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Remembering Ed Baker

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REMEMBERING ED BAKER

*Tobias Barrington Wolff**

Sitting at the top of my e-mail Inbox on my home computer are two messages from Ed Baker. He sent them to me last spring, in response to a paper that I had presented in workshop to the Penn faculty—a draft of a First Amendment article on which I have been working in one form or another for over ten years. The article attempts to say something about the proper analysis of free speech claims under the First Amendment when those claims are asserted by corporations and other artificial entities. It pursues a set of instincts about the distinction between safeguarding individual autonomy and promoting robust public debate, along with the arguments for and against permitting artificial entities to invoke each species of claim in different speech situations. I started work on the article about a year before I became a law professor, and I have come to think of it as the measure of my own learning curve in the field of free speech. I have ripped it up and rewritten it several times; spun off another article from one part of the paper's analysis; and, nonetheless, I am still painfully aware that I do not yet know enough to write this paper in the way it should be written.

Ed's e-mail comments came in response to the paper's current incarnation—a stripped down version of what it has been at various points in the past, since it lacks both the sections that were spun off into another article and the sections that I excised upon returning to it this most recent time and concluding that substantial portions were not yet right. The Penn faculty, as always, were excellent in workshop, engaging with the elements of the project in which they saw genuine value and pushing me to improve my thinking in the parts that were still rough. But Ed had been unable to attend my workshop presentation. If memory serves, he was in New York that day. Instead, he read the draft and offered me his reactions in written form.

I have not been ready to give Ed's e-mails the attention they deserve, hence their presence atop my Inbox these many months. My head has been filled with Civil Procedure, Federal Jurisdiction, and Conflict of Laws since last summer, and I have promised myself that

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in my next engagement with this First Amendment article I will spend as much time educating myself and refining my thoughts as is necessary to do the project justice. Ed spoke to me in that mode in his e-mails—as a colleague and equal capable of engaging with free speech doctrine and theory at the highest level. A scholar with proper respect for his avocation does not approach such a conversation unprepared. And so Ed's e-mails have sat conspicuously atop my Inbox as a reminder of the major endeavor that I have waiting for me, and of the great mind that will be there to help guide me, with characteristic generosity, to a deeper understanding of my own instincts about this indispensable provision of our Constitution.

It will perhaps not be difficult to understand, therefore, that Ed's e-mails have now taken on an elegiac quality. I will not enjoy the benefit of that great mind in my further efforts to understand the First Amendment. Ed Baker made perhaps the most earnest, passionate, and thorough attempt to use the autonomy of the individual as a basis for justifying free speech theory and structuring First Amendment doctrine that any scholar has contributed to the modern canon. When I joined the Penn faculty three years ago, Ed Baker's collegueship was like a vein of ore to me—a source of wealth that I would mine, just as soon as I was ready. But now that treasure has receded beyond reach.

I did not know Ed well. We had several rich conversations about the law after I arrived at Penn in 2007. On two immensely gratifying occasions—once in response to a presentation that I made of another First Amendment article, and once when he agreed to sign an amicus brief that I had written to a federal appeals court—Ed praised me for having provided insights that were new to him and had changed his way of thinking about a pair of free speech issues. But I don't believe that we ever shared a meal together outside the halls of the law school, and I knew little about him beyond his work. It is one of the passages that marks the transition from young scholar to mature academic, I think, when one begins approaching senior colleagues not merely as intellectual mentors but also as friends. Though I have found some of my closest friendships in the academy in these last ten years, that transition came more slowly for me in approaching Ed. He was notoriously private and inscrutable, which perhaps accounts for a part of that lost opportunity, but he was so palpably tenderhearted and compassionate that any colleague must assume equal responsibility for not finding a space to share with him.

The work that Ed Baker leaves behind will be a legacy of which any scholar would be proud, and I will turn to that work frequently as I continue trying to form myself into a respectable First Amendment

scholar. But Ed's e-mails will always serve as a more personal reminder to me of what I have lost: a great mind; a generous colleague; and a close friend and co-venturer that could have been.