

## ED BAKER, COLLEAGUE

*Regina Austin\**

As I reflect on my relationship with Ed Baker, I am amazed how much overlap there was in our time as Penn Law faculty members. Ed came to Penn in 1981, a mere four years after I returned to Penn as an assistant professor. Ed, of course, was well ahead of me in terms of productivity and status in the profession.

In the beginning, we read each other's work. He offered substantive comments on mine while I proofread his. Over time, I understood less and less of what he was doing and he understood less and less of what I was doing. Our minds simply did not work the same way. He was methodically rigorous. He was excited about talking theory. I like reality and popular culture; I was excited by ethnographies and documentaries. His avocations were my vocations. His fascination with print media and his reluctance to subscribe to cable television left me totally dumbfounded.

But he remained my good colleague. We would ride the rails together, down to Philadelphia, back up to New York. Back and forth and back and forth. He would often join me and my husband for Sunday brunches, sometimes with the likes of Walter Mosley and Danny Glover. Ed hung with them and seemed to accept his role as the token white guy. I will be eternally grateful for the protection he provided me from so much macho humanism. At some point, I could take it no more, gave up, and moved back to Philadelphia to produce student videos. Throughout it all, whether in NYC or Philadelphia, Ed and I talked about life at the Law School.

We talked about teaching and the difficulties we encountered. Over time the students had become less politically liberal and more intellectually blasé. Ed never blamed his teaching evaluations on that. He was very concerned that he was not effective at getting his message across. Ed's commitment to the values of democracy was best reflected in and confirmed by his dealings with his students. I do not recall his having groupies the way some professors do, but he touched many of his students in a most profound way. Jo-Ann Verrier, Vice Dean of Administration and Penn Law Class of 1983, shared

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with me the story of one of her classmates, Martha Manning, who had Ed Baker as a teacher when she was a first-year student at the University of Oregon Law School. Jo-Ann writes: When Ed Baker arrived at Penn Law, “he convinced the Admissions Office to accept Marty as a transfer student. Well, she excelled here. She did excellent work as a student while delivering twins her 3rd year. She went to Morgan, Lewis & Bockius, then was general counsel at the Wistar Institute and now she’s Vice President and General Counsel at the international biopharma firm Sandoz. . . . Along the way, she’s had four more children.” Martha Manning acknowledges her debt to Ed Baker. “He really made a difference in my life not only by opening the door to Penn Law School for me, but by his teaching. When I was a 1L in his class at Oregon, he used the Socratic Method to teach me to think for myself—to come up with not only my own answers to his tough questions, but to come up with my own questions. That is the most important skill I learned in law school and rely on every day in practice. He was truly instrumental in my legal education and [in] really teaching me to think for myself.”

Far more than teaching, though, we talked about the obstacles that stood in the way of our being members of a progressive and diversified faculty. James Gimmelman, whom I do not know, offered the following comment on Ed’s Facebook page; there is truth in what he says: “I only met Ed twice, but I’ll remember him vividly. The first time was a talk on his theory of ‘complex democracy’ and I remember thinking that this was a man who truly loved democracy. Not in a distant, abstracted, idealized way, but with a calm, contented, knowing, sad, and complex depth. He gave it a lifetime of scholarly attention, and notwithstanding all the trends he decried, I like to think that his care was repaid.” I am not so sure about that.

For many academics who came of age in the 1960s and 1970s (like me and Ed and many of others here), our commitment to democratic rule is both expressed and practiced in the context of the university, particularly in areas of faculty governance.

We fought many battles over the past thirty years. We won some, and lost some, most notably the right to elect the appointments committee and the decision to grant tenure to Drucilla Cornell.

Ed believed that balanced, cogent, tightly reasoned, disciplined analysis of the scholarship of candidates for appointment and tenure would be listened to and responded to in kind, even if his views did not ultimately prevail. He poured his best efforts into the statements he put in files or read aloud at faculty meetings because his commitment to collegial decision making demanded it. After the meetings were over, he would ask me and others our opinions of his perform-

ance. He wanted confirmation of his views and feedback about areas where the analysis needed improvement. As the number of people who placed a high priority on our having a progressive and diverse faculty dwindled, Ed's words had less persuasive impact. Ed was deeply disappointed and angry. Yes, Ed got mad, but he was able to get on a train and travel to a more nurturing environment.

I believe that Ed took our colleagues' responses to his evaluations of the work of candidates for appointment and tenure and opinions about other issues of faculty governance personally. I think he would have liked to have had more of an impact on our collective decisions because it would have represented recognition of his standing as a scholar and a thinker. Despite his record of publications, his engaged mind, his temperate disposition, his expansive network of academic friends and acquaintances, it appears that he served on the appointments committee only once and on the tenure and promotions committee only twice. Being able to influence the future course of the institution, to have colleagues who respect your intelligence and your contribution to the overall reputation of school, to have fellow scholars with whom one can really have deeply substantive discussions is important to any true academic. I think they were important to Ed. Ed would have taken it as acknowledgment of his value to the Penn community if he had been asked to serve, if he had had more influence in a democratically governed community of scholars.

But Ed was changing. He seemed to have less need for external validation and vindication. As Dean Robert Post of Yale has written of Ed: "I believe his need for recognition and for acknowledgement diminished as [he] grew older and as the quality of his work became so indisputably foundational that even he could relax about the security of its reception."

I hope that the outpouring of testimonials about Ed the scholar and theorist will cause some of my colleagues to reflect upon him and his scholarship anew. It still matters.

Ed was not the only one of my colleagues who died suddenly during my tenure at Penn Law School. There was another Ed, Ed Sparer, who had a fatal heart attack at his home in Woodstock. He was a brilliant legal thinker too and a creative and caring activist/lawyer of welfare law and health law. He too was not fully appreciated. Shortly before he died our new dean told him that he had been underpaid for years. In the time since his death, he has become better regarded. Now there is an annual symposium held in his honor. But the faculty did not do the one thing that would have indicated that it recognized the truly superlative quality of his intellect: that is, appoint someone to the faculty who was committed to carry-

ing on his work. Rather, the response might be characterized as cynical.

I have found these words very hard to write. If Ed were still alive I would have given him a draft and gotten his thoughts on whether the tone is right or whether I am merely speaking truth to petty power and should save my breath. Worst yet, he might know if I was foreclosing a window of hope and goodwill, no matter how small, that might lead to the result I want. So many of our best efforts to seek a more progressive and diverse community have been met with the kind of response that makes one careful what one asks for. I cannot guarantee that a fate like Ed Sparer's will not befall my colleague Ed Baker. The votes are not there. I have moved on too. The best I can do is go on record with my hope that Ed Baker's scholarly commitments to a diverse, progressive democratic order protected by a vibrant First Amendment will be reflected in future appointments to the Penn Law faculty and that if questioned you will attest to what I have said here.