1996

Tribute to James E. Beaver

John Mitchell
Tribute to

PROFESSOR
JAMES E. BEAVER
1930-1996
"I believe, without ability to prove it, that Truth is somehow immortal. In the ultimate, perhaps, Truth can only reside in the brain and in the bosom of God, if any God there be, and if His essence is comprehensible at all in human terms. One supposes that Truth in mortal terms—cogitat ergo est—is the object of all scholarship properly denominated as such."

James E. Beaver
James Edward Beaver, born September 6, 1930 in Chicago, Illinois, died February 16, 1996, in Tacoma, Washington. He graduated second in his class from Wesleyan University in Connecticut and was first in his class from the University of Chicago Law School, where he was Managing Editor of the Law Review. Under a Fulbright Scholarship, he completed a year's post-graduate study of History at University of Graz and University of Vienna, Austria. After graduating from law school, he refused an invitation to clerk for Chief Justice Earl Warren in order to begin employment at Kirkland and Ellis in Chicago, where he was an associate for eight years. He was admitted to practice in three states, two Circuit Courts of Appeal, various U.S. District Courts, and the U.S. Supreme Court.

Before becoming the senior founding faculty member of the new University of Puget Sound School of Law, Professor Beaver was an Associate Professor of Law at the University of Washington School of Law and Professor of Law at Indiana University School of Law at Indianapolis. He was a dedicated scholar and teacher, who played an important role in the development of the law school.

He was named Professor Emeritus by the Seattle University Board of Trustees in recognition of his twenty-four years of distinguished service to the School of Law.

An accomplished pianist, he entertained his students at the end of every semester with a piano recital at his home. He was a stamp collector, and had a substantial collection of art and Oriental rugs. A conservative Republican, he twice ran for Congress and remained very active in both Republican Party and conservative causes. He embraced life enthusiastically, reveled in political debate, and viewed all authority skeptically.

Professor Beaver will be greatly missed by all of the Law School community.
EULOGY FOR JIM BEAVER FEBRUARY 29, 1996

Jim Beaver loved history. He loved the classics. And, of course, he loved texts. He particularly enjoyed expounding them—from the maxims of equity to the Federal Rules of Evidence to the Dauer Report. The Dauer Report? That was Jim's title for a single sentence, authored by Dean Dauer, in a 1989 ABA inspection report. The sentence asserted that our senior faculty were paid $10,000 to $20,000 less than their counterparts elsewhere. Jim never tired of expounding that text to me. And, were he here today, he would doubtless tell you that my inability to appreciate his exposition put me among the most dim-witted of students he had ever tried to teach.

Though I could not hope for a star, I thought I might raise Jim's estimation of me just a bit if I chose, as the basis for my remarks this afternoon, a classic text with historical significance. The text is a Shakespearean sonnet, whose second line, with its concern for time, has achieved worldwide circulation, as the epigraph for one of the greatest novels of the twentieth century.

When to the sessions of sweet silent thought
I summon up remembrance of things past,
I sigh the lack of many a thing I sought
And with old woes new wail my dear time's waste:
Then can I drown an eye, unused to flow,
For precious friends hid in death's dateless night,
And weep afresh love's long since canceled woe,
And moan the expense of many a vanished sight:
Then can I grieve at grievances foregone,
And heavily from woe to woe tell o'er
The sad account of fore-bemoane'd moan,
Which I new pay as if not paid before,
But if the while I think on thee, dear friend,
All losses are restored and sorrows end.

I chose this text because the voice of that sonnet is Jim Beaver's voice; and unless you understand that voice, you cannot understand Jim: his sense of self, which was so complex and divided, or his generosity of spirit, which was so simple and whole.

Like most of us, Jim experienced triumph and failure; and again, like most of us, he discovered early and often that life was not always fair. He dealt with all this quite straightforwardly. He took responsibility for the decisions he made—decisions that in retrospect he might have thought should have been made differently: turning down a football scholarship to Vanderbilt; marrying the first time so early;
declining a clerkship with Chief Justice Warren; rejecting a belated offer of tenure from the University of Washington; leaving Indiana University in 1972 for a fledgling law school in the Pacific Northwest. These decisions—if wrong—were his; and the blame was therefore his.

Oh, to be sure, he occasionally “sigh(ed) the lack of many a thing (he had) sought”: partnership in Kirkland and Ellis, a seat in Congress, an appointment to the federal bench. Costly as was the expense of those many vanished sights, Jim wept little over their loss. They were fated not to be, and he had no quarrel with fate.

Jim did quarrel with those who maliciously inflicted losses on him. He did “drown an eye, unused to flow” over those grievances. And like the voice of the Sonnet, he grieved those “foregone grievances o’er” again. He could not understand, for example, how his colleagues at the U could vote to deny him tenure because he held conservative political views, or why some students might, for the same reason, refuse to take his classes, or why a University President would punish him for speaking his mind at a Board of Visitors meeting. To the end of his life, Jim had a child’s innate sense of fair play. He must have hated schoolyard bullies.

Jim’s insistent demand that we apply high standards uniformly was rooted in that sense of fair play. People ought to be judged by what they did. Those who did more—those who did better—should succeed. And they ought to succeed, he added, without regard to gender, color or point of view.

I recall, for example, his evaluation of a book written by a colleague whose political views Jim detested. He thought the book an excellent piece of scholarship and praised it lavishly—though, I must add, for accuracy’s sake, I thought I detected in his voice some surprise that one otherwise so deficient in common sense could produce quality work. In any case, Jim cheerfully voted to promote the colleague.

Indeed, Jim rarely voted against the promotion or tenure of a colleague. He was, in my view, generous to a fault in personnel matters; and he was enormously sympathetic to the rejected. In other matters as well, Jim was far more compassionate than many suspected. They saw only the bluff and bluster behind which he occasionally hid his vulnerability. And vulnerable he was because, like all of us, he wanted the approval of those around him. As Dean, I invariably tried to get new faculty to go to lunch with Jim; all too often they would look at me with fear-filled eyes, as if I were asking them to walk into a lion’s den unarmed. What they didn’t understand was that Jim could be subdued without arms. This lion could be tamed with nothing more than a sincere offer of tolerance, respect, and friendship.
Jim prized those qualities—tolerance, respect, friendship—because he knew that they alone enabled a community of teachers and scholars to flourish. He dedicated the last half of his professional career to building that kind of community at this school.

Surely in his reveries Jim thought both about that particular contribution and the general richness of a life that embraced music, politics, and art. More importantly, and more certainly, he must have recalled the affection of his children and Anita's love. Such remembrances should have made him realize that he had wasted little of his "dear time" and that he had paid in full any "sad account" he ever owed.

But... but... I suspect that even in "those sessions of sweet, silent thought" Jim was bedeviled by doubts: doubts that he had done enough, achieved enough, made enough of a difference. My fear is that he never gave himself the star he so richly deserved.

But, then again, perhaps he has heard what was said at the funeral Saturday and here today. Perhaps he has heard at last how much we valued him and how much we shall miss him. Hearing all this would probably surprise Jim—especially the fact that he was anywhere he could hear it. But hearing all this, Jim must now be whispering: "Dear friend(s), all losses are restored and sorrows end."

James E. Bond
Dean
Seattle University School of Law

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REMEMBERING MY FRIEND AND COLLEAGUE

Jim Beaver was my friend, my faculty colleague, at the University of Washington School of Law. I speak from a time in our lives over 25 years ago. Though Jim and I were friends—close friends in spirit—until he died, we seldom saw each other or even spoke on the telephone after that period. When I joined the faculty at the School of Law, University of Washington, in 1967, he had been there for two years. Then-Dean Tunks had hired him as one of a group of very bright, young faculty, to transform the school from a good, regional one to a law school of national stature. None of them had qualifications to equal Jim's, second in his graduating class at Wesleyan, first in his law class at Chicago, and, unheard of, one who had declined a clerkship to the chief justice of the United States. None had his
brilliance, a mind like Jim’s, a scalpel cutting to the heart of a legal problem.

Jim and I were drawn into friendship, both professional and as close on the personal level as I have ever had with a faculty colleague. He played the piano for me and introduced me to Alfred Brendel’s playing; we even went fishing together. He taught evidence, a subject I had been teaching at the law school I had just left. As a fellow Midwesterner, I was not repelled but made comfortable by his candor, his lack of guile, his directness. The phrase, “What you see is what you get,” was made for Jim. If you asked Jim his view on something, what you got was the contents of his mind, as pure and transparent as spring water, not, as with so many persons, colored to influence you in some desired way. That absolute intellectual honesty was perhaps hard for some to bear, especially if they disagreed with Jim. He had a way, another Midwestern trait, I think, of summarizing difficult ideas plainly, of giving you his conclusions first, unvarnished, unadorned, then explaining his reasons next.

That Jim held strong opinions on many subjects is surely true. But I found him as agnostic about his own mind as he professed to be about religion, and I suspect many of his colleagues never saw this. He would often say, “Well, I may be wrong, but it is my opinion . . . .” That is the mind of a true conservative, to have a large reservoir of self-doubt. The inevitable corollary is that, if you doubt the ultimate truth of your own conclusions, you will allow the possibility that, in the end, those who disagree with you could just turn out to have been right. And that is nothing but toleration, a most serious deficiency in our society today; it is intolerance, more than disagreement, that is disrupting us. I found Jim to be as tolerant a person as ever I knew. It is a virtue to have strongly held values—and he did—but it is a vice to try to force them unwilling on others—and he never, never wanted to do that. Jim never thought to take retribution against those with whom he disagreed; disagreements were, as they should be, at the level of ideas. He was no faculty politician. In the days when General Grant’s army stood before Richmond, another officer warned him, “General, Lee will outmaneuver you.” Grant replied, “I do not maneuver.” In his faculty dealings, Jim did not maneuver; he did not know how.

Jim and I were drawn into friendship, more than anything else, because we shared similar weltanschauung. But upon reflection I apprehend that we may have reached our common ground by quite different paths. Everyone who knows anything about Jim would say he was politically “conservative.” Maybe so, but he was the most
maverick conservative I ever knew. Most conservatives, like most persons at any point on the political spectrum, became such because of influence by family or teachers or other persons influential in their lives. There probably were some such influences in Jim’s early life—I do not know—but his beliefs on politics and his basic value judgments appeared to be more the product of his own pure reason than with anyone I have ever known. He was in that respect a rationalist, not a traditionalist. I believe he would have held almost the same values, the same beliefs, if he, like Romulus and Remus, had been raised devoid of human influences. He did not share many of the traits often associated with American conservatism. Though our close association was at the height of the Cold War, I do not recall him expressing much concern about international Communism. He certainly had no affinity with the religious right; he was a humanist, a free thinker, not nearly as socially conservative as politically conservative. That is why, I think, those who knew him saw him as a complex person, who could not be fit into any pigeonhole. Did he seem unpredictable? Perhaps it is we, captive in large part to our own biases, who are less rational than Jim, whose beliefs were more derived by reasoning from first principles.

Under all his seeming bluster, Jim was a gentle man and a very humane one. Before I let you go, allow me to share a story that shows his humanity. Several years ago, I had occasion to call him on the telephone about something. After we had taken care of our business, Jim asked, “Do you want to buy an Oriental rug; I have about 300 of them for sale at my house.” I had to tell him no, since we are not into Oriental rugs with our Scandinavian teak furniture. A few months later, I called him again about something else, one of our graduates who was interested in a position on his faculty, I think. After we took care of that business, Jim announced, “I’m going on sabbatical next fall.” “Where,” I asked. “Turkey,” he replied, in just the right matter-of-fact tone.

The University of Puget Sound School of Law, as it was then known, was exceedingly fortunate to attract Jim Beaver as its first faculty member in 1972. Since 1969, I have always wished he had stayed with us, as he might have, and should have if our colleagues had been more constant and acted more predictably toward him, and if, I must in fairness add, Jim had been less prideful. In a eulogy for Jim that he delivered on 29 February, Dean Jim Bond suggested that some, though by no means all, of our Washington faculty opposed him because of his frankly expressed conservative views. That was certainly what he and I thought at the time. I am in his debt, because
from his experience I learned much about how pliable is the vaunted phrase, “academic freedom.” For Jim’s sake and for the sake of the Seattle University School of Law, it was fortunate that its faculty conceived of that phrase in a more principled way than did my own. You are most fortunate to have had Jim Beaver with you for many years. Now you miss his presence. In this we are one, for I have missed Jim since 1969.

William B. Stoebuck
Judson Falknor Professor of Law
University of Washington School of Law

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JIM BEAVER REMEMBERED

I remember my first class, of the first day, as a student attending the University of Washington School of Law in September 1966: Professor James E. Beaver, presiding.

He began class, where I thought my erstwhile legal career would end, with a hopelessly long Latin quotation, finishing with this stinger: “Mr. Sanders, what did I say?” Not only did I not have the foggiest idea but found my inadequacy was amply confirmed when he asked, “Well, anyone?” And at least a half dozen students raised their hands, the first one giving a perfect translation.

Not in my wildest imagination did I think I would be writing a short remembrance of Jim almost 30 years later, from my chambers in the Washington Supreme Court.

Jim featured himself a classical liberal. He eschewed governmental interference almost as much as he exalted individual accomplishment—and he showed by his own example the great potential all of us have but few of us put to use.

Of course he was a man of letters, an academic, and a scholar, but I knew him as the only law professor who ever invited me home for dinner, who ever played a classical piece on the piano, who knew something about Oriental carpets, and who never tired of describing his art collection which included an incredibly large, and impossibly old, painting of the Tower of Babel (my favorite).

Jim’s example was an inspiration of passion. His convictions were at once carefully considered and a call to arms. For this he paid the warrior’s price: He was denied tenure at the University of Washington School of Law, perhaps the unkindest cut of all from those who could not recognize greatness in their midst. But he occasionally enjoyed the
all-too-rare, hard-fought victory. Successfully suing the UPS Law School brought him a smile and a hearty laugh. He had fun while it lasted, and so did his friends.

Jim, you are gone but not forgotten.

Richard B. Sanders
Justice
Washington State Supreme Court

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JIM BEAVER—A GREAT SCHOLAR, A DEAR FRIEND

James E. Beaver, a splendid teacher and lecturer, a magnificent writer, a remarkable scholar, a warm and compassionate man, was unique in the contemporary law and its law school world because his towering intellect and his understanding of history developed humility rather than hubris, tolerance rather than tendentiousness, civility rather than callousness, and restraint rather than rodomontade.

Indeed, in legal education of these days, he was a person of rare talent and disposition. When he used historical references or descriptions, he actually understood the history to which he referred. He understood its significance, and he said that it is significant. Shocking stuff, this! Jim understood that Cicero was destroyed by envy of other persons. He knew that a Republic can suffer the same fate, especially when envy is packaged and imposed as law.

He fully appreciated the harm that “change” and “new” rules can inflict, particularly if they are presented as an “improvement” with which “all lawyers” and “the unanimous court” agree. Jim knew that a judicial or legislative committee, whose members believe they must produce something, can, when the product is adopted by the committee’s appointing authority, inflict terrible but generally imperceptible harm in the name of “progress” or “change” or “improvement.”

Among his many writings and thoughts, my favorite is The 'Mentally Ill' and the Law: Sisyphus and Zeus, 1968 Utah Law Review 1. It was a treasure. It is now, and it will always be. The leaden suppression of freedom made acceptable in the label “health care for the mentally ill,” along with the imposition of enormous costs upon all of us, that is strongly advanced to the Congress today, is fully anticipated almost 30 years ago. Jim quoted Camus, but Jim wrote as well or better. Camus observed “that ‘bourgeois intellectuals’ are ‘willing that their privileges’ be paid for by ‘enslavement’ of others. ‘And, besides, most of the time they do not even defend freedom the
moment there is any risk in doing so."" Mentally Ill and the Law, supra fn. 2, page 2.

Whether in class or in conversation, if you were exposed to Jim Beaver, then you were in the presence of a giant. I am honored to say that he was a very good friend. I am pleased to say that he was with us in our time. I proudly say that he was one of our finest, and I am desperately sad to say that now he is gone.

William F. Harvey

Carl M. Gray Professor of Law and Advocacy
Indiana University School of Law at Indianapolis

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JIM BEAVER, THE FOUNDING MEMBER OF THIS LAW SCHOOL

Jim Beaver was the first UPS Law School faculty member. He joined the faculty while on leave as a tenured faculty member at the Indiana University School of Law at Indianapolis. He was the only member of the original law school faculty who had law school teaching experience let alone tenure at another institution. Despite the differences in experience and in age between Jim and the rest of the faculty—many of us were 30 years old or less—Jim treated us with respect and as fully equal colleagues. Although he periodically referred to us, and me in particular, as “being wet behind the ears,” a characterization to which he referred only a few months ago, he never pulled rank. Although he was the senior ranking faculty member, he considered everyone on the faculty his equal, in faculty meetings and elsewhere, and gave a full hearing to the ideas of his less experienced colleagues.

The first two years at the law school in particular were very difficult ones. Each of us taught three sections of a course. Instead of 300 students the first year, there were 475 the first day of class, and each of us taught all 475 students. There were no academic rules. The only committee to deal with matters such as admissions and hiring was a faculty committee of the whole. There were numerous faculty meetings, generally twice a week, every week, for approximately two years. They involved interminable wrangling over every possible issue from plus and minus grading to probation policy. When the going became particularly tough, Jim would inevitably opine: “No one ever said it would be easy.” Despite his strongly held views on many issues, Jim was a great compromiser. He always talked about “cutting out the horseplay” and “getting the job done.” When things became very difficult between the Dean and the junior faculty, Jim acted as a
mediator to bring harmony to what would have become a fractious institution.

Of all the teachers, Jim was undoubtedly the favorite of the students. He taught three sections of Civil Procedure and incorporated into the cases and rules he taught anecdotes about his own litigation practice in Chicago, Illinois with the firm of Kirkland and Ellis. While discussing motion practice at the trial court level, he would, in his own disarming way, tell how a lawyer who had a busy day and could not wait to argue a motion later in the day would slip a twenty dollar bill to the clerk of the court who would move the lawyer's case to the head of the docket. Or he would tell how, after trying a price fixing case involving a liquor distributor, he and some of his colleagues in the firm drank all the evidence. In one of his evening classes, a student thought Jim had taught the same case two nights in a row. He very excitedly went up to Jim to indicate that Jim had slipped and taught the same material twice. Jim said to him: "Mr. [So-and-So], I don't have very much to give, but what I've got you're going to get."

Although he greatly liked and enjoyed being around students, Jim was not averse to telling them what he thought they needed to hear. At the end of the first semester of the first year, grades came out and were very low. The students thought that the grades resulted from pressure to change grading practices. When he heard of the student reaction, Jim took time in each of his sections to tell the students that they had better, in his words, "shape up" and "get with the program" or they ought to get mops and brooms and look for jobs as janitors. This was something only Jim could say because only he commanded the necessary respect of the students. What was important was that he was willing to risk his relationship with the students for his colleagues and the good of the school.

In his first years, Jim played a particularly active role in faculty hiring, contacting his many acquaintances throughout academia trying to convince them to come to a fledgling law school. Jim held very strong political views and yet he did not let that affect his decisions in any respect in hiring or tenure decisions. He might characterize someone as a "Lefty" or a "Pinko," but he always voted for the person if he thought he or she deserved it on the merits. Not once did he attempt to influence the composition of the faculty along political or ideological lines.

Jim sought the best for the law school regardless of the perceptions of others, particularly those with administrative authority. Some faculty are especially deferential to a dean candidate; not Jim. He always asked dean candidates and deans whether they were the kind
who “pushed up” or “pushed down.” By pushing up he meant promoting the interests of the law school; by pushing down he meant knuckling under and subjugating the law school’s interest, generally to some other interest within the university. When you sat with Jim in interviews with an evasive or nonresponsive decanal candidate, you always knew what the candidate’s answer was by Jim’s response.

Jim not only did not fear deans, but also university presidents and boards of trustees. At one of the first Board of Visitor meetings, Jim read a bill of particulars criticizing what he saw as university action detrimental to the best interest of the law school. Although he received a great deal of criticism from the university and offered to return to Indiana, he never withdrew his remarks or refrained from speaking out in the future. Whether you thought he was right or wrong, Jim spoke unflinchingly for what he saw as the good of the law school. He kowtowed to no one.

Jim did a great deal in the first few years of the law school’s existence. As indicated above, he set the tone for the relationship among faculty that was and is nonhierarchical. Given the character of our school and its need to hire predominantly junior faculty, that was a significant contribution. Although he was a politician in the best sense of the word, he did not act politically, either in making decisions such as in hiring or tenure, or in how he approached academic issues. He did not engage in back door politicking. Rather he went to faculty meetings with his yellow legal pad and said what he thought was correct whether it offended those who agreed with or opposed him.

Finally and perhaps most significantly, he strongly defended academic freedom and faculty decisionmaking. Jim did not believe that the faculty should run the law school. He believed the dean and the university administration had important roles to play both in setting and implementing policy. But he did believe in faculty primacy in crucial academic areas. Jim was a scholar who believed in the university as it arose out of the middle ages in places like Bologna. To him, it was the faculty that decided what was taught, how it was to be taught, and who taught it. In the early days of the law school, there was a strong likelihood that this school would be a dean-run law school with the faculty here to do what the dean told it to do. For the first few years of the law school, Jim led the charge, sometimes almost single-handedly, in assuring that the faculty and not the dean determined academic matters. Had Jim not succeeded in leading the fight on that battle, this school would be a substantially different one than it is today, certainly not one that enjoys the stature and recognition that it does. Thanks to Jim this is a far better school, offering a
better education than had he not been here from the beginning. We had, and we have lost, a valuable educator and colleague.

Thomas Holdych  
Professor of Law  
Seattle University School of Law

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ECHO:  
WORDS SPOKEN IN MEMORY OF JAMES BEAVER

I think it appropriate for me to begin with a brief recitation of the facts: Professor Beaver was born in the Midwest, he graduated first in his class at the University of Chicago School of Law; he spoke several languages, and he was a connoisseur of fine art, classical music, and conservative politics.

And yet, people still liked him.

Why? Because what matters are not the honors and achievements bestowed, but rather the spirit or essence of the person. Part of the reason I liked him was that he was different—perhaps one might even say eccentric. He was reminiscent of a captivating Dickens character like Pickwick or Micawber. He may have been white but he was not plain vanilla.

Maybe more importantly, he was different and he didn't try to hide that difference. He was a very content man. He seemed happy with so many parts of his life; but what struck me most was how much he loved his job.

There are two major components to being a law school professor: teaching and publishing. He enjoyed both components of the job and excelled at them as well. Teaching, of course, is merely another performance art, so his musical training prepared him well for the task. And while his publishing legacy is nearly complete, the legacy of his teaching is only beginning: two of the most recently elected State Supreme Court justices were students of Professor Beaver. So was a Vice-President of the United States, numerous law professors, television personalities, and thousands of equally successful but lesser known acolytes with more on the way.

As for publishing, Professor Beaver was born to write scholarly works. The truth is, he even spoke like a law review article, complete with footnotes.
It might be because I did much of my work with Professor Beaver on the phone, but one of the characteristics that I will always remember him for is the way he spoke. Part of it was the voice itself: deep and resonant, like a movement in the base clef on a grand piano. A fortissimo movement.

Something like:
"Kelly, Jim Beaver."

The New York Times quotes William Raspberry, syndicated columnist for the Washington Post, as saying that 'the purpose of laws from time immemorial has been to promote the interactivity of people.' New York Times, January 8, 1996, at A4. I believe the case to be, in fact, quite the contrary. That is, that the purpose of laws from time immemorial has been to discourage the interactivity of people (e.g., the laws governing murder, theft, and other trespasses to chattels). What I need is an example, preferably from the Code of Hammurabi (circa 1750 BC), or perhaps even the Code of Justinian (also known as the Codex Justinianus or Corpus Juris Civilis). Justinian I, of course, being Byzantine emperor from 527 to 565, Anno Domini."

The man was born to write law reviews.

I think the only thing he disliked about his chosen occupation was the giving and grading of tests. But he even excelled at that—or more accurately, at avoiding that task as nearly as possible. At least, I think that's a fair assumption to be made of somebody who once had students take a multiple-choice test on mark-sense forms.

One could argue that Professor Beaver was the embodiment of the school that was the University of Puget Sound School of Law. Within his milieu, he was a living legend.

It is sad that the next generations of students will take a course called Admiralty instead of "Beaver on Boats."

And that the valuable and time-tested Beaverlines for Evidence and Conflicts will fall into disuse.

More importantly, who now will open their home to every student to teach us that there is more to a life than understanding its laws?

Kelly Kunsch
Reference Librarian
Seattle University School of Law

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MY THOUGHTS ABOUT PROFESSOR JAMES E. BEAVER

Although Jim Beaver and I were born in the same month (September) of the same year (1930) and in the same state (Illinois) and though we went to the same law school (University of Chicago), we did not meet until I arrived at the University of Puget Sound as Dean in 1976.

During that spring of 1976, while I was being introduced as the new Dean, Jim was presenting a report to the Board of Visitors that angered the powers that be.

That act epitomized the character of Jim Beaver. Jim was not a revolutionary, nor was he an enemy of the status quo. In general, he supported authority against carping criticism. On the other hand, he was highly principled and felt compelled to state the facts of a matter even when to do so would be costly to him. When it came to telling the truth, I am not sure that he ever calculated the cost.

Yet I know from personal experience that the cost to him was often excessive; but he never faltered. During our time together at the University of Puget Sound, he became my closest friend on the faculty. Not a day passes now that I do not look at his office door and fondly remember our political and philosophical discussions. Certainly, we did not always agree, but I never doubted the sincerity of his views nor suspected that they were based upon a calculation of personal benefit. Moreover, I knew that I could depend upon Jim absolutely for personal support on any issue of conscience, especially issues involving academic freedom.

I do not believe that the world will produce another Jim Beaver. But I do know that the world is a poorer place without him. I miss him personally and as a moral presence at this school.

Wallace M. Rudolph
Professor of Law
Seattle University School of Law

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I was here in New Zealand where I've been teaching when I got the news of Jim Beaver's death, and it came as more of a shock than had I been on the scene. I know the full impact of Jim's death will not hit me until I return and find him conspicuously absent. Jim was more than just one of the faculty, or one of the three of us who taught Evidence regularly. He was an institution in his own right, a part of our identity as a school and our personality as a faculty.

Jim Beaver had many sides to his life and personality, including popular teacher, respected scholar, art and Oriental carpet collector, even handball player. But the facets of Jim's life that I personally will miss most are two:

Jim was one of those rare colleagues with whom you always knew where you stood: he was not in the least reticent, and his views did not run to the moderate or wishy-washy. If the Emperor had no clothes, Jim would be the first (and sometimes only) one to say so. Faculty meetings will never be the same without Jim's booming voice setting forth his principles, quoting relevant authority, and pointing out the lack of logic or fairness in some proposed action of the faculty or administration.

That was Jim's public persona. But in his private life, Jim was an accomplished pianist who loved to share his talent with his students and colleagues. I will not be alone in missing those post-semester recitals at his and Anita's home, where surrounded by (and standing upon) numerous works of art, we would relax and be reminded that there is more to life than law school, and more to teaching than the law.

It is, perhaps, fitting that Jim's academic life coincided so closely with that of UPS as a law school. Jim was fiercely loyal to and staunchly supportive of the school he helped found. I am sure that he will be looking down on his old comrades, watching to be sure that in his absence we keep the faith and continue on our upward path.

We shall, of course, carry on as Seattle University, Jim; but we leave behind a University of Puget Sound School of Law with which you will forever be identified.

Mark Reutlinger
Professor of Law
Seattle University School of Law

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Jim took up a lot of space, in every respect. His presence, voice, laughter, drama, and intellect all filled a room. In fact, he single-handedly held open a space for a point in time passed, a time more formal and learned, a time when books, theater, and the arts did not compete with MTV. Jim took up a lot of space, and so his passing leaves an equally large emptiness.

John Mitchell
Clinical Professor
Seattle University School of Law

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Jim Beaver’s candor was refreshing. When it came to issues, one never had to speculate about where he stood. He shared his opinions with gusto, and his opinions always were unequivocal. Yet, Jim had the ability to separate issues from persons. When it came to other individuals, he was wonderfully inclusive. He was accepting and caring. He was a kind person who did not speak negatively of others, whether or not they agreed with his beliefs. I treasured those rare qualities, and I will miss him.

Melinda Branscomb
Associate Professor of Law
Seattle University School of Law

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MY MEMORIES OF PROFESSOR BEAVER

I worked for him for seven years as his secretary. He was so intelligent it was almost intimidating until we got to know each other. It took about 6 months for me to prove to him that I could do expertly and expeditiously what he wanted me to do. He shared with me his love for stamp collecting, his love of Turkish and Mideastern history, his love of music, and his love of books and learning in general. He was always the teacher. Any question I would ask, about a point of law in a brief I was typing or an historical comment in an article he was writing, would be answered in depth. The knowledge on whatever subject would just pour forth all the way back to 900 and 1100 A.D. sometimes. He was kind and a gentleman. He would ask about my family, how my kids were doing; he encouraged my older daughter in her schooling pursuits; he held my grandson when he was a week old; he would encourage me to pursue further education for myself saying
I had a good understanding of what we were about here and I should go to law school myself. I miss him telling me he had arrived for the day. I miss him telling me he was going home to get some work done. I miss him on the phone saying, "Beaver, here" and then going on to explain what he had in mind for me to do. I miss his presence in the hallway, in the faculty lounge, in his office. I miss him as a daily part of my work life. I will remember him always.

Norma Slaughter
Legal Secretary
Seattle University School of Law

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A great intellectual light in the teaching of law went out upon Jim’s passing. Jim’s teaching ability was legendary based upon his towering intellect, charisma, and irreverence. Jim loved to tweak the nose of every sacred cow and institution which he, at the time, felt needed inspection under the microscope.

Jim would berate the reputation of Harvard Law School and told us, on more than one occasion, that if they fired the entire Harvard Law School Faculty and brought in fifty orangutans and put suits on them, Harvard Law School would still be ranked number one ten years later.

Jim was gifted in that he was able to teach with wit and charm and yet could still occasionally use withering sarcasm and cynicism to make a valuable point. A point that was not soon or occasionally ever forgotten.

Twenty years out of law school, I can still recall many of his colorful stories and illustrations to teach the points of evidence and civil procedure which I learned as a student at “his” law school.

Jim taught his students to be provocative, caring, and thoughtful. He also believed that a lawyer should enlarge his profession, seek the greater light, and take the higher road. His death was too soon and too bad.

I will always remember him.

Roger T. Sharp, Esq.
Class of 1975
University of Puget Sound School of Law

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I knew James Beaver as a direct, intelligent, and sincere individual who genuinely cared about his students. There are many attributes about Professor Beaver that I admired, but his respect for the individual overshadows them all. In my experience, a common bond for our alumni and student body is their Beaver stories. These stories are recited with differing attitudes, but always with a deep respect for the man and his intellect. In this age of political correctness, he was inherently incorrect. However, he sincerely believed that a robust change of ideas did not make your opponent an enemy. Rather, the opponent was granted the exalted status of “a worthy foe.” Although the alumni, faculty, and student body may contain several of these worthy foe, I doubt that any would claim to be more than just his friend.

He was a particularly unique man and his presence in the legal community will be greatly missed. Thank you, Jim.

John Branch  
Class of 1996  
Seattle University School of Law

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**JAMES BEAVER AS A MUSICIAN**

Jim began taking piano lessons when he was eight years old, from a Mrs. McFarland in Glenbard, Illinois, where he lived. Later in life, he expressed the opinion that, in order to be a concert pianist, one should begin studying the piano before the age of eight.

His younger brother has said that James, as a youth, could be counted on to be engaged at all times in one of three activities: playing baseball or football, reading history books, or playing the piano.

When his senior class at Glenbard High School voted to have him play the piano as the feature event of the graduation program, he played the first movement of Beethoven’s Moonlight Sonata.

During his four years at Wesleyan College in Connecticut (1948-52), James studied piano with Professor McManus of the Wesleyan faculty, who had been accompanist for Pablo Casals, the noted violinist. He continued taking lessons from teachers in Austria, during the year of his Fulbright Scholarship.

After service in the Army, he attended law school, and spent eight years at the law firm of Kirkland and Ellis in Chicago. During his years of law practice, he took piano lessons for a half-hour every other week from Professor Glade at the Chicago Conservatory of Music.
Professor Glade declared in a thick German accent that, although James was the best amateur he had ever heard, he would not recommend that James give up the practice of law.

Part of his law practice involved repossessing pianos for the Baldwin Piano Company in Chicago, where he made friends. When they inspected a 1903 Steinway piano that was being auctioned by Hanzel Galleries, and recommended to James that he should buy it, engaging them to rebuild it, he followed that advice. Thus he acquired the intricately carved Circassian walnut instrument that traveled with him to Seattle when he began teaching, then to Indianapolis, and back finally to Tacoma.

His musical study was largely self-directed in the 70s and 80s. When students asked to hear him play, he initiated what became a tradition of inviting all students in each of his courses (as well as academic colleagues and a few friends) to his home for a party, near the end of each semester. Frequently, students from prior years would call to learn the date, and would show up. For these concert occasions, he would play one of the Beethoven Sonatas that he had been practicing recently, in a kind of rotating order over the years.

In the early 90s, he took a few lessons from Professor Duane Hulbert of the Music Department at the University of Puget Sound. Mostly, however, he conscientiously practiced every day that he could, usually in the early morning. His neighbors were kind enough to tell him that they enjoyed hearing him play, whether early morning or late evening.

Jim Beaver’s love and admiration for Beethoven’s music was an ineradicable part of his joy in living. He delighted in sharing the piano Sonatas, and the sound of his playing will be sorely missed by all of us who loved to hear Jim at the piano.

His piano repertoire included the following:

Bach, Johann Sebastian:
Six Partitas or Suites, Op. 1

Beethoven, Ludwig van:
Seven Bagatelles, Op. 33
Eleven Bagatelles, Op. 119
Concerto No. IV in G major, Op. 58
Concerto No. V in E-flat major, Op. 73
Busoni Cadenzas to the Piano Concertos
Sonata, Op. 10, No. 3
Sonata, Op. 13, “Pathetique”
Sonata, Op. 26
Sonata, Op. 27, No. 1, “Sonata quasi una Fantasia”
Sonata, Op. 27, No. 2, “Sonata quasi una Fantasia”; “Moonlight”
Sonata, Op. 31, No.2
Sonata, Op. 57, “Appassionata”
Sonata, Op. 81a, “Les adieux”
Sonata, Op. 90
Sonata, Op. 101
Sonata, Op. 109
Sonata, Op. 110
Sonata, Op. 111
Turkish March from “The Ruins of Athens” (transcription by Anton Rubinstein)
Mozart, Wolfgang Amadeus:
Concerto No. 25 in C major, Köchel 503
Cadenza to First Movement by R. Casadesus
Cadenza by Hummel

Anita M. Steele
Professor of Law
Director of the Law Library
Seattle University School of Law

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JAMES EDWARD BEAVER—BEETHOVENIST

Beethoven is not the shepherd driving his flock before him; he is the bull marching at the head of his herd. . . . And the great bull with its fierce eye, its head raised, its four hooves planted on the summit, at the edge of the abyss, whose roar is heard above the time. . . .

James Edward Beaver's final year as a law professor overlapped years in which Beethoven scholarship was in one of its periodic surges. And though he did not write about Ludwig van Beethoven, he dedicated a considerable part of his life to performances of the Master's greatest works for piano. Indeed, in salon concerts in his home for students and alumni of the various courses he taught over the years, he performed each semester at least one of the piano sonatas by Beetho-

ven, usually one of the monumental works from the so-called "late" period of the Master's compositions.²

At the end of the spring semester, 1996, he was to have played with me an early Beethoven work, the "Spring" sonata for violin and piano, Opus 24 in F Major. Characteristically, and though he had no experience as an accompanist or with chamber music, preferring to play the great solo works for the piano by Beethoven, he threw himself into learning the work for violin with a steady and single-minded dedication.

The violin sonatas of Beethoven, particularly the early ones, have been described as essentially piano sonatas with violin obligato. In terms of technical difficulty, the piano accompaniments of the sonatas for violin pale in comparison with the technique required for any performance of the great Beethoven sonatas for piano alone. Nonetheless, Beaver approached the performance of the Spring sonata in April with equal parts of care and trepidation, despite my protestations that they did not compare in difficulty to works Beaver had already taught himself to play.

Beaver's love affair with Beethoven came to its temporal end as a broad range of works about different aspects and implications of the great composer's works were published. For example, last year Scott Burnham's BEETHOVEN HERO³ focused on the heroic elements in Beethoven's work and the manner in which it forever shaped Western musical conceptions about man's fate and the struggle of the human spirit to transcend its earthly impediments. Another work, Tia DeNora's BEETHOVEN AND THE CONSTRUCTION OF GENIUS,⁴ explored musical politics in Vienna from 1792 to 1803, the period that preceded the decade in which his compositions began to evince the heroic aura which Scott Burnham's book celebrated.

As Beaver was not a professional pianist, so the books on Beethoven have not all been by musicologists. Ms. DeNora is a

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2. According to Anita Steele, Beaver's beloved companion, his repertoire included the following Beethoven piano sonatas: Opus 10, No. 3 in D major; Opus 13, No. 8 in C minor ("Pathétique"); Opus 27 (Quasi Una Fantasia), No. 13 in E-flat major and No. 14 in C-sharp minor ("Moonlight"); Opus 31, No. 2 in D minor; Opus 53, No. 21 in C major ("Waldstein"); Opus 57, No. 23 in F minor ("Appassionata"); Opus 81a, No. 26 in E flat ("Les Adieux"); Opus 90, No. 27 in E minor; Opus 101, No. 28 in A major; Opus 106, No. 29 in B-flat major ("Grosse Sonate fur das Hammer-Klavier"); Opus 109, No. 30 in E major; Opus 110, No. 31 in A-flat major; and Opus 111, No. 32 in C minor, Beethoven's last work in the form and undeniably a landmark of the piano literature. Elsewhere in this issue of the law review, Ms. Steele reviews the additional Beethoven works and the compositions by other composers in Beaver's repertoire.


sociologist. Within a month of Beaver’s last class in Evidence, David B. Dennis, who is a historian at Loyola University, a Jesuit institution in Chicago, published BEETHOVEN IN GERMAN POLITICS 1870-1989. In contrast to Beaver’s unswerving conservative political convictions, the Dennis book illustrates how Beethoven’s music, and stories about his personality and politics, have been pressed into service in the cause of the widest range of political causes in Germany for at least a hundred years and more.

As for Beethoven himself, Professor Dennis writes that “Surviving all the disruption that occurred in German and Austrian lands around the turn of the 19th century—enlightened reform, revolutionary struggle, military invasion, national liberation and reactionary dictatorship—the composer followed an uneven path of political development.” The protean nature of Beethoven’s political thought is reflected in his music. As Gustav Mahler is supposed to have said, “Your Beethoven is not my Beethoven.”

Thus, although Beethoven originally dedicated his Ninth Symphony to Emperor Friedrich Wilhelm III, King of Prussia, and though on occasion Beethoven scorned the masses, his Ninth Symphony (and greatest work) is in its last movement a paean to universal brotherhood. Fittingly, to celebrate the destruction of the Berlin Wall, the Ninth Symphony was performed in East Berlin by an orchestra of musicians from each of the major powers involved in the Second World War, led by the eminent American maestro Leonard Bernstein, on December 23, 1969—the day after the opening of the Brandenburger Gate. The performance was repeated on Christmas Day in West Berlin. In keeping with the occasion, Bernstein substituted the word “freedom” for the word “joy” in Beethoven’s setting of Friedrich von Schiller’s “Ode to Joy.” In a statement released before the performance, Bernstein acknowledged the apocryphal nature of the story that Schiller had made the substitution himself in an unpublished version of the poem. In language that Beaver surely must have applauded, Bernstein declared: “. . . I believe that this is a heavensent moment when we should sing the word ‘Freedom’ wherever the score reads ‘Joy.’ If there ever were a historical moment in which one can neglect the theoretical discussions of academics in the name of human freedom—this is it. And I believe that Beethoven would have given

6. Id. at 31.
8. Id. at 200-03. A compact disk of the event has been issued by Deutsche Grammophon 429861 (1990).
us his blessing. Let freedom live!” Though Beaver understood well that appeals to brotherhood sometimes mask values which can collide with individual liberty, there can be little doubt of his dedication to freedom, and its promise of a social order in which all suffer no unnecessary constraints in their quests for self-realization.

If Beethoven’s political beliefs oscillated, his musical ideas also were in constant transition as evidenced by the sketches that precede his compositions. There are more than 7,000 pages of drafts of musical compositions scrawled outdoors on scraps of papers or in small notebooks as well as extensive notebooks written indoors. If Beaver shared no such uncertainty in his political views, he apparently also never wavered in his respect, even awe, for Beethoven’s signal compositions for piano.

Since I joined the Seattle University faculty but a year ago, I had the opportunity to hear only one of the Beethoven sonatas in his repertoire—No. 30 in E Major, opus 109—which he played for his students at the close of a summer session class in 1994. Opus 109 is of course one of the great episodes in Western music, itself following the contrasting but equally famed “Grosse Sonate Fur Das Hammer-Klavier,” the Sonata No. 29 in B-Flat Major, opus 106 (which Beaver also had added to his repertoire).

Before describing the impression made by Beaver’s performance of “the 109,” a brief description of the work is in order. The first movement ties together sections which at first seem contradictory—a vivace (quick) with an adagio (slow), juxtaposing them alternately. As John N. Burk has said in his classic survey of Beethoven’s music, “By this order, any sense of a slow introduction is destroyed.” The rhapsodist dreams upon a flowing chord interplay of the two hands, a pattern always developing, pausing only twice to admit wandering measures of slow chords, arpeggios and scales.\(^9\) A brief and technically difficult prestissimo (very fast) interlude is followed by a precedent-setting finale, the first work Beethoven ever closed with a slow movement, though his last sonata was to close with an adagio molto (very slow). John Burk has described the last movement of Opus 109 as a “marvelous set of variations, surely the richest of the many Beethoven wrote for the piano, . . .”\(^10\)

Such was the challenge Beaver confronted in performing one of the landmarks of the literature for the piano, if not in all of Western music itself. Indeed, the late Beethoven sonatas are played in recital.

\(^10\) Id. at 449.
by only a handful of pianists. If more technically difficult works were written thereafter by composers such as Brahms and Liszt, or Chopin and Schuman, none present greater interpretive challenges than the Beethoven works of the Master’s final stage. Beethoven has passed through the agony of his progressive, and eventually total, deafness to achieve a serenity and repose and a music “which lifted all men in spite of themselves.”

I came to Beaver’s performance having given him, in a previous visit to the University of Puget Sound School of Law, the Columbia Records disk of the work by the legendary Hungarian virtuoso Rudolf Serkin. Knowing of Beaver’s passion for Beethoven, and given the likelihood that I might never again play the by-then-ancient long playing record, I could think of no better custodian of the record than himself. Indeed, though my mother was a piano teacher, and I had been directly involved in some form of music-making since my seventh birthday, I actually had never personally met anyone who played, or even attempted to play, “the 109.” My acquaintance with the work was via LP records, and, in fifty plus years of concert going, one, perhaps two, live performances by artists who were at the very pinnacle of the performing arts.

Beaver, however, was steadfast in his pursuit of a work I frankly regarded as unplayable by all except the most accomplished and gifted of pianists. If I feared either for Beaver’s struggle with Beethoven, or Beethoven in Beaver’s hands, my fears were dissipated by a performance, which, if not note-perfect, genuinely caught the sweep, the ineffable beauty, and the inexpressible sublimity of the sonata. Beaver’s performance was powerful and convincing. He rendered the contours of the work, articulated the work’s musical architecture, and conveyed much of its subtlety. As a relative of mine who was a cellist for years with the Cleveland Orchestra would have put it, “it was the 109!”

Beaver’s struggle with Beethoven, his no doubt laborious, note-by-note acquisition of some of the most difficult-to-interpret music ever written, was not only emblematic of his dedication to the highest aspirations and sentiments of the human experience but was a badge

11. Id. at 257.
12. Although the recording I gave Beaver is out of print, SONY, which acquired Columbia Records, has issued a three-disk compact disk set—No. 64490 (1994)—which contains many of the sonatas Beaver played and recorded by Serkin in previously unreleased studio recordings. A single compact disk recording of Opus 109 by Rudolph Serkin has been issued by Deutsche Grammophon on its CD 427 498-2 (1989). The piano sonatas No. 31 in A flat major and No. 32 in C minor, Opus 111, both played by Beaver, also are included on the Serkin CD.
of his own personal heroism. As J.W.N. Sullivan observed of Beethoven, so may it be said of James E. Beaver: "Heroism, for him, was not merely a name descriptive of a quality of certain acts, but a sort of principle manifesting itself in life. As a corollary he had a personified idea of Fate. Fate was his name for a personified conception of those characteristics of life that call out the heroic in man." 13 In Beaver's performance of Beethoven, as in his dedication to law's civilizing mission, there was indeed heroism. For in his life, as in his music, Beaver met fate's challenge to respond heroically not only to the challenges of Beethoven, but to those of life itself.

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SIGNIFICANT PUBLICATIONS BY PROFESSOR JAMES E. BEAVER


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