

BENJAMIN G. DAVIS: A DIFFERENT DRUMMER

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I often find it remarkable that Ben Davis was hired into the legal academy. I do not mean this negatively. In some regards, he fits the mold of the typical law school professor. He received his undergraduate degree from Harvard, and his Juris Doctor and his Master of Business Administration also come from the same institution. With that said, law school faculties tend to replicate themselves in regard to how they think about the world.¹ When it comes to free thinkers, the well-worn saying is that such individuals march to the beat of a different drummer. However, I am certain that Ben has never followed anyone with the exception of the *Grateful Dead*.² As a consequence, one might better view Ben Davis himself as a different drummer. He has charted his own course in the academy, and while doing so, he has made numerous contributions through his teaching, scholarly interests, and service.

In regard to teaching, I was talking with a student a few years ago about a positive experience that he had with Professor Davis. Unfortunately, I cannot remember the context because Professor Davis is a student-focused educator, and it could have been anything from taking one of his classes, having him oversee a writing project, having him advise a student group, or a myriad of other activities. The student made the point that because Professor Davis is so unorthodox, “it is easy to miss how smart he is.” The student did not mean this as a criticism. Professors often teach by keeping students at arm’s length, while Ben’s teaching methods are founded upon modesty, sincerity, and active engagement. Of course, this reality should not outshine his knowledge of the subject-matter that he has taught. As contracts scholars, Ben and I regularly talked about our fascination with legally enforceable agreements, and I was always impressed with his sophistication and depth of thinking on even the most obscure areas of contract law.

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1. See John M. Breen & Lee J. Strang, *Academic Freedom and the Catholic University: An Historical Review, a Conceptual Analysis, and a Prescriptive Proposal*, 15 U. ST. THOMAS L.J. 253, 306 (2019) (“[F]aculty members tend to replicate themselves, selecting new teachers and scholars who not only agree with them with respect to the most contentious issues in their given disciplines, but who largely mirror existing faculty members culturally and politically.”).

2. During his career, Professor Davis regularly donated specimens from his collection of tie-dyed *Grateful Dead* concert t-shirts to auctions held by the Public Interest Law Association and Student Bar Association at the College of Law. They were coveted items across numerous classes of law students.

In regard to his scholarly interests, Ben has been a maverick as well. Of course, he has published a number of traditional law review articles and essays, which are mainly on domestic and international arbitration and on executive power.³ However, Ben's scholarly interests extend far beyond those fields. How do I know? Besides talking with him regularly, Ben has never met a faculty listserv that he did not like. As many will tell you, if you end up on a faculty listserv with Ben and your goal is getting your inbox to empty, you should unsubscribe immediately. Ben's intellectual curiosity and willingness to engage in discussion and debate are rivaled only by his willingness to hit "reply all." The messages that he sends, however, are not fluff. They are deep and thought-provoking. He has never been reluctant to ask the hard questions regardless of whether it is across cyberspace, during a faculty meeting, or in a packed auditorium. He has forged his own path through a wide range of fields, which include, but are not limited to, alternative dispute resolution, contract law, constitutional law, free speech regulation, law and race, and public international law.

Ben has done all of this with a focus on service. His engagement is too plentiful to even scratch the surface in this tribute essay. To focus on one attribute of his service, his ability to innovate is remarkable. For example, he created and organized the Guantanamo Bay Military Commission Student Observer Program for students to observe the Military Commissions at Guantanamo Bay, which has been transformative in many students' careers and lives. In addition, in the twilight of his time as a fulltime faculty member, when academics rest on their laurels, Ben took on bar passage and began teaching a new course on the topic, and he did so with nearly limitless energy and excitement.

All of this offers just some insight into who Ben is. To offer one final story, when I interviewed at The University of Toledo College of Law, I brought a heavy satchel with all of the things that one might need for the day.⁴ As part of my interview, Ben had agreed to give me a tour of the law school building. When he met me, he greeted me with a warm smile, shook my hand, gingerly removed the bag from my other hand, and carried it around the building for me. I certainly would have been happy to carry it, which I mentioned to him, but he seemed so convinced that he ought to be lightening my load that I let him do it. That story embodies who Ben Davis has been at The University of Toledo College of Law: jovial, kind, and always doing more than his fair share. As he departs from full-time teaching, the beat will go on, but he will be terrifically missed.

3. See, e.g., Benjamin G. Davis, *American Diversity in International Arbitration: A New Arbitration Story or Evidence of Things Not Seen*, 88 *FORDHAM L. REV.* 2143 (2020); Benjamin G. Davis, *United or Untied: On Confronting Presidential Criminality in the Savage Wars of Peace*, 84 *TENN. L. REV.* 671 (2017); Benjamin G. Davis, *The 9/11 Military Commission Motion Hearings: An Ordinary Citizen Looks At Comparative Legitimacy*, 37 *S. ILL. U. L.J.* 599 (2013); Benjamin G. Davis, *Obama and Libya*, 7 *FLA. A & M U. L. REV.* 1 (2011); Benjamin G. Davis, *A Citizen Observer's View of the U.S. Approach to the War on Terror*, 17 *TRANSNAT'L L. & CONTEMP. PROBS.* 465 (2008); Benjamin G. Davis, *Walking Along in the Mission*, 38 *U. TOL. L. REV.* 1 (2006); Benjamin G. Davis, *The Color Line in International Arbitration: An American Perspective*, 14 *AM. REV. INT'L ARB.* 461 (2003).

4. Well, I will be honest. I am a law professor, which means that the bag was filled with way more than I actually needed for the day.