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Professor Carl Tobias

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TRIBUTE

Professor Carl Tobias*

The University of Montana School of Law has had many outstanding professors, but none measures higher than Professor Carl Tobias. After twenty-three years at Montana, Carl leaves to join the faculty of the University of Nevada School of Law.

The faculty and the Dean at Montana join in thanking Carl for almost a quarter of a century of outstanding performance. We express both our best wishes and our remorse at his departure. With his departure, the faculty loses a scholar, teacher, mentor, friend and colleague.

I. PROFESSOR TOBIAS AS A SCHOLAR

Professor Tobias is a nationally recognized and accomplished legal scholar. He has authored approximately 100 law review articles during his tenure at Montana, and currently produces a dozen articles each year. His articles have appeared in fifty different law reviews, including the most prestigious law reviews in the United States. He has also produced twelve articles in West's Federal Rules Decisions and twenty-three legal newspaper articles. He is truly one of the most prolific authors and legal commentators in the country.

The massive quantity of his work is more than matched by its quality. His articles have been cited and relied upon at least 320 times by other authors. One 1992 article has been cited 36

* In 1968, Professor Tobias earned a B.A. degree from Duke University, and in 1972, after completing his legal studies at the University of Virginia, he practiced law with Hunton & Williams in Richmond, Virginia, and thereafter served as Counsel to the Separation of Powers Subcommittee of the U.S. Senate Judiciary Committee. He joined the Montana Law faculty in 1975, and at the time of his departure he holds the second highest seniority on the faculty.

times. Courts also have been influenced by his scholarship. He has been repeatedly cited by the highest state appellate courts, the federal district courts, and the federal Courts of Appeals.

In recent years, Carl has become perhaps the leading national commentator on the Civil Justice Reform Act. His scholarship on this subject is well-known and well-respected. The following comments of just four nationally known authors are representative of many more:

Mercer Law School Dean Larry Dessem commented on Professor Tobias' Scholarship,

Carl Tobias has written that rare form of scholarship that addresses the real needs of the legal profession while engendering the universal respect of those in legal academia. He has written prolifically in the area of civil justice reform, at a time when the bench, bar and the academy have focused upon ways in which the federal courts can fulfill the mandate of Rule 1 of the Federal Rules of Civil Procedure to better insure the "just, speedy, and inexpensive determination of every action."

University of California Law Professor John Oakley comments,

I've long envied the law faculty of Montana for having Carl Tobias as a colleague. If I had my way, he would be moving just a bit farther west to become one of mine. I sympathize with your loss, and am happy to join in your tribute to a model scholar and law teacher. . . .

There is no better medium today for keeping abreast of developments in judicial administration than to be on Carl's mailing list. His prolific stream of articles has been invaluable to me in keeping current on the workings of the federal court system. . . .

University of Pittsburgh Law Professor William V. Luneburg states of Carl,

[H]is productivity and wide-ranging interests, particularly in view of the quality of the end products of his efforts, are quite extraordinary

In 1994, Carl was elected to join a select group of lawyers, judges, and academics as a Member of the American Law Institute. Charles Alan Wright, President of the Institute and the nation's best known federal practice scholar, wrote Carl, stating, "I read you regularly and admire the important contribution you have made to the Federal Rules and our understanding of them on federal practice."

Carl's stature as a scholar has brought the University of Montana School of Law much recognition. His Montana colleagues honor his accomplishments.

II. PROFESSOR TOBIAS AS A TEACHER

In 1975, when Carl joined the faculty, he initiated what is now an excellent, well-recognized, interdisciplinary environmental law program. Approximately ten years ago Carl stopped teaching environmental law, but his early efforts, in large part, resulted in the very fine program the School has today. In the environmental law area his stewardship is recognized and appreciated. Former students, now leading environmental lawyers, comment:

Tom France, Senior Counsel the National Wildlife Federation, Adjunct Environmental Law Professor, and Director of the Law School Natural Resources Clinic notes,

Carl had the energy and the temerity—not to mention the foolhardiness—to found the Natural Resource Clinic. He started the Clinic on one-tenth of his time, took in ten students, threw out the ball and said “go for it.” Dozens of law students have participated in the program in the seventeen years since its founding and they now comprise one of the strongest vital environmental bars in the country.

Environmental Attorney and Adjunct Environmental Law Professor Jack R. Tuholske states,

Carl's timely article interrupting and explaining the Montana Environmental Policy Act found its way into nearly every brief I have written on MEPA in the last 12 years. It been the foundation for my strong (and often successful) advocacy in favor of rigorous enforcement of that law.

Apart from environmental law, Carl has taught Torts, Products Liability, Federal Courts and Constitutional Law. He is probably best known to former students as their Torts teacher. Carl has been the mainstay of the Torts course during his entire tenure at Montana. His work on products liability and interspousal tort immunity has been well received nationally.

Carl has earned the recognition as one of the School's finest teachers. He has always enjoyed the respect and high regard of his students.

III. PROFESSOR TOBIAS AS MENTOR FOR FACULTY AND STUDENTS

During his years at Montana, Carl has actively promoted and assisted students in becoming federal court clerks. His efforts have paid off handsomely. Because of Carl's dedication, many students have been afforded the opportunity to start their legal careers through one of the best and most prestigious training grounds, a federal clerkship.

Apart from his work on federal clerkships, Carl has been a mentor for many students. He has had countless research assistants who have gained immeasurably from working closely with an outstanding legal scholar. His dedication to task, his work ethic, and his unwavering commitment to "getting it right" have been a strong influence on the students who have worked with him. As a strong civil libertarian, Carl has also mentored students who work to protect the rights of the injured and the underprivileged.

Carl has also been a strong presence in mentoring faculty members in their development of scholarship. His natural leadership as a national scholar, and his generous assistance in nurturing faculty members to create, edit and ultimately place scholarship, have been invaluable.

Professor Sally Weaver comments of Carl,

His capacity for hard work is legendary and his scholarly contributions give new meaning to the word "prolific." I doubt, however, that everyone is aware of Carl's good-humored willingness to set his work aside to assist his colleagues in very tangible and meaningful ways.

I do not exaggerate when I state that Carl read and edited, line by line, at least fifteen drafts of my first law review article—and he did so with extraordinary good humor. My pattern during the months I worked on this article was to spend each week generating a new draft, which I gave to Carl on Friday afternoon—just in time to ruin his weekend and free up mine. Carl worked very late most nights and, accordingly, developed a practice of leaving me lengthy voice mails with his thoughts and suggestions. . . . His mentoring continued through my discussions with law reviews, decisions about publication and editorial process—and then he did it all again when I wrote my second article.

Professor Mary Helen McNeal comments,

When . . . I had my first law review article in the works . . . Carl instantly made himself available, to talk substance, to provide encouragement, and to review and edit the many

drafts. Without his support, it never would have been finished. It is hard to imagine writing an article without Carl's feedback, but I believe him when he says he will still review drafts, even from Las Vegas.

Professor Melissa Harrison states,

As we all know, scholarship is Carl's passion. Once I expressed an interest in legal scholarship and the will to do the hard work it requires, Carl sprang into action. He offered encouragement and guidance as I began my first effort to write a law review article, something I had never done and wasn't sure I could do.

That first article (and almost all of my subsequent ones) could not have been written without Carl's guidance and meticulous editing. He probably edited twenty drafts of that first article. By edit, I mean line by line, word by word edits. Each draft was returned to me covered with red marks. It was daunting, but I knew that if I worked through each draft and made the suggested changes, the article would benefit.

To the extent that anyone considers me a legal scholar, it is due to Carl Tobias. I will miss him. We all will. He has been my mentor in the best sense of the word and I don't know who will fill that role when he is gone.

In an effort to support the scholarship of the faculty, Carl initiated a continuing series of faculty colloquia to spotlight new faculty new research and scholarship. This series is ongoing, and will support the continued production of quality faculty scholarship at the School.

IV. CARL AS A FRIEND AND COLLEAGUE

One might assume that as an accomplished scholar, teacher and mentor, Carl may not have time for the more informal interchanges that make one a valuable friend and colleague. That has not been the situation. He has been a friend of the School, its students, staff, and faculty. He has supported and given to all.

Finally, so that this Tribute does not fail to address the Carl Tobias that we all saw and spoke to on a daily basis, let it be said that Carl certainly is one of the most colorful and memorable characters who ever inhabited the building.

First, Carl did inhabit the building. He was not just a day-time resident, an 8-to-10 hour guy, a Monday through Friday player; he literally lived in the building 14 hours a day, seven days a week. His great productivity is not based on flights of fancy but the daily discipline of work and the monitoring of de-

tail.

Carl is not a jacket and tie guy. For twenty-two years, winter and summer, his uniform has consisted of corduroy Levi pants, an open collar shirt, old running shoes and the best collection of "droop around the ankle" socks one can imagine. His only departure from this daily attire has been his running outfit. Carl does not "jog." To him "jogging" represents some high status activity. Carl is in it for the physical activity and a good sweat.

He runs daily, regardless of the weather, regardless of sickness or health, regardless! He departs from his office, runs two or three miles, and returns to his office. His running outfit consists of a better pair of old running shoes and an eclectic assortment of other garments. In an era of spandex and color coordinated "jogging" apparel, as is the case with much of his life, Carl does not go with the trend. His old clothes are recycled into running gear.

Carl is purposeful in all he does. He does not allow the fashion of the time, the fad of the moment, or the shift in the political or social winds to alter his course. Like most successful people, he is not afraid of work. He embraces work, and his success is, in large part, measured by work. His life is based on the value of simplicity, clear thinking and principle.

As a colleague, you always know where Carl is on an issue. He does not demand that others agree with him, but only that they consider his position. He may disagree, but does so without becoming disagreeable. He is principled in defeat and honorable in victory. He is a good colleague and friend.

Carl, your Montana friends will miss you. Stop by when you are out this way. The latch hook is always up.

—Professor Bill Corbett*

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