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## DAVID N. EDELSTEIN: A PERSONAL REMEMBRANCE

*Judge Kevin T. Duffy '58'*

Others will write of the work of David N. Edelstein as a judge. What he did as a judge is there in the many opinions he wrote and were published in the Federal Supplement—over almost 50 years of service as a judge; what he did as a judge is there in the records of the United States District Court for the Southern District of New York; it is there in the writings of Judge Edelstein and in the writings about him. Legal scholars may praise him or not as they see fit. I write from a different perspective, for I wish to tell of David Edelstein as a man who was a judge. The reader must recognize that David's life and his profession were so intertwined that my reminiscence must perforce touch on the work of David Edelstein.

My memories of the Honorable David N. Edelstein span forty five years. I remember David as a Federal Judge who as a man was kind to me when I was a brash young Bailiff-Court Crier/Law Clerk to a Circuit Judge in the venerable New York City Federal Courthouse at 40 Foley Square. Perhaps David took special note of me because we were both Fordham men—college and law school. Of course, the years of his attendance at Fordham (B.S., M.A. 1941, L.L.B. 1932) were a bit ahead of my own—but David's training at Fordham was something he was most proud of and his affection for the University and its alumni was unailing.

After my clerking days I went to the U.S. Attorney's Office and appeared before Judge Edelstein as a prosecutor. While I never had the opportunity to try a case before Judge Edelstein, I had numerous opportunities to see him operate from the point of view as one of the advocates in his courtroom. Once again I was impressed by his kindness, understanding and humanity. David was always approachable to hear extraordinary applications. He would always consider signing a writ or a subpoena or a search warrant. But he was not one-sided nor biased. He always listened to the arguments of the defense with as much attention (perhaps more) as to the arguments of the prosecution. This was particularly true when the issues involved sentencing. When it came to sentencing, David showed his true

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\* The author is a judge in the Federal District Court for the Southern District of New York and a graduate of the Fordham University School of Law, class of 1958.

understanding of human nature. He weighed the interests of society (the type of crime, the method of its commission, the offender's prior record and the chance of recidivism, etc.) and the interests of the victim of the crime along with the interest of the offender and the family of the offender. He spelled out the reasons for sentence and then leavened the entire mix with mercy. Indeed, to a young prosecutor, mercy seemed to be behind most of Judge Edelstein's sentences. And the peculiarity was that David Edelstein gloried in telling young prosecutors of his days with the Department of Justice.

That is not to say that Judge Edelstein would not impose a hard sentence when justice and the interests of society demanded it. But after I became a judge, I discovered how difficult such a sentence was for David. At such a time, David Edelstein projected a hard shell and at times seemed acerbic. It was all a front, a facade, to cover the pain David felt in delivering a harsh sentence.

One of the sentences imposed by Judge Edelstein and recounted by the *New York Times* in his obituary shows how much he was a man of mercy. Faced with the prospect of punishing a group of six wholesale bakers who had been illegally fixing the price of donuts and pastries to restaurants, David crafted a sentence which required the defendants to supply \$1,200 worth of baked goods to the homeless each week for a period of two years. In so doing, the guilty were punished and the most needy members of society directly benefitted from that punishment. This sentence shows not a peculiarity of sentencing, but the thoughtfulness of a truly caring man. That thoughtfulness and that caring were hallmarks of David Edelstein's life.

When I became a district judge almost twenty-eight years ago, David N. Edelstein was the Chief Judge who administered the oath and presided at my swearing-in ceremony. Back in those days before there District Executives and grandiose administrative staffs, David Edelstein was the man who found me a place in the courthouse and made sure I had the physical items necessary to do my job and take care of the cases assigned. But more than that, David was the one person who actually helped me to cope. He showed me procedures required to actually close a case. He told me how to fill out the various judicial branch forms which lawyers almost never see. In doing this, perhaps it could be said that David was merely doing the work of a Chief Judge. But it was it was beyond the duties of a Chief Judge to make sure, as David did, that I was introduced to the "family of the judiciary" as a friend and a colleague. David Edelstein changed the District's Annual Dinner to coincide with the evening of my swearing-in. I cannot think of a more congenial way to meet one's colleagues. While he could not set an Annual Dinner for every new judge, David Edelstein made sure that each was introduced into the judicial family in the best way possible.

David's concern for his colleagues did not stop with their introduction. He gave of himself to each in a spirit of real friendship. David Edelstein and his beloved wife, Florence, hosted parties for judges from the Southern District and the Second Circuit in their Park Avenue apartment. While there, David loved to show his collection of fine paintings, most by artists who had yet to be recognized by the critics; but each artist was one that David believed would soon emerge as a new Degas or Renoir.

It was at such a party that I met Jeffrey and Jonathan, the two sons that David and Florence brought into the world, nourished and loved so deeply. When David Edelstein spoke of his family, what clearly came through was his pride in and love for his sons and in particular for Florence. Florence was not just a help-mate to David, she was the balance wheel of his life. David often in his non-judicial life would be swept up in his zest for life and his enthusiasms but Florence could and did slow the dash to a more reasoned approach. For example, before a stroke in his 82nd year, David loved to dance and would dance the night away if it were not for the gentle reminder from Florence that the morning would bring new demands on him, for which he had to be rested and alert.

When David gave up the position of Chief Judge upon becoming seventy, he refused to go on senior status. David insisted on continuing to hand a full case load as an active judge. He looked at each new case as a challenge, a chance to do justice. His zest for life continued to bring him to the courthouse early every morning where he would quiz his law clerks on whatever issues the day might bring.

The "random selection of a judge for each case," practiced in the Southern District of New York, continued to produce challenging cases on the docket of Judge Edelstein. One of these was particularly challenging—*United States v. International Brotherhood of Teamsters*. That case, started in 1988, required David to oversee the actions of the Teamsters Union to make sure that it was free of criminal and corrupt influences.

It was after his first stroke that David Edelstein decided to become a judge on senior status. He recognized that he would have to slow down so that he could undergo the course of rehabilitation necessary. Although often seen in a wheelchair, David asked for no pity and even told my wife he expected to be back on the dance floor again.

Being on senior status means that a judge does not have to carry a *full* load of cases; but the senior status judge does continue to work and receive cases; indeed, he continued with the *Teamsters* case. Even in his last illness he was discussing with his law clerk how best to resolve the problems that the case continues to produce.

The reader should know that David and I had our differences over the years. I would dispute his rulings at times; I would suggest that perhaps a different approach might achieve a better result. But

through the years I respected him, since I was always sure that the aim of all David's actions was to achieve ultimate justice. I will miss his enthusiasm, his zest for life, and his friendship. Rest in peace my friend.