



## IN MEMORIAM

David E. Feller  
Professor of Law, Emeritus  
Berkeley  
1916 — 2003

David E. Feller, the Elizabeth Josselyn Boalt Professor of Law, Emeritus, died February 10, 2003, in Oakland at the age of 86.

Born on November 19, 1916, David went on to earn his undergraduate and graduate degrees at Harvard University. After military service in World War II, he worked at the Justice Department's Office of the Alien Property Custodian and served as a law clerk to Chief Justice Fred Vinson. He then joined the law firm of Arthur Goldberg in Washington, D.C., where he rapidly earned a reputation as one of the most distinguished union labor lawyers in the country. On Goldberg's appointment as Secretary of Labor in 1961, David succeeded him as General Counsel to the United Steelworkers Union and to the Industrial Union Department of the AFL-CIO.

Over the course of his career as a practicing lawyer David participated in many cases before the United States Supreme Court. In one remarkable series of cases he and his colleagues persuaded the Court to undertake the extraordinary task of creating a federal common law of the collective bargaining agreement. This became in effect a federal law of labor arbitration. Positions David argued to the Court with considerable success in later cases became major building blocks of the doctrinal structure that remains in place today. As an appellate advocate he achieved the difficult feat of combining rigorous intellectual honesty with highly persuasive argument in support of a client's cause.

David took up a second career when he joined the faculty of the Boalt Hall School of Law at the University of California, Berkeley in 1967. A generation of law students learned labor law from him; he was not only a master of the law of his field but a master expositor as well, able to put in order the Rubik's Cube of secondary boycott law, to hunt down the elusive duty to bargain in good faith, and to illuminate the dark corners of the union duty of fair representation. He also created a course in appellate advocacy, in which he guided students through their first steps toward the very high standard of excellence which he had attained in his own practice.

In his major scholarly work, David built on the insights into the collective bargaining process that he had developed in the course of his practice as a lawyer. He had helped bring the Supreme Court not just to embark on the task of constructing a common law of the collective bargaining agreement but also to place at the center of the new doctrine judicial support for the institution of private arbitration developed by unions and employers in the post- World War II period. Two premises underlay the argument the Court had endorsed. One was that the grievance and arbitration procedures widely adopted in collective bargaining agreements were an extension of the bargaining process itself. The other was that labor arbitration was not a substitute for litigation — as with commercial arbitration — but a substitute for the strike. The implications of these points for the law of collective bargaining agreements are extensive and deep, as David demonstrated in an article of monograph length that appeared in the *California Law Review*. This article joins a handful of papers by other scholars at the highest level of scholarship on American labor law. In later work, continued well into his retirement, he analyzed and critiqued with characteristic panache and skill the somewhat jagged path the Court has traced as it continues to develop the law of labor arbitration and to widen very considerably the scope of arbitration law more generally.

David found many ways to serve the University. He was an influential member of the University Retirement System Board from 1968 to 1984 and also served for extended periods on the campus and statewide faculty welfare committees. When the California Legislature enacted the Higher Education in Employer- Employee Relations Act, he (almost single-handedly and over the opposition of the Governor's Office and the statewide University administration) persuaded the Legislature to endorse bargaining units limited to Academic Senate members at individual campuses, making it possible to preserve the Academic Senate under a potential regime of collective bargaining. He was involved in the formation of the Berkeley Faculty Association and served as its chair from 1971 to 1980. On the Association's behalf he prepared an amicus curiae brief and participated in oral argument before the California Supreme Court in successful support of a retroactive pay adjustment in 1979. For these and many other services he was awarded the Berkeley Citation upon his retirement in 1987.

He won the respect and gratitude of his colleagues in the law school in numerous, less visible ways. For much of his time in the University, the Berkeley campus — and with it the law school — was visited by considerable stress and conflict. David brought to the recurring crises of the period a first- rate lawyer's capacity to join wholehearted involvement with deliberative detachment; to the school's great benefit he led it one time after another to sensible accommodations that enabled the faculty to get on with its main business of teaching and scholarship with a minimum of damage.

After joining the University's faculty, he became sought after as an arbitrator. He was widely respected in this role, was invited to join the professional association of labor arbitrators — the National Academy of Arbitrators — and eventually, in 1992, served a term as the Academy's president. He persuaded the Academy to submit amicus curiae briefs to the Supreme Court in a number of labor arbitration cases and wrote the briefs himself, setting out for the Court the views of the Academy as a body of neutrals professionally concerned with administering the arbitration process. Over the course of his career David wrote amicus briefs in other cases as well, including one on behalf of the Steelworkers Union in *Brown v. Board of Education* and another on behalf of the Association of American Law Schools in *Bakke v. Board of Regents of the University of California*. Throughout his adult life David was committed to the cause of civil rights and served from 1960 to 1997 as a member of the Board of Directors of the litigating and advocacy arm of the NAACP, the NAACP Legal Defense and Education Fund.

Although by profession and by choice David was continually engaged in controversy, he was never mean- spirited or narrowly partisan. On the contrary, he was an immensely likable person with a gift for friendship that earned him the universal affection of his colleagues. He was devoted to his wife of 55 years, Gilda, and their four sons, all of whom survive him. His personal life, like his professional, was a life well- lived.

Edward C. Halbach Jr.  
Sanford H. Kadish  
Jan Vetter