

Reflections on David Sive from Mark Chertok  
May 2014

- honored and privileged to say a few words about david
  - though a few words cannot do justice to his trailblazing and fostering of environmental law, his mentoring of young lawyers and law students, his involvement in founding national and local environmental organizations and, last but not least, developing a firm that, as you heard, is very special to be a part of
- unlike my two partners who just spoke, i was a young associate when i joined the firm
  - had no knowledge of or experience in environmental law -- not sure i even knew what it was
    - shows how desperate the firm was in those days
  - i had the opportunity of working and trying several cases with him –direct mentoring, so to speak
  - indeed, its fair to say that in large part i owe my career as an environmental lawyer to david
  - my earliest experience was startling – i have an indelible picture in my mind of david dictating – contemporaneously -- two separate briefs to two secretaries – dictating one brief while a secretary was typing the other – while formulating novel theories for each case and suggesting that i fill in the “x to x’s” in the brief, and giving me several cases to initiate the hunt for legal support for these theories. remarkably, those cases invariably provided the linchpin for developing that support
  - several lessons i hopefully took from my experience with david
    - be imaginative; i.e., think outside the box – push the proverbial envelope
      - david was absolutely brilliant in filling in the interstices of statutes and regulations
      - any gap or ambiguity in legislation was an opportunity for creative lawyering
        - whether it was using language in the federal power act in the storm king mountain matter to establish the principal that federal actions needed to consider alternatives in decision-making or proving that the proposed hudson river expressway from tarrytown to beacon was a dike requiring congressional approval, david was brilliant in using
        - scenic hudson/storm king mountain and the federal power act to establish the need for federal agencies to consider alternatives in decision-making —the forerunner of this requirement in nepa, seqra and numerous other environmental statutes
        - stopping the hudson river expressway (1969-70), which was proposed to be built into the hudson river from tarrytown to beacon by proving that the highway was a dike under federal law, and thus required congressional approval
    - develop procedural flaws, and show some substantive harm
      - allows the court to duck the hard substantive issues and just rule on the procedural infirmities
    - develop a concept that would highlight what the case was about
      - my favorite example comes from a trial over whether our client had failed to construct a road that was a subject of a project approval
        - it had not, but the reason was that it was a “road to nowhere” – served no purpose and made no sense to build
          - david used this phrase throughout the trial
        - the judge seized on this concept and pummeled our adversaries
    - demeanor can be deceiving

- david's demeanor was always the same –soft spoken, self-effacing and polite
    - adversaries often wrongly perceived his courtesies as a weakness
    - and the witness never felt the proverbial legal dagger until far too late
  - david was a fierce warrior/advocate for the environment
    - though he would probably not invoke the military analogy, given his purple heart from the battle of the bulge
    - but sometimes david's colleagues paid a price for his fierce advocacy for the environment
    - my favorite anecdote was where i was the victim
    - trident litigation
      - ostensibly brought to stop the construction of the trident submarine base on the hood canal, west of seattle. though david was sometime don quixotic, he recognized that the likelihood of stopping the country's then largest defense system was not high. real purpose was to establish that strategic military decision were subject to nepa.
    - findings of fact and conclusions of law
- david was also a poet
  - in years past, david would write poems for the firm's annual holiday parties
    - his lyrics were always humorous, often poignant, and sometimes subtly but accurately biting
    - cemented the family concept of the firm
- and of course, his personal poetry was the wilderness, and especially his treasured adirondack and catskill mountains
  - knowledge was remarkable
    - could show him a photo of any stream or valley and he could identify the location – and tell you when he had been there
  - among his favorite litigations were cases defending the forever wild provisions of the ny state constitution and protecting the adirondacks and catskills
  - and perhaps his favorite was the mohonk preserve litigation (late 1970s). the issue here was whether land held by a not-for-profit as wilderness for environmental and conservation purposes constituted a “charitable” use and therefore qualified the property for an exemption from real estate taxes
    - land in the shawangunk mountains, near new paltz, in the hudson river valley
  - in defending the preserve, david had the opportunity to put his favorite poet -- wordsworth -- to work. he put on testimony from philosophers, educators, scientists and other experts to demonstrate that using the wilderness for aesthetic, educational and scientific purposes – including simply to seek refuge from the turmoil of everyday life -- was well within the statutory purposes
    - overruling two lower court decisions, the court of appeals agreed with david — unanimously
    - this was a critical issue, as land conservation organizations throughout the country depend on this tax exempt status to survive
  - but david never waxed more lyrical than in describing his home in margaretville – where he could float in his pond and view his beloved catskill mountains on all directions

- i can leave you with no better memory of david than that – thank you.