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## A Reverent Homage to David Fulton Herr

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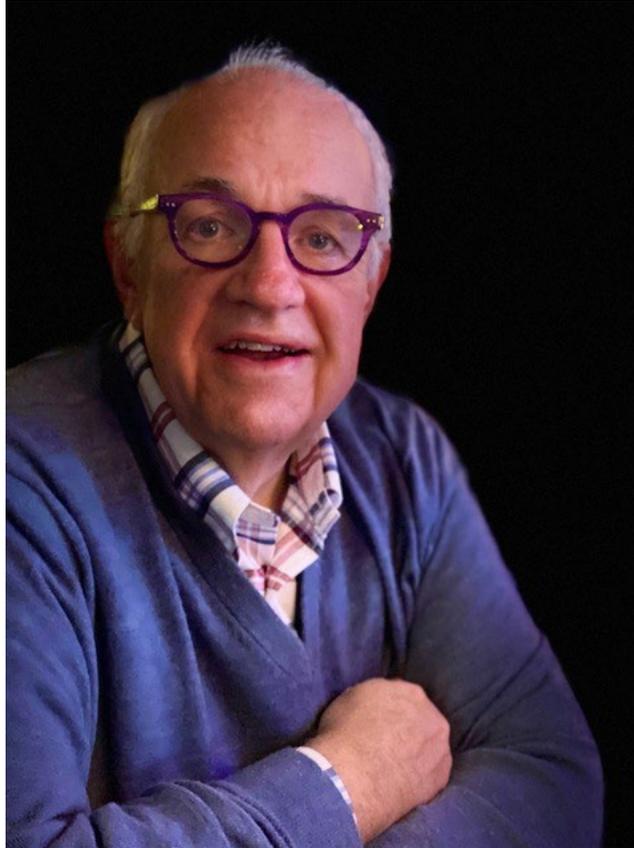
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### A REVERENT HOMAGE TO DAVID FULTON HERR<sup>1</sup>

*David, we miss you dearly. We loved your friendship, your passion for the law, your affection for your family, your curiosity about life, your charisma and virtues, and the joy you brought to our lives. You were easy to admire, although we did have to struggle with your occasional sarcasm, overly helpful advice, and wry attempts at humor. You were a delightful character, for all ages.*

David Herr was a wonderful friend, a consummate lawyer, and a role model for how to live a balanced family and professional life. In a video tribute to him while he was still with us, I said to him:

You have taught me the value of friendship, the art of writing, the skills of teaching, the importance of ethics, the meaning of parenting, the worth of lawyering, the thrill of being a trial lawyer, the challenge of being an appellate lawyer, the fun of fine dining, the intrigue of fine wine, the delight of traveling, and the patience to endure your humor. Your legal work extends well beyond Minnesota lawyers and judges. Most of the litigators in America and many internationally have relied on one of your law books. Your legacy is extraordinary, as are you.

Lest those of you who are reading this think I may exaggerate his influence, I believe you would understand if you had spent the time with him that we were fortunate to have had. It's not possible to

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readily compress David's larger than life experiences, but this dedication will hopefully reveal the measure of this great man and highlight his good works so he can continue to influence us.

He was fiercely proud of being a Mitchell graduate from the "lawyer's law school." Those of us who taught him immediately realized his talents. I had the good fortune to supervise him in our Law Clinic. We represented a frustrated consumer in a contentious dispute with a bank. As we initially appeared in court, the judge took one look at David and another at me and addressed David as the supervising attorney. He would regale others with that story these forty-five years later. He also enjoyed the joy of writing and served at the beginning of the Law Review with his classmates and Professor Michael Steenson, who, like others, learned as much from David as we taught him.

David continued his association with Mitchell, having brilliantly taught as an adjunct professor for over thirty diligent years. Many of our students benefited from his acumen and mentorship. Dean Emeritus Eric Janus considers him one of the finest graduates to have graced our community.

David spent virtually his entire professional life with the Maslon Law Firm, where he made his impressive mark on the law. His clients can testify to his compassion and tenacity. His partners can affirm his exceptional abilities and loyalty. His opponents can acknowledge his mutual respect and admiration. His pro bono work reflected his generous and philanthropic nature.

While attending Mitchell, David clerked for Hennepin County judges, who benefited from his legal research and perspicacity. He subsequently spent decades passionately working with state and federal judges, bar committees, and national legal academies in an enduring effort to make us better advocates of the law. He devoted much of his professional life to writing about rules of civil procedure, to improving our civil justice system, and to advocating and supporting social justice. Every courthouse and law firm in Minnesota contains many of his law books. Judges and litigators in our eminent state and many professionals nationally and globally have relied on his visionary works. He is the most prolific author of law practice books, maybe ever.

His books covered appellate law, pretrial practice, trial advocacy, evidence, lawyering, and complex litigation, published by over a dozen legal publishers. Those of us who had the privilege of being his co-author for several decades, including Professor Jeffrey Stempel, were often in awe of the breadth of his reach, and his irksome insistence on proper citation form. David spoke sagely at countless CLE programs nationally and internationally. He proudly served as President of the Academy of Appellate Lawyers and the Academy of Court Appointed Masters, whose members gratefully benefited from his collegiality. He inspired many to follow his lead.

David had high expectations of himself and those who worked with him. His striving for perfection could be both frustrating as well as valuable. His jocularity oftentimes balanced his dreams. Opposing lawyers would argue in court using one of his books he co-authored against him to prove a contrary point of law. David, without hesitation, would inform the judge that his co-author was regrettably wrong and future editions would include that correction. And when we would receive an email from a judge or lawyer pointing out a purported mistake in one of our books, David was quick to research it and remind me that it was my work that needed improvement. Ouch. Then he would chortle.

He was a modest renaissance man with a deep spiritual wellspring. He knew a lot about a lot of things, some eventful, others disparate. We hosted David annually for a lengthy and intense writing session when he and I would update our book supplements and editions. He would entertain Elaine with insights about best-selling books, current favorites recipes, and recent developments in, say, nail polish technology. He would amuse me with his passion for Triumph motorcycles, adventurous ocean cruises, and the Inns of Court. Name a topic, and David had an insight or, for sure, an opinion.

The real love of his life were his family and friends. It was a delight to hear him talk about Mary Kay, Alec, Erhland, and other family members. He spoke in depth about how much he enjoyed and appreciated their being in his life. Stories from his best friends, Eric Magnuson and Cooper Ashley and others, appear on the Legacy Tribute to David on both the Mitchell and Maslon websites. These remembrances, laughs, and tears reflect his grand life.

*David, we already miss your remarkable wit, wisdom, and writings. We will do our best to honor your remarkable legacy. Thank you for sharing your brilliant life with us.*

\*With Gratitude and Blessings by Roger Haydock  
David's Bereft Friend and Honored Colleague