

GARY SCHWARTZ: THE BEAUTY OF BALANCE

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What makes a great torts scholar? Many qualities are needed: a sense of history, an understanding of the economic consequences of the relevant rules, a concern with the roles of different decisionmakers—like judges and juries—in shaping and applying those rules, and an appreciation for—perhaps even a love of—common law processes, combined with a respect for the many statutes that alter and confine those processes. These are but a few that might be mentioned. Gary Schwartz had these and any number of other required traits in abundance. But he had more He had an instinctive and all-encompassing sense of balance.

Why should balance mean so much? Torts is a field in which the economic interests of “repeat players,” whether manufacturers of potentially dangerous goods, insurers, plaintiff lawyers, or defense lawyers, are particularly strong and persistently in conflict. It is also a field in which some of the central participants, those who are injured, are paradigmatically pitiful one-shot players. Their interests are, therefore, frequently underrepresented in discussions of reform proposals, while their plight is often taken advantage of by those who, whether through fraud or exaggeration, wish to benefit from it. It is, as a result, a field where it is unusually easy to be self-righteous and scornful of positions other than one’s own. Balance of the sort Gary had was and remains the most effective and valid antidote to the self-righteous scorn that abounds in this field that I love.

In preparing this appreciation of Gary, I reread many of his pieces, and I cried. I cried because I shall so much miss him personally. But I also cried because I will no longer hear his slightly skeptical, always calm, never cynical voice that made such sense in the midst of partisan pieties.

I admire brilliance and you had that, Gary. I appreciate depth and you frequently went mighty deep. But most of all, I cherish that balance, that judgment, that distance and lack of partisanship, that made you truly special, Gary, and that will make your work remain fundamental to us all long, long after your tragically early departure from us.

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