GARY SCHWARTZ

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I met Gary Schwartz fifty years ago when we both entered the seventh grade at Roxboro Junior High School in Cleveland Heights, Ohio. I remember being struck by how friendly he was, how smart he was, how quickly he talked, and how much he had to tell. I last saw him before his illness; the same adjectives applied. The remarkable thing is how constant Gary remained over this lifetime. Because he never lost his enthusiasms, and never slowed down his delivery, it is difficult to believe that he is gone.

Like many new lawyers in the 1960s, Gary was attracted to Washington where, it seemed, people of good will were working together to eliminate poverty and prejudice. He clerked for Judge J. Skelly Wright of the U.S. Court of Appeals for the D.C. Circuit, a judicial hero in the struggle for civil rights in the South and a jurist who believed that law could and should be an instrument of progressive social reform. Gary then worked as a Reginald Heber Smith Fellow for Neighborhood Legal Services to advance this vision, and finally for the Department of Transportation. Gary left Washington for California and UCLA, where he remained until his untimely death.

Gary was brilliant, affable, serious, quirky, engaged, and engaging. He was a caring and thoughtful friend. Except when it came to sports teams, a topic about which he might have allowed his emotions to overwhelm his judgment, Gary was the supreme rationalist. It may be no accident that he ended up as the undisputed master of doctrine and its nuances in an area of law that purports to concern itself with the behavior of a hypothetical reasonable person. In many ways, Gary was that person. Refusing to commit himself to the competing grand theories that seek to explain tort law, he chose—indeed, through his intellectual rigor and scope, brought respectability to—the middle path. His positions were always the product of exceptionally careful research and analysis, and they always reflected an effort to arrive at a rational policy based upon the evidence as it existed, rather than the evidence as we thought or hoped or assumed it was.

More than twenty years ago, Gary established that if one actually read tort decisions from the latter half of the nineteenth century, much of what one thought he knew about the fate of tort plaintiffs in that era was wrong. While workers asserting negligence claims may have fared badly at the hands

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of nineteenth-century courts, other plaintiffs were succeeding in holding emerging industry to account under negligence principles. This was classic Gary—faced with powerful theoretical arguments and common assumptions about the nature of tort law during the industrialization of the country, he had to find out for himself, and *did*. He spent a summer in the library reading through every tort decision in New Hampshire and California from the latter half of the nineteenth century. A few years later, he repeated the exercise in three other states in order to answer criticisms of his initial work and to extend his analysis.

When Gary went to law school, it was considered part of the law professor's mission to "keep up with the advance sheets" by reading appellate court opinions as they were announced. That way, the professor would be familiar with emerging trends in the law long before they were identified in the scholarly literature or found their way into casebooks. Whether this was as honored in practice as it was in the breach thirty-five years ago is questionable; what is clear is that Gary was almost unique in his commitment to this vision in his scholarship, teaching, and thought. He rendered an inestimable service for everyone who works in the law of torts—scholars, judges, and practitioners—by caring so much and thinking so hard about the law as it actually was decided. There was no one more suited to the task of attempting to restate the law of torts than Gary, and no one more deserving of the designation as Reporter for the *Restatement (Third)*.