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## Remembering Gary

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## REMEMBERING GARY

DAVID G. OWEN\*

The life and career of Professor Gary Schwartz are remembered in many places, notably in a symposium issue on tort law generally, in his honor, in a forthcoming issue of the *UCLA Law Review*.<sup>1</sup> But Gary had a special interest in understanding products liability law, a major branch of tort law, and in helping to guide its progression as it has struggled for shape and definition. Gary is deserving of many tributes, and many will he continue to receive. The current collection of articles is offered as a tribute to Gary's memory, with appreciation for all he taught us about how the law is good and how it can be improved.

Everyone who studied products liability and other tort law issues during the last quarter of the twentieth century knew Gary Schwartz. During this period, tort law swirled in many directions, and Gary and products liability law both were often at the center of the maelstrom. From the 1970s, it has not been possible to do tort law scholarship without running into Gary's ideas, and one cannot read Gary's writings—on products liability or anything else—without being enriched by his teachings. Gary's products liability writings were only a part of his tort law scholarship, which was but a segment of his legal scholarship, which was only a portion of his contributions as a law professor, which was but one dimension of Gary's rich life.

Some scholars make their names through controversy, by aggressively challenging the legitimacy of conventional thought. This form of scholarship may garner praise from scholars left untrampled in the process, and it has some value, but it also has its costs. Always balanced and fair-minded, Gary trod a different path: he searched for truth in conflicting theories, and often found the middle ground. When Gary inquired into such matters as the role of insurance,<sup>2</sup> deterrence,<sup>3</sup> punitive damages,<sup>4</sup> or the federal government<sup>5</sup> in products liability and other tort law spheres, his purpose was not to clang bells to gain applause from the academy for the novelty of his ideas. Instead, he pursued what truth might lie in the many strands of conflicting thought that he elegantly wove together into a richly embroidered, multi-dimensional web of legal insights—embracing history, theory,

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1. See *Rosenfield Symposium in Tribute to Gary T. Schwartz*, 50 *UCLA L. REV.* \_\_ (forthcoming 2002).

2. See Gary T. Schwartz, *The Ethics and the Economics of Tort Liability Insurance*, 75 *CORNELL L. REV.* 313 (1990).

3. See Gary T. Schwartz, *Reality in the Economic Analysis of Tort Law: Does Tort Law Really Deter?*, 42 *UCLA L. REV.* 377 (1994).

4. See Gary T. Schwartz, *The Myth of the Ford Pinto Case*, 43 *RUTGERS L. REV.* 1013 (1991); Gary T. Schwartz, *Mass Torts and Punitive Damages: A Comment*, 39 *VILL. L. REV.* 415 (1994).

5. See Gary T. Schwartz, *Considering the Proper Federal Role in American Tort Law*, 38 *ARIZ. L. REV.* 917 (1996).

doctrine, and practice—that became his hallmark. So, to the centrally perplexing question of tort law as to whether corrective justice or efficient deterrence is more important, Gary answered, “both.”<sup>6</sup>

Gary’s early products liability and other tort law scholarship during the 1970s and early 1980s, notably his *Understanding Products Liability* article in 1979 in the *California Law Review*,<sup>7</sup> established him as one of the foremost American scholars speaking broadly and objectively to developments in tort law doctrine and theory. Gary thus became the fulcrum for important colloquia and other congregations of tort law scholars and tort law projects in the 1980s, 1990s, and early 2000s, a fulcrum whose very presence tended to certify the significance of the gathering. Gary figured prominently at the assemblage of tort law teachers in Boston in the summer of 1982, and it was Gary who furnished the overview of tort law scholarship at a conference at Yale University<sup>8</sup> and a symposium in the *California Law Review*,<sup>9</sup> both in 1985. When the *Georgia Law Review* sought a national scholar to chronicle the rise of American tort law, first in 1981 and then again in 1992, it turned to Gary Schwartz.<sup>10</sup> When the American Law Institute began to restate the law of products liability in the early 1990s, Gary was appointed an Adviser to the project. And when the Institute decided to restate the broader principles of the law of torts in the late 1990s, Gary was tapped first to frame, and thereafter as Reporter to research and prepare, the Third Restatement’s treatment of the basic principles of the law of torts. Perhaps the crowning recognition of Gary’s career in tort law was an international gathering, the most important assemblage of tort law scholars since the Yale colloquium of 1985,<sup>11</sup> at Vanderbilt University in the year 2000 for the purpose of examining Gary’s momentous work on the Third Restatement.<sup>12</sup>

Though products liability law was but a part of Gary’s interests, it was a central part, for he devoted a significant part of his career to making sense of products liability law, of steering this branch of tort law in sensible directions. And what better way to remember a colleague and a friend than to gather together for the purpose of advancing a little further a discipline he cared about and helped to mold. And that is what we do today. Reflecting the scholarly community’s enormous respect and affection for Gary, a large proportion of the scholars on torts and products liability who worked with Gary to shape these areas of the law during

6. See Gary T. Schwartz, *Mixed Theories of Tort Law: Affirming Both Deterrence and Corrective Justice*, 75 TEX. L. REV. 1801 (1997).

7. See Gary T. Schwartz, *Foreword: Understanding Products Liability*, 67 CAL. L. REV. 435 (1979).

8. See Gary T. Schwartz, *Directions in Contemporary Products Liability Scholarship*, 14 J. LEG. STUD. 763 (1985).

9. See Gary T. Schwartz, *Foreword: Torts Scholarship*, 73 CAL. L. REV. 548 (1985).

10. See Gary T. Schwartz, *The Vitality of Negligence and the Ethics of Strict Liability*, 15 GA. L. REV. 963 (1981); Gary T. Schwartz, *The Beginning and the Possible End of the Rise of Modern American Tort Law*, 26 GA. L. REV. 601 (1992).

11. This was Gary’s characterization of the Vanderbilt assembly.

12. See Symposium, *The John W. Wade Conference on the Third Restatement of Torts*, 54 VAND. L. REV. 639 (2001).

his career assemble their writings here in tribute to his memory.

If Gary were still among us, he would no doubt have many things to say about this collection of articles—some complimentary, others critical, but all fair. Each article and essay in this issue moves products liability law forward a notch or two, which surely would please Professor Gary Schwartz. Rather than describe or summarize each article and essay here, it seems better to let each piece stand on its own, and *ipsa loquitur* as it were. Thanks to Gary Schwartz for helping products liability law find its way.

An unflinching devotion to fairness and historical truth, together with a penetrating intellect, combined in Gary to guarantee that whatever aspect of torts and products liability law he focused on would forever be illuminated, brilliantly, by his mind. We dedicate this collection of articles and essays to the memory of Gary Schwartz.

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