Tribute to Professor Horton

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TOM GEU†

Tribute to Professor Horton

I. INTRODUCTION

I knew Tom Horton as a professional colleague, a member of the faculty while I was dean, and, most important to me, as one of my dearest friends. I’ve spent more than a little time trying to write a narrative about Tom’s life. My attempt has been difficult because, above all else, Tom Horton was a force of nature. He was a hurricane: an unrelenting and overwhelming force—both unpredictable and directional.

II. TOM WAS ALMOST A CARICATURE OF BEING HUMAN

Professor Horton went nowhere quietly; was always on a mission; and was deeply passionate about love, life, and the law. He loved students, family, animals, advocacy, research, teaching, and the law. It is a long list of loves, and he was almost always able to pull off his life with aplomb. Successful pursuit of those loves and passions required perseverance and tremendous focus on the task on his desk or the person in front of him. Tom was “present in the moment” far more than most of us.

He was a successful lawyer, teacher, scholar, musician, and athlete. He loved and worried about his family in a very practical day-to-day way that I admired. He was generous to a fault and perhaps only his spouse, Karen, knows how much of their personal budget he spent taking trial teams to “good restaurants” in metropolitan cities where tournaments were held. He said the students deserved it, but that they also needed life experience and coaching in an environment that was new to many of them. He spent time co-authoring articles with students instead of on his own research.

Make no mistake: Tom liked to succeed. He was justifiably proud of his many accomplishments. Of course, his passion and focus belied a Type A personality that at times manifested as demanding and, sometimes, as micromanagement. As an advocate he clearly stated both praise and criticism. As a former dean I suggest

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† Professor Geu was on the faculty of the University of South Dakota Knudson School of Law for thirty-three years. He was dean when the faculty hired Professor Horton about twelve years ago. Geu taught organizational, transactional, and regulatory law. His research focused on his teaching interests as well as the application of complex adaptive systems theory to law. Geu grew up in Sidney, Nebraska, and graduated from University of Nebraska Lincoln with a bachelor’s of science (with distinction) with degrees in finance and economics and a juris doctor. He was a member of law review. He clerked for the United States Tax Court, the Seventh Federal Circuit Court of Appeals, and practiced law for five years. Geu is a member of the American Law Institute, a fellow of the American Bar Foundation and the American College of Unincorporated Entity Lawyers and was chair of the Socio-Economic Section of the American Association of Law School.
he was delightfully and disarmingly “difficult to manage.” As a friend, however, I came to know that he was sensitive and, as all of us, knew self-doubt.

One of my favorite stories in that regard occurred one evening when I stopped by his office on my way home. We had one of the very few contentious faculty meetings during my entire thirty-two years as a faculty member earlier that day. It was one, perhaps the only, time during my deanship I had tried to use my administrative authority without much faculty debate and, certainly, no consensus. My approach in the meeting was to quickly and forcefully pull the band-aid off the issue, let the pain ripple through all of us, and then just get over it. Tom steered the conversation in his office toward the meeting and said he happened to agree with my decision and that I had clear administrative authority on the issue. He then observed matter-of-factly that, “Today your leadership style was like Andrew Jackson’s; and sometimes that’s necessary.” Now, Professor Horton read a great deal of history; nonetheless, it is difficult for me to find any leadership comparison to Andrew Jackson which is complimentary. Point taken. Criticism duly noted. Touché Professor Horton.

III. TOM WAS TOUGH AND PERSEVERING

Professor Horton was a tough advocate and a demanding professor. His toughness in the face of his physical pain (due to a degenerative disease) is indeed legendary and inspiring. His toughness is evidenced, too, by his membership in the Steelworkers’ Union and as a NCAA varsity baseball player. Moreover, I think his toughness and perseverance is evidenced by his running (he ran at least one marathon while he was practicing law), his trial advocacy as a partner in two national law firms, and by his earning a master’s degree in liberal studies (history emphasis), also while practicing law. Finally, his perseverance is no better personified than by his being a lifelong Cleveland sports fan.

IV. TOM HAD TREMENDOUS INTELLECTUAL CURiosITY

Professor Horton read broadly in history, science, and the law. He had an undergraduate biology degree from Harvard, a master’s degree (liberal studies, history emphasis) from Georgetown, and was Order of the Coif at Case-Western Law School. He enjoyed the challenge of teaching a new course late in his career (Civil Procedure) telling me he learned more about the general law of civil procedure by teaching it than by taking the course in law school or by practicing it.

He threw himself into research and was a nationally known and respected antitrust scholar. His publications were regularly in the top ten percent of all antitrust article downloads. One of his special interests was in the application of morality and redundancy (as described by complex adaptive systems (“CAS”) theory) to antitrust law (manifested in biological evolution and ecosystem development). His pursuit of this line of research helped erode the neoclassical
and econometric model of efficiency that has dominated antitrust theory since the mid-twentieth century. One effect of the dominant theory was it divorced morality and the jury from antitrust law. His use of CAS theory provided a unique perspective on the damage caused by these effects. I firmly believe history will recognize Tom was one of the leaders in changing eras in antitrust theory.

His curiosity and research, however, went beyond theory. He willingly volunteered for service which provided fertile fields for his curiosity. For example, he was USD Knudson School of Law’s representative to a three-school joint venture teaching law to U.S. and Chinese students in the People’s Republic of China. There he taught comparative antitrust law and international negotiation. He wrote several articles about Chinese antitrust law (including the effect of Confucius thought on its development) after his return. As a result of this research, he was invited to, and provided, testimony to Congress about antitrust law in the Peoples Republic of China.

Importantly, he was a student of the art of trial techniques and advocacy. His expertise was recognized by being on the faculty of continuing education programs and clinics on the national and state levels (as well as teaching the law school course on trial techniques and being the Trial Team coach for almost a decade).

Finally, his curiosity extended to music. He was tutored by one of the best-known jazz drummers of the twentieth century and, remarkably, played percussion with the Cleveland Symphony while in high school.¹

V. TOM WAS A PATRIOT

Professor Horton was a patriot in every sense of the word. He believed in the rule of law and taught it in China. He taught it, the importance of an independent judiciary and, in turn, the role of the jury in it. He learned American history to better understand our nation. He ran for Congress as a nominee of the Democratic Party in Northern Virginia. He served as a lawyer competently and honorably (he received the highest ratings for competency and ethical practice by the best known and oldest rating service). He was an engaged civic leader as evidenced by his service to the non-partisan American Antitrust Association. And, he was a good local neighbor taking part, for example, in the community theater as a drummer.

In addition, he was honored to be a public servant as a lawyer for the United States of America. Once, as a special prosecutor, he brought down the governor of Rhode Island because of corruption. I smile when I think of his nightly news conferences and the relationship he must have had with the U.S. Marshals protecting him.

Beyond the listing of activities, I think one of his pro-bono trial experiences best illustrates his kind of patriot; one that was willing to both praise and criticize

¹. The Cleveland Symphony is known as one of the “Big Five” symphony orchestras in the United States. The others are the New York Philharmonic, the Boston Symphony Orchestra, the Philadelphia Orchestra, and the Chicago Symphony Orchestra.
the government and “We the People.” He told me a story that he once represented
(pro bono) a murder defendant at a trial that took place in the deep south. The
defendant was African American, and the jury returned a guilty verdict. Tom did
not question the verdict. He said, however, he still got a chill when he remembers
the Confederate flag hanging behind the judge’s bench.

VI. FAREWELL

My deepest sympathies to all who knew and now grieve him.

Professor Horton, you left the planet better than you found it. I loved you as
a brother and, until we meet again, Godspeed.