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IN MEMORIAM: GARY I. BOREN

The following addresses were delivered at a memorial service for Professor Gary Boren on November 28, 1989.

DORSEY D. ELLIS, JR.*

We are gathered this afternoon to celebrate the life and career of Professor Gary I. Boren, and to express our joy at having known him as teacher, colleague, and friend.

Because my acquaintance with Gary was shorter than anyone else speaking this afternoon, I thought I could best preface my personal comments by recalling for us Gary's professional history.

Gary joined the faculty of the School of Law in 1967 as Assistant Professor of Law and Assistant Dean. Hi Lesar was Dean, the law school was in January Hall, and Professors Dorsey, Gerard, Mandelker, Miller, and Swihart were already on the faculty.

Gary was born in Detroit and had gone to high school there, but he obtained both his B.A. and LL.B. degrees from U.C.L.A. He was a Note and Comment Editor of the *U.C.L.A. Law Review*, was elected to the Order of the Coif, and graduated from law school first in his class in 1961.

For the next six years, he practiced law in Los Angeles. It was during that period that he and Sondra married, and together they came to St.

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Louis in the summer of 1967. They took up residence in an apartment in St. Ann, and Gary began his administrative and teaching duties.

He had written his law review note on natural resources, and it was therefore quite natural that Natural Resources became one of his two courses. In the following year he exchanged his Assistant Dean title for the title of Assistant Professor of Law and Social Work, adding Family Law to his Natural Resources and tax courses. By his third year in teaching, he was able to devote himself exclusively to law, teaching tax courses plus Natural Resources.

Promotion to Associate Professor with tenure followed in due course; one outside reviewer characterized his first article as exhibiting "the highest type of scholarship," and likely to "be the definitive article in the area until . . . legislative proposals based on analyses like his are finally adopted."[1]

He was again inducted into the administration of the school, this time as Associate Dean, a position he held during the transition between Hi Lesar's and Tad Foote's deanships. Returning again to the faculty, he was promoted to full Professor in 1975 with the enthusiastic accolades of the tenured faculty and Dean Foote.

It was in the field of deferred compensation that Gary made his name as a scholar. His treatise, *Qualified Deferred Compensation Plans*,[2] occupies the field. Like his earlier law review scholarship, it is meticulous and comprehensive in its coverage. Erected on a solid foundation of research, it provides sure guidance through the labyrinthine statutory, regulatory, and judicial encrustations in this area. The law of deferred compensation has profound implications both for the effective creation of incentives and for perceptions of the just distribution of wealth. Perhaps that is why it is a subject undergoing rapid and continual change, change that occurs not only at the margin, but at its very core. Thus, to retain maximum value to the user, the treatise required semiannual supplementation and revision, placing on its author a far more intense burden than is typical.

I do not know when Gary first became involved with running the Graduate Tax Program. I do know, both from first hand experience and from the record, that he was an eloquent advocate of it. He was deter-

1. Letter from Ralph S. Rice, Connell Professor of Law, University of California, Los Angeles, to Dean Hiram H. Lesar (Feb. 16, 1971) (on file at Washington University School of Law).

2. G. BOREN, QUALIFIED DEFERRED COMPENSATION PLANS (1983-1988).

mined that it be an advanced program of the highest quality and insistent that it be provided the resources necessary to that result. His essential role in nurturing it from its infancy to maturity will be remembered for as long as the program thrives. It is with great pleasure that I announce that, through the generosity of Adjunct Professor Michael Goldstein and his firm, Suelthaus and Kaplan, the School of Law will hereafter proudly award on commencement day the "Gary I. Boren Memorial Prize" to the student in each graduate tax class who graduates with the highest grade point average.

I first met Gary at the Pumpernickel Restaurant in Coralville, Iowa. It was the summer of 1984. Gary was teaching summer school at Iowa, and someone had suggested me as a dean candidate to Washington University. Having recently taken on new responsibilities at Iowa, I was not able to consider any new opportunities. So I joined Gary and David Vernon for lunch without any sense that I was in effect under review. But I remember the occasion vividly. My impression of this man with the sardonic smile was of a quiet person, almost to the point of taciturnity. Only the barest hint of his wry humor was evident during that first encounter.

It was not until I came to St. Louis that I discovered Gary's personal warmth, his humor, and the other qualities that so endeared him to students and colleagues. I got to know him just as he was confronting the implications of a prognosis that would test the mettle of an angel. It was about this time of the year, two years ago, that Gary told me about the unwelcome, and at that time, incomplete news he was receiving from his doctors. We had a number of conversations about his situation in the ensuing months, most initiated by him. He displayed an impressive strength of character and spirit, as his hopes for effective treatment were raised only to be disappointed again. Throughout, he acted out of a resolute determination that this inner enemy would not prevail without a fight, and that neither the School of Law, his students, nor his faculty colleagues would be disadvantaged by his suffering. Being with Gary during the final years of his life invoked not pity but admiration. He exemplified quiet courage and concern for others.

It was a great privilege to have known him.

FRANK WILLIAM MILLER*

The faculty, staff, students, and alumni of Washington University School of Law in St. Louis were saddened by the death of Professor Gary I. Boren on October 11, 1989.

Gary was born in 1936. He received his B.A. degree in 1957 from U.C.L.A. In 1961, he received his LL.B. degree from the same school, having finished first in his class and having served as Note Editor of the *U.C.L.A. Law Review.*

After seven years of private practice in Los Angeles, Gary came to us here at Washington University in 1967, and remained with us until his untimely and tragic death in 1989. Gary was a brilliant and caring teacher, with more friends among the student body than another teacher might imagine possible. The same might be said of the range of his friendships among colleagues and staff members. No doubt this reflected Gary's extraordinary sensitivity and his high level of tolerance for the foibles of others.

But Gary was no soft touch. He was a demanding teacher who expected his students to perform at their best. He expected his colleagues to do likewise, even when he realized, at some level of consciousness, that we were not likely to match his own standards of performance, and he remained generous in his treatment of us when we could not quite match him. For Gary was an outstanding scholar with a magnificent mind and a desire for excellence. His articles on state business tax apportionment remain classics, and his treatise on pensions is a pioneering effort, which continues to dominate the field.

Gary died a hard death, and he knew its inevitability for almost two years. His courage and determination during that time seems astounding to me even now. We miss him mightily.

DALE SWIHART*

My name is Dale Swihart. I intend to spend a few minutes sharing with you a few fond and special recollections about Gary, who was my friend and colleague for almost twenty-five years. The generalizations are easy: Gary had a healthy seriousness about teaching students, a commitment to research and writing about ideas and problems that excited him, an intense loyalty to his family, friends, and this law school—all

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appropriately spiced with a delightful sense of humor. I have the privilege to recall some aspects of each of these. To those who believe that seriousness should be my guide, I must apologize in advance, because the Gary I knew would be distressed if I were too solemn on this occasion.

Gary's family was the most important part of his life. Sondra, as Gary's rabbi has so beautifully described it, true love regained not only helped Gary face the future in the past two years, but was in great measure the reason Gary was able to enjoy those years. Judith, you know how deeply your father loved you. Your triumphs, large and small, were your father's favorite topics at our daily morning coffee break. All of the regular members of the coffee group are fathers of daughters, and we shared your father's view that daughters are just simply grand.

Over the last twenty-five years, Gary and I have been tax teachers. We took advantage of our mutual interests to help each other in our attempts to fathom the intricacies and the rationales underlying the tax laws of this country. More often than not, we would find the intricacies deep and the rationales shallow. But the frustrations only whetted our interests.

Unlike some of his colleagues Gary was not a rabid sports fan. But because he had a brilliant mind and a superb memory for detail, he invariably would find a fallacy either in fact or analysis if his friends would stray too far from reason in conversation about sports. Right Frank? Additionally, Gary, as is true of most of us, detested the idea that he might be taken advantage of in the setting of odds for a bet about sports. I believe that reaction stems from the World Series of 1968. Gary's childhood home was Detroit (Hamtramack I would say), and he felt obliged to root for the Tigers against the Cardinals in the 1968 World Series. In that series the Cardinals were heavily favored—they were, after all, the defending world champions. With a lack of caution on his part, which was not to occur again to my knowledge, Gary and I made a five dollar bet—with even odds. And that was big money! After Gary read in the paper the odds favoring the Cardinals, and especially when the series stood at three games to one in favor of the Cardinals, he was furious that I might have taken advantage of him in a weak moment. As some of you know, the Cardinals, with Curt Flood missing a fly ball in center field in the seventh game, managed to lose the last three games and the 1968 series to the Tigers. Never has the winner of a bet taken the money from his victim with the flourishes Gary managed when I handed over the five bucks. Even the dramatics that Gary traditionally displayed

when he raked in the big pots in our poker games were gentle and polite by comparison. I should add that because he was both competent and lucky at poker, he won far more than his reasonable share.

As my colleagues have mentioned, Gary was nationally recognized for his research and publication on a variety of tax problems. His work in state taxation of interstate business income and the federal issues relating to deferred compensation are his most widely known scholarly contributions. His pensions book is the leading treatise on the subject. I have used his articles on interstate business income when teaching State and Local Taxation courses, and I report to you that those pieces are superbly done. The policy issues that Gary treated provide a blueprint for appropriate federal resolutions; I regret to report that Congress has trouble following blueprints, and many of the issues Gary treated remain unresolved.

Gary had his own approach to the hard job of research and writing—a style I will call the perambulatory method. That is: two lines on the word processor and a walk around the law school; then two more lines and another walk, and so forth. More often than not Gary was not seeing anything on his walks; I think he was simply better able to formulate his next idea while moving than while sitting. He may have had a different view. As those of you who have been to his office may know, Gary posted a single line on a letter size sheet of paper by his door, which he attributed to Pascal, and maybe accurately so, and which I will try to recall from memory for you: "All the world's evil may be traced to a single source—a man's inability to sit alone in a room." I think this showed that Gary had the prerequisite for a true sense of humor—the ability to poke fun at oneself.

Let me speak last to you about Gary's love of teaching. Our conversations about any other matter were never as serious as were our explorations of how best to help our students study and understand tax. While our techniques undoubtedly differed, we had no disagreements about the bottom line: students learn best when they are prepared and attend class regularly. Easier said than done, obviously, when the expectation is for the student to sit for hours wrestling with the code and regulations. Neither of those bulky bundles of words were written with the objective of providing an enjoyable experience for the reader, and too often, apparently, without the objective of providing even a comprehensible experience for the reader. But strive Gary did.

Gary used humor in the classroom. From a number of Gary Boren

traditions I will report to you one. For those of you who are not familiar with student evaluations of our classes, I will set a little background. Once each semester students are asked to evaluate the course and the instructor. They spend the first fifteen minutes or so of class time writing what usually are gentle suggestions for improvement by the teacher. Thereafter the teacher arrives to start the class. In my classes this semester, and only for this semester, I told my students that I would continue a traditional opening line which Gary used when he would walk into the classroom as the administrator of the student evaluations would leave with the, as yet, unread comments of his students. I said, as Gary would have, "And the same to you."

I close by fulfilling a promise I made to one of Gary's students who attended the last class that Gary taught. Jane Denes asked that I convey a message to Gary's wife and daughter. And so Sondra and Judith, I use this occasion to do so. Jane reported that even in his last class, Gary's sense of purpose to help his students was sharp and undiminished. His sense of humor was bright and in full use. Jane indicates that she marvelled at Gary's strength and determination. So do I, but I am not surprised, because that was Gary.

CAROLYN WOLFF*

I knew Mr. Boren because he was a teacher of tax and I was a student of tax at this law school from 1972 to 1977.

After I finished law school, our association continued, largely because of our common interest in the substantive law relating to our country's private pension system.

I had the highest regard for Mr. Boren. He was both a serious person and a droll person; that combination of character traits made him perfectly suited to his work, and caused me to have a lot of fun during an intense and very difficult experience as a law student. I think Mr. Boren elicited the same vivid feelings of respect and regard from most people he knew.

I would like to read to you a portion of the preface from the first edition of Mr. Boren's book about the private pension system. The subject matter is very difficult and complicated. The private pension system is governed in part by the Internal Revenue Code and in part by another federal statute called ERISA, the Employment Retirement Income Se-

* Greensfelder, Hemker & Gale, P.C.

curity Act of 1974. The book was first published shortly after a major change in the governing statutes. This big change was designed to solve some serious problems of form over substance that had developed over a long period of time. It is one of those legislative efforts that might have been successful in some degree, but somehow we ended up with a more difficult and more complicated body of law.

So, I will just read to you from this preface. The wryness of the writing pleases me greatly and reminds me vividly of Mr. Boren; it also reminds me of Prosser on Torts and Bittker and Eustice on the Federal Income Taxation of Corporations and Shareholders.

> In the not so distant past, countless professional practices and many other businesses were incorporated solely because the Internal Revenue Code blessed the corporate form with the largest amounts of tax-favored deferred compensation. The rules have changed since then; incorporation is no longer necessary to obtain maximum contributions or benefits, although some differences between plans of corporations and of unincorporated businesses remain. Other rules have also changed, or been added, or repealed. Each group of changes, especially those that diminish the amounts that can be channeled to insiders, or which increase the costs of creating and operating the qualified plans, is followed by predictions that the private pension system (by which is meant the entire range of qualified plans) will not survive. So far, the tremendous tax advantages that can be obtained through what remains one of the great tax shelters perpetuate the qualified plan. Though ritual incorporation can be avoided (if one so chooses), other rules and rites cannot.[3]

I want to read also from the acknowledgments in the book because they are a little bit telling about Mr. Boren. In the acknowledgments, he thanked former law students, his current law students, his research assistant, his secretary, the word processing coordinator of the law school, his editor at Callaghan & Co., the publisher of this book, his wife, his daughter, Hodge O'Neal, who first got him interested in the private pension law, and then there are some final words of thanks:

> Finally I would like to express my deep indebtedness to Addison Mueller, late Professor of Law at the University of California at Los Angeles, who made me think.[4]

I would put Mr. Boren up there with the best of them in that capacity.

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3. G. BOREN, QUALIFIED DEFERRED COMPENSATION PLANS at v (1983-1988).
4. *Id.* at vii.

LAWRENCE BRODY*

My name is Larry Brody, class of 1967. I was honored to be asked to say a few words about my friend and colleague Gary at this remembrance of his life and about what I think is our recognition of the lasting effect he had on all of us. I must admit that when John Drobak first asked me to participate in this service, I was a little concerned about what I could say about Gary that would be of interest and that would not be repeated by someone else. I did not want it to be so maudlin that if Gary were here, he would be offended by it; nor so laudatory that he would be embarrassed by it. That did not leave a whole lot.

Gary and I knew each other for most of the time he was in St. Louis. I was slightly too old, not much too old, but slightly too old to have been a student of his. But we did work together on the Graduate Tax Program. We spent some time working through some of the issues that came up in that program once he became its Director. We often shared the podium at an organization called the St. Louis Tax Lawyers' Club, which is a more interesting club than the name implies. Somehow Boren and Brody were often called on to speak at the same meeting. It's a little like being back in Dale Swihart's class, when he went down the rows, and you knew you were next. Gary and I often shared the same podium when we worked together trying to put on those programs. When he became ill, we really began to see each other more and to talk more. Unfortunately, it was not until that time in his life that I got to know him better.

All of our contacts, especially those in the last year-and-a half or two, were experiences that revealed to me a very dedicated and determined person, even in some of his physically darker moments. His determination was amazing. He continued to teach and write and to try to lead as normal a life as possible. As Dean Ellis has said, how he faced mortality was inspirational. Gary was a friend, a confidant, somebody you could talk to, a scholar, and above all, a caring human being. There is a yiddish word that I think has become a part of our general vocabulary which for me really describes what Gary was; I think that it may describe what he was to most of you. He was a mensch. Very loosely translated it means that he was a real person, a human being in the grandest sense of that word, someone you felt cared as much about you and what you were doing, as he did about himself and what was happening to him.

In thinking about and discussing what I might talk about today, I

* Bryan, Cave, McPheeters & McRoberts.

spoke to one of our associates, Judy Raker Bruton, who was a law student here when Gary taught. She related a story of Gary's influence on her, not so much as a law student because I don't think she ever had him in class. But she did relate a story about his influence on her as a person, which I thought summed up the way I felt about Gary, and in some ways, the way I was influenced by him. Judy, when she was in law school was a very dedicated, what some might say compulsive, student. She spent most of her time either in the library preparing for class or going to class. She didn't have a lot of outside time. Gary, whom she never had as a teacher, somehow found her in the library and kept trying to get her to do other things. She said what he did for her was to give her some perspective on life, not just being a law student. A perspective, I might add, she was unable to get elsewhere. In fact, Gary kept insisting she get out of the library. Eventually, Gary realized that she wasn't going to do it on her own, and he did something I think is pure Gary—something I don't think the rest of us would do. He came in one day, picked her up, put her in his car, and took her to the zoo. They spent the day at the zoo. Probably ten years later, Judy still remembers that experience—of someone who cared enough about her to take off a day, to go to the zoo, and just talk about what was bothering her. She told me that ever since then, she really felt Gary was there for her. I think Gary was there for all of us, and I think that that is what we are going to miss the most about Gary.