2-1-2011

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Available at: https://digital.sandiego.edu/sdlr/vol48/iss1/16

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Remembering Fred Z

GARY J. SIMSON*

I first met Fred Zacharias—or, as some of his friends affectionately referred to him, Fred Z—when he interviewed late in the fall of 1982 for a faculty position at Cornell Law School. In my many years of teaching, most of them at Cornell, I have attended dozens of presentations by candidates seeking their first faculty position. By far the presentation by an entry-level candidate that I recall most vividly is Fred’s.

Fred spoke about a torts issue—negligent security liability—that was central to an article that he had begun writing, an article that ultimately would be published in The Yale Law Journal under the title The Politics of Torts.1 I remember marveling at Fred’s intellectual quickness and ability to stay focused in fielding the barrage of questions that the faculty, a number of whom had taught Torts for years, asked him. Most entry-level candidates would have wilted under the fire, but not Fred. If he was intimidated by his questioners, he never let on. The fact was that it was an outstanding talk. Far from reflecting any shortcomings in Fred’s presentation, the intensity of the questioning was a tribute to the presentation’s intellectual spark.

Over the years, I often have thought back on that presentation and how clearly it revealed certain attributes that would make Fred such an exceptional scholar: a brilliant and razor-sharp mind, an uncanny eye for interesting topics, a wonderful capacity and tendency to think outside the

* Dean and Macon Chair in Law, Mercer University School of Law. This tribute was delivered as a speech at the Memorial Service for Professor Zacharias on April 16, 2010, at the University of San Diego School of Law. At the time, the author was the Joseph C. Hostetler - Baker & Hostetler Professor of Law at Case Western Reserve University.

box and see things from a different perspective, a readiness to take a controversial position if that is where his thinking took him, an intellectual toughness and tenacity in defending his ideas, and more. It was not apparent at the time that Fred would make legal ethics the primary focus of his scholarship. In fact, that did not become apparent until several years into his academic career. However, from the start, there could be very little doubt that Fred would write often and have an abundance of thoughtful and creative things to say.

Fred was always so committed to scholarship that one might have expected his commitment to teaching to be relatively relaxed. But that certainly was not the case. Fred was not only a very talented teacher but also an unusually conscientious one. He did not regard coming to class less than fully prepared as an option. In a very real sense, he saw class preparation as an ethical obligation. I was amazed when he mentioned to me a couple of years ago that he had maintained through the years his practice as a new teacher of blocking off the two or three hours prior to any class to get himself fully mentally prepared, even when that meant waking up at what most of us would consider an ungodly hour in order to prepare for an early morning class.

From the start Fred not only took his teaching seriously but expected his students to do the same. I remember well the time in Fred’s first or second year at Cornell when I ran into him in the hall on his way back from class. As anyone who knew Fred at all could not help but notice about him—and, in my view, love about him—he was not hard to read. If something was on his mind, he was not very good at hiding it, and on this day, he was obviously upset. As he explained to me, he had come into class ready to discuss an interesting but difficult set of cases only to find one student after another unprepared. Ultimately, he had become so exasperated that, although the class was only about half over, he picked up his books and papers, said that he hoped the students would be better prepared next time, and walked out of the room.

There are not many teachers who would have done what Fred did. Some of us would have liked to do what he did but, especially in our first or second year of teaching, simply would not have had the nerve. Others would not have felt the urge to do what he did because they tend not to be as invested in the classroom experience. The bottom line, though, is that I think what Fred did was very atypical of law professors and very characteristic of him, and it came straight from the heart. I am confident that after the students recovered from the shock of Fred’s walking out—and I have this image in my mind of the students sitting there speechless for ten minutes after he left—they understood for the first time how deeply he cared about what he was doing. As Fred told me later, they did come to
subsequent classes significantly better prepared. They surely did so partly for their own sake, but probably even more so for his.

In short, Fred truly was the consummate teacher and scholar. Above all, though, for me, Fred was someone with whom I felt a bond almost from the start that felt as much like family as friend. I will always remember him for his generosity, his integrity, his unpretentiousness, and his great personal warmth. But probably what I will always think of first when I think about Fred will be his terrific and unique sense of humor. Nothing passed him by, and he was the master of the deadpan aside. Watch out if you were sitting next to Fred in a meeting where laughter would be out of place! I can recall a number of times during our years together at Cornell, including once at a law school graduation when we were seated on the stage with other faculty facing all the graduates and their families, when Fred would lean over to me and, with comic timing that would do Jack Benny proud, matter-of-factly make some hilarious observation that would leave me straining to stifle guffaws.

In the fall of 2006, a few months after I moved from Ithaca to Cleveland to become dean of the law school at Case Western Reserve, Bob Lawry, the director for many years of the law school’s legal ethics center and an outstanding legal ethics teacher and scholar, told me that he would be retiring at the end of the 2006–2007 academic year. Over the next few weeks I tried to get Bob to reconsider his decision, but to no avail. Ultimately, I asked Bob to help the Faculty Appointments Committee search for a worthy successor by putting together a list of experienced legal ethics scholars who would be strong candidates for a faculty appointment.

From speaking with Fred, I knew that Eric, the younger of Fred and Sharon’s two children, would be graduating from high school in June 2007 and had been talking for some time about heading to the east coast for college. I also knew that their older son, Blake, who had stayed in California for college, would be graduating in May 2008 and was seriously considering a move at that time to the east coast. It occurred to me that under the circumstances, the time might be ripe for Fred and Sharon to move eastward. And what better place than Cleveland!

As a dean, it was hard not to get excited about the prospect of filling a major curricular need and doing so by adding a teacher and scholar so good that almost any faculty would be eager to hire him regardless of curricular needs. In addition, on a purely personal level, it was hard not to get excited about the prospect of once again being on the same faculty and living in the same town as my former colleague and longtime friend.
But our close personal connection also presented obvious complications. Neither Fred nor I would be well served if it appeared that even part of the reason that he was being seriously considered was that he was the dean’s good friend. I therefore resolved not to raise Fred’s name. Instead, I would wait to see Bob Lawry’s list of legal ethics faculty to pursue and hope that Fred’s name would be on it.

To my great disappointment, when Bob gave me his list, Fred’s name was nowhere to be found. Based on both Fred’s national prominence in the field and my own independent judgment of the high quality of his work, I was quite puzzled. Although I had resolved not to suggest Fred for an appointment, I could not resist asking Bob why he did not rank Fred as highly as those whom he had named. Bob’s initial response was a look of disbelief, after which he said something to the effect of, “What are you talking about? Fred is a star. I rank him more highly than anyone on my list. I didn’t list him because I thought there was no way we could possibly get him.” When I replied by explaining why Fred might be amenable for family reasons to an eastward move, Bob said: “Forget about the list. Tell me what I can do to help us get Fred.”

During my first year as dean at Case, I came upon a tradition at the law school that in my view had long outlived whatever utility it once may have had: upon retirement, a faculty member would be presented with a rocking chair. To be honest, when my executive assistant first told me of the tradition, I thought she was kidding. Maybe it is just personal idiosyncrasy, but I know that if I were presented with a rocking chair on my retirement, I would be much more apt to feel horrified than grateful.

In any event, I decided that Bob Lawry’s upcoming retirement presented the perfect opportunity to begin a new tradition. Henceforth, a retirement would be celebrated by inviting a distinguished scholar in the retiree’s area of expertise to come to the law school to give a lecture in the retiree’s honor. Moreover, I would get the new tradition off to a great start by inviting Fred to do a lecture in Bob’s honor. Bob loved the idea, as did the Faculty Appointments Committee, which urged me to make clear to Fred the committee’s hope that he might entertain the possibility of being considered for a faculty appointment.

Fred agreed to give the lecture early in the fall of 2007 and to spend several days in Cleveland getting a feel for the city and the law school. Ultimately, Fred gave a lecture that was outstanding in both style and substance. I was not the least bit surprised that the substance was so good, but not having seen Fred speak publicly for years, I did not realize what a remarkably accomplished speaker he had become. I fully expected him to

be very good, but he was far better than that, expertly using quotations, vivid examples, humor, and more to make complex concepts understandable and his thesis persuasive.

As memorable as Fred’s lecture was, it was not the high point for me of his visit. That had to be a dinner out that my wife and I had with Fred and Sharon, who at my invitation had joined Fred for the final couple of days of his visit. The time flew by as the four of us sat and talked and laughed without a pause in the conversation. I realized that although almost twenty years had passed since the four of us had last sat around a table together—no doubt one of our dining room tables in Ithaca—the evening very much had the feel of resuming a conversation that we had begun the day before.

When I asked Fred at the end of his visit whether he would give serious thought to an offer to join the Case faculty and he responded that he would, the Faculty Appointments Committee swung into action. The committee solicited the requisite outside letters on Fred’s scholarship, and as anticipated, the letters made clear that Fred’s joining the Case faculty would be an enormous coup for the school. By January 2008, the Committee and then the faculty as a whole had resoundingly endorsed making Fred an offer, and as dean, I had the great pleasure of extending it to him.

Ironically, as Case’s lengthy courtship of Fred in 2007–2008 was unfolding, the family reasons that initially had led me to think Fred might be movable were fading away. His son Eric decided that college on the east coast was not for him after all. Instead, following the lead of Fred’s older son Blake, Eric enrolled in the fall of 2007 at Claremont McKenna College, where Blake was beginning his senior year. As far as Blake, although he would not graduate from Claremont McKenna until May 2008, he decided by late fall of 2007 that he would begin his business career on the west, not east, coast. In fact, he decided to begin it right in San Diego, accepting a job to begin after graduation.

Fred mulled over the Case offer for several months. Ultimately, however, he decided to decline the offer. Notwithstanding Cleveland’s well-known weather advantages over San Diego, Fred would remain a member of the faculty of the University of San Diego School of Law.

Early the next year, Fred was diagnosed with a form of cancer that I knew would be very hard to beat. Particularly having thought so much in the prior couple of years about the possibility of being reunited with Fred at Case, I was floored by the news. I could accept that Fred would not be my colleague at Case, but I could not begin to accept that this dear friend and thoroughgoing mensch might be taken from us so soon. All the
conversations that he and I had had about a possible move to Case now seemed almost cruelly insignificant, so sadly beside the point.

Gradually, though, I came to see those conversations, particularly those that we had face to face, as anything but unimportant. They brought Fred and me closer together than we had been in years, and for that, I will always be enormously grateful.