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TRIBUTE

*Noel Augustyn**

Thomas L. Shaffer: A Remembrance

The death earlier this year of Professor Tom Shaffer of the University of Notre Dame has provoked many memories among many people who were fortunate enough to have known him. As one of his students—in the broad sense that term—I was privileged to be asked to share some of my own, and they begin, literally, on the day that I and others in my class first met him.

In late August 1971, Dean Thomas L. Shaffer welcomed the incoming Notre Dame Law School Class of 1974. There were about 140 of us, including only a little more than a dozen women at what was still, in those days, essentially an all-male university. Tom's tenure as dean there would extend one year longer than that class would be on campus, but his influence will go well beyond our lifetimes.

Dean Shaffer's (pronounced Shay-fer) was an unusual greeting, as I recall it. He questioned why we wanted to trade our sun-tanned, relatively young and straight selves for the pallid, hunched-over-books-for-three-years-and-thereafter creatures who are law students and then lawyers. Tom was a bit pallid and hunched himself, and spoke with a voice that was soft, low, and gravelly. The first words out of his mouth provoked thought among his listeners, and in that way, and more, he was a true intellectual—something rare, alas, among many university administrators.

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He went on to say, in typical self-effacement, that his selection as the new dean of the law school from which he, himself, had graduated was a reflection of the confidence that the university president, the legendary Fr. Theodore Hesburgh, C.S.C. had developed in the emerging high quality of that institution. The fact is, a man of Tom Schaffer's high intellect, broad learning, and, above all, depth, could have been a law school dean anywhere. Graduating first in his law school class, editor in chief of the law review, author of some 300 publications, Tom was simply a brilliant scholar and gentleman.

As a person, he was impressive in a distinctively gentle way. A bruised reed he did not break, but the fact that I can remember, forty-eight years later, anything anyone said at a routine matriculation meeting is a testament to a man who, from the beginning, was worth listening to. Except for a one-week seminar on the Legal Profession he taught to those of us who were spending our second year in Notre Dame's London Programme, I never had Tom for a professor in a class. Nevertheless, he exerted a powerful influence on my thinking throughout my career.

One of Tom's innovations was a Saturday morning seminar entitled "On Being a Christian and a Lawyer"—which became the title of a book he published some ten years later. There were about a dozen of us students and faculty who would assemble to discuss questions such as, "When St. Stephen, while being stoned, prayed for his executioners, 'Lord, lay not this sin against their charge,' was he praying for injustice?"

In addition to Dean Shaffer, the faculty members who attended those gatherings included the quintessential absent-minded professor Bob Rodes, who was incapable of saying anything that was not profound, and Peter "Thunder" Thornton, the terror of first-year Civil Procedure students, who bore an amazing physical resemblance to KFC's Colonel Sanders. Rodes and Thornton, like Tom, were converts to Catholicism, and they brought their Protestant attachments to the Word to the table. There was also the ex-Marine, Professor Charlie Rice, whose outrageous sense of humor was transcended only by his Catholic orthodoxy, and legendary Contracts teacher, Smilin' Ed Murphy. Riding herd on this group, in addition to students from all three classes, took cowboy aptitudes, which Tom must have inherited from his birth and background in the West.

Provocative Shaffer-isms that emerged from these seminars and otherwise included, "Precedent is the worst reason you can give for deciding a case." (Tell that to a practitioner!) Moreover, "The first person to whom Christ promised paradise was a criminal." He was fond of using the phrase

“leadership position” as a euphemism for trying to persuade people to volunteer to do more work, the rewards for which were by no means apparent. Original thinker that he was, Dean Shaffer was apparently nonetheless not immune to the Great Society zeitgeist when he seemed to favor Lyndon Johnson over Jesus of Nazareth in saying that the latter’s truism, “the poor you always have with you,” was the very worst statement in the entire Bible. Tom was no knee-jerk liberal, however, (he was no knee-jerk anything) so he also said, “the problem with liberals is that they see peoples as problems rather than as people.” But in all events, Tom made you think—and in a way, you may never have thought before.

Moreover, it was a tribute to the law school atmosphere he helped to fashion that these types of questions and comments could be aired and seriously discussed; I could not imagine these seminars occurring in a law school at a place like Stanford, for example, where I had received a master’s degree a few years earlier. That said, Tom’s influence extended beyond his students and colleagues to the nation, including the Ivy League. Years later, in my own career, Dean Roger Cramton of Cornell Law School and president of the Association of American Law Schools told me how much he admired Tom, as did Jim Freedman, then dean of the University of Pennsylvania Law School.

In the spring of 1974, Tom received an invitation to a conference on “Law and the Liberal Arts” hosted by Wabash College in southern Indiana. Knowing of my interest in such matters, he asked me to represent him—and hence the law school—at that symposium. I was honored to do so, and, as it turned out, it was an example of how, unwittingly, Tom Shaffer influenced what eventually became most of my working career in the federal courts.

At Wabash, I met one of the program’s panelists, who, upon learning that I was moving to Boston after graduation for work with a law firm there, suggested I look up one of his Harvard Law School classmates and friends, who was then the assistant to the president of Boston University. His friend was Dr. William J. Bennett, who subsequently became, under President Ronald Reagan, chairman of the National Endowment for the Humanities and Secretary of Education, and, under President George H.W. Bush, “drug czar.” Bill and I became friends, and he later became a poker-playing partner with then-Justice William H. Rehnquist. When I applied for the position of chief of staff for the latter, shortly after he was appointed Chief Justice, a good word from one Bill to the other on my behalf certainly did not hurt my chances of getting the job. And it all began with Tom Shaffer.

My contacts with Tom after graduation were, unfortunately, fairly few. In the days when knowledge of bar passage rates was less readily available than now, but when law schools were still obviously interested in their graduates' results, I sent Tom a note in the autumn of 1974 that I had passed the Massachusetts bar examination. The evening I received that good news, it so happened, was also when I became a victim of a Seventh Commandment violation in that my 1962 Chevrolet Impala—which I had driven six times across the North American continent—was stolen, which I had also told Tom. He replied with a postcard simply stating: “Yay, for bar; boo, no car.”

In later years, I would see him occasionally at AALS meetings, including one where he gave an address on hierarchies within law schools, which Georgetown's Dean David McCarthy aptly described as simply artistic in its organizational presentation. Our interactions at these events were unfortunately brief, as I tended to be running from one hotel conference room to another in connection with my Association work. I regret not making more of an effort to keep in touch with Tom in the years thereafter, and I have advised law students (and my own children) to stay in contact with those who have had a positive influence on them. Our own lives can be enriched beyond memories if we do so.

A common-sense but not necessarily obvious observation once stated by his colleague, Professor Bob Rodes—that we relate to others best when we are most ourselves—applied completely to Tom. He never appeared to be “on stage.” You never got the impression that there was another Tom Shaffer. What you saw and heard was what you got, and what we got came from a marvelous man who shaped generations of other people in unanticipated ways. To have been one of Tom's students was worth the price of becoming hunched and pallid, and remembering him has been a joy—although it's still not clear to me whether or not St. Stephen was praying for injustice.

Requiescat in pace.