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A TRIBUTE TO PROFESSOR JEFF GABA

*Joseph F. Guida**

AS I pondered what to say in tribute to my dear friend, Professor Jeff Gaba, it occurred to me that there is not one Jeff Gaba but many. He is a brilliant academician, intimidating law professor, prolific author, engaging humorist, fierce courthouse competitor, devoted husband and father, master craftsman, and warm and caring friend. I have personally seen him fill all these roles, and in all of them, he has won my deepest esteem. So, in this tribute, which I am humbled and most unworthy to give, I have chosen to tell you a little bit about the many Jeff Gabas I know.

My earliest memory of Jeff was in 1982 when he was a newly minted professor at SMU Law School with an unruly shock of dark hair and a decidedly '60s-style irreverence for conventional thinking regardless of the point of view. He had been invited to speak to a group of Dallas environmental attorneys. I recall that his topic covered some very arcane area of controversy between the EPA and industry regarding wastewater discharge permits under the federal Clean Water Act. He spoke almost entirely extemporaneously and, as he is still wont to do, with a pen in his hand, grasped as if he were going to write his words in thin air. I don't recall much about the actual substance (it was dense), but I do recall his ability to impart his enchantment with the law to his audience. His palpable (and, dare I say, obsessive) fascination with the intricacies of law fuels a passion that energizes his academic and professional endeavors and invigorates his law classes and other audiences to this day.

Upon his arrival at SMU Law School, that passion inspired him to exit the comfort zone that he brought with him from his days as an EPA and public interest group attorney working on federal Clean Water Act matters. He quickly morphed into a property law expert when the law school needed one. Due both to his ambition to create an innovative environmental law class as well as his insatiable thirst for knowledge, Jeff soon ventured well beyond water quality control regulation with intense study of other developing areas of environmental law, notably the Resource Conservation and Recovery Act or "RCRA" (hazardous and solid waste), the Comprehensive Environmental Response, Compensation, and Liability Act or "CERCLA" (cleanup of hazardous substance releases), and Toxic Substances Control Act or "TSCA" (chemical regula-

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tion). He proceeded to not only feature these areas in his classes but also to publish abundantly about them, as mentioned below.

It was when Jeff asked me to assist him as an adjunct lecturer for his maiden voyage in teaching environmental law that I witnessed his teaching style and philosophy first-hand. As a first-time law lecturer, I had a lot to learn. Jeff was a natural educator who kindly (but sometimes sternly) took me under his wing. He made one thing clear first: this was not a CLE course in which the speaker spoon feeds the audience. The *students* are supposed to *learn the material first* and it was my job to challenge their understanding and force them to do one thing: *think*.

On the days that I lectured, he would sit in the back of the room and sometimes furrow his brow, squint his eyes, cross his arms and legs, and shift in his seat to let me know when I was actually inspiring thought. (This unusual behavior could occasionally provoke puzzlement on the part of the students. I would have to instruct them: “Please direct your attention to the front of the room and pay no attention to Professor Gaba.”) When Jeff took the lectern, it was (in sharp contrast to me) a virtuoso performance, replete with witticisms, exaggerated facial expressions, sweeping hand gestures, and stern reminders to read the assignments before class—all as he effortlessly spun out Socratic conundrums. Some parts were more theater than lecture, and the students loved it! I ran into a former student many years later who assured me that Professor Gaba’s environmental law class was one of his most unforgettable and valuable law school experiences.

While we were team-teaching the environmental law class, I would occasionally drop by Jeff’s new home to discuss my class plans. The first time I visited, he informed me that his house would be easy to spot because it was the only one on the block with a plastic pink flamingo in the front yard. When I found the flamingo and went inside, I immediately noticed that the walls and woodwork were all torn up. I asked him what had happened, he told me that he was remodeling his living room. When I asked who was doing the work, he matter-of-factly replied “me.” Sure enough, Jeff did all the woodwork for his home remodeling project himself. It struck me as extraordinary to see this gifted man of letters work so handily with a hammer, crowbar, and power tools.

Jeff had other traits that distinguished him from the stereotypical law professor laboring in the quiet bowels of a dusty law library to prepare for classes or to conjure up books and articles on abstruse topics. Jeff routinely found his muse in the noisy bustle of a comfort food hangout across from the law school. He would sit and write for hours—a singular figure with nothing but a cup of coffee and a laptop or legal pad. He once explained to me that noise and activity around him helped him shut out distractions and he would seek similar venues when he was away from the law school. As improbable as it sounds, this practice often lay at the heart of his masterly and voluminous publications.

I would be remiss, however, if I failed to mention a much more important place that the comfort food hangout had in Jeff's life. One day, while Jeff was toiling away at some *magnum opus*, a lovely young woman approached the counter, and Jeff, sitting alone at a nearby table, was instantly smitten. He somehow gathered up the courage to introduce himself (I'm sure it was a classic rom/com scene), and, as they say, the rest is history. Jeff and Brenda have been together ever since and are the parents of two wonderful boys. I have always had faith in Jeff's judgment, but landing Brenda was clearly the best decision he ever made. The second best may have been his decision to remain a law professor despite my efforts to have him leave teaching and join me as a full-time law firm partner.

Several years into our relationship, I did manage to convince Jeff to join the environmental practice group at my downtown Dallas law firm on a part-time "of counsel" basis. After all, we often spent a lot of time on the phone or at lunch where I would pick his brain on some knotty environmental law issue, especially several arising in a groundbreaking CERCLA case in which my firm was involved. (These conversations were usually a bit unnerving for me because Jeff always knew more about the law than me, and I would have to openly display my ignorance.) Due to his professional experience prior to teaching, he easily transitioned into the private practice environment. His competitive drive and raw legal talent combined to make him a master of strategy and tactics in environmental litigation. In addition, his deep knowledge of substantive law was the source of many a creative argument or solution.

On one occasion, he argued a motion for one of our clients in the aforementioned CERCLA case in federal district court. Jeff spent weeks meticulously crafting the motion and planning his oral argument. His performance at the hearing, which commanded rapt attention from the judge and a courtroom full of trial-dog litigators, was characteristically brilliant despite what was recounted in the post-hearing assessment by his harshest critic: himself. Yes, even with his prodigious intellectual strength and academic and professional achievements, Jeff never lost his native modesty nor his willingness to admit his vulnerabilities. For this reason alone, he is very hard not to like.

In the wake of some workplace changes on my part, we have seen each other less frequently in more recent years. In that time, Jeff's career reached the stratosphere of academic and professional accomplishment. Among other things, he had a pivotal role in briefing groundbreaking cases on private causes of action under CERCLA that were decided by the U.S. Supreme Court.¹ He also has made major contributions to scholarship on private causes of action under CERCLA.² Jeff has testified

1. *Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157 (2004); *United States v. Atlantic Rsch.*, 551 U.S. 128 (2007).

2. *See, e.g.*, Jeffrey Gaba, *The Private Causes of Action under CERCLA: Navigating the Intersection of Sections 107(A) and 113(F)*, 5 MICH. J. ENV'T. & ADMIN. L. 117 (2015).

before Congress on water quality legislation³ and authored, co-authored, or edited several books on environmental law. Somehow, he also found the time and endurance to author numerous scholarly articles in the areas of water quality control, waste management, toxic substances, and governmental “takings.” However, he did not stop there. In addition to his career-long focus on environmental law topics, Jeff demonstrated the immense range of his intellectual curiosity and analytical dexterity in his fascinating 2011 article on the copyrighting of works by William Shakespeare.⁴

There are many other academic and professional kudos for Jeff too numerous to be specifically listed here. I, however, cannot resist mentioning that he capped his career as the M.D. Anderson Foundation Endowed Professor in Health Law and as a Dean at SMU Law School. These are fitting distinctions for a man who has so completely merited and deserved such recognition for both his career and his legacy.

On the occasion of his retirement, I join so many others in celebrating Jeff’s contributions to our field and profession. For me personally, however, I also celebrate Jeff as my true friend and benefactor who has totally exemplified a life well-lived and whose friendship I hope to enjoy for many years to come as he, Brenda, and the boys continue to make and experience life’s adventures.

3. *Testimony before Joint Hearings of the Subcomm. on Fish and Wildlife and the Env’t and Subcomm. on Oceans and Great Lakes of the H. Merchant Marine Comm. on H.R. 2647, the Coastal Defense Initiative*, 101st Cong. (1990).

4. Jeffrey M. Gaba, *Copyrighting Shakespeare: Jacob Tonson, Eighteenth Century English Copyright, and the Birth of Shakespeare Scholarship*, 19 J. INTELL. PROP. L. 21 (2011).