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Frank Horack (1949 Acting)

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## Frank E. Horack Jr.

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## FRANK E. HORACK JR.

Writing *about* rather than *to* an esteemed friend and colleague chokes expression and darkly saddens the mood of thought. The prepositional shift deftly severs a life and leaves us clinging, somewhat helplessly, to fond memories, though enduring ones they will be.

Frank Horack endeared himself to many who sought to win their laurels, as he so notably did, in the field of law. His was a receptive ear, ever ready to listen to their problems; his was a critical eye, ever ready to warn them of pitfalls; his was a helping hand, ever ready to encourage and assist them in their work. It mattered not whether they sought to furrow in his own back yard. "The better for us all," he would say unselfishly. Even (some would say "especially") in Academia, such bigness in a man is rare. And still more rare is the *kind* of bigness that it was. It came naturally and quietly from within, not with any show from without. Time and again benefits were bestowed without any trace of the benefactor. Only accidentally through others would one later ever learn of the source. This is necessarily a fractional glimpse of a man—no sketch can ever attempt to be complete—but in reconstructing a character image, certain lines are bound to loom in prominence. Those of helpfulness, of selflessness and of a devotion to friends so stand out in the image of Frank Horack that they somehow would be communicated even to a stranger whose exposure to him was but fleeting.

He left not only a heritage of character, but also of mind. In the law, he was interested in deep jurisprudential and philosophical problems, but he chose not to pose them in the highly abstract language of the theoreticians. Frank Horack was far too earthy for this. He philosophized without being a philosopher. His method was to raise searching questions in the context of concrete situations—but questions that the great thinkers in a more formal way have asked and struggled with for centuries. And he not only asked, but also provided a great deal of leadership in searching for answers.

Time and again he asserted that the most important chapter in his path-breaking casebook on Legislation was the one on policy-making and the central problem of law was the relationship of means to ends. His mentor in this, it would seem, was Jeremy Bentham; the special Horack thrust in wrestling with this problem does credit to both names. Although his edition of *Sutherland on Statutory Construction* is still used by some who seek comfort and a sense of security in the various maxims

of interpretation, his own publicly expressed views on "The Disintegration of Statutory Construction" suggest a strong mooring to the Realist school, where the urge is to expose the naked emptiness of the so-called "rules" of construction and to focus on the creative rather than on the discovery aspects of judicial law. In so doing, considerations of policy, of ends and of the means to these ends were brought directly to the forefront of attention and discussion. Perhaps the work that best exemplifies the Horack mind is his brilliant piece on "The Common Law of Legislation." Here, with unerring accuracy, he pinpointed one of the knottiest problems in the law—the need to bridge the gap between judicial and legislative legislation. His effort here in synthesizing the two areas of law into one harmonious whole could well serve as an anthropologist's model for discovering the common elements of two seemingly diverse and irreconcilable cultures. He sought by this to advance the course of legal development from the orthodox common-law view, which regarded legislative law as something foreign to the legal system, to the view that it should be treated as a permanent part of the general body of law, to be reasoned from by analogy coordinately with judge-made law. And so determined was he to give coordinate status to lawyers practicing in the legislative forum that he urged the creation of a legislative lawyer's bar.

The classroom was not the only laboratory in which he worked, nor was he the detached ivory-tower scholar. He often tested his ideas in the rough and tumble of the practical world—as consultant to policy-makers, as the drafter of legislation, as parliamentary strategist—from the municipal level on up. His experiences would always come back as a check upon previously formulated theories. Theory first guided, but then yielded to experience when theory did not fit what was directly observed.

In the field of Legislation, he was, indeed, a pioneer. Ernst Freund and others did some early nudging and exploring, but it is Frank Horack who, by providing an imaginately organized national teaching tool, is to be credited with making Legislation an essential and honored course of study in the modern-day law school.

We shall miss Frank Horack. We shall miss him sorely as a man; we shall miss very much the leadership of his mind.

JULIUS COHEN†

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