

## A TRIBUTE TO GLEN O. ROBINSON

*John C. Jeffries, Jr.\**

GLEN Robinson was born in Utah in 1936. He graduated from Harvard College in 1958 and from Stanford Law School in 1961. He practiced with the firm of Covington & Burling in Washington, D.C., from 1961 through 1967. He then entered law teaching at the University of Minnesota, where he remained until 1974, when he was appointed a Commissioner of the Federal Communications Commission. After two years on the FCC, Glen came to Virginia, where he served for thirty-two years, save for a brief leave to serve as the United States Ambassador and Head of the United States Delegation to the World Administrative Radio Conference in 1979. In 2003, Glen was awarded one of the newly created David and Mary Harrison Distinguished Professorships, a position in which I am proud to be his successor.

So much for biography. Several years ago, our colleague Dan Ortiz said of Glen: "It's not just that he's still enthusiastic, but that he's still coming up with new ideas. It's seldom that you find that kind of continuing enthusiasm from someone who has been at any line of work for a long time. He's a model for us all."

Dan's words were true when spoken, and they remain so today, on the occasion of Glen's retirement from active teaching. To law professors, not only at Virginia but everywhere, Glen Robinson is indeed a model for us all. To understand why that's true, one needs to know something about the extraordinary range of Glen's intellectual interests. He has written extensively on communications law, including a casebook for students<sup>1</sup> and articles on the "electronic First Amendment,"<sup>2</sup> spectrum property law,<sup>3</sup> the Telecom-

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<sup>1</sup> Glen O. Robinson & Thomas Nachbar, *Communications Law* (forthcoming 2008); see also *Communications for Tomorrow: Policy Perspectives for the 1980s* (Glen O. Robinson ed., 1978).

<sup>2</sup> Glen O. Robinson, *The Electronic First Amendment: An Essay for the New Age*, 47 *Duke L.J.* 899 (1998).

<sup>3</sup> Glen O. Robinson, *Spectrum Property Law* 101, 41 *J.L. & Econ.* 609 (1998).

munications Act of 1996,<sup>4</sup> cable television and the First Amendment,<sup>5</sup> and a whole series of works on the Federal Communications Commission.<sup>6</sup>

Glen's scholarship in communications law, standing alone, would make a very respectable academic career. But he has also written on administrative law generally, including a leading casebook in that field<sup>7</sup> and works on the operation of public choice theory in administrative agencies,<sup>8</sup> independent agencies,<sup>9</sup> the line-item veto,<sup>10</sup> the delegation doctrine,<sup>11</sup> administrative rulemaking,<sup>12</sup> and even the Forest Service.<sup>13</sup>

As these references suggest, Glen is one of the nation's foremost experts in administrative law. But he is also known and admired for a large body of work in torts. He has written on the valuation of mass tort claims,<sup>14</sup> on probabilistic causation and compensation for

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<sup>4</sup> The "New" Communications Act: A Second Opinion, 29 Conn. L. Rev. 289 (1996); see also Glen O. Robinson & Dennis C. Weisman, Designing Competition Policy for Telecommunications, *Review of Network Economics* (forthcoming 2008).

<sup>5</sup> Glen O. Robinson, Cable Television and the First Amendment, 6 *Comm. & L.* 47 (1984).

<sup>6</sup> Glen O. Robinson, Origins of Federal Communications Regulation, in *Legislative History of the Communications Act* (M. Paglin ed., Oxford Univ. Press 1989); Glen O. Robinson, The FCC in the Year 2000, 37 *Fed. Comm. L.J.* 155 (1985); Glen O. Robinson, The Federal Communications Commission: An Essay on Regulatory Watchdogs, 64 *Va. L. Rev.* 169 (1978); Glen O. Robinson, The FCC and the First Amendment: Observations on 40 Years of Radio and Television Regulation, 52 *Minn. L. Rev.* 67 (1967).

<sup>7</sup> Glen O. Robinson, Ernest Gellhorn & Harold Bruff, *The Administrative Process* (4th ed. 1993).

<sup>8</sup> Glen O. Robinson, *American Bureaucracy: Public Choice and Public Law* (1991).

<sup>9</sup> Glen O. Robinson, Independent Agencies: Form and Substance in Executive Prerogative, 1988 *Duke L.J.* 238; Glen O. Robinson, Reorganizing the Independent Regulatory Agencies, 57 *Va. L. Rev.* 947 (1971).

<sup>10</sup> Glen O. Robinson, Public Choice Perspectives on the Line Item Veto, 74 *Va. L. Rev.* 403 (1988).

<sup>11</sup> Peter H. Aranson, Ernest Gellhorn & Glen O. Robinson, A Theory of Legislative Delegation, 68 *Cornell L. Rev.* 1 (1983).

<sup>12</sup> Glen O. Robinson, The Making of Administrative Policy: Another Look at Rulemaking and Adjudication and Administrative Procedure Reform, 118 *U. Pa. L. Rev.* 485 (1970); Ernest Gellhorn & Glen O. Robinson, Rulemaking "Due Process": An Inconclusive Dialogue, 48 *U. Chi. L. Rev.* 201 (1981).

<sup>13</sup> Glen O. Robinson, *The Forest Service: A Study in Public Land Management* (1975).

<sup>14</sup> Kenneth S. Abraham & Glen O. Robinson, Aggregative Valuation of Mass Torts Claims, 53 *Law & Contemp. Probs.* 137 (1990).

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risk,<sup>15</sup> on multiple causation in tort law,<sup>16</sup> on collective justice,<sup>17</sup> and, repeatedly, on medical malpractice.<sup>18</sup> “But wait, there’s more.” Glen has also written on property,<sup>19</sup> on antitrust,<sup>20</sup> and on legal education,<sup>21</sup> and has authored some articles, like the wonderful 1997 Virginia Law Review piece on “Communities,”<sup>22</sup> that are impossible to pigeonhole.<sup>23</sup>

This summary does not include all of Glen’s output, but the point isn’t numbers. It’s breadth. Glen Robinson’s intellectual interests range across the legal landscape. His curiosity leads him to consider puzzles in the law—puzzles that sometimes lie within a particular field but that sometimes do not; puzzles that often bridge the curricular categories that tend to define (and to confine) our

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<sup>15</sup> Glen O. Robinson, Probabilistic Causation and Compensation for Tortious Risk, 14 J. Legal Stud. 779 (1985); Glen O. Robinson, Risk, Causation, and Harm, in *Liability and Responsibility: Essays in Law and Morals* (R.G. Frey & C.W. Morris eds., Cambridge Univ. Press 1991).

<sup>16</sup> Glen O. Robinson, Multiple Causation in Tort Law: Reflections on the *DES* Cases, 68 Va. L. Rev. 713 (1982).

<sup>17</sup> Glen O. Robinson & Kenneth S. Abraham, Collective Justice in Tort Law, 78 Va. L. Rev. 1481 (1992).

<sup>18</sup> Glen O. Robinson, Rethinking the Allocation of Medical Malpractice Risks Between Patients and Providers, 49 Law & Contemp. Probs. 173 (1986); Glen O. Robinson, The Medical Malpractice Crisis: A Retrospective, 49 Law & Contemp. Probs. 5 (1986); Glen O. Robinson, Perspectives on Medical Malpractice and Tort Law Reform, in *Medical Malpractice—Tort Reform* (James E. Hamner & B.R. Jennings III eds., Univ. of Tenn. Press 1987).

<sup>19</sup> Glen O. Robinson, Personal Property Servitudes, 71 U. Chi. L. Rev. 1449 (2004); Glen O. Robinson, Explaining Contingent Rights: The Puzzle of Obsolete Covenants, 91 Colum. L. Rev. 546 (1991); Glen O. Robinson, Property Rights of Despots (Bepress Working Paper), available at <http://law.bepress.com/uvalwps/olin/art39/> (2007).

<sup>20</sup> Glen O. Robinson, On Refusing to Deal with Rivals, 87 Cornell L. Rev. 1177 (2002); Glen O. Robinson, Explaining Vertical Agreements: The *Colgate* Puzzle and Antitrust Method, 80 Va. L. Rev. 577 (1994); Glen O. Robinson, The Sherman Act as a Home Rule Charter: *Community Communications Co. v. City of Boulder*, 2 Sup. Ct. Econ. Rev. 131 (1983); Glen O. Robinson, The New Video Competition: Dances with Regulators, 97 Colum. L. Rev. 1016 (1997).

<sup>21</sup> Ernest Gellhorn & Glen O. Robinson, The Role of Economic Analysis in Legal Education, 33 J. Legal Educ. 247 (1983); Glen O. Robinson, The Administrative Conference and Administrative Law Scholarship, 26 Admin. L. Rev. 269 (1974).

<sup>22</sup> Glen O. Robinson, *Communities*, 83 Va. L. Rev. 269 (1997).

<sup>23</sup> See also Glen O. Robinson, Comment on Consumer Sovereignty and National Sovereignty, in *Cultures in Collision: The Interaction of Canadian and U.S. Broadcasting Policies* (1984); Glen O. Robinson, *Wilderness: The Last Frontier*, 59 Minn. L. Rev. 1 (1975).

thinking; puzzles that sometimes reach all the way to the background conventions that frame the way we think about law. Glen's wide-ranging curiosity is an offshoot of intelligence, to be sure, but also of an intellectual imagination that enables him to see old questions in new ways.

This turn of mind is wonderful and rare, and all the more so in a person of mature years. Once the bloom of youth is well past, academics tend to work mostly within familiar paradigms and to exploit mostly familiar methodologies. At a certain age, most of us are drawing down our stock of intellectual capital, but not making many new investments.

Glen Robinson is a magnificent exception. Over the long arc of his career, Glen has never stood still. He is exemplary not only in his continuing scholarly productivity but also in his continuing intellectual ambition. He has learned new subjects and new technologies. Glen's intellectual style is evident not only in the range of subjects that he addresses but also, and more fundamentally, in the terms of his analysis. He does not begin with prior commitments. He does not start from a fixed point of view or from some political or ideological position that he aims to vindicate over and over. Glen begins, rather, with the puzzle, with the odd fact or incomplete theory that—once identified—cries out for explanation. And his explanation is never prepackaged or pat. It comes from the facts and law that Glen is trying to understand. His is not only a wide-ranging intellect but also a free-spirited one. He has the kind of mind that every academic admires and that every member of the Law School faculty wishes he or she could emulate. Glen Robinson is, in fact, a model for us all.

*Kenneth S. Abraham\**

**G**LEN Robinson is the consummate colleague. He may have tried to stop teaching, though I suspect he will end up being drawn back into the classroom. Some day he may stop writing, though it will be a long time before he loses the taste for clearing up confusions that is so much a hallmark of his scholarship. But as surely as the sun rises in the morning, he will be a colleague, in all

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the best senses of that term, for the full length of what we apparently are calling his “retirement.”

It is difficult for anyone who has not done it for a lengthy period of time to appreciate how much being a legal scholar means being part of a communal enterprise. We do the hard work of writing the words that constitute the scholarly product by ourselves. The clarification, enrichment, and sometimes even the genesis of the ideas that are at the heart of legal scholarship, however, are almost always the result of a continuous dialogue with student and faculty colleagues. I refer here not only to the kind of scrutiny and criticism that colleagues give to ideas that are already on paper. Before anything gets written, the best environment for generating original thinking that eventually finds its way into print is a community in which ideas are constantly in the air, under discussion, and being tested through argument.

For the entire time that Glen has been a member of the Law School community, he has been at the center of this process. Over coffee in the faculty lounge, at lunch, at workshops where papers are discussed late every Friday afternoon, in office doorways, even occasionally in the mailroom, you can encounter Glen, deep in discussion with someone, about almost anything. You can find him probing, testing, complimenting, arguing, or (this too is part of his charm) dismissing a position with a graphic adjective. For Glen, an idea has to stand on its own, no matter whose idea it is. So he not only dishes out critical analysis; he takes it too, and joyfully. To paraphrase Learned Hand, in a world of ideas, he lives by the sword.<sup>1</sup>

One day about twenty years ago I walked into the faculty lounge and found Glen, grousing under his breath. He had committed to write an article for a symposium on mass tort law. He knew exactly what he wanted to say. But now that it was time to do it, he was having difficulty generating the enthusiasm required for getting started. In an effort to add the necessary enthusiasm, I offered to write the article with him. That changed everything. His face lit up, he became energetic, and he could not wait to get started. I hasten

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<sup>1</sup> Hand was fond of saying about his law professors that, “In a universe of truth . . . they lived by the sword.” *Tribute, Learned Hand: 1872–1961*, 71 *Yale L.J.* 108, 108 (1961).

to add that I think this had little or nothing to do with the identity of his new co-author. He simply relished the prospect of being able to bat his ideas around with someone as the piece was being written.

Being Glen's co-author was easy duty. It was mostly a matter of just charging up the hill together, with his ideas. Writing the first article<sup>2</sup> was such fun that we went on to write a second piece that took off from where the first one had stopped.<sup>3</sup> A few times since then I've been tempted to catch Glen at an opportune moment and become his co-author on an article about intellectual property or telecommunications law, two of the many subjects about which I know nothing and about which he has written with great expertise. He wouldn't have minded; he's that generous.

There is no way that Glen will stop being the wonderful colleague he has been to all of us for so many years. Being our colleague is too much fun for him, and too important for the rest of us, for that ever to happen. But we can hope that placing the term "Emeritus" after his title will give him more time for the fun of being a colleague, and the rest of us the great pleasure of even more of his company.

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<sup>2</sup> Kenneth S. Abraham & Glen O. Robinson, *Aggregative Valuation of Mass Tort Claims*, 53 *Law & Contemp. Probs.* 137 (1990).

<sup>3</sup> Glen O. Robinson & Kenneth S. Abraham, *Collective Justice in Tort Law*, 78 *Va. L. Rev.* 1481 (1992)