Teacher, Scholar, Colleague, Friend

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JOHN KENNEDY had all the attributes of a great law teacher: brilliance, judgment, breadth of learning, compassion, a commitment to teaching students. To list them like this is to run the risk of depreciating them, or at least making it seem less remarkable that they should all have been in one person in such abundance. But close your eyes for a moment and think of the best law teacher you ever had — no, the best teacher you ever had. Period. John was that good.

As a junior colleague of John's, I want to emphasize the things about him that meant the most to me, and that requires some selectivity if I am to avoid the risk that my first sentence runs. But first, a confession.

As a law student, I spent quite a bit of time — more, probably, than I could afford back then, and more than I've been able to afford since — reading "In Memoriams" for recently deceased faculty members (always in law reviews) and judges (usually in the Federal Reporter series, but if the judge wrote more than his or her share of cases that had made it into casebooks, then in law reviews, too). The idea behind that reading was to discover the values and qualities that members of the profession cherished enough to celebrate in their most serious, public moments. I thought then, as I do now, that it was in their eulogies, reminiscences, and miscellaneous honorifics

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that lawyers paused and reflected on what it meant to “live greatly in the law.”

The values and qualities I found turned out to be the ones you would expect: keenness of intellect ranked up there, just below the virtues of honesty, courage, and compassion. Despite the predictability of these tributes, I kept reading them, but for something else. Occasionally, if rarely, there was also the telling anecdote or quotation that added muscle and sinew, or perhaps phlegm and bile, to the abstraction that had been little more than a name on a treatise or opinion. As interesting and instructive as it was to learn how giants and saints live greatly in the law, it was even more valuable to learn how mere mortals manage it, too. I now know how poorly all of this reading has prepared me for the task at hand.

I once mentioned to John that I had this somewhat morbid reading habit as a law student and had even recommended it to some of the students in my first civil procedure class. He laughed and said something to the effect that it was an odd suggestion but that it probably wouldn’t do the students any harm.

His response reminds me now of two of John’s most endearing and memorable qualities: his sense of humor and his open-mindedness. His quick smile and easy laugh made it easy for all of us to love John: He could laugh at anything or anyone, himself included, and he often did. John’s example reminded me that humor was a great help in the classroom, as well as an analytical tool that could puncture the pomposities and absurdities that occasionally make their way into opinions and legal arguments. All that aside, being around John was fun. Any discussion — whether about Sylvester Pennoyer, Richard Nixon, or Garrison Keillor — could be quickly illuminated by his sparkling smile and infectious laugh.

Of course, with John there was always something more behind the laugh and smile. John’s open-mindedness meant that no idea was too well-established to be reconsidered, no suggestion too off-the-wall not to be entitled
to at least a few moments' thought. The consequences for this habit of mind were as impressive as the costs must have been high. His teaching was always fresh, largely because he not only reread the materials for each class, but reread them with the purpose of finding the fact or phrase that he had somehow overlooked in twenty previous readings and that would help uncover the dynamics of a case or an argument in some new way. The cost of this habit can be measured in units of time, or in opportunity costs, but there are also psychic costs that attend a constant willingness to throw out everything you have believed about a case or a doctrine at any time.

In the last year he was alive, John and I talked often about adopting Procedure, a new and radically different civil procedure casebook by Owen Fiss, Judith Resnik, and the late Robert Cover. John knew the book is bloated, just as he knew that the book avoids the historical development of doctrine and emphasis on a close reading of rules of procedure that John had always brought to bear on the subject. He would also have agreed with Mark Tushnet's observation that the book's preference for public interest, structural reform-oriented litigation tends to obscure the fact that so-called "ordinary litigation" between private litigants, properly understood, often involves equally dramatic and important stories of "individuals struggling to make their way in the world, the [former] through the public assistance system and the [latter] through the private economy." Still, John was struck by the authors' inclusion of Gary Gilmore's handwritten notes to dissuade his mother and others from intervening in his execution for capital murder, and he was fascinated by the authors' attempt to lay bare the links, so often obscured by procedure books and teachers, between procedure and the real world.

I will miss the hours of talking and planning and discussing what worked and what didn't. I'll miss learning from John. I miss John. We all do.