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John Edward Kennedy: 1934-1989

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JOHN EDWARD KENNEDY: 1934 - 1989

SCHOLAR, Teacher, Friend. Each describes the man whose passing we mourn and in whose memory this issue serves. John Kennedy was beloved and respected within the law school, and his teaching and scholarship have prepared many for the rigors of the profession he served. Praise of Professor Kennedy could fill the pages of this journal. We present herein the recollections of two of John Kennedy's closest friends and colleagues, C. Paul Rogers, III, and William J. Bridge.

Not all of us had the privilege of Professor Kennedy's tutelage. For those of us whom he taught, we recall the fun and trepidation of his classes—fun because he made learning interesting; trepidation because we knew that no matter how well we prepared, his intellect and knowledge could lead us down a murky Socratic path from which escape seemed impossible. Others of us who did not know Professor Kennedy nonetheless benefited from his tenure at SMU. He regularly participated in the administrative decisions that affected us. His was a voice of fairness, a voice that counseled openness and encouraged our involvement. Although that voice is lost, its imprint remains.

The Board of Editors and Staff of *Southwestern Law Journal* dedicate this issue to the memory of John E. Kennedy.

REMEMBERING JOHN E. KENNEDY

by

*C. Paul Rogers III**

JOHN Edward Kennedy was the consummate law professor; he was teacher, scholar, lawyer, colleague, and friend. He was, whether he knew it or not, a tremendous role model for everyone in the law school community. The twinkle in John's eye and his warmth of character were difficult to overlook and are impossible to forget.

John's untimely passing saddens us greatly. In the months since John's death, I have in my travels throughout the country continually been reminded of the positive impact John had on the lives of the many people he touched. Scores of colleagues and former students throughout legal education and the legal profession admired and respected him. At SMU John was nothing short of a legend; he was beloved by deans, faculty colleagues, students and staff. We know that John's wonderful wife, Jan, and his children, John, Matthew and Megan, are strengthened by the knowledge that John was so special to so many.

John had very impressive academic and professional credentials: articles editor at the Notre Dame Law School; Master of Laws and Doctor of Juridical Science degrees from Yale; a judicial clerkship with a prominent federal judge; important work as a principal co-author on Moore's Federal Practice, the leading treatise in the area; and Reporter to the prestigious Devitt Committee on Standards for Admission to the Federal Court Bar.

Those accomplishments, however, do not begin to describe the contributions John made to the SMU Law School and to those of us fortunate enough to have worked, taught, and studied with him. John joined SMU in 1969 and was with us for 20 delightful, productive years. He was a master teacher, committed to the classroom and adored by his students. He had an exceptional mind; he was always inquiring and was excited and stimulated by the challenges of the law. His intellectual curiosity moved and motivated students and colleagues alike.

But what set John apart more than anything was his caring nature and his devotion to fair play and fairness. These wonderful qualities permeated his professional life, from his concern for the principles of due process to his insistence on common sense and equity on issues at the Law School. As a result, John was not only an intellectual leader of the Law School, he was also our center of reason, reflection, and compassion.

John was truly a unique individual. As I reflect upon his wonderful quali-

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ties and his approach to life, I am struck that no one reminds me of John and John reminds me of no one else. He simply was one of a kind: he possessed a great intellect and was consumed with a desire to make his part of the world a fairer, more tolerant, and more compassionate place. Even so, John retained the capacity to identify and to laugh at the ironies and paradoxes that seem to surround us.

John had a delightful, bemused sense of humor and was the original absentminded professor. One popular story involves John meeting two of his colleagues in the parking lot behind Storey Hall on the morning of the first day of exams. One colleague asked John when he had an exam to give, to which John replied after some reflection, "You know, I think I have one today." Then there was the time that he got into a deep discussion with a colleague about some fine point of procedural law, continued the discussion over lunch, and returned to his office only to discover that he had forgotten he had a 12 o'clock class.

Even saying hello or good morning to John was an experience. When I passed John in the hall or on the stairs, he would inevitably say "hello. . ." and, as often as not, I would hear some seconds later when John was well past me ". . . Paul". No one was ever offended that it took John several seconds to recall our names. We understood that John knew exactly who we were; it was just that his remarkable mind was functioning on another level and it took it a little time to shift gears.

Conversations with John were a wonder, not only because of their intellectual content but also because you were never quite sure when the conversation was at an end. I recall leaving John's office thinking we were through only to hear John start talking again even though I was out of eyesight. When that happened I always returned for fear that I would miss something. He was also the master of the false exit if he was in your office chatting. He would often leave only to return immediately to make another point. John would sometimes do this four or five times. And each return would produce some new insight or witticism.

John was born to be a law professor and we were truly blessed to have had him at SMU. John enriched us in ways which I am sure not even he could understand. He made all of us at the school more humane, more reflective, and less self-centered. Whenever one of us had an idea we thought to be of some consequence, whether it involved legal reform or a new law school policy, we sought John's counsel. We all valued his common sense, his judgment, and his unerring sense of fairness. John was to us a true treasure on earth.

John's gentle spirit and unshakable character affected all that he did and all with whom he came in contact. He made all of us better people, whether colleagues, students, lawyers, staff or the little girls that he coached for so many years in soccer. He was that rare person who touched us all. As we mourn the loss of John from our midst we should be warmed and comforted by his memory. Those of us fortunate enough to have learned from, worked

with, or known John have benefitted immeasurably; and his memory will endure in all of us.

IN HONOR OF JOHN E. KENNEDY

by

*William J. Bridge**

JOHAN E. Kennedy joined the Southern Methodist University Law Faculty in the Fall of 1969 and left it a bit over twenty years later, in the Fall of 1989.

John Kennedy was judged as all law professors are judged: by what he published and how he taught. In each of those categories he was peerless. In each he justly earned widespread recognition.

It is as a teacher first that John Kennedy should be remembered. Although the classic scholar, he was first a teacher. Not only did John win university-wide and law school teaching awards, in 1973 and 1983, he deserved them. Several of his writings were about teaching or teaching materials.¹ John cared about the presentation of his ideas in the classroom. One of the hallmarks of a dedicated teacher is that he worries about a class after it occurs as well as before; John Kennedy did. His classroom style in large classes was the conventional Socratic method at its best, minus the sadistic overlay.

John Kennedy demanded much from his students. He seated them in alphabetical order, and often called on them to recite in that order. While it ensured advance preparation, it did not guarantee that the student would be able to answer John's probing but gentle questions. His seating arrangement made it easier for him to learn his students' names quickly. It also enabled John to surprise graduates many years later by remembering what classes they had taken with him, where they had sat in the classrooms, and on what cases they had recited.

John committed the hopeful publisher's cardinal sin: he changed casebooks often, in order to keep the material fresh for himself as well as up-to-date for the students. Students usually left John Kennedy's classes (Civil Procedure, Federal Courts, and Conflict of Laws, in particular) in a fog. Some of the fog had entered with them, and some of it he had created. In

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1. See Kennedy, Book Review, 38 J. LEGAL EDUC. 474 (1988) (reviewing DAVID CRUMP, WILLIAM DORSANEO, OSCAR CHASE, AND REX PERSCHBACHER, CIVIL PROCEDURE: CASES AND MATERIALS (1987)); Kennedy, *Tribute to Professor William D. Rollison*, 47 NOTRE DAME L. REV. 19 (1971); Kennedy, Book Review, 23 J. LEGAL EDUC. 477 (1971) (reviewing PAUL CARRINGTON, CIVIL PROCEDURE: CASES AND COMMENTS ON THE PROCESS OF ADJUDICATION (1969)); Kennedy, Book Review, 19 J. LEGAL EDUC. 245 (1966) (reviewing MARY ELLEN CALDWELL & LAYMAN ALLEN, COMMUNICATIONS SCIENCES AND LAW: REFLECTIONS FROM THE JURIMETRICS CONFERENCE (1965)).

class, students knew that John would follow an idea through the labyrinthine abstractness of his own mind, but that he would always come back for them. His demonstrativeness helped; his was the clear voice leading toward the shore. And, although John always sought understanding, both for himself and for his students, he never cheaply substituted the simplistic for the rightly complex.

As with his teaching, John Kennedy's research was within the most intricate areas of the law, class actions and complex litigation.² From his time in residence at Yale Law School in the early 1960's, he focused on the court's decision from whom to hear before deciding.³ At Yale, John began his long collaboration with James Wm. Moore on chapters in that scholar's indispensable treatise.⁴ In addition, he published widely in legal periodicals, most often about procedure, especially parties. John brought a solid philosophical grounding, from his undergraduate days at Notre Dame, to the intensely practical world of the procedural lawyer. He espoused both the practical value of theory and the need of the theoretical for the experience from practice. John exercised his imagination often in his scholarship. His 1983 article⁵ on opting out of class actions begins with a quote from Kurt Vonnegut's *Cat's Cradle*, and his 1985 piece⁶ on state multistate class actions ends with an extended footnote aptly applying a grade-B movie analogy to the United States Supreme Court's handiwork.

To a lesser extent, law professors are judged by their "university service," that is, the drudgery of committee work. In that category too, John was peerless. He was the natural addition to any committee, for his participation ensured the full consideration of all points of view. It is no accident that, in his scholarly work, John Kennedy sought to grapple with the question of inclusiveness, especially in those cases in which the cost of it would be high. He was legendary for his passion for fairness, both substantive and procedural. John was adamant that all with an interest be heard, even at the price of the impatience of his faculty colleagues. So, when the Dean or Faculty wanted painstaking consideration, or a moderating influence, they turned to John Kennedy.

2. See, e.g., Kennedy, *Federal Summary Judgment: Reconciling Celotex with Adickes v. Kress and the Evidentiary Problems Under Rule 56*, 6 REV. OF LITIGATION 227 (1987); Kennedy, *The Supreme Court Meets the Bride of Frankenstein: Phillips Petroleum Co. v. Shutts and the State Multistate Class Action*, 34 U. KAN. L. REV. 255 (1985); Kennedy, *Class Actions: The Right to Opt Out*, 25 ARIZ. L. REV. 3 (1983).

3. John Kennedy, *The Process of Selecting Parties, Qualifying to Litigate and Intervening in Federal Courts* (1970) (J.S.D. Dissertation, Yale Law School).

4. See MOORE'S FEDERAL PRACTICE, Chapters 13, ("Counterclaim and Cross-Claim") (1972 rev., with James Wm. Moore), 14 ("Third Party Practice") (1973 rev., with James Wm. Moore), 17 ("Parties Plaintiff and Defendant: Capacity") (1968 rev., with James Wm. Moore), 23 ("Class Actions") (1978 rev., with James Wm. Moore), 23.1 ("Derivative Actions by Shareholders") (1976 rev., with James Wm. Moore), 23.2 ("Actions Related to Unincorporated Associations") (1976 rev., with James Wm. Moore), and 24 ("Intervention") (1969 rev., with James Wm. Moore).

5. John Kennedy, *Class Actions: The Right to Opt Out*, 25 ARIZ. L. REV. 3 (1983).

6. John Kennedy, *The Supreme Court Meets the Bride of Frankenstein: Phillips Petroleum Co. v. Shutts and the State Multistate Class Action*, 34 U. KAN. L. REV. 255 (1985).

John Kennedy was concerned and caring, as committee member, teacher, and scholar. In 1966, as an assistant professor, he published a review of a play by Ugo Betti, "Corruption in the Palace of Justice."⁷ John acknowledged that the play was "more of a psychological probe of men's souls" than directly about jurisprudence, yet he found in it "insight for law."⁸ Betti's play is about three judges' reactions to an investigation of judicial corruption following the death of what would be called today an "organized crime figure." One judge, Cust, orchestrates the disgrace of the Court President and the court's next most senior member. After the death of his rival, Cust, destined for appointment as the new Court President, succumbs to his own guilt and prepares to confess it. John Kennedy writes movingly of Cust's "soul anguish," and soundly rejects utilitarianism:

[N]ot all the choices in the modern world are simply relative to whether the decider can prosper without incurring legal or social sanction; . . . at some point for every judge or lawyer, despite his sophistication in rationalizing, there are still issues of moral choice in which he must choose good over evil or be confronted with a conscience that says: "there is no argument on earth that would let me shut my eyes in peace tonight."⁹

John Kennedy was able to convey the same empathy he showed to the venal character redeemed in the Betti play. Only after his death did many people learn of the discreet openness John had offered to students, staff, colleagues, and no doubt, many others. Those in need were moved to approach John perhaps because of his most memorable physical attribute, his smile. More than a boyish grin, John's smile subtly acknowledged that there was pain in the world, and that he was willing to hear about it. Hearing goes a long way toward healing.

The sudden death of a friend and colleague occasions a pause for reconsideration, of the friend, of life's priorities, and of our own deaths. Death freezes a person in time: our knowledge about him may change, our opinions also; but, the person will no longer change. John Kennedy was so wonderful in so many ways; his capacity for change was among the most wonderful. The stasis of death is, in many ways, its essential sadness.

In the Western religious and cultural tradition, death is also an occasion for remembering and celebration. An academic is supposed to be missed for his mind, for the weight of his contributions to the conversation, in legal scholarship, in classrooms, and in faculty deliberations. John Kennedy will of course be missed for his mind. That will be all those who never met him can miss. For those who knew him, however, he will be missed far more for his broad smile, for his open ear, and for his gentle spirit.

We remember, and we celebrate John Edward Kennedy.

7. John Kennedy, *Play Review*, 54 KY. L.J. 433 (1966).

8. *Id.* at 433.

9. *Id.* at 436-37 (quoting Betti, "Corruption in the Palace of Justice").

