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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").