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Tribute to Professor John E. Kennedy

Alvin L. Goldman
University of Kentucky

Fred G. Karem

Rutheford B. Campbell Jr.
University of Kentucky

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Professor John E. Kennedy: 1934-1989

A Remembrance

John E. Kennedy (LL.B. '59 Notre Dame, LL.M. '64 Yale, J.S.D. '70 Yale) joined the College of Law faculty in 1964, the school's last year at Lafferty Hall. In total, John spent only five of his subsequent twenty-five years of service as a law teacher and scholar on the premises of the University of Kentucky College of Law. (He was on leave visiting first at the University of Illinois and later at Southern Methodist University for three of his eight years as a member of the U.K. faculty.) But these were the particularly important formative years; they were formative not only for John, but also for the College of Law, which, in his second year of teaching, moved to the present building and soon underwent an approximate doubling of student body and faculty size, and an expansion of the upper level curriculum. Moreover, these were years of turmoil and change—the civil rights movement took hold on campus and in the community, renewed attention was focused upon the plight of the poor, Lexington struggled to control potentially chaotic urban growth, and the nation attempted to understand the moral, legal, and political responsibilities of the U.S. role in the Vietnam War.

The political issues of the day and the problems inherent in the transition from a small to medium size school all generated individual and institutional tensions and conflicts for the law faculty. In the resulting tests of personal attributes, John Kennedy emerged as involved, thoughtful, mature, good-humored, and understanding. As a result, some will remember John for his occasional intervention as a mediator—he was liked and respected by all the parties and his sincere concern and convictions did not alter his ability to be civil and help others find guidance through reason.

Hundreds of U.K. law graduates will remember John Kennedy as a teacher whose dedication to excellence gained the immediate appreciation and affection of his students. Colleagues soon learned that they could tell by the persistent pattern of laughter that John was holding forth in a classroom. His teaching was challenging, stimulating, and innovative. He developed a civil procedure game that reduced drudgery while enabling students to master the details and nuances of the subject. Rarely did he return to his office less

than ten to fifteen minutes after the end of a class hour. There were too many students lingering with questions, comments, or just a desire not to miss out on anything additional Professor Kennedy might say.

Students, colleagues, and Kentucky friends will remember John as well for his warmth, wit, good looks, and charm. His infectious zest for joy and laughter made him a popular figure at student-organized social functions. Coupled with Janet Kennedy's beauty and sparkling sense of humor, the Kennedys brought life to any party—even faculty events. Additionally, the Kennedy home on Cooper Drive played its special role in those years. It was a sanctuary for faculty bachelors and a place where younger law professors and their families often gathered on cold winter weekends to unchill their bones with Janet's brew of spiked Constant Comment.

Law teachers in every corner of the nation will remember John Kennedy not only as a respected scholar but also as someone who gave frequent valued service to institutions of higher education. He served on several committees of the Association of American Law Schools, as well as on key committees of his own university. And his continued affection for the U.K. College of Law was reflected in his participation, in the mid-1980s, on the law school's Advisory Committee.

While John will be warmly remembered throughout the lives of his wife, his children, his friends, and his students, John's scholarly achievements will endure even longer. During the eight years John Kennedy was affiliated with the College of Law, he published eight law journal articles, a mark of his dedication to scholarship. In addition, he was co-author of the second edition of volume 3B of Professor Moore's prestigious multi-volume treatise on Federal Practice. John's frequent contributions to legal scholarship continued in his years at Southern Methodist University and gained him national recognition in the field of civil procedure. No doubt he was best known for his influential work in the area of class actions, a subject whose philosophic, political, historic, jurisprudential, and practical complexities John explored in great depth.¹

¹ For a few illustrations of the influence John's work has had upon courts and scholars, see *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985) (taking guidance from the discussion in 3B J. MOORE & J. KENNEDY, *MOORE'S FEDERAL PRACTICE* ¶ 23.45 [4.-5] (2d ed. 1984)); *In re Dennis Greenman Securities Litigation v. Merrill Lynch, Pierce,*

When we remember John Kennedy, we will always picture him in that pose that epitomized his character. There is a twinkle in his eyes, a soft chuckle interrupting his flow of speech, and an almost childlike look of delighted amusement at the anecdote he is recounting. He could derive a tremendous intensity of concentrated joy in a clever statement he had just read, a student's perceptive response, a colleague's accomplishment (or foible), or in watching his (or others') children discover their abilities or limitations, or in observing Dogas, the Kennedy terrier, pretend that a stick was a conquered prey.

On September 21, 1989, Professor John E. Kennedy ended a long, painful illness in the manner characteristic of that illness—major depression. Some may think it inappropriate to include that fact in this Remembrance. But for those of us who loved and admired John, it is essential that we remember why he ended his life. Depression is a disease. Physicians have found cures and controls for many sufferers. Tragically, John's illness was unresponsive. We can memorialize John's life, his contributions as a teacher, as a scholar, as a colleague, and as a friend, by supporting research for better ways to combat depression.

Farewell, John, you will always be with us.

*Alvin L. Goldman**

Fenner and Smith, 829 F.2d 1539, 1544 (11th Cir. 1987) (taking guidance from Kennedy, *Class Actions: The Right to Opt Out*, 25 ARIZ. L. REV. 3 (1983)); Abrams & Dimond, *Toward a Constitutional Framework for the Control of State Court Jurisdiction*, 69 MINN. L. REV. 75, 99 n.121 (1984) (Where the 25 ARIZ. L. REV. article is characterized as an "exhaustive study of the policies informing opt-out provisions."); Miller & Crump, *Jurisdiction and Choice of Law in Multistate Class Actions After Phillips Petroleum Co. v. Shutts*, 96 YALE L.J. 1, 3 n.1 (1986) (Where the authors make frequent reference to J. Kennedy, *The Supreme Court and the Bride of Frankenstein*, 34 KAN. L. REV. 255 (1985), which they describe as "an excellent critique of the Court's opinion." *Id.* at 3, n.1.).

* Professor of Law, University of Kentucky College of Law. A.B. 1959, Columbia University; LL.B. 1962, New York University.

John E. Kennedy

“. . . memories to last a lifetime”

During a memorial service in Dallas last September, the Southern Methodist University chaplain said that he could not tell John Kennedy’s many friends exactly how to mourn his death. But he added, “I can and will encourage you to tell each other the stories of John’s meaning in your lives.” By doing so, he indicated, we could celebrate John’s life as well as help ourselves and others find some comfort for our grief.

I want to follow the Reverend William Fannin’s advice in this tribute to John Kennedy. Like many of his former law students, I know that John—as teacher, faculty advisor, mentor, and friend—had a significant influence on my life.

To start at the beginning, after all these years when I recall law school, my most vivid memory is not of a “Paper Chase” style Professor Kingsfield, but of a real life John Kennedy. My impression of John began with my very first class at the College of Law—coincidentally, Contracts—which also was his very first class as a law professor, after having recently obtained an LL.M. Given my already strong Republican orientation in the fall of 1964, I naturally entered the hall a few minutes before 8:00 a.m. with a predisposed skepticism toward this handsome, articulate, boyish-looking law professor named John Kennedy. However, that morning he quickly won me over, and my admiration for the man grew steadily the more I came to know him.

I consider myself quite fortunate to have had John Kennedy at UK law school for all three of my years there. In addition to his teaching my Contracts course throughout my first year and Federal Procedure throughout my second, he was Faculty Editor of the *Kentucky Law Journal* during my third year, when I was Editor-in-Chief.

Students found his classes stimulating and valuable because he was always prepared, current, and enthusiastic. It was obvious he had worked hard getting ready for class; because of his excitement about learning, he never just went through the motions. “Cans” or “hand-me-down” outlines were never adequate substitutes for the exercises in analysis and content presented in John’s courses. Notwithstanding his obvious adherence to a strong work ethic and

his emphasis on academic excellence, I was always impressed with the absence of any intellectual arrogance. With John, there was no guile or pretension; you got what you saw—a bright, sincere, refreshing person.

The significance of John Kennedy for me was such that, for almost the last year and a half of my law school days, with the exception of my wife, he was possibly the most important person in my life. We spent countless hours together during this period—generally working on law journal affairs, but often talking about a broad range of matters. Day or night, John was always there for me then—to enlighten, to challenge, to guide, to encourage, or in some other important way to help a student-editor frequently overwhelmed with the substantive and administrative dimensions of directing thirty law students in publishing a scholarly legal journal. Particularly meaningful to me at that time was his attitude in being there and providing counsel: despite his teaching obligations and his own creative involvement in numerous areas, he always made me feel that he was available to help with my responsibilities.

He was readily accessible to students generally, whether about course work or personal problems; as a result, we appreciated him that much more. John was never too preoccupied with his own research, writing, and professional activities to neglect his fundamental duty as an educator. These attributes are what made John Kennedy an exceptional teacher, certainly one who stands out at the top level in my own educational experiences. And all this time—in and out of class, with the *Journal* and elsewhere—there was always that John Kennedy vibrancy, spirit, and genuine good will.

With the *Journal*, I witnessed John's effectiveness as Faculty Editor in motivating the editorial board and staff. He stimulated us to use our *Journal* involvement to significantly sharpen our abilities in legal research, analysis, and writing while at the same time striving to produce a quality publication.

Throughout my formative student and young adult years, I was fortunate to have had a series of particularly helpful mentors. Although this group consisted primarily of political and government leaders, I have always considered John Kennedy to be among the individuals having a lasting positive effect on my life and serving as a role model. I saw in him a true caring for others that was reflected in various important ways: on a personal level in relationships with students, on a professional level in emphasis on high character standards, and on a public level in concern about the workings of the law in the community.

Having said something about what John Kennedy's life meant to me, I would conclude with a few comments about the meaning of his death. Given the tragic circumstances, John's death has had a profound effect on me. I still find myself emotionally moved whenever he comes into my mind, and that has been often.

I regret that I did not see more of John Kennedy the last fifteen or so years of his life. I regret that I did not know until after his death about his serious illness and the pain it caused him for so long. To me, his death clearly underscores once again the importance of spending time with friends while one can.

Since his death, Jan Kennedy has said, "Thank God he left me with three wonderful children and enough love and good memories to last a lifetime." John Kennedy also left large numbers of former students with good memories. As much as I have always admired his scholarly talents and professional achievements, John's meaning in my life remains primarily derived from his strengths as a teacher as well as his special personal qualities. I know I speak for many of his students when I say that we hope the Kennedy family continues to find comfort in knowing that John touched many, many lives in a unique way, and that he will be remembered by us with great respect, deep appreciation, and warm affection.

*Fred G. Karem**

* Having previously served in appointive positions in the state and federal governments, as well as subsequently practicing law, Fred Karem currently is involved in real estate development and consulting. B.A. 1964, Wesleyan University; J.D. 1967, University of Kentucky College of Law.

John Kennedy

Others who write to honor John Kennedy will convey his characteristics and accomplishments. My comments will be limited to a single encounter that I had with John Kennedy in the spring of 1969, when he was a young faculty member at the law school, and I was a third year student.

In 1969, my senior year at the law school, I received an offer to practice law with a huge, old-line, Wall Street law firm. That offer generated many of the normal reactions that one would imagine. I was flattered and proud to receive such an offer. At the same time, I was a little scared to think about joining a firm with nearly as many lawyers as the entire population of my home town.

Other, perhaps less typical factors were also important in considering that offer. It is the grossest of understatements to say that I had not anticipated practicing on Wall Street. Instead, I had always intended to return to Eastern Kentucky to practice in a small town.

And, of course, there were the times. The late 1960's was a difficult period for students. Martin Luther King and Robert Kennedy were both assassinated. The Vietnam War, which was raging, created moral and personal dilemmas for many of us, especially those with unfulfilled military obligations. The establishment was under siege, and many thought there was a legitimate basis for the assault.

Given those kinds of times and my rural, Eastern Kentucky background, an offer to join a Wall Street firm was difficult to deal with. Certainly, I believed in (and still do) the capitalistic system, its freedom and opportunities, and was (and am) convinced that it generates levels of production that are unmatched by any other economic system. Still, there was this gnawing apprehension. Should I take such an "establishment" job?

It was about that time that I had to see John Kennedy concerning a problem on the *Kentucky Law Journal* (John was our faculty advisor). When we finished, he asked about my plans for the next year. I told him about my offer and, without much explanation, told John that I was not at all sure I would accept it.

At that point, John, whom I really did not know all that well and who had something of a deserved reputation for shyness,

conveyed to me in clear terms that I should go to Wall Street. I listened while he went through the normal reasons for accepting the offer. I then opened up to John just a bit, hinting in an oblique fashion about some of my thoughts, thoughts that were so very personal and so much a product of the times and my background.

Immediately, John knew what the real issues were, but he stood his ground while shifting his argument. "What you should really do," he said, "is go to Wall Street for a few years and then go work with the vineyard workers in California." I told him I probably did not need the latter experience since I had grown up in Eastern Kentucky during the 1950's and 1960's. He smiled, and he understood what I was saying. I also understood what he meant.

This brief encounter with John Kennedy twenty years ago obviously was important to me. John believed in and conveyed to me the idea that rich and diverse life experiences are essential to all of us. We must not allow ourselves to live in narrow worlds where we see only people with the same views, achievements, and aspirations as ours. John also believed and, of course, was telling me that one is not required to shed one's own moral and political views or one's own life experiences when entering new worlds. Indeed, at such times it is even more important to retain one's own values.

These were essential notions to my dealing with what was going on in 1969. Obviously, the validity of these ideas has not diminished with time.

Years later when we became better friends, I asked John if he remembered that conversation. He said he did not, but then he laughed and added, "It sounds like something I would say."

*Rutheford B Campbell, Jr.**

* Dean and Professor of Law, University of Kentucky College of Law. B.A. 1966, Centre College; J.D. 1969, University of Kentucky; LL.M. 1971, Harvard University.