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Tribute: Kevin E. Kennedy

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TRIBUTES

KEVIN E. KENNEDY

*David L. Chambers**

Our first encounter was on one of Kevin's many triumphant days during law school. Kevin, then a second year student, had advanced to the final round of the Campbell Competition, the moot court competition in which students brief and argue a case as if before the United States Supreme Court. I was one of the five "justices" who heard the case. The others were the dean and three distinguished appellate judges. Four students presented oral arguments and all were fine, but, Kevin's, the "Justices" agreed, was simply of a different order.

Archibald Cox, when Solicitor General of the United States, was said to have been able to frame issues for the Court in a manner so compelling that the Justices often imposed his formulation on the counsel who followed him. Of course, Kevin, at twenty-nine, was no Archibald Cox, but then I'm not a Justice of the Supreme Court, and I had the disquieting pleasure that day of being led along nearly to the point of accepting a position I was sure I rejected. I also had the pleasure, for the first of many times, of watching this piercing, interesting mind at work. Pursing his lips while thinking, his eyes looking right at you to tell you he was ready for whatever you might want to ask, he responded to questions with directness, wit and a touch of irony. Like Cox, he let us know that he was smarter than we were without offending us in the process.

On a later occasion, I watched Kevin at work as Editor-in-Chief of this review. One of his significant achievements in that position was a symposium on "Legal Storytelling" that emphasized the uses of narrative by persons and groups outside the usual sources of power. The symposium makes important contributions to contemporary legal scholarship, but I remember most vividly an aspect that bore only indirectly on the quality of the final product. To enlarge the group who benefited from the enterprise, Kevin invited the authors to Ann Arbor for a couple of days of small-group meetings. The central idea was that each author would meet informally with three or four persons

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who had read the author's draft. Each group was to include one of the other authors, one faculty member from Michigan who had expressed an interest in the subject, and one or two editors of the *Review*.

Although the authors had been advised about the format in advance, when the participants gathered and Kevin welcomed us in an initial session of the whole, one author unexpectedly expressed strong reservations about the small-group meetings. He said that what he really wanted — what he believed the authors really needed — was for the authors to meet just among themselves. A second author also expressed unhappiness. Half the authors who had come were persons of color, but, contrary to Kevin's hopes, all the law students and Michigan faculty members who'd volunteered to participate were white. The dissenters, one of whom was a person of color, stated their views. Then came silence and awkward unease. Everyone looked to Kevin. Kevin, a little shaken but undefensive, encouraged all the other authors to speak and they, impressed I think by Kevin's good will, eventually persuaded the dissenters that the small group meetings might be helpful, even pleasurable. Later, over wine, one of the authors told Kevin that he had looked somewhat ashen but had responded to the situation with great tact. Kevin replied that "ashen" was his natural color but that he appreciated the compliment.

I came to know Kevin best through a series of informal seminars on public policy issues relating to AIDS. He and a dozen other students, most of them founding members of a new Health Law Society, invited speakers and organized readings and asked me to participate. We met eight times over the course of Kevin' third year and from among those sessions, I'll pull one more brief story about Kevin during law school. I recall a session at Kevin's house. (Kevin invited the group there a couple of times, in part, I think, to force himself to sweep and clean.) The guest was the author of a Broadway play about AIDS, who struck me as both pompous and condescending. Some of the students and I were not enjoying ourselves much, but we all sat attentively, feeding the writer's sense of self-importance. He had lost many friends to AIDS and implied that the students, young, naive and midwestern, simply were unlikely to understand what he and others in New York were experiencing. Kevin, who never said anything then or at any other session about his own health, would have none of it. He simply pushed the playwright and prompted others to push the playwright, until the playwright finally treated his audience as persons.

I hope these glimpses of Kevin provide some sense of his impatience with arrogance, his intellectual self-assurance, his capacity for diplomacy under pressure. They do not adequately convey his curios-

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ity about life or his blackly humored vision of the world. Nor do they adequately convey the scope of his achievements during his law school years, achievements that any three law students would be proud to claim. What remains hard for me to comprehend is that during those years, years when he achieved so much, Kevin had AIDS and knew it. During those years, taking powerful medications with many side-effects, he never felt really well, yet simply refused to give in to the virus that was weakening his body.

His determination to live life fully continued after law school. Upon graduation, he adhered to a plan to work as a clerk for Judge Stephen Reinhardt, a judge whom he knew to be particularly demanding. Here is an excerpt from a letter written in October 1989 in the second month of the clerkship. Listen to its tone. Note its images. It captures much of Kevin's complexity — his exuberant cynicism, his serious playfulness:

> I don't think I ever imagined there would be so much to do. Opinions, dissents, concurrences, memoranda, responses to memoranda, responses to responses, amendments, deletions, petitions for rehearing, motions, orders, summary dispositions, it never ends. Memorials to the emperor — a flow of paper and electricity that is as pervasive and inescapable as anything the Chinese mandarins devised. I suddenly understand the notion of the yamen — the lowly, despised, and ill-kept clerk who peopled China's imperial judicial system. Chopping documents, issuing grants or denials to be heard, posting orders, mediating the rush of information — and, in the course, granting and denying justice to those who claim it as their right. I'm performing tasks devised 3000 years ago — and at about the same rate of pay and pleasure.
>
> Still, it's fascinating work sometimes, David. It's much more fun to decide than to persuade, more thrilling to announce than to request, and seemingly more easy to reveal the immanent "Law" than to twist and torture a "law" from the grasp of annotated codes and obscure dicta. Just say it and it's so, not for what is said but for who — or what — says it.

These weeks with Judge Reinhardt proved to be Kevin's last moments of pushing himself toward the professional life that he had earned and planned for. In the same letter, Kevin admitted that he was "so tired that, as I sit here at my office desk, I can barely hold my head up. I feel like one of those plastic doodads, a stork or a heron, that's balanced just at the point where when its head tips too far forward the weight of its body snaps it back straight."

He was, at that moment, still feeling the effects of a bout with bronchitis. Within a month, still exhausted, he decided that his body could no longer take the strain. Judge Reinhardt, whom Kevin admired greatly and who had known all along of Kevin's illness, asked

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Kevin if he wanted to work part time, but Kevin decided to come home to his family in Philadelphia. It was at about this point, I think, that Kevin realized that he was going to die and something inside gave out.

Kevin returned at Thanksgiving to live with his mother in the home in which he had grown. His seven sisters and brothers also lived at home or nearby. They and their spouses and Kevin's mother, especially his mother, took care of him and brought him nearly all his moments of pleasure during his last eleven months. He volunteered briefly in a program that offered legal services to persons with AIDS, but found that he did not have enough energy to provide the quality of work he demanded of himself.

Two weeks before he died, weak and spent, he went out for breakfast with his sisters Kathleen and Eileen. It was his thirty-second birthday. His eyesight, which had been failing for many months, was nearly gone. He had lost so much weight that he felt that he was wearing his bones on the outside. He and Kathy and Eileen laughed and complained about each other as they had for thirty years. He came home to a birthday dinner with the rest of his family. He then drifted, in pain, toward a death that he had come to desire simply as a form of release.

During his last months, Kevin was profoundly depressed. He felt that he had accomplished little in life and that his death would signify nothing. And nothing anyone said to him could change his mind.

I too feel dispirited. I think I'm expected to end a piece such as this by proclaiming that Kevin was wrong, that his life was filled with meaning, that he brought excitement to the lives of others, that he showed the power of the human spirit in the face of a fatal disease. And, of course, all that is so. But my dominant feeling right now is that he and we have been cheated, cheated of all that would yet have been, all that was sure to come.

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