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FRANK R. KENNEDY

*Hon. George Brody**

“An occasional man achieves such distinction, makes so great a contribution, leaves so striking a mark on his profession, that it is almost unseemly to sing his praises.”¹ Such a man is Frank Kennedy and, unseemly or not, I am going to indulge in praising the great — not only my personal praise, but also the praises of those with whom he has labored on his countless projects.

Professor Kennedy has had an illustrious teaching career, which began in 1940 at the University of Iowa College of Law. He then moved to the University of Michigan Law School in 1961, and, except for stints as visiting professor at various law schools throughout the country, he culminated his teaching career there in June of 1983. He has had a marked impact on the many students who have attended his classes and who have been counseled by him.

SCHOLAR AND EDUCATOR

Harvey Miller, a member of the National Bankruptcy Conference and eminent bankruptcy practitioner, evaluates Frank Kennedy's teaching impact as follows:

Clearly, you have been an inspiration to your students and to all those who have had the opportunity to know you and your prodigious work. It has always appeared to me that you have taken for your own Stendahl's dictum, “Unless I am clear, the world about me collapses.” To read a Law Review article, a note or a letter by Frank Kennedy is a joy in and of itself. You have done successfully what many others have tried to do in vain. You have imparted knowledge, understanding and humanity to thousands of students and attorneys.

While Warren, Douglas, Black and other great judicial figures have impressed their philosophies upon generations of lawyers through their opinions, you have exerted your influence upon students just before they cross the threshold into the profession. Through them, you have started to shape the law in a rational and logical fashion. Your contributions to date have been multitudinous. We can only expect more.

Norman Nachman, the Dean of the Chicago Bankruptcy Bar, similarly observes:

* United States Bankruptcy Judge, Eastern District of Michigan; J.D. 1947, Michigan Law School; B.S. 1942, College of New York; L.L.D. 1959, New York University Law School.—Ed.

1. Siegel, *Alfred Conard*, 79 MICH. L. REV. 382 (1981).

The legions of students who were fortunate enough to attend your law lectures are collectively the very best evidence of the inestimable contribution you have made to the bench and bar as a teacher of the law. Through them, your pervasive beneficial influence, particularly in the administration of bankruptcy, will long remain.

Ms. Darlene Nowak, a former student of Frank Kennedy, whom I had the good fortune to employ as my law clerk upon his recommendation, reminisces:

Frank Kennedy is the consummate teacher because his students can never graduate from his influence. Long after you forget how to study textbooks and prepare lessons, long after you leave the comforting regimentation of daily classes and abandon the luxury of arguing academic points for nonexistent clients, you are still a student of Frank Kennedy. With every difficult problem you ask yourself (albeit silently) "How would Professor Kennedy handle this?" Long after grades cease to be important, you are still trying to come up with an answer to please him. To instill this attitude to continually strive for excellence is the hallmark of a great educator, for it requires not only a recognized mastery of knowledge but a genuine affection for students and limitless generosity. Professor Kennedy possesses all these things wrapped up in a Missouri accent; I feel his influence every day.

Students trained by Frank Kennedy enter the legal arena with a decided advantage. Illustrative is the story told to me by Ronald De Kovan, a practicing attorney in New York. He tells of the time recently when he and a young professor of law from the University of Michigan were asked to draft some legislation. According to Mr. DeKovan, "another party then present queried whether the professor was qualified. The answer was simple. The professor had been trained by Frank Kennedy. There was no further inquiry."

Professor Kennedy's literary output has been prolific. He has written extensively on a varied range of subjects, with particular emphasis on bankruptcy.² Ken Klee, Associate Counsel to the House Judiciary Committee when legislation leading to the adoption of the Bankruptcy Code was under consideration in Congress, has commented on Frank's scholarly contributions, noting: "In a frenetic world, you are one of the few remaining scholars who meticulously researches and refines a piece before submitting it to publication. While I am hopeful that future generations will emulate your work, I am pessimistic that they will do so."

Similar comments abound. Professor David Epstein of the Uni-

2. Frank Kennedy contributed to *BANKRUPTCY AND THE CHAPTER PROCEEDINGS* (G. Holmes ed. 1976) and to Vol. 1 of *SECURED TRANSACTIONS UNDER THE UCC* (P. Coogan, W. Hogan & D. Vagts eds. 1963). He co-authored volumes 4, 4A, and 4B of *COLLIER ON BANKRUPTCY* (14th ed.). He has also had published in excess of 100 law review articles.

versity of Texas Law School and a member of the National Bankruptcy Conference writes:

Every person who studies, teaches, or practices bankruptcy law is, of course, indebted to Frank. His work with the National Bankruptcy Conference, with the Rules Committee, with the Commission on the Bankruptcy Laws of the United States has significantly improved bankruptcy law and bankruptcy procedure. His law review writings and continuing legal education talks have made those areas of bankruptcy law and bankruptcy procedure that he has not improved more understandable.

George M. Treister, a Los Angeles attorney and a respected scholar in his own right, has worked with Frank Kennedy for over a quarter century in the various activities of the National Bankruptcy Conference, on the first Advisory Committee on Bankruptcy Rules, and on numerous continuing legal education programs. He notes that Frank has "consistently provided the top scholarship, as well as the extraordinary energy and painstaking care and attention to detail that mark the finest degree of professionalism."

In a similar vein, Benjamin Weintraub, who has made significant contributions to the development of Chapter 11 of the Bankruptcy Code, states:

The late Judge Jerome Frank in a Learned Hand lecture commented on the Judge's achievements, in words we may very well apply to Frank, who "with his creative insight, his penetrating intellect, his imaginative experience, he has enlarged the legal world for all of us." May we also add to this his warm sympathy, his exuberance, and deep attachment to the law which never failed to attract all of us.

AUTHOR OF LEGAL REFORM

The profound changes that have been made in bankruptcy law and procedure during the past two decades carry Frank's unmistakable imprint. Frank Kennedy was appointed Reporter for the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States in 1960. In 1964, the Supreme Court was authorized by Congress to promulgate Rules of Bankruptcy Procedure to replace the antiquated Rules under which the Bankruptcy Court was operating. Under Frank Kennedy's guidance, this project was successfully completed.

Judge Asa Herzog, a member of the Committee, provides insight with respect to Frank's personal and professional contribution:

Frank wrote the original version of the rules and his scholarship and expertise came shining through in every work he shaped. His explanations of the "whys" and "wherefores" of each sentence, phrase and paragraph was a model of clarity and an exhibition of the keenest of

minds. Throughout many years of wrangling and arguing, Frank never once raised his voice and gracefully accepted changes proposed by various members of the Committee even when he strongly disagreed.

In transmitting the Rules to the Supreme Court for approval, Judge Aldisert, then Chairman of the Advisory Committee on Bankruptcy Rules, recognized that the success of the project "was made possible only by the prodigious and devoted effort exerted by the Committee's Reporter, Professor Frank R. Kennedy. In addition to his vast knowledge of the subject, he brought a limitless capacity for meticulous research to the job, which I believe has made it as complete and all-encompassing as possible."

Congress, on July 24, 1970, by joint resolution authorized the establishment of a Commission "to study, analyze, evaluate and recommend changes in the Bankruptcy Act of 1898."³ Harold Marsh was appointed Chairman of the Commission and selected Frank Kennedy as Executive Director. The project was completed in July of 1973, with the submission of the Commission's recommendations and findings and the drafting of a proposed statute to implement the recommendations.⁴ The explanatory notes which accompanied the proposed legislation are a remarkable summary of then-existing bankruptcy law. The Commission's statutory proposal was introduced as a bill in both the House and the Senate, and served as the basis for the eventual enactment of the Bankruptcy Code of 1978. Harold Marsh, who had the wisdom to select Frank Kennedy as Executive Director of the Commission, attributed the Commission's success to Frank Kennedy's leadership, "his encyclopedic knowledge of bankruptcy law and all related fields," knowledge which had not "been approached by any other scholar . . . his unlimited capacity for work" and "his incredible patience and unfailing courtesy in dealing with all of the persons" who dealt with the Commission.

Gerald Smith, Deputy Director of the Commission, describes Frank's contribution to the accomplishments of the Commission thus: "With Frank in attendance, you really needed no other research tool. He brought his own library, primarily stored in his head, but amplified by meticulously accumulated notes and materials relevant to every conceivable matter having any impact on bankruptcy law, which of course includes the universe."

3. Act of July 24, 1970, Pub. L. No. 91-354, 84 Stat. 468.

4. Report of the Commission on the Bankruptcy Laws of the United States, H.R. Doc. 137, 93d Cong., 1st Sess. (1973).

MENTOR AND FRIEND

Despite his heavy teaching schedule, his prolific writings, demands made upon him by the National Bankruptcy Conference and his work on the Bankruptcy Rules Committee and Commission, Frank still found time to patiently answer in minute detail the countless inquiries addressed to him by lawyers, judges and colleagues. I first met Frank Kennedy in 1961. Since that time, I have written to him on many occasions with respect to varied problems dealing with bankruptcy administration. I remember vividly my first such contact, when I presented to him what I thought to be a very simple question. To my surprise then — but not anymore — I received in the mail a treatise on the question I had posed. Others have had the same experience. Bernard Shapiro, an eminent teacher, lecturer and practicing attorney in California, recounts: "The last time I wrote to Frank I asked him if he had any random thoughts about the automatic stay and I had to hire American Van Lines to haul away his answer."

Many years ago, a fledgling attorney attended a lecture given by Frank Kennedy. At the conclusion of the lecture, he introduced himself to Frank and asked a question, which apparently Frank did not completely answer. Two weeks later, this attorney received a two-page single spaced letter from Frank Kennedy in which Frank apologized for speaking hastily and said that upon reflection, he was not sure that the answer he had given was correct. Frank then proceeded to cite numerous cases as justification for his lack of certainty. This same lawyer, William Rochelle, now a respected and successful lawyer in Texas, recalls Frank's response in amazement: "That Frank would remember my name and question and his answer under such frantic circumstances was, itself, remarkable, but that he would take the time and trouble to share his knowledge and expertise was both gratifying and surprising."

Frank's scholarly achievements tell but an incomplete story. Charles Horsky, confidant of Presidents, prominent Washington attorney and Chairman of the National Bankruptcy Conference, notes that "to speak of Frank only as a consummate lawyer and teacher is to render an imperfect tribute. He is also the consummate gentleman — quiet, courteous, helpful and understanding." Adds Gerald Smith, "His kindness and patience with students and lessers, of which there are many, may be equaled, but I doubt that it is exceeded."

Others have also given recognition to these qualities, as illustrated by the comments of Daniel R. Cowans, former Bankruptcy

Judge and member of the National Bankruptcy Conference, now a practicing attorney in California:

There are those who use their knowledge to help and to teach. They share rather than belittle. Probably most great teachers are of this nature; they are open and accessible. Many times at meetings and seminars I have seen you surrounded at the conclusion by people asking questions. I have always had the respect for you that brought the questions there, but at least as importantly, the admiration for you to remain there patiently and conscientiously trying to answer. I think . . . I saw the true Frank Kennedy doing his excellent best to broaden knowledge and understanding.

Professor Stefan A. Riesenfeld, Professor of Law at the University of California, similarly observes: "Frank is not only a superb scholar and uncontested leader in the field, but is also a wonderful human being whose intellect has not overshadowed warmth and compassion." Adds United States District Judge Conrad Cyr, "His great intellect, learning, patience, diplomacy, energy and personal warmth are a prescription for professional success no matter how difficult the challenge."

Vern Countryman, a long-time colleague of Frank's, was apprehensive about Frank's retirement. "I trust," he wrote, "that you are not retiring from the rendition of any of those other services — including the very important one of preserving me from error." I am certain that this remark was made in jest. Vern Countryman, and all others who know Frank are aware that, except for relinquishing his teaching duties, he will continue to be as active as he has been in the past. He will, in the words of Frank Quittner, a respected member of the California Bar, "never quit performing the magic that he has bestowed on all of us."

For more than twenty years, since the time I became a Bankruptcy Judge, I have been keenly aware of Frank Kennedy's unselfish dedication to the many projects which have been thrust upon him, overwhelmed by the enormity of the tasks he has undertaken and carried out to successful completion, and awed by his prodigious scholarly output. I consider myself fortunate in being afforded the opportunity to have shared in some of those projects and to have the valued friendship of a sensitive, loyal and caring human being.