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Dedication

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DEDICATION

JOSEPH B. KELLY

*Zane E. Finkelstein**

It has been requested that I assist in dedicating this issue to my old friend and revered colleague, Professor Joseph Burns Kelly. The compliment inherent in the request far exceeds my ability to initiate the process of Mr. Kelly's canonization which is probably what the staff has in mind. Nonetheless, as he might say, "Let's examine the case."

Dedications of this nature cluster around three general models:

First, the multi-phase biography. One that starts with ancestors and conception, proceeds through education, marriage, and military service to career and pending retirement or demise. [Professor Kelly was born in Fort Smith, Arkansas in 1923, spent World War II (Remember when wars were spelled with capital letters?) as an Artillery Liaison Officer with the Chinese in Burma, China and Indo-China. It is reported, probably apocryphally, that he can say "on the way" in five dialects and that he knew Ho "George Washington" Chi Mihn prior to his assault on the South and the tumbling of the Dominoes. The war over and the world again safe for democracy and civil war reenactments: B.S. *summa cum laude*, Xavier 1947; J.D. University of Cincinnati, Editor-in-Chief Law Review, and Order of COIF 1949; married Jean Gardies, six children; Korean War — back into the Army, LL.M., M.A. Georgetown. For the next two decades, teacher and practitioner of International Law.] I have little use for this model nor would anyone read it other than his mother.

Second, the comprehensive, commodious, and critical review of the honoree's research. This approach focuses on the latest multi-volume work, constructed in large measure by a legion of "assistants," and is designed to display the dedicat-
or's erudition and mastery of legal syntax. I ignore this approach for two reasons: First, this model is limited to non-existent erudition and mastery of nothing. Second, and more importantly, it has never been Joe Kelly's bent to examine two books that no one has ever read, and edit a third that no one has ever read, and edit a third that no one will read! (He has, however, in fact published widely and significantly. His two volume work on International Law continues to inform

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the judgments and decisions of senior military officials in the United States and abroad. His exhaustive examination of "Assassination in War Time," published in 1965, has accompanied U.S. military lawyers to the field ever since. His nine other International Law publications are in practitioners' briefcases, not just gathering dust or puffing up a vita. And there is more, more publications and more work. Taxation and trial practice join his favorite area of domestic law, contracts. But if you have lunch with Professor Kelly at the Cosmos Club, it will not be the public event that joining Myers, McDougal or Prosser used to be. It is unlikely that he would be given special treatment at "21" or "the Grove.") Publication for survival or notoriety is not his style, and this model is not mine.

Third, the last model focuses on a meticulous and chaste examination of the honoree's judicial philosophy. Was he influenced by Holmes or Montaigne, Coke or Locke, St. Thomas or Thomas Lowell, Thucydides or some teutonic scholar whose potty training was so strict that it resulted in scatological decisions? (Professor Kelly's Jesuit education provided him the tools to star in this league, but he never requires his students or associates to play.) We pass the sagacious philosopher model with relief and considerable pleasure.

If the "Greatman" model is rejected along with the "scholar" and "philosopher" models, what do we say about Professor Kelly? Why do we honor him? Why do we dedicate this volume to him? One word defines him and portrays all he stands for. That word is "teacher."

Professor Kelly is a nonpompous pedagogue with passion. He knows you cannot improve society or even describe it with the dull language of science. He ignites his classes with the language of art, poetry, and a love of the law that approaches idolatry. His students are steeped in the oral traditions. Traditions that are fantastic, vivid, discordant, and disquieting are steel-knitted and welded under his "kind" attention. Only the foolhardy are comfortable. The better prepared one is, the higher the level of one's concern. Like Mr. Justice Frankfurter, he focuses his indomitable will to create in his students an awareness that the law is not a complex set of abstractions, but a web of arrangements rooted in hope and tradition designed to restrain the reversion to barbarism and to promote the maximum use of the nation's talent and resources. If "repetition is the mother of learning," terror, or at least dread, is its father in Professor Kelly's classroom. Learning conceived in this crucible does not produce plastic people with cloned parts. His students are not people with petrified views characterized by predictable attitudes or hardening of approach. Professor Kelly inspires imagination. Pick it up! Turn it over! Ex-

amine it from more than one perspective! Ignore the fancy facade! Peer around it! Find the essence of the problem! "Law," he once opined with infectious vigor, "is not an end in itself. It is a means for addressing humanity." He seeks to locate, create and encourage strong, fresh, happy, healthy, imaginative minds. The "great gradual glacier of despair" he rejects.

One need not espouse evolution or creationism to believe that disappointment in the monkey led God to establish man. His judgment is now before the Bar. Fear not. "Ready for the defense, Your Honor — Professor Joseph Burns Kelly, Dickinson School of Law." For this we are grateful, for this we thank him, for this we dedicate this small volume to him with our respect, our admiration, and our love.

