

## TRIBUTE TO ARTHUR MURPHY

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Columbia Law School's postwar class of 1948, perhaps more than any other, has brought remarkable distinction to both the school and the law. Marvin Frankel, Jack Greenberg, Jack Kernochan, Arthur Murphy, and Jack Weinberg have all both taught here and acted with enormous distinction and success in the outside world of law—a grouping not so often to be found in the legal academy these days. Arthur Murphy, whom we celebrate here, moved between these worlds with ease: first as an associate at Columbia in 1949; then years in private practice and with the Department of Justice; then, from 1956–1958, back to Columbia as associate director of its then-active Legislative Drafting Research Fund (LDRF); back to private practice; and finally, in 1963, made a law professor here.<sup>1</sup> Arthur, the last among us to be *forced* into emeritus status,<sup>2</sup> was a treasure to his students and to his colleagues. His dedication to family and school, gentility, intelligence, and rapier-sharp sense of humor were extraordinary. His generosity is the quality I will stress here. Again and again he was my benefactor, without ever seeming to notice or call attention to that.

One notable occasion came in the winter of 1974–1975, when he inquired, apparently offhandedly, whether I knew anyone who might wish consideration to serve as the first general counsel of the just-formed Nuclear Regulatory Commission (NRC). A glance at the faculty resolution

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1. See Columbia Law Sch. Faculty, Retirement Resolution: Prof. Arthur W. Murphy I (May 8, 1992) [hereinafter Faculty Resolution] (on file with the *Columbia Law Review*).

2. As Professors Orley Ashenfelter and David Card write:

[Today,] the institution of mandatory retirement has all but disappeared from American life. College and university professors were among the handful of occupations exempted from the general prohibition of age-related employment barriers in the 1986 amendments of the Age Discrimination in Employment Act. The law granted a temporary exemption for postsecondary institutions to enforce mandatory retirement at age 70. The exemption was a hard-fought victory for college and university representatives, who argued that mandatory retirement was needed to maintain a steady inflow of young faculty and promote the hiring of women and minorities. Following a review in the early 1990's, however, Congress allowed the exemption to expire, and mandatory retirement was eliminated on January 1, 1994.

Orley Ashenfelter & David Card, Did the Elimination of Mandatory Retirement Affect Faculty Retirement?, 92 *Am. Econ. Rev.* 957, 957 (2002).

adopted at his retirement in 1992,<sup>3</sup> or at his bibliography,<sup>4</sup> will make clear that he was the person for that job; following his pathbreaking LDRF studies on power plant liability issues, for years he had worked for and with the Atomic Energy Commission (AEC) (the Adam from whose rib the NRC's Eve was created), and its then- General Counsel Mark Rowden, soon to be an NRC Commissioner, was a good friend. As we celebrated in that resolution,

An abiding concern with . . . law and science . . . shaped much of Arthur Murphy's professional career. It is reflected in his writings, his public service, and his teaching. A majority of Arthur's excellent scholarly books and articles since 1956 have dealt with nuclear energy and its management within the legal system, especially in relation to legislation, the law of torts and government regulation. In this field, he has been a much honored "mover and shaker" with a distinctive viewpoint. His approach is marked by clear-headed appraisal, a refusal to be distracted by popular or unpopular extremisms and by a realistic, insightful grasp of the issues and a judicious weighing of the relevant economic, legal, political and human values . . . . It was inevitable that he would be the one chosen to assemble and edit, as well as contribute to, the American Assembly's milestone volume (1976) on the *Nuclear Power Controversy*.<sup>5</sup>

I have long imagined Mr. Rowden must have asked Arthur if he wanted the job, and then converted him to nominator when he declined. When Arthur asked, it turned out I did know such a person; the two years in Washington that resulted, more than any other influence in my life, have underlain such success as has come to me as a scholar of administrative law.

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3. Faculty Resolution, *supra* note 1. It reports that, as associate director of the LDRF, Arthur directed the Fund's study of financial protection against the hazards of nuclear power. "The resulting report . . . was a concise, immensely creative and altogether masterly piece of problem-solving. Many of its principal recommendations were almost immediately enacted into law as part of the Price-Anderson Amendments (1957) to the Atomic Energy Act. This was an extraordinary achievement, highly and justly acclaimed." *Id.* at 1. Mentioned as well were his membership on the Atomic Energy Commission's Atomic Safety and Licensing Panel (1962-1973), responsible for resolving licensing issues respecting nuclear power plants; his work with the New York State Atomic and Space Development Authority (1965-1975); and his subsequent membership on the Presidential Commission on Catastrophic Nuclear Accidents (1988-1990). *Id.* at 2.

4. His projects for Columbia's LDRF included: *Financial Protection Against Atomic Hazards* (1957); *Issues of Financial Protection in Nuclear Merchant Ship Operations* (1975); *Nuclear "Moratorium" Legislation in the States and the Supremacy Clause: A Case of Express Preemption*, 76 *Colum. L. Rev.* 392 (1976) (which he wrote with D. Bruce La Pierre); *The Licensing of Power Plants in the United States: A Report* (1978) (which he coauthored with D. Bruce La Pierre and Neil Orloff). The American Assembly, a publisher-affiliate of Columbia, put him in charge of an edited volume, *The Nuclear Power Controversy* (1976), to which he also contributed.

5. Faculty Resolution, *supra* note 1, at 2.

On my return to Columbia, Arthur encouraged my engagement with the Legal Method course in which he had so entranced our entering students year after year, sharing his notes as well as his love for the course. Again, from the faculty resolution:

Arthur Murphy has been one of the Law School's finest teachers . . . . It is probably in the Legal Method course, a Columbia specialty, that his teaching has shone most brightly. He was a principal architect, with Jones and Kernochan, of the latest edition of the Legal Method Casebook. He has done much in other ways to shape this course, for which he has always had the greatest love and through which he has had an enormous influence on generations of Columbia law students. He brings a special talent to it. The ability to master complex concepts and issues and deal with them in precise yet simple terms that inspire as well as explain is not everyone's gift. It is Arthur's. Legal Method, as he teaches it, evokes student reactions that run the gamut from adjectives like "wonderful" and "marvelous" to standing ovations.<sup>6</sup>

And Arthur saved me from the wrath of his great friend and classmate Jack Kernochan when, acquiring my own great love for the Legal Method course after a few years, I too came to reshape it. Arthur and Jack simply permitted me to use, gratis, the many pages of their collective, copyrighted work that I wanted to carry forward into my own materials. But when I presumed to put an "s" at the end of its name without a faculty vote to support that change—"Legal Methods," not "Method"—that annoyed Jack to no end. Arthur smoothed the waters, as he so often did for all of us.

Other qualities emerge from that resolution and reverberate in memory: Formal collegial service came in his work as our vice dean for many years, for both Deans Albert Rosenthal and Barbara Black.<sup>7</sup> More than once, his remarkable wit saved us from a colleague's anger at a faculty meeting. That wit also marked him as the toastmaster of choice for any community event. And his wit was the more remarkable in the face of another quality—this one unmentioned in our resolution—that stood out for me during our many years of friendship and collegial association: his resilience in the face of troubles. Much of it came before we met, transcending the death of his first wife and, not long after, their son. Those events alone could have darkened anyone's life—even after his great good fortune in finding and marrying Jean, and then adding Paul and Rachel to the remarkable family he so adored. Later came the long illness of his grandson, at first near death and then long threatening, which he let me know about in a quiet way. Deeply troubled, he remained outwardly a man of cheerful, sometimes wicked wit and of care and compassion for his students. The capacity he had to transcend

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6. *Id.* at 2–3.

7. *Id.* at 3.

the blows life gave him, to stay so firmly in the positive, was and remains truly inspirational for me.

It is the rare man who enhances his intellect with such willingness to subordinate his own interests to support the success of others—though perhaps you will think that is just another way of appreciating what an extraordinary teacher he was.