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## Tribute to Arthur Murphy

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## TRIBUTE TO ARTHUR MURPHY

*Michael I. Sovern\**

Students remember Arthur Murphy as a warm, caring teacher with a great sense of humor, a man who helped them learn and grow. Our colleagues admired and respected his scholarship and his commitment to our school. While I shared all of that, to me, most importantly, Arthur was an empathetic friend for more than half a century. And this despite the fact that he had two strikes against him—he was a Harvard graduate and a Boston Red Sox fan.

Arthur was a member of what Tom Brokaw called “The Greatest Generation.”<sup>1</sup> After fighting in World War II, he enrolled in Columbia Law School, one of six veterans whose destinies would lead here, first as students and later as members of the faculty. The other five were Jack Greenberg, Marvin Frankel, Jack Kernochan, Maurice Rosenberg, and Jack Weinstein.<sup>2</sup>

In the first half of the twenty-first century, they were our seemingly indestructible link to the first half of the twentieth. But that link has grown weaker, with only Jack Weinstein still with us.

Institutions like ours thrive on intergenerational sharing, which is, after all, a way of describing teaching. Arthur reveled in it, not by sharing war stories. He didn’t do that. His objective was to share what he could that would help his students. As he put it, he sought to foster “growth in knowledge (of legal doctrines, legal institutions and processes . . . ),” “development of skills (e.g., case reading, doctrinal synthesis, advocacy, counseling, use of analyses from other disciplines) or of perspectives (fact skepticism, appreciation of the impact of role upon legal analysis . . . ),” and “acquisition of certain insights, perceptions, intuitions and experiences (e.g., the intractability of certain problems, the difficulties of rule formulation arising from imperfect foresight or knowledge, the necessity

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1. Tom Brokaw, *The Greatest Generation* XXXXVIII (2004).

2. Arthur, Marvin Frankel, and Jack Weinstein signaled their intentions early. Upon graduating they were among the first to fill the newly created post of associate, serving for a year before moving on to the practice of law. Marvin would return as a professor in 1962, leaving a few years later to accept an appointment to the federal bench. Arthur came back in 1963 and enjoyed almost fifty productive years before retiring at the age of eighty-eight. Jack Weinstein and Jack Kernochan had been the first to return, joining the faculty in 1952, followed by Maurice Rosenberg in 1956. Jack Greenberg joined us in 1970 after his history-making career at the NAACP Legal Defense Fund.

nonetheless of formulating some rules on the basis of imperfect knowledge).”<sup>3</sup> It’s no wonder he became a Legal Methods teacher.

I teach that course today. When older alumni ask what I teach and I tell them, they regale me with their fond memories of Arthur’s class, which was, of course, their introduction to our profession. They still reckon it a running start.

Arthur and Jack Kernochan, who also taught Legal Methods, were the custodians of teaching materials that had their origins in the 1940s.<sup>4</sup> (I studied an earlier version as a first-year student in the fall of 1952.) Peter Strauss has maintained the tradition with an excellent new version, in which he acknowledges his debt to Arthur and Jack.<sup>5</sup> Since I teach from those materials, it’s a debt I share.

Arthur was also the coeditor of a casebook on trusts and estates.<sup>6</sup> Unlike Legal Methods, which Arthur seemed born to teach, his trusts and estates specialty was an accident of curricular need. Asked by then-Dean Warren to teach the subject, Arthur tackled the assignment with characteristic energy, becoming an expert in order to enlighten.

A good teacher’s legacy can reverberate down through the years. Scholarship typically has a shorter shelf life, though in addition to affording contemporary insights, it too can serve as a foundation for what follows. And sometimes it can anticipate.

When Arthur wrote *Old Maxims Never Die: The Plain-Meaning Rule and Statutory Interpretation in the Modern Federal Courts*<sup>7</sup> back in 1975, the subject of statutory interpretation was not exactly on everyone’s front burner. And then along came Justice Scalia. The result: Arthur’s wise contribution fits right into the current debate about the interpretation of statutes.<sup>8</sup> It could almost be subtitled “A Response to Justice Scalia.” And guess who has it right.

Much of Arthur’s other scholarship explored the intersection of science and law. A major focus was on a field that didn’t even exist when he was a student—atomic energy. I doubt that the scientists engaged in splitting the atom gave much thought to the prospect that their work

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3. Memorandum from Arthur Murphy, Professor, Columbia Law Sch., to First-Year Teachers at Columbia Law Sch. 1 (Mar. 18, 1971) (on file with the *Columbia Law Review*).

4. See Harry W. Jones, John M. Kernochan & Arthur W. Murphy, *Legal Method: Cases and Text Materials* (1980).

5. See Peter Strauss, *Legal Methods: Understanding and Using Cases and Statutes*, at v (2014).

6. See Mark L. Ascher, Elias Clark, Grayson M.P. McCouch & Arthur W. Murphy, *Cases and Materials on Gratuitous Transfers: Wills, Intestate Succession, Trusts, Gifts, Future Interests, and Estate and Gift Taxation* (6th ed. 2013).

7. Arthur W. Murphy, *Old Maxims Never Die: The Plain-Meaning Rule and Statutory Interpretation in the Modern Federal Courts*, 75 *Colum. L. Rev.* 1299 (1975).

8. For an example of Justice Scalia’s scholarship in this area, see Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (2012).

would ultimately implicate the U.S. Constitution, administrative law, and insurance, to pick only those fields of law that Arthur wrote about.

In an area often marked by hysteria, he brought cool analysis to bear in, among other works, *Nuclear ‘Moratorium’ Legislation in the States and the Supremacy Clause: A Case of Express Preemption*,<sup>9</sup> *Atomic Safety and Licensing Boards: An Experiment in Administrative Decision Making on Safety Questions*,<sup>10</sup> and *The Problems of Protection Against Atomic Hazards*.<sup>11</sup>

His expertise led naturally to valued public service, including membership on the Presidential Commission on Catastrophic Nuclear Accidents, the Atomic Safety and Licensing Board of the Atomic Energy Commission, and the New York State Atomic and Space Development Authority.<sup>12</sup>

As the succession of appointments makes clear, Arthur impressed those with whom he worked. He plainly could have filled his schedule with extracurricular assignments both timely and exciting. But he never yielded to that temptation. He was devoted to our School, to the people who made it so special, and to a life dedicated to teaching and shedding a bit of light here and there.

Arthur was the full package: teacher, scholar, public servant, citizen of Columbia University. Over the years he bore far more than his share of administrative burdens, agreeing to serve not once but twice as Vice Dean of the Law School.

I did not know him when he endured the unendurable—the loss of his first wife and son. But he was then blessed with the love of Jean, his treasure of a wife for sixty-one years, and his three children—Lois, Rachel, and Paul. Arthur was a loving man and nothing was more important to him. He was a good man, a decent, generous human being without airs or pretense. He knew his worth—he just saw no reason to crow about it.

As George Bernard Shaw said of William Morris, “You can lose a man like that by your own death, but not by his. And so, until then, let us rejoice in him.”<sup>13</sup>

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9. Arthur W. Murphy & D. Bruce La Perre, *Nuclear “Moratorium” Legislation in the States and the Supremacy Clause: A Case of Express Preemption*, 76 *Colum. L. Rev.* 392 (1976).

10. Arthur W. Murphy, *Atomic Safety and Licensing Boards: An Experiment in Administrative Decision Making on Safety Questions*, 33 *L. and Contemp. Probs.* 566 (1968).

11. Arthur W. Murphy, *The Problems of Protection Against Atomic Hazards*, 428 *Ins. L.J.* 583 (1958).

12. See Press Release, Columbia Law Sch. Professor Emeritus Arthur W. Murphy '48 LL.B., Expert on Wills, Estates, Science and the Law, Dies, (Jan. 20, 2016), [https://www.law.columbia.edu/media\\_inquiries/news\\_events/2016/january2016/arthur-murphy-obituary](https://www.law.columbia.edu/media_inquiries/news_events/2016/january2016/arthur-murphy-obituary) [<http://perma.cc/7FSP-XYGG>].

13. George Bernard Shaw, *William Morris: Morris as Actor and Dramatist*, 82 *Saturday Rev.* 385, 387 (1896) (on file with the *Columbia Law Review*).