

Oklahoma Law Review

Volume 65 | Number 3

2013

In Memoriam: Tributes to Professor Frank Elkouri

Joseph Harroz Jr.

University of Oklahoma College of Law, jharroz@ou.edu

Theodore J. St. Antoine

University of Michigan Law School, tstanton@umich.edu

Randall T. Coyne

Drew L. Kershen

University of Oklahoma College of Law, dkershen@ou.edu

Judith L. Maute

University of Oklahoma, judithmaute4321@gmail.com

Follow this and additional works at: <https://digitalcommons.law.ou.edu/olr>

Recommended Citation

This Introduction is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in Oklahoma Law Review by an authorized editor of University of Oklahoma College of Law Digital Commons. For more information, please contact Law-LibraryDigitalCommons@ou.edu.



PROFESSOR FRANK ELKOURI, 1967

FRANK ELKOURI

On January 18, 2013, the University of Oklahoma College of Law community lost a dedicated professor, generous benefactor, and dear friend. Professor Emeritus Frank Elkouri was an outstanding scholar and a nationally recognized authority in arbitration. He was also an equally talented educator, inspiring countless students and faculty during his fifty-eight years teaching at the College of Law.

Professor Elkouri graduated Phi Beta Kappa from the University of Oklahoma in 1943 with a bachelor's degree in government. He earned his first law degree, an LLB, from the College of Law in 1947. He subsequently earned an LLM and an SJD from the University of Michigan.

Prior to joining the faculty of the College of Law in 1952, Professor Elkouri practiced law in Oklahoma City with Quinlan & Elkouri, a firm he co-founded. He also served as an attorney with the National Wage Stabilization Board in Washington, D.C., and Dallas. As a faculty member, Professor Elkouri taught labor law, property, trade regulation, torts, and workers' compensation. Among his publications is *How Arbitration Works*, widely regarded as the authoritative treatise on the law and the practice of labor arbitration. Professor Elkouri also served as an arbitrator in labor-management disputes, a special justice of the Oklahoma Supreme Court, a member of the Oklahoma Governor's Special Advisory Committee on Workmen's Compensation, and an executive reservist with the United States Department of Labor.

In 1974, Professor Elkouri received the University of Oklahoma Distinguished Teaching Citation; he was appointed to a George Lynn Cross Research Professorship in 1979. The American Arbitration Association honored him in 1980 with the Whitney North Seymour Medal for his outstanding contributions to arbitration.

Professor Elkouri retired in 1985, but remained active as a mentor and colleague through 2010. To honor his devotion to the College of Law, the wing of professor emeritus offices was named in his honor.

In addition to fifty-eight years of service, Professor Elkouri and his wife, Edna Asper Elkouri, gave generously to the College of Law. In 2002, they made a major gift to endow the Frank Elkouri and Edna Asper Elkouri Professorship of Law. This was followed in 2011 by the largest one-time gift in the history of the College of Law. The historic six million dollar gift will provide scholarships for generations of students.¹

The *Oklahoma Law Review* dedicates this issue to Professor Elkouri with a series of tributes by those who knew him best.

1. For additional information on the Elkouris' gift, see Jonella Frank, *A Gift from the Heart: The Historic Elkouri Commitment*, SOONER LAWYER, Spring/Summer 2011, at 2.

AN ENDURING LEGACY

*Joseph Harroz, Jr.**

During my first few months on the job as Dean of the College of Law, in a remarkably unassuming way, Professor Frank Elkouri came to the reception desk of the Dean's Office and asked to meet with me. He had no agenda; he simply wanted to get to know me. During our conversation that day, I learned he had met with every other dean of the College of Law with the exception of the very first, Dean Monnet. Frank and I became friends that day, and I was struck by his warmth, his dedication to the law, and his devotion to the law school.

At the conclusion of our conversation, aided by his walker, he began to move diligently across the law school atrium. I decided to accompany him, and he explained he had come to the College of Law that day to clean out his office. In his office in the retired faculty wing, he sifted through his papers, generously offering to donate his books to the College of Law. Dean Emeritus Andy Coats stopped by to see Frank off as well. When Frank departed that day, he had packed up fifty-eight years of class notes and memories.

Shortly after my visit with Frank, I decided to dedicate the Emeritus Wing in honor of Frank and his wife. Given his long history with the law school, his remarkable accomplishments in the field of labor arbitration, and the endowed chair he had donated to the College of Law, it seemed like the appropriate thing to do. Frank and Edna were honored, but initially resisted the recognition. While we were attempting to organize a reception to cut the ribbon on the newly dedicated wing, Frank called to tell me two things. First, he really didn't want a reception. Second, he and Edna had decided to make a gift to the College of Law now "so students could begin to enjoy the benefit as soon as possible." It was a few weeks later that I learned of the magnitude of the gift—a record six million dollars exclusively for student scholarships. They wanted it to be anonymous, but I convinced them the story behind the gift was too important to be kept quiet.

The story of Frank and Edna is a love story. They were devoted to each other in their personal and professional lives—married for fifty-six years. Most every time we would visit, Frank jumped at the opportunity to tell me how they met and how she finally said "yes." He would conclude by saying how much he loved her—not as an idle affirmation, but a clear declaration of his feelings. Together they would tell stories about how they worked in

* University Vice President, Dean of the College of Law, Director of the Law Center, Fenelon Boesche Chair in Law, and Professor of Law, University of Oklahoma College of Law.

partnership on editions of *How Arbitration Works* and other scholarly projects. One window into their nature is that almost twelve years ago they moved out of their family home in Norman to an assisted living home for the sole reason of providing comfort and support to Edna's brother, who required such a living arrangement.

They shared a common love of the law and a common belief in the power of scholarships to positively impact the lives of individuals and society. Frank and Edna explained that they were motivated to make the gift to provide scholarships because they would never forget the impact scholarships had on their own abilities to pursue law degrees. They desired to give a gift that would positively impact the lives of many more. Because of this gift, talented students today are able to study the law and pursue the careers of their dreams.

Frank's story is a story of his love of the College of Law. Frank Elkouri was a student at the College of Law from 1944 to 1947. He left in 1947 to pursue his LLM and SJD at the University of Michigan. It was in his SJD work that he produced *How Arbitration Works*, the book that would launch him to the top of his academic field. At the age of thirty-one, he returned to the College of Law, this time as a young member of the faculty. He taught on a full-time basis until 1985, when he assumed emeritus status. He remained active as a retired faculty member, writing and teaching until the day he emptied his office in 2010. While Frank could have pursued his career at any law school, he chose OU, and there was a special relationship between the two.

Frank's story is also a story of the true and enduring friendships he had with his colleagues at the College of Law. He was the last of the special generation of post-World War II faculty who developed the College of Law and spent much time together socially. He was close with so many members of the faculty, including Professors Mark Gillett, Drew Kershen, Judith Maute, David Swank, and, especially Randall Coyne.

Frank will be greatly missed. I feel a selfish emptiness when I realize I cannot drive south on Chautauqua Avenue from the law school and spend time with him. My nine-year-old son frequently accompanied me on my visits, and he misses Frank's warm smile and keen interest in his life. Frank is special and an indelible part of the history of the College of Law; he represented so much that is good in all of us. His was a life well lived, and long after we are all gone, the Frank and Edna Asper Elkouri Scholars will serve as an enduring and appropriate tribute to Frank and his life.

THE BIBLE OF LABOR ARBITRATION

*Theodore J. St. Antoine**

Each of the three traditional learned professions has had its “bible.” Divines had the progenitor, the *Holy Bible* itself; medical doctors had *Gray’s Anatomy*; and lawyers had *Blackstone*. What could be more fitting than that the sprightly newcomer to the ranks of the learned professions—labor arbitration—should also have its own bible: *Elkouri & Elkouri, How Arbitration Works?* But while *Blackstone*, *Gray’s*, and perhaps even the King James Version have largely been supplanted by sleeker, more contemporary models, nothing of the sort has happened to *Elkouri*. It just sails on majestically from one edition to another, now heading into its seventh.¹

In the process, of course, *Elkouri* took on added propulsion in the form of the redoubtable Edna Asper Elkouri, Frank’s spouse, as co-editor. Then, beginning with the fifth edition in 1997, editing responsibility passed to the Committee on Alternative Dispute Resolution in Labor and Employment Law of the American Bar Association’s Section of Labor and Employment Law.

As a graduate and faculty member of the University of Michigan Law School, I take a special pride in *Elkouri & Elkouri*. Frank Elkouri’s 1951 SJD dissertation at Michigan Law was the basis for the first edition of the famous work. In addition, our mutual mentor, Russell A. Smith (a Past President of the National Academy of Arbitrators), penned these prescient words in his Foreword to that first edition:

The next decade should disclose whether the recorded and published decisions of arbitrators have developed some generalized thinking about collective bargaining problems Some may view this prospect with alarm, based on a fear of stereotyped thinking and undue reverence for precedent. This attitude seems to me to show a lack of understanding of the judicial process. It is simply contrary to every canon of progress to refuse in this field or any other to conserve the accumulated

* James E. & Sarah A. Degan Professor Emeritus of Law, University of Michigan.

1. ELKOURI & ELKOURI, *HOW ARBITRATION WORKS* (Kenneth May et al. eds., 7th ed. 2012). The first edition was a mere 271 pages long; the seventh edition checks in at 1896 pages. Although the title, like that of the National Academy of Arbitrators, suggests a comprehensive coverage, the Elkouri treatise, like the Academy membership, is confined to labor and employment arbitration. That lack of specificity reflects the preeminence of labor issues at a certain stage in the development of arbitration in this country. *See, e.g.*, DENNIS R. NOLAN, *LABOR AND EMPLOYMENT ARBITRATION IN A NUTSHELL* 1-9 (1998).

wisdom and experience of the past and make such use of it for the solution of present problems as sound judgment may dictate.²

In the late 1990s the National Academy of Arbitrators was divided over whether to sponsor what became *The Common Law of the Workplace*,³ a shorter statement of the major principles developed in labor arbitration. The very same fears of “stereotyped thinking” identified by Russ Smith were voiced by a number of Academy members. In that discussion, I found much comfort in Russ’s reassuring thoughts. When the decision was finally made to proceed with *The Common Law*, I wrote Russ, then in his 90s, that I deeply appreciated having such a youthful-spirited person on my side in that great debate. I got back a charming note from him, telling me how much he enjoyed learning that something he wrote almost a half-century earlier was still being read and heeded. But it was Frank Elkouri who had the vision and fortitude to embark on what could have been a lonely and fruitless voyage.

Today it is the rare arbitrator or advocate who, when confronted with a novel arbitration problem or the need for some good authority to support a particular position, does not turn first to *Elkouri & Elkouri*. It has indeed become a byword—the veritable “bible” of the arbitration profession. There are other, crisper profiles of the subject, multivolume encyclopedic treatments, and works dealing more deeply with specific topics like discipline and discharge or winning advocacy or arbitral decision-making (and I myself have been involved with several of these). But when one seeks a clear, sound, comprehensive overview of the whole field in a single volume, *Elkouri & Elkouri* remains supreme.

For the most part, the Elkouris and their successor editors have avoided the trap of taking too strong a stand on one side or the other of sensitive, controversial issues in labor arbitration. They generally have been satisfied with describing the opposing views, citing the cases supporting them, and then letting the reader (or the arbitrator) decide. An example of an exception may have been the Elkouris’ seeming endorsement of the outworn “plain meaning” rule of contract interpretation, but they had plenty of company among distinguished arbitrators.⁴ Yet even Homer nodded, and

2. Russell A. Smith, *Foreword* to FRANK ELKOURI, *HOW ARBITRATION WORKS*, at xi, xi (1952).

3. *THE COMMON LAW OF THE WORKPLACE: THE VIEWS OF ARBITRATORS* (Theodore J. St. Antoine ed., 1998).

4. See FRANK ELKOURI & EDNA ASPER ELKOURI, *HOW ARBITRATION WORKS* 348-50 (4th ed. 1985). Compare Carlton J. Snow, *Contract Interpretation: The Plain Meaning Rule in Labor Arbitration*, 55 *FORDHAM L. REV.* 681, 704 (1987) (“Arbitrators’ continued invocation of the plain meaning rule is anomalous in light of the trend to reject the rule by

it may simply have been Frank and Edna's respect for a clearly prevailing view among arbitrators that led them too into nodding on this occasion. Recent editions, I should mention, have been far more receptive to criticisms of the plain meaning rule. In any event, a possible lapse here and there in providing fully rounded reporting can hardly detract much from a work that has been so indispensable to so many in enlightening them about such a highly important, practical field as labor arbitration.

the courts, the U.C.C., the Restatement, and treatise writers."); *see also* 6 CORBIN ON CONTRACTS §§ 25.4-25.5 (Joseph M. Perillo ed. 2012).

FAR MORE THAN THE RESUME

*Randall T. Coyne**

What can I say about a man who I love and who mentored me for more than two decades? All are aware of Frank's remarkable professional accomplishments: a consummate professor, an internationally recognized scholar, a highly esteemed arbitrator, and a beloved colleague.

But Frank was far more impressive than his stellar resume.

To know Frank Elkouri was to love him. I have never met a kinder, gentler, more generous man than Frank. He was a gentleman in every sense of the word.

When I joined the College of Law faculty in 1990, Frank and I became fast friends through our shared love of jazz music. Bill McNichols, another accomplished faculty musician, and others on our retired faculty well remember Frank's gift for playing clarinet.

In a faculty combo along with Bill and other colleagues, he entertained students and faculty alike at many a Gridiron.¹

I never had the pleasure of hearing Frank play. And I deeply regret that.

Frank knew and was delighted that I play in a jazz quartet once a week, on Fridays. As Friday would draw near, he would ask me: "Are we playing tonight? I wish I could be there, but I'll be with you in spirit."

I would record those shows and play them for Frank and Edna in the car, often on the way to doctor appointments. And Frank really seemed to enjoy them. He always had something positive to say—usually right before he would fall asleep for a brief nap.

Soon after Frank and I discovered our mutual love for jazz, we bonded over our shared love of Edna. Frank would often tell me he loved me. But—with what I like to imagine was a hint of jealousy—he'd say: "But I think Edna might love you more."

Frank and Edna had no children of their own. Of course they loved Frank's sister Lucille and his brother Jim. And they adored their niece Michele and their nephews, Richard and Michael. The Elkouris' incredible generosity to the College of Law has greatly benefited countless students pursuing their childhood dreams of becoming lawyers.

Many years ago, when my daughter Marley was in elementary school, her school celebrated Grandparents Day. Children were asked to invite their grandparents to school for a party. My daughter's grandparents were out of state and unable to attend. Frank and Edna stepped in as surrogate

* Frank Elkouri and Edna Asper Elkouri Professor of Law, University of Oklahoma College of Law.

1. Gridiron is the annual spring law school production and dance, colloquially referred to by students as "Law Prom."

grandparents. That marked the beginning of a special relationship shared by Frank, Edna, and my daughter.

In his final years, Frank suffered greatly. And I'm not talking about faculty meetings.

A combination of ailments—arthritis, a twice-broken leg, back problems, and Padget's disease—left him in almost constant pain. But Frank never complained. He daily demonstrated true bravery and remarkable selflessness.

I never once heard Frank say an unkind word about anyone. He and Edna particularly enjoyed the esteem and respect which Dean Emeritus Andy Coats, and more recently Dean Joe Harroz, bestowed upon them.

And of course, they were ever so grateful for the kindness and love they received from their friends from Rivermont Retirement Community, their church, and the College of Law, particularly Mark Gillett, Judith Maute, and Drew and Kathy Kershen.

Even more, though, they especially savored the homemade chocolate chip cookies Libby Gillett would bring by from time to time. Whatever differences they may have had during their fifty-six year long marriage, they enthusiastically agreed that Libby's cookies were "the best chocolate chip cookies in the world, ever."

The love of Frank's life, of course, was his precious Edna. Frank's deep, abiding affection for Edna was so genuine and touching. Perhaps this is because Frank had to propose to Edna three times before she accepted. Frank was a patient man. And his persistence paid off handsomely.

I've never seen a man more deeply in love with a woman. They were married for fifty-six years. Think about that. Often, Frank would gush about his soul mate Edna: "My beautiful darling. Isn't my precious Edna so beautiful?"

During a career as a law teacher, you acquire nicknames and titles. In addition to being the George Lynn Cross Research Professor, Frank was known during his teaching days as "The Elk." George Frasier earned the nickname "The Tiger." Bill McNichols was called "Wild Bill."

Of all the names associated with me—with the possible exception of Daddy—my proudest is the Frank Elkouri and Edna Asper Elkouri Professor of Law.

I thank God for putting Frank and Edna in my life.

A COLLEAGUE'S COLLEAGUE

*Drew L. Kershen**

Frank Elkouri—gentleness in spirit, kindness in deeds, and integrity and intellect in scholarship and professional life.

Frank was the last survivor of the University of Oklahoma World War II generation of law professors—men who devoted themselves to the College of Law: George Fraser, Eugene Kuntz, Dwight Morgan, Elbridge Phelps, Dale Vliet, Leo Whinery, and Harold Young. These men left a legacy of excellence. We are indebted to these men.

Frank was a creative man with his musical talents and his musical interests. He was a man who could play a clarinet and make you want to dance. He not only joined a College of Law faculty, but also joined a law school big band!

Frank was devoted to Edna. They teamed to produce a classic work in labor law that continues to this day to influence labor arbitration. Frank and Edna were, and are, a sweet couple who blessed us with their lives.

Thank you, Edna and Frank, for befriending Kathy and me so many years ago. We are privileged to know you. We express our sorrow to you, Edna, but we rejoice with you in your love and memories of Frank.

* Earl Sneed Centennial Professor of Law Emeritus, University of Oklahoma College of Law.

THE ULTIMATE GENTLEMAN

*Judith L. Maute**

It was an honor to speak at the beautiful Trisagion Service celebrating the life and death of this extraordinary man and an honor to write this tribute based on those remarks. In looking at pictures and thinking about stories of Frank in his younger, healthier days, we were reminded of his good looks, dapper wardrobe, bright spirit, strong intellect, and generous spirit, which he freely shared with others. A lesser man could have found good cause to complain, hold grudges, or become grumpy in his old age, wracked with untreatable pain.

Frank was the ultimate gentleman, in thought, word, and deed. Despite his remarkable professional accomplishments, he was humble and kind to all with whom he interacted. I cherish memories of first meeting him over thirty years ago, and those memories made up to the day he died. When I last saw him, he apologized for being grumpy because he was in such pain, and yet exclaimed with delight at his delicious lunch of saltines and milk. Imagine that. He consistently looked on the bright side of life, finding good in everyone and grateful for the kindness of others—especially for Randy Coyne and for Libby Gillett's chocolate chip cookies. On occasion I brought chocolate candy—which he and Edna ate sparingly, to make it last longer.

I recall various interactions through the years that exemplified Frank's positive and kind-hearted outlook. In my first year of teaching I had the dubious privilege of teaching the entire first year class a pass/fail course in legal methods. A student handed me a copy of a joke involving a workers' compensation lawyer, knowing that I had practiced some in the field. After scanning quickly, I made a copy and put in Frank's mailbox, not realizing that it contained an off-color term. A few days later, I asked Frank what he thought of the joke, and he said I was probably too young to know that a term included in it had a sexual connotation. After the funeral, Peter Kutner and Mac Reynolds laughed again at that embarrassing moment. Lesson well learned. Never share a joke that you have not read and approved for content and word choice.

Frank and Edna shared a deep and abiding love for each other. After meeting Edna at a church event while she was working with the Internal Revenue Service in Washington, D.C., their long-distance courtship lasted several years before he persuaded her to marry. Between courtship and marriage, they were together nearly sixty years. They were a true partnership in all aspects of life, with each complementing the other in so

* William J. Alley Professor of Law and President's Associates Presidential Professor, University of Oklahoma College of Law.

many ways. Yet it was striking how each maintained their independence. Last year I brought over some chocolates with macadamia nuts, and Frank insisted that Edna could not partake because of her food allergies. As soon as he dozed off, she quietly opened the box and ate one, looking a bit like a Cheshire cat. I can only imagine the void his passing has left in her heart.

Frank's kindness and generosity of spirit knew no bounds. I cannot recall him ever speaking poorly of a colleague or other person. For law faculties nationwide, that is exceptional. Frank gave fully of himself and always thought the best of others. Another dear colleague, now at another school, was in a committed same-sex partnership when I joined the faculty. During my recruitment process she remarked that Frank was so good-hearted that he fully accepted her partner as a member of the College of Law faculty family. When I wrote to tell her of Frank's passing, she reflected that he was the last of an era. Those who welcomed her in the 1970s included George Fraser, Eugene Kuntz, Dwight Morgan, Elbridge Phelps, and Dale Vliet.

Besides their love for each other, Frank and Edna demonstrated their abiding love for the law and the College of Law. Together they produced the most important treatise on labor arbitration, *How Arbitration Works*. I first worked with it as a law student at the University of Pittsburgh in a labor arbitration seminar. It is widely considered the penultimate work on the subject, and it certainly enabled their unprecedented generosity to student scholarships. As a result, they will live on forever as beloved members of the law school community, helping future generations of law students who could not otherwise afford legal educations.

Frank was a beloved teacher for generations of students. On his ninetieth birthday, one of our excellent support staff thought to get a card for people to sign; I had the privilege of delivering it to him. Frank and Edna passed the card back and forth, being so touched that they discussed framing it. Dean Emeritus Andy Coats inscribed it "to my professor," which touched Frank so deeply.

In remembering Professor Elkouri, Jim Drummond, a local criminal defense attorney, writes:

Professor Elkouri's wit and thorough benevolence toward his students [were] matched only by his exhaustive knowledge of the three courses I took from him. As a freshman I was fairly fresh out of the Army in his Property II class, and often wore my Army shirt to class. The first time he called on me he called me "U.S. Army." I also recall him bringing wastebaskets to gum chewers with a huge grin on his face. He was a brilliant teacher, fair and clear. I much later had the honor of being President of the Cleveland County Bar when we celebrated his 60th year as a

member of the Oklahoma Bar Association He will be always remembered fondly by me.¹

Frank's love of music and his own clarinet talent were renowned. When my daughter was small, he made tapes of children's music for her and tapes from the big band era for me. After Frank retired, Frank and Edna published a book to keep their minds active. *Stories of the American Civil War: Why and How It Was Fought* includes much music from the Civil War era.²

And so, as the pearly gates opened to welcome Frank near the start of Lent, I heard strains of Louis Armstrong singing "when the saints go marching in."

1. E-mail from Jim Drummond, to author (Mar. 4, 2013, 4:36 p.m.) (on file with author).

2. FRANK ELKOURI & EDNA ASPER ELKOURI, *STORIES OF THE AMERICAN CIVIL WAR: WHY AND HOW IT WAS FOUGHT* (2008).