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IN MEMORIAM: PROFESSOR EUGENE O. KUNTZ¹

EULOGY TO A "GENTLE MAN" AND SCHOLAR

Gene Kuntz exemplified the description: "a gentleman and a scholar." He was not only a gentleman, but he was also a "gentle man" with a zest for life. Close friends of Gene, including friendships forged because of mutual interest in oil and gas law, will remember Gene for much more than his status as a legendary teacher, scholar, Dean, and lawyer. We will remember his always pleasant demeanor, his wonderful sense of humor, his penchant for singing, and his natural talent for enlivening any gathering. At the annual dinners of the Board of Editors of the *Oil and Gas Reporter*, Gene would often give a light-hearted impromptu speech and then lead the group in song. At any social gathering, people would tend to gather around Gene and his spouse, Rose, just to share in their love of life.

We will remember Gene for his love of God and his church, and especially for his deep love for his spouse, Rose. Gene and Rose were a match made in Baylor. To a Southern Baptist, a match made in Baylor would be comparable to a match made in heaven. But for Rose' Southern Baptist parents, who lived in Waco, one can imagine that they might not have been too keen on their daughter dating and marrying a dance band musician from Houston. Nevertheless, for Rose and Gene it was love at first site, and love it remained for the fifty-five years that they worked together and played together. Their friendship, love, and respect for each other and for their family is an inspiration for all.

Gene Kuntz has influenced oil and gas law more than any other individual, but the start of his career would not be typical today. In 1940, he completed his law degree at Baylor before completing his undergraduate degree. He then practiced law in Amarillo until one day in August of 1941 when, through a bureaucratic foul-up, he was abruptly mustered into the Navy, four months prior to Pearl Harbor. When discharged from active duty after the war, he completed his undergraduate degree from Baylor and earned his LL.M. degree from Harvard because he had always wanted to teach law. So, rather than return to the hot, windy plains of Amarillo, he and Rose went to the cold, windy, mountains of Laramie where he first taught at the University of Wyoming College of Law.

While at the University of Wyoming, Gene quickly made his mark as a scholar of natural resources law by writing about the meaning and intent of the word "mineral" when used in a mineral deed or mineral reservation. In a 1949 Wyoming Law Journal article, Gene argued that the question of a mineral owner's title to a particular depletable substance should be separated from the question of the mineral owner's right to use and damage the surface estate. Over the years, variations of his argument have been adopted by courts in several jurisdictions, including Texas in 1984. And elements of his view are also present in federal statutes governing the strip mining of coal.

After coming to the University of Oklahoma in 1952, Gene began writing a treatise on oil and gas law, which he completed in the 1960s. Then, between 1987 and 1991, when Gene was in his 70s and coping with cancer, he wrote a complete revision of his treatise. When Gene was working on his first edition, a competing oil and gas law treatise was written by Professors Charles Meyers and Howard

1. This tribute is comprised of eulogies taken from the memorial service in honor of Eugene Kuntz held on November 18, 1995, at the Memorial Presbyterian Church in Norman, Oklahoma.

Williams, who began their work while at the University of Texas. I don't believe Texans present at today's service will mind my suggesting that this merely illustrates the old saw that it takes two Texans to do the work of one Oklahoman. Of course in saying this, I conveniently overlook the fact that Gene was born in Texas.

Several law professors gained preeminence in the 1950s as oil and gas scholars. Indeed, Gene came to the University of Oklahoma in 1952 to replace Professor Victor Kulp, an oil and gas scholar of an earlier generation. Gene's colleague, Professor Maurice Merrill, was a scholar of several subjects, including oil and gas implied covenant law. While at the University of Oklahoma, Gene served as the George Lynn Cross Research Professor, as the Alfred P. Murrah Professor, and as Dean of the College of Law. In addition to teaching at the Universities of Wyoming and Oklahoma, Gene has taught at Southern Methodist University, the University of Texas, and the University of Calgary, where he served as the Killam Scholar and Visiting Chair of Natural Resources Law.

In 1954, Gene was appointed by the Southwestern Legal Foundation as an Editor of the *Oil and Gas Reporter*. Gene started contributing commentary in Volume 3, and did so through Volume 125. Gene's case commentary was not always favorable, as many justices of the Oklahoma Supreme Court may lament, but it was always polite, respectful, and thoughtful, in full recognition of the fact that a judge is obliged to write "legal decisions" and a law professor is obliged to write "legal criticism." In 1992, Gene received the John Rogers Award from the Southwestern Legal Foundation in recognition of his leadership in forging oil and gas policy. Gene was the first, and thus far, the only person from the academic community to receive this prestigious award.

Together, Gene Kuntz's writings, in particular his treatise, have been cited in nearly 250 reported cases by courts in all major oil and gas producing states and by many federal courts. The Supreme Court of the United States, a court that seldom hears natural resources matters, has cited Gene in three opinions. Within the past year, Gene's treatise has been cited in several opinions handed down by the Oklahoma, Kansas, and Colorado Supreme Courts on the question of whether certain costs may be deducted from gas royalty payments. Just a few weeks before his passing, Gene expressed some regret to me that the courts of Oklahoma and Kansas had overstated his position on this question; however, he was pleased that Colorado had at least gotten it right "in principle."

In the early 1980s, Gene envisioned a new oil and gas law text for use in law schools. Professors Ernest Smith, John Lowe, and I were privileged to co-author a casebook with Gene. This was my first personal contact with Gene. Over the years, but especially since I came to Norman in 1992, we have spoken frequently, often about oil and gas issues, and most recently, about ten days before his death when he was busy writing a legal brief from his hospital bed. I know that I speak for all oil and gas lawyers and professors in deeply regretting not having at least one more opportunity to study at the foot of this master. I am more fortunate than others, however, as I have the great honor to hold the Eugene Kuntz Professorship at the College of Law, and, for this reason, Gene's spirit will continue to be close to me.

Owen L. Anderson

GENE KUNTZ: DEAN, PROFESSOR, AND COLLEAGUE

One of our purposes today is to celebrate — to celebrate the incredible richness of Gene Kuntz's life and to celebrate the ways our lives have been enriched by his.

Four of my law school classes were taught by Gene — Property II, Trusts, Oil & Gas (of course!), and Oil & Gas Taxation. He was one of the teachers we took as many classes from as we could because his classes were known to be fun as well as challenging. We had to be prepared because we were called on regularly. We were glad to be prepared because Gene brought the material to life and made it useable.

I joined the faculty in 1962. Gene began his five years as dean in 1965. They were five very good years for the College of Law. Gene was a strong advocate of faculty governance and instigated a system of committees that ensured faculty were actively engaged in all important decisions. Further, he insisted that this method of decision-making be firmly in place before he left the deanship in 1970. It was, and it has indeed served us well in the twenty-five years since.

Undoubtedly Gene's most significant achievement as dean was the separation of the College of Law's budget from the rest of the University's. This gave the College of Law the same budgetary independence as the other state professional schools, the medical school in Oklahoma City and the veterinary medicine school in Stillwater. This "separate budget" has not made us a wealthy academic unit, but it has served us well through the state's economic ups and downs. As Oklahoma's only state-supported law school, we have fared significantly better as a piece of the state budgetary pie than we had as a part of the Norman campus pie.

Undoubtedly Gene's, and Rose's, most significant contribution to law school life over the years has been the persistent injection of fun into our lives. As one example, in the 1960s the faculty actively participated in the annual College of Law "Gridiron." Gene scripted and orchestrated a triennial rotation of "pageants" for the faculty's contributions to this annual party. There was the pageant of water, in which water represented knowledge and was poured from one scholar's cup to another through the ages until it reached the current student who ineptly spilled most of it and it was lost. There was a similar pageant of fire in which the flame of knowledge was passed from candle to candle, but the current student had no idea what it was for and snuffed it out. Best of all was the dramatization of Prosser's *Lighthouse Him No Good for Fog*,² a short reading attributed to a coastal Native American, reporting his observations. The lighthouse represents the teacher guiding the many with its light of knowledge. The fog represents the ignorance of students which is vast and impenetrable. Gene read it with vigor, a line at a time:

Lighthouse, him no good for fog.
Lighthouse, him whistle, . . .
him ring bell,
him flash light,
him raise hell; . . .

2. William L. Prosser, *Lighthouse No Good*, 1 J. LEGAL ED. 257, 257 (1948).

Gene would have three faculty members on the stage with a ladder. As Gene read, one would mount the ladder and blow a whistle, a second would go up and ring a cowbell, and a third go up and would flash a light. Then the three would whistle, ring, and flash simultaneously. Then Gene would deliver the last line:

but fog come in just the same.

At each Gridiron, there would also be a faculty musicale with Gene on bass fiddle and one or more of Frank Elkouri on clarinet, Leo Whinery on violin, Bill McNichols on drums, and Dwight Morgan on guitar. Dale Vliet, of course, would entertain us with his magnificent voice. Gene also loved to sing. He played a strange multi-string instrument he called a "zither" and sang a variety of songs accompanying himself. For many of us, our favorite was "Scarlet Ribbons," a delightful ballad suggesting the power of prayer.

At a variety of faculty parties over the years, large and small, there would be singing, with Gene on the bass, Rose on the piano, and sometimes others.

Also there were the annual one-day bus trips to Dallas for the Oklahoma-Texas football game. Gene's bass voice was a main ingredient of the truly rare and wonderful song sessions on the trip down, and the trip back. Among the many favorites were *South of the Border* (with Gene's fanciful interjections) and, for an obvious reason, *San Antonio Rose* and *The Yellow Rose of Texas*.

My wife Carol and I have not known two people more devoted to one another than Rose and Gene. One illustration occurred in 1981 on a group cross-country bicycle trip through Vermont. They were in their sixties and past their fortieth wedding anniversary. Several days into the trip during a stop for a meal, one of the younger couples was eating with them and said "We've been wondering . . . and it's none of our business . . . but we've been watching you . . . and the way you look at each other . . . we have to ask . . . are you newlyweds?"

There is of course no way to describe adequately the myriad of ways Gene Kuntz and Rose have enriched so many of our lives with good fun and fellowship, with good food and good drink, with good jokes, good singing, and good conversation, over so many years. We know we are much the richer, professionally and personally, for having Gene as our teacher, our colleague, and our friend.

We have indeed been blessed to have travelled so much of our journey through this world in the company of Rose and Gene.

Daniel G. Gibbens

EUGENE KUNTZ AND PRIVATE PRACTICE

Eugene Kuntz was truly a Renaissance Lawyer; that is, a lawyer with far ranging legal skills and interests who had become expert in many areas. His contribution to the law of oil and gas is well known and documented. However, his expertise extended to other areas including taxation, trusts and estates, property, and, of all subjects, the rule against perpetuities, an area that the California courts have held to be too complicated to be the basis for lawyer malpractice. We knew him as a legal scholar, an administrator, a teacher, an author, a reporter and a private practitioner. I will share with you some of the aspects of the life of Gene Kuntz as the private practitioner.

Gene joined the law firm of McAfee & Taft in 1958. From then until he became Dean of the law school in 1965, he divided his week with predictable order, spending Monday through Wednesday in the law office handling, with zest and uncommon skill, enough work to fill an ordinary lawyer's total week, and on Thursday, Friday, and Saturday, conducting a full class load in Norman. After Gene left the Dean's office in 1970, he rejoined our firm as counsel, and for these many years, he has shared with us his knowledge of the law, his counseling, and his draftsmanship. Gene's contribution to our firm and its clients has been invaluable and irreplaceable. But what I really want to share with you for a few short moments is a sense of those characteristics that made Gene Kuntz the most successful among successful practicing lawyers.

What is success in the practice of law? What are the attributes of the most successful? With Kuntz in mind, words like competent, persuasive, patient, practical, and available come to mind. But what really set Gene apart from other successful lawyers was his sense of humor, his practical bent, and, most of all, his extraordinary creativity. At McAfee & Taft, Gene demonstrated all of his unique attributes. He once wrote a memorandum to "all hands" at the firm in observation of our new Office Management Policy Manual. It said:

Pursuant to our recently completed synchornized policy projection, we have now adopted a functional reciprocal concept of total organizational flexibility. It will now be necessary for parallel management options to be developed in addition to a responsive logistical capability. Before we proceed, we need your comments on the proposed systematized reciprocal concept described above, the need for compatible third-generation hardware and ample time for the carrying out of a parallel policy time-phase.

Be sure and make your comments clear and concise.

Eugene Kuntz

His humor had a point, and what a kind way to comment upon a flawed policy manual.

My law partner, Pete Woodruff, has written about Gene's career at McAfee & Taft in the *Oklahoma Law Review*. That article captures, precisely, the characteristics of his success, and I would like to share part of it with you.

Everything Gene did in the law office was done at a consistently high level of excellence, in every way comparable to the standards that he set in law school. Gene's academic background was a strong asset in his practice. His broad and current knowledge of the law and his awesome power of recall were reflected in every aspect of his legal engagements. Despite his reputation and eminence in the oil and gas field, Gene's expertise in the areas of taxation and estate planning was widely known among our lawyers and the firm's clients. Equally important were his practical bent and inventiveness. Although fully appreciating the limitations imposed by the relevant statutes and decisions, Gene was primarily concerned with his client's goals; he loved nothing more than to find a way — and it was often a brilliant new way — to "wire around the problem." Added to these formidable strengths were Gene's invaluable personality assets: his empathy and patience with clients and

his persuasiveness in the administrative and judicial cockpits where his practice often took him, to his personal delight. In the litigation arena, Gene was universally respected by both bench and bar for his vigorous and effective advocacy. Gene was, in short, a Compleat Lawyer.

Most impressive, Gene operated under what must surely have been severe pressure caused by his multiple careers, without appearing to be anything but calm and cheerful. His door was always open to even the youngest lawyer in the firm. He never seemed hurried; he never, not even once, lost his sense of humor. Whatever fires may have raged within, to all the world Gene remained outwardly and incredibly serene.

After Gene left the Dean's office in 1970, he rejoined our firm as counsel and, for several years, was with us every Monday. During those years, the inevitable restrictions imposed by a one-day-a-week appearance altered Gene's role, but did not lessen its value. We should not have been, but were nevertheless surprised at the significant number of client counseling and drafting jobs that could be accomplished within a single day each week.

Perhaps his most significant contribution to the firm at that time was to serve as the firm's guru — I just wish we had listed him that way on our letterhead. Our lawyers were like a file of ants, streaming in and out of Gene's office every Monday seeking his knowledge and ideas on matters as disparate as the tax complication of large-scale acquisitions, or the interpretation of an oil and gas lease provision, or the best way to "wire around" the Rule Against Perpetuities in a will, or a minor law firm administrative matter. Whoever the supplicant, and however involved or trivial his problem, Gene's reaction was always constant — invariably friendly and invariably helpful.³

Gene Kuntz once told me, "I enjoy everything I do." His work reflects this express pleasure, and I say, "Gene Kuntz was simply the very best at everything he did."

Gary F. Fuller (written with Judson S. Woodruff)

GENE KUNTZ: ONE OF MY HEROES

Gene Kuntz is one of my heroes. I do not have countless heroes. I can perhaps count them on one hand. There are many people in this world whom I admire. But I reserve the word "hero" for those who go beyond admiration. What fits my description of a hero? A hero, I must first say, is not perfect. And a hero is certainly not a god. What is a hero? A hero is three things to me. A hero is someone I know personally. A hero is someone who points out a higher road — a higher way of living. And a hero is someone who models that higher way of living, who by his or her own life inspires me, nudges me, cajoles me into taking a higher road myself. For eleven years I have known Gene Kuntz. I have seen him in many situations. And there is no doubt in my mind, he fits my description of a hero.

3. Judson S. Woodruff, *Eugene Kuntz and Private Practice*, 34 OKLA. L. REV. 22, 22-23 (1981) (altered from original).

A word about Gene's priorities. They have meant very much to me and have helped me in setting my own priorities. First in Gene's life? The law? The law that he practiced with diligence and excellence? One colleague said about Gene and the law, "He set the intellectual and ethical standard for several generations of lawyers." But this same colleague recognized that it was not the law that came first in Gene's life. After his basic commitment to God, there was one person who was number one to Gene — his wife Rose. As this same colleague expressed it in writing to Rose, "You were Gene's strength and inspiration, literally the love of his life." His wife was number one. They were, as one person said, "soulmates." "Almost like one person with two heads." Gene, I think, put it best on the day before he died. On eating hospital food the comment was made that it was not a "gourmet meal." At which point Gene said, "But I had a gourmet companion."

And then there was his family. His daughter, Karen, his son-in-law, Dennis, his grandchildren, Travis and Alicia. Alicia and Travis said of their "Pappy," "He played with us when we were younger . . . he made time for us . . . he would always tell us how proud he was of us no matter what we did."

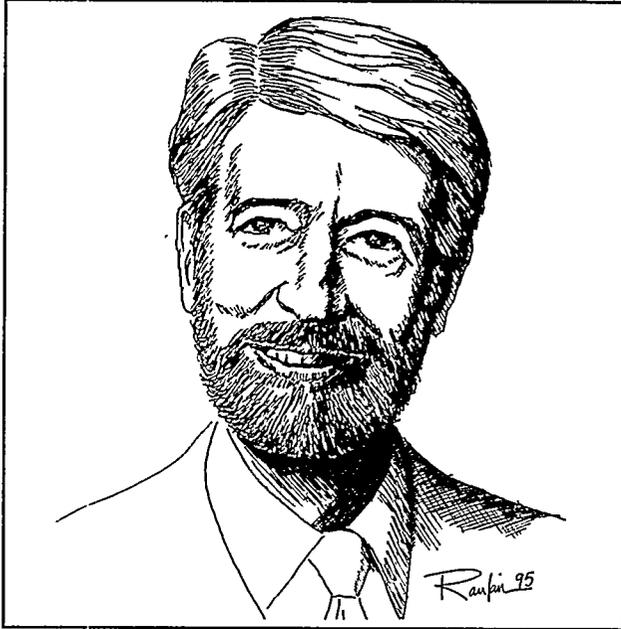
And next there was the church through which he offered faithful service to God. Service offered, in one member's words, with a "quiet sense of grace." Service offered, as another member said, "with more quality words in less time than most people." Service offered out of a strong faith which was much more than the words by which he professed his faith.

And then there was the law. In one sense, the law may not have fallen behind the church for Gene. Gene worshipped God through the church. But I believe that he also worshipped God through the way he approached his work. God gave him certain skills, and I think that Gene tried to honor God through proper use of those skills. His own grandson noted, "he was an excellent lawyer." And so he was. Among the many comments I heard about his legal skills, perhaps the one I like most came from the person who said that Gene "could reason with someone in such a way where you felt it was your idea." What a way to win a case!

I spoke about Gene this past week with a member of this church who is a former librarian. She reminded me of a phrase from *Hamlet*: "I shall not look upon his life again." No. There will not be another man exactly like this man. But through the gifts that come from God through Gene Kuntz's life, I believe that "his like" will continue to walk upon this earth. That, I pray, will be his greatest legacy. That because he lived, we too will be inspired to make a joyful sound to the Lord in whatever we do.

We thank God for the life of Eugene Kuntz. Gene Kuntz was born on October 8, 1913, in Corpus Christi, Texas. He died on November 11, 1995, in Norman, Oklahoma.

*Dr. James M. Burns, Jr., Pastor
Memorial Presbyterian Church
Norman, Okla.*



EUGENE O. KUNTZ
1913-1995

