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A Tribute to Hon. George Bundy Smith – Colleague, Teacher, and Friend

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A Tribute to Hon. George Bundy Smith – Colleague, Teacher, and Friend*

Judith S. Kaye

Abstract

A tribute to Judge George Bundy Smith, discussing his work ethic both as a judge, professor, and mentor, his principles as a jurist, and his personal qualities.

KEYWORDS: judge, judges, george bundy smith, new york state court, tribute

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**A TRIBUTE TO
HON. GEORGE BUNDY SMITH
COLLEAGUE, TEACHER, AND FRIEND**

*Judith S. Kaye**

Writing for this journal of Fordham Law School, where Judge Smith is celebrated not only as a great jurist but also as a great teacher, I feel the need to begin with a confession. I have been keeping this a secret for a long, long time and I need finally to fess up. It's good for the soul.

For many years—when Judge Smith carried the additional burden of serving as Senior Associate Judge on the Court of Appeals, right-hand man to the Chief Judge—again and again I strenuously urged him to give up his teaching responsibilities here at the Law School, which at a minimum during Court Sessions required him to travel down from Albany on Monday afternoons and then, after class, back up to Albany. He often arrived back in the dead of night.

As he now marks his 25th straight year on the Fordham faculty, you know how stunningly successful I was.

While licking my wounds, I have often reflected on how characteristic that was of Judge Smith. And I have isolated three themes from that experience that in my mind typify my former Colleague and forever friend George Bundy Smith.

NO DUTY IGNORED

First, despite the added time demands of teaching, the fact is George Smith never flagged in a single responsibility of the Senior Associate Judge—whether being liaison with or heading up Committees, or attending innumerable meetings, or simply being on hand to consult with me. Indeed, he never flagged in *any* of his responsibilities, however impossible the demands.

He is a prodigious, productive worker. Even at the Court of Appeals, where the competition is stiff, George Smith's working hours were legendary. We all grew accustomed to finding faxes and e-

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mails he had transmitted to us in the wee hours of the morning. His wife, Dr. Alene Smith, never remembers him without an armload of briefs and other delightful reading material, even when attending weddings, graduations, and family picnics. What fun!

Having had the privilege of sitting right next to Judge Smith on the bench for several years I can tell you that he was always consummately prepared on the briefs *and* on the record. He was meticulous beyond description, often questioning counsel on fine points in the record. His brilliant mind and his unstinting effort always to reach the just result, and then to express it precisely, clearly, and convincingly are reflected in his extraordinary contribution to the law of the state and nation, in hundreds of writings for the Court of Appeals.

Happily, his passion for preparation and study of the law is matched by his passion for justice—justice for litigants and justice for society—which he has honed over his entire lifetime. We know his struggle in every case, large and small, to reach just the right result, and then to express it thoughtfully, clearly, and convincingly. I have to admit to some discomfort when my vote in Conference differed from Judge Smith's—I know his courage and commitment to the right result in every case. So first and foremost, I should have known that I did not need to ask Judge Smith to relinquish his teaching responsibilities here at Fordham because there was never any question that he would discharge all his responsibilities fully, wholeheartedly, and magnificently. Doing everything he undertakes magnificently and with a full heart is characteristic of George Bundy Smith.

A MATTER OF PRINCIPLE

Second, I learned very early in our relationship that dissuading George Smith from something he believed was the right thing to do was an impossible task. You might call that stubborn; I think the correct word is principled. I do not by this mean that he was needlessly difficult—absolutely not. Always Judge Smith was a great colleague, with enormous respect given and received around the Court's Conference Table; the correct word for that is collegiality. He knew when to press an issue, and when not; the correct word for *that*, I believe, is wisdom. When he disagreed with a recommended result in a case but could live with it—as many times he did—he would announce that he “wasn't going to jump up and down about it.” But if it was a matter of principle for him, forget it. There was no budging him.

So, second on my list is that I should have known that when it came to guiding, counseling, teaching, and mentoring law students, this was something Judge Smith *would* jump up and down about. This was a matter of principle. No way was he about to relinquish his teaching responsibilities here at Fordham. They just mattered too much to him. Mentoring, teaching, promoting the very best in the next generation of our noble profession is characteristic of George Bundy Smith.

HIS PERSONAL QUALITIES

Third and finally, no one on Earth can turn a person down more graciously, more politely, or more pleasantly than George Bundy Smith. I was never aware that I was being solidly rebuffed; I did not even feel bruised. He very cordially and courteously told me he would think about my request. I presume he still is thinking about it.

Indeed, in our fourteen years as Court of Appeals colleagues, I can remember differences but never an unpleasant moment with Judge Smith. Treating every human being with dignity and respect, never being disagreeable even when disagreeing, that too is wholly characteristic of George Bundy Smith, who is the epitome of a modest, humble, gentle, caring, compassionate colleague and friend. There is not a hint of ego or pretension about him. The only thing calculating about George Bundy Smith is that he did an incredible job of divvying up the bill when the Court of Appeals Judges dined together in Albany. In that respect, as in all others, he is without peer.

I know there were many times we disagreed on the law—they are recorded in the Court's Official Reports. I suspect there were many times we disagreed on other matters—how could that not be so? But I do not even remember what they were. Agree or disagree, what I do remember—what is forever engraved on my mind—is the magical, light-up-the-world smile that always concluded dealings with George. Today more than ever I appreciate the futility of the course I had initially embarked on with Senior Associate Judge George Bundy Smith. There is nothing that he cherishes more than the opportunity to mentor and guide law students. Now to have scholarships in his name at this great law school would for him clearly be the ultimate honor, and I thank Fordham for bestowing this honor on a most deserving person. Always in every class there will be a George Bundy Smith Scholar at the Law School, an enduring compliment to Judge Smith.

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I am delighted for my beloved friend, and even more for the current recipients of this precious accolade: third-year day student Kyle Vaughn, a Brooklynite and 2004 graduate of the University of Rochester with a Political Science major; second-year day student Raya Salter-Moore of Westchester County, who is a 1994 graduate of Wesleyan College, and married with a daughter; and first-year evening student Beth Scott, a Long Islander and 2005 graduate of Yale University with an English major. Mr. Vaughn, Ms. Salter-Moore and Ms. Scott should know that while the scholarships are an enduring compliment to Judge Smith, they are an even greater compliment to their recipients. Judge Smith has earned enormous respect within the legal community; carrying his name, the George Bundy Smith Scholars have both a ready credential of excellence and a responsibility to maintain it.

Seeing the proud students, seeing the light-up-the-world magical smile on the face of Judge Smith as he met them, it occurred to me that I have never had greater joy in being flatly turned down by one of my Colleagues.