Richard W. Jennings

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No one I have had the privilege to know so completely integrated the private and public attributes of personality and character as did Richard Jennings. What he had to say to another person in private he was prepared to say about that person in public; what he was, by his lights, duty-bound to say about someone in public he was prepared to say to that person in private. That comment could be construed in negative or cynical terms, but I mean it in high praise. He did not—could not—temper his reflections on persons or events because of the situation or context in which they were heard. To him, the notion that a letter of reference might differ depending on whether or not it could be held in confidence by its recipient was close to incomprehensible.

This did not make Richard Jennings a stiff-necked absolutist. He was not so much convinced of his own rectitude as he was an unconscious embodiment of that virtue. He understood the inevitability of the more human frailties, of course, and he did not judge them harshly. What Dick understood very well, however, were those frailties born of greed and its temptations; that is, knowing their inevitability, he knew that they would not be banished from this world by calls to human nature to better itself in this regard. He was no Cartesian; the notion that society or law could expect a person to rise above financial self-interest by the internal processes of judgment would, and did, make him laugh. His major public contemporary in his field, Louis Loss, famously said that you could no more expect a salesman to abstain from puffery than a nation to abstain from slaking its thirst, and on that at least Loss and Jennings were as one. Removing temptation, not issuing calls to rise above it, was his public creed; in the detailed expression of that belief in appropriate rules and appropriate procedures Dick won both his reputation and the deep respect of his students and colleagues.

Eulogies by the subject’s intimates generally end up focusing on the eulogizer as much as the subject, and this brief comment will not be the exception, but let me limit myself to the context in which the above judgments were reached. In terms of character and temperament Dick Jennings of course was formed early, by nature and by nurture. In terms of the direction of his engagements, on the other hand, he was a child of his times; that is, he was formed—blooded—by the Depression and the excesses that preceded it. He would not have sympathized with the notion that insider trading is acceptable because it speeds the flow of information

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to public markets whatever his era; but the passion and persuasiveness with which he argued the contrary owed much to his experiences. Put in broader terms, he was able, as a result, to impress onto the laws and practice of California, and to a considerable degree on the laws and practice of the federal regime, values that a less integrated person—if that is a proper term—could have not impressed on them.

As his student in 1952 and later as a young colleague, I was more than once invited by Dick and Betty to join the family for a weekend or week of skiing in the Tahoe Basin. Once you got above Colfax (on the two-lane highway), it generally was time to put on the chains. Local residents stationed themselves at promising locations and offered their services to get under the car and do the attachments, probably for a dollar or two at the time, and most drivers happily availed themselves of the help. Dick Jennings could no more do that than buy orange juice in place of oranges, and so this old man, over forty, would get out and lie under the car and do the job himself (at least until he finally trusted his son Tom or me to do it right). It was certainly not the money as such, although saving this cost in a sense was a surrogate for right living. I tell this story as an example of ethical persuasion: Dick could not help but live the principles he could not help but preach, and by doing so his preaching was effective. The same integration was evident in the classroom. Yes, Dick preached (including that long-lost art, "read the Code!"), but his concern for his students' understanding of the subject was real and passionate and in his students' eyes fully justified his worrying at them when they had not taken the trouble to prepare for the hour.

Those readers who knew Richard Jennings need no more than this, I believe, to awaken their own reflections on his person and his significance to their education and professional lives. For the latecomers who did not have this privilege—and the blessing of his survival as an active and engaged human being into his 90s means, in that limited sense, regrettably, that their number is large—one more reflection is necessary. None of them should think that this man was unsophisticated. He could not have become the "titan of the law," as the New York Times obituary named him, had he not had a thorough understanding of the economic and financial life of the country and the world. Dick Jennings understood the structure and processes of financial markets and of corporate life as well as any academic or practitioner of his day; no detail about the practice of brokers and dealers, of underwriters and investment bankers, or for that matter of accountants and lawyers escaped him. More, he saw trends and changes earlier than most, from his alertness to what became the Silicon Valley phenomenon that Larry Sonsini describes to the significance of the revival of the German and Japanese economies and the development of the nascent European Economic Community. He was fully and finely attuned to the
architecture and the dynamics of the subjects about which he taught, wrote, and consulted.

Some of Richard Jennings's passions no longer engage the bar, bench, regulator, and legislator, at least for now. His long advocacy of local control of the pseudo-foreign corporation has not turned out to be translatable into effective state corporation law, although that battle is not over. In the larger context, his struggle to keep state law involved as an equal partner of the SEC in the regulation of corporate finance—especially his state, with its Department of Corporations and its deep and historic "culture"—has lost its persuasive power if not all of its relevance. Dick Jennings understood these changes and could accept those that were inevitable even as he fought those that were not yet such; one could even discuss the pros and cons of cumulative voting with him after 1977. That does not matter. Dick understood the times well enough to know why and how they would change. What is important is that his work is so sound in its value judgments and so sound in its sophistication that it will count as the times continue to change, and in that soundness it is the reflection of the person.