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Memories of a Partner, Colleague, Servant-Leader, and Friend

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We will sorely miss Dennis Belcher, who passed away on April 27, 2017, at the age of 65. As our friend and ACTEC Fellow Nancy Fax put it, "He was too young, too vital, too talented, and too beloved to be gone." He indeed was all those things. To me, as my partner, he played a vital role in building an outstanding private wealth service practice group. He unselfishly offered his talent to the profession and the community, including, very conspicuously, to build and strengthen professional organizations like ACTEC. And his winsome ways and sensitive spirit made him a beloved servant-leader and friend.

I. Dennis, My Partner

In 1998 I was recruited to McGuireWoods[1] by Cathy Hughes, who had preceded me in moving there from Miller & Chevalier. Along with Cathy, Dennis was the main reason I made that move. After McGuireWoods agreed with Dennis to make me an offer, it still took me several months to make the decision to leave Miller & Chevalier, the outstanding tax firm that had trained and supported me for 23 years. Dennis was the consistent voice of the seemingly impossible blend of no pressure and no let-up at the same time. Through the regular "how's-it-going" phone calls and the occasional "we're-really-serious" dinners with Dennis and Vickie at professional meetings, Dennis made the offer irresistible.

At the time, Dennis was advising the executors of an estate on issues that he decided needed a letter ruling from the IRS. He enlisted the help of a McGuireWoods partner who had previously worked in the IRS Chief Counsel's office where the ruling request would be considered. That partner helped Dennis prepare the ruling request and participated with Dennis in an ensuing conference at the IRS National Office. Because of the importance to me of preserving my own good relationship with the Chief Counsel's office, I decided that part of my due diligence in considering my move was to ask a former Miller & Chevalier partner who worked there if he had any impression of the reputation of

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1 It was then McGuire, Woods, Battle & Boothe.

McGuireWoods. Without mentioning any taxpayer information, he recalled the conference he had recently attended to discuss that very ruling request. He told me it had gone very well, and that the former IRS attorney did all of the talking while "a young guy with him who looked like Tom Cruise didn't say anything but seemed nice." Giddy with the revelation that there was one place in the country related to tax law where Dennis could go unrecognized, I accepted the McGuireWoods offer.

Possibly the most significant contribution Dennis made to the Private Wealth Services practice at McGuireWoods was to nourish and insist on a culture of great unselfishness and collegiality. It never mattered to him who got the credit. He refused to make it about himself. He refused to be flashy. His example was compellingly contagious. It cultivated a team approach that was the best way – in many cases the only way – to deliver high-quality, vigorous, and imaginative legal service, especially in those cases where complex fact patterns, vexing legal problems, or persistent family discord aggravated the challenges and demanded the most and the best of us.

And here's how that worked: A client or a colleague could bring a tough question to one of us and get rigorous analysis, or to someone else and get thorough research, or to someone else and get the benefit of years of experience. Or one could go to Dennis, and Dennis would often seem to just guess. But he would turn out to be right! Thus was built Dennis's well justified reputation for having unequalled instincts about what the best outcome for any situation was and how to move toward that outcome.

Dennis had convictions, he always had a vision for the right outcome in any matter, and, again, he had an unequaled instinct for how to achieve that outcome. Some might say that made him "opinionated." In the family of his McGuireWoods colleagues, he sometimes was opinionated, even stubborn. But in dealing with clients, clients' families, opposing parties and counsel, colleagues in ACTEC and other professional organizations, and the public, he was entirely winsome and focused on the needs and interests of others, even as he instinctively knew the best outcome and how to move toward it.

II. Dennis, Our Professional Colleague

This issue of the *ACTEC Law Journal* is being devoted to memories of Dennis Belcher mainly because of his leadership role in ACTEC, including his service as ACTEC's 55th President in 2009-2010, which was mirrored in his service to other professional organizations as well.

A. Task Force on Federal Wealth Transfer Taxes (2001-2004)

The enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001,[2] with its awkward repeal of the estate and GST taxes deferred nine years to 2010 and then lasting only one year, ushered in a decade of great anxiety about changes in wealth transfer taxation and how to anticipate and accommodate those changes in estate planning. In response, the American Bar Association's Section of Real Property, Trust and Estate Law,[3] the American Bar Association's Section of Taxation, the American College of Tax Counsel, the American Bankers Association, the American Institute of Certified Public Accountants, and ACTEC created a joint Task Force on Federal Wealth Transfer Taxes. The task force consisted of 33 professionals from those six organizations, many of them members of more than one of those organizations.

Because of his outstanding reputation within all of the sponsoring groups and the professional circles they represented, Dennis was designated the chair of the task force. Sure enough, he set goals, stimulated thinking, collected ideas, and presided over a number of vigorous discussions in a manner that gave every member the satisfaction of having an important voice while still staying on track and making progress. Dennis wisely guided the task force to a consensus that it would not try to produce a lobbying piece advocating specific changes in the tax law, but instead would identify practical issues in the technical tax law environment, offer alternative ways to address those issues, and objectively analyze those alternatives. Perhaps Dennis's most farsighted and important contribution was to see the need for an independent, yet knowledgeable, reporter to translate the task force's views into a cohesive report, and to recruit Professor Mary Louise Fellows of the University of Minnesota Law School for that role.

The task force published its report in 2004.[4] It included such subjects as the phaseout and subsequent reinstatement of the estate and GST taxes, the gift tax that had escaped the phaseout, the new modified carryover basis rules enacted for 2010, a thorough and practical overview of the entire federal system for taxing wealth transfers, and possible alternatives to that system. The report was blunt in spotlighting the uncertainty, complexity, and arbitrary disparity created by the one-year repeal in 2010. Astutely – but, as it regrettably turned out, futilely – the report suggested that Congress either promptly make the repeal perma-

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2 Pub. L. No. 107-16, 115 Stat. 38 (2001).

3 It was then the Section of Real Property, Probate and Trust Law.

4 TASK FORCE ON FED. WEALTH TRANSFER TAXES, REPORT ON REFORM OF FEDERAL WEALTH TRANSFER TAXES (2004), https://www.americanbar.org/content/dam/aba/administrative/taxation/migrated/pubpolicy/2004/04fwtt.authcheckdam.pdf.

nent or promptly reinstate the estate tax.[5] Alternatively – with almost eerie foresight – the report suggested giving the executors of estates of decedents who died in 2010 the ability to elect to be subject to estate tax rather than the modified carryover basis regime.[6] Prophetically, it discussed portability of the unified credit and the GST exemption between spouses, which has largely become the law,[7] and offered several alternatives to the valuation rules of chapter 14, which continue to confound the estate planning community and the IRS alike.[8]

The task force's report was historic. Despite the fact that many of its useful suggestions have not yet been followed, I was told that it was considered an indispensable reference by many congressional staff members, especially when navigating the unparalleled landscape of 2010.

B. ABA Section of Real Property, Trust and Estate Law (2002-2003)

In 2002-2003 Dennis chaired the American Bar Association Section of Real Property, Trust and Estate Law with energy and distinction similar to what he always demonstrated in ACTEC. Besides his very effective public leadership of the Section, in one behind-the-scenes incident someone called his attention to a newspaper article about poor people losing land to developers through partition actions. Although Dennis had come to his leadership role through the "trust and estate side" of the Section, he immediately urged his colleagues on the "real estate side" to look into that report. That ignited inquiry and discussion, which by 2010 produced a new uniform act protecting heirs and devisees of tenancy-in-common interests in land.[9] Dennis could not keep from making things better.

C. Sponsorship at ACTEC National Meetings (2003)

Financial support from businesses that interact with the estate planning practices of ACTEC Fellows has long helped ACTEC provide lively fellowship, interesting activities, and robust education at the regional and state levels, but such sponsorship was traditionally not a part of national meetings. Dennis was appointed to lead an effort to reconsider that tradition. His report to the Board of Regents at the annual

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[5] *Id.* at 14.

[6] *Id*.

[7] *Id.* at 99-101. Eschewing simplicity, Congress excluded the GST exemption from the portability provisions of I.R.C. § 2010(c).

[8] *Id.* at 101-15.

[9] UNIF. PARTITION OF HEIRS PROPERTY ACT (UNIF. LAW COMM'N 2010), http://www.uniformlaws.org/shared/docs/partition%20of%20heirs%20property/uphpa_final_10.pdf.

meeting in March 2003 recommended that sponsorship be embraced as a regular practice at the three national meetings each year, and the Board of Regents, after thoughtful debate, agreed.

I was at first wary of this change, although I ended up supporting it on the basis of the recommendations and explanations Dennis offered. When I became president of ACTEC at that 2003 annual meeting, it fell to me to implement the sponsorship mandate. The task of implementing a permanent policy, knowing that each decision, protocol, and letter would establish a standard and set a precedent, was formidable. I shamelessly challenged Dennis with variations of "What were you thinking?" He gave practical pointers for where and how to start. Sensitive to my initial wariness, which he respected, he especially offered counsel on how to start modestly (for example, by not initially offering corporate sponsors access to committee meetings) while leaving room for expansion and growth. I remember Dennis telling me, "We can always go forward, but it would be hard to go back."

Today it is obvious that sponsorship of ACTEC's national meetings has produced not only the resources to enhance the meeting experience but also rich opportunities for mutually beneficial professional interaction, including invigorating interaction at committee meetings. I exchanged my cry to Dennis of "What were you thinking?" with the confession of "What was I thinking?" when I was originally wary of the proposal.

D. ACTEC's Estate and Gift Tax Committee (2004-2007)

Dennis's stewardship of ACTEC's Estate and Gift Tax Committee could not have occurred at a more dramatic time.

After his reelection in 2004, President George W. Bush referred to the "political capital" that he had earned and intended to "spend."[10] He also made it clear that one of the centerpieces of his domestic agenda was to make permanent the tax cuts enacted in 2001, including the repeal of the estate and GST taxes. The Republicans had maintained control of the House of Representatives, and the 55 Republican Senators were a larger number of Republicans than there had been in the Senate since Herbert Hoover was President. The time had come, it seemed, to make the one-year repeal of the estate and GST taxes permanent.[11]

The permanent repeal of the federal estate tax was placed before the Senate when, by a more-or-less bipartisan vote of 272-162 on April

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[10] Richard W. Stevenson, *Confident Bush Outlines Ambitious Plan for 2nd Term*, N.Y. Times, Nov. 5, 2004, http://www.nytimes.com/2004/11/05/politics/campaign/confident-bush-outlines-ambitious-plan-for-2nd-term.html?mcubz=0.

[11] *See*, *e.g.*, Martin A. Sullivan, *60-Vote Majority at Hand for Estate Tax Repeal*, 105 Tax Notes 1174-77 at 1174 (Nov. 29, 2004).

13, 2005, the House passed its current version of the "Death Tax Repeal Permanency Act of 2005" to abandon the 2011 "sunset" that limited repeal to just the year 2010.[12] At the end of July 2005, just before the August recess, Senate Majority Leader Bill Frist of Tennessee filed a cloture motion that, if 60 Senators approved, would have brought the bill to the floor of the Senate when it reconvened on September 6, the day after Labor Day. But a week before Labor Day, Hurricane Katrina had crashed ashore in New Orleans. The spectacle of considering huge tax cuts for the nation's wealthiest families when multitudes on the Gulf Coast had been left with nothing proved to be too much for the Senate to handle. On June 8, 2006, the Senate finally took up a cloture motion, which fell three votes short.

No one knows how the repeal vote might have come out if it were not for the devastating intervention of Hurricane Katrina – and, the following month, Hurricane Rita. And the Republican losses in the 2006 mid-term election essentially closed the path to permanent repeal in that decade. Thus, it was during Dennis's three-year chairmanship of the Estate and Gift Tax Committee that the chaos of 2010, birthed in 2001 among widespread incredulity, began to look like it might really happen. Dennis's leadership prepared the Committee to lean on its creative oars and weather the figurative storm of 2010 that the real storms of 2005 had made inevitable. He left the Committee in strong shape for his successor, the late Mil Hatcher of Atlanta.[13]

E. ACTEC Presidency (2009-2010)

When 2009-2010 finally arrived, Dennis's term as ACTEC's President was a time of enormous transition. The 2001 changes in the tax law had still not been rationalized when he took office in March 2009. Personnel decisions were pressing, as ACTEC's long-serving Executive Director, Gerry Vogt, announced her retirement. And many ACTEC leaders concluded that the time had come to consider moving the ACTEC office from Santa Monica, California, to Washington, D.C. We had all seen Dennis's ability to tackle tough issues, solve problems, accomplish things. Things like tax reform options and sponsorship policy. But 2009 was special.

Dennis arranged a meeting of the Board of Regents in June 2009 in San Francisco at the summer meeting (when it ordinarily did not meet) to decide the issue of moving the ACTEC office. He had previously circulated word of his intention to call on each Regent to speak, in the

[12] H.R. 8, 109th Cong., 1st Sess. (2005).

[13] Mil was another good friend who died too young, at the age of 63 in May 2011, barely a year after completing his term as chair of the Estate and Gift Tax Committee.

order in which they were assigned seats around the meeting table – that is, in alphabetical order – and then to call on the Regents Emeriti (the past presidents), also in the way they sit – alphabetically (which, of course, I thought was entirely fair!). As in Dennis's past endeavors and as his friends had come to expect of him always, everyone left the meeting comfortable that they all had had a say, even though Dennis had known all along exactly what outcome he wanted. Who could deny that the move to Washington has worked out beautifully!

F. Trachtman Lecture (2016)

At the request of President Bruce Stone, Dennis delivered the annual Joseph Trachtman Memorial Lecture at the annual meeting in Las Vegas in March 2016. Reminding the audience that canaries have been used in coal mines so that if they fell silent it would warn when levels of poisonous gases were becoming unsafe, he titled his thoughtful lecture about the future of the estate planning practice, "Do We Need a Canary or Did the Canary Stop Singing and We Missed It?"

Dennis started by observing that transfer taxes now affect fewer people, as confirmed by the declining numbers of estate and gift tax returns filed. He viewed this trend and increased competition from non-law firm sources as "negative change drivers" for estate planning practices. But, always an optimist, Dennis balanced that with even more "positive change drivers," including demographic changes and more complicated lives that require more advice. The demographic changes he cited were an older population and children who are slower to leave their parents' homes, slower to marry, and slower to have children, all of which, Dennis said, creates opportunity because clients need more advice (if they are willing to pay for it). He identified a surprising number of what he called "growth areas," including both quantitative trends like more planning for ultra-high net worth clients, more income tax planning, more fiduciary litigation, more business planning, more charitable planning, more elder law planning, and more international planning, and qualitative trends like more focus of high-end charitable giving on transferring family values and not just family wealth.

Dennis introduced what seems to be an original contrast between "*Beverly Hillbillies* practices" and "*Star Trek* practices." He reminded us that as a television series *Beverly Hillbillies* enjoyed high ratings with simple plots during its 274 episodes over nine seasons, while *Star Trek* struggled with low ratings with complicated plots that required the viewer's "investment," before it was cancelled after only three seasons and 79 episodes. Nevertheless, after cancellation, *Star Trek* spun off seven seasons of "Star Trek: The Next Generation" and six movies, with world-wide box office receipts of $2 billion, while *Beverly Hillbillies* was largely relegated to re-runs.

Dennis was quick to point out that he meant no disrespect of *Beverly Hillbillies*, citing his own "hillbilly blood."[14] But, continuing the theme, Dennis saw a *Beverly Hillbillies* practice as a "commodity practice:" price sensitive, leveraged, and boring. He urged us toward a *Star Trek* practice, which he saw as focused on more complex matters, assets, and beneficiary relationships, less price sensitive, with multiple contacts, and offering the lawyer opportunities to becomes a "trusted advisor." The trusted advisor, Dennis reminded us, gets work that is more purely legal, more sophisticated, more lucrative, and more attractive to younger lawyers.

Then, in what proved to be some of Dennis's final advice to his national ACTEC family, here is what he shared about "how to be a trusted advisor:" "Have credibility [reinforced by ACTEC affiliation]. Invest in knowing more about the client. Spend time with the client without charging. Schedule regular meetings with the client. Get to know the client's family."[15] Those of us who were privileged to know Dennis realize that these points were not just his advice, they were his model and are his legacy.

III. Dennis, Servant-Leader and Everyone's Friend

As I mentioned, at meetings of the Board of Regents the past presidents of ACTEC (as Regents Emeriti) sit alphabetically. Accordingly, I had been looking forward to sitting next to Dennis, so he could tell me what things really meant. But he didn't come much! This, I had come to know, was a part of how he balanced his commitments to his clients, his colleagues (including associates and young partners whom he made it a priority to mentor), and of course his wife Vickie and their family, which always came first for Dennis.

Dennis respected balance in others too. On the morning of his Trachtman Lecture, Dennis chatted with a Fellow who it turned out was going to skip the lecture to go kayaking with friends. His response was, "Good for you!"

But if Dennis didn't always maintain a high profile or perfect attendance, when there was a problem to be solved, he was there. He served solely for the sake of serving – not for reward – not to be praised.

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[14] Dennis's father, Finley ("Red") Belcher, was a banjo player with the band Kentucky Ridgerunners, playing hillbilly music (now called Early Bluegrass music) on WWVA Jamboree in Wheeling, West Virginia (where Dennis was born). He died in a car crash in 1952, eight days before Dennis's first birthday.

[15] This is from the PowerPoint slides Dennis used during his lecture. A transcript of his lecture appears in Part I of this volume.

But he served to really serve, to get things done – identifying transfer tax options, protecting tenants-in-common, obtaining sponsorship of ACTEC meetings, and gaining approval for the move of the ACTEC office. Whatever he did, including serving, he did with great purpose and a strong resolve.

We all know how unselfishly Dennis gave back to the estate planning profession, especially thorough speaking engagements. His leadership in recent years of the annual current developments program at the Heckerling Institute on Estate Planning was legendary. One time, at another educational conference, Dennis was enjoying the reception the evening before for speakers and the planning committee when word came that the recent developments speaker had a family emergency and couldn't come. Without hesitation, Dennis said, "I'll do it." He took the scheduled speaker's material, and the next morning he delivered an analysis of recent developments just as if he had been the planned speaker all along.

Very few equaled Dennis's ability as a speaker, but none equaled his ability as a listener. By listening, Dennis showed he cared. Listening was also how Dennis formed the advice for which he was famous, succinctly stated – even pithy – but wonderfully helpful! For example, he told one of our partners, "Tell your father you love him today." He told someone who was planning his daughter's wedding, "When it's all said and done, you want no regrets."

Another one of our partners recently told me this about Dennis: "Despite living in a world of billionaire clients, Dennis treated everyone the same. His clients included the super wealthy and the guy from the mailroom."

As Turney Berry of Louisville, Kentucky, another of Dennis's successors as chair of the ACTEC Estate and Gift Tax Committee, put it in an email shortly after Dennis's death:

> We cannot *define* a dear friend, but we can *describe* one:
>
> Encourager,
> Inspirer,
> Someone who cares as much about what you are doing
> as what he is doing.
> *The* constant lender of the helping hand,
> *The* faithful leader,
> *The* friendly face,
> *The* first to say thank you.
>
> Or instead, we can say – Dennis.