

THE PRACTICAL SCHOLAR

DAVID G. EPSTEIN*

Larry King was “the practical scholar” for bankruptcy.

In 1992, Harry Edwards, a District of Columbia Court of Appeals judge who has been a lecturer at New York University Law School since 1989, provided a definition of “practical scholarship” that defines Larry’s scholarship: “[I]t analyzes the law and the legal system with an aim to instruct attorneys in their consideration of legal problems; to guide judges and other decisionmakers in their resolution of legal disputes; and to advise legislators and other policymakers on law reform.”¹

I

“INSTRUCT ATTORNEYS”

After his first law review article in 1958,² “The Adverse Witness

* Charles E. Tweedy, Jr. Chair, University of Alabama Law School; Bruce Nichols Visiting Professor, Spring 2002, Harvard Law School. B.A., 1964, University of Texas; LL.B., 1966, University of Texas; LL.M., 1969, Harvard Law School. As one of the hundreds of people who thinks of himself as one of Larry’s close friends, I am grateful to the editors of the *New York University Law Review* for this opportunity to honor Larry.

I am also grateful to Professor Roy Mersky of the University of Texas Law School and his uncommonly talented and hard-working colleague, Jeanne F. Price, Electronic Resources Librarian at the Tarlton Law Library of the University of Texas Law School. Jeanne can and did find anything.

¹ Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 Mich. L. Rev. 34, 42 (1992). Judge Edwards’s article provoked a heated debate over whether law professors do, or should, produce “practical scholarship.” See generally, e.g., Robert W. Gordon, *Lawyers, Scholars and the “Middle Ground,”* 91 Mich. L. Rev. 2075 (1993); Sanford Levinson, *Judge Edwards’ Indictment of “Impractical” Scholars: The Need for a Bill of Particulars*, 91 Mich. L. Rev. 2010 (1993); cf. Julius Getman, *In the Company of Scholars* 43 (1992) (

Research thus provides the dress suit for academic elitism, clothing with respectability the attitudes that the academic enterprise is more important, demanding, and complex than other endeavors and that first-rate academics are different, smarter and more creative than other people.

Research also has its egalitarian aspects. At its best, it connects the academy with the real world. It often reminds us that reality is more complex than professors sometimes pretend and that thinking and ideas are not our exclusive province.)

² Arguably, Larry’s first article was published while he was a student editor of this review. Lawrence King & Richard Lieb, *Report to the Second National Conference of Law Reviews*, 28 N.Y.U. L. Rev. 1001 (1953). It is harder to make the argument, however, that this report on a conference of law review editors “instructed attorneys in their consideration of legal problems.” Edwards, *supra* note 1, at 42-43.

Statute and Expert Opinion,”³ most of his articles were on bankruptcy law and provided a comprehensive and comprehensible explanation of statutory language and policy considerations.

Try to identify the litigable issues under section 67b of the Bankruptcy Act of 1898,⁴ and then read Larry’s article on statutory liens in bankruptcy. Or try explaining to a city council member or mayor how the 1976 amendments to Chapter IX provisions might affect her city, and then read Larry’s article on municipal insolvency.⁵

While Larry’s law review articles have been of real value to the bar, Larry’s most significant contribution to lawyers in their consideration of legal problems is, of course, his work on the *Collier* bankruptcy books. Not even a Texan could overstate how important the various *Collier* bankruptcy books have been to lawyers or how important Larry has been to the *Collier* series. Judges and practitioners regularly look to *Collier*,⁶ and the publishers of *Collier* regularly looked to Larry King.

Originally, *Collier on Bankruptcy* (like “Imus in the Morning”) was a person: In 1898, William Miller Collier, a thirty-year-old bankruptcy referee in Auburn, New York, wrote a treatise setting out his views on the Bankruptcy Act of 1898.⁷ Today the *Collier* treatise has various distinguished judges, lawyers, and law professors who serve as contributing authors or editors. Nonetheless, for the more than twenty years that Larry was editor-in-chief, *Collier on Bankruptcy* was again, in a sense, a person. Larry did a substantial amount of original writing for the *Collier* series and even more “rewriting.” Larry’s fingerprints and red ink were on every page of the *Collier* manuscript. Wherever Larry went (other than the tennis court or the synagogue),

³ Lawrence P. King, *The Adverse Witness Statute and Expert Opinion*, 4 *Wayne L. Rev.* 228 (1958). Larry began his teaching career at the Wayne State University Law School, where his subjects included Civil Procedure and Michigan Practice. *Directory of Law Teachers* 189 (1959); *Directory of Law Teachers* 184 (1958).

⁴ Lawrence P. King, *Statutory Liens—1966 Amendment of Section 67 of the Bankruptcy Act*, 55 *Ky. L.J.* 542 (1967).

⁵ Lawrence P. King, *Municipal Insolvency: The New Chapter IX of the Bankruptcy Act*, 1976 *Duke L.J.* 1157.

⁶ Law professors also regularly look to *Collier*. For reasons that only a law professor or law-school dean could understand, a law professor did a study that measured the “academic distinction of law faculties.” In part, this study determined that, as of July 1998, Larry King stood among the fewer than 200 law professors whose articles and treatises had been cited at least 500 times in journals and law reviews on the Westlaw “JLR” database. Brian Leiter, *Measuring the Academic Distinction of Law Faculties*, 29 *J. Legal Stud.* 451, 470-75 (2000).

⁷ See Hon. Prudence Beatty Abram & Andrew DeNatale, *From Referee to Bankruptcy Judge: A Century of Change in the Second Circuit*, in *The Development of Bankruptcy and Reorganization Law in the Courts of the Second Circuit of the United States* 59, 67 (1995).

Larry took pages of *Collier* manuscript with him. And, Larry took *Collier* wherever it went with respect to "open questions." Decisions as to whether *Collier* should take positions on unresolved questions and what those positions should be were guided by Larry's judgment and expertise.

II "GUIDE JUDGES"

And the positions that *Collier* took often "guided judges." I found⁸ more than 140 reported cases that refer to *Collier* (when written/edited by King) as the "leading treatise" or as the "leading academic/scholarly authority" or the "leading/noted commentator" on bankruptcy law. The Ninth Circuit in *Houglund v. Lomas & Nettleton Co. (In re Houglund)*,⁹ was "comforted in [its] decision by the fact that a leading treatise on bankruptcy law [*Collier*] agrees with this construction of the statute."¹⁰

Larry was not always "comforted" by, or in agreement with, decisions of the Ninth Circuit or other courts. His *Columbia Law Review* article on the Ninth Circuit's decision in *Pacific Finance Corp. v. Edwards*,¹¹ begins:

Although the wording and intent of Section 70c of the Bankruptcy Act seem clear and unequivocal, in view of the difficulty some courts have had in applying it, it must in fact be just the opposite. Within the past eight years, two federal courts of appeals have rendered horrendous decisions in cases involving the simple application of [S]ection 70c.¹²

The article goes on to explain why the *Pacific Finance* decision was "horrendous"—why it was inconsistent with statutory language and bankruptcy policy. *Collier*, of course, took a similar (albeit more temperate) position.¹³ No court outside of the Ninth Circuit adopted the *Pacific Finance* "misreading of [S]ection 70c."¹⁴

⁸ More accurately, Jeanne Price found the cases.

⁹ 886 F.2d 1182 (9th Cir. 1989), overruled by *Nobelman v. Am. Savings Bank*, 508 U.S. 324, 330-32 (1993).

¹⁰ *Id.* at 1184.

¹¹ 304 F.2d 224 (9th Cir. 1962).

¹² Lawrence P. King, *Pacific Finance Corporation v. Edwards: Another Misreading of Section 70c of the Bankruptcy Act*, 63 Colum. L. Rev. 232, 232 (1963).

¹³ See 4B *Collier on Bankruptcy* ¶ 70.50, at 614 (James Wm. Moore & Lawrence P. King eds., 14th ed. 1976) ("It is submitted, with due deference, that the Ninth Circuit Court of Appeals was in error . . .").

¹⁴ King, *supra* note 12; cf. *In re Callahan Motors, Inc.*, 396 F. Supp. 785, 791 (D.N.J. 1975) ("Reliance on *Pacific Finance Corporations v. Edwards* is misplaced, as although it does support this contention, the holding is clearly contrary to the overwhelming weight of

Larry's work on the rules of procedure for bankruptcy cases also guided judges. He served as Associate Reporter to the Advisory Committee on Bankruptcy Rules from 1968-1976, as Coreporter from 1979-1983, and then as a Committee Member from 1983-1992.¹⁵ According to Judge Morey L. Sear, who served as chair of the Committee for a part of that time:

He was Mr. Bankruptcy, as far as I was concerned. . . . I think that Larry was the most respected . . . and the most dedicated person that worked in the area of bankruptcy that I met in all the years I served on the Bankruptcy Rules Committee.¹⁶

III

"ADVISE LEGISLATORS"

Larry was equally dedicated in his work to advise legislators—even if it meant drinking bourbon at nine in the morning. In his last public speech, the March 30, 2001 keynote address at the American College of Bankruptcy Induction Ceremony, he remembered one of his "most interesting days" working with Congress:

I received a call from Senator Quentin Burdick of North Dakota asking me to come to his office. I was there very quickly, he ushered me into his office, told me to put my feet on the desk, offered me a shot of bourbon (at 9:00 a.m.), and he started talking. He had gotten interested in the bankruptcy jurisdiction of the referee in bankruptcy and wondered out loud whether it made sense to create a commission to study the bankruptcy laws with a view to updating them. I, of course, was in 100% ecstatic agreement and from that moment the 1970 Commission was born[.]¹⁷

Larry served as Consultant to that Commission from 1971-1973 and then later served as Senior Advisor to the National Bankruptcy Review Commission in 1996 and 1997. For more than thirty years, he served the members of Congress and their staff as a respected expert witness and trusted adviser.

authority and has been severely criticized." (first citation omitted) (citing 4A Collier on Bankruptcy, *supra* note 13, ¶ 70.50, at 611-14)), *rev'd*, 538 F.2d 76 (3d Cir. 1976).

¹⁵ See generally Lawrence P. King, *The History and Development of the Bankruptcy Rules*, 70 *Am. Bankr. L.J.* 217 (1996).

¹⁶ In Memoriam: Larry King: 1929-2001, *Bankr. Ct. Decisions Wkly. News & Comment*, Apr. 17, 2001, at A1.

¹⁷ Lawrence P. King, *Address at the American College of Bankruptcy Induction Ceremony* (Mar. 30, 2001), at <http://www.amercol.org/kingspch.html>.

CONCLUSION

As Larry said in his last public speech, "I wanted to teach law in order to educate others on how to help people through the practice of law . . ." ¹⁸ That is exactly what Larry did for more than forty years—and that is what his books and articles will continue to do.

¹⁸ *Id.*