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In Memory of Chief Judge Robert F. Peckham

Robert F. Peckham was born on November 3, 1920, in San Francisco. His grandfather, Robert Francis Peckham, was a district attorney and county judge in Santa Cruz; his father, R. F. Peckham, was a San Jose and San Francisco attorney for many years. Peckham moved to Palo Alto at age seven, where he would reside for the rest of his life.

Judge Peckham earned his bachelor's degree at Stanford University in 1941. He then attended Yale Law School for one year before coming back to Stanford to earn his LL.B. in 1945. He practiced privately for two years before becoming assistant United States Attorney for the Northern District of California, a position he held for five years before resigning to reenter private practice in 1953. During this time, he met and married his first wife, Dr. Harriet Behring, a member of the faculty at Stanford's School of Medicine. They had two daughters, Ann Evelyn and Sara Esther. Dr. Peckham died in 1970; Judge Peckham married Carol Potter in 1974.

Peckham was active in the state's Democratic Party, prompting Governor Edmund G. Brown to appoint him to the Santa Clara County Superior Court in 1959. He remained there until 1966; three of his seven years were spent as presiding judge. President Lyndon B. Johnson tapped Judge Peckham for the federal bench in 1966. He served as district judge until 1976, when he became Chief Judge of the Northern District of California, a position he would hold for twelve years. In 1988, he went into semi-retirement and transferred to San Jose. He remained active until shortly before his death on February 16, 1993 from complications following heart surgery.

Judge Peckham's professional accomplishments are legion. He was a member of the American Law Institute, and published in the California and Rutgers law reviews. He was active in the United States Judicial Conference and the Ninth Circuit Task Force on Alternative Dispute Resolution, which he chaired for five years. On numerous occasions he visited countries in Europe, Asia, and South America to demonstrate jury trials, appellate arguments, and hearings, and to discuss issues in comparative law. He was a member of the American Bar Association's House of Delegates. In 1983, American Lawyer magazine selected Judge Peckham as the "Best Federal Trial Judge in the Ninth Circuit."

Judge Peckham also had a keen interest in history. He founded the United States District Court, Northern District of California Historical Society in 1980; he was a trustee of the California Historical Society for thirteen years as well.

Among many famous trials over which he presided were a long-running suit against the San Francisco Police Department over discriminatory hiring and promotion practices; a suit against the State of California over its use of IQ tests to determine whether children should be placed in special school classes for the mentally retarded; and the criminal prosecution of Larry Layton, convicted of conspiracy in the murder of former United States Representative Leo Ryan hours before Reverend Jim Jones' People's Temple committed mass murder/suicide in Guyana in 1978.

In the pages that follow, three of Judge Peckham's colleagues reflect on the Judge as leader, innovator, humanitarian, mentor, and friend.

Wayne D. Brazil*

This is a portrait of a process purist and a leadership genius. While it is not a portrait of the whole man, it captures some of the aspects of person that were most central to Chief Judge Robert F. Peckham.

When I began thinking about this piece, I wondered whether its focus should be on matters professional or matters personal. After just a few seconds of considering this question I realized that it posed a false dichotomy. For Chief Judge Peckham there was no meaningful separation between the personal and the professional. His professional life was personal. Deeply personal. The genius and beauty of his professional life were products of the genius and beauty of his personal values. In other words, Robert Peckham being a judge and being a leader was Robert Peckham being himself.

Being himself included projecting a profound empathy for the victims in our society—the weak, the less blessed, the underdogs. Being himself included being fair, sensitive, and careful with the rights, ideas, and feelings of others. It included bringing a sense of justice to his work that was informed in large measure by a generous and forgiving humanism. It also included being committed to public service and to improving both himself and the institutions in which he labored.

What most centrally defined Robert Peckham as a judge, however, was the depth and persistence of his respect for others. It is that respect, rather than abstract attachment to some jurisprudential theory, that made him a process purist. That respect was reflected in a fundamental set of assumptions that governed his initial encounters with all the people who appeared in his court. Like virtually all judges in busy urban courts, Judge Peckham was constantly subject to an array of potentially overwhelming pressures. For decades he experienced the demands and the disappointments of litigants and lawyers. For decades he was exposed to the dense emotional and intellectual tensions that accompany vigorous presentation by adversaries of mutually exclusive views. For decades he witnessed the distortions of human spirit and human behavior that can be caused by high stakes litigation. For decades he was pressed from many quarters for more attention and more time than any human could deliver. Yet he never succumbed to the temptation to retreat into the defensiveness, the guardedness, or the aggression that can be born of such experiences and pressures. Instead, he persisted throughout his long tenure on the bench in greeting the lawyers and parties who ap-

* United States Magistrate, United States District Court, Northern District of California.

peared before him with the heart-felt assumption that they were proceeding in good faith, that they had views that they sincerely wanted heard, and that it was important to give them a full opportunity to present those views.

Judge Peckham's sense of the importance of giving parties a full opportunity to be heard was inspired by two powerful sets of instincts. The first was the most deeply rooted. At its center was a genuine interest in people—all other people. He liked people. He felt engaged and enriched by the intricate weave of dimensions that he was able to see in each individual he encountered. Because he valued all people, and expected to be enlarged by what they communicated, he actively wanted to hear from them. In addition, he understood that having an opportunity to be heard was important both to the spiritual health of the persons who appeared before him (a sufficient reason to let them speak) and to the political health of our society. He understood that he had a precious opportunity to encourage people to feel connected to and respect for our democratic institutions when they entered his court and sought to be heard. Since he embodied governmental power he could encourage positive feelings for that power by managing its use respectfully. He was the master, literally, at so managing his power.

The second set of instincts that underlay Judge Peckham's appreciation of the importance of permitting people to be truly heard in his court was rooted in his recognition that reality is often complicated and subtle and, therefore, that doing justice is a complicated and subtle undertaking. He was keenly aware of the limitations of his own knowledge and of the likelihood that if he permitted others to speak freely they would lead him, independently or in dialectic, either to places he could not have anticipated or to an appreciably more reliable basis for decision. He believed, in short, that a judge who does not permit parties to speak freely and to present their perspectives fully imperils the truth-finding process. The integrity of that process was much more important to him than the short-term efficiencies that might have been achieved by curtailing opportunities to be heard.

Like the qualities that distinguished him as a judge, the qualities that distinguished Robert F. Peckham as a leader were manifestations of core personal values and reflections of central features of his personality. In fact, it was by watching how Judge Peckham led—how he approached the task of building toward change—that I learned most about him personally. This is an appropriate place to describe in some detail how he led—because so much of his personal beauty and wisdom is reflected in his approach to leadership.

The personal value that dominated Chief Judge Peckham's approach to leadership was the same personal value that dominated his approach to being a judge: respect for others. His leadership began with openness of heart. He was blessed with an acute and active sensitivity to the circumstances and needs of others, to their pain, their problems, their frustrations, their disappointments, their hopes, and their ambitions. He listened, compassionately and creatively. He empathized. He understood because he wanted to understand. Because his sensitivity was so active he not only understood but in some measure experienced the emotions of the people he encountered in his work and in his community. Experiencing both their pain and their ambition led him inevitably to feel an intense desire to make things better.

That desire to make things better converged with another trait of personality that was central to Judge Peckham's leadership genius: genuine openness of mind. He truly welcomed new information. He loved to learn, and was particularly good at learning from people who were not his peers in age or status or background. His listening was not encumbered by fear or defensiveness or laziness or prejudice. Nor was he driven by a need to demonstrate his cerebral prowess to others. While gifted intellectually, he was in no sense arrogant. He never assumed, before some conversation or meeting, that he knew all that there was to know about any subject. Nor did he assume that his intelligence was so superior that it would lead him to everything he needed to know. Perhaps because of this fundamental intellectual humility, he could hear others without a trace of that defensiveness that can impede real access to other people's suggestions or insights. He was remarkably free of the need to defend his own ideas, his own powers of mind, his own agenda, his own institutions, his own practices, even his own innovations.

And he was not afraid. He was not afraid of someone else being perceived as more innovative or clever, not afraid of criticism, not afraid of change, not afraid of proposals that might lead to more work for him and for other judges or to a re-allocation of power, even his own power, to others. Instead, he was quick to recognize intelligence in and good ideas from others. He envisioned one of his primary roles as learning from others, absorbing the new and the useful from their ideas, then helping them to gain acceptance for their insights. In fact, he sought out good ideas from a huge range of sources, from his own clerks to judges and scholars in the far reaches of the globe.

Robert Peckham was not satisfied, however, simply to learn the things that others had already thought. Rather, he wanted to set in motion dynamic, dialectical processes—processes of research, analysis, de-

bate, reconsideration, and reformulation—that would result in creating ideas and developing proposals that no one had yet conceived. Given the respect he had for other minds, and his appreciation of the fact that no one person could understand all the perspectives from which even familiar problems could be analyzed, it is not surprising that his approach to reform often began, after he sensed a need or a problem, with bringing together a truly diverse group of knowledgeable people and seeking their help.

This was not simply a matter of forming a committee and asking for a report. Rather, he began by being sure that each of the participants to whom he extended a personal invitation had a real interest in addressing the problem he had identified. He also insisted that every identifiable perspective on the problem be represented. Then when the group was assembled, he spoke, gently but without emotional reserve, about need and opportunity. As a member of more than one of the groups that Chief Judge Peckham called together, I felt his words reach into our consciences, fire our imaginations, and move us into an intellectual and moral dynamic (with him, but also, importantly, with one another) that would energize and sustain the process of analysis and the search for solutions. This energizing resulted not only from the quiet but palpable passion about “doing better” that the Judge made evident, often without the need for explicit articulation, but also from the fact that he vested so much confidence, freedom, and responsibility in the group. While he communicated how strongly he felt that improvements were needed, he also made it clear that he had no preset agenda and that he looked to the intelligence, good faith, and moral fervor of the people he had assembled to teach him what the solutions should be. By giving us full intellectual freedom and a promise of institutional support he demonstrated a level of confidence and respect that inspired a keen sense of gratitude and responsibility. Thus, it was with his passion for making things better, his expectations of us, his respect for us, and the promise of an opportunity to make a real difference that he gently infected us with a sense of duty that could be fulfilled only by committing great energy to the work on which he launched us.

But he was not content to send us out and passively await our return. Instead, he met us at every important way station, asking for an account of the trail over which we had thus far travelled, responding to our perceptions, considering with us the directions we wanted to pursue, suggesting ways to avoid pit-falls and cul-de-sacs, and re-energizing our work. In these ways our ideas and his became intertwined, and our work product became, in essential ways, his.

As important as the traits just described are, nothing reveals more about Robert Peckham the person than how he proceeded in his leadership role *after* he and one of his committees had identified a promising new idea or direction of change. Chief Judge Peckham's approach to reform was informed by a powerful sense that the ultimate purpose of the process was not simply to accomplish some particular task, but, more fundamentally, to strengthen the connections between the people who made up the institution or the community and to invigorate their commitment to their mission of public service. He used the process of deliberating about reform to open lines of communication, to form friendships, to introduce to one another people from diverse backgrounds who had common concerns—and thus to lay a foundation on which sustained and future undertakings could be built.

As significant, he was ceaselessly sensitive to the persons who might be adversely affected by reforms that were under consideration. He wanted change without tearing the social fabric, without breaking personal ties, and certainly without elevation of self at the expense of others. He was willing to postpone or sacrifice parts of objectives in order to maintain relationships or to protect the self-esteem or sense of place in the community even of the people who resisted the proposals he supported.

These features of Chief Judge Peckham's approach to leadership were clearly visible even in the way he interacted with other members of his own court. When someone urged a change in the local rules, for example, he would be sure that all his colleagues knew, from the outset, that the matter was under consideration. If a proposed change was significant or sensitive, he went out of his way to talk to everyone in the loop—gently and privately—explaining the rationale for the proposal and making it clear that he was interested in the views of every judge. Along the way, as the proposal changed form, he was careful to keep the judges, as well as any other affected constituencies, fully informed, not only about the substance of what was under consideration, but also about the pros and cons of the alternatives.

Moreover, as proposals were being developed he would sincerely attempt to accommodate the concerns even of the perennial skeptics and nay-sayers, both those more conservative and those more radical. At a minimum, he made sure that they knew that he had understood their input, had taken them seriously, and had made adjustments in the proposals where possible. Where no adjustments to accommodate their views were feasible, he acknowledged their differences of opinion squarely and explained carefully why a different route was recom-

mended. In these ways he enabled all those affected to feel involved or that they had had a meaningful opportunity to be involved, so that no one felt blind-sided or end-run. Finally, when the votes were taken, Judge Peckham did his best to protect the people whose views had not prevailed from suffering embarrassment or isolation. He sought to camouflage or understate their defeats so that their political landings could be as soft as possible. He never gloated and never over-reached for credit or publicity. When the course had been run, he was generous in acknowledging the contributions that others had made to the work with which he was identified.

In sum, as a reformer Chief Judge Peckham was a connector, a healer, a repairer, a preserver, a builder, and an extender. He was truly a chief among judges.

These magnificent characteristics of his approach to leadership were not simply products of his political realism and sophistication, which were considerable, but were inexorable expressions of the most fundamental traits of his person. They were born in the genuineness of his affection for others and in his appreciation of how much other people had to offer—even in subjects where he was an acknowledged master. Thus he was a political genius not so much by calculation as by instinct. In other words, while he was capable of refined and complex political calculation, it was not calculation that made him a political genius. Rather, he was a political genius because of the kind of human being he was.

One of the fitting memorials to Chief Judge Peckham's leadership genius is the constellation of accomplishments it yielded during his tenure on the bench in the Northern District. He is the reason this Court was one of the first three federal district courts to implement an arbitration program. He is the reason this Court was the first to implement an early neutral evaluation program. He is the reason this Court now offers a range of alternative dispute resolution options that is exceeded nowhere in the country. He is the reason this Court pioneered the development of on-going educational programs for lawyers that cover not only the gamut of litigation matters but also settlement and alternative dispute resolution, including training for counsel who serve as the neutrals in mediation, early neutral evaluation, and arbitration. He is the source of much of the innovation in case development planning, case management, and discovery reform with which this court is credited around the country. He is the reason this Court is one of only five courts that Congress designated in the Civil Justice Reform Act of 1990 as a "Demonstration" district and asked to "experiment with various methods of reducing cost

and delay in civil litigation, including alternative dispute resolution.” And he is the principal reason this Court responded to that statutory designation by expanding its already considerable alternative dispute resolution offerings and by implementing what is probably the most ambitious system of compulsory pretrial disclosure in the country. In short, Chief Judge Peckham is the principal reason this Court is regarded nationally as one of the most actively committed to improving the delivery of judicial and dispute resolution services to litigants and one of the most open to procedural innovation. It is no exaggeration to say that none of the programs and attributes that so distinguish this Court today would exist if he had not been its leader.

There is one additional legacy of Chief Judge Peckham’s life as a judge and a leader that is less visible but no less important. He enlarged the aspirations and changed the conduct of a great many of the judges who knew him. By quiet but compelling example, he elevated our sense of what it means to be a judge. His ways have become the standard by which the best in judging is defined. He thus continues to be our leader.

Jordan Eth**

Judge Peckham was a gentleman. In his treatment of litigants and their counsel, his clerks, staff, and colleagues, he was guided by sensitivity, politeness, and respect. He achieved far more in his career than most of us can even hope to accomplish. Yet, for me, it is his thoughtfulness and decency that will always stand out.

Before starting my clerkship for Chief Judge Peckham, I had expected a heady experience grappling with cutting-edge issues. Judge Peckham had recently been voted the best District Judge in the Ninth Circuit and had a legendary record of judicial accomplishment. His docket included an array of high-profile cases, ranging from the San Jose school desegregation case and the consent decree governing the San Francisco Police Department, to a criminal trial concerning the events surrounding the Jonestown mass suicide. Judge Peckham was also a noted author and lecturer on alternative dispute resolution and an innovator in judicial reform. I would be working with one of the great trial judges, learning the practical aspects of law that school does not teach.

On a professional level, the clerkship was an even broader experience than I expected. Judge Peckham involved his clerks in nearly every aspect of his work. Naturally, we reviewed all motions before the court. But he also had us sit in on his status and scheduling conferences, so that he could show us how his ideas for streamlining litigation worked in practice. We worked with the Judge on settlement conferences, and helped him research and draft speeches and articles. He invited us to attend meetings with other Judges and to meet the many dignitaries who visited him. He made us feel more like young colleagues than the inexperienced but eager research assistants that we were. By working with the Judge so closely on so many issues, we were privileged to see the breadth of his insight. In this respect, like many former clerks, I consider my clerkship to have been the fourth (and most valuable) year of law school.

But clerking for Judge Peckham turned out to be much more than that, as his most enduring lessons went far beyond the confines of the law. He taught us never to forget the paramount importance of people—in the cases, in the courtroom, and in the workplace.

Early in my clerkship, Judge Peckham showed us his equal respect for all who appeared before the court. The Judge came into our part of chambers after the we had decided amongst ourselves how to divide up our responsibilities for the cases. At that time, each judge had a large

** Litigation Partner, Morrison & Foerster, San Francisco, Cal.; law clerk to Chief Judge Robert F. Peckham, 1985-86.

number of appeals from denials of social security benefits. These were "small" cases from the perspective of a new federal clerk, both in terms of the amounts at stake and the legal issues.

Judge Peckham did not see it that way, and gently made sure that we would not do so either. He told us that these were important cases for the individual litigant—more meaningful, in fact, to the litigants than our other cases. He emphasized the importance of ruling timely on these appeals and not letting them linger in deference to seemingly more glamorous cases.

The Judge's respect for individuals carried over into his courtroom style. He did not berate counsel or bemoan the sorry state of advocacy. (Indeed, Judge Peckham was a driving force behind numerous advocacy programs both in this country and abroad.) He rarely issued orders from the bench, even when the outcome was clear, telling us that he did not want to embarrass the litigant (or her counsel) with an instantaneous ruling when a short written order would accomplish the same result.

Similarly, the Judge rarely dispensed with oral argument on a motion, even if the issues were straightforward. After all, the process was designed in part to give parties their day in court. Hearing them out served this important function.

Only once do I remember the Judge raising his voice at counsel—and this instance demonstrates his approach to individual rights and to his role as a federal judge. Pan Am and the EEOC had entered into a proposed consent decree in an age discrimination case involving airline pilots. Approximately half of the pilots objected to the proposed decree. The EEOC attorney argued that the Judge's role in reviewing the decree was limited; he was required to approve it, even if he found it unreasonable, so long as it was not illegal or "grossly" unreasonable.

The Judge loudly voiced his strong disagreement, characterizing this view as arrogant. In his view, one of the primary roles of a federal judge was to exercise independent judgment to safeguard the rights of individuals, not to serve as a rubber stamp.

The Judge's management style also exemplified his respect for people. He didn't intimidate or threaten. He didn't manage the details of our work. He gave us the freedom to work on an entire motion (and make our own mistakes), rather than assign us just the discrete points he needed researched to make his decision. He never set artificial deadlines. We knew that he needed bench memos from us by the end of the day Friday, and we knew the cost of not complying (a drive to Palo Alto over the weekend to hand-deliver the memo to the Judge).

Judge Peckham's example stands in direct contrast to the models of success so often held up today. We often hear that employees are "assets" that must be deployed efficiently. We measure our success by objective, depersonalizing criteria: headcount, revenue per lawyer, billable hours. We also all know the stories of abusive attorneys (and even judges) who view their harshness as the price of success.

But Judge Peckham showed a different way. Somehow, we all worked as hard, and as happily, for this gentle man as we have ever done. He demonstrated that strength of belief is not measured by harshness of character. Ultimately, he taught that in all endeavors, and especially in the law, people matter.

Thelton E. Henderson***

When Chief Judge Robert Peckham swore me in as a District Court Judge in July of 1980, I knew him only as a Judge who was already legendary for his willingness and ability to listen with great patience to all sides of a case, as a Judge who cared deeply for those who sought justice in his court, and as a Judge who ruled with great courage on some of the most important and controversial issues of the day.

So you can imagine my feelings of good fortune when I learned that my new chambers would be right next door to Judge Peckham's. I can tell you that *no* new Judge could ever hope to be so lucky as to have Robert Peckham as a next-door neighbor, and as a soon-to-be friend, role model, mentor, and wise counsel.

That was some thirteen years ago. And at that time, it never would have occurred to me that I might some day inherit the position of Chief Judge that Robert Peckham then so dauntingly occupied. And what an inheritance he has left, first for Judge William Ingram and now myself—and, of course, always for the Court.

Bob Peckham contributed to our Court in many, many important ways and was instrumental in whatever stature we achieved as an institution during his judgeship. It will be difficult for any of us to even approach his record. It will be impossible for any of us to forget what he has done for us, and the legacy he has left us.

In the broadest sense, Bob Peckham's contributions were of two sorts. First, and perhaps most obviously, he was an innovator. In an extraordinary range of areas he was a prolific source of new ideas and new programs and new directions for the Court.

Many of these innovations, of course, had to do with the way we process cases. They began with the telephone conference call, which Bob Peckham pioneered on this Court. And while it has been rumored that Bob and his telephone were virtually inseparable, there is no truth whatever to the rumor that the portable phone was invented specifically to allow Bob to leave his chambers during the workday!

This initial effort to save attorney time and client money soon expanded to the area of Alternative Dispute Resolution (ADR). Bob's interest in ADR is well-documented, and he was a national leader in efforts to develop less expensive and faster means of resolving disputes in our federal courts. In this regard he was indeed a visionary, seeing long

*** Chief Judge, United States District Court, Northern District of California. This tribute was originally delivered at a memorial service for Judge Peckham at Stanford Memorial Church, Stanford, Cal., on March 8, 1993.

before most of us the limits of the adversarial process. And while a few others also saw those limits, it was typical of Bob, more than anyone else, that he chose to leap into the void and actually do something about it.

Among his many contributions were to increase the resources devoted to settlement, such that our Court now settles more civil cases, and because of this, has fewer civil cases that actually go to trial, than any of the ninety-four District Courts in the United States. He also developed new procedures for Court-Annexed Arbitration and established the Early Neutral Evaluation Program, which is now being duplicated by so many other courts.

Bob also played a crucial role in shaping the recently-enacted Civil Justice Reform Act (popularly called the "Biden Bill"), which has mandated the development of ADR programs in all of our federal courts. And it is no exaggeration whatsoever to assert that, with the passage of the Biden Bill in 1992, the rest of the country was just beginning to catch up to Bob Peckham's vision of the way justice ought to be dispensed in our courts.

Bob established many programs in addition to ADR. Among the most notable of these has been the Federal Trial Practice Program. Unique in the nation when it was begun in 1982, this creative program provided additional training in trial advocacy, at affordable prices, to over 2,000 attorneys in this district, both in San Francisco and San Jose. Bob, of course, played a major role in having our Court sit in San Jose. . . .

For many of you, however, it is probably impossible to think of Bob Peckham without remembering his great and abiding love of history. He understood and appreciated the power of history and as a result we have a rich legacy of materials for future generations to learn about the history of our Court and our Judges. It was at his direction that this Court formed the First District Court Historical Society in the country, an organization that has been copied by numerous federal courts—district and circuit—throughout the nation.

Time precludes me from listing the many other ways Bob improved the way we do business in the Northern District of California and, ultimately, in the federal judiciary nationwide. I have tried to sketch some of the high points, but I can accurately summarize by noting that there is hardly any aspect of the administration of justice in our Court that was not paid attention to and improved upon by Bob Peckham during his years on the bench.

I've just described Bob Peckham as an innovator. But, in addition to his innovations, Bob left a second, and perhaps even more important,

legacy to the Northern District. That legacy is one of the spirit. No one who came to know Bob could help but be struck by his remarkable personality. Bob treated everyone he encountered with courtesy, with kindness, and with generosity. His ready smile, his amazing grace, and his warmth left an indelible impression on all fortunate enough to meet and know him. He was a gentleman in the old-fashioned and best sense of the word.

As Chief Judge, Bob maintained a court marked by friendship and collegiality. There are some courts, as is no secret, that are divisive in their nature. Not Bob's court. Whatever the matter at hand, his skills and dedication helped remind us that we were colleagues striving toward a common goal for a common good. In addition, Bob always reached out to include others and to allow their voices to be heard. He sought good relations with all sectors of the bench and bar and with all the agencies involved in the business of the federal court. When he called them, collectively, "the federal family," he meant it—they knew he meant it, and we all felt and acted as "family."

Bob Peckham's dual contribution—as a brilliant and innovative court administrator, and as a man of gentle spirit, decency, dignity, integrity, and a scrupulous sense of fairness—form a legacy that will be with us as long as law is practiced in our courts.

As we look to the future, we on the Court know that not one working day will pass when what we do, and what the attorneys do, will not be affected by Bob Peckham's wonderful vision of the law and by the spirit he left with us.

He has enriched the lives of all of us, and we shall miss him dearly.

