THE HEIRS OF HOWE AND HUMMEL

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ABSTRACT: those believing the practice of law to be a gentleman’s profession should be prepared to be disabused of that misapprehension

The Heirs of Howe and Hummel

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With the passage of a hundred years since the heyday of their law practice in New York during the late nineteenth and early twentieth centuries, the shenanigans of William Howe and Abraham Hummel permit us to today view them as the Bar's likeable villains whose tough or dirty tactics raise a smile whenever the legal profession meet for drinks after work. It may be that the distance of time permits us to derive some amusement that was never appreciated by their immediate contemporaries: their fellow practitioners and other victims. Not so their descendants whose close proximity and their manner of practising law should and does give us ulcers and turns our hair white because we are more directly affected by their behaviour.

The reputations of Howe and Hummel can be briefly described thus: Francis Wellman, in his The Art of Cross-Examination describes William Howe as “one of the most successful lawyers of his time in criminal cases”, while Arthur Train’s description of him was as a cross between a Coney Island Barker and a coter-tonger.

It is of note that Rovere’s slim volume of only 113 pages provides five (out of a total of 364) entries chosen by the editor of The Oxford Book of Legal Anecdotes. [To put this in context, F.E. Smith (Lord Birkenhead) scores seven anecdotes sourced from three different books and Clarence Darrow also contributes five entries from the much thicker biography by Irving Stone. So far as batting averages go, Howe and Hummel are heavy hitters.]

Howe and Hummel’s firm defended, over its 40-year life, more than a thousand people indicted for murder or manslaughter and William Howe appeared on behalf of more than 650 of them. In the meantime their firm saw nothing untoward in representing both parties to a civil action (no suggestion of Chinese Walls back then!), kept a stable of professional witnesses and specialized in blackmail, judge and jury fixing, subornation of perjury and the fabrication of evidence. Abraham Hummel was regarded as an accomplished pick-pocket and, although wealthy, delighted in refusing to pay his creditors, believing that the defence of cases brought against him was good training for the young apprentice lawyers in the office. Hummel’s fight against his second disbarment which lasted over four years and was prosecuted by District Attorney Train is considered a classic US legal struggle with Hummel availing himself of all means, fair and foul, to hold off by delay, and possibly defeat the ultimate result.

They were perfectly suited to a time when the criminal Bar consisted mainly of de-frocked priests, drunkards, ex-police magistrates and political riff-raff of all sorts.

Jeffrey O’Connell’s book is an attack on the US system of common law tort litigation with its heavy reliance on substantial contingent fees. But it is not only the plaintiff’s lawyers who are the successful showmen as shown by his description of a leading insurance defence lawyer who takes great pains to play down his influence and authority:

In court he wears a baggy tweed jacket with elbow patches and badly frayed sleeves. His shoes are scuffed, and one of them is coming apart at the seams. He carries a battered briefcase. He carefully avoids smoking his custom-made cigars in front of the jury and makes a point during the trial of eating in the courtroom cafeteria, where the jurors eat, rather than at his usual luncheon place, the baronial University Club. Speaking of such poses he asks with a smile, “Why should the other side have a monopoly on sympathy?”

Having dressed for the part, now consider the same lawyer’s performance. He is defending a suit brought by a middle-aged businessman whose wife was killed in a car smash involving the defendant:

[Counsel] had his attractive blonde secretary come into the courtroom at the end of the trial and sit next to the plaintiff-widower. Following counsel’s instructions, she asked the man an innocent question, smiled, patted his hand and quickly left. “Just one look at the cold expressions on the lady jurors’ faces was enough to tell me that we were home free,” counsel recalls with a smile. “When the jury came back with [their] verdict for the defence, the plaintiff’s lawyer never knew what hit him. You see, the entire interchange took place while he was facing the jury in the midst of his closing argument.”
O’Connell relates an incident (also covered in greater detail in Stewart’s *The Partners*) wherein a partner in the prestigious Donovan Leisure law firm perjured himself in an affidavit in the late 1970s and consequently was sentenced to a month in gaol.

The format of both the Stewart books is to devote a chapter to a particular piece of litigation. Thus in *The Partners* there is a chapter on the IBM-Telex case and another on the Kodak-Polaroid case (where the Donovan Leisure partner perjured himself). On the criminal side, *The Prosecutors* has chapters devoted to the Hitachi sting (involving industrial spying against IBM), the McDonnell-Douglas bribery scandal and the first of the Wall Street “insider trading” prosecutions.

The road to the top is described in *The Partners*:

Associates at Cravath [Swaine and Moore] are considered for partnerships in groups based on their year of graduation from law school, though there may be some spillover from one year to the next. During the period of frenzied discovery in 1974, the group of senior IBM team associates were entering the last crucial year or two before the fateful decision, and competition among them reached a fever pitch. There was Mullen, from the law class of ’68, who appeared to be on his way to an all-time record for billable hours logged; and there were four associates from the class of ’69: Rolfe, Sahid, Saunders and John Cooper. Competition was especially fierce between Rolfe and Sahid. The feeling was that probably only one or two out of the eligible group would actually be made a partner, and Sahid seemed to have had an edge ever since his Telex counterclaim triumph. When Sahid scored another triumph by billing 24 hours in a single day, Rolfe — in a move that became the subject of legend in the firm — flew to California, worked on the plane and, by virtue of the change in time zones, managed to bill 27 hours in one day.

Left unsaid by Stewart is the value provided to the firm’s client who was paying top Cravath dollar for the 27th hour billed by the presumably jet-lagged and exhausted Rolfe.

Comparable to Kurt Vonnegut’s classic description of the practice of law from (if my memory serves me well) *God Bless You, Mr Rosewater* (1965):

In every big transaction, there is a magic moment during which a man has surrendered a treasure and during which the man who is due to receive it has not yet done so. An alert lawyer will make that moment his own, possessing the treasure for a magic microsecond, taking a little of it, passing it on.

is Stewart’s “Not even the best, and most expensive, lawyers can stop the resolute flow of cash. As Kern himself concedes, they can only hope to be there when it changes hands.”

The ego of the criminal lawyer is touched upon in *The Prosecutors* when a carefully crafted and painstakenly negotiated plea bargain in the Hitachi sting case almost sank when counsel for one of the co-defendants decided to needle the prosecutor: “You’d better sign those papers or you’ll lose at trial,” he taunted. The prosecutor’s response was to storm off with the plea bargain agreement until the cooler heads of the other defence counsel could persuade him to return.

And it is not only the defence: US Attorney Rudi Giuliani’s desire for publicity (as a launching pad for a political career) saw him participating in an undercover operation in 1986 in which he decked himself out in an outrageous disguise and went to Harlem to purchase cocaine. Upon his successful return he called a press conference and posed for photographs. Fortunately, no prosecution resulted. Otherwise such prosecutions may have been challenged on the basis of the publicity stunt depriving any defendant of a fair trial.

Guiliani’s antics were but a faint echo of those of an earlier US Attorney: the late Roy Cohn. Cohn — swindler, perjurer, tax evader on a grand scale, briber, political fixer, hypocritical homosexual, betrayer of his clients, publicity hound and unashamed toady — was a true heir of Howe and Hummel.

There was no in-between with Cohn — you either loved him or hated him. At the time of his dying from AIDS in 1986 one of his ex-clients, estranged from him since she’d been forced to sue him for the return of a $100,000 loan, had a tearful reunion with him. She recollects, “And I said the strangest thing I’ve ever said, I said ‘Don’t worry, Roy, the only thing I really care about is are you still my best friend?’ This man had ruined my life sometimes in 50 ways…”

Conversely, at a Columbia alumni gathering the columnist Leonard Lyons offered to introduce Roy to the financier Benjamin Buttenweiser. Buttenweiser stared at Cohn’s proffered hand with distaste and announced he had no desire to touch it. Cohn’s hackles rose and he stated that he did not believe Columbia alumni should be so rude. Buttenweiser was prepared for this and responded by quoting Oscar Wilde to the effect that a gentleman is never unintentionally rude. On his deathbed, despite being disbarred he sought to put in the fix (legal or political or both) for the benefit of friends and clients. Yet others were to say that it, AIDS, “couldn’t have happened to a nicer guy, so there is a God after all”.

Even among the homosexual population of New York where everybody had dying lovers and dear friends, there was gloating over his dying and one man even boastingly claimed credit for arranging for Roy to catch the disease by putting him together with an infected lover. Such was the hatred and loathing that Cohn attracted.

As the son of a politically appointed New York state judge, Cohn was wheeling and dealing in his early teens — in high school, college and law school. It was political clout that enabled him to enter Columbia Law School despite his poor college grades. With the passage of time Cohn would recall that he was a straight-A student. Similarly, his first job out of law school was in the US Attorney’s office where in his words, he recalled that:

by then I had been in courtrooms for two and a half years on an almost daily basis as an assistant US attorney and had prosecuted more than 200 defendants, with no losses, not one acquittal marked up against me.

However, his then colleagues remember it differently. Cohn’s technique was to indict somebody, issue a press release, indict him again and issue another press release on the superseding indictment. Each indictment in the file had its corresponding press release clipped to it, each press release featuring Cohn’s name. Cohn was responsible for a lot of indictments that never went anywhere, which were obtained primarily for the publicity and later had to be dismissed for lack of evidence. His contemporaries remembered Cohn as an object of derision in the US Attorney’s office, as a publicity hound who would indict anyone.

This method was followed in his later private practice. He would initiate suits in a blaze of publicity and later, quietly negotiate a settlement. To go to trial was a defeat for Cohn who was a fixer, a person who could not last the distance in extended litigation which interfered with
his jet setting and social celebrity lifestyle. On the few occasions when he was forced to trial the most common result was a loss because of Cohn’s lack of preparation and diligence or even by default. With the passage of time these losses would be fondly remembered by Cohn as a rip-roaring victory wherein Cohn had stomped all over his opponents. His employee lawyers were similarly handicapped by an out-of-date library resulting from Cohn’s refusal to pay his debts including those owing to the law publishers. Their legal research was conducted mainly in the Fordham University law school library or the court’s library.

Not all of the employees’ experiences were hard grind. One recalled:

One day I’m sitting with Tom when Roy pops his head in the room and says, “Tom, do you want to go to lunch with so-and-so?” a well-known person, associated, I guess, with the criminal elements. Tom said, “No, Roy, I’m busy ….” When he left, Tom looked at me and said, “I don’t want to go to lunch with ‘em. These guys are always getting shot in restaurants.”

Cohn’s fame (or notoriety) was gained in the early fifties where as a US Attorney he participated in the prosecution of Julius and Ethel Rosenberg and then was appointed as counsel to the staff of Senator Joseph McCarthy of Missouri. This period of about three years would shape his life and he would be forever linked to the “Atom spy” trial and the “commie hunting” Senator McCarthy.

During the Rosenberg trial it appears that the prosecution (and particularly Cohn) enjoyed ex parte audiences with the trial judge Irving Kaufman. There are suggestions of evidence fabrication during the Army-McCarthy congressional hearings with Cohn in the thick of it.

After the Rosenberg trial Cohn, through political influence, joined McCarthy as his chief counsel, edging out the then young Bobby Kennedy who served on McCarthy’s staff subordinate to Cohn. It was the beginning of an enmity that saw them come close to fisticuffs during the public Senate hearings and was later to result in Bobby, by then JFK’s Attorney General, prosecuting Cohn on four separate occasions which Cohn beat, in some cases narrowly, with some surreptitious assistance from FBI director J. Edgar Hoover.

Cohn’s fisticuffs may have only been show — as with others, it made headlines but it has been suggested that Cohn always ensured there was somebody about to restrain him when he exploded.

A common link between Roy Cohn and the nationwide (and international) “megafirm” Finley Kumble is that both were the subject of ongoing critical comments in The American Lawyer which sought to bring to public attention the unethical and illegal conduct of both firms and also their common heritage of ex-employees who were dismissed and now look back on their subsequent periods of unemployment with satisfaction as the beginning of their happiness and enlightened contentment.

The demise of the firm Finley Kumble in the 1980s carries with it the truth of the adage that one should be nice to people on your way up because you’re sure to meet them again on your way down. Certainly there were no tears shed by their professional colleagues, all of whom had been victims of FK’s abrasive discourtesy and hard-ball tactics.

Among their clients there was a marked reluctance to pay outstanding fees once the rumours of the fast-fading survival came to light and at this time the principals were negotiating their own futures seeking new positions elsewhere while reassuring staff and other partners that all was well and issuing emphatic denials of the firm’s deep financial troubles. The message of closure of the newly-opened London office was delivered by the champagne-drinking Concorde-travelling partner who saw no reason to stint while the firm was going down the gurgler.

The headline in Steve Brill’s The American Lawyer summarised FK’s contribution with: “Eye-Bye FK — The Firm Everyone Loves to Hate is Falling Apart.”

In their time both Finley and Kumble had screwed their employers, their partners, their adversaries, their employees, their collegiate law firms (when acting on the same side) and their clients. Kumble’s dictum regarding clients was to find its way into The Oxford Dictionary of American Legal Quotations (1993):

Praise the adversary. He is the catalyst by which you will pay your client. Damn the client. He is your true enemy.

And he reprimanded the firm’s Miami partner for not insisting on a top dollar minimum retainer from Kumble’s own aunt who had sought assistance on a minor problem: “Aunt, schmaunt,” said Kumble, “if she can’t pay her retainer, she can go elsewhere.” Truly, FK was scrupulously fair — they screwed everybody equally without fear or favour.

The fear and loathing engendered by the firm was reflected internally. Andrew Heine was recruited specifically to head up the firm’s litigation department. In his first days at the firm he seemed particularly nervous. Partners informed him that they had a million-dollar “key man” insurance policy on Kumble, lest anything happen to their primary rainmaker. Heine listened with interest. But he was so accustomed to being disliked that he began to tremble when it was suggested that a similar policy be taken out on him. “One of you bastards will push me out the window,” said Heine with no hint of joking.

Prior to the firm’s collapse it was unable to collect its debts and as a consequence its liabilities at the collapse blew out to $83 million. One of the partners had previously observed, “[W]hen word gets out that we are wounded, we’re going to have a hell of a time collecting our bills. People hate to pay their lawyers. What they hate worse is to pay their ex-lawyers.”

Less than two years previously, when the firm was the second largest in America (behind Baker & McKenzie) it had splurged $11 million on renovating its New York office.

An opposing lawyer was to tell his concurring client, “I don’t know what we’ll eventually get, but winning a dollar from these bastards (Finley Kumble) will feel like a dollar and a half from anybody else.”

While one can understand the schadenfreude enjoyed by FK’s “victims” one must also feel some sympathy for partner Davis Ellsworth who had paid $322,000 into FK to join the partnership in January 1987 because his previous firm had “overborrowed itself to death”. Thirteen months later his capital contribution was gone and he was jointly liable for the firm’s debts which, if apportioned equally, averaged out at more than $415,000 for each of the 200 partners.

In Eisler’s introduction to his book he summarised FK’s contribution with:

[their concepts and practices transformed law from a gentlemen’s profession into a coldhearted business. But Finley Kumble’s big-and-tough public image masked the Keystone Cops manner in which the firm’s managers lurched from crisis to crisis.

I think it a fair conjecture that the FK story, its successful growth and subsequent rapid failure spanning less than two decades, would provide quite a few entries for a later edition of the OBLA or any other anthology of legal anecdotes.