

University of Chicago Law School

Chicago Unbound

Journal Articles

Faculty Scholarship

2003

Credos Tribute

Dennis J. Hutchinson

Follow this and additional works at: https://chicagounbound.uchicago.edu/journal_articles



Part of the [Law Commons](#)

Recommended Citation

Dennis J. Hutchinson, "Credos Tribute," 112 Yale Law Journal 983 (2003).

This Article is brought to you for free and open access by the Faculty Scholarship at Chicago Unbound. It has been accepted for inclusion in Journal Articles by an authorized administrator of Chicago Unbound. For more information, please contact unbound@law.uchicago.edu.

Credos

Dennis J. Hutchinson[†]

When Byron White moved in the spring of 2001 from Washington, D.C., where he had been a public servant for forty years, back to Denver, where he had begun his legal career after World War II, he brought with him a vast cache of personal memorabilia that had been collected over a lifetime. The collection includes scrapbooks that his mother started when he was in high school and which were continued by his wife, Marion, after they were married in 1946. It also contains other artifacts—athletic programs, photographs, portraits, bronze busts, plaques, trophies—running the gamut of a life spent largely in the public eye since late adolescence. For the time being, the collection is being stored in the federal courthouse that bears his name, and a special room is being considered to house the collection. When White delivered the collection, two of his former law clerks who were living in the Denver area helped sort and arrange the material. Among the artifacts is a chapbook that White began in high school under the direction of his remarkable English literature teacher, Evelyn Schmidt Ely.¹ White explained to the former clerks that his values, first bred at home, took root under Mrs. Ely's direction. Two works, he said, became polestars in his life. The first was John Milton's sonnet, which is customarily entitled, *On His Blindness*:

When I consider how my light is spent,
Ere half my days, in this dark world and wide,
And that one Talent which is death to hide,
Lodg'd with me useless, though my Soul more bent
To serve therewith my Maker, and present
My true account, lest he returning chide;
"Doth God exact day-labour, light denied,"
I fondly ask; But Patience, to prevent
That murmur, soon replies, "God doth not need

[†] William Rainey Harper Professor in the College and Senior Lecturer in Law, The University of Chicago.

1. See Dennis J. Hutchinson, *The Man Who Once Was Whizzer White*, 103 YALE L.J. 43, 54-55 (1993).

Either man's work or his own gifts; who best
 Bear his mild yoke, they serve him best; his State
 Is Kingly. Thousands at his bidding speed
 And post o'er Land and Ocean without rest:
 They also serve who stand and wait."²

The poem, copied out in a round, young hand more than sixty-five years before, now carried an immediate poignancy—White had recently suffered a series of small strokes that prevented him from speaking more than a word or two at a time and that precluded him from sitting by designation on federal courts of appeals after his retirement from the Supreme Court. Thus, nearly a half-century of public service—"man's work[s]"—was finished.

The other work copied in the chapbook, its particular pages rubbed with wear, was the inspirational poem, *If*, written by Rudyard Kipling in 1910:

If you can keep your head when all about you
 Are losing theirs and blaming it on you,
 If you can trust yourself when all men doubt you,
 But make allowance for their doubting too;
 If you can wait and not be tired of waiting,
 Or being lied about, don't deal in lies,
 Or being hated, don't give way to hating,
 And yet don't look too good, nor talk too wise:
 If you can dream—and not make dreams your master;
 If you can think—and not make thoughts your aim;
 If you can meet with Triumph and Disaster
 And treat those two impostors just the same;
 If you can bear to hear the truth you've spoken
 Twisted by knaves to make a trap for fools,
 Or watch the things you gave your life to, broken,
 And stoop and build 'em up with worn-out tools:
 If you can make one heap of all your winnings
 And risk it on one turn of pitch-and-toss,
 And lose, and start again at your beginnings
 And never breathe a word about your loss;
 If you can force your heart and nerve and sinew
 To serve your turn long after they are gone,
 And so hold on when there is nothing in you
 Except the Will which says to them: "Hold on!"
 If you can talk with crowds and keep your virtue,
 Or walk with Kings—nor lose the common touch,
 If neither foes nor loving friends can hurt you,
 If all men count with you, but none too much;

2. JOHN MILTON, COMPLETE POEMS AND MAJOR PROSE 168 (Merritt Y. Hughes ed., 1957).

If you can fill the unforgiving minute
 With sixty seconds' worth of distance run,
 Yours is the Earth and everything that's in it,
 And—which is more—you'll be a Man, my son!³

Both of the former clerks later told me that they found the sentiments in the poem eerie. They felt as if they were reading the inventory of character traits of someone for whom they had worked many years before and who now struggled to communicate the simplest facts as heart and nerve and sinew all began to fail.

I thought of that moment a year later as I sat in St. John's Cathedral in Denver for Justice White's funeral service. Somewhat to my surprise, a copy of the Kipling poem was distributed together with the program for the service⁴—a somewhat unorthodox gesture, but then again, the service itself was not entirely predictable. Although the service was attended by five sitting members of the Supreme Court of the United States, the Solicitor General, and several state and federal judges (as well as by a U.S. Senator, a governor, and a former governor), Justice White's thirty-one-year tenure on the Court was barely mentioned. The two principal eulogists were fellow alumni of the Kennedy Administration's Department of Justice who White did so much to recruit in 1961. The lesson seemed to be that the judicial service spoke for itself, but that other choices deserved celebration and emphasis. As I listened to Judge Louis Oberdorfer, who was head of the Tax Division in the Kennedy Administration, and Herbert J. (Jack) Miller, who was head of the Criminal Division, I thought of stories they had told me about White's cool direction of the Department during the Freedom Riders crisis in 1961.⁵ They had also recounted how White had frustrated many in the White House by his stubborn refusal to sign off on judicial appointees whose principal qualification was party loyalty or a Boston-Irish pedigree.⁶ Kipling's first stanza doesn't quite capture the quality, but for me, Byron White was at his best when the stakes were the greatest—personally, politically, or constitutionally—and when the conventional wisdom, or what Justice Holmes called the “hydraulic pressure”⁷ of the moment, made clear thinking and independent action the most difficult. The harder the wind blew, the firmer White stood.

When the service ended, I thought again of the text distributed that day. The final words from the pulpit, following a very formal Rite of Christian

3. T.S. ELIOT, *A CHOICE OF KIPLING'S VERSE* 273 (1941).

4. The legend at the bottom of the text read: “This poem was copied by Justice White in a high school notebook of important things that he learned and wanted to preserve.”

5. DENNIS J. HUTCHINSON, *THE MAN WHO ONCE WAS WHIZZER WHITE: A PORTRAIT OF JUSTICE BYRON R. WHITE* 272-86 (1998).

6. *See, e.g., id.* at 296-97, 499 n.320.

7. *N. Sec. Co. v. United States*, 193 U.S. 197, 401 (1904) (Holmes, J., dissenting).

Burial, were an open invitation to “everyone in attendance” to join the family for a reception at the Denver Country Club—“crowds” and “kings” in the same venue, to the discomfort of some of the kings, I might say. As I left the cathedral, I recognized someone who had known White for seventy years, Art Unger. He was White’s favorite receiver when the single-wing offense employed by the University of Colorado in the 1930s allowed for the occasional forward pass, and he later became a star basketball player in Amateur Athletic Union tournaments. White treasured their friendship. Unger was now wheelchair bound, and his powerful hands were contorted by arthritis. We exchanged greetings, and I complimented him on braving a cold morning and a chilly venue. “I wouldn’t miss it,” he said firmly. I asked him what he thought about the poem that had been distributed at the service. He laughed and waved a large, gnarled hand dismissively: “Oh Byron didn’t think of that as a poem. He thought it was holy writ!”