The McChesney Family, Dean Patricia D. White, Mike Murphy, Professor Timothy Muris

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Remembering Professor Fred McChesney

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A WORD FROM THE MCCHESEY FAMILY

First, let’s acknowledge that Fred McChesney’s life and career occurred in many different contexts and locations. The reader may have known him in one or more arenas. But all who knew him, even a little, understand that the commonality of Fred’s integrity and character that existed in one area existed in all areas. We will always remember Fred as larger than life, a grand personality, a force of nature. As everyone knows, Fred was smart, energetic, and ambitious. He was physically and intellectually enormous. He had a colossal, loving heart. What may not be known by everyone in professional circles is that he was the oldest of seven children, four boys followed by three girls. He was the very proud father of four children, two daughters and two sons. Fred was a family man. From the beginning, Fred was a teacher and an advisor. Fred led by example and modeled hard work and independent thinking, fair-mindedness and goodwill for all. He had a great friend; he shared with us his passions for sports, music, learning and, most of all, for life. His passing has left a void in the family that cannot be filled. But he has also left a legacy of which we are immensely proud.

In addition to his amazing intellect and long list of professional accomplishments, all his friends and family recall fondly his gift of gab. An eloquent speaker, a brilliant and funny story teller, and an eager conversationalist, Fred’s ability with words was truly a gift. He believed teaching was his calling, in part because of the ready forum it provided him. We used to tease him about his inability to keep a conversation short. Virtually every phone call from Fred would start with “have you got a second, I promise I’ll be quick.” As everyone in the family knew, this was
the cue to settle in for the long conversation ahead. Although typically lengthy, talking with Fred was also easy. He was always able to strike up a conversation that was sincere and meaningful, as well as entertaining and fun. Conversations with Fred typically ended when he asked “got time for one more thing,” followed by whatever it was he had to say, and then “love you, bye.” Some of us used to tease him that the title of his biography would be “One More Thing.”

His biography may never be written, though there is ample material to fill a book. Still, we know Fred is enjoying the forum that the University of Miami School of Law continues to provide him, posthumously, through the memorial service in February, and now in this issue of the Business Law Journal. His stories are still being told, his wisdom still being shared, and his love of life and people still stands as an example to anyone who is paying attention. We are grateful to UM for giving Fred this opportunity to share one more thing.

A WORD FROM DEAN PATRICIA D. WHITE, UNIVERSITY OF MIAMI SCHOOL OF LAW

Fred was a man of enormous professional accomplishment. His legal career both began and ended here. It began when he came here to attend law school in 1975 and ended with his untimely death last October as the holder of the de la Crus–Mentschikoff Chair in Law & Economics. He returned here to teach in 2011, leaving a named professorship and joint appointment at Northwestern University’s Law School and Kellogg School of Management to do so. In between his two sojourns in Miami, he led a rich and full life which we now celebrate.

The first time I met Fred McChesney, I was struck by the twinkle in his eye. He looked like a person who enjoyed life and who didn’t take himself too seriously. The last time I saw Fred—after he had endured what seemed a never-ending cascade of personal loss and medical calamities, and just before his last Miami hospitalization—he still had the twinkle in his eyes. His spirit, good nature, and optimism were nothing short of astonishing.

Fred contributed much to this school, initially as a student, then as a teacher and scholar, and always as a cheerleader and booster. He loved the classroom and his students. His legions of students happily reported on the joie de vivre he brought to his classes—replete with song and humor—all while teaching very difficult material with rigor. He would spend hours on the Bricks talking with students about law, life, baseball, and rock and roll.

We had a perpetual problem scheduling Friday classes. For some reason, upper-class students don’t believe that Friday is a school day. A
few years back, we had Fred’s BA class meet on Friday morning in the hope that he would alleviate the Friday problem. Fred was unhappy because he feared that students wouldn’t enroll, but he agreed to do it and see. The students registered in droves. His class continued to have 130–140 students in it—it was almost always our largest class—and we continued to keep it on the Friday schedule.

One January, both Fred and I traveled to Spain to attend the LWOW Kickoff hosted by the IE Law School in Segovia. It was bitter cold, icy and snowing, and Fred was on crutches and weak. Segovia is a centuries-old city with steep, narrow cobblestone streets. The conditions could not have been less well-suited for someone on crutches but Fred didn’t care. He was just happy to be there in Spain, at LWOW, with young people from all over the world. New friends to make, old friends in Madrid to see. The optimistic enthusiasm characterized all of my interactions with Fred, even as he was dealt blow after blow. He never complained, never asked for special favors, and always volunteered to help the law school or me in any way he could. He was realistic about his circumstances but self-pity was not in his repertoires. Those eyes never lost their twinkle.

It was a privilege to be his colleague and friend.

I met Fred McChesney on our first day of law school at UM well over 40 years ago. We have been friends ever since that day. We played softball together, talked baseball, rock and roll music, occasionally politics, and exchanged some great jokes and stories. He was a prolific reader, like no one else I have ever met. Back in the 70s there was an afternoon paper, the Miami News, and Fred always read the news. He was disappointed in the quality of the Miami News for their poor book reviews and he complained to the Editor that the book reviews were horrible. The Editor said he received boxes of books to review every week and told Fred that if he felt so strongly, he could try to improve the quality on his own. Fred called his bluff and picked up several books a week to review. The News published them on a weekly basis and he did all of this while attending law school full time, working on his dissertation for his PhD in Economics from UVA, and being married and fathering his first born, Madeleine. Fred practiced law for a short time but his first love was always his teaching. He loved engaging with students, sharing experiences, questioning theories, good reads, and of course stories—he loved telling stories. I don’t think there was a time that we spent together when he did not mention a story about “his students” like they were his kids. For Fred, life was his
classroom and he always thirsted for more knowledge, reading, engaging students, fellow educators, and imparting his experiences to others.

He was a best friend whom I miss dearly, and I will always be grateful that I was lucky enough to be counted as his friend.

**FRED McCHESNEY: FRIEND, TEACHER, AND SCHOLAR—A WORD FROM PROFESSOR TIMOTHY MURIS**

President Shalala, Dean White, Dean Butler, Dean Gudridge, any other Deans in attendance, Mr. Delacruz, members of the McChesney family, friends and colleagues of Fred, I am honored to be here today to celebrate Fred’s life.

Fred and I first became friends at this school in 1976. It was a friendship based on shared loves, most notably baseball, law & economics, history, rock & roll, and fine food – especially Shorty’s, where Dean Gudridge, Professor Stotsky, John Mariani, and I ate today.

Fred was one of the most human people I have ever met – a great friend, scholar, and teacher. I began my academic career here, Fred’s last two years as a law student. We learned together, published a joint article, went on two spring training tours, and even played softball. On one memorable weekend, we won the law school tournament, stringing together five or six improbable victories over more talented teams. Fred played first base, and for once during that tournament, Joe Shiavaone, playing third–base, did not airmail throws over first base, depriving us of Fred throwing his glove to the ground in frustration and yelling at Joe.

Fred left Miami for a clerkship in the Ninth Circuit, then traveled east in September 1979 for two years in a prominent DC law firm. On the way, he stopped in Chicago, where I was spending the academic year, and we of course went to a baseball game. We also went to the Chicago zoo to see the famous gorilla, Otto, with my not quite one–year old son, Matt, on Fred’s shoulders.

It was the intersection of Fred’s love of rock ‘n’ roll and another attribute of Fred’s outsized personality that made him my first hire when I became director of the FTC’s Bureau of Consumer Protection in 1981. For I knew that Fred not only believed in protecting consumers, he had walked the walk. Yes, Fred McChesney had led a consumer revolt against false advertising.

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* Timothy J. Muris is a George Mason University Foundation Professor at the Antonin Scalia Law School. I thank Thomas Rucker for valuable research assistance and William MacLeod and John Mariani for helpful comments.

Let me take you to the event told through the eyes of the two principal actors. First was Rick Nelson, son of Ozzie and Harriet. Perhaps you do not know who they were, but in post–World War II America, they hosted a popular radio show, later successfully transitioned to television.\(^2\) The show featured the escapades of their growing family, with Ricky, as he was then known, the youngest. By the late ‘50s, he had become a rock ‘n’ roll sensation, for whom the words “teen idol” were invented. Multiple gold records followed.

By October 15, 1971, however, like all great American pre–Beatles pop acts, save the Beach Boys, the British invasion had eclipsed Mr. Nelson. On that night, he found himself at the world’s most famous arena, Madison Square Garden, with other well–known singers in what was billed as an oldies concert.\(^3\) In the words of Mr. Nelson in his last hit song, remembering the event, “I went to a garden party to reminisce with my old friends.”

The event was well attended, again quoting Mr. Nelson: “People came from miles around. Everyone was there; Yoko brought her walrus, there was magic in the air.”\(^4\) Yoko, of course, was Yoko Ono with John Lennon I am the walrus of Beatles Fame. Not mentioned in the song by name, but crucial to our drama, also in attendance was the second key actor, 22–year old Fred McChesney. Like the other thousands in the Garden, Fred had believed the advertising and had come to hear the oldies. But Mr. Nelson did not want to perform those songs, famously saying in his lyrics about the event, “if memories were all I sang, I’d rather drive a truck.”\(^5\) While Mr. Nelson went through his mostly non–oldies repertoire, Fred, in his booming voice, demanded his favorite oldies.

At first, he was alone . . . . Then after another new number, he was joined by dozens . . . . Then the protest grew . . . . At last, Fred led the multitudes.

Finally, Mr. Nelson began to sing a version of “Honky–Tonk Woman,” a far cry from the “bee bop baby” of his fame. Returning to Mr. Nelson’s lyrics, “when I sang a song about honky–tonk, it was time to leave.”\(^6\) Our Fred had ignited the protest, and Ricky Nelson left the stage. Outraged consumers had triumphed. Of course, Mr. Nelson’s wallet won in the end, with the trauma of the event serving to inspire his last hit.

With the same enthusiasm, Fred turned to the FTC in 1981. In the 1970s, the Agency had tried to become the second most powerful

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\(^2\) See e.g., Dennis McLellan, *David Nelson Dies at 74: Las Surviving Member of the TV Sitcom Family*, L.A. Times, Jan. 12, 2011.


\(^4\) *Id.*

\(^5\) *Id.*

\(^6\) *Id.*
legislature in Washington, proposing rules to transform dozens of industries. We disagreed. Relying on our law and economics background, we thought that the common-law already provided crucial, basic rules for the economy, such as avoiding fraud and deception and keeping your contractual promises. Because of inadequate procedures to enforce those rules in consumer transactions, there was an important role for a federal agency. With Fred’s help, we defined that role and the FTC began the long road to the prominence it enjoys today. There really was a Reagan Revolution at the FTC, and Fred was an important part of it.

Then, Fred began his remarkable academic career, first at Emory for 14 years, then two at Cornell, 12 at Northwestern in the James B. Haddad Chair, and finally, starting in 2011, here in the de la Cruz/Mentschikoff Chair in Law and Economics. In those years, Fred’s scholarly contributions were important and varied.

First, rent extraction. Few books have been more aptly titled than Fred’s 1997 Harvard publication, “Money for Nothing: Politicians, Rent Extraction, and Political Extortion.” Most had long understood that politicians offer favors, such as the latest pork barrel project. We see legions of lobbyists trolling Capitol Hill, engaged in rent seeking, but Fred explained that the politicians offer more: not doing something that a particular group finds onerous. Hence, money to politicians for doing nothing.

Thus, to Fred, the 1986 Tax Reform Act was the Sistine Chapel of the political art. Not only did that Act simplify the tax code, allowing room for selling thousands of new complexities that came later, but the tax writers could also threaten numerous onerous provisions that were never enacted. Fred put a new twist on Ronald Reagan’s apt description of Washington mores: “If it moves, tax it. If it keeps moving, regulate it. If it stops moving, subsidize it.”

It is impossible to overstate the significance and influence of Fred’s work. Listen to Richard Epstein, one of the most important scholars of the last 50 years. “Fred’s contribution had one great idea that seems obvious once it is stated, even if it had never been stated before. Once this simple point is seen, the entire fabric of political negotiation has an extra dimension that we ignore at our peril.”

Fred also insisted on applying public choice economics to antitrust, as illustrated by his 1995 Chicago book with Bill Shughart, “Causes and

Consequences of Antitrust: The Public Choice Perspective. 9 For reasons hard to understand, many in the Chicago school of economics thought that government actors were guided by self-interest, except those in the antitrust field. Fred’s work was a useful correction and reminder of the importance of economic incentives in all aspects of life.

Fred wrote on antitrust doctrine as well. In one piece, he used his love for music, which went beyond rock ‘n’ roll. He loved all music, and he also loved one-upmanship. Thus, he published an article on the opinion I had written for the FTC involving a conspiracy formed to promote the last Three Tenors concert at the world cup of soccer in 1998. 10 There, Fred was proud to note that Tim may have written the opinion, but Fred was in Paris attending the concert! And he particularly enjoyed that article, because he criticized me from a place on the antitrust spectrum rare to both of us, namely from my left. To Fred, the conspiracy that I took many pages to condemn was so obviously anti-competitive it should have been disposed of much more briefly.

Of course, there is much more. Did you know that some legal clinics not only charge less for routine legal services, but can also increase quality? Our 1979 article, using empirical data on legal clinic performance, explained that, through advertising, legal clinics could obtain a sufficient volume. 11 With that volume, they can specialize on certain services, thereby not only lowering price, but also improving quality. 12

Fred also explained the benefits of property rights in one’s parking place on the street following Chicago snowstorms. By giving individuals who clear a space on the street for their car property rights, Chicago encourages snow removal, not only in the space involved, but in contiguous spaces because of increased melting next to the cleared land.

Let me conclude by returning to Fred’s love of music. Members of the McChesney family learned that love at an early age. I take you to an event early in 1981. I was working on the Reagan Regulatory Relief task force, and, new in DC, bunking with the McChesney’s. 6 am one Sunday morning – the only day I could sleep in – I awoke to find a smiling 2 1/2-year-old Madeline McChesney a foot from my face, proclaiming “let’s listen to the Tunettes.” Tunettes you ask? That’s what Madeline and Fred called the Ronnettes! Her parents had told her that, in the event they went to the hospital for the arrival of Madeline’s new baby sister,

11 See Muris & McChesney, supra note 1.
12 Id. at 182.
she should feel free to entertain me. And entertain me she did. To this
day, I cannot hear “Be My Baby,” without that pleasant memory. Thank
you!

Appendix