

POSTSCRIPT

I have mentioned earlier in this oral history the importance of my years in the United States Attorney's Office, particularly those under the leadership of United States Attorney Tom Flannery. Those years, and particularly my time with Tom, helped immensely to shape me. I hope I have made this point with clarity. In the event I have not, I include with this oral history a reminiscence that I delivered at the 50th anniversary reunion of the Flannery era Assistant United States Attorneys, just held at the United States Courthouse on April 8 and 9, 2016. It is entitled "The Noon Train." It follows.

THE NOON TRAIN

He stood right over there, almost forty-six years ago. Tall, quiet to the point of reserve, behind the lectern, as I recall, facing twelve jurors and six alternates. Early October of 1970, forty-six years ago.

Behind us sat Judge Aubrey Robinson, presiding. In the well of the court were seven defendants. All were charged with serious drug offenses. All would be convicted. The trial lasted about two months. All of the defendants received lengthy jail sentences, many without parole.

It was Tom Flannery's last case, his last ride as a trial lawyer and a prosecutor. October 1970. Two years later he would be a judge.

Those who saw him that October morning as he presented his opening statement would never forget him. He spoke quietly, calmly, commandingly, presenting himself with great decency and strength, but also with appropriate modesty.

An iconic, almost mythic combination.

That certainly is how he struck me on that October morning.

And that was not the first time I had been moved by the power of his presence. The first time was about a year or so earlier. It was as impactful as anything I had experienced to that time in my young life. I shared it with many of you (and indeed with Tom) twenty or twenty-five years ago. This is a retelling.

Every generation has its iconic figures. People who embody a set of idealized values in ways so powerful and so profound that they resonate broadly across the cultural landscape. For ten- or fifteen-year-old kids in the 1950s (of which I was one) one of those iconic figures was Will Kane. Now few of you will remember him today as Will Kane, or Marshal Will Kane. Many of you may remember him as Gary Cooper, the sheriff who met the noon train and the Miller Gang on the Silver Screen in High Noon – the movie that transfixed me and a generation of young, impressionable kids, coming of age in the 1950s.

Frank Miller, whom Gary Cooper had sent to prison years earlier, had inexplicably been released. He was arriving in Cooper's town on the noon train, there to meet up with his old gang and exact revenge on Cooper. The movie, done in real time, begins at about 10:30 a.m. For the next hour the Marshall canvasses the town for help in fighting off the Miller gang. The feckless townspeople, having initially been supportive, fade away at crunch time. Gary Cooper is left alone in a cold, fickle world, there to do his duty at High Noon.

And in a way that powerfully illustrates to a young boy the real human experience that we confront in times of great difficulty, Gary Cooper responded. He showed despair at having to

confront life's greatest challenge alone. In one scene he wept. He obviously felt fear. Beneath these very human feelings, he found within himself a conviction to stand, to fight, to do the right thing regardless of cost. His conviction was steely, firm. It was quiet, not flashy, and came from the core of his soul, his being. You learned as a young boy that honor and integrity matter. Doing the right thing matters. Even if you are alone. Even if you are afraid.

Well, that message, embodied in that mythic figure, profoundly affected a generation of young people who came of age in the 1950's and 1960's. It affected me.

So there I was, perhaps fifteen years later, a greenhorn, a tenderfoot, in the United States Attorney's Office, when I encountered the same mythic figure in the flesh. It was 1969. I had been in the Office for a couple of years. I had been hired by David Bress. I was still as green as could be, quite unformed, as many of us were. We looked for guideposts, people on whom we could model our behavior, our way of dealing with legal and human problems and dealing with life.

And here in the flesh in 1969 was this same mythic figure – tall, rangy, quiet, commanding, modest – wonderful human qualities that overlay a core that was as tough as nails, firm, unyielding and uncommon in its rectitude and commitment to the rule of law and to doing the right thing.

All that was missing was the horse and the hat. This time, though, it wasn't Will Kane, it wasn't Gary Cooper. It was Tom Flannery.

Tom Flannery had come back to the Office to run it. He had served there between about 1950 and 1960 as a distinguished Assistant, having come from private practice in the late 40's and the service as an air force officer in Europe before that during World War II. By 1969, he had obviously seen a great deal of the world. And he came to lead, really to revitalize, an office that probably had between 50 and 60 assistants – some extraordinary experienced prosecutors and a huge number of wet, young, inexperienced pups. He became a leader of unparalleled strength and vision.

From an administrative and professional perspective, Tom Flannery developed and molded us and our office into a much more effective, contemporary prosecution force. The prosecution of white collar crime and organized crime; the increased jurisdiction of the local courts all developed during his tenure. The building blocks of the office were put in place – through Earl and Carl Rauh – for the initial prosecution of Watergate and the maturation of the office into the 1970's and beyond. It was a period of ferment and renaissance that left its mark on the structure and effectiveness of the U.S. Attorney's Office for years and indeed for decades to come.

But the mark that Tom Flannery left is deeper than just that. The mark he left may be found, and found to this day, in the hearts and souls of the young men and women whose lives he touched and who were moved by the extraordinary qualities that he possessed. Those qualities – exhibited by a tall, gentle man who rode into our lives and was our leader for a few years in our relative youth – have served many of us as guideposts for the past fifty years.

For it's really true that the noon train comes to all of us at some point in our lives. Understanding how to respond, how to do the right thing, understanding what it is expected of us as lawyers and human beings is one of the profound insights of life.

Well, the noon train arrived here on that October morning in 1970. It wasn't the Miller Gang, but an outfit – in modern parlance a conspiracy – just as rough. For a time, the judge was under police protection. Various members of the Office received police protection. It was a serious case, with upwards ultimately of 50 convicted conspirators, and jail time that probably exceeded 500 years meted out to those who were convicted. Every conviction was affirmed by the Court of Appeals.

It took Tom a bit longer than Gary Cooper to mete out the justice that was done. Thankfully, he had a bit more help than Marshal Kane did. But the rectitude, the commitment, the decency, the modesty, the grace – the mythic figure was exactly the same.

And for me, at least, in a personal sense it will ever be thus. Whenever I enter this courtroom, I see that figure standing before the jury box on that October morning in 1970. And I give thanks to whatever providence there is that gave us Tom and our time with him and with one another.

Tom passed away in 2007. At that the time of death, he had served as a United States District Judge for thirty-four years. Many of us got together after he died and talked about what might be an appropriate memorial. Our dear friend and colleague Roger Adelman came up with it. Roger suggested a lecture series. We took that suggestion and developed and implemented the Thomas A. Flannery Lecture on the Administration of Justice, to be given once a year. Appropriately, it is given in this courtroom from Tom's old lectern. Additionally, and also appropriately, it occurs in the fall of the year, the season when Tom met the noon train here in October 1970.

Under the direction and tutelage of Paul Friedman and Royce Lamberth, we have had a wonderful collection of speakers. Royce, as Chief Judge, was our first speaker in 2009. There followed the late Justice Antonin Scalia in 2010, Earl in 2011, former Senator George Mitchell in 2012, SEC Chair Mary Jo White in 2013, and former director of the FBI Bob Mueller in 2014. Our 2015 speaker was former Attorney General Eric Holder.

In addition, we have had shorter presentations from leaders of the local bar, including U.S. Attorney Ron Machen, former District of Columbia Attorney General Irv Nathan, District of Columbia Attorney General Karl Racine, and others. We have often had overflow attendance in these presentations, and I estimate the aggregate number of attendees who have seen our Flannery lectures over the years is in the range of 2,500 to 3,000.

What is particularly rewarding is that most of the speakers have taken the time to review Tom's life and to speak a few words about him. His daughter, Irene Flannery, and his son, Tom, Jr., attend these lectures. Irene herself has spoken at a couple of them.

So, once a year in the fall, Tom and his memory get a lot of recognition in this very courtroom and, if only for a brief hour or so, we are all here with him once more. Awaiting, yet again, the arrival of the Noon Train.