

FRANCIS W. COKER, JR., AND THE SECURITIES AND EXCHANGE COMMISSION

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FRANK COKER died suddenly—just after he had finished brilliantly asserting his views on a basic question before the Securities and Exchange Commission. The impact upon us was universal: He was our counsellor and a true friend. But sorrow and sentiment are not enough. Frank was too robust a spirit for that. True, he was self-effacing, but he was not sweet. He was extraordinarily gentle, but his gentleness combined with effectiveness and strength. Sensitivity and tough fiber are seldom found in the same being, but together they are the essence of a superior one. Despite his tenuous hold on life he did not ration his zest or his drive. Because of his health I had little expectation that he would come to Washington as our consultant, but he accepted the role because of the challenge. He found himself fascinated by the tough intellectual problems, and wanted to do something about them.

Qualities of a superior law teacher or superior public servant are not dissimilar. Both must appreciate the need for maintaining a balance between idealism and realism. One without the other is either vapid or sordid. Both were skillfully blended in Frank Coker. He had already become a partner in a distinguished firm before he chose the academic life. He sought to raise standards by concrete application. He would deprecate his contribution and humbly offer his ideas as one of the alternatives we might consider. But actually they were not placid suggestions, but tough convictions. And he was ready to stand behind them—vigorously and forcefully—when anyone began to probe his reasoning. He had the faculty of stripping a problem to its intellectual essence, analyzing it in its most abstract forms, and then developing a totally realistic solution.

Frank Coker was of incomparable help to the Commission in its efforts to come to grips with some of its most important and baffling problems. His first major task was in the development of a regulatory structure under the Investment Company Act of 1940 for companies issuing variable annuity contracts. The Supreme Court decision had established a principle—that variable annuities are securities and their issuer is subject to regulation under the Investment Company Act. But the next step was to make it work. In essence, the problem involved the mutual accommodation of two substantially different philosophies of regulation, *e.g.*, for insurance companies and investment funds. Thanks in large part to Frank's analysis, imagination, and realism, the staff has developed an approach which may well achieve this accommodation.

Frank had also been directing his attention to the philosophical problems underlying the Investment Company Act. This concerns an industry which has

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burgeoned from a few billion to thirty billion dollars over a few years, and now holds the savings of over five million persons. The Commission is presently engaged in a re-examination of that Act and an overall study of the investment company industry. Here Frank was far from completing his inquiry, but his preliminary observations were nonetheless penetrating and seminal. Imaginative, unorthodox, but no mere flights of fancy, they will serve to stimulate and focus our thinking in the years to come.

The very fact that Frank Coker had an impact on the laborious evolutions of government policy in a year's time is a tribute not only to his intellect, but also to his special character and tough minded idealism. I am sure that he would have subscribed to a standard which he so clearly exemplified—to the salty words of Karl Llewellyn: "Technique without ideals is a menace; ideals without technique are a mess."