

BUILDING THE KELLEY TRUST

In late 1989 and 1990 I began looking at the real estate market very closely for investment opportunities. The Savings and Loan and banking crises were in full swing and there were many properties on the market that were being sold by the FDIC that seemed to be less than market value. There were just simply not enough buyers and too many sellers, so the prices of the properties had dropped significantly. This seemed like a very good opportunity to acquire some properties on behalf of the Kelley Trust. Although I had not discussed this matter with Mr. Kelley, he liked real estate and I didn't think he would have a problem if I invested a little bit of his money in real estate. He certainly wasn't using any of the income or principal for his own needs so it wasn't as if I was creating a problem for Mr. Kelley. I started looking at some quadraplexes. Being a local real estate attorney and real estate investor, I was familiar with many of the properties which were now on the market. Because of this, it was easier for me to make a decision as to the value of these properties.

In February 1990, the Kelley Trust bought four quadraplexes from the FDIC. I considered the price of \$288,000.00 to be a real steal. I knew we could rent them and make some money. I didn't realize how much trouble it was to be a manager of rental property, but that's another story. Later that same year I bought four more quadraplexes from the FDIC for approximately the same price. In 1991 I bought 65 lots in Pleasant Valley for about \$70,000.00. You couldn't replace these lots for the price we paid for them and I felt it would be a good investment if we could get the roads accepted by the County. I was familiar with some of the issues regarding this subdivision and felt like I could handle it. After we bought the 65 lots, I proceeded to sell them to two builders, Curtis Mickan and Jimmy Jacobs. It turned out to be an excellent investment.

Within the next two years I acquired two buildings on the Square, some commercial property on Williams Drive, and an 81.0 acre tract on the southeast corner of I-35 and Westinghouse Road which I later sold and bought 82.0 acres on the northeast corner. Prices were very reasonable and I felt the properties would appreciate considerably in the next 5 to 10 years. Kelley wasn't using the money and he had no problem with me managing his affairs as I saw fit. I felt very comfortable in making these real estate investments. We had plenty of liquidity and Kelley never seemed to need any money out of the Trust. He always used to say, "I have \$30,000 a year income and I'm barely able to spend that every year. Why should I need any more money?" Kelley was an unusual person because most of my clients and friends were preoccupied with money. Kelley was unique in that he had all the money that you could possibly want and yet he didn't want any of it. He refused to spend any money on himself except for the new car.

Between 1990 and 1995, Kelley made several substantial gifts to certain chosen individuals whom he had a special affection for. Kelley was very generous and didn't ask for anything in return for those gifts. They were purely out of the kindness of his heart. He really enjoyed making the gifts. I got to play Santa Claus and write letters to the people who were receiving the gifts and of course, they usually couldn't get in touch with Kelley to thank him so they usually called me and thanked me. Of course, I was

not the one to be thanked. I was kind of like the man in the old tv program called "The Millionaire" who would deliver the million dollar check. Of course, these checks were not that big, but they were like a million dollars to the people who received them.

But my relationship with Kelley was always complicated. From the very beginning I wasn't sure if our relationship was strictly an attorney-client relationship. He always seemed to treat me differently than just his attorney. After twelve years I began to realize that perhaps I was Kelley's surrogate son.

As an attorney it was difficult to represent Kelley. I tried to be conscientious, to dot all my i's and cross all my t's and to be sure that he got copies of all the correspondence I wrote and knew about all the expenditures I made. But, in fact, he didn't care about those things. He seemed to have a unique and abiding trust in me which gave me an enormous sense of confidence to do the things that I was doing. Never in my life had I had this much money to invest freely as I wanted to. At the same time, it was stressful to be making these decisions without any reaction from Kelley, but he was happy with what I was doing and I guess that was all that mattered.

Although I don't think it would have made any difference to Kelley if I had made money or if I had lost money on these investments, it just so happened that I did quite well for Kelley. But he liked me no matter what I did and that was what was so unique about Kelley. I had a strong sense of security about my relationship with Kelley. He wasn't going to all of a sudden get mad at me if I made some mistake or made a bad investment. He never requested any money from the Trust and as much as I tried to get him to spend money from the trust, he would refuse it. He did go to the Georgetown National Bank every three or four months to take out spending money, but most of that money had come from his pension at the Carpenter's Union or his annuity with Travelers or his monthly social security check. He just didn't spend more than the \$30,000.00 a year he had coming in each year. He said would say, "I have money left over every year, so why would I need any more money?" Besides, Kelley had a uniquely skeptical view of money and its value. One of his favorite things that he repeated over and over to me as he ate catfish at the Café on the Square, "Dale, the Yankee dollar speaks more languages than the devil himself." There would be an Irish twinkle in his eye as he said it. Another thing he talked about regularly was one of his favorite short stories by Steven Vincent Benet called "The Devil and Daniel Webster". This was a story of how a farmer sold his soul to the devil in exchange for "all the happiness that money could buy". When he said that phrase, he would laugh. He loved the irony of the statement. He had all the money that most people would ever want and yet he realized that his happiness was not dependent upon it. I had never met anyone like Mr. Kelley.

On the other hand I was still a young lawyer and I was very interested in money, particularly managing Kelley's money and making a good return for the Kelley Trust. I figured that by December 1992, the investments had appreciated by more than \$1.3 million. It gave me confidence to buy more properties from the FDIC and at what I believed to be rock-bottom prices.

The Kelley Trust was beginning to take shape and the future of the Trust was definitely going to include lots of good Georgetown real estate. During this time, Kelley continued to make gifts to those certain chosen people that were lucky enough to be on his short list. We filed gift tax returns and slowly but surely we used his unified estate and gift tax exemption, which at the time was \$600,000.00, and had to pay gift tax on several additional gifts.

Kelley enjoyed giving away money. It was the one thing that he enjoyed about money, making other people happy. When Kelley came to visit me in October 1994, Sandy and I had lunch with him at the L & M Café. Kelley smoked a lot and drank a lot of coffee. He didn't eat much food that day. After lunch we went to the bank where he got \$3,000 in cash in one hundred dollar bills and a few twenties. When he got cash from the bank, he would put the bills in his shirt pocket; more often than not the \$100.00 bills were hanging out so anybody could see them. He certainly didn't do this to attract attention, but that was just how he kept his money.

My wife and I were building a house at the time and after we gave him a tour of the house, we all sat on the back porch and talked. He enjoyed sitting on the back porch. He liked to talk about Martha and her children and he enjoyed commenting on the butterflies and flowers in our garden. He was very knowledgeable on the different types of butterflies.

He had a deep cough, as usual, but he seemed in good spirits except that he was winded when he walked. He was getting older and he wasn't taking very good care of himself. He never went to a doctor. He didn't believe in doctors. He'd always say, "Doctors give you medicine while your body gets you well."

Kelley instructed me time and time again to take care of his friends in whatever way I could, but he was never specific about what I was supposed to do. It was difficult because as an attorney I needed specific instructions. It was also difficult to be his attorney when he talked about making specific gifts to me and Sandy, but he was always wanting to do something for me. He would also say that I didn't pay myself enough attorney's fees. (I certainly didn't have any other clients that felt that way.) But Kelley was very sincere and he definitely wanted to take care of Sandy and me and the children. He was very attached to us, as we were to him.

In 1994, I started making trips to College Station to see Kelley because he was spending more and more time at Martha Cannon's house. It was a good place for me to see him. We would always go out to lunch and then afterwards we would sit in the car and talk. He liked to talk about what gifts he was going to make and who he was going to make them to. Except for the monetary gifts, he didn't like to talk about business. Despite the fact that he didn't like to talk about business I always liked to brag about how much the Trust had grown. According to my calculations, the Trust assets were now worth about \$4.8 million.

At my request, on January 20, 1994, Kelley executed a new Trust which was a restatement of the old Trust but it was much more particular on what would happen upon Kelley's death and what my responsibilities and duties would be regarding the creation of a foundation in Kelley's name. After a lot of consultation with attorneys who were familiar with foundations, I had decided it was necessary to be more specific about the charitable entity that would be created upon his death. I knew it would be a lot easier to deal with these subjects while Kelley was still living than to deal with them after he was gone.

Kelley's health was deteriorating. He wasn't as spry as he used to be and I knew that he was going to need a lot more attention than he had in the past. On Friday, July 7, 1995, at approximately 9:30 I received a call from Martha Cannon stating that Kelley had been taken to the hospital by EMS. He had suffered some kind of a seizure, or stroke or heart failure and was being transported to St. Joseph's Hospital in Bryan, Texas. I located the Medical Power of Attorney that I had drawn up for Kelley and faxed it to Martha. I began to ready myself for the trip to Bryan/College Station. I knew I needed to be there.

I arrived in Bryan/College Station about 1:00 p.m. and I met Martha Cannon in the parking lot at St. Joseph's Hospital. We walked into the hospital together and I went in to see Kelley in the intensive care unit. He was alert and greeted me in the normal Kelley fashion. He made it quite clear to me that he wanted to leave the hospital as soon as possible. I was, of course, aghast at this because, just having arrived at the hospital, I didn't think he should leave. One of the first things Kelley said to me after my arrival at the hospital was that he wanted his estate to be split between me and Martha with me receiving the larger share. He didn't say how he wanted this done nor what proportions he wanted it divided into nor did he say when he wanted it done. I didn't question him about it because this wasn't the proper time to do so. After a few minutes of conversation and determining that he was stable, I left the room in order to talk to the attending physician about his condition. Dr. Schert was a good doctor and he led me outside the hospital where he described the tests that had been run on Kelley. His summation was that Kelley was in pretty good shape considering his age. His lungs, despite his smoking, were in better shape than he expected them to be. But Kelley did suffer from iron deficiency anemia. He was not sure of the cause but felt that Kelley should follow up with a visit with his family physician to determine the cause of this anemia. He indicated there are other reasons for anemia than bad eating habits. After talking to the doctor I discussed the matter with Martha and she made it quite clear that she did not want Kelley coming back to her house as she was unable to care for him in his condition. I discussed this with Mr. Kelley but he was adamant that he wanted out of the hospital and he wanted out immediately. I told him that he could not leave the hospital until he signed a release releasing the hospital from any liability. Before he could sign the release he had to talk to a doctor and the doctor he had to talk to wasn't available, so Kelley was angry even though I was trying my best to get him out of the hospital. I managed to get the doctor to see him and the doctor agreed that it was useless to try to persuade Kelley to stay in the hospital. Kelley admitted an interesting fact: he didn't like to be touched by anyone, whether they were male or female, doctor

or nurse or whatever. He was just uncomfortable with anyone touching him and, of course, in a hospital you have many people poking and prodding and touching you.

Kelley and I followed Martha back to her house. I could tell that she wasn't very happy about the whole situation. I sat in the car with Kelley and talked about the situation. I suggested that Kelley needed to give Martha a large gift because Martha basically saved his life that day—at least that is what I told him. Kelley informed me that I should give Martha \$100,000. Several days later I was able to complete this gift. While we were talking in my Explorer he suggested that I take some trust money and buy the vacant lot next door to mine. He was afraid someone might buy the lot and build a rent house on it. I was really moved by his seemingly generous gesture, although I never did anything about it. I was impressed that Kelley, who had been unconscious a few hours earlier and had just walked out of the hospital against the advice of several doctors was worried about who was going to build a house next to me. Was this an indication of his extreme generosity and thoughtfulness, or was this his way of avoiding the subject of his own mortality?

Because of the seizure Kelley seemed a little more willing to talk about estate planning. I tried to get him to understand that it was imperative that he leave something for Martha at the time of his death. I reiterated this time and time again. It finally must have sunk in because on August 17, 1995, he executed an amendment to the Trust which set up three separate trusts, one for Martha Cannon, one for Betty Manning and one for Charlene Prichard. I had thought this was an excellent idea on his part because giving it all to charity really didn't seem right. He needed to also take care of his friends.

The seizure at Martha's had a profound affect on Kelley. About a month later, on August 16th he came to visit me. We had our usual catfish dinner at the Café on the Square and after dinner we walked back to my office. He asked me if he could sleep on my floor that night. I told him I certainly didn't mind if he slept on my floor, but I would be happy to get him a motel room or he could come home with me and sleep at my house. He said he just wanted to spread out his sleeping bag on the floor and sleep at my office. I had learned some years earlier that when Kelley said something like this, that was what he wanted to do. He didn't want to go to a motel. He didn't want to sleep in a bed. He wanted to sleep in his sleeping bag, on the floor of my office, the very office where we had gotten to know each other over the past 18 years. Somehow he must have felt safe here. At any rate, I was able to hear him and I said, "Sure, Mr. Kelley, you can sleep on my floor." He went out to his car and got a moth-eaten sleeping bag and spread it on the floor. I explained how the air conditioning in my building worked, gave him a key and left him with his sleeping bag. The next morning when I arrived Kelley was sitting in a chair in my office with the sleeping bag neatly rolled up beside him. I told Mr. Kelley that I really hoped he would stay around for a while and that there was a sofa in the back room that he was welcome to use instead of sleeping on the floor. Mr. Kelley walked to the back room, sat down on the sofa and for the next six and one-half months lived in that room and slept on that sofa. I eventually rigged up a cable tv and got him a comfortable chair.

Mr. Kelley's usual schedule was to get up around 7:00 - 7:30 a.m. and go to breakfast at about 8:00 a.m. He usually went to the L & M Café and ordered two eggs over easy with bacon and toast and coffee and sat in the L & M Café until 10:30 or 11:00 a.m. Sometimes Jack Buchanan or Sam Pfister would meet Kelley for breakfast or coffee at the L & M and on occasions took him for rides in the country or to see their different projects they were working on. Sam and Jack were very helpful in entertaining Mr. Kelley on these occasions and taking the burden off of my shoulders. I got to spend a lot of time with Mr. Kelley. My wife said she barely saw me during this six and a half months because I was trying to entertain Kelley all of the time. I spent a lot of time with him during those months. One of the things we did was to rent the movie which he was so fond of, "The Devil and Daniel Webster". He seemed to take a real pleasure in showing me this film.

Having Kelley in my office was not always a pleasant event. There was no shower in my law office, so Kelley could not bathe during this period of time. The stench in his room was getting stronger and stronger. Also, the pressure on me to entertain Kelley was growing and I was getting somewhat irritable. I decided the only way to handle this was to build Kelley a house. In one of my many excursions with Kelley in my car, we drove up to this lot which the Kelley Trust owned. I said, "Kelley, you own this lot. What's wrong with this lot?" It was in a relatively poor part of town but it was a nice lot and had a view of a soccer field and the elementary school beyond. Kelley said that it looked like a good lot to him and why didn't I get some plans and we would build a house. I immediately contacted my architect, Richard Elsasser, and contractor, Steve Richmond, and within the next few weeks we had agreed on some plans.

On October 9, 1995, I signed a contract with Steve Richmond for the construction of Kelley's house. It took about four and one-half months to build the house. Kelley enjoyed watching the process and enjoyed talking to Steve Richmond as it was built. My wife was desperate that Kelley move out of my office so that my life could get back to normal. We were worried that Kelley wouldn't move into the house because he wouldn't have any furniture. So Sandy got busy and found some furniture that she thought Kelley would like. Of course, Kelley didn't like the furniture that Sandy picked out. He wanted to pick out his own furniture but he didn't want to pick it out until the house was finished.

At this point I was spending most of my time either taking care of the Kelley Trust, managing the Kelley Trust money, taking care of Mr. Kelley personally, and managing the Kelley Trust properties, and trying to get Kelley to take care of himself, which was not very easy.

At this time in 1995, the Trust properties were now worth approximately \$6.5 million. The investments had grown substantially under my management, but Kelley still wasn't very interested in how much money he was worth. He was appreciative of my efforts and he appreciated the fact that I had enabled the Trust to grow, but he never took any

money out of the Trust, except for the building of his house and purchase of his car and, of course, to make gifts to his friends.

Kelley became a real fixture in Georgetown. He ate most of his meals at the L & M Café and seemed to get along pretty well living out of my office. Jack and Sam, my very good friends, became real close buddies of Mr. Kelley, as did some of the hangers-on at the L & M Café. He always held court at the same booth and he always ordered the same thing and had the same waitress.

It was December of 1995. Kelley enjoyed driving around with me but it was particularly enjoyable at Christmas. We got an old Bing Crosby tape out of his car and played it as we drove around the fancy sections of Georgetown and looked at all the beautiful lights and decorations. We had a good time together talking and listening to the old Christmas music of Bing Crosby.

Sandy and I had invited Kelley to come to Christmas dinner and, of course, we prepared a lavish meal and set a place for Kelley. I went down to the office to pick him up and when I got there I found no Kelley. His red Mustang was not parked in front of my office and there was no sign of Kelley in the office. He had bolted. I knew he just didn't like interrupting a family gathering on Christmas. He just couldn't partake of our Christmas dinner even though we desperately wanted him to do so. We later found out that Kelley had departed for Concorde, California where Betty Manning lived. He got there just after Christmas and stayed until early January. During that time Kelley had another seizure, lost consciousness, was taken to the hospital, treated and, of course, demanded to go home. Betty called me immediately and told me what was going on; she was very worried about Kelley because he was talking about driving back to Georgetown. Of course, no one could talk sense into Kelley and certainly not Betty or me, even though I tried over the telephone, one of my rare telephone conversations with Kelley. I thought it was imperative that we try to keep him out of his car while he was having these epileptic fits.

Kelley made it back to Georgetown without any trouble. After all the advice from Betty and me to take it easy, Kelley drove straight through from Concorde, California, to Georgetown, Texas in a day and a half. When he got back, he resumed residence in my law office. It wasn't long before his house was finished and he was ready to move in. He picked out his own furniture with Jack Buchanan and we moved him into his house in the latter part of February, 1996. Kelley was once again at home.

It was a relief to get Kelley out of my office. I think he felt the same way. It had been a very difficult six months with Kelley and even after he had moved out, I kept his room the same and from time to time he would come back and visit. But mostly I went to visit him at his home. I tried to go every day but didn't always make it. Jack Buchanan and Sam Pfiester would go by and check on him from time to time also.

Kelley got along pretty well in his new house. He would still go to the L & M Café every morning for breakfast.

My legal assistant, Donna Arldt, had been with me since the very beginning of the Kelley saga. She had been through the two trials, all of the ups and downs of Mr. Kelley's life, but after 18 years of working together, I made the very difficult decision to fire Donna. I just couldn't handle her any more and gave her a six month's notice in July of 1996. Mr. Kelley was very fond of Donna and this was a shock to him that I was going to let her go. He basically didn't like anyone to lose their job so he tried to convince me that it wasn't a good idea to let her go. But I had made up my mind, and there was no going back, even though it was going to put a strain on my relationship with Kelley.

This was really the first time that I had ever done anything that would upset Kelley so it was hard on me as well. The six months after I gave Donna notice were perhaps the most stressful time of my life. But Kelley didn't talk about things like this. If he was ever really upset with me, he never told me. As the hot summer turned to fall, Kelley would sit in a lawn chair in front of his house and let the sun warm his back. His arthritis was really bothering him and this was one of the ways he dealt with it. Even though his back hurt, we still made several trips. This driving around time with Kelley was very relaxing. He was kind of like an old dog who liked to ride in the back of the pickup truck. There was something about a ride in the country that Kelley really enjoyed. It was really one of his few pleasures. He seemed to be going down hill.

By the first week of December, 1996, Kelley didn't seem well at all. He never talked to me about his medical problems, except his arthritis. He never talked about his bowels. He never talked about those sorts of things. Unbeknownst to me, Kelley was constipated. He didn't look good. He wasn't acting good. He wasn't eating. I asked him if he wanted to go to the doctor but he didn't. I was leaving town to go visit my mother on Friday, December 6th. I went by to see him early that morning before I left for Houston. I knew Kelley wasn't doing well so I asked Martha Cannon to spend the weekend with Kelley. She was coming late Friday afternoon. I was in a hurry to leave that morning and Kelley could sense it. He started to say something but he never finished; he didn't want to keep me any longer. That was the last time I saw Kelley. I got a telephone call the next morning from my wife that Kelley had died in the night. The tragic events of that evening are indelibly imprinted on Martha Cannon who was actually at the house when he died. She didn't hear all of the commotion that went on but when she woke up the next morning she could see a body on the floor that was not moving and she suspected the worst. She called EMS and the police and, of course, he was dead. He had died of impacted bowels.

Kelley's death was a shock as all deaths are but no one had expected him to die in this manner. Because of the circumstances of the death, they had to perform some sort of an examination to determine the cause of death. Of course it was determined that he died of natural causes and the body was delivered to the funeral home for cremation. Pursuant to some conversations I had with Martha and Kelley, I knew that he wanted to have his ashes scattered. I also knew, however, that I wanted to bury some of the ashes in the Presbyterian Cemetery in Georgetown, Texas, where my family and I are to

be buried. I considered Mr. Kelley as part of my family. It was very important that he be buried in the same plot where I would some day rest.

This was a very difficult time in my life. Donna's last day was to be December 23rd. Kelley had died December 7th. It was very hard on both of us. It was hard to lose Kelley and it was particularly difficult and stressful at the same time to deal with Donna's leaving right at Christmas.

Kelley's ashes sat on my desk; there was no way I could plan for Kelley's funeral in the stressful condition I was presently in. Kelley would have to wait. He would have to sit in my office for a little while longer before he was put in his own resting place.

It ended up that Kelley had to wait until April before he would get to his final resting place. Many different things happened. The weather did not cooperate. We had ice and rain storms. We had to cancel the burial twice because of weather problems. I had told Martha that I was using a friend of mine who had just been ordained into the priesthood, an episcopal priest, Kyle Seage. Martha had a problem with the fact that Kyle was a woman. We got into an argument on the telephone and I basically decided then and there that if I was going to have this funeral, it was going to be on my terms; it was going to be with my priest; it was going to be according to my script. I think Kelley would have permitted me those decisions. For the past nine months Kyle had taught me, my wife and five other people the first year of a three year course called "Education for Ministry", an intense course in the Bible and a very intense experience for the seven people involved. Kyle had just graduated from seminary the year before and her husband was a senior at the seminary and she was waiting for him to finish before they moved back to Mississippi where she was from. I felt very close to Kyle. She understood how I felt about Mr. Kelley. She understood the problems I had with Donna. We had talked about these things as part of the course and I felt that she understood. So she was the person I chose to conduct Kelley's funeral. I made a conscious effort not to involve a funeral home. I had the ashes. Kyle agreed to perform the service. All that we needed was to set a date and to invite the people.

Because of all the controversy I had with Donna, I did not invite her. However, she did show up and I was glad that she was there. We arrived at the cemetery and Kyle said, "Let's all process across the cemetery as I recite the opening passages from the service." So I carried the ashes. Jack carried the sack of dirt and Sam carried the shovel. My wife and family and other members of the funeral party processed across the Presbyterian Cemetery while Kyle recited: "I am the Truth. I am the Resurrection and the Life. Whosoever believes in Me shall not perish but have eternal life." There were puddles of water in the cemetery as it had been raining. When we got to the burial site I knew that I had to bail out the water before I could put Kelley's ashes in the ground. I had a tin can. I got down on my knees and bailed the hole out until it was dry. I then waited for the proper moment in the service and then lowered the ashes into the hole. Jack poured the dirt over the ashes and Sam shoveled the other dirt on top and we completed the service. This service could have happened in any century. There

was no evidence of anything modern. It was a simple burial of a mysterious and wonderful man. I was very grateful to be able to bury Kelley with my own hands.

Kelley's death was totally unexpected. I kept thinking over and over what I could have done to prevent it. I replayed the events of the last several months over in my mind. What did I do wrong?

Life had been made easier when Kelley was alive despite all the day-to-day problems of looking after him. Kelley's death helped me to realize that what Kelley had given me was a lot more than just the responsibility of taking care of his legal affairs and managing his money. Kelley had given me his absolute trust and confidence from the day we met until the day he died. No one had ever given me such trust. This was Kelley's greatest gift.