

Volume 38 | Issue 4

1988

Tom Emerson: The Constructive Advocate

John P. Frank

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>



Part of the [Law Commons](#)

Recommended Citation

John P. Frank, *Tom Emerson: The Constructive Advocate*, 38 Case W. Res. L. Rev. 537 (1988)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol38/iss4/12>

This Article is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

TOM EMERSON: THE CONSTRUCTIVE ADVOCATE

*John P. Frank**

My first meeting with Tom Emerson was in September, 1941 at the Department of Justice in Washington, D.C. It was a gathering of the chief counsel of the government agencies as they prepared for the war to come. The problem to be solved was how to keep the agencies, desperate for staff, from raiding each other. The war agencies had the need and the money, and the old line agencies had the lawyers and the tight budgets. I was there as one of the staff of umpires representing the special board which had been created to help man the legal staffs of all of the agencies.

So far as the rest were concerned, Tom was the enemy. As Associate General Counsel of the Office of Price Administration, he had the greatest need, the fastest growing staff, and the most money. I remember Warner Garner, able and saturnine, Solicitor of the Department of Labor, saying, "I don't care what you do. He's ruined me already."

The episode comes back to mind because of Tom's handling of it. He was calm, totally unruffled, and reasonable. He was not ready to yield, but he was ready to cooperate. In the following months, he worked with our office, wholly constructively, to help find and qualify new legal staffs, not only for his own but for all of the agencies. Tom was effective, determined, unyielding, but always constructive.

On the occasion of this brief salutation, I leap to the end. We are past the years of extraordinary creativity, the time when he, by sheer hard work and brilliance, created a whole new learning and a whole new structure on the liberties of the American citizen. I jump past our most intensely shared moment of joint effort when, with five others on behalf of the law teaching profession, and before

* Partner, Lewis & Roca, Phoenix, Arizona; B.A., University of Wisconsin (1938); LL.B., University of Wisconsin (1940); J.S.D., Yale University (1947). The author has written numerous books on constitutional law and history, and was a colleague of Professor Emerson for several years at the Yale Law School.

*Brown v. Board of Education*¹, we went into the Supreme Court with what I think may be the first brief calling for a total end to segregation in America.² What matters now is not whether it was first, or one of the first, but that it was a chance to work with Tom in one of the many causes dear to his heart.

Instead, I come to my last note from Tom, handwritten as usual, dropped on to my desk after a lapse of a couple of years. He is old now, ill, and indomitable. He wanted to pat me on the back for recent testimony before the Senate Judiciary Committee in opposition to what I regarded as an unfortunate Supreme Court nomination. I wrote back, “[p]raise, from one who has done the most, counts.”

Tom Emerson, effective, determined, unyielding, but always constructive.

1. 344 U.S. 1 (1952).

2. Brief of Committee of Law Teachers Against Segregation in Legal Education as Amicus Curiae, *Sweatt v. Painter*, 339 U.S. 629 (1950) (No. 44).