

LOUIS H. POLLAK, GENEROSITY, AND SUBTLETY: A STUDENT'S VIEW

GUIDO CALABRESI †

Judge Pollak, Judge Louis H. Pollak . . . it fits. Lou was made to be a judge and all those who care about law and justice will benefit from his appointment. There are at least as many ways of describing the mix of qualities that make him suited for judicial office, as there are people writing for this issue. Some will point to those skills that were demonstrated in Lou Pollak as Dean, others in Lou Pollak as advocate. I would like to emphasize some of the traits that I appreciated in Lou as teacher and colleague. Specifically, I would focus on his generosity and on his subtlety of mind.

Lou's generosity is true generosity . . . of spirit. It is the generosity of the ascetic who gives of himself, not of the bon vivant who gives the leavings of what he has in surfeit. It is the generosity of the teacher who respects—even too much—his students' ideas. It is, therefore, the generosity of the judge who will hear the needs and hopes of those before him, however preoccupied or busy he should, objectively speaking, be. There is an anecdote that Lou tells of himself . . . and me . . . that I would like to share with you, because it demonstrates that generosity of spirit.

In my first days at the Yale Law School, I found myself in Lou Pollak's Constitutional Law class. I knew nothing—except perhaps a bit of economics. He knew everything—except perhaps a bit of economics. The fates, and the fact that my last name begins with a "C," placed me directly in front of him in the first row. After some weeks on *Marbury v. Madison*, weeks in which I felt myself to be ever more stupid, Lou turned to the mare's nest that is the cases dealing with state regulation of interstate commerce. He dealt with them elegantly, playing off all the nuances that those paradoxical decisions permit. Apparently, however, his treatment was not in keeping with the higher learning of welfare economics. For, as he tells it, when he began teaching those cases, I started (unconsciously . . . I swear) to shake my head, ever more vigorously and ever more negatively, directly in front of his face.

Most professors in their first year (and Lou was a novice, if brilliant, teacher), especially in those days, when the *Paper Chase* was not merely a second-rate novel, would have destroyed (and how easy it would have been) the impudent nodder. That, of course,

† Sterling Professor of Law, Yale University.

would not have been Lou. Typically, in *his* version of the story, he abandoned the subject immediately, never to return to it. But that is not what, in fact, happened. After hearing him first tell the story, I went back to my class notes for that course and found the following (edited) comments interspersed in the discussion:

Day one—This guy doesn't know beans about economics;

Day two—He must be taking a cram course [written, I think, with some sarcasm];

Day three—God, that's good, check it with Fellner [William Fellner, then Sterling Professor of Economics at Yale].

No; Lou was both too generous to treat my impudence with contempt, and too tenacious to drop the point—marginal though, in many ways, it was. Characteristically, he assumed that there might be something in those ignorant nods, and setting about to find out, he succeeded with extraordinary speed to incorporate, and even to go beyond, what the dismal science could give to his analysis.

The second quality on which I would like to focus is subtlety, the capacity to make, and to use purposefully, the finest of distinctions. I saw this trait in its most brilliant form in a third year seminar in Federal Jurisdiction that Lou taught to some seven of us. It was like observing a great pianist close at hand, for not only were distinctions others could not see achieved with exquisite skill and rapidity, but they were always made with an aim. They were used to further his valid interpretation of the music. It was this quality, so often demonstrated by Lou as a colleague as well, that Alex Bickel most frequently noted and admired in him. It was this same quality that he has used devastatingly—as in his celebrated appraisal of the candidacy of Harold Carswell for the United States Supreme Court—in the public forum.

Alone each of these qualities—generosity of spirit and purposeful subtlety of mind—can become almost a fault in a teacher . . . or a judge. Together they became an extraordinary source of wisdom and strength.