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The Dean

Louis H. Pollak[†]

In remembering Eugene Victor Rostow—"Gene," "E.V.R."—we take stock of a life well lived. Were Gene to read the several tributes in this issue of *The Yale Law Journal*, he would, in his smiling, upbeat way, be profoundly gratified by the affection and admiration that are their common themes. He would also, however, qualify his expression of gratification with the gentle admonition that we all should be cautious in treating as true whatever kind things might be said by any of the tribute writers. "Lapidary inscriptions," Gene was wont to remark, "are not under oath." But given that there were to be memorial tributes, Gene would have been glad, I am confident, that the vehicle of publication was this journal, a publication dear to his heart, and one that has for more than a century carried the banner of Yale—the University that was Gene's intellectual home for some four decades and whose Law School he led to greatness in his ten years as dean.

Why am I so confident that if tributes were to be had, an academic periodical would have been Gene's chosen venue? To respond, I must invoke a memory of Gene—one of five memories that I will share with you this afternoon because, for me, they define our friend. This memory goes back approximately forty years. The Law School was hosting a lecturer of uncommon distinction, Philip Jessup, the eminent scholar of international law who, toward the end of the Truman years, was hijacked from Columbia Law School by President Truman and Secretary Acheson to serve in lofty diplomatic posts, including Ambassador-at-Large. By the time of his visit to the Law School in the early 1960s, Jessup had become Judge Jessup of the International Court of Justice. The evening before Jessup was to deliver his lecture, Edna and Gene had an elegant dinner party at their beautiful home on St. Ronan Street. In the course of the evening, Gene put a question to Jessup. Gene asked how Jessup would like to be introduced the next day:

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“As ‘Judge’? As ‘Ambassador’? Or,” Gene persisted, “by your highest title, ‘Professor’?”

Gene was a professor—a recently minted full professor—at the time of my earliest memory of him. The year was 1946, and we first-years were invited to a meeting convened by second- and third-years who were the incumbent high priests of an obscure but manifestly influential divinity—the self-same *Yale Law Journal* in which these tributes today appear. The purpose of the meeting was to explain the trials of Hercules one had to go through to become a votary of the sacred *Yale Law Journal* flame. The explainer was to be Professor Rostow, of whom we first-years had a considerable amount of advance intelligence. We knew that as an undergraduate he had been captain of Yale’s water polo team. And we knew that as a law student he had been the highest of the *Journal*’s high priests, and had concurrently—so it was reported—racked up an academic record second to none in the school’s history. And we also knew that a year before—in 1945, the last year of World War II—Professor Rostow had written an article, published in *The Yale Law Journal*, that was already a classic. The article—*The Japanese American Cases—A Disaster*¹—was an American *J’Accuse*. It exposed the moral and political bankruptcy of our World War II internment of many tens of thousands of persons, most of them citizens, for the crime of being of Japanese ancestry, and the legal bankruptcy of the Supreme Court’s validation of the internment program in the shameful *Korematsu* case.² “The idea of punishment only for individual behavior is,” so Professor Rostow had written, “basic to all systems of civilized law. A great principle,” he went on, “was never lost so casually.”³

Professor Rostow’s explanation of the wonders of the *Journal*—why involvement in its rituals was the most rigorous education this fine school could provide—was a tour de force. Although he was over thirty, Professor Rostow spoke with the vigor of a man still in his prime. Professor Rostow told us that writing for the *Journal* was a ceaseless search for perfection. What one should do was emulate Justice Brandeis, who routinely drove an opinion through twelve—or did Professor Rostow say sixteen?—drafts. By the end of Professor Rostow’s talk, his handsome, genial, erstwhile-water-polo-captain countenance had imperceptibly merged into the stern prophetic countenance of the great Justice.

Fast forward to the next defining memory. It was 1957, or perhaps 1958. Dean Rostow had assembled in his office the ten recently recruited, but not yet tenured members of the faculty who, Gene hoped, would rejuvenate a law school that had been at low ebb when he assumed the

1. Eugene V. Rostow, *The Japanese American Cases—A Disaster*, 54 *YALE L.J.* 489 (1945).

2. *Korematsu v. United States*, 323 U.S. 214 (1944).

3. Rostow, *supra* note 1, at 532.

deanship in 1955. The bulk of the Dean's "Win Winsocki" message I have forgotten. What I remember is the peroration: "My flag flies on you."

Perhaps you will now understand that, for me, just as the unelaborated phrase "the President" signifies Franklin Roosevelt, so the unelaborated phrase "the Dean" signifies Eugene Rostow. Abe, Harry, Guido, Tony—I trust, my friends, that you will not take it as undervaluation of your respective strong achievements for our school when I say that I regard all five of us as *locum tenens*.

The next memory is hearsay, but I believe it to be reliable nonetheless, because the source was a cleric, Reverend William Sloane Coffin, Jr., the former Chaplain of Yale University. The time was the spring of 1961—Freedom Ride time. Some of the racially integrated groups of Freedom Riders, testing their right to travel south on interstate buses, had been met with violence. Coffin, a friend of Reverend Martin Luther King, Jr., was preparing to lead a new contingent—three white academic colleagues⁴ plus one black first-year law student, George Smith. George asked the Dean whether he could accompany Chaplain Coffin, postponing his examinations until his return. The Dean said that could be arranged, but that George should take his casebooks with him so that he could study on the bus.

Just before the planned departure, Coffin received a message from the Justice Department strongly urging that he reconsider the planned expedition, which might prove inflammatory. The Chaplain sought advice from the Dean. The Dean said: "Remember, Bill, Meade missed his moment of truth at Gettysburg when he failed to pursue a retreating army." So Coffin and his four fellow Freedom Riders departed from New Haven, flying to Atlanta where, joined by two black theology students,⁵ they journeyed by bus to Montgomery, intending then to transfer to another bus heading into Mississippi. When the group of Freedom Riders—now numbering seven—reached Montgomery, they found the first capital of the Confederacy patrolled by the Alabama National Guard. The seven Freedom Riders went to call on Dr. King, and then—escorted by another black theology student,⁶ and by Reverend Ralph Abernathy, Reverend Fred L. Shuttlesworth, and Reverend Wyatt Tee Walker, three prominent black clergymen who were senior colleagues of Dr. King—returned to the Montgomery bus station. There, prior to the anticipated departure of the bus heading into Mississippi, the seven Freedom Riders and their four escorts took seats at the lunch counter and ordered a snack. For this act all eleven were arrested; each was charged with breach of the peace and unlawful assembly in that, according to the circuit solicitor's complaint, at a time

4. Professor Gaylord B. Noyce of the Yale Divinity School, and Professors John David Maguire and David E. Swift of Wesleyan University.

5. Clyde Carter and Joseph Charles Jones.

6. Bernard S. Lee.

when Montgomery was “under martial rule as a result of the outbreak of racial mob action . . . [he] did wilfully and intentionally seek . . . service at a public lunch counter with a racially mixed group.”⁷ The eleven were convicted and were sentenced to fines of \$100 and ten days (except, in Reverend Walker’s case, ninety days) in the county jail.⁸ Four years later, the eleven convictions were overturned by the Supreme Court.⁹ The Dean’s advice to the Chaplain had been vindicated.

George Smith evidently studied hard on the bus: Four decades after his graduation from the Law School, Judge George Bundy Smith of the New York Court of Appeals is widely recognized as one of New York’s most respected jurists.¹⁰

The final defining memory is the winter and spring of 1969. When Lyndon Johnson’s presidency ended in January 1969, former Undersecretary of State Rostow returned to his classroom and his scholarship. The St. Ronan Street house was rented until the end of the academic year. Edna was still in Washington. So throughout the semester Gene not only taught and wrote but also lived in the Sterling Law Building. My recollection of a faculty colleague is precisely congruent with Dean Kronman’s memory of his teacher.¹¹ To students—none of whom knew Gene but virtually all of whom opposed the Vietnam War—the former undersecretary was not a person but a stick figure, a leading member of the LBJ war-criminal cabal. But, day after day, Gene returned suspicion and outright hostility with courtesy and respect. In and after class, in the dining room, over a beer in the evening, Gene confounded students by bringing them to realize that reasonable people of good will could honestly, not angrily, disagree about matters of gravest public policy, and engage in continuing constructive dialogue. This was education of a high order. And it was courage.

In conversation, in teaching, in meetings, and in his writings, continuing constructive dialogue was a Rostow trademark. A key ingredient was Gene’s perennial optimism, his unwavering assurance that even for the most intractable problems sensible solutions could be found. Gene might

7. Transcript of Record at 4, *Abernathy v. Alabama*, 380 U.S. 447 (1965) (No. 9) (citation omitted).

8. *Id.* at 3, 594.

9. See *Abernathy*, 380 U.S. at 447. In the interest of full disclosure, I note that, together with Jack Greenberg (then Director-Counsel of the NAACP Legal Defense Fund) and Fred D. Gray of Montgomery, I served as counsel for Coffin, Smith, *Abernathy*, *Shuttlesworth*, *Walker*, and their fellow defendants.

10. As recent evidence of Judge Smith’s influential role, see his important concurrence in *Campaign for Fiscal Equality v. State*, 2003 N.Y. slip op. 15,615, 2003 WL 21468502 (N.Y. June 26, 2003), the path-breaking school-finance case.

11. See Anthony T. Kronman, *In Memory of Gene Rostow*, 113 YALE L.J. 9, 13 (2003).

have been one of Ulysses's shipmates who, according to Tennyson, "ever with a frolic welcome took / The thunder and the sunshine."¹²

Where did this serene strength come from? From the immigrant parents whose love for their new country led them to name their three sons after Emerson, Whitman, and Debs? Doubtless so, in considerable measure. But I venture to suppose that the greater part of Gene's strength was drawn from his own wife and children. Consider the dedications of two of Gene's books: *The Sovereign Prerogative* and *The Ideal in Law*. One is "For Victor, Jessica and Nicky."¹³ The other is "For E.G.R."—Edna Greenberg Rostow—"Once more, with love."¹⁴ For E.V.R. it was E.G.R. "once more" and always—and always "with love." For sixty-nine years they were an indomitable partnership, each fully engaged in the other's work. Gene and Edna were John and Abigail Adams updated. In saluting Gene, we salute Edna as well.

At the start of this essay, I offered evidence that, for Eugene Rostow, the highest calling was that of professor. But it deserves emphasis that the discipline he professed, and practiced, was law. "Law," he wrote,

is something more than what men do in fact, and something less than what they piously wish they did. It is what they think they ought to do, and what they usually do: their mores, and not their customs alone. In short, law should be perceived as the way in which each culture seeks to fulfill its ideal of justice—through procedures it deems fair, to reach results as close to being "just," in its view, as the circumstances of the moment permit. It is a way of making social policy, and a way of thinking about it as well.¹⁵

For almost seventy years, lawyer Rostow thought about, and had a hand in shaping, his country's welfare. He was an outstanding teacher, a richly productive scholar, and a dedicated public servant. He was, in sum, a good citizen. And, for those privileged to know him, he was a good friend.

12. ALFRED LORD TENNYSON, *Ulysses*, in 1 THE POEMS AND PLAYS OF ALFRED LORD TENNYSON 166, 167 (Modern Library 1938).

13. EUGENE V. ROSTOW, *THE SOVEREIGN PREROGATIVE*, at v (1962).

14. EUGENE V. ROSTOW, *THE IDEAL IN LAW*, at iii (1978).

15. *Id.* at 1.
