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Ralph Brown: Farewell to a Friend

Louis H. Pollak[†]

As Dean Anthony Kronman and Professor Boris Bittker have reminded us, Ralph Sharp Brown was an actively engaged teaching member of the Yale Law School faculty for over fifty years—longer, even, than Arthur Corbin.¹ Something of the range of Ralph Brown's manifold contributions to the Yale Law School has been recalled for us by the Dean. Suffice it to say that Ralph, like Boris Bittker, was a leader of that group of dedicated and demanding teacher-scholars who brought the Yale Law School from aspiration to preeminence.

But Ralph's life at Yale was not circumscribed by the Law School. He was a leading citizen of the University, counseling countless presidents, provosts and deans on matters both of process and of substance. And, as John Ryden will shortly tell us—and as Chester Kerr would affirm, if only he could be with us—Ralph was for decades a major figure in the work of the Yale University Press.

As Boris has noted, Ralph was also a leading citizen of his and Betty's home town of Guilford. And Ralph's citizenship also extended to the Browns' summer residence in another small town—Salem, New York, just up Route 22. Twelve years ago, Ralph and Betty's youngest daughter Lila—the magically talented violist who, together with her colleagues, we have had the joy of hearing from this afternoon—undertook, with others, to establish a summer chamber music series at Salem—which has flourished, bringing delight to that entire region. This past summer, in early August, Kathy—my wife—and I attended one of the “Music from Salem” concerts presented by Lila, her husband, Werner Dickel, and other artists. Inserted in the program that evening was a slip of paper with a brief text. It read:

[†] Senior Judge, United States District Court for the Eastern District of Pennsylvania.

1. It should be recalled that Ralph Brown also found time, for several years, to lend his teaching talents to New York Law School, the school led for the last many years by Dean Harry Wellington with the same verve, creativity and enterprise with which Harry, to our good fortune, so brilliantly led the Yale Law School from 1975 to 1985.

Ralph S. Brown
(1913-1998)

We mourn our departed friend—distinguished professor of law at Yale University, dedicated civil libertarian, lover of chamber music—without whose generous support Music from Salem would not have thrived.

“[D]edicated civil libertarian,” said the program insert. Dedicated indeed. From 1954 to 1991—for thirty-seven years—Ralph was a member of the National Board of the American Civil Liberties Union, and he continued on the ACLU’s constitution committee even after he retired from the Board. Ralph’s role in the ACLU was as influential as his role, described to us by Professor Robert Gorman, in the AAUP. Ralph not only served as an architect of the ACLU’s positions on major civil liberties issues, he also played a principal part in reconfiguring the ACLU’s own board structure, with a view to permitting an organization once dominated by New York, Boston, and New Haven to get effective input from affiliates in such frontier communities as Chicago and Los Angeles. In Board debate, Ralph’s wisdom—couched in the dignity, restraint, and precision that were his hallmarks—was a formidable asset. Authoritative testimony to this effect came to me last Thursday, in a conversation with Ruth Ginsburg, a Board member colleague of Ralph’s in the seventies. Justice Ginsburg said that Ralph was—and I quote—“the voice of reason.” She also described Ralph by such an old-fashioned word—a “gentleman.” According to the Justice, she, Ralph, and William Van Alstyne (another eminent constitutional law scholar) were “the right wing” of the Board.

To get a full sense of the strength and lawyerly discipline of Ralph’s commitment to civil liberties, one need only turn to his superb book, *Loyalty and Security*.² I use the adjective “superb” advisedly. Published—by the Press—in 1958, the book, which was awarded Harvard Law School’s Henderson Prize, was the definitive study of the loyalty and security employment tests that, in the wake of the Cold War, engulfed both government and the private sector, with devastating effect, in the McCarthy era. The book was made possible, Ralph wrote in his preface, “by a generous grant to Yale University from the Louis S. Weiss Fund, Inc.”³ Ralph went on to explain, in felicitous words that capture Ralph’s own view of the nobility of law practice at its very best, that the Fund

was established by friends [of Louis Weiss] to honor the memory of a leader of the bar who, in spite of the demands of a busy practice, devoted his talents with unceasing energy, imagination

2. RALPH S. BROWN, JR., *LOYALTY AND SECURITY: EMPLOYMENT TESTS IN THE UNITED STATES* (1958).

3. *Id.* at ix.

and courage to the cause of civil rights and human freedom, to the advancement of adult education, and to the sympathetic guidance and assistance of all who came to him with their personal problems or for help and advice in social undertakings.⁴

Louis Weiss was Kathy's—Katherine Weiss Pollak's—father.

I turn now to my own partnership with Ralph Brown. In 1965, it fell to the President of the University—Kingman Brewster, that valiant captain of the academy, non pareil—to make a decision affecting the Law School. President Brewster had to select a new Law School Dean to succeed Eugene Rostow, who had in his ten years as Dean virtually rebuilt the School. The President quickly found that right in the Sterling Law Building there was no shortage of candidates. Overcoming the modesty and reticence that have always characterized the Yale Law School faculty, almost every one of us assured the President that he or she was poised to move into the Dean's office at the first beckoning from Woodbridge Hall. A signal exception was the one obvious choice—Boris, who declined the President's overtures with, “No, Kingman, I'm the best Dean the Yale Law School never had.” So Kingman picked one of the plethora of second choices—me. Boris, however, advised me—and, doubtless, Kingman—that Pollak was likely to run into trouble unless he shared the management of the School with a colleague who could do what Pollak, to Boris's certain knowledge, was unable to do: read a balance sheet. Ralph, said Boris, was formidably capable of doing just that—and everything else besides. I knew Ralph as a respected and admired senior colleague, although, as of then, he was not yet a close friend. I knew Ralph well enough, however, to know that there was no stronger institutional pillar of our School. And so, with Kingman's emphatic blessing, I asked Ralph to be Associate Dean, and he agreed.

For five years, from 1965 to 1970, Ralph and I worked together to keep the School moving ahead. The problems were many. Hard as it may be to credit this today, in the years before Deans Goldstein, Wellington, Calabresi, and Kronman invented affluence, money was actually in short supply. But Ralph, who could not only read but write a balance sheet, steered us past the financial shoals. On another front, as Dean Kronman has noted, when, in the mid-sixties, the Law Librarian suddenly defected to what he perceived to be greener pastures, Ralph at once added the post of Acting Librarian to his portfolio—until the search committee consisting of Associate Dean Brown, Professor Bork and me managed to persuade Arthur Charpentier to quit his glittering domain, the Library of the Bar Association of the City of New York, for a new challenge.⁵

4. *Id.*

5. Ralph's service as Acting Law Librarian was paralleled by the service, at President

But budgets and libraries are standard problems. What made our five years particularly challenging—in certain respects the most intense in the School's modern history—were problems without precedent. In 1965 the student body of the Yale Law School—like that of virtually every American law school other than Howard—consisted almost entirely of males who were white. Before 1970, Yale's student body had come to include a significant number of blacks—Yale was, I think, the first major school to accomplish this—and a steadily increasing enrollment of women. Yale Law School had become a different school—and a better one.

It was not easy. Ralph and I could not have managed it without the support of a large majority of our students, and of the President, and of a number, but by no means all, of our faculty colleagues—it is only fair to acknowledge that some of our colleagues took a somewhat jaundiced view of some aspects of the Brown-Pollak affirmative action program. But we had sufficient support, and we did the job. I must stress, however, that the crucial ingredient was Ralph Brown's unremitting commitment to achieving what, he and I were convinced, was essential to achieve if Yale was to continue to make its highest contribution to the best purposes of the American legal order.

I would note, in this context, that, when, last Thursday, Justice Ginsburg told me that, twenty years ago, she and Ralph and Bill Van Alstyne were the right wing of the ACLU Board, I told her that, just a few years earlier, some of our Yale faculty colleagues must have viewed Ralph and me as leaders of the left. But the fact is that Ralph and I had no carefully honed ideological agenda. If we defined ourselves at all, it was as centrists—pragmatists—charged with the maintenance and forward progress of a cherished, and fragile, institution.

There were some bad times. The worst, assuredly, was when, late one night in the early spring of 1970—the Vietnam spring, when universities across the nation were under siege—word came of a fire in the Law Library. By the time Ralph, racing in from Guilford, and I, nearer at hand in New Haven, reached 127 Wall Street, the fire—deep in the stacks—had been contained, and the loss turned out to be modest. But the terrible question—were we actually under attack?—hung in the midnight air. For Ralph, fighter for the First Amendment, and special protector of all books, but especially the books of the Yale Law School, the mere articulation of the question was torture. In the fullness of time—a week or so later—the fire marshals who examined the ashes were able to assure us that it was an accidental blaze, not arson at all. But that night there was menace in the air. Or so there was, until, well after midnight, the students of our School rallied

Brewster's request, of Professor John Blum, Yale's eminent historian of 20th-century America, as Acting Librarian of Sterling, the University Library, during a gap in the seisin at Sterling.

to protect their institution. In the early morning hours the big classroom—115 as it used to be, 127 now—was thronged with students appalled at the possibility that the center of the academic enterprise—the Law Library—might be at risk. Spontaneously, at their own initiative, our students organized patrols to keep the Sterling Law Building safe, and, starting that night, those patrols continued for the balance of the semester. Ralph and I knew then that the apparent worst had turned into the best. The center had held.⁶

The special dividend of those five years was that Ralph's and my close partnership became a close friendship as well. It was my good fortune to come to know well a man of principle, wisdom, courage, dedication, and humanity. These marvelous gifts were leavened by a generosity of spirit and a wealth of humor that made hard things doable and earned the respect and admiration of all who worked with him, and the love of those privileged to be his family and his friends.

I close with two quotations that tell us much about Ralph Brown. The first is from his book on *Loyalty and Security*. In the opening chapter, he wrote about the difficulty of defining loyalty. In a few sentences—sentences whose words take wings, as was often true of his writing—Ralph told us much of what it means to be an American:

[L]oyalty, when freely given, takes many forms. It is evoked by a shared experience, a common history, an acceptance of common values. As a bundle of sentiments toward one's country, it is closely related to patriotism, but it does not necessarily have the associations of patriotism with ritual and quasimilitary observances. For each of us the focus may be different. The man who is indifferent to Flag Day may be deeply moved by the Bill of Rights. Others may derive their loyalty from the simple familiar features of life that we consider especially our own—baseball, apple pie, the face of the land.⁷

The second quotation was borrowed from another's text. On the day—July 1, 1965—when we commenced the management of the Law School, Ralph brought to the Dean's office a cardboard sign published by Avis back in the days when it was seeking to surpass Hertz: "We Try Harder." It took me a long time to realize that what Ralph was saying, thirty-three years ago, was not simply that we were in train to overtake Harvard. I know now that it was the founding creed of a good man who throughout his long and productive life labored ceaselessly to advance for all of us the highest values of a free society.

6. See Louis H. Pollak, *Ralph S. Brown: The Center Holds*, 93 YALE L.J. 1192, 1195 (1984).

7. See Brown, *supra* note 2, at 5.

