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Owen M. Fiss

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Yale According to Joe

Owen M. Fiss[†]

Everyone is entitled to a mistake or two—I have had my share. Probably my most glaring is that I attended that other law school, the one a little up north. So, when I first joined the faculty in 1974, Yale was, if not an alien, then certainly an unfamiliar, institution.

Joe and Sonja Goldstein welcomed us to the community. They were our family away from family. They opened their house to us. Their friends became our friends. They were always available for dinner (Joe would call it a “bite”), or for a movie. Joe’s father had once been in the movie business in Springfield, and that seemed to entitle him, almost forever, to a free pass to Cinema Showcase. Joe loved bargains, especially this one. We often talked about our children, and through word and example, Joe and Sonja helped us through our most difficult parenting days. Invariably, Joe and Sonja returned from their trips abroad with trinkets for our daughters. Every conversation with Joe ended, “Kiss the girls for me.”

In all of these ways, Joe taught me about friendship, even love, a feat all the more remarkable given his seriousness of purpose and scholarly achievements. Joe worked long and hard, and was constantly exploring new frontiers and learning new subjects. He delighted in the study of constitutional law because it was a new challenge for him. Yet somehow he always found the time and energy for those he cared about. Joe did not love everyone—no one does, no one can, and besides, Joe was a man of particular likes and dislikes—but those whom he did love were among the blessed. They always saw the twinkle in his eyes; they felt the warmth of his presence; they were the object of his generosity and his extraordinary capacity to go out of his way for others.

Not only did Joe bring a certain human warmth to these halls, which sometimes can be oh-so-serious, but he also espoused a very distinctive understanding of the purposes of the Law School. He emphasized its academic as opposed to its professional side, and urged, indeed demanded, the prerogatives that rightly belong to any professor, above all, the freedom to pursue one’s ideas in any way that one happened to see fit. Joe was a free

[†] Sterling Professor of Law, Yale Law School.

spirit. He fought against outside pressures, such as those that may be brought to bear on professors by the organized bar. Also, and more remarkably, he resisted the constraints that might be imposed on a professor, even unwittingly, by colleagues and, even worse, the dean. One of Joe's favorite maxims, which I have borrowed many times, declares: It is the professor's job to decide what is educationally best, and the dean's duty to find the funds to support this decision.

From Joe's perspective, the purpose of the Yale Law School was not to train lawyers but rather to study law—another maxim that I have borrowed on many occasions. Of course, once you study law you may be in a better position to practice law, but that would be an incidental—maybe a happy, though still only incidental—consequence of the pure, disinterested study of law. Some may practice law, some may not. As a result, Joe refused to be bound by practice-based understandings of law teaching and scholarship. He was adamant that the new body of knowledge have some real intellectual payoff for the law. He was no fan of interdisciplinary work for its own sake, but he was led, because of his very distinctive understanding of our mission, to become a pioneer in the endeavor to bring the insights of psychoanalysis to bear on the law. This body of work stands as a monument to the freedom that Joe so relished.

Joe's emphasis upon the academic character of the Law School also shaped his relationship to his students. It accounted for the time he devoted to his students (almost endless), the kinds of challenges he put to them (he resisted the current trend requiring moot court exercises), and even the way he presented himself to his students (always with a jacket, business shirt, and bow tie). When I arrived at Yale in 1974, stories abounded about the way Joe had conducted a disciplinary hearing that arose during one of the turbulent encounters of the early 1970s, after a student had allegedly threatened a professor. Refusing to assume the posture of a judge, Joe required the administration to dismantle what then passed as a podium here, and to put in its place the furniture that he used to meet students on a daily basis—a couch and some worn easy chairs.

In the 1980s, Joe feared that the Law School's interviewing process was beginning to encroach upon, indeed overwhelm, the intellectual life of the Law School. Students were less worried about the day's lesson than what firm was in town interviewing or what should be worn to an interview. With his customary tenacity, Joe then spearheaded a campaign that, after countless memoranda and faculty meetings, and at least one false start (moving the interviews to the summer), led to the Yale Law School's most enduring and most beloved contribution to Western civilization—the fly-back week. I am sure Joe hated that term because it suggested that we might in fact be adjusting the academic calendar to accommodate the professional interests of our students or the demands of law firms—God forbid.

Joe was a friend, and a man whom I loved. He helped make me feel at home at Yale. For the twenty-five years that I have made Yale my home, and surely before, Joe was one of the towering presences of this institution. Yale took pride in all his scholarly accomplishments, and its fame grew as his did. Even more significantly, Yale bears the imprint of Joe's distinctive personality and distinctive understanding of the school's ethos. Joe helped make this Law School all that it is. It is hard for me to think of Yale without also thinking of Joe. His absence is an absence that we all feel, personally and professionally, yet his mark on the institution is so profound and so indelible, it almost seems that he is still with us—as a smile, as an exemplar, as an inspiration, and even more, as a conscience.

The other night my wife and I were having dinner with Sonja and some friends whom Joe had first brought to the Law School from abroad. One was from Germany, two from Israel. As we sat down for dinner, I offered a toast welcoming all to our home, and noted how sad and odd it was that Joe—who had first brought us all together—was not with us. Tears welled up, but then Sonja quickly caught herself. “Anyway,” she said, “I believe Joe is still watching us.”
