
LOUIS H. POLLAK



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FROM *JUSTICE: FACES OF THE HUMAN RIGHTS REVOLUTION*

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The day after I was sworn in as a federal judge, Judge Louis Pollak came to visit, tapping on an open door in my new chambers, saying, “May I come in?” He stayed nearly the entire morning. I was enthralled. That was nearly thirty years ago and the commencement (for me) of an extraordinary friendship.

When deciding cases, judges can speak only with other judges, and so for me, and for many other judges, too, Lou was adviser, counselor and sagacious mentor.

Lou Pollak profoundly and joyfully touched many lives. These vignettes from colleagues—lawyers, academics, and judges—give a telling glimpse of this magnificent person.

ANTHONY J. SCIRICA

U.S. Court of Appeals Judge for the Third Circuit

IF THERE IS ANYONE BETTER than Lou Pollak was at teaching by doing, whether lessons for law or lessons for life, I have not met that person. To be sure, the subtlety and suppleness of his mind—and his delight in the fabric of human experience—were such that learning lessons for law sometimes required patience. There was no wait, however, to receive lessons for life, if only one could learn them. The opportunity to know, let alone to work with, a person so deeply considerate of others, so thoroughly indifferent to hierarchy, and so (quietly) passionate about equal opportunity, was a priceless gift.

Although Lou had helped to hire me as the University of Pennsylvania’s first in-house general counsel, we did not get to know each other well until we worked on the *amicus curiae* brief that Penn and a number of other universities filed to assist the Supreme Court in *Regents of the University of California v. Bakke*. The idea that there should be such a brief was Lou’s. Fearful that the Court’s decision in a case involving admission to a public university might deprive private universities of the freedom to take into account personal characteristics they reasonably deemed important to their educational missions, he took the initiative to persuade me and Penn’s president, Martin Meyerson, that Penn should take the lead.

Once we agreed and had put together the group of universities and determined who would be speaking for them, the fun began. The issues were difficult, important, and at times contentious. Lou’s contributions to the brief as one of its two primary authors included not just the fruits of deep knowledge of the Constitution, of the struggle for racial equality, and of the role of universities in American society. He had the

capacity to win an argument without seeming to argue—deftly employing humor—which made internal divisions about strategy or language much easier to resolve. Thus, when we were searching for language that would describe the freedom we sought to preserve and not be inflammatory, the general counsel of another university suggested the formula used in an earlier brief, “according favorable weight to minority status.” One of the two primary authors responded, “That’s fine so long as we drop a footnote.”¹ The author in question was Al Rosenthal of Columbia, but the technique was as much Lou’s as Al’s.

Lou’s sweet reason was not to be confused with a faint heart, as those who sought to prevent the University of Pennsylvania from filing the brief learned at a meeting of the University Council at which a draft was discussed. Calmly but forcefully rebutting the opponents’ arguments, Lou’s advocacy won the day. The brief was filed, and it featured prominently in Justice Powell’s pivotal opinion in *Bakke*. In giving Lou some of the credit for helping tens of thousands of young people to benefit from the institutional freedom thus preserved, let us also remember those whose lives he changed simply by the power of example.

STEPHEN B. BURBANK

David Berger Professor for the Administration of Justice
University of Pennsylvania Law School

FORSAN ET HAEC OLIM MEMINISSE JUVABIT: Virgil’s *Aeneid* begins with those words—“Someday, perhaps, this too will seem worth remembering.” When, only a few days ago, Kathy asked me to speak, she told me she had forgotten about Yale. In a way it is *singularly* appropriate that Yale should have been forgotten, and *trivially* appropriate, that I should be the one to bring it back to mind today. The latter because, for my sins, I have spent a considerable time trying to make Yale Law School worth remembering. The former, for deeper reasons involving Lou and what needs to be said in his memory . . . memory, that word again.

Today, I do not wish to speak of Lou as a teacher. I spoke of that a while ago when his portrait was presented here [in the ceremonial courtroom of the U. S. Federal Courthouse, Philadelphia], and what, in that role, he meant to me and to so many, and how—with good reason—I choose to teach under another portrait of his. Nor will I speak of what Lou has meant to all of us, and again to me in particular,

1 “Hereinafter referred to as ‘It.’”

as a judge . . . as a *really* great judge. Rather, I will talk of the period that Lou himself, at times, wanted to forget . . . his deanship at Yale. For indeed, as the poet said, *this too* is well worth remembering.

Lou became dean at Yale in 1965. That year we thought that the good battles had all been won. Integration, we believed, had taken hold and—following on the martyrdom of President Kennedy and the election of 1964—would continue to proceed apace. The graduating class of 1966—at Yale Law School—Lou’s first year as dean, had a fair number of African Americans in it. I recall those in my Torts class, and, this is the odd thing, *in that first year class* they were seen not as black, but as epitomes of *the colleges* they had gone to. John Rose, looking as if he had skied in from Dartmouth; Dave Pitinsky, the perfect New Yorker from Columbia; Drew Days, the classic, from a good small college—Hamilton; Hugh Price, the elegant Williams man; and, perhaps most eminently, Haywood Burns, from Harvard, with one book already under his belt. Clearly integration had worked and the great society was near at hand.

Oh, yes, the prophet in the person of Charlie Reich was walking the halls, saying, “Repent for the end of the world is near.” But who believed him? And then it all came apart. Was it Vietnam? Was it the realization that what had been achieved was meager, and what still needed to be done monstrously hard? I don’t know. It is a fact that each of those first-year students I mentioned became significant leaders in the struggle that still lay ahead. And an important part of that struggle occurred immediately in the law school.

Times of change, times of struggle, are always difficult. Some abhor them—Lou’s successor as dean, so incorrectly, so sadly, called those days “the dark ages.” Faculty left Harvard; faculty at Yale did not leave, but many tried to hide in their offices or at home. Lou, instead, saw that these were times that demanded strong and yet immensely subtle leadership. He saw that much for the better could *now* be done and that it *could* be done precisely because there was an almost revolutionary demand for change. He also saw that this had to be done without losing the things, and the people, from the past that deserved keeping.

And so it happened. African Americans were sought out and came to Yale in larger numbers than ever before. More important, unlike those I mentioned earlier, they came not from the great private colleges, and from already middle class origins. Rather, they brought with them far more diverse, and often more troublesome, backgrounds. And, with their coming, ways of teaching, rules of governance, intra-faculty relationships all changed—never to return.

It was inevitable that the dean who oversaw that time should have been attacked by those who sought the changes . . . for not doing more,

and faster. In time, however, they, better than anyone, recognized how truly great Lou's achievements were. Today, those Lou brought to the school *and protected* there, whether they are sitting on U.S. Courts of Appeals, in Congress, or on law faculties, or are still in the trenches, remember him as the one who made it possible.

It was also inevitable that those who were frightened by the changes should have blamed the dean for not being a twentieth-century Radetzky destroying these modern 1848ers. Later, though, even these—perhaps less consciously and certainly less verbally than those who had sought change—came to rely on, and almost to rejoice in, the very changes that they so bitterly opposed. I was a kid then—on the faculty, but still a kid. And so I was neither one of the students ferociously seeking a better world and a better school, nor was I one of those whose way of living and teaching seemed threatened by the demands. I could watch the masterful way in which Lou handled that most difficult and wonderful—full of wonders and of problems—time. And I stored it in my memory.

Now, some forty-five years later, and having been a dean myself in far easier days, I call forth those memories and can say honestly and happily, “This was a great, great dean. No one else I have known could have done as much, and as well.” I, like so many here, loved and honored Lou as a teacher and friend and I, again like so many here, loved and respected Lou as a judge. But Lou's accomplishments as dean at Yale, like the story of Aeneas that led ultimately to Rome, and to a grander Troy, also deserve the highest possible honor and respect. They are truly worth remembering.²

GUIDO CALABRESI

Former Dean

Sterling Professor of Law Emeritus

Professional Lecturer

Yale Law School

Circuit Judge

United States Court of Appeals for the Second Circuit

IT IS A WELL-KNOWN REALITY that all judges appointed under Article III, § 1 of the United States Constitution are appointed by the president and confirmed “with the Advice and Consent of the Senate.”³ With the making of all Article III judges in the hands of the executive

² These remarks were delivered at the memorial service for Judge Pollak on 12 June 2012.

³ U.S. Const. Art. II, §2.

and the Senate, it is no surprise that the paths to such judgeships can vary widely.

In this respect, it is useful to compare the paths of two judges appointed within months of each other in 1978, Richard S. Arnold and Louis H. Pollak. We know the exact route of Judge Arnold's path because he was always quite frank about it. His account of how his path began is instructive, and so I reproduce it in Judge Arnold's own words:

"Some judges (you may not believe this) are political appointees, but I was appointed on merit. My merit was that I worked for a United States Senator. One day in 1978, as I was working for Senator Dale Bumpers of Arkansas, word came that a vacancy had occurred on the District Court in Little Rock. A few days later, the Senator called me into his office, and he said, 'Richard, fix up a letter to the President recommending you to be United States District Judge.' So I wrote him a hell of a letter—the finest, most fulsome, most eloquent letter of recommendation ever sent by a United States Senator."⁴

Even more vivid is Judge Arnold's account of the end of his path after President Carter nominated him for the district court bench in Arkansas.

And so, one day when Senator Bumpers and I got on the elevator in the Dirksen Senate Office Building, who should come on with us but the powerful—the name and title of this man were never repeated without the adjective "powerful"—the powerful James O. Eastland, chairman of the Senate Judiciary Committee. And so we got on the elevator and Dale said, "Jim, Richard here"—and he jerked his thumb at me, as if at an insignificant object (which I was)—"Richard here has been nominated to be District Judge, and I want you to confirm him." And Senator [Eastland] looked at him, and he said, "Whatever you say, Dale." Then we got down to the bottom of the building and it was time to get off of the elevator. The doors opened up, and Eastland looked at me and said, "After you, Judge." So I got confirmed in the elevator.⁵

I'll refer here to Judge Arnold's description of his first judicial path as "the Arnold Route."⁶ Judge Pollak's path to his district court judgeship bore no point of congruency with the Arnold Route, although, in the end, there came a modest convergence.

⁴ Richard S. Arnold, "The Federal Courts: Causes of Discontent," 56 *SMU L. Rev.* 767 (2003).

⁵ *Id.* 767–68.

⁶ It bears noting that notwithstanding his oft-incanted confession, Judge Arnold then went on to become a most respected judge of the United States Court of Appeals for the Eighth Circuit (indeed became its chief judge) and served with distinction until his death in 2004. See Neil A. Lewis, "Richard S. Arnold, 68, Judge Once Eyed for Supreme Court, Dies," *New York Times*, 25 Sept. 2004.

As many are aware, Judge Pollak was primarily a scholar after he finished his clerkship with Supreme Court Justice Rutledge in 1949 and got two years as an associate in a major New York law firm, Paul, Weiss, behind him. While on the faculty of Yale Law School, first as a professor and later dean, Professor Pollak published the two-volume *The Constitution and the Supreme Court: A Documentary History* in 1966. He later became a professor and dean at the University of Pennsylvania Law School for three years, ending with his judicial appointment in 1978.

To be sure, Louis H. Pollak, Esquire, had a notable, if brief, courtroom career, most consequentially as part of the NAACP legal team that ultimately triumphed in *Brown v. Board of Education*.⁷ Lawyer Pollak also had some litigation experience while an associate at Paul, Weiss, but he was, as he would be the first to say, primarily an academic. Although he came to know most, if not all, of the Supreme Court justices in his academic career, he had no political patron like Senator Bumpers.

But as it turned out, the then new junior senator from Pennsylvania, H. John Heinz III, had made a campaign promise in his successful 1976 campaign that his first act as senator would be to create, with then-senior senator Richard Schweiker, a Merit Selection Commission to vet candidates for vacancies on the three Pennsylvania federal district courts. And thus shortly after taking office, Senator Heinz, with Senator Schweiker's support, formed that commission, and I suggested certain members for it. Senator Heinz agreed that the Secretary of the commission should be my senior partner, Lewis H. Van Dusen, Jr.

So in 1978, when a vacancy occurred on the Eastern District of Pennsylvania court, I asked Lew Van Dusen who some of the candidates were. To my surprise, the first name Lew mentioned to me was Louis Pollak. This was amazingly good news, a view Lew Van Dusen shared. So it wasn't long before Dean Pollak was among the handful of names recommended to the two Senators.

Although John Heinz was not legally trained (he was a mere graduate of Yale College and Harvard Business School), he regarded the federal courts with a certain awe. He was, in fact, anything but cynical about the subject and often said that the recommendation of district court judgeships was among the most important things United States Senators do. I therefore knew that when John would ask me about Dean Pollak this would be an easy sale, and it most assuredly was. After I recounted to John Lou's work on *Brown* and his deanships

7 347 U.S. 483 (1954).

at Yale and Penn, he said to me words that, in sum, amounted to, “Well, this is a no-brainer, isn’t it?” I agreed that it was hardly a tough call, and the rest became the distinguished career of United States District Judge Louis H. Pollak.

And what a career it was! A measure of the regard Judge Pollak enjoyed may be found in the many law clerks he sent to the Supreme Court for clerkships with, for example, Justice Brennan and, later, Justice Souter. And as a trial judge, Lou never lost the grace that he demonstrated as dean of two major law schools. This explains why lawyers all gave him their utmost respect and, dare I say, affection. The judgeship never went to his head.

And Judge Pollak also never lost his scholar’s sensitivity and attentiveness to history. I was not long ago put in mind of this while reading Walter Isaacson’s magnificent biography of the Founder of the American Philosophical Society. I was particularly struck by Franklin’s words in opposition to the high-handedness of the then proprietor of Pennsylvania, words that could readily have come from Judge Pollak’s pen or mouth if he were with us today: “Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety.”⁸

These were words and a perspective that Judge Pollak brought to life every day in his courtroom.

STEWART DALZELL⁹

United States District Judge for the Eastern District of Pennsylvania

LOU POLLAK WAS A MAGNIFICENT JUDGE, a distinguished constitutional scholar, an inspiring teacher, and twice a beloved law school dean. Such diverse accomplishments don’t usually come neatly tied in a single package. But in Lou’s case it was all of a piece—the achievements emerged out of his deep humanity and quiet personal connection with almost everyone with whom he came into contact. He was a serial mensch—and it brought out the best in people around him.

I first met Lou more than thirty-five years ago when we both arrived in the U. S. Federal Courthouse in Philadelphia, reporting for duty, as it were. To say that there was a difference in our positions is the understatement of the year. I was bright eyed and bushy tailed, fresh

⁸ Walter Isaacson, *Benjamin Franklin* (2004 edition), 169.

⁹ Judge Dalzell served as a colleague and friend of Judge Pollak’s for more than twenty years.

out of law school, beginning service as a law clerk to the Honorable Leon Higginbotham.

Lou had just stepped down from the Penn Law deanship, having served on both the Penn and Yale law faculties, where he had also been dean, and was then the newest member of the federal bench.

To a star-struck fledgling attorney such as myself, Lou was a legend.

Judge Higginbotham, his close friend, let the clerks know that this icon would be coming to the chambers, and he would introduce us. We all knew Lou's background—his co-authorship of the brief in *Brown*, the constitutional scholarship, and his renowned civil rights and civil liberties advocacy.

I was prepared—literally—to quake in his presence. Yet when he entered the room, with that warm avuncular smile and soft blue eyes connecting with everyone in his presence, I was immediately overcome by the Pollak effect, as I would be the remainder of my life.

He wanted to know all about me—who I was—and what had I done that had led me to that point in my career. And he then congratulated me for having the privilege of clerking for my soon-to-be mentor, Judge Higginbotham. In short, from the first moment, he related to me in a very special and personal way that I will never forget.

And that human connection was really no different when I was a law clerk, when I joined the Penn Law faculty years later, or when I assumed his former position as dean of Penn Law. For Lou, it was always about the individual, regardless of role.

Indeed, one of the most vivid moments when I saw those qualities on display was several years ago when Lou's judicial portrait was unveiled. Just as when his dean's portrait was unveiled years earlier at Penn, after the presentations he went around the room and made a sincere, personal observation about almost everyone present, explaining their relationship to him and the issues and people they all held dear.

That was one of the vital sources of his greatness. He loved humanity in the abstract and in the particular—and for Lou, the two were inextricably linked. Those qualities undoubtedly help to explain why the Penn Law faculty strong-armed him to become dean.

Let me be clear—I, of all people, understand why someone would need to be coerced to be a law dean, but why the faculty would focus on Lou of all the people in the world to apply that pressure should be obvious to anyone who knew him. His ability to relate to people brought out the best in others and made him a force for an institution's and society's good.

The faculty wanted to be at a place led by Lou and to do their best

work with Lou as dean. He inspired and supported their best instincts. He embodied the culture and values they held dear.

In that regard, I am proud to be one of Lou's thousands of academic friends and admirers. He had so many friends at Penn Law School alone, but I must make special note of three, who for purposes of anonymity, as Lou would put it, might be referred to as Clyde Summers, his lifelong academic soul mate, who accompanied him from Yale to Penn; the intellectually intense Frank Goodman; and civil procedure guru Stephen Burbank. All three remained close to Kathy and Lou for life.

The Penn Law community, which welcomed Lou in 1975, will always be grateful that, after his arm was twisted to become dean, he never let us go. He remained on the faculty and deeply involved with the law school for thirty years after joining the bench.

He even won the teaching award the last year he taught at the school before his health prevented him from continuing to serve. And, as a fitting capstone, the law school's public service award was named in his honor a month before his death, an honor for which he expressed deep pride in the last conversation I had with him.

Of course, if Lou were giving a tribute to a colleague, he would continue far longer than I will be permitted. That was Lou.

I remember when he gave a public tribute to Professor Bob Gorman at Bob's retirement dinner many years ago. I had been dean for less than a month and did not adequately appreciate the full extent of Lou's passion for speaking at length about justice—and people. Lou opened his remarks by saying, "I've been asked by Mike to talk for ten minutes." And then he laughed, ceremoniously ripped up some papers he had carried to the podium—presumably including my invitation—and with that trademark mischievous smile of his, launched into a thirty-minute address.

Based on this history, I thought I had taken adequate precautions several years later when I asked Lou to speak for ten minutes to our entering class at orientation about the role of the Supreme Court. I repeated the time limitations in a letter, and on the day of the event called to remind him a third time, "Lou, ten minutes." He laughed, and said, "Of course, Mike."

Well, he spoke for forty-five minutes that day about the history of the Supreme Court, beginning with *Marbury v. Madison*, and detailing the Court's great successes and failures over the full sweep of history.

It was a tour de force—though a forty-five-minute tour de force. The students didn't get their dinner on time, but they did get a lesson that would last a lifetime. Indeed, one remarked to me recently that it was her most memorable experience in law school. In retrospect, I have

to wonder how I ever thought I could place a time limitation on Lou. Or should.

When Lou relinquished his deanship to become a district court judge, the editors of the *University of Pennsylvania Law Review* dedicated an issue in his honor. They noted that “[t]he entire law school community will miss his gentle presence as dean, especially those who have been fortunate enough to have been his students.” And they offered this prescient prediction: “The qualities that made Dean Pollak’s tenure at this law school memorable will continue to serve him well as a federal judge.”

At the time not everyone was so sanguine. As my fellow dean Bob Mundheim recollected recently, “Lou had been an appellate advocate, not a trial lawyer, and many wondered whether this person who tended to listen, had enormous patience, who did not direct directly, they wondered would he be able to run a courtroom? Would cases go on forever?” Indeed, Bob confessed that he would have bet against Lou’s being a successful trial court judge.

But as Bob later recognized, he was wrong. Lou’s greatness was of a piece, and his ability to connect with people across the board ultimately made him a superb trial court judge, understanding counsel and parties alike, just as it made him a remarkable dean and teacher.

It is with his role as a teacher that I would conclude my comments.

His students adored him. “I will still be telling stories about him fifty years from now,” one said after taking his seminar.

Another former student, to whom I will give the final word, perhaps summed it up best when commenting at the end of what turned out to be the last class Lou ever taught. The student wrote, “The world would be a far better place if all men—and women—were more like Judge Pollak. What a wonderful, wonderful man. What an inspiration for everyone around him.”¹⁰

MICHAEL A. FITTS

President

Tulane University

Former Dean and Bernard G. Segal Professor of Law

University of Pennsylvania Law School

WHEN I WAS VERY YOUNG, my grandfather told me that any consideration of a man’s contributions to his fellow man should begin with

¹⁰ These remarks were delivered at the U.S. Federal Courthouse in Philadelphia on 28 September 2012.

a brief summary of the services he had rendered to the Episcopal Church, the Republican Party, and the Harvard football team. He called this “justification by works.”

I had this instruction in mind in the summer of 1976 when—in my first days as an associate editor of the *University of Pennsylvania Law Review*—I was told to edit a brief tribute to William Henry Hastie penned by the dean of our law school, Louis H. Pollak. I should add that that tribute (which may be found at 125 *U. Pa. L. Rev.*, p. 1) pretty much defied editing. Indeed, my only contribution—the addition of a single letter to the text the Dean had provided—was quickly rejected by the editor-in-chief on the ground that the author did not spell his name with a “c.” Which goes to show that sometimes a law review editor does cave in to an author’s whim.

Anyway, the first two sentences of Pollak’s essay may bear re-reading: “By the time he died,” Pollak wrote, “William Henry Hastie had been a great judge—indeed, one of the most distinguished judges in the nation—for a long time. So long a time (twenty-six years) that it is not easy to remember that he was a major force in the law years before he became Judge Hastie.”

All of which could now be said about Pollak himself, who ended up serving even longer as “one of the most distinguished judges in the nation.”

In any event, back in 1976, Pollak, when contemplating Hastie, said nothing about any of the good works my grandfather had valued. He chose instead to praise his subject’s “intellectual power” and “unflagging energy.” And he put particular emphasis on Judge Hastie’s “unremitting commitment to principle.” All of which is what my grandfather would have called “justification by faith.”

Now the fact is that in the many years since I first read Pollak’s unedited tribute to Hastie, I had ample opportunity to observe both Pollak’s works and Pollak’s faith, as it were, and I believe I could provide a stirring justification of him on either ground. But I’m not sure that is what is wanted. So permit me, instead, to provide a few quick sketches of the man himself.

Picture him, if you will, at an Inn of Court dinner sometime around the turn of the millennium. He has reluctantly agreed to give the after-dinner talk, but instead of tiring his audience with something earnest, he is telling us a bit about the practice of law in New York a generation or two ago. It is a subject about which he knows a fair amount, having made the obviously prudent decision to marry the boss’s daughter while working at Paul, Weiss in the early 1950s. And as he talks, Pollak unwittingly gives us glimpses of his own roots. He recalls his mother-in-law, who was a kind yet energetic woman, the kind of person my

grandfather would have called a “do-gooder.” And his father-in-law, Louis Weiss, who was one of the leading lawyers of his time and a founder of Paul, Weiss. Weiss was the kind of person my grandfather would have called a “gentleman.”

And then Pollak is holding up a photograph of the lawyers of Sullivan & Cromwell circa 1912—a photograph that included his father, Walter Pollak, who was the kind of person my grandfather would have called a “Bolshevik.” Rather than staying with a perfectly respectable firm—as Sullivan & Cromwell then was—the elder Pollak had gone on to make his name representing the less respectable. He was also the inventor of the constitutional doctrine of incorporation, having successfully pedaled that counterintuitive idea to the Supreme Court while losing a case called *Gitlow v. New York*. I cite the case now only for the proposition that the later Pollak’s constitutional views were probably genetically fixed and thus not entirely his fault.

But enough of Pollak’s heritage, however much it may have influenced him. Let us picture him, instead, teaching a class on federal courts in the early spring of 1978. Most of the students are “third years” who already have their jobs or clerkships and who are playing out the string, as it were. The dean, as he then was, is doing what he can to engage these unengageable students in a discussion of *Louisville and Nashville Railroad v. Mottley*, 211 U.S. 149 (1908). He is employing his own version of the Socratic method—which is far too gentle to inspire the fear that makes the Socratic method effective. Accordingly, with this group, his questions are producing responses like, “Gee, I don’t know” or “Sorry, I didn’t read the assignment.”

If the dean is annoyed or disappointed—as he could have been—he gives no sign of it. Instead, he reacts to each response with a kindly if somewhat quizzical smile and then presses on with another question—all in the hope that he might be able to teach even this class something about the well-pleaded complaint. He will fail at this. But a couple of the students sitting toward the back of the class marvel nonetheless at how patiently and gracefully he persists in what seems to them a pointless exercise. They conclude that that is just the way he is. By which they mean, it is his character. Years later, they will think that lessons in character matter more than the facts of the *Mottley* case.

But maybe that picture is a little too academic. Perhaps it would be better to depict an insurance coverage case tried to a jury in June of 1987. And maybe the plaintiff’s lawyer keeps changing his theories—and the defendant’s lawyer keeps asking the same questions—and maybe there’s an expert on Mexican law answering every question, “Yes,” no matter what it is, because his only experience of an American courtroom comes from television and he thinks the lawyers will be able

to destroy him on cross-examination unless he agrees with whatever they say on direct.

And maybe the trial goes seven days and isn't ultimately about anything all that important—although God knows we all thought it was. But the judge is acting throughout as if all the lawyers and all the witnesses and even the jurors were real people with real lives, as if they actually mattered. So he treats all of them courteously all of the time. No matter what. Even that confused and frightened expert from Mexico City. It might even be said—indeed, it is said—that this judge suffers fools gladly—or, if not gladly, then more than he should. Yet at the end of the trial, none of the participants feels incompetent or foolish—even though all of them were at times. Which was probably the judge's principal contribution to the festivities. The kind of contribution that counts for little in the world of great works and for even less in the world of lofty principles.

But most of us don't actually live in those worlds. We live in this one. And when we live in it long enough, we grow less impressed with the works of men and we start to wonder about “unremitting commitment to principle” even when we can agree on the principle, which we cannot always do. So sometimes we remember an older and different teaching—that a man is not justified either by his works or by his faith. That is only done—if it is done at all—by something called grace.

And grace is an uncommon phenomenon that we do not often encounter and cannot easily explain. Which is why we call it a gift. An inward and invisible gift that is nonetheless manifested by countless outward and visible signs. And as surprising as it is to see it, the fact is that all of us know it when we do. And could not miss it in Lou.¹¹

ALFRED W. PUTNAM, JR.

Partner, Drinker Biddle & Reath

IT IS A PRIVILEGE to write in memory of Judge Louis H. Pollak. I shall refer to him as Lou, because the only time he reproved me—gently—was when I addressed him as “Judge Pollak.” Others are more qualified to write in Lou's honor: those who knew him when Thurgood Marshall first recruited him to volunteer for the NAACP Legal Defense and Educational Fund; or when he worked on the NAACP team that briefed *Brown v. Board of Education*; or at Yale Law School when Lou was a professor and then the dean; or at Penn Law School when Lou

11 This tribute is an edited version of remarks given at the unveiling of Judge Pollak's portrait at the United States Courthouse in Philadelphia on 21 May 2010.

was our dean; or during Lou's many years on the bench in the Eastern District of Pennsylvania. But perhaps I can speak for more than a decade's worth of our Penn Law students, including some who had the opportunity to serve in Lou's chambers as interns or law clerks, and others who learned from him in his seminar on Great Supreme Court Cases, and all of whom revered and loved him.

As a reporter to the committee that drafts model jury instructions for use in civil cases in the Third Circuit—a committee on which Lou served since its inception—I came to know both his deep wisdom and his equally deep kindness. The model instructions can be added to many other features of American law that are more just because of Lou's work. And when I walk through the lobby of the courthouse at Sixth and Market Streets, I remember Lou, already in his eighties at that point, walking me out of the courthouse and onto Market Street so that he could hail me a cab because I had a broken foot.

Everyone who knew Lou will recognize that quality. He was not merely a great academic, lawyer, and judge. He was a husband and father devoted to his family. He was a judge who decided a fair housing case involving a challenge to the siting of a homeless shelter and then—after the case was over—walked unrecognized through the shelter so that he could see how it had turned out. He was a judge who was interested in the well-being of a litigant many years after her case had gone to judgment.

Lou helped to shape the great concepts of justice in twentieth-century American law, but those concepts were not abstractions to him. Each human being whom he encountered received his attention and concern.

Elected 2000; Councilor 2004–10; Committees: Meetings 2000–09; Membership V 2002–08; Phillips Prize 2002–11

CATHERINE STRUVE

Professor of Law
University of Pennsylvania Law School