DEAN LOUIS H. POLLAK: THE GRACEFUL OCCUPANT OF THE OFFICE OF CITIZEN

WILLIAM T. COLEMAN, JR. †

To his friends and colleagues, that Dean Louis H. Pollak would one day become a federal judge was inevitable. Fortunately, enough distinguished academicians have become judges to leave an imprint of excellence on our heritage of judicial opinions. But there is nothing inevitable about the accession of a Story, Frankfurter, Rutledge, Goodrich, Hastie, or Frank to a federal judgeship.

Dean Pollak's inevitability flows not so much from his preeminent scholarship, or his laser-like mind, or his practical experience. Rather, the inevitability lies with that peculiar quality that is the essence of being judicial—a quality of which Lou Pollak is the quintessential expression. That quality, upon which the very survival of our legal system ultimately rests, is the capacity to reconcile conflicting interests and objectives in a fair and impartial manner, balancing thoughtful respect for tradition and precedent with sensitive appreciation for civilization's unwavering quest for the fulfillment of human dignity. For reasons of brevity, I refer to these qualities as judicial balance. For those who are privileged to exercise federal judicial power in the United States must appreciate that we live in a constitutional democratic society that has a commitment to remain free and to become a more open society.

Many legal academicians fail appointment to the bench because their careers do not include practical experience or the opportunity to handle major public matters. But those who make it often bring the extra dimension that makes their legal opinions more incisive and that reveal "a long view of the law and its unfolding."

What are these characteristics that make it so important to infuse our federal judiciary with a leaven of legal academicians who have combined an active life of teaching with other relevant experiences?

We have every right to assume that our judges will be honest and intelligent. Only on few occasions have we been forced to be

† Partner, O'Melveny & Myers of Washington, D.C., Los Angeles, and Paris. A.B. 1941, University of Pennsylvania; LL.B. 1946, as of 1943, Harvard Law School; Law Clerk to Herbert F. Goodrich, 1947; Law Clerk to Mr. Justice Felix Frankfurter, October Term 1948; United States Secretary of Transportation (1975-77); American College of Trial Lawyers; Member of Pennsylvania and District of Columbia Bars; American Law Institute; Chairman of the Board of the NAACP Legal Defense and Educational Fund; Vice President, Philadelphia Art Museum; Member of Council on Foreign Relations and Trilateral Commission.

momentarily disillusioned by the few exceptions. But our system is strong enough to be self-correcting: the level of integrity and intelligence that pervades our judicial system is high. It can withstand an occasional deviant. More crucial, however, to the capacity of our legal system to reflect the redeeming virtues of our culture and our cultural aspirations is this quality of judicial balance. Balance is essential to sustain the support and respect of the American public for its judges, for "the Court's authority—possessed of neither the purse nor the sword—ultimately rests on sustained public confidence in its moral sanction." [1] It is essential to preserve a proper and effective role for the judiciary in our system of checks and balances. It is the essence of fairness not only to the parties involved in any particular dispute but to the relevance of that dispute to all future parties and to the continuity and perfectability of our legal system.

As I attempt to define judicial balance, it will become clear to those of you who know him why Dean Pollak is the manifestation of this quality and why his induction as a federal judge is as inevitable as the successful auction of a Leonardo da Vinci at Sotheby's under the skillful hammer of Peter Wilson. A good judge must balance confidence in his scholarship and understanding of the law with the humility of a listener who is wise enough to know that he still has much to learn, who respects the unique contribution to his knowledge that each person appearing before him will bring, regardless of the quality of articulation or level of scholarship, and who appreciate the need of human beings to have an opportunity to express their cause. A practicing judge must balance his unwavering commitment to the concepts of human equality and dignity that are the essence of our constitutional democracy with the recognition that the vitality of that democrary ultimately rests with the people and their elected representatives and not with a paternalistic judiciary. The art of balance requires courage to resist the popular trends, flaring public emotions, and the conventional wisdom of one's fraternal associates.[2] It requires compassion, rooted in an empathy for "those who have few friends." It requires reconciliation, comparing and weighing competing rights and values, which often are not subject to easy or graceful comparison, while recognizing that few issues reach a judge where there is a marked choice between right and wrong.

It is these qualities that have characterized Lou Pollak's career to date, and most especially his valued tenures as Professor of

[1] Baker v. Carr, 369 U.S. 186, 267 (1962) (Frankfurter, J., dissenting).

[2] W. Hastie, Judicial Role and Judicial Image (Owen J. Roberts Memorial Lecture, March 22, 1973), *reprinted in* 121 U. PA. L. REV. 947 (1973).

Law and Dean of two of our great law schools: Yale and the University of Pennsylvania. While his legal scholarship has been internationally recognized and represents a breadth of knowledge and experience unique even among the nation's finest law schools, the quality of his tenures has been far more significant. His understanding of the law has been matched by his understanding of the process of learning and his respect for each student engaged in that process. His dedication to the law and our judicial system has been matched by his compassion for those for whom participation in our legal system is most difficult. The rapier quality of his intellect is matched by the graciousness, warmth, and subtle humor that characterize his personal relationships. Finally, his commitment to the effective administration of the Yale Law School and of the University of Pennsylvania Law School has been matched by his continuing contribution as lawyer to his international, national, and local communities. In each instance it was his privilege to lead his law school through the process of attracting minority and female students to the law school in significant numbers and getting them meaningfully placed after graduation. The dramatic increases in the figures during his respective tenures is temporary proof of his success. Of course, the ultimate proof comes as these men and women make meaningful contributions to the law and our country.

Lou Pollak's remarkable love for justice has even penetrated a South African magistrate's tribunal in the Biko inquest. It has enabled him to preside over numerous public employee fact finding tribunals. Especially significant for me has been his longstanding effort on behalf of the NAACP Legal Defense and Educational Fund, in which he served as Vice President and participated in many of the major civil rights cases of our time in the Supreme Court of the United States, in the federal courts of Alabama, and before the National Labor Relations Board. By the end of his vivid recital of the facts to the Supreme Court, including the effective use of Anthony Lewis in setting the scene in one of the "sit-in" cases,[3] he had created among the nine Justices total empathy for the feeling of rejection that racial discrimination inflicts. The lofty bench of the Supreme Court was transformed metaphorically into a lunch counter in the deep South as the Justices shifted restlessly in their chairs.

As Frankfurter was fond of stating when he was about to be indiscrete about the Court's inner workings, "history has its claim on the truth." Pollak, along with one other whose name won't be mentioned, wrote much of the *Brown v. Board of Education* brief

[3] 380 U.S. 447 (1965).

and the Jurisdictional Statement in the first *Girard College* case.[4] He also drafted on my kitchen table the part of a speech that I gave advising President Ford and Attorney General Levi why the Administration, of which I was a part, should not intervene in the Boston school case on the side of those who opposed the only effective tool available to bring about integration in the Boston school system.[5] The Administration stayed out of the case.

That Louis Pollak was destined to be a renaissance lawyer and fill well "the office of citizen" [6] was apparent from his upbringing. His father, Walter H. Pollak, an associate of Benjamin N. Cardozo until Cardozo went on the bench, was a nationally-renowned appellate and constitutional lawyer whose arguments in *Gitlow v. New York* [7] and *Powell v. Alabama* [8] will long be remembered as milestones in the movement toward greater civil liberties. His wife, Cathy, is the daughter of Louis S. Weiss, a distinguished attorney and, in many ways, the founder of the modern law firm. Louis Weiss gave another dimension to his law firm; in my judgment, one that was even more important. He insisted that lawyers who represented the major corporations and the wealthy must also have an equal concern for the basic human values that make our country distinctive, and how our society would provide true equality for the poor and the minorites. For lawyers are the linchpin that makes our society, based upon private property and individual and human rights work, in a peaceful manner. After all, we as a diverse people have handled many explosive social issues that would have split asunder other societies and yet only once in 202 years have we failed to do so peacefully. Lou Pollak and I both began our legal careers working for the law firm that his father-in-law helped shape.

After graduating from Yale Law School, Lou Pollak served as a law clerk to Supreme Court Justice Wiley Rutledge and later as an assistant to Ambassador Philip Jessup, whose imprint on the development of international law has been substantial. His service as Dean and Professor of Law at two of the nation's great law schools, Yale and Pennsylvania, has been unprecedented. To each law school he brought this unique quality of balance: decisive leadership with participation by faculty and students, an emphasis on faculty scholarship but not at the expense of good teaching, and a

[4] 353 U.S. 230 (1957).

[5] Washington Post, May 22, 1976, at 1.

[6] Felix Frankfurter used to say that the highest office in a democracy was "the office of citizen." New York Times, Nov. 18, 1978, at 20, col. 3.

[7] 268 U.S. 652 (1925).

[8] 287 U.S. 45 (1932).

curriculum firmly founded in history but highly relevant to the changing contemporary scene. He opened up the doors of the law schools to the community and to those who traditionally have found it more difficult to pursue a legal education, and, in so doing, he enhanced the schools' reputations for academic excellence.

During the era of university turbulence—when the spirit of reconciliation that has characterized our constitutional democracy appeared forgotten—Lou Pollak sought moderation and openness, earning criticism from every quarter as the ultimate tribute to his fairness. Since the resurgence of pragmatism on university campuses, he has administered in a quieter era, and his fairness and leadership have been recognized in all quarters.

Although his loss will be felt personally at the law school and at the NAACP Legal Defense and Educational Fund, Inc., his contribution, of course, will remain very much a part of these institutions, and it is the nature of the man that the personal relationships he has established at each will flourish. As he dons the robes for which he seems to have been predestined, he will bring to his judgeship a sense of quality, reverence for tradition, historical perspective, compassion for the less advantaged, an open and incisive mind, and an uncanny sense for what is relevant and meaningful. Ultimately, even this law school, which suffers his immediate loss, will gain from the contributions he will make to the bench. Students in future years will benefit from a judiciary that will be, for his presence, a little fairer, a bit more articulate, and more sensitively balanced. And the living relevance of the law's sometimes vague and austere commands will be tempered with "the totality of man's nature and experience." [9]

So, Lou, we salute you as you begin your voyage "to make [our government and social] institutions serve the people well in our times." [10] The teaching and practicing bar is a little poorer, but the judicial bar has been enriched.

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[9] F. FRANKFURTER, OF LAW AND MEN 39-40 (1956).

[10] On April 5, 1976, Chief Judge William H. Hastie, who presided at the opening session of the Bicentennial Conference on the Constitution, stated:

> On the other hand, to the extent that governmental impositions prove burdensome or oppressive, there will be outcry for greater freedom. Thus, from generation to generation, it becomes more difficult to satisfy, or even to reconcile, the resulting diversity of deserving, but often contradictory, claims. Yes, our political legacy includes intractable problems. Yet we continue to believe that the genius of the founders of our nation lay in the devising of political institutions that would both command respect and loyalty because of their decency and exhibit flexibility enough for effective adaptation to the needs of other and different times. For that, we cannot give them too much credit. Yet our belief in the excellence of their work is also the measure of our responsibility to make those institutions serve the people well in our times.