

REMARKS ON MY MENTOR, ROBERT COVER

*Keynote Speaker – Remarks of the Hon. Guido Calabresi**

I'm just delighted to be a small part of this marvelous conference and thank all those who have put it together – this conference on my friend and, in many ways, my mentor despite his relative youth: Bob Cover.

Most of you have contributed or are contributing serious thoughts on and derived from his scholarship. My nostalgic remarks – both happy, for all he gave me, and sad because of his so early death – will be less deep. But they will, I hope, serve to give a picture of Bob as a person, a wonderful, wonderful, interesting human being, the type of person whom it was a joy to be with and interact with. Here, then, are a few tales.

I. ROBERT COVER'S DECISION TO JOIN THE YALE LAW SCHOOL FACULTY

The first one is, how did Bob come to Yale? Well, the situation at that time in the late 1960s and early 1970s was that Yale had failed to promote, for any number of reasons we can't go into, a large number of people. And then Harry Wellington became Dean. I was kind of his right hand – or left hand, perhaps.

* Judge Calabresi was appointed United States Circuit Judge in July 1994, and entered into duty on September 16, 1994. Prior to his appointment, he was Dean and Sterling Professor at the Yale Law School, where he began teaching in 1959 and became a full professor in 1961. He continues to serve as a member of that faculty as Sterling Professor Emeritus and Professorial Lecturer.

Judge Calabresi received his B.S. degree, summa cum laude, from Yale College in 1953, a B.A. degree with First Class Honors from Magdalen College, Oxford University, in 1955, an LL.B. degree, magna cum laude, in 1958 from Yale Law School, and an M.A. in Politics, Philosophy and Economics from Oxford University in 1959. A Rhodes Scholar and member of Phi Beta Kappa and Order of the Coif, Judge Calabresi served as the Note Editor of the Yale Law Journal, 1957-58, while graduating first in his law school class. Following graduation, Judge Calabresi clerked for Justice Hugo Black of the United States Supreme Court.

We tried to go out and find the top people, youngsters, who were writing really promising things in those in many ways very good but still difficult days for people to write. So we went and got Jerry Mashaw from someplace, Bruce Ackerman from someplace else, and of course we saw what Bob had written. Bob had written wonderful things already as an untenured professor at Columbia and so we made him an offer.

But how to convince this New Yorker, this lover of books and bookstores, that New Haven could be a good home for him? Well, we brought him up, and I think he quickly loved the searching, paradigm-breaking atmosphere of Yale Law School. And despite some questions, I think he saw how he might fit in well with the New Haven Jewish community. It is difficult to find a community, that is both conservative in its observance and yet liberal in its thought. And yet because of people like Steve Wizner, he found that. So that was not a problem.

But what about books and bookstores? I was head of the appointments committee and knew that New Haven then lacked such things. But I had a thought: the Book Barn. The Book Barn was an old farm, the owners of which had turned into a place to collect and sell books from estates; they'd gone out and picked up many such books. There were books in the chicken coops and other like places to be looked at. It still sort of exists but it's not the same thing.

So we brought Bob out there. He looked around and on a chicken roost he found George Tucker's Blackstone.¹ Now, Tucker's Blackstone was the edition that most influenced the early 19th century developers of American law. Bob looked at it and it was a first edition from 1803. He got interested and then he saw the signature of the owner: It was David Daggett, one of the three founders of Yale Law School. So Bob got quite excited and we asked what the price was, five dollars. He bought it and came to Yale Law School. I don't know that he ever found anything else of that sort but it was enough to convince him.

Now, some people, after I became Dean, said, "Did you place it there?" (Deans are known to be manipulative.) No. This was just destiny that he should come and it was there.

¹ See generally 1 William Blackstone, *Commentaries*.

II. BOB COVER AND JAROSLAV PELIKAN

My second tale is he was here and so was Jaroslav Pelikan, who was the leading historian of religion, Christian religion actually. Pelikan's family had been Lutheran ministers since the time of Martin Luther and Pelikan was writing a great history of religion. He had heard about Bob and asked me if he could meet Bob.² So I arranged a lunch at Mory's for Jary Pelikan and Bob Cover.

I don't know that either of them found anything worth eating there but they got discussing. I was sitting there, fly on the wall, and never in my 73 years around this university and universities have I been so dazzled and learned as much as from that conversation between these two, who were really dying to learn more about religion and parts of religion that they didn't know. They both left lunch glowing.

III. BOB COVER AND MY ANCESTORS

The next story that I tell is that once Bob came up to me and said that he had been reading about a correspondence between some great Ashkenazim rabbis in, I think, the 13th or 14th century, something like that, and some great Italian rabbis about the relative merits of the Ashkenazim rite and the ancient Italian rite, that was practiced in Rome before the Diaspora.

He asked me whether I had ever heard of these Italian rabbis whom he described as the Zekenim of Lugo. I said, of course I've heard of them. They are my family. They are my ancestors. My grandmother, my mother's mother, was a Zekenim of Lugo. He embraced me and we had a connection so deep after that that it could never, never be broken.

IV. BOB COVER AS A TEACHER

I want to talk a moment about Bob as a teacher. Much has been said about that and the kind of teacher that he was. Grant Gilmore had said "woof, great teachers should be hunted down and shot" (he used to bark, as some of you know). By that, he meant the performers, the

² Wolfgang Saxon, *Jaroslav Pelikan, Wide-Ranging Historian of Christian Traditions, Dies at 82*, N.Y. TIMES (May 16, 2006), <https://www.nytimes.com/2006/05/16/obituaries/16PELIKAN.html>.

poor man's Winston Churchill, the people who stood there and acted and everybody had to listen, but it was all show. Grant Gilmore was a great teacher but not of that sort. And neither, of course, as several have said, was Bob. But he was a truly great teacher who loved his students and knew them really well.

I think probably the sense I had of how deep Bob loved and knew his students came when we considered making an appointment to the faculty of Martha Minow. Yale Law School virtually never appoints, never makes offers to people right out of school, even more rarely of its own. But the way that Bob described Martha, and the way he foresaw what she would do and would be, convinced me and the faculty to make her an offer. Unfortunately for us, she went to Harvard. But what he did showed a knowledge, an understanding and a support of his students which is really what great teaching is about.

V. DISAGREEMENTS WITH BOB

It wasn't as if Bob and I always agreed. When I became Dean I established "the Wall" in which people could say anything they wanted, argue about anything they wanted, take any position even beyond the First Amendment. I didn't want, in a law school, for people to be arguing whether some vulgar thing was protected by the First Amendment or not. I thought anybody could say anything and could be answered.

The only restriction that I put – if it was a restriction – was that people should identify themselves. They should sign their name and so be part of the discussion. (This was not necessary if they were criticizing the Dean or the faculty, although in fact they did identify themselves then, which pleased me, because it showed that they felt safe.) And I promised I would protect anybody who put their names up. Other people could argue with them, signing their names; I would protect them all.

Bob thought that I was wrong in requiring people to sign their names. He thought despite all the sense of protection that I could give, that it would have been better – more open, more interesting, – if people could go on the wall anonymously.

And I remember having a long discussion with him because I said, yes, putting your name down may chill a few people. But it will also help and support speech from unpopular organizations. If names are not required and someone says something that the majority of

people don't like, people will say, "Oh it's that group, it's the Catholic students, it's the Jewish students, it's the Federalists, it's this or that." So organizations will be diminished. They will be chilled in that way.

He laughed, because of course the organizations were so much of what he was about, but he stuck to his position and we had the most loving disagreement about that.

Another disagreement came when I wrote *A Common Law for the Age of Statutes*.³ This book, which some people say suggests that courts should update statutes, is actually more complicated. But it had a position on statutes and on courts. I remember Bob seeing me after it came out – almost running down the hall, with a smile on his face, saying, "Oh Guido, it's a wonderful book, it's a wonderful book, it's a wonderful book. But how wrong you are. How wrong you are to give courts even more power. It just will not work out." Again, it was the kind of loving disagreement, thoughtful and joyful, that characterized all that he did.

VI. A STUDENT DISCIPLINARY CASE INVOLVING REPREHENSIBLE SPEECH

Bob, at the end of his life, was involved in a student disciplinary case in Yale College. A nasty, twerpy, snotty Yale undergraduate had decided to make fun of – attack – GLAD Days – Gay and Lesbian Awareness Days. There had been signs about GLAD Days. And this twerp put up signs called BAD Days – Bestiality Awareness Days. And in these signs, which he put on tables and other places he said all sorts of nasty things and even made some suggestions about some faculty members, John Boswell and some others, that he was aiming at.⁴

The College, in its wisdom, or non-wisdom, called him in. They had a disciplinary hearing and they suspended him, did all sorts of things to him. Bob thought that this was deeply wrong. Much as he was offended by what this kid did, he thought that free speech in a university allowed him to do that.

And so he challenged the result, brought an appeal to a higher university group, college group, and was litigating that when he died –

³ See GUIDO CALABRESI, *A COMMON LAW FOR THE AGE OF STATUTES* (1985).

⁴ David W. Dunlap, *John E. Boswell, 47, Historian of Medieval Gay Culture, Dies*, N.Y. TIMES (Dec. 25, 1994), <https://www.nytimes.com/1994/12/25/obituaries/john-e-boswell-47-historian-of-medieval-gay-culture-dies.html>.

when he died so suddenly. So I took the case on. I probably wouldn't have, but there it was. Bob had taken it on, and I thought somebody should stand in his place.

I did. And we won. The university changed its mind and took away the suspension. And then, on that day, when we got the result, there was this twerpy kid and I turned to him and I said, "You snotty little blank" – I won't say the word I used. "You won, as you should have, but will you learn something from this or continue to hate? You have won because the principle was that you should win but you behaved disgustingly."

I then went home and slept well because I knew that I had done what my teacher would have done. He was much younger than I but he was my mentor – and mentor in a variety of ways. One of the things that I did when I was Dean was to make the clinical program at Yale be part of, to be considered as well, get named chairs for (Steve Wizner got the first one), as the purely academics. And one of the things I was thinking of was Bob Cover, this scholar who was also an activist in the sense that only the clinics can be, and was a part of it. It was one more gift that Bob had given to me and, more important, to the school.

I loved Bob. I will miss him. I miss him every day.

Thank you.

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