

# Joseph Warren Bishop, Jr.\*

Ralph K. Winter, Jr.†

Joseph Warren Bishop, Jr., the public man, had a career of extraordinary variety and achievement. Before he was forty years old, he had been involved in the transition of Germany from occupied enemy to post-war ally, had argued and won cases in the Supreme Court of the United States, and had played a major role in the Army-McCarthy controversy. Later, as a teacher, scholar, and essayist, he was at once an expert on the intricacies of corporate law, a writer able to make the English language do what it will do for few others, and a thoughtful observer on an uncommonly broad range of issues.

Joe's world view was shaped by a distaste for moral absolutes. Many thus found it hard to label him because our labels are so often tied to one or another absolutist position. This world view stemmed from his lawyer-like hostility to abstractions as tools of analysis. He deplored proposals for simplistic solutions to political problems based on appeals to conscience. To him, the incantation of the word "conscience" in a political discussion was a deliberate invitation to forego the painful analysis complicated issues require. He called it "bellyfeel." He also saw in a moralistic, absolutist approach to politics the dangers of zealotry and demagoguery.

In 1971, he wrote, "A pall of Morality hangs over the campuses like smog over Los Angeles. A middle-aged professor afflicted with the tenets of traditional liberalism and cynicism feels like the only agnostic . . . during [a] nineteenth century religious revival." And, in a passage painful for Joe, he said, "I almost yearn for Eisenhower."

Joe's resistance to McCarthyism and the New Left was thus not motivated by either a desire to protect Communists in government or to support the war in Vietnam. He knew Communism was the twin of fascism, and he believed the war a "confused and bloody tragedy" brought on by statesmen themselves motivated more by morality than by national self-interest or even by simple prudence. What he abhorred in McCarthyism and the New Left was the appeal to emotion and to those particular brands of moral absolutes, all of which encouraged the distortion of facts and an intolerance toward others. When many were justifying civil diso-

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\* This eulogy was delivered by Judge Winter at the memorial service for Professor Bishop held in New Haven on May 23, 1985.

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bedience over Vietnam by the "higher" call of conscience, Joe Bishop reminded us that Senator McCarthy had once argued that a "higher" patriotism obligated government employees to turn over to him confidential personnel files.

Good intentions were not enough to justify moral posturing. "How easily," he wrote, "idealism fades into crankiness, generous hatred of injustice into smug sanctimoniousness, independence of spirit into the slightly ridiculous."

It was, of course, inevitable that a person of Joe's outlook would clash with what he called the New Clergy. In his youth he had come to distrust clergymen who claimed a special expertise in the application of morality to public affairs. These men were reactionaries then, but, when the New Left appeared in the 1960's with its corps of chaplains, Joe's pen was ready.

His rejection of moralizing was made easy by the fact that he had no emotional need for a public display of his own ethical or moral worth to compensate for poorly developed personal values. Joe was not a particularly religious man but he religiously held values of the highest order. He had a strong sense of duty, of loyalty, of honesty and of courage.

His early career in public service as a soldier and as a lawyer reflected his sense of duty and his patriotism. Although much of his later career was spent in an environment hostile to the American military, Joe was always openly proud of his service in the United States Army.

He brought these traditional values to the Yale Law School as a teacher. I was one of Joe's first students and a colleague for over twenty years, and I know how hard he worked at teaching. His careful preparation for class conveyed to students his expectation that they too would be conscientious. In administrative affairs, he never shirked from undertaking necessary but unrewarding tasks such as Chairman of the Admissions Committee.

As an author, Joe displayed an uncommon intellectual honesty and courage in his convictions. He was not afraid to go where his logic and his values took him even when that logic and those values put him in opposition to lifelong allies. Many who face the dilemma of parting company with intellectual allies shrink back in the knowledge that the hostility of former comrades is often greater than that of longtime adversaries. Such a calculus of advantage never entered Joe Bishop's mind.

When it came to ideas, he was armed with a mastery of the English language and had a yen for battle. As he wrote of one well-publicized moralizer, "The unbeliever's urge to boot that majestic behind is overpowering."

It would be the greatest mistake, however, to confuse Joe Bishop, the

warrior of ideas, with Joe Bishop, the person. He thought ideas were important and worth fighting about, but he never confused these encounters with personal causes. As you all know, Joe was caring, warm-hearted and compassionate, one of the sweetest guys I have ever known. And, in the last two years, when he lived in the shadow, he was a tower of courage.

The pain of loss is unrelenting, but it is the price to be paid for the example he set for us, for what he taught us about law and about life and for the sheer joy of having had him among us.