

# IN MEMORIAM

HAROLD W. SOLOMON

To each member of his family, to each of his friends, Harold's death brings a private grief. And because he is gone, we are twice disarmed. For it was at just such moments of senseless sadness that each of us was accustomed to lean upon Harold most—looking, for comfort, to his warmth, his ready laugh, his patience and his rare capacity for meeting life wisely and head-on. Now each of us must build our dear companion from private memories.

Because his life had such entire integrity, the very qualities of mind and spirit which animate our private grief serve to define the grievous public loss: Harold, by the time of his death, had risen to a role of leadership in the law. Particularly, he was one of the few lawyers who have thought hard and well about crime and correction: about those phases of the law of widest and hardest impact, the very phases which—to the great shame of the profession—lawyers have done least to reform.

To have been, as Harold was, one of the most gifted of Matty's [the late F. O. Matthiessen's] students, and then to choose the law, was not an easy course. For to study with Matty was to learn that the life of the teacher and scholar is the life of happiest and hardest challenge. And it was also to learn that one's best neighbors are Melville and Hawthorne and the Jameses, and Henry Adams and Emily Dickinson and Eliot and Mark Twain. Viewed from this perspective, turning to the law could seem a turning away from a life close to the core of America's spirit and aspiration.

It was not so for Harold: First came a long and thoughtful apprenticeship as practitioner and government attorney. Then, starting only six years ago, he moved purposefully and powerfully into the upper ranks of American law teachers. From the outset of his teaching career, his classes were both electric and reflective, even as Matty's classes were. And as a scholar, Harold marched, in these scant half-dozen years, to the threshold of major achievement, only to be cut off before fulfillment. But the lines of force Harold was bringing to bear upon the criminal law of our nation were already manifest.

Let me read a few sentences published less than a year ago, in which Harold called directly into question one of the routine postulates of the law of crime—the bland societal assumption that the convicted criminal should, in ordinary course, be dispatched to prison:

In a significant moral sense, any deprivation may be unfair and inhuman, regardless of its benign purpose or degree of severity, when it does not produce results, or when the effectiveness of the sanction is doubtful and its social costs and side effects are unnecessarily high. A system of deprivations must surely justify itself in terms of its ability to achieve desired legitimate goals, and the point at which returns of this order diminish is the point at which such a system must be redesigned. The inherited assumption that the guilty should *ipso facto* be deprived is a legacy of cruelty. A democratic society is committed to respect the human dignity which inheres even in the most debased among us.<sup>1</sup>

At the end of the sentences I have read there is, as in all proper legal writing, a footnote. To what source did Harold turn to document the thought last expressed—the thought that “A democratic society is committed to respect the human dignity which inheres even in the most debased among us”? Harold did not cite a Supreme Court opinion, or a respectable law review article or a standard legal treatise, or even the stored wisdom of politics, of history, or of ethics. He turned, instead, as Matty would have wished Harold to do, to the root sources of his faith in people. He turned to *Moby Dick* and found there the right rhetoric of compassion and hope and wonder:

If then, the meanest mariners, and renegades and castaways, I shall hereafter ascribe high qualities, though dark; weave around them tragic graces; if even the most mournful, perchance the most abased, among them all, shall at times lift himself to the exalted mounts; if I shall touch that workman's arm with some ethereal light; if I shall spread a rainbow over his disastrous set of sun! then against all mortal critics bear me out in it, thou just Spirit of Equality, which has spread one royal mantle of humanity over all my kind! Bear me out in it thou great democratic God! who didst not refuse to the swart convict, Bunyan, the pale poetic pearl; Thou who didst clothe with double hammered leaves of finest gold, the stumped and paupered arm of old Cervantes; Thou who didst pick up Andrew Jackson from the pebbles; who didst hurl him upon a warhorse; who didst thunder him higher than a thorne! Thou, who in all thy mighty, earthly marchings,

---

<sup>1</sup> Solomon, *Legal Needs of the Poor*, 66 COLUM. L. REV. 248 (1966).

ever cullest Thy selectest champions from the kingly commons; bear me out in it, O God!<sup>2</sup>

Harold's life in the law was one of which, I venture to suggest, Matty would have profoundly approved. I know no higher accolade.

LOUIS H. POLLAK\*

---

<sup>2</sup> MELVILLE, *MOBY DICK* 113-14 (Mansfield & Vincent eds. 1952).

\* Dean and Professor of Law, Yale Law School. These words were originally delivered at Professor Solomon's funeral.