Monrad G. Paulsen

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MONRAD G. PAULSEN

SANFORD H. KADISH*

Monrad Paulsen graced the world of legal education since he entered it in 1946. He graced my life, as friend and collaborator, since we first met twenty-three years ago, as he graced the lives of all whose good fortune it was to have been touched by the embrace of his friendship. To say that his departure is a loss is not to say enough—in truth, the lives of all he knew are diminished in worth.

Four years ago I was privileged to write a tribute to Monrad in a dedicatory issue of the Virginia Law Review. He called me when he saw it and I remember with warmth the joyful banter of our conversation. I want to recall some of those words now, because they were spoken for him to hear—to tease as well as to please him—and because the vibrant memories Monrad evokes make the present tense of those words truer to him than the past tense, even In memoriam.

Monrad is usually seen, by those who know him casually, as they saw him at the most recent annual meeting of the Association of American Law Schools—an ebullient, bouncy giant, exuding good humor and mirth at Christmas time, a regular Santa Claus of the casebook circuit. Some joke! One of Monrad's best. Those who know him better know better. Behind the florid face and big belly hides a cosmic grouch whose transcendent pessimism evokes the Mid-Western Calvinism of his upbringing and gives witness to the painful disillusion of a man who feels to the core for his fellow men and their follies. I emphasize that last facet of his pessimism, for it is one with his warmth and radiating good humor toward others. Monrad loves people. He revels in them. Among many, that is one of his greatest gifts. I have been its beneficiary and I am indebted to him for it.

Throughout his career Monrad has been and remains a notable presence in legal education. He was a member of no less than five faculties—North, South, West and East—and he has taught and lectured at dozens of others. Few law professors know as many in the trade, and even fewer have his eye for talent. He has been a self-contained faculty appointments committee for the profession at large, whose critical insight and uncritical compassion have helped many along the way. He has contributed notably to law and legal education through a substantial volume of writing of lasting value covering a half-dozen or more legal fields. His colleagues at Vir-

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ginia and Yeshiva are the best witnesses of his craftsmanship as a dean. I can only report what I see—a law school at Virginia even greater than the one he came to, and a law school of strength and promise at Yeshiva where there was none before.

You will want to know that it was the word "grouch" that got to him. Paulsen, the Preacher—Ecclesiastes himself—I dare call grouch? "Chutzpah!" he shouted, in one of his two words of Hebrew. He was right, of course. But such an Ecclesiastes! All is vanity and a striving after wind, and, by the way, have you heard the latest stories going around Washington? And boy, does this school have a future. And let me tell you about a couple of great youngsters, real comers! I must say this great Dane of an Ecclesiastes was a big improvement over the original.

What I said about his scholarship drew a more serious response. He did not think his writing amounted to much. Both as an act of devotion and to settle the matter at least in my mind I spent last weekend reading what he had written in one field, criminal law. I was right and he was wrong. Commencing in 1954, he contributed just to this one field over a dozen articles in the law reviews, a casebook with me, and a set of pamphlets for the continuing legal education program of the American Law Institute and the American Bar Association. Apart from one article, in which he presented the thinking behind the Model Penal Code’s proposals on intoxication as a defense, for which he was responsible as a special consultant, all of his law review writing was devoted to two of the most significant events in American law during this period—the development of constitutional restraints on police practices and the transformation of juvenile courts into courts of justice.

My own perception is that the writing of academic commentators in these fields was largely responsible for the way the law developed and that Monrad’s contributions figured as prominently as those of any in effectuating that influence. In 1954, he criticized the Supreme Court’s slowness in enlarging the rationale behind coerced confessions to include practices which offended decency even when they did not impair the reliability of confession. In 1957, he powerfully presented the case for stricter controls on police power to arrest and search, especially where scientific detection devices began to threaten old values in new ways. In 1961, just before the Supreme Court

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1 Kadish, Dedication, 63 Va. L. Rev. 163 (1977).
extended the exclusionary rule to state action, he produced a vigorous defense of the rule, arguing that it was the only promising sanction for enforcing constitutional norms of police conduct and that its opponents were really attacking those constitutional norms themselves.5 In 1963, he analyzed with sharpness and precision the threats to civil libertarian values in Attorney General Robert Kennedy’s proposals to deal with organized crime by extending immunity legislation and facilitating double prosecutions.6 In 1966, he reviewed the injustices of the monetary bail system, in conception and in practice, and supported legislative bail reforms that were soon thereafter to be enacted.7

Those who knew Monrad in subsequent years may be surprised at the civil libertarian fervor of these contributions. In later years the Ecclesiastes in him grew stronger and, like that Preacher, he looked back on what he himself had helped to fashion, as no more than vanity and a striving after wind. He surely was not alone.

Juvenile court procedure was the other main focus of his criminal law writing. As early as 1957 he drew attention to the dangers to the values of justice and fairness in the naive attachment of juvenile court ideologies to the model of these courts as pure social service agencies.8 In later writings he developed his theme that justice for the child must be the primary value to be respected in juvenile dispositions, a value attainable only by according procedural rights to the juvenile.9 When the Supreme Court embraced this view in the Gault10 decision, Monrad celebrated the event and, with typical prescience, depicted the consequences of this revolution in the law he helped to bring about.11 So far as I know Monrad never regarded this constitutional domestication of the juvenile court, as he called it, to be a striving after wind. He came, on the contrary, to feel that way about the rehabilitative potential of these courts for which earlier he held higher hopes.

Collaborating with Monrad was one of the joys of my professional life. Its beginning and its conception were Monrad’s doing. He

8 Paulsen, Fairness to the Juvenile Offender, 41 Minn. L. Rev. 547 (1957).
10 In re Gault, 387 U.S. 1 (1967).
saw the need for a casebook that gave relatively equal attention to substantive and procedural law in a basic course and he recruited me at Utah in 1957 to undertake the substantive half of the book. So began a collaboration that flourished for twenty-three years through numerous annual supplements and three editions. I shall miss him dearly on the fourth. It is a tribute to Monrad, certainly not to me, that our disagreements were never disagreeable. He resolved them on each occasion either by bringing me around to his views—where rational persuasion did not work he was not above a story, a joke, a change of subject, a bit of flattery, a compromise—or by graciously yielding to my obstinancy. A fundamental academic value for Monrad was colleagueship—generosity, helpfulness, cooperation, sympathy, and all in all a largeness of spirit in which one’s own personal ends were subordinated to those of the other in the interests of the common enterprise. No one I have ever known had a greater gift for it. I learned much from Monrad over the years, but what I learned most was what colleagueship meant and why its flourishing was essential to the intellectual life of the academy.

May I close with a few words of Henry David Thoreau, not one close in spirit to Monrad, but one who captured what I now feel: “Even the death of friends will inspire us as much as their lives . . . . Their memories will be encrusted over with sublime and pleasing thoughts, as monuments of other men are overgrown with moss; for our friends have no place in the graveyard.”  

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18 H. THOREAU, A WEEK ON THE CONCORD AND MERRIMAC RIVERS (1849).