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IN PRAISE OF DAVID K. KADANE

*Bernard Jacob**

Distinguished judges, members of the Hofstra Law School community—faculty, former faculty, students, alumni, staff and administration—and honored guests, I rise this evening to thank and congratulate the Hofstra Public Justice Foundation and to praise my colleague and teacher, David K. Kadane. I enjoy a great advantage over David tonight. He must sit here and listen to me without having an opportunity to jump in and respond. He must sit here and listen to what I think him to be without any protection—not even Helene can help him for once. Let me state my allegations; David's answer will be on my desk tomorrow.

First, I want to thank the members, the board and the Hofstra advisers of the Public Justice Foundation doubly. I thank them for implementing this splendid idea of giving financial aid to, and, as they themselves describe it, otherwise “providing a support network for law students interested in pursuing careers in public interest law.” It is a very David Kadane kind of idea; carrying the idea into actuality with the verve they have is a very David Kadane kind of action.

I also want to congratulate the Foundation on its insight and wisdom. My faculty colleagues and I are very pleased that you have invoked David Kadane's name in connection with your efforts, for we know that David Kadane is the Hofstra guru of public interest law.

It is hard to believe that David has been an emeritus professor for five years. Our loss, it has turned out, but CUNY's gain, for David Kadane is an authentically great teacher. When he was with us every day, he taught both large classes and small. The small classes

* Professor of Law, Hofstra University School of Law. What follows are remarks made at the First Annual Public Justice Foundation Dinner, March 5, 1990, honoring David Kadane and the first recipients of the Kadane Summer Fellowships in Public Law. I thought long and hard about modifying these remarks or even substituting for them the slightly longer remarks I made at a Memorial Service for David. In the end I have opted to leave these remarks mainly unchanged. I hope that they capture one enchanted friend's view of the wonderful paradox of the man whom I call, in all seriousness, an authentically great teacher. It is part of that paradox that, at the March, 1990 dinner, the honoree rose, lifted his martini glass and said, “Here's to the revolution-any revolution.”

occurred whenever anyone stepped into his office. And his large classes included not only the entire student body, but also his faculty colleagues and often the greater University community. And his teaching was done as often by action as by words.

What David taught was always somehow *Justice*, and his simple but critically important lesson for all of us was to call us back to the realization that *Justice* is what the law is about.

That side of David is exemplified in his introduction and faithful nurturing of clinical legal education. For David, clinical legal education was always more than a pedagogical technique; it was a way of inculcating in young men and women a desire to practice public interest law, to represent the unrepresented and to seek justice. David's nurturing of public interest law led to the establishment of the Neighborhood Legal Office (NLO).¹ That side of David is consonant, also, with his services as a legal adviser to Julius Nyerere's Tanzania in the mid-sixties. Above all, this side of David showed in his social activism in a hundred causes and projects, a social activism that David practiced, sometimes with charm, tact and reason and sometimes without any of these qualities. But he always carried out what needed to be done.

But there is another side to David, a complicating side, a touch of chiaroscuro that heightens the respect in which my colleagues and I hold him. This is the side of David in which he appears as David Kadane, the democratic elitist.

On this side of his personality goes his razor sharp mind, his successful career as a securities lawyer and his secret involvement, at the very beginning of his legal career, in the drafting of the sections of the *Restatement of Property* that deal with powers, a subject of such invincible obscurity that I have never succeeded, as David did, in understanding it.

It is the two together—the activist David and the intellectual Kadane—that made David a great teacher. For a long time I could

1. David Kadane came to Hofstra in order to bring together his interest in both legal education and public justice; the result was the NLO, serving the Hempstead community. The NLO was founded as an independent corporation and a presence that was physically off-campus where, under a special rule of the New York State Court of Appeals, students could learn law from their supervising teachers and, at the same time, render legal assistance to those otherwise unrepresented. The NLO was one of the first clinical legal service offices directly part of a law school curriculum in the State of New York. It continues in a more conventional form as the vehicle through which the Law School obtains a practice rule that makes clinical education possible.

not put my finger on what I have just said; I could not say what made David a great teacher. And I also could not fathom how the two sides of David occupied the same body and soul.

It was David himself who gave me—as a good teacher does—the wherewithal to find the answer. For he left on my desk, several years ago, a copy of the revised edition of Morris Raphael Cohen's *Reason and Nature*. He also left a note:

B.J., I have not read this revised edition—but then you say you haven't read *either one*. No hurry about returning this, as I have the 1st ed.—marked up, too. D.K.K.

Morris Cohen taught David and many others at C.C.N.Y., and was himself unquestionably a great teacher. In due time I got to read a little of Morris Cohen, and he gave me an explanation of the particular mixture of the fire and ice that is David, a soft heart for social causes and justice, and a tough lawyer's mind. That tension is an expression of Morris Cohen's doctrine of the vitalizing principle of polarity, the doctrine that many opposites exist and function only in their tension with each other.

It is Morris Cohen, too, that gives me the statement that sums up what the dynamic polarity of David Kadane has done to those people who have come into contact with him. Cohen said: "Justice and law, the ideal and the actual, are inseparable, but distinguishable."

That is the lesson that David Kadane taught. And that which we all still try to keep alive in his name. We try to remember that there is no law without justice, and we try to remember that we must always strive to move law towards justice and against the tendency of law to move away from justice.

