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1976-1977]

In Memoriam

HARRY E. KALODNER

Senior Judge
United States Court of Appeals
for the Third Circuit

1897-1977

In a letter to John Adams, in 1813, Thomas Jefferson explained that there is a "natural aristocracy among men," and "the grounds for this are virtue and talent." He went on to say that this "natural aristocracy I consider as the most precious gift for the instruction, the trust and government of society." Surely Jefferson must have had in mind, when writing that letter, a person such as the late Judge Kalodner.

Harry Kalodner was born at 522 Spruce Street, in Philadelphia, one of five children. His father was a carpenter. In those days, carpenters made little money and the children had to lend a hand. Harry went to the local elementary school, then on to South Philadelphia High School. It was during this formative period of his life that he developed a love of poetry. And in later years, he frequently invoked the poems that he had learned as a young man, in order to make cogent points in his opinions and other writings.¹ He wanted to study law, but could not be admitted to law school until he was eighteen years old. At that time it was not necessary to go to college first; rather all one had to do was to pass a preliminary examination. So, with a two-year wait ahead of him, Harry launched his career in journalism by becoming a copy boy at the old *Philadelphia Press*, at a salary of \$5 a week.

Harry Kalodner entered the University of Pennsylvania Law School in 1914, continuing his work as a newsman. He covered the theater, opera, general news, and, indeed, anything to help him pay his way. He received his degree in 1917, but instead of going into practice, he went into the army. After active service in France, he returned to Philadelphia in 1919, and served as a law clerk in a small firm.

1. For example, in *State v. Gray*, 468 F.2d 257, 260 (3d Cir. 1972), in illustrating that an error in a criminal trial could not be harmless, he cited the *Rubaiyat*:
"The Moving Finger writes; and having writ, Moves on: nor all your Piety nor Wit, Shall lure it back to cancel half a Line, Nor all your Tears wash out a Word of it."

See *Commissioner of Internal Revenue v. Bilder*, 289 F.2d 291 (3d Cir. 1961) (invoking child's nursery rhyme).

Funds were still a problem, so he proceeded to "moonlight" at the old *North American* until 1925, doing a column on Pennsylvania Government and Politics. By 1928 he was covering real estate matters for the *Record*, continuing all the while to practice law. While at the *Record*, Harry received a Pulitzer Prize honorable mention for an article exposing corruption in Philadelphia City Hall, and a second honorable mention for a series of stories on a scheme in which some Pennsylvania securities firms had defrauded bondholders of \$4,000,000.

An article dealing with the old PRT, the company that long ago operated the buses and trolleys in Philadelphia, brought him nationwide attention. A meeting of the stockholders of the PRT was scheduled which promised large headlines since the City Controller had threatened to be present and to "blast" the company's management. A number of newsmen showed up to cover the meeting, but they were stopped at the door and told that only PRT stockholders could enter. While the writers argued with the doorkeeper, Harry Kalodner rushed to a nearby brokerage office and bought two shares of PRT stock, at \$26 each. He obtained a delivery of the certificates in less than a half hour and raced back to the meeting. Again the guards tried to block him, but when he showed them his stock certificates they, of course, had to admit him.

Harry Kalodner was the financial editor of the *Record* in 1934 when George H. Earle ran for Governor. Earle quickly perceived how politically astute this young man was, and persuaded him to become his campaign manager. After Earle was elected, he made Kalodner Secretary to the Governor as well as the State's Secretary of Revenue. It was one of the few times in the Commonwealth's history that anyone ever held two cabinet positions simultaneously.

In 1936, the Governor appointed Harry Kalodner to the common pleas court of Philadelphia. But his tenure there was a brief one, and he soon returned to the practice of law. His profound legal skill, vigor in advocacy, and clarity of reasoning quickly established him as a prominent practitioner. The judiciary, however, remained his primary interest, and when a vacancy occurred in the district court, President Roosevelt named him to fill it. Eight years later he was appointed to the Court of Appeals by President Truman, and in 1965 became the Chief Judge of that Court. When he reached seventy years of age, the applicable statute required him to relinquish his administrative duties, but he still continued as an active judge for three more years, and as a senior judge for the rest of his life.

Even as a senior judge, Harry Kalodner took his regular turn sitting and writing opinions. And indeed was busily engaged with

difficult legal problems and opinions until a few days before his death.² His records indicate that he considered over 50 cases while on the Common Pleas Court, several hundred cases on the District Court, and more than 3300 cases while on the Court of Appeals.

Judge Kalodner possessed fine qualities in great abundance. But if one had to select the one that emerged in sharpest focus, it probably is the quality of loyalty. He was loyal to the nation, to the judicial process, to the Court as an institution, to his family and to his many friends.

Although he often would question conduct by those in power, there never was any doubt that once a position was taken by the government, he was prepared to support it with all the energy he possessed. He passionately believed that the United States was the greatest country that ever existed, and he expressed, on every appropriate occasion, his profound gratitude for his good fortune in being born here.

Of course, the law was his great and abiding interest. His approach to adjudication was soundly rooted in a strong philosophical underpinning. Judge Kalodner understood that the law must be stable and yet not stand still. A judge, he believed, should be diffident in setting his judgment against that of other independent branches of government in the course of determining what is and what is not proper under the circumstances. He learned that a mature judge is not one who has dispensed with the need for authority, but one who has outgrown the fear of authority, who knows its value, and who can in good conscience wield it. At the center of his outlook was the thought that the soul of a government of laws is the judicial function, and that such function can exist only if adjudication is understood by our people to be essentially disinterested, rational, and a deliberate effort on behalf of society. The institutional aspect of the Court was also a deep concern to Judge Kalodner. He understood perfectly that judges on a large court representing diverse backgrounds would and, indeed, should, dissent from time to time. However, he frequently emphasized that such dissent should be without dissention.

But to consider Judge Kalodner solely in his role with the government and with the Court would present only a partial picture of this many faceted personality. Harry was the epitome of the family man. He adored his wife, Tillie, and from the time she was afflicted with a stroke he cared for her with a tenderness and

2. See, e.g., *Kreda v. Rush*, No. 76-1406 (3d Cir., filed Feb. 18, 1977); *United States v. Davis*, No. 76-1935 (3d Cir., filed March 24, 1977); *Apple v. Greer*, No. 76-1899 (3d Cir., filed _____).

devotion that had few equals. His two sons, and their wives and children were the center of his great pride and affection. Never did he refer to any of them without a twinkle coming into his hazel eyes.

He was a deeply religious person. Aside from believing devotedly in the efficacy of prayer, he supported most assiduously the various institutions that undergirded his religion. Much of this same type of zeal permeated his interest in other communal endeavors, such as the Allied Appeal, the Psychiatric Hospital, Yeshiva University, and Hahnemann Medical College.

Aside from his work with philanthropic and charitable causes, he rendered untold aid to numerous friends and even strangers. How many young people he assisted with school and other problems will never be disclosed. And always he did this with a loving heart and a self-abnegation that none but those closest to him can divine. He loved to meet people, to be with them, and to chat with them. Rarely was he severe, but if he was, his severity was primarily leveled at dishonesty, cant, hypocrisy, and fraud. For like Cardoza before him, he believed that life and the law fail when they offer undue reward to chicanery and greed. In each of his various endeavors he contributed both of his time and his resources with a firm conviction that the roots of true happiness grow deepest in the soil of service to others.

Harry had a multitude of engaging personal attributes: a sturdiness of friendship, a joy of companionship, a wholesome sense of humor, a freedom from intrigue. And these qualities were known to all his companions. So, too, was the charming simplicity of his life — a characteristic he shared with so many of our truly great figures.

On a personal note, I cannot conclude without stating that he was a friend, advisor, and inspiration in my development as a judge. I shall sorely miss him.³

Arlin M. Adams

Judge

United States Court of Appeals
for the Third Circuit

3. After Judge Kalodner elected to assume senior judge status on October 3, 1969, I was nominated to replace him.