Tribute

Carl A. Auerbach
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CARL A. AUERBACH*

Nat Nathanson, my dear friend for more than four decades, was one of the nation's most creative legal scholars. The outpouring of affection and esteem in personal tributes and memorials — which Nat in his lifetime would have tried to stifle — attests to our appreciation of his intellectual power, his gentleness and wit, and the love he bore for his students and colleagues. His legacy will long endure.

I first met Nat early in World War II when we both worked for the Office of Price Administration. I was assigned to the price stabilization program. Nat was head of the staff responsible for defending the price, rent, and rationing regulations in the Emergency Court of Appeals and United States Supreme Court.

Not only did Nat have immense success in defending these regulations but his sage advice to those of us who were their authors prevented many of them from being challenged. Nat was the OPA lawyers' lawyer, a task he handled superbly. For him, and of course for myself, it was an enriching experience in the practice of administrative law.

Soon after I entered academic life, Nat invited me to join him in writing a casebook on regulated industries. I accepted with alacrity. That our friendship managed to survive our Herculean production and even prosper can only be attributed to the saintly qualities which Nat possessed. A large part of the problem was that I was blithely unfamiliar with the nature of casebooks. I wrote prodigiously and found it impossible to eliminate anything. Not surprisingly when, against Nat's better judgment, our original manuscript was delivered to West Publishing Company, our disbelieving publisher informed us

* Professor of Law, University of Minnesota Law School; Visiting Professor, University of San Diego School of Law.

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our little volume would run some 6000 printed pages. Chastened, we managed to cut it by four-fifths. That still left 1223 pages, not counting the statutory supplement. Unfortunately, even then, it proved too difficult for law teachers, let alone law students, to master. To this day, I am sure that casebook ranks number one on West’s alltime list of publisher’s nightmares.

But the collaboration with Nat was equivalent to a post-graduate course for me and I continued to learn from him in ensuing years. To this day, I still find fresh insights in his article on the Administrative Procedure Act which was published soon after it became law. Some of his most illuminating writings in administrative law and constitutional law were published during the last years of his life. We wrote complementary articles opposing the concept of an administrative record that is to be the exclusive basis on which informal agency adjudication and informal rulemaking will be judicially reviewed. We took the conservative position that this concept raised doubts of constitutionality.

Nat’s work reflects an unwavering philosophy of government. He participated in a creative government enterprise during wartime. He saw government not as a burden to be lifted from the backs of the American people but as vital to the wellbeing of the nation and the realization of the hopes of its citizens.

Nat believed that constitutional law should safeguard the fundamental values of our democratic society and that administrative law should provide the framework, consistent with these values, to enable government to accomplish its objectives effectively.

In January, 1985 I am to be a visiting Professor at this Law School, an invitation which Nat helped to arrange. My wife and I had hoped to join Nat and his devoted wife Leah, our treasured friend. We will miss his presence profoundly. Nothing can “replace the touch of a vanished hand and the sound of a voice that is still.”

1. A. BRUCH, POEMS AND LETTERS (1928).