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## Dedication-Ralph F. Fuchs

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## Dedication-Ralph F. Fuchs

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## Dedication—Ralph F. Fuchs

*The Board of Editors dedicates this issue to University Professor of Law Emeritus Ralph F. Fuchs in recognition of his outstanding contribution to the study of law.*

### Ralph F. Fuchs: A Tribute from a Friend and Colleague

MAURICE J. HOLLAND\*

The recent death of Ralph F. Fuchs stirs conflicting emotions in all who share links to the Indiana University School of Law, but especially in those who had the great good fortune to be both his friend and colleague. The more immediate and acute emotions are, of course, those of sadness at our personal loss, commiseration with Annetta Fuchs and other members of the family in their specially felt grief, and a sense of institutional diminishment from the fact that, after forty years, Ralph's presence no longer adorns our faculty. Against these, however, are deeper feelings, less prompted by the momentary sense of bereavement and hence likely to prove the more enduring, which are those of gratitude, reaffirmation, and joy.

The sadness of the moment is quickly displaced by joy when we reflect on what a full, productive, and satisfying life Ralph Fuchs lived, a life prolonged into a lengthy and happy period of retirement which he shared with us. What cause for more than momentary sorrow when we consider that he enjoyed so many years beyond the normal mortal span, years that were as full of accomplishment, service, and love as were those that had gone before?

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Others have written in this dedication issue to describe Ralph Fuchs' accomplishments as one of the pioneering generation of scholars in the field of modern administrative law, as to which he was quite literally "present at the creation" during the 1930's and 40's. In this connection, his name is worthy to be put in the company of such illustrious figures as Felix Frankfurter, James Landis, Louis Jaffe, Kenneth Culp Davis, and Clark Byse, those pathbreaking writers to whom such great credit is due for erecting the sturdy foundation of doctrine and formative principles in this exacting specialty. That administrative law has so rapidly achieved maturation, so that contemporary students are usually surprised to learn how relatively young it is, is largely owing to the painstaking yet enormously creative work to which Ralph Fuchs was a notable contributor.

Likewise, others can better describe Ralph Fuchs as a teacher. It is about Ralph as a colleague that I should like to comment. Perhaps the first thing to be said is that he remained intensely interested in the concerns and activities of this faculty until, literally, the last hours of his life. His retirement in 1969 from teaching on a regular basis did not diminish in the slightest degree his willingness to participate in the affairs of the faculty, his readiness to lend assistance and counsel to any of his colleagues whenever these might be sought, or his generosity with his time and energy whenever called upon by individual faculty members or by the faculty as a group. Because of these qualities, differences in age and status never intruded as barriers to the formation of close bonds of friendship and collegiality between Ralph and even the youngest and most junior among us. Thus, although he had taken emeritus status several years before my own arrival on the faculty as a new assistant professor, Ralph's geniality and interest in me and my work were such as immediately to dispel any sense of distance or imposition on my part of the sort that might be expected with so senior and eminent a figure. This experience of mine with Ralph was by no means unique. Rather, his warmth of feeling and generosity of spirit were invariably extended, in my observation, in full measure to all who became his colleague without regard to difference in age or rank.

Collegiality is, of course, by no means unique to the academic vocation, but it is surely the case that in no other calling is it more central or essential, both to the vitality and achievement of faculties as collectivities as well as to the fulfillment of their individual members. This is so because excellence in teaching and scholarship is most likely to be attained under conditions of mutual inspiration and exchange of ideas, in an environment of give and take on a plane of intellectual equality and mutual respect. In its most ideal realization, collegiality requires that every faculty member feel him or herself to have a vital part in the growth and accomplishment of all the others, and as well enables all to contribute to the growth and accomplishments of each. The collegial spirit is therefore generous, albeit demanding, and freely acknowledges the collaborative element in all individual attainment. It is thus monachal and communitarian, rather than hermetical, in its character

and derivation. It is this precious, hard-to-define spirit which enables great faculties to be more than the sum of their constituent members considered individually.

Ralph Fuchs will always be remembered by me, and, I am sure, by all his other colleagues, as a superlative embodiment and exemplar of academic collegiality in its finest form. As acutely as we shall all now miss his actual presence in our midst, we need never be deprived of his spiritual presence as long as we keep his memory alive in our hearts, and strive to be for one another something as nearly approaching to what he was for all of us as our frailties will allow.

## Ralph Fuchs

ROBERT L. STERN\*

I came to know Ralph Fuchs in 1941 or 1942, when he became Assistant Director under Herbert Wechsler (subsequently Professor at Columbia Law School and director of the American Law Institute for many years), of the Board of Legal Examiners, which was created to establish a merit system for the appointment of government lawyers. Although not a part of the Department of Justice, the Board's offices were on the fifth floor of the Justice Building, down the hall from the Solicitor General's Office, to which Ralph moved in 1943 or 1944. For the three years he spent in that Office, his room was next to mine. During that period he argued fourteen cases in the Supreme Court. Like the rest of us, he reviewed a large number of briefs; our names were appended as counsel only when we thought we had contributed significantly to the brief. Ralph's name appeared on sixteen during this period, and also on two in 1926 as Special Assistant to Solicitor General William D. Mitchell.

These cases were representative of the types of government litigation which came before the Supreme Court during that period. They came from the Claims (now Civil), Criminal, Tax, Antitrust and Lands Divisions of the Department of Justice, the Labor Department, the Federal Communications, Trade, and Civil Service Commissions. Ralph argued *United States v. Lovett*, (328 U.S. 303 (1946)), in which the Executive Branch of the government, in opposition to lawyers representing Congress, admitted that a statute depriving three named public officials of their right to be paid was an unconstitutional bill of attainder—and the Court so held. He was on the briefs for the government in two of the Japanese exclusion cases, in which the Court sustained the removal of persons of Japanese extraction from the West Coast early in the War, but not the continued retention in a relocation camp some time later of a person whose loyalty to the United States was

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not questioned. *Korematsu v. United States*, 323 U.S. 214 (1944); *Ex parte Endo*, 323 U.S. 283 (1944).

I wish I could remember what Ralph said in the conversations we must have had about those cases. But that was forty years ago, and I have no recollection as to any expression of personal views contrary to the position he was arguing. Government lawyers, like most other lawyers, represent their client as long as a respectable argument can be made, and I do not remember any scruples against the positions we were then maintaining. The other government lawyers on the Japanese cases—Solicitor General (later Circuit Judge) Charles Fahy, Herbert Wechsler and Edward Ennis—as well as Ralph, all became known, at least in part, for their commitments to the protection of civil rights. Earl Warren, as Attorney General of California, had urged the Government to remove the Japanese, and the Justices Black and Douglas wrote or joined in the Court's opinions. This proves that in time of war, lawyers and judges, like others, were reluctant to second-guess the military, who, after Pearl Harbor, feared Japanese invasion of California with the support of any local residents who had a slightly yellower skin—even though hindsight showed all that was ridiculous.

Ralph subsequently wrote *amicus* briefs for the American Association of University Professors in support of civil rights in 1959 and 1966. *Barenblatt v. United States*, 360 U.S. 109 (1959); *Keyishian v. Board of Regents*, 385 U.S. 589 (1967). His experience in the government undoubtedly enlarged Ralph's perspective as to how administrative agencies operated. Most of the approximately seventy-seven articles and eighty-three book reviews—not to mention six books—he wrote pertained to the subject of administrative law, on which he was one of the nation's leading scholars. He also wrote on civil service for federal attorneys, (in the early 1940's), antitrust and legal education, and about his friend Wiley Rutledge upon Rutledge's appointment to the Supreme Court in 1943 and his death in 1949.

Our friendship with Ralph and Annetta remained close in every way but geographically after he left the Solicitor General's Office. We saw the Fuchses somewhat more often after I followed him to the Midwest in 1954 for private practice in Chicago. On several occasions I was invited to talk at the Law School in Bloomington, and to interview law students for our office in Chicago. We always stayed with the Fuchses and enjoyed the opportunities to see them.

Others are in a better position to describe Ralph's career as teacher, scholar, and great lawyer in general. We will remember him as a friend, whose outstanding characteristics were cheerfulness and a sense of justice and fairness.

## Tribute to Ralph Fuchs

HIRAM H. LESAR\*

Although I had heard him speak before that time, I first met Ralph Fuchs, who was then Assistant Director of the Board of Legal Examiners in Washington, when I reported to him as a newly appointed Senior Attorney for the Board in February, 1942. That particular association lasted for two years, but there were others at Indiana University and Washington University in later years, and my wife and I continued to correspond periodically with him and his charming wife, Annetta, and to see them on various occasions.

Ralph had many interests and engaged in a variety of professional activities—as administrator, lawyer, scholar, teacher, and defender of academic freedom. During the more than forty years that I knew him, however, his main legal interest was the improvement of the administrative process to the end that administrative procedures and decision-making be not only fair and open but also efficient. As his 1968 Tyrrell Williams Lecture indicates,<sup>1</sup> he understood full well that procedures, rules and regulations, and judicial review were only tools for getting good results, but he wanted us to have the best implements that could be devised. To his work, about which he was much too modest,<sup>2</sup> he brought an enviable academic background in law and economics, ordered diligence and a keen analytical mind. The result was a substantial contribution to the law.

Behind the dedicated professional was Ralph the person. A man of strong moral conviction, he could state his positions vigorously as occasion warranted. Yet he was open-minded, compassionate, kind, considerate, a true and loyal friend, and a gentleman in every sense of the word. So I remember him.

## RALPH FOLLEN FUCHS

F. REED DICKERSON\*\*

We honor here an extraordinary life.

But first I must share a personal confidence that I hope the reader will carefully guard. I am a deeply prejudiced, highly polarized person with a capacity for hating people who can do things better than I can.

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<sup>1</sup> See Fuchs, *Governmental Decision-Making in the Great Society*, 1968 WASH. U.L.Q. 361 at 376-77.

<sup>2</sup> See, e.g., Author's Prefatory Note to his article, *Prerequisites to Judicial Review of Administrative Agency Action*, 51 IND. L.J. 817 (1976).

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Shortly after we became colleagues at Washington University in St. Louis in 1939, Ralph Fuchs put himself in jeopardy by thoroughly thrashing me in tennis. He had just earned my displeasure by marrying a wife as extraordinary as my own. He compounded these misjudgments soon after, when I heard him speak, most perceptively and elegantly, at the annual meeting of the Association of American Law Schools. My jealousy of a man who could think in paragraphs was exacerbated when my companion and recent classmate, David Riesman, turned to me and said, "What a doll!" The incredible thing was that, despite all, I could not muster even a small twinge of dislike. This guy was unique.

By the end of the school year, which was my first in fulltime teaching, I had become, like many others, an abject admirer. As a callow pedagogue, I was still floundering, but Ralph Fuchs bolstered my confidence and renewed my spirit. As two pairs of newlyweds, the Fuchses and Dickersons found much to enjoy in each other's company.

Having then moved on, first to the University of Pittsburgh and then to Washington's wartime bureaucracy, we did not see much of the Fuchses, even during the war years, when Ralph and Annetta were in Washington while Ralph was sifting the credentials of lawyers who aspired to help the war effort there or was serving the Department of Justice. I remember with special pleasure a small dinner party at the Fuchses that honored the renowned constitutional authority, Paul Freund.

Shortly afterwards, the Fuchses moved to Bloomington, while we remained in Washington. When, in 1958, I was invited to join I.U.'s law faculty, the decision was easy. Any faculty that included Frank Horack, Jerome Hall, and Ralph Fuchs had to be top drawer. We have never regretted that judgment.

Since 1958, our relations with the Fuchses have been close and, as always, warm. Before publishing, I often showed the manuscript to Ralph, and my work benefitted much from his judgment. Even more important was his wide-ranging and sure-footed approach to public affairs.

Ralph was always liberal in the classical sense, but in the late sixties he was much disturbed by the turns that young liberals and many academicians were taking. In 1969, he retired at the peak of social and academic turbulence. When asked at a luncheon in the Coronation Room whether his point of view had been affected by these developments, he replied that, whereas his mind pointed him toward pessimism, his heart sustained his normal optimism, an observation that burned deeply into my consciousness.

I have, at home, a room where I keep all my words. In it, there is a sizeable box devoted to words of praise. Having, in Ralph's case, no occasion to consult anything else, I pulled out a handful of adjectives such as "wise," "kindly," "articulate," "perceptive," "genial," "compassionate," "courageous," "dedicated," and "honest," all of which seemed entirely apt. It then occurred to me that describing him on so specific a plane was not enough. This man was an extraordinary human being, period. But if that needs filling out, these words do it nicely: "brains," "integrity," and "love."



Did Ralph have shortcomings? Of course. Candor forces me to concede that he was incapable of any tinge of arrogance, condescension, cynicism, selfishness, insensitivity, vanity, or malice.

Lest anyone think that I am peddling another messiah, let me reassure him that Ralph Fuchs did not single-handedly attain what was, for us, near sainthood. For over 45 years, he had the extraordinary help of another—the incomparable Annetta. Indeed, it is almost impossible to think of either of these two without thinking of the other. And while little can soften our present sadness, we can take comfort in knowing that the joining of widower and widow on June 7, 1939, launched what can only be viewed as a classic marriage.

Because I never attended any of his classes, I cannot verify from first-hand observation that Ralph was by conventional standards a great teacher. Certainly, he was not famed for academic dramatics or his entertainment value. Although he was obviously fully knowledgeable, thorough, well-organized, and articulate, I suspect that his greatest academic contribution was to exude moral and intellectual integrity; in other words, the “Right Stuff”!

Those of us who were disappointed that circumstances prevented Ralph from completing the classic text on administrative law that Robert Stern and other persons familiar with Ralph’s articles knew he could produce can take satisfaction that the many projects that diverted his attention from this formidable undertaking were worthy contributions to the public good. I count among these his contributions to the American Association of University Professors (of which he became president), the Uniform Law Commission, the American Law Institute, the Department of Justice, Meadville Theological School, the Indian Law Institute in New Delhi, Indiana’s Civil Liberties Union, and Bloomington’s Unitarian Church and Meadowood, the last three of which he helped organize. Add to this his utter devotion to his family and friends.

But if the law lost a definitive text on administrative law, the world gained the more for the almost unique contributions of a beautiful life.

I am honored to join in this public salute to Indiana University’s “Jewel in the Crown,” Ralph Follen Fuchs.

## Tribute to Ralph Fuchs

WILLIAM D. POPKIN\*

Ralph Fuchs was a remarkable person and it is important for his colleagues to reflect why.

The record is impressive. He published in all the outstanding legal journals and was a widely respected and important figure in public law. He had a doctorate in Economics from the predecessor of the Brookings Institution.

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He was one of a small group of people who shaped the most important piece of administrative law legislation in our country's history, the Administrative Procedure Act. He helped found the Indiana Chapter of the Civil Liberties Union, was faculty advisor to the Indiana University Chapter of the NAACP, and held every major position in the national office of the AAUP. He went to India as a Ford Foundation Professor to advise on legal education.

This list is incomplete, but any list would be. It would not explain anything. To do that we must engage in a favorite pastime of Ralph's colleagues—telling Ralph Stories. Two anecdotes will suffice.

Around the time when the Indiana Chapter of the Civil Liberties Union was founded, the group was denied use of an Indianapolis facility by the American Legion (it was the McCarthy era). Ralph helped to arrange for the ICLU to use a Bloomington Church for the meeting. The meeting took place the same night as the Legion used the Indianapolis building. When Edward R. Morrow televised both these events nationwide, the effect was both understated and dramatic, as was Ralph.

Some years earlier, Ralph played an important role in the famous or infamous *Korematsu* case before the Supreme Court. Many of you know this case as the one in which the government's efforts to intern Japanese-Americans were upheld by the Supreme Court. It would not surprise people who knew Ralph to find out that he was active in the case. It will not surprise those of you who knew him well to learn that he wrote the brief for the government in favor of the constitutionality of the internment. Asked to explain how a civil libertarian could have done this, he did not see why anyone else should be asked to do something so distasteful; it was his job.

From these biographical details, there emerge two related themes—civility and lack of pretension. In Ralph they were related. His civility was not that of class or station, but of conviction, tied intimately to his own sense of unimportance. He was civil by default. What, after all, was there to be arrogant about? From this came his life-long devotion to process, in administrative law, in the treatment of minorities, in the concern for legal education in developing countries, not as a means to an end, but as an end in itself. He was living proof that the point of it all is method and means. He tended his garden and the world was fortunate to have reaped the harvest. If it had not, Ralph would have cared and cared deeply, but done nothing different.

Maybe that is why it is so difficult to mourn Ralph's death. The dominant emotion I feel is gratitude—for the example he provided and for the hope he gave the rest of us that such a life could be lived. If in giving thanks we find ourselves engaged in the process of looking for someone to thank, I think Ralph would have understood.

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