

Tribute to Henry White Edgerton

Stanley D. Metzger

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A TRIBUTE TO HENRY WHITE EDGERTON*

HENRY WHITE EDGERTON AS TEACHER

Stanley D. Metzger†

Henry Edgerton taught law for nineteen years, from 1916 to 1918 at Cornell, from 1921 to 1927 at George Washington, the 1927-28 school year at Chicago, and from 1928 to 1938 again at Cornell.

He had great impact and influence upon many of his students. Passionately concerned with bringing about social justice, believing that informed, reasoned, and unremitting effort to achieve it was the most important task a man could undertake, he taught by example that a bold, courageous, and incisive mind, intent upon helping the more unfortunate amongst his fellow men, could find fulfillment in the law and life of our country.

In the classroom, though his manner was matter-of-fact and undramatic, his analytical skill, his ability to cut to the bone of an issue, was remarkable even among colleagues, many of whom possessed this primary lawyer's tool in sufficiency. Blessed with a mind like a steel trap, to use Dean Robert Stevens's phrase, he got beneath the verbal formulas to the uses to which the law was put—to the interests which were benefited or harmed through its processes. This was an old habit. In his seminal article on legal cause,¹ he had analyzed the rubrics which had long been used as substitutes for thought in that troubled legal area. He had found that "it neither is nor should be possible to extract from the cases rules which cover the subject and are definite enough to solve cases" He had suggested that the solution of actual cases depends "upon a balancing of considerations which tend to show that

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† Professor of Law, Georgetown University Law Center; Chairman, U.S. Tariff Commission, 1967-69. A.B. 1936, LL.B. 1938, Cornell University.

¹ Edgerton, *Legal Cause* (pts. 1-2), 72 U. PA. L. REV. 211, 343 (1924).

it is, or is not, reasonable or just to treat the act as the cause of the harm" In this "balancing of conflicting interests, individual and social," the factors to be weighed were "indefinite in number and value, and incommensurable." Legal cause, in the end, was "justly attachable cause."²

When called upon to balance interests, Henry Edgerton left no doubt where he put most weight. While not using the classroom as a pulpit, he made it clear that he gave greater weight to the interests of the propertyless and working classes, and less to those of the propertied and employing classes. Greatly concerned with promoting justice, he had "the tolerance of change and the concern for the most common interests of men that are called liberal or democratic."³ The institutions of citizenship, fair trial, free expression, and the premise that all men are created equal were close to his heart and high in his scale of values.

Warm-hearted, accessible to students, he was a willing participant in those of their activities which reflected his own concerns; in 1934 he was one of two faculty speakers at a Bailey Hall "peace strike" meeting dedicated to making ROTC voluntary. There was no man at law school for whom the students had more respect. When his appointment to the bench was announced, all who could navigate in the middle of an Ithaca winter came to a farewell dinner.

To those of us who shared Henry Edgerton's social outlook the occasion was of even greater moment. His rigorous intellectual honesty, his trenchant mind, his Old Testament devotion to social justice, his courage which had withstood the loss of his first teaching post because of his opposition to American entry into World War I—these qualities we well knew. But that a man of this stripe could be named to an important federal bench, that to us was like a miracle. For his appointment signified that, despite our doubts, our country was prepared to use in high office not only those who had followed the ordinary paths of little resistance, but also an exceptionally able man who had been outspokenly and militantly liberal. Henry Edgerton's judicial appointment gave us hope and trust at a time when it was sorely needed.

The students' relationships with the Edgertons did not end when he left Cornell. Washington was merely a continuation for many of us; Thursday nights were an almost institutional open house for years and years. Judge Edgerton's performance on the bench was exactly as we had known it would be, for it had been fully foreshadowed in the years of his teaching.

² *Id.* at 211.

³ Edgerton, *Mr. Justice Rutledge*, 63 HARV. L. REV. 293, 295 (1949).

How long the memory of any man, even a great man like Henry Edgerton, will remain alive, cannot be foretold. But for so long as the generous impulses of good will, tolerance, brotherhood, and fair dealing generate action in this world, for so long should Henry Edgerton's memory sustain and inspire future generations, as it did the younger generation in his time.

HENRY WHITE EDGERTON AS JUDGE

David L. Bazelon†

For thirty years Henry White Edgerton graced our Court. During those years the Court faced many of the great, controversial social issues of the day. The range and depth of his intellectual powers, and the compassion with which he dealt with these issues, established him in the eyes of his countrymen as among our most distinguished jurists.

For all his colleagues on the bench—and particularly for Judges Prettyman, Miller, Fahy, and Washington, with whom he served longest—Judge Edgerton played a singular role. As Chief Judge, I speak on behalf of all who served with Henry on this Court in remembering him as our brother and teacher. We shall dearly miss him, for he not only led, but inspired us.

Judge Edgerton found amusing the idea that his work required courage. Yet he was fond of quoting Brandeis: “If we would guide by the light of reason, we must let our minds be bold.”¹ Henry Edgerton’s bold and unflinching conviction that there was judicial power, and that it should be used on behalf of the disadvantaged, gave us strength in times of confusion and uncertainty.

Henry once described the approach of a liberal judge in a eulogy to Wiley Rutledge, who, he said, “had a ‘consciousness that law exists for the sake of the interests that may be vindicated and protected by means of it.’ Though he sought precedents diligently and used them with skill, he was greatly concerned with promoting justice as he understood it and believed it to be commonly understood.”² This was exactly Henry’s own concern. His care, craftsmanship, and clear-sightedness set a mark which we—who sincerely call ourselves his disciples—will always strive to meet.

If I may be permitted a personal note, it is difficult for me to think about this Court or our work apart from Henry Edgerton. I recall the awe I felt toward him when I was appointed to the Court in 1949. His was a towering reputation in academic circles, and in the eleven years he had been on the bench his opinions had excited tremendous interest and admiration. I knew that my appointment was in place of a man Henry Edgerton wanted and believed better fit for the job. Yet he wel-

† Chief Judge, United States Court of Appeals for the District of Columbia Circuit.

¹ *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (dissenting opinion).

² Edgerton, *Mr. Justice Rutledge*, 63 HARV. L. REV. 293, 293-94 (1949) (footnote omitted).

came me to the Court with the unflagging courtesy which marked all his dealing with his fellow men.

A vivid memory of those early days is when I circulated my first opinion. It had to do with liberty—a matter of great interest to the Judge—and within an hour of the draft opinion's leaving my office, Judge Edgerton was there. He was warm in his praise of the approach and generous in aiding my attempt to present the decision compellingly. As in so many other opinions over the twenty years we served together, his insightful suggestions not only deepened the ideas expressed but added clarity and sparkle as well. From the time of that first opinion, we became close associates and over the years the closest of friends. Like everyone who knew Henry, I soon realized that his wife Alice was his greatest blessing and a constant source of strength and inspiration.

Judge Edgerton was a professor on the bench, willing until the very end to teach any who would learn. For those who took him as a mentor, not the least of his genius was his inimitable style. Five years before becoming an appellate judge, Henry wrote an admiring article about the style of Cuthbert Pound, saying:

It is neither severe nor ornate. In terms of the old text-book trilogy of "clearness, force and beauty," the important qualities for judicial writing are clearness and force, that the reader may see what is meant and, if possible, be brought to assent to it.³

Henry himself was master of this quality. Consider particularly the now-famous closing sentences of the opinion in which he urged the unconstitutionality of school segregation:

It is sometimes suggested that due process of law cannot require what law cannot enforce. No such suggestion is relevant here. When United States courts order integration of District of Columbia schools they will be integrated. It has been too long forgotten that the District of Columbia is not a provincial community but the cosmopolitan capital of a nation that professes democracy.⁴

Henry Edgerton also felt that good judicial writing was without "purple patches." He said that "such beauty as there is . . . is incidental to conciseness and vigor."⁵ Yet in the absolute perfection of his own style there was often great beauty. Typical are his words in one of the so-called "loyalty" cases:

Whatever her [the dismissed employee's] actual thoughts may have been, to oust her as disloyal without trial is to pay too much for

³ Edgerton, *A Liberal Judge: Cuthbert W. Pound*, 21 CORNELL L.Q. 7, 44 (1935).

⁴ Carr v. Corning, 182 F.2d 14, 33 (D.C. Cir. 1950) (dissenting opinion) (footnote omitted).

⁵ Edgerton, *supra* note 3.

protection against any harm that could possibly be done in such a job. The cost is too great in morale and efficiency of government workers, in appeal of government employment to independent and inquiring minds, and in public confidence in democracy. But even if such dismissals strengthened the government instead of weakening it, they would still cost too much in constitutional rights. We cannot preserve our liberties by sacrificing them.⁶

Thoughts and words like these will always remain as a great memorial to Judge Edgerton. Yet he means more to us—so very much more—than is encompassed in these opinions alone. Henry was fond of telling how, many years ago, when he was leaving the practice of law to take up teaching, he called upon one of his firm's senior partners to take his leave. "I wanted to tell you," said Henry, "how much I respect and admire you." When the elderly lawyer looked crestfallen, Henry waited expectantly for an explanation of what he had said wrong. Finally, the partner sadly replied, "More than your respect, I wish I had won your affection."

Henry Edgerton won not only our respect and our affection but also our love.

⁶ *Bailey v. Richardson*, 182 F.2d 46, 74 (D.C. Cir. 1950) (dissenting opinion), *aff'd mem. by an equally divided Court*, 341 U.S. 918 (1951).