

REMARKS OF THE HON. ELLEN ASH PETERS
YALE UNDERGRADUATE LAW REVIEW
Thursday, October 07, 2010

David Chan and members of your new journal: Thank you for inviting me to speak to you this evening. And thank you especially for understanding that I cannot comment on recent events involving the New Haven police and some of your friends and classmates. With a little bit of luck, this incident will be peacefully resolved without litigation, but, if not, it may arrive in a Connecticut state courtroom. I don't like to disqualify myself.

It is the case, as lawyers often say, that everything and anything can arrive in a state courthouse. We are courts of general jurisdiction; we resemble utility infielders. On the Appellate Court where I now sit to hear cases, our docket deals with marriage and divorce and children and land disputes and busted drug deals and sexual assaults and homicides. The trial courts are the fact finders and we review the legal conclusions that they bring to bear on the facts that they have found.

Although all judges have had a legal career before they put on a robe, as you know, my own career history differs from that of most of my colleagues. Indeed, at my initial confirmation hearings in 1978, I was repeatedly quizzed about how I could possibly become a judge when I had never appeared in court to try a case. In fact, I had begun my teaching career at Yale, 22 years earlier, because I had been *unsuccessful* in getting a job in practice. My answer to this entirely reasonable inquiry- which happily proved to be acceptable- was that I would not have been competent to take on the position of a trial judge but that the work of an appellate judge was not too far removed from that of a reasonably successful Yale Law Professor.

I would like this evening to go back 40 years, to an earlier intersection between Yale and the state court system. I don't know how many people still remember the pivotal role that Yale played in the heated litigation that began in the spring 1970 in the New Haven criminal courthouse, right here on the green.

Two men were on center stage in the ultimately peaceful resolution of that litigation, Kingman Brewster, the president of Yale, and Harold M. Mulvey, the man who presided over the trial as a judge of the superior court.

The case was the 1970 trial of some of the leaders of the Black Panther movement for kidnapping and murder. Their trials proved to be a challenge both to Yale and to the judicial branch of the state of Connecticut.

The Black Panthers had a radical agenda for changes in American society. One way or another, much of that agenda was fueled by despair over the Vietnam War which, although hopeless, was still ongoing in 1970.

The New Haven trial of the Black Panthers was not, of course, directly about the war, but that linkage was uppermost in many people's minds. Legally speaking, the case was about nine African Americans who had been charged with having kidnapped and murdered a fellow Black Panther named Alex Rackley.

In the weeks before the beginning of the trial, large numbers of young people, Black Panthers and their followers, came to New Haven to demonstrate their solidarity with the defendants. They camped on the green, not far from Phelps Gate. They shouted anti-war slogans. They were encouraged by radical speakers such as Jean Genet and Abbie Hoffman. Although their presence made many members of the Yale community very uncomfortable, Yale Chaplain William Sloane Coffin warmly and vocally endorsed the Panthers' claims that they had been abused by law enforcement authorities everywhere.

On May 1, 1970, at ten minutes before midnight, bombers exploded three devices in the Yale hockey rink. Protesters threw rocks and bottles at the National Guardsmen and taunted the New Haven police. The authorities responded by tear-gassing the demonstrators. Fortunately, there were no fatalities that evening.

It became well-known on campus that radical disruptions at other universities because of the Vietnam War had led to one administrative disaster after another. The May 4th student riot at Kent State then added fuel to the fire.

Things escalated elsewhere in New Haven as well. Fires were set in the Yale library, not many, but even a few were too much. There were disruptions at various university locations. I recall my great discomfort when a group of some 15 young men marched into my law school class chanting some inaudible but nonetheless intimidating slogan or another.

The rumor mill was going strong. There were reputed to be more armed protesters and more armed national guardsmen just waiting to make their frightening appearance. I was strongly advised not to drive my youngest child to nursery school at the other end of town.

But then: there was Kingman Brewster, who had been president of Yale since 1963. The Brewster presidency had already transformed Yale by championing the admission of women to Yale College. Brewster was an open and admiring supporter of Chaplain William Sloane Coffin.

In the face of growing unrest and uncertainty, Brewster was advised to close Phelps Gate and to have the university barricade itself against outsiders. He rejected that advice. He told the faculty, in remarks which later (not surprisingly) were leaked to the press: "I am appalled and ashamed that things should have come to such a pass in this country that I am skeptical of the ability of black revolutionaries to achieve a fair trial anywhere in the United States." Instead of instituting a lock-down, Brewster opened Yale's gates to the protestors.

Because of Brewster's wisdom and restraint, Yale was able to function that spring. No Yale buildings were shut down, no Yale offices were invaded, no Yale studies were disrupted, no Yale students were unable to graduate, no faculty research papers were lost. Not surprisingly, many Yale alumni were originally dismayed, and were not averse to publicly denouncing Brewster's statement. In time, however, many if not most alumni have come back into the fold.

More immediately, it is my firm belief that Brewster's openness and civility had an impact on the very Black Panther trials that prompted his intervention. Back at the courthouse, Judge Mulvey, a relatively new judge of only two years' tenure, began the protracted task of jury selection for the first trial, that of Lonnie McLucas. This courthouse faces directly on the green. Its walls are not impervious to chanting on the green.

For the first time in Connecticut judicial history, there were metal detectors at the courtroom doors, and it took six weeks to pick the jury to try Lonnie McLucas, which was then a record. BUT: although the defendant and Black Panther onlookers regularly exchanged greetings of "All power to the people!" each time the defendant entered and left the courtroom, Judge Mulvey persuaded himself to ignore this provocation and to keep the courtroom open. Publicly, he explained that he had decided to "tolerate a certain amount of nonsense" in his courtroom, although privately, I heard later, he confided to his fellow judges that, not surprisingly, he had found the proceedings exceedingly wearing.

In the end, as with Kingman Brewster, indeed perhaps hearing and appreciating Brewster's message, Judge Mulvey acted with wisdom and restraint throughout the trial. And, as with Yale, his admirable conduct of the court proceedings paid off. The jury *acquitted* McLucas of the more serious murder charges that had been lodged against him and convicted him only of the *lesser charge* of conspiracy to commit murder.

Afterwards, McLucas' defense attorney declared, publicly, that his client had been given a fair trial. That statement would have been unimaginable a few months earlier!

The subsequent second trial, of Bobby Seale and Ericka Huggins, for murder and kidnapping, over which Judge Mulvey also presided, ended even more surprisingly. The following May, the jury reported that it was deadlocked. Contrary to general expectations, Judge Mulvey declined to order a retrial.

Unconsciously echoing Kingman Brewster's statement of a year earlier, Mulvey stated "I find it impossible to believe that an unbiased jury could be selected without superhuman efforts, efforts which this court, the state *and these defendants* should not be called upon either to make or to endure."

With the end of the New Haven Panther trials, Yale returned to its normal travails. Until 1977, when Kingman Brewster resigned from the presidency, he again took on the responsibilities of running a large university, that, then as now, needs a superb professoriate and adequate financial resources to serve its many constituencies.

President Brewster managed faculty relationships with a light hand, consulting widely. I confess that I have come to regret that I discarded his letters to me, invariably signed "King."

I have admired many Yale presidents over the years that I have had an association with this great university. Still, I especially treasure my recollection of watching Kingman and Mary Louise Brewster walking from the President's house, around the Yale campus, with their two large dogs, stopping to talk with one and all, radiating confidence that Yale was a great place to be and that it would continue to make great strides to become even better. It is perhaps symbolic that no subsequent president has lived at the President's house. He was a hard act to follow.

As a former faculty member, I am grateful for having had the opportunity to know Kingman Brewster. As a former leader of the judicial branch of this state, I am grateful to our state judges who, like Harold Mulvey, every day and in every courtroom, understand and act on principles of tolerance and openness.