

ANDREW HAMILTON AWARD

Judge Pollock

There is a prior recipient although standing was not appreciated when Lynn asked the recipients to stand. That unappreciated recipient was Lynn Marks. It is a particular pleasure for me to present to you this year's Andrew Hamilton awardee. Although I have been acquainted with the awardee for quite a number of years I will not depart from academy neutrality to explain to you how high Tom Gilhool was in the esteem of those privileged to be his teachers at Yale Law School when he passed through there on his way to his graduation in 1964. A Class of particular distinction of which he was recognized as one of the illuminators so I will in lieu of giving you an academic view of Tom Gilhool the student I will read to you trusting on the confidence of the people in this room not to go any farther a document which comes to me in a rather curious way just let me say that it was apparently in the personnel file of another student in the Class of '64 and it came to me when the former official of the law school apparently had access to the files released it under the promise of anonymity because his or her official responsibilities might otherwise be compromised. It is not yet ready for formal release. The piece of paper is on the letterhead of Gillian Russell. It is captioned as follows:

Class of '64 which male classmates, by way of distinguishing the fact that there were other non-male classmates not very many of them but one for example that has a Philadelphia connection But this as you see is a gender selective document, if any will do something useful and then it says in black, short list. Then follows four names and this is what is written:

“two presidential want-to-bees, Gerry Brown wants to be Gov first Washington okay but who could live in Sacramento. Gary Hart, doubt he is any good on relationships” and then it says “Hart is a lonely hunter.” The next caption is Others and then there follows two names Robert Rubin right good neighboring class I take it they were ___ “on rare occasion he came to class so laid back I am not even sure he can hold a job and I don’t want to be the only breadwinner” finally “Tom Gilhool talks a good civil rights game every week founds new organizations Law Students Civil Rights Research Council, Law Students Civil Rights Movement but I think he can be molded.” The rest appears to be history. My role really is to remind you of some of Tom Gilhool’s post law school career the sweep of it defines description as a public official as the Secretary of Education here in the Commonwealth of Pennsylvania, as a teacher in many universities and the Philadelphia public school, as a trainer of literally thousands of public interest lawyers but particularly a course of litigation activity which would seem enough for a dozen distinguished and energetic public interest lawyers but which Tom combined in his own career. A few highlights are: three years after graduating from law school Tom Gilhool was lead counsel in Smith v. Reynolds here in the Eastern District of Pennsylvania before a three judge court addressing the alleged constitutionality of a restriction of welfare benefits to those which would bar such benefits unless the proposed beneficiary has been a resident for a year. Tom persuaded the three judge court through the voice of wonderful Joe Lloyd but over the dissent of Circuit Judge _____ that the Pennsylvania restriction was unconstitutional. Smith v. Reynolds was of course not the only litigation of that kind contemptuous to it was two others all of which went to the Supreme Court together and were affirmed in 1969 Tom again participating in the argument along with Archibald Cocks and many others helped Tom significantly and I take

it that was Tom's first appearance in the Supreme Court after all by then he had been out of law school for five years. Shapiro v. Thompson I think all will remember was one of Justice Reynolds liberating opinions. Tom Gilhool have prevailed in Shapiro v. Thompson in 1969 really laid fallow until the PARC litigation came along two years latter and that trial began before a three judge court which brought the Commonwealth into a settlement agreement agreeing to the inclusion of children with disabilities into regular programs of the Commonwealth's public schools which was a victory of an enormous consequence and paralleled by a similar though several months later decision of the same kind in the District of Columbia in the Mills case and Tom's Gilhool's triumph in PARC in Mills is to be remembered that team of counsel was a young lawyer also graduate of the Yale Law School, Patricia MacGowan ___ who in due course was to become a Judge and then Chief Judge of the DC Circuit. Those cases illustrate one of Tom's particular accomplishments. Those cases PARC and its parallel Mills have been recognized twice by the Supreme Court of the United States as the inspiration for the architectural period if you will of the legislation which has become of course of such critical importance of the IDEA legislation and that pathway of taking litigation to a point where then Congress picks up the ball and makes it enforceable law of the land is pretty triumph lawyering. When Pennhurst came along that immense tapestry of litigation that went who knows how many times before the Court of Appeals and twice to the United States Supreme Court Tom Gilhool was again one of the leaders of that enterprise. That was in the Supreme Court in 1981 and in 1984. Those of you who were privileged to know the late Greg Brockers (?) of our court will know that for him the Pennhurst litigation was one of the great chapters, to put in egotistical terms of his own judicial career, one of the great chapters of liberating law in the United States.

Not that it accomplished every objective but it did result functionally in the deinstitutionalization, dewarehousing of thousands and thousands of persons many of them but not altogether warehoused because they were thought to be deficient, retarded and unable to be with the community. For Greg Brockers the persons who saw the photographs in his wall, I am sure Tom will remember, you would see photographs of members of the plaintiff class. They were Judge Brockers real heroes. There was a second tier of heroes and they were the lawyers, Gilhool and his colleagues. This is the kind of litigation triumph that establishes a lawyer as one of the really important figures vindicating the possibilities of the law. It is a career Tom has inspired many, many hundreds of the rest of us who tried to work in one aspect or another, one function or the other in the public interest there were few careers that match it. It remains for me to say Tom that as of September 30 of this year you formally retired from PILCOP where you labored for a quarter of a century and of course before that you were one of the founders of CLS and before that you were one of the founding figures in organizing and giving directions to the Legal Services Corporation. The report that as of September 30th you are retiring that doesn't make much sense. The report that is after 41 years of lawyering that figure, that number troubles me particularly so I need a guarantee from you that the report means less than it sounds, as if it means why do I say that that number worries me particularly well this is the beginning of the 41st year of Joe Petrinis tenure and there would be many in the Commonwealth who be unhappy if Petrinis were to follow a Gilhool departure. Closer to home this is also the beginning of the 41st year of service on our court of John Fuller and we cannot let him stop at the end of the 41st year so Tom I want your assurance that your asserted retirement merely means that it is the predicate for new phases of writing, lecturing, teaching, training and perhaps even of litigating.

Thomas K. Gilhool

Could you imagine a more magnificent introduction. Most of you know that Gillian Russell whose notes he recited but those of you who don't come up and say hello. My wife. "I enjoyed working with you." 43 years so far and counting. I am so grateful for Andrew Hamilton who had imbedded so firmly in history what is to be expected of the Philadelphia lawyer and I am enormously grateful to the committee, to the association, the section and my colleagues who forwarded my nomination to this extraordinary public interest Bar. A little bit of competition from Chicago but over 40 years of the public interest social justice work conducted by such insidious and purposeful lawyers, the best in the country with the finest results. To receive this Andrew Hamilton Award from your hands Judge Pollock is a particular pleasure for the reasons you have seen but also because for our generation of law students your work with the Legal Defense Fund in the South in the civil rights movement in the early 60s told us all what we might expect of ourselves and each other as practitioners. It is a particular pleasure also in the presence of Leonard Higginbacker's memory and to see his spirit renewed in the new generation of lawyers who will carry on his and our sense of what the law is about and what it is for and it is a particular pleasure to receive this award on the same bill that Alan Feldman and his colleagues have been celebrated upon. You know that Andrew Hamilton was

given by the residents don't say citizens because they were not citizens yet of New York when in 1735 he secured a jury verdict for John Peters Anger finding him not guilty. He was presented with a 5 ½ ounce box of inscribed "acquired not for money but for character" now I kind of hope that that accompanied the Andrew Hamilton award. It does not but that box whether inscribed in Latin or English to that effect will come to Allen at the close of his chancelorship and that celebratory phrase has been well earned by all of my colleagues at the Public Interest bar and perhaps some time we will find a set of tee shirts to distribute to all those in significant service. Which is to say in some to receive this award in the presence of so many members of this bar and in the accompany of those who could not fit in this room is a particular pleasure. The company of the extraordinarily strong and purposeful social justice bar that has characterized and does to the future the practice of law here. John Dorsett said two things distinguished a great lawyer from a mediocre lawyer for those of you much younger than I he was the Assistant Attorney General in charge of Civil Rights during the Kennedy/Johnson administration and those two things he said were one persistence and two persistence. Persistence in pursuit of our repeat our client's purposes has from the beginning and still into the future marked the performance of every member of this bar whom I have come to know. There is persistence in another way that is unique across the country and that is the persistence of tenure. I may have been at it for 41 years but there is so many here like Richard Weinstein and is John Stein here and Ann Torregossa, former winner of this award, and Steve Gold who have been at in for 35 years. And another set of magnificent people have been at it for 30, and 20 and the 20 years in people all show signs of breaking the record that the rest of us have set. That commitment and longevity distinguishes us both in product I suggest and in characteristics from much of the public interest

bar across the country but there are other things also that are unique to the practice of social change law here. It was a style set from the beginning by Community Legal Services generalized now across the remarkable profusion of public interest shocks that have been sustained in Philadelphia and it is the practice of law in the grand manner as Louis Van ___ put it in a 1904 article in the American Law Register later to be known as the University of Pennsylvania Law Review and he suggested that practicing law in the grand manner involves among other things attention not only to courts and maximizing their usage on behalf of your client's purposes but attention also to every other forum. The informing of public opinion, the direct work with legislatures, the quiet or sometimes not so quiet direct negotiations with executives, the pursuit in other words of every formal and informal forum where the law based search for real goods may be conducted. And he suggested as well that to practice law in the grand manner is to take clients seriously. Now that's a ___ and its in the code of professional responsibility but from the beginning and now there is two things to be said about clients. One, we learned early that no individual case if it is attended to with care and imagination will fail to open up into the grandest change and realization of the promise of the law and no landlord/tenant problem few can be solve at all and the solution of many requires for example such things as the resurrection in Philadelphia of the powers of the Fair Housing Commission that prohibited evictions where there are code violations. The creation of judicial receiverships in large residential places. The amendment of urban renewal ordinances removing, promising to remove, threatening to remove people of low income their amendment to provide for matching replacement housing for people in poverty and then the special habit of attending to, searching for, listening to, sustaining and helping build organizations of clients. In my life that started

with the Philadelphia Welfare Rights Organization where the clients of others here including John and Richard, the Residents Advisory Board. The point of all of that being that such clients and a seriousness about them means that you think and imagine and create differently than you would have otherwise for those who are in the midst of reality of the problems that we seek to solve of astonishingly in this civic culture of ours see often the cause of action before the lawyer does and to practice in such a way as to empower them of course adds to their power in each of the other forms whether it is public opinion, or the legislature or the courts. The other characteristic that has sustained itself across these four decades of social justice lawyering here is of course “never take no for an answer”.

I do not envy the job of this Andrew Hamilton committee because there are indeed scores, if not literally hundreds of people whose work in recent in many decades would not be properly honored with this award. It may be much as occasionally we bring class defendants actions, it may be that it is time for a class bestow of the Andrew Hamilton Award. It is my experience that the effective solitary practice of the law particularly social change law but I think in general is an oxamoran. Practicing law I believe is a social undertaking and then I noted that too in the practicing in a grand manner and I want therefore to acknowledge much too briefly some of my colleagues and by doing so to acknowledge all of my colleagues, Michael Churchill, my closest partner of 31 years; Frank Laski of 24 years in court in Connecticut, today practicing now out of Boston; Judith Gran and Barbara Ransom who have half the time in as the rest of us but who their next half life promises to be as productive as their first; Jim Eiseman who came over after retirement to practice what he promises to be another 20 years at the Public Interest Law Center; Jerry Balter, who was cut from a different cloth than mine, retired not long ago at age 84 and I

will say more about him later; Elias Cohen who as Secretary of AFEC Public Assistance as well as the Secretary of the Aging in the Scranton and Shafer administrations and before that in the Lawrence and Leary administrations, one of the first Secretaries to be the lead defendant in welfare rights cases and the chief witness for Plaintiffs who subsequently decided by heaven that it was time to night law school at Temple and I called him one day while we were in California and he was chairing the National Legal Services Backup Center on the Aging to say: "Eli have you ever thought about practicing" and he joined us at the Law Center for a significant period of time. The Law Center's remarkable work in employment discrimination was led by Frank Finch. We are you know the only shop in the country to have done race, gender and national origin discrimination cases in police hiring and promotion. I don't know if Tony Jackson is here but he had lead responsibility for the police abuse work. Now all of that is without mentioning those who have spent a good time in the Law Center and contributed mightily to the work of all of us but I can't pass without celebrating two things, one our energetic and insightful new leader Jennifer Clarke who had just won several cases out of Dechert with significant returns and was therefore owed and who chose to say to the firm what I want in celebration of what I have done is your support in representing the American Academy of Pediatrics of Michigan in the pursuit of the complete and effective and prompt delivery of children's health care for the children in Michigan and so we just kept intriguing her and now she is our leader and second the extraordinary set of support people who raise up the likes of the rest of us and the many of you who know the rest of us know that it takes a lot of raising up and I want to acknowledge their crucial part in my own work and the work of all of us. That is one of the acknowledgments.

The next is of one of which I sought whose place I inadequately described earlier. I have personally been blessed at CLS and here and now at the Law Center have been blessed with the most extraordinary range and depth of clients. I mentioned two, the ARCs of Pennsylvania around the two cases Lou mentioned and then the ARC of Connecticut and then Rhode Island and then Michigan and then New Mexico and so on. The two former presidents of the Philadelphia ARC, the Pennsylvania ARC and the National ARC once called the Association for Retarded Children and after we won the school case they decided to become the Association for Retarded Citizens acknowledging the full pursuit of equal citizenship under the fourteenth amendment and leading to the *Pennhurst* case. The presidents of Philadelphia, Pennsylvania and National, two of them are here. Eleanor Elkins who graced the working body of the Law Center for a good decade and whose birthday of 90 years we celebrated a few weeks ago and Jim Wilson of Smeley Street commuting to New York is retired doing nonetheless all that is necessary to keep Forbes Magazine in business. When he was the president of the ARC we were litigating PARC and he was on the business side of the New York Times and that fact had nothing to do that when the PARC orders were issued they appeared on the front page of the New York Times and that 7 days later the wonderful editorial director of the Times called it to the attention of the Congress and suggested that they ought to do that for the rest of the country and that is where the Act that we spoke of began. Significantly when people ask okay we are now in school ask what are we getting there that is worth being there for. We represented as we have in the past the police and fire association then called handicapped children now known as Vision for Equality and Dean and Maureen ____ specifically with whom we did the police undertakings that we spoke of and ____ the third counsel on many undertakings. Many of you know an

important and sustaining organization in the city for two decades _____ and now being recreated as the Philadelphia Citizens for Children and Youth which Shelley Yanoff has brought in the last 15 years to a state of existence and contribution in this city that is just remarkable and I am proud of her. We lost this year and intimation of mortality creep on with less of the earlier generations now more often than they have. We lost Bob Sayre and his wife Lucy Sayre. Bob Sayre is known to many of you. He stood up in the McCarthy era, that era's Patriot Act, ___ Act and related to PCCY he was an important figure in the Health & Welfare Council of Philadelphia which PCCY is the successor which chose after the riots in Philadelphia when Eli Cohen and his colleagues of the Department of Public Welfare noticed that none of the people arrested in those riots were recipients of Public Assistance and at first they were so pleased and then they said to themselves that recipients are so down that they didn't even participate in that and so the state through the instrumentality of the Health and Welfare Council provided the money for Terry Dewlat and Roxeanne Jones and the generations after to organize and sustain the Philadelphia Rights Organization. Bob was as you will remember its level of gratitude almost that we owe Alan and his colleagues he was the inventor of the United Way that we call it specified giving and he was for five years the chair of the legal services of the law centers board.

What this is all about of course of our work is equality and the commitment of the United States to the proposition of equality arose here and it was as to the ___ to the very opening paragraph in democracy in America and as Jefferson illustrated in a way that I will quickly describe to you it was a commitment to equality of condition that other reductional phrase still useful equality of opportunity didn't enter the American political ___ until well after the Civil

War. This proposition of equality to which we are committed may take on meaning for you if you understand that in his walk-up apartment at 7th and High Street the other thing that Jefferson wrote while the Declaration of Independence was pending in that building that Andrew Hamilton designed, Independence Hall, on ground which his son sold to the city was a draft of the bill of rights of the Constitution of Virginia. And to tell you what the commitment to equality meant to Jefferson know only that the first provision in that Bill of Rights was 50 acres to every person who had none and as many as would compose 50 acres to those persons who had some but not 50 remember they were distributing Virginia parks and land. Jefferson wrote in the second draft every male person and he struck male and the further provision of that Bill of Rights was daughters shall inherit on the same basis as sons. And the third was that no person entering Virginia hereafter shall be held in slavery. Well it is that sense what equality may and God willing with the work of the people of the United States will in time come to be a reality. Let me close with Lincoln's articulation of what it is we are all about and how we may achieve it. It is from his _____ address in Springfield in 1857.

“The assertion that all men were created equal was in no practical use in affecting our separation from Great Britain and it was placed in the Declaration not for that but for its future use. They meant to set-up a standard maxim for a free society that should be familiar to all and revered by all, constantly looked to, constantly labored for and even though never perfectly attained, constantly approximated and thereby constantly spreading and deepening its influence and augmenting the happiness and value of life to all people of all colors everywhere.” They meant to declare the ____ (Lincoln's emphasis) so that the enforcement (Lincoln's emphasis) of it might follow as fast as circumstances should prevail.

Of course over the last 40 years circumstances have permitted very much in part because we were so lucky to find judges of the character that Lou Pollock has described but that has changed. God knows we may be able to get it back. Ahead of us Philadelphia now has the highest rate of poverty of any city in the United States, 8% of low income children get to college, 77% of affluent children get to college, 2 million people are in prison mostly black and brown, mostly men but including women and they return to society in great number as hopeless as the conditions that put them there in the first place so our challenge is to work together to recreate the conditions to create new circumstances in which that promise and commitment to equality may be further advanced and achieved. I am deeply honored to receive this reward and in your company to resolve that we shall persevere.

