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IN MEMORIAM: JAMES J. GRAHAM

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Jim Graham came to Arizona a short two years before he returned, very ill, to his native New York. The move was a major one for a born and bred New Yorker, particularly one whose whole life had been devoted to the problems of the big city. From an area where social reformism is orthodox, Jim and Nancy came to a state in which there is some concern that reformism is getting too much attention in the law schools.

Jim remained, as he had been throughout his life, a passionate partisan of the weak and the oppressed. Many whose emotions and intellect are engaged by the plight of those whom society treats badly ascribe the oppression they see to an evil conspiracy. Jim saw more clearly than that. He knew that the explanations for our cruelties are more commonplace and therefore more fearsome and impervious to reform. He saw, as did Hannah Arendt, the "banality of evil." That is, he knew that racism is in each of us as a result of time-honored customs that hardly seem evil at all. He found and often wrote about our centuries-old beliefs about the poor—beliefs that are woven into the fabric of our law in literally countless ways—beliefs that are grounded in the fundamental notion that poverty is the *fault* of the poor—that it stems from inherent defects of moral fiber and a perverse lack of personal initiative.

One cannot be sure, of course, but I suspect that Jim's insight into the pervasive infection of our attitudes toward the weak and the different were strongly influenced by his early seminary training. One who has taken quite seriously the doctrine of original sin is not likely thereafter to be surprised that "good" men are capable of racism and hostility toward the poor. In his book, *The Enemies of the Poor*,¹ Jim developed his thesis

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1. New York: Random House (1970) (308 pp.).

that certain of our institutions, the welfare system, the churches, the unions and the lawyers, which ought to be leading the struggle to help the oppressed, are often indifferent or, what is worse, are actively engaged on the other side. The list of charges against the welfare system and its operatives is by now familiar. Based on false notions about the nature of poverty, administered by public officials who either take as their primary mission the preservation of the public treasury or who are simply overwhelmed by the magnitude of their task, the system ravishes human dignity and locks generations of people into a permanent "welfare culture." The unions, once the champions of economic justice, have "got theirs" and have now become protectors of the status quo and largely resistant to the claims to membership by blacks and other minorities. Jim worked for several years as a labor lawyer and knew firsthand the failure of so many unions to practice the democracy they preached.

In the ghettos of New York, Jim thought he saw the failure of organized Christian churches to live up to their ideals when the interests of the most economically and culturally deprived clashed with those of the churches' affluent parishioners. He saw hope in the appearance of young activists, many of whom were breaking with their clerical superiors.

As for the legal system, he found the promise of equal justice under law too often broken and too few lawyers engaged in trying to enforce that promise.

The particular targets of Jim Graham's criticisms were those who lay some claim to a morally righteous posture. Yet he usually pointed out that posturing with sardonic but genuine amusement.

It is interesting that the institutions he attacked for the way they fail the poor were institutions of which he had been or was a part or, in the case of welfare, in whose announced aims he so thoroughly believed. I suppose he felt a particular betrayal that their promises are so frequently unfulfilled.

Despite all this, I think I find in Jim's writing an abiding optimism that there will be progress. In his latest writing he developed the theme that the now discredited doctrine of substantive due process could be revived to guarantee a minimal right to a decent life, an education and adequate municipal services.² He saw young lawyers as the agents who would push the courts toward that goal.

Jim Graham brought to this law school a perspective it had not had before. One need not have agreed with the full sweep of his analyses of law and society (Jim was not particularly comfortable in agreement) to appreciate the contribution he made by insisting that we reexamine our resigned acceptance of too many injustices. He made a mark in this community.

2. Graham, *Poverty and Substantive Due Process*, 12 ARIZ. L. REV. 1 (1970).