

In Memoriam: Professor Donald J. Werner

Joseph W. Bellacosa

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

This In Memoriam is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

IN MEMORIAM:
PROFESSOR DONALD J. WERNER

JOSEPH W. BELLACOSA*

When Donna Marie Werner called me the morning after my friend's death on December 29, 1995, I expressed my feelings and sorrow as follows in a statement issued on December 30, 1995:

Donald Werner was one of the finest individuals, most intelligent lawyers, outstandingly skilled law teachers and hardest working people I will ever know. He was also my friend and confidante of thirty years duration, and a colleague in several key professional roles. I loved and respected him, and he reciprocated those sentiments. I will miss him to the depths of my soul.

In Brooklyn and Mineola Chambers in the mid sixties, we occupied adjoining desks as law clerk partners to the late Marcus G. Christ, Presiding Justice of the Appellate Division, Second Department. Later, Donald served as confidential law secretary, with great skill and distinction, to the late Justice Daniel Albert at Nassau Supreme Court. Thereafter, we taught together in the early '70s at St. John's University School of Law, and fate had us occasionally offering companion sections of some of the same courses. In the early '90s, his daughter, Donna Marie Werner, earned a place as one of my law clerks at the Court of Appeals, and her father was justly very proud of her outstanding fulfillment of a professional rank and responsibility he and I were privileged to share in our early careers.

Donald Werner had a marvelous literate and lyrical side, having taught high school English and having maintained a lifelong passion for beautiful words, songs, poems, ballads and symbols. He saw and expressed a poetic connection and destiny in the concentric circles of the many facets of our relationship.

When we had dinner alone in Mineola on December 8, 1995, a few weeks before his untimely death, we laughed and reminisced

*Judge of the New York State Court of Appeals. Delivered on March 1, 1996, at St. John's School of Law.

over many hours, re-living our varied service, friendship and family stories. We kidded about the terms and conditions of a law practice partnership we offered twenty five years ago to our adjunct faculty colleague and pal, Mario M. Cuomo, at a restaurant close to where Donald and I dined this last time.

If Justices Christ and Albert were still alive, they would acknowledge cheerfully and gratefully Donald's superb public service in the courts, to people, to educating young lawyers, and his devotion to excellence in all things. I speak for them and add the appreciative hosannahs of a great multitude of lawyers he taught over the past twenty five years. For myself, I am deeply grateful for the smile and grace Donald put in my soul. He was an extraordinary friend and gift in my life.

I extend my most earnest condolences and prayers to his wife, Arlien, and his entire beautiful family. May Donald rest with his God, and may the restless perfection he always strove for and demanded from others here on earth now be his peaceful eternal reward.

* * *

Two months after his passing, many people gathered in a Moot Court classroom Professor Werner and I had taught in, sometimes together. I used a different voice and message on this occasion to reflect my re-examined feelings and some facets of this unique person. As part of a program including a genuine blend of family, friends, and colleagues, I offered these words:

Thinking about how to remember and honor my friend, Professor Don Werner, in my allotted time has been a serious challenge, but also a labor of friendly love. It is also a good discipline he would appreciate, against the possibility of my prattling on all afternoon. My Mary is present because she, too, loved Donald as our friend and to protect against a garrulous profusion from me.

I finally decided to use a literary device today, because Donald was one of the most literate individuals I have ever met. He was an English teacher before turning to law, and before we met. I thought he might rather like and enjoy my celebrating one of his lesser-known but very essential distinctive qualities, in this way with all of you family, friends, alums, students, former students, classmates, and colleagues assembled specially to remember him this afternoon. All his other exquisite qualities I leave for others to recite and remember for themselves: intelligence, industry, rectitude, strength, singlemindedness of purpose, love of beauty and fun, curmudgeonish, and on and on the litany can go. I do hope, however, that this audience will grant me some leeway—a tad bit of poetic license if you like—for my peripatetic choices and my untrained dramatic delivery. Donald

could do what I am about to attempt much better than most.

I am going to string together a couple of handfuls of randomly selected poetry for you, leading off with one of which Donald frequently recited to me during the thirty years of our friendship, growth, adventures, fun, and work together. It didn't take much to inspire—or provoke—Donald into song and recitation, whether in our joint or separate offices, at our companion desks, in our homes, cars, on his boat, at overnight card games, in a snowstorm, in a restaurant, and even, from time to time, Heaven Forfend, in an occasional tavern. As a small digression from my plan, I share with you an apt, quick story about Donald's sense of humor. He proposed buying several such establishments in partnership with me. He said I would manage the tavern and he would entertain with poetry recitations and singing (calypso mostly). His condition was that only our friends would be welcome. When I would complain that we might then go broke, he would wave me off with a smile and reminder that that was *my* problem, since I was to be the manager and he, as the artist, had no time or concern for such trifles.

I now must return to my plan and message. Donald's favorite ballad, as I recall, was *Barbara Allan*, and he would lyrically let every stanza fly from his photographic memory, lips, and buoyant spirit quite regularly:

It was in and about the Martinmas time,
When the green leaves were a-falling,
That Sir John Graeme in the west country,
Fell in love with Barbara Allan.

He sent his man down through the town,
To the place where she was dwelling,
"O haste and come to my master dear,
Gin ye be Barbara Allan."

O hooly, hooly rose she up,
To the place where he was lying,
And when she drew the curtain by:
"Young man, I think you're dying."

"O it's I'm sick, and very, very sick,

“O the better for me ye’s never be,
Though your heart’s blood were a-spilling.

“O dinna ye mind, young man,” said she,
“When ye was in the tavern a-drinking,
That ye made the healths gae round and round,
And slighted Barbara Allan.”

He turn’d his face unto the wall,
And death was with him dealing:
“Adieu, adieu, my dear friends all,
And be kind to Barbara Allan.”

And slowly, slowly raise she up,
And slowly, slowly left him;
And sighing, said she could not stay,
Since death of life had reft him.

She had not gane a mile but twa,
When she heard the dead-bell ringing,
And every jow that the dead-bell geid,
It cried, Woe to Barbara Allan.

“O mother, mother, make my bed,
O make it soft and narrow,
Since my love died for me today,
I’ll die for him tomorrow.”

Bonny Barbara Allan

The other poetry—and I have restricted myself to a baker’s dozen from among hundreds of selections I re-read in preparation for this tribute to his memory and gifts—I will recite with no commentary or segues. I give you only illustrative, personally relevant lines, strung together like lyrical gems of different sizes, shapes, and hues. I hope you feel and find your own meaning, connection, and poignancy this afternoon in these personal selections and in other distinctive gems of your own remembrance

and experience.

[A] friend may well be reckoned the masterpiece of nature.

...The only reward of virtue is virtue; the only way to have a friend is to be one.

Friendship, Ralph Waldo Emerson

* * *

Think where man's glory most begins and ends,

And say my glory was I had such friends.

The Municipal Gallery Revisited, VII, Yeats

* * *

I dream'd in a dream I saw a city invincible to the attacks of the whole of the rest of the earth, I dream'd that was the new city of Friends.

I Dream'd in a Dream, Whitman

* * *

The holy passion of Friendship is of so sweet and steady and loyal and enduring a nature that it will last through a whole lifetime, if not asked to lend money.

Pudd'nhead Wilson, VIII, Mark Twain

* * *

The friends, who in our sunshine live,

When winter comes, are flown;

And he who has but tears to give,

Must weep those tears alone.

Oh, Thou! Who Dry'st the Mourner's Tear,

Thomas Moore [19th cent.]

* * *

From quiet homes and first beginning,

Out to the undiscovered ends,

There's nothing worth the wear of winning,

But laughter and the love of friends.

Sonnets and Verse: Dedicatory Ode,

Hilaire Belloc [20th cent.]

* * *

And these few precepts in thy memory

See thou character. Give thy thoughts no tongue,

Nor any unproportion'd thought his act.
 Be thou familiar, but by no means vulgar.
 Those friends thou hast, and their adoption tried,
 Grapple them to thy soul with hoops of steel,
 But do not dull thy palm with entertainment
 Of each new-hatch'd, unfledged comrade. Beware
 Of entrance to a quarrel, but being in,
 Bear't that the opposed may beware of thee.
 Give every man thy ear, but few thy voice;
 Take each man's censure, but reserve thy judgment.
 Costly thy habit as thy purse can buy,
 But not express'd in fancy; rich, not gaudy;
 For the apparel oft proclaims the man,
 And they in France of the best rank and station
 Are of amost select and generous chief in that.
 Neither a borrower nor a lender be;
 For loan oft loses both itself and friend,
 And borrowing dulls the edge of husbandry.
 This above all: to thine own self be true,
 And it must follow, as the night the day,
 Thou canst not then be false to any man.

Polonius, Hamlet, William Shakespeare

* * *

Blow, blow, thou winter wind,
 Thou art not so unkind,
 As man's ingratitude;
 Thy tooth is not so keen,
 Because thou art not seen,
 Although thy breath be rude.
 Heigh-ho! sing, heigh-ho, unto the green holly:
 Most friendship is feigning, most loving mere
 folly:
 Then, heigh-ho, the holly!

Freeze, freeze, thou bitter sky,
 That dost not bite so nigh,
 As benefits forgot:
 Though thou the waters warp,
 Thy sting is not so sharp,
 As friend remember'd not.

As You Like It, William Shakespeare

* * *

When to the sessions of sweet silent thought
 I summon up remembrance of things past,
 I sigh the lack of many a thing I sought,
 And with old woes new wail my dear time's
 waste:

Then can I drown an eye, unused to flow,
 For precious friends hid in death's dateless night,
 And weep afresh love's long since cancell'd woe,
 And moan the expense of many a vanish'd sight:

Then can I grieve at grievances foregone,
 And heavily from woe to woe tell o'er
 The sad account of fore-bemoaned moan,
 Which I new pay as if not paid before.

But if the while I think on thee, dear friend,
 All losses are restored and sorrows end.

Sonnets, Remembrance, William Shakespeare

* * *

Farewell! thou art too dear for my possessing,
 And like enough thou know'st thy estimate:
 The charter of thy worth gives thee releasing;
 My bonds in thee are all determinate.
 For how do I hold thee but by thy granting?
 And for that riches where is my deserving?
 The cause of this fair gift in me is wanting,

And so my patent back again is swerving.
 Thyself thou gav'st, thy own worth then not
 knowing,
 Or me, to whom thou gav'st it, else mistaking;
 So thy great gift, upon misprision growing,
 Comes home again, on better judgement making.
 Thus have I had thee, as a dream doth flatter,
 In sleep a king, but waking no such matter.

Sonnets, 87, Shakespeare

* * *

Sunset and evening star,
 And one clear call for me!
 And may there be no moaning of the bar
 When I put out to sea,
 But such a tide as moving seems asleep,
 Too full for sound and foam,
 When that which drew from out the boundless
 deep
 Turns again home.
 Twilight and evening bell,
 And after that the dark!
 And may there be no sadness of farewell
 When I embark;
 For though from out our bourne of Time and
 Place
 The flood may bear me far,
 I hope to see my Pilot face to face
 When I have crossed the bar.

Crossing the Bar, Alfred, Lord Tennyson

* * *

STANZA 1—

I weep for Adonais—he is dead!
 O, weep for Adonais! though our tears
 Thaw not the frost which binds so dear a head!

And thou, sad Hour, selected from all years
 To mourn our loss, rouse thy obscure compeers,
 And teach them thine own sorrow, say: with me
 Died Adonais; till the Future dares
 Forget the Past, his fate and fame shall be
 An echo and a light unto eternity!

STANZA 55 [*The Last*]

The breath whose might I have invoked in song
 Descends on me; my spirit's bark is driven,
 Far from the shore, far from the trembling
 throng
 Whose sails were never to the tempest given;
 The massy earth and sphered skies are riven!
 I am borne darkly, fearfully, afar;
 Whilst, burning through the inmost veil of
 Heaven,
 The soul of Adonais, like a star,
 Beacons from the abode where the Eternal are.

Adonais, An Elegy on the Death of John Keats,

Percy Bysshe Shelley

* * *

Death be not proud, though some have called
 thee
 Mighty and dreadful, for thou art not soe;
 For those whom thou think'st thou dost over-
 throw,
 Die not, poor death, nor yet canst thou kill me.
 From rest and sleep, which but thy pictures be,
 Much pleasure then, from thee much more must
 flow;
 And soonest our best men with thee do go,
 Rest of their bones and soul's delivery.
 Thou art slave to fate, chance, kings, and desper-
 ate men,
 And dost with poison, war, and sickness dwell;

And poppy or charms can make us sleep as well,
 And better than thy stroke. Why swell'st thou
 then?

One short sleep passed, we wake eternally,
 And death shall be no more; death, thou shalt
 die.

Holy Sonnets [X], John Donne

* * *

I fled Him, down the nights and down the days;
 I fled Him, down the arches of the years;
 I fled Him, down the labyrinthine ways
 Of my own mind; and in the mist of tears
 I hid from Him, and under running laughter.

The Hound of Heaven, Francis Thompson

* * *

The grass is very green, my friend,
 and tousled, like the head of —
 your grandson, yes? And the mountain,
 the mountain we climbed
 twenty years since for the last
 time (I write this thinking
 of you) is saw-horned as then
 upon the sky's edge—an old barn
 is peaked there also, fatefully,
 against the sky. And there it is
 and we can't shift it or change
 it or parse it or alter it
 in any way. *Listen! Do you not hear
 them? the singing?* There it is and
 we'd better acknowledge it and
 write it down that way, not otherwise.
 Not twist the words to mean
 what we should have said but to mean
 — what cannot be escaped: the

mountain riding the afternoon as
 it does, the grass matted green,
 green underfoot and the air —
 rotten wood. *Hear! Hear them!*
the Undying. The hill slopes away,
 then rises in the middleground,
 you remember, with a grove of gnarled
 maples centering the bare pasture,
 sacred, surely—for what reason?
 I cannot say? Idyllic!
 a shrine cinctured there by
 the trees, a certainty of music!
 a unison and a dance, joined
 at this death's festival: Something
 of a shed snake's skin, the beginning
 goldenrod. Or, best, a white stone,
 you have seen it: *Mathilda Maria*
Fox—and near the ground's lip,
 all but undecipherable, *Aet Suae*
Anno 9—still there, the grass
 dripping of last night's rain—and
 welcome! The thin air, the near,
 clear brook water!—and could not,
 and died, unable; to escape
 what the air and the wet grass —
 through which, tomorrow, bejeweled,
 the great sun will rise—the
 unchanging mountains, forced on them —
 and they received, willingly!
 Stones, stones of a difference
 joining the others at pace. *Hear!*
Hear the unison of their voices....

A Unison, William Carlos Williams

* * *

Many things I might have said today.
 And I kept my mouth shut.
 So many times I was asked
 To come and say the same things
 Everybody was saying, no end
 To the yes-yes, yes-yes,
 me-too, me-too.
 The aprons of silence covered me.
 A wire and hatch held my tongue.
 I spit nails into an abyss and listened.
 I shut off the gabble of Jones, Johnson, Smith,
 All whose names take pages in the city directory.
 I fixed up a padded cell and lugged it around.
 I locked myself in and nobody knew it.
 Only the keeper and the kept in the hoosegow
 Knew it—on the streets, in the post office,
 On the cars, into the railroad station
 Where the caller was calling, “All a-board,
 All a-board for ... Blaa-blaa ... Blaa-blaa,
 Blaa-blaa ... and all points northwest ... all a-
 board.”
 Here I took along my own hoosegow
 And did business with my own thoughts.
 Do you see? It must be the aprons of silence.

Aprons of Silence, Carl Sandburg

* * *

Rose-cheeked Laura, come,
 Sing thou smoothly with thy beauty's
 Silent music, either other
 Sweetly gracing.
 Lovely forms do flow
 From concent divinely framed;
 Heav'n is music, and thy beauty's
 Birth is heavenly.

These dull notes we sing
 Discords need for helps to grace them;
 Only beauty purely loving
 Knows no discord,
 But still moves delight,
 Like clear springs renewed by flowing,
 Ever perfect, ever in them-
 selves eternal.

Rose-cheeked Laura, Thomas Campion

* * *

Heaven is
 The place where
 Happiness is
 Everywhere.
 Animals
 And birds sing —
 As does
 Everything.
 To each stone,
 “How-do-you-do?”
 Stone answers back,
 “Well! And you?”

Heaven, Langston Hughes

* * *

St. Thomas More, the Chancellor, our special lawyer’s patron and paradigm of virtue and principle, is said to have cheerily saluted his dear daughter, Margaret, and his executioner alike just before his death: “Farewell—Until we meet merrily in heaven!”

So, rest in good cheer and merriment, dear friend, Donald, until we meet merrily again. Thank you for your friendship. I will remember you fondly in my prayers and in sweet verses always.

