

Brubeck, Bancroft, and the Present

An analysis of the unusual roles and responsibilities of James Bancroft, considered in light of today's music industry.

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Brubeck, Bancroft, and the Present

Perhaps the most prolific jazz pianist and musician living today, Dave Brubeck began his career playing piano for big bands in the 1930s.¹ Though his mother, a trained concert pianist, encouraged Brubeck's studies of classical piano, his passion for jazz led him down a different path.² After completing his studies at the Pacific Conservatory of Music and a four year tour of duty that placed him overseas during the Second World War, Brubeck began his studies at Mills College and formed the first group with which he began to perform on a regular basis.³ It was during this time that Brubeck encountered his first negative experience with the music industry. When Paul Desmond (later the saxophonist for the Brubeck Quartet) abruptly left Brubeck without a job or a means to support himself and his family, Brubeck found a connection with influential radio host Jimmy Lyons.⁴ From these origins emerged the Brubeck Quartet and such notable works of music as Time Out, the critically acclaimed album debuting the renowned song "Take Five."

In the late 1940s, Brubeck became involved in the founding of Fantasy Records, a firm that would later become a prominent jazz label. Though the exact circumstances remain unclear, Brubeck held a well-founded belief that his involvement in the formative years of the company established him as a partner in the firm. However, no contract detailing the relationship between Brubeck and Fantasy Records exists and, around 1951, the owners of the label made it clear that Brubeck was not a

partner but instead one of the label's artists.⁵ It was this unsettling relationship between Brubeck and the owners of Fantasy Records (Brubeck continue to record for the label over the next three years) that caused him to seek advice from an attorney in the early 1950s. Shortly after the resolution of yet another contractual dispute among Brubeck and the owners of Fantasy, Brubeck enlisted the legal services of James Bancroft, a San Francisco attorney. It was the ensuing relationship between the two that made possible much of the artistic, business, and financial success Dave Brubeck has enjoyed. Unlike today's practice of enlisting a personal manager, business manager, agent, and attorney, Brubeck relied upon James Bancroft to fulfill each of these unique roles, particularly in the early years of Brubeck's career (1954-1959). In addition, Bancroft provided representation in both Brubeck's professional and personal life, often diminishing the distinction between business and personal affairs. In short, Dave Brubeck, in the early years of his career, relied on James Bancroft to undertake the responsibilities left to the personal managers, business managers, agents, and personal attorneys of today and in the process was prepared for the success he later enjoyed

It must be recognized that the now seemingly atypical nature of the relationship between Brubeck and Bancroft evolved in a music industry that has since experienced significant change. In addition, the relationship was surrounded by extenuating circumstances, such as the departure of Mort Lewis, Brubeck's personal manager.⁶ However, the relationship between Dave Brubeck and James Bancroft is worth comparing to that of the traditional attorney/client. Donald Passman is a Los Angeles entertainment attorney and author of a leading source of information on the music business. As Passman notes in All you Need to Know About the Music Business, entertainment

¹ Hall, Fred M. *It's About Time: the Dave Brubeck Story*. Fayetteville: The University of Arkansas, 1996, 12.

² Hall, Fred M. *It's About Time: the Dave Brubeck Story*. Fayetteville: The University of Arkansas, 1996, 8.

³ Hall, Fred M. *It's About Time: the Dave Brubeck Story*. Fayetteville: The University of Arkansas, 1996, 32-34

⁴ Hall, Fred M. *It's About Time: the Dave Brubeck Story*. Fayetteville: The University of Arkansas, 1996, 38.

⁵ Hall, Fred M. *It's About Time: the Dave Brubeck Story*. Fayetteville: The University of Arkansas, 1996, 52.

⁶ Hall, Fred M. *It's About Time: the Dave Brubeck Story*. Fayetteville: The University of Arkansas, 1996, 114.

attorneys are occupied with more than contracts and are often "...Involved in structuring deals and shaping artists' *business* lives."⁷ Bancroft's involvement in Brubeck's *personal* affairs (involvement that reached beyond Passman's definition) is perhaps the greatest deviation from the relationship of today's entertainment attorneys and their clients.

Another point of comparison that produces valuable insight into the relationship between Dave Brubeck and James Bancroft is the American Bar Association's Code of Ethics. Originally adopted in 1908, the then so-called Canons of Professional Ethics provide an ethical guide to the law profession.⁸ It is when comparing the attorney/client facet of the relationship between Brubeck and Bancroft with this code that an understanding of the involved individual's motivations and the circumstances surrounding their relationship is made possible. In addition, insights gained from this understanding can also be applied more broadly to today's attorney/client relationships.

The early years (1954 – 1955) of the relationship between Brubeck and Bancroft can be characterized as true legal counsel. Indeed, their correspondence was dedicated to understanding and consolidating Brubeck's existing contracts and agreements. As Bancroft wrote to Brubeck on December 1, 1954, "Dear Dave: ... Dale will bring us copies of the Columbia and the Fantasy contracts. If you have any other written contracts which are in force or may eventually come into effect, we should review them at the same time."⁹ Further insight into their relationship is found in a February 16, 1955 letter from Bancroft in which he

encourages Brubeck to consider current actions in light of the future. As Bancroft writes, "The real danger is that you will never get ahead and stay ahead if you have to sign the other fellow's papers at the command of Glaser [Brubeck's agent] or anyone else without your own interests at heart."¹⁰ These examples embody a development-focused relationship, one in which Bancroft held Brubeck as more than a mere client. Indeed, as Bancroft himself notes, "...in dealing with Dave...I was working with someone who was totally reliable, absolutely honest, [and who] saw the world as I think I saw it, I was just very comfortable with it."¹¹ It was this close relationship between Brubeck and Bancroft that facilitated Bancroft's later efforts to creatively protect Brubeck's artistic assets. In many respects, the closeness of the relationship also made it possible for Bancroft to provide the counsel that enabled Brubeck to achieve notable success.

As previously noted, James Bancroft did, at times, undertake what today would be seen as nontraditional responsibilities of an entertainment attorney. Perhaps the earliest example of this trend is Bancroft's involvement in establishing Brubeck's affiliation with Broadcast Music, Inc. (BMI) in 1956. Several correspondences initiated by James Bancroft seek advice about the competing performing rights societies (BMI and ASCAP). Prior to delving into an analysis of these letters, it must be noted that this particular aspect of artistic development is usually left to the personal manager today. As Passman notes, the responsibilities of personal managers include assisting artists with major business decisions.¹² This includes deciding with which of the performing rights organizations to affiliate oneself. Perhaps the most significant advantage

⁷ Passman, Donald S. *All You Need To Know About the Music Business 6th Edition*. New York: Free, 2006, 48.

⁸ American Bar Association. "Model Rules of Professional Conduct Table of Contents - Center for Professional Responsibility." *American Bar Association - Defending Liberty, Pursuing Justice*. Web. 02 Nov. 2009. <http://www.abanet.org/cpr/mrpc/mrpc_toc.html>

⁹ Bancroft, James. Letter to Dave Brubeck, December 1, 1954. Business Papers, 1950-1957. Brubeck Collection, Holt-Atherton Special Collection, University of the Pacific, Stockton.

¹⁰ Bancroft, James. Letter to Dave Brubeck, February 16, 1955. Business Papers, 1950-1957. Brubeck Collection.

¹¹ Hatschek, Keith. Interview with James Bancroft. Oral Interview with Jim Bancroft. Brubeck Collection, Holt-Atherton Special Collection. June 3, 2009, 5.

¹² Passman, Donald S. *All You Need To Know About the Music Business 6th Edition*. New York: Free, 2006, 27.

a personal manager holds over an attorney is the manager's extensive experience and knowledge in establishing an artist's affiliation with a performing rights organizations.

Indeed, Bancroft exerted substantial effort in obtaining the knowledge necessary to assist Brubeck in making an informed decision. As Bancroft himself writes to Richard Kirk (of BMI) on December 20, 1955, "When such questions are raised, I feel that it is my duty to Dave to obtain answers from a reliable source, although I must admit it embarrasses me to impose so heavily upon your patience."¹³ These questions asked by Bancroft (which included differences in the payment methods of BMI and ASCAP, specifics of contracts with both BMI and ASCAP, etc.) would readily be known to an experienced personal manager of today. In such light, it must be noted that the use of an attorney in this fashion is an inefficient use of an artist's resources. Time costs an artist money and the time needed to answer these questions is decreased by experience (often referred to by economists as the experience curve effect). Indeed, the use of an attorney in this manner may even prove to be a risk. Not every attorney will fully research an answer and attempt to fully understand the key variables necessary to make an informed decision.

By this time, James Bancroft had begun to enlist the assistance of John Merchant, one of his associates, in handling Brubeck's affairs. Indeed, Merchant was heavily involved in setting up Brubeck's publishing company, Derry Music Co. As previously mentioned, Brubeck had not been named an owner of Fantasy Records, despite his role in its founding. Merchant made sure this was not the case with Derry Music Co. Yet, as Bancroft explains in a later letter dated March 20, 1957, "[Derry Music Co.]...is owned almost entirely by trusts for the children of David and Iola Brubeck." Once again it is seen that Bancroft had Brubeck's interests at heart, for it was Brubeck's intent to,

¹³ Bancroft, James. Letter to Richard Kirk, December 20, 1955. Business Papers, 1950-1957. Brubeck Collection.

"...provide for the future of [his] children while times [were] good"¹⁴

Bancroft later explained the reasons for creating the publishing firm, citing the passive Blackwood Music publishing division of Columbia Records as a motivating factor. As Bancroft recalls, "Blackwood publishers...just sat there with a cash register and collected...half of the composer royalty"¹⁵ Indeed, Derry Music Co. proved to be a successful venture for Brubeck. Royalties for compositions are traditionally split equally between the composer and the publishing firm. However, if a composer owns his/her own publishing firm, then he/she receives the full royalty.¹⁵ Such was the case for Brubeck and Derry Music Co. For example, consider that Brubeck's "Blue Rondo A La Turk" was used in the 2005 feature film, Wedding Crashers. Using figures provided by Passman, it can be assumed Brubeck received \$15,000 to \$100,000 for this use of his work.¹⁶ Had Brubeck still been under contract with Blackwood publishers, he would have received half of this revenue. The significance of Derry Music Co. is further illustrated when the use of Brubeck's "Blue Rondo A La Turk" by other artists is considered. Averaging the statutory mechanical license rate from the 1950s with the current rate, it can be said \$0.055 is generated for each use of "Blue Rondo A La Turk" on a record.¹⁷ Assuming each unique record has sold a modest 10,000 units and multiplying that number by the averaged statutory rate of \$0.055 and the 196 records using the work, Brubeck and Derry Music Co. earned a combined \$107,800.¹⁸ Indeed, Bancroft himself has noted

¹⁴ Bancroft, James. Letter to Joe Glaser, March 20, 1957. Business Papers, 1950-1957. Brubeck Collection.

¹⁵ Hatschek, Keith. Interview with James Bancroft. Oral Interview with Jim Bancroft. Brubeck Collection, Holt-Atherton Special Collection. June 3, 2009, 2.

¹⁶ Passman, Donald S. *All You Need To Know About the Music Business 6th Edition*. New York: Free, 2006, 232.

¹⁷ "Mechanical License Royalty Rates." *U.S. Copyright Office*. Web. 17 Nov. 2009.

<<http://www.copyright.gov/carp/m200a.html>>.

¹⁸ All Music. "Search Results for: Blue Rondo A La Turk (196)." *All Music*. Web. 13 Nov. 2009.

that Derry Music Co. engages in a significant amount of licensing, particularly of Brubeck's original material.¹⁹

The unusual responsibilities undertaken by Bancroft do not end here. He was involved in the management of the Brubeck Quartet as well. In an April 17, 1957 letter written by Bancroft, Brubeck's compensation for performances is discussed. As Bancroft writes, "...the problem here is to find some arrangement which gives Dave the incentive to play more dates. As things stand now... it [is] pointless for him to play more than the bare minimum required to keep the group together."²⁰ Bancroft eventually suggested an arrangement whereby compensation for Brubeck was redirected to his publishing firm, Derry Music Co. As noted above, Derry Music Co. is owned by the Brubeck estate and thus any payments made to the firm serve as indirect income for Brubeck (income that can be quite substantial). Through such efforts, Bancroft undertook a role typical of today's agent. Though certain aspects of the correspondence bear great legal significance (such as the legal aspects of forming a corporation), the majority of the letter is dedicated to an exploration of the booking arrangements and financial compensation of the Brubeck Quartet. This is not considered the primary role of an entertainment attorney today. Rather, it is typically the responsibility of an agent.

Yet Bancroft's involvement pushed beyond the booking and compensation arrangements of the group. For example, in an August 8, 1957 letter Bancroft writes, "In reviewing the books of the Dave Brubeck Quartet...we have come across a discrepancy concerning...the price agreed upon..."²¹ While

<<http://allmusic.com/cg/amg.dll?p=amg&sql=17:169177>>

¹⁹ Hatschek, Keith. Interview with James Bancroft. Oral Interview with Jim Bancroft. Brubeck Collection, Holt-Atherton Special Collection. June 3, 2009, 3.

²⁰ Bancroft, James. Letter to Joe Glaser, April 17, 1957. Business Papers, 1950-1957. Brubeck Collection.

²¹ Merchant, John. Letter to Irving Granz, August 8, 1957. Business Papers, 1950-1957. Brubeck Collection.

Bancroft did help to resolve contractual disputes, he also involved himself in what today would be considered the responsibilities of a business manager, the individual who handles the artist's money.²² As illustrated by a letter dated September 15, 1958, Bancroft handled and tracked the group's financial records. Bancroft writes, "Our firm keeps the payroll records for the Dave Brubeck Quartet."²³ Yet Bancroft's involvement in the handling of the group's finances pushed beyond even this limit. On February 7, 1958, Bancroft (through his associate, Merchant) personally handled and sent a check for tour insurance on behalf of the group in the process of facilitating the Brubeck Quartet's European tour.²⁴

James Bancroft's involvement with Brubeck and the Brubeck Quartet in the capacities previously mentioned is worth particular consideration. When analyzing the unusual roles that Bancroft played for the Brubeck Quartet, two distinct perspectives arise. If the group is viewed as an enterprise (such that Brubeck acts as owner and all other members function as employees), then Bancroft's involvement raises no particular issues beyond an inherent risk of insufficient experience and expertise. However, if the group is seen to be an independent entity such that Brubeck is a mere part of a whole, then a potential conflict of interest arises. As noted by the American Bar Association, "...a lawyer shall not represent a client if the representation involves a concurrent conflict of interest." However, if a lawyer believes he can represent the client in an unbiased fashion, an exception may be made.²⁵

²² Passman, Donald S. *All You Need To Know About the Music Business 6th Edition*. New York: Free, 2006, 41

²³ Krueger, B.J. Letter to Joe Benjamin, September 15, 1958. Business Papers, 1958. Brubeck Collection, Holt-Atherton Special Collection, University of the Pacific, Stockton.

²⁴ Merchant, John. Letter to Dale Sehlager, February 7, 1958. Business Papers, 1958. Brubeck Collection, Holt-Atherton Special Collection, University of the Pacific, Stockton.

²⁵ American Bar Association. "Model Rules of Professional Conduct Table of Contents - Center for

In the case of Brubeck and the Brubeck Quartet, it appears evident that Dave Brubeck functioned as the group's owner. Indeed, Paul Desmond offered to baby-sit Brubeck's children and wash his car for the chance to play with the group, thus creating a sort of bargaining exchange.²⁶ As such, it is unlikely that Bancroft's involvement ever placed him in a compromising position. Still, as Passman writes, it is not uncommon for entertainment lawyers to find themselves in situations where their clients are making deals with one another. Passman further note that most of these instances are entirely harmless and can be handled quite simply.²⁷

As previously noted, Derry Music Co. was established, in part, as means of securing the future financial wellbeing of the Brubeck children. Bancroft's involvement in establishing the company proved to be crucial. Indeed, as illustrated above, the firm still generates a considerable amount of money for the Dave Brubeck estate. Yet Bancroft's guiding influence and support can be found in other areas of Brubeck's personal life as well. Indeed, several letters from Bancroft indicate a high level involvement in establishing the Brubeck estate. Beyond securing ownership in Derry Music Co. for the Brubeck children, Bancroft also endeavored to establish Brubeck's property deeds as trusts, as evidenced by a March 14, 1957 letter to that effect.²⁸ His involvement also extended into areas of specialized law. As Bancroft reported to Iola Brubeck, Dave Brubeck's wife, on March 27, 1957, "We have finally received the information we requested from the Tax Collector concerning the real property taxes you and Dave owe." Bancroft continues, "If all goes well I will be in a

position to go over your income tax during the first week in April."²⁹ In this particular instance, Bancroft's involvement is wholly appropriate as he specialized in tax law prior to serving as Brubeck's attorney.³⁰

Indeed, Bancroft represented Brubeck in contract disputes and conflicts well beyond the scope of the music industry. In a letter dated June 3, 1958 Bancroft writes a contractor on behalf of Brubeck, insisting the tennis court installed by the contractor was not satisfactorily completed and providing a deadline for correcting the error.³¹ Bancroft also mediated a contractual dispute over a wire fence installed on Brubeck's estate. As Bancroft explains in an April 2, 1958 letter, "When Mr. Brubeck had the work done by your company he was aware that there would be a delay in [payment] and it is our understanding that there was a verbal agreement between him and the representative of your company that he could withhold payment until [a later date]."³² Both correspondences illustrate an unusual use of an artist's professional attorney and further illustrate Bancroft's deep and personal commitment to Brubeck. The mere fact that Bancroft was aware of these issues in Brubeck's personal life speaks volumes to the care with which he attended his client.

The inherent differences between the early years of Brubeck's career (as considered here) and the present must again be stressed. As previously noted, the music industry has undergone significant changes in the past fifty years and an exploration of the unusual relationship between Brubeck and Bancroft serves primarily as a catalyst for discussion about present responsibilities and duties of entertainment attorneys in general.

Professional Responsibility." *American Bar Association - Defending Liberty, Pursuing Justice*. Web. 02 Nov. 2009. <http://www.abanet.org/cpr/mrpc/mrpc_toc.html>.

²⁶ Hall, Fred M. *It's About Time: the Dave Brubeck Story*. Fayetteville: The University of Arkansas, 1996, 40.

²⁷ Passman, Donald S. *All You Need To Know About the Music Business 6th Edition*. New York: Free, 2006, 51

²⁸ Merchant, John. Letter to Oakland Title Insurance Co., March 14, 1957. Business Papers, 1950-1957. Brubeck Collection.

²⁹ Merchant, John. Letter to Iola Brubeck, March 27, 1957. Business Papers, 1950-1957. Brubeck Collection.

³⁰ Hatschek, Keith. Interview with James Bancroft. Oral Interview with Jim Bancroft. Brubeck Collection, Holt-Atherton Special Collection. June 3, 2009, 1.

³¹ Merchant, John. Letter to Oliver DeSilva, June 3, 1958. Business Papers, 1958. Brubeck Collection.

³² Merchant, John. Letter to I.C. Bronson, April 2, 1958. Business Papers, 1958. Brubeck Collection.

In the context of the present environment of the music industry, it is worth considering if a close personal friendship (such as the one between Brubeck and Bancroft) with one's attorney is prudent. Certainly, there exists an inherent risk. A friendship can produce entangled emotions that can impede and impair the ability of an attorney to fully represent a client. If one's insight is blurred by loyalty or emotion, it may prove impossible to fully comprehend and recognize the truths of a situation. In this instance it is, perhaps, better to then enlist the services of yet another trusted source of counsel. However, should a strong personal friendship exist between the client and attorney, then benefits might be derived that would otherwise be unobtainable. For example, a close friendship yields invaluable insight into the persona and behavior of another individual. Such understanding can be critical to fully comprehending the motivations of that individual. It might also assist an attorney in assessing a situation and, subsequently, representing the client.

It is seen, then, the best scenario when making business decisions as an artist is to use an attorney as a second opinion. The experience and expertise of today's personal and business managers is invaluable, particularly when considered in light of the complexities of the industry. It is certainly advisable to consult with one's attorney on any matter of importance and, indeed, an attorney can provide better insight into legal consequences of a decision than can a manager. However, when there exists a situation where it is impossible to obtain the services of a personal or business manager (such as insufficient financial support or the sudden departure of a manager) it may become appropriate for the entertainment attorney to step-in and provide dual counsel. Yet artists should approach such situations with extreme caution, for an entertainment attorney's expertise lies primarily with the law (and not in the realms of the industry typically covered by managers). As evidenced by letters written by Bancroft, Brubeck was fortunate to have

counsel dedicated to completely researching and comprehending a situation prior to assisting in the decision making process. It is essential an artist actively work to ensure he or she is being educated to the best of counsel's ability. A decision can only be properly made with the necessary knowledge and understanding.

Despite the analysis conducted herein focusing on unusual roles undertaken by Brubeck's attorney, Bancroft did provide Brubeck traditional entertainment legal counsel. For example, a great deal of correspondence regarding Brubeck's recording contract with Columbia exists. In a March 19, 1957 letter, Bancroft confirms Columbia's decision to exercise its option to extend Brubeck's contract.³³ The specifics of the contract are later discussed in context of understanding Brubeck's recording rights. As Bancroft writes on July 3, 1958, "We have reviewed Dave's Columbia contract with particular reference to the legal status of master recordings made by Dave..."³⁴ In fact, Bancroft insured Brubeck owned his own masters, an unusual arrangement and an extremely innovative business development for the time.¹⁵ The entirety of the relationship, when viewed in this context, can now be seen. In addition to performing the traditional roles of an entertainment attorney, involving a moderate to high level of personal contact with the client, Bancroft pushed beyond these limits and provided representation that demanded a considerable investment of time, self-education and dedication. Such commitment by an attorney is desired by any client and, perhaps, ought to be the goal of all attorneys. Indeed, a greater quality of counsel is likely provided under such circumstances.

Looking to the future of the music industry, what from the relationship between Brubeck and Bancroft can be applied to the larger music community? Certainly, the high level of personal commitment and active

³³ Bancroft, James. Letter to Walter Dean, March 19, 1957. Business Papers, 1950-1957. Brubeck Collection.

³⁴ Bancroft, James. Letter to Mort Lewis, July 3, 1958. Business Papers, 1958. Brubeck Collection.

participation in the artist's career, as exhibited by James Bancroft, might be practiced by all attorneys today. An attorney who is actively aware of his clients endeavors and associations is much better equipped to provide preemptive counsel. Attorneys might also actively work to understand facets of the entertainment industry normally outside their expertise in order to establish a better context with which to assist clients in legal matters (while refraining from attempting to fulfill the roles of today's managers). A more-than-basic understanding of the areas in which managers deal can assist attorneys in recognizing potential misunderstandings or poor decisions. Attorneys might also consider developing a personal relationship with clients. As mentioned above, an understanding of a client beyond the context of a profession can provide invaluable insight. However, no attorney should be attached to a client such that their ability to impartially provide counsel is impaired.