

TRIBUTES

A TRIBUTE TO PROFESSOR MARY MITCHELL

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In the nine years since we moved into this building, I have stood at this podium many times, usually to introduce distinguished speakers, welcome entering students, or greet groups assembled here for one reason or another. I am deeply honored to have been asked to speak from this podium today about my friend and colleague, Mary Mitchell, her many roles at the law school, and her remarkable contributions to our law school community. Nevertheless, the responsibility of doing justice to my subject and holding myself together while doing it have weighed heavily upon me for the last several months.

Mary Mitchell was a law professor. That is how many of us—her colleagues, her students, and others with whom she worked in this building—think of her. In some ways, it says a great deal about her that she chose as her profession to be a law professor and teacher. But really, it says very little about her because she was so many other things as well: mother, daughter, sister, wife, friend, student, caretaker, poet, reader, thinker, pacifist, activist, feminist, hostess of great parties, pie baker par excellence, and many more. Just as Mary would never ever categorize anyone, she herself defied categorization. I would love to talk about many of the things that Mary did, but my charge today is to talk about Mary and what she meant to the law school. This alone is no small task, and I have had to pare down my remarks far more than I would have liked. What I will focus on is Mary as colleague and faculty leader, Mary as teacher, and Mary as law school community builder.

I'll start with Mary as a colleague because that is how I first knew her and how I knew her best. I think a primary reason I was asked to give this talk, even though there are other colleagues who have been closer to her in recent years than I have, is that with the exception of her siblings, some older relatives, and old friends who may be here today, I have known Mary longer than anyone present—thirty years, give or take a few months. I started in the law school in 1978 as a lecturer in legal writing, and Mary started at the law school in a tenure-track position in 1980, having just finished two years as a lecturer in legal writing at the law school in Bloomington. I switched to the tenure track the next year, and for the next seventeen years, we were in offices next door to one another. Our offices had an interior adjoining door that was often open.

I can say in all honesty that with our meager credentials, there is not a law

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school in the country with any sense that would hire either one of us today. In 1981, Mary and I were truly as green as grass. In our adjoining offices, sitting not twenty feet from one another, we learned together how to be law professors. We certainly had the help of some wonderful, patient, and generous colleagues and mentors, but we largely learned through trial and error.

Initially, our great bond was that we suffered through the trials and tribulations of the promotion and tenure process together. The pre-tenure years are difficult and challenging for everyone, but Mary and I felt the uncertainty of them acutely. Not only did we not know what we were doing, but we also weren't sure what was expected of us. This was still an era when women were a relative rarity in law school as students, much less in the professorial ranks. When Mary started on the faculty in 1980, there were three female professors on the tenure track—none of them tenured or fully promoted—and two women lecturers who were ineligible for tenure. As a result, there were no women on the Promotion and Tenure Committee. We were both just beginning to see the challenges of juggling full-time jobs and families. I had three young children, and Mary had two babies during the promotion and tenure process. We had no idea what would be taken into account in our progress toward tenure.

During the promotion and tenure process, Mary and I helped and supported each other, but we approached it in very different ways. I was always doing things “by the book,” never wanting (or maybe it would be more accurate to say never having the courage) to deviate from what I perceived people's expectations of me might be. While I wouldn't characterize Mary as an enormous risk taker, she certainly knew how and when to push the envelope. She never acted precipitously. She gave great thought always and in all matters to how the world should be—what would be right and just. As Tom Wilson, my colleague and Mary's close friend, said to me of Mary's approach to life, “The way you view the world determines how you act in the world.”

In Mary's view of the world, personal needs, and especially family needs, should be accommodated. That's not to say that her job and the law school weren't important to her; they were very important to her. But in her view of the world, family and profession were parts of a whole that could and should coexist happily together. I first saw Mary put this world view into action when she became pregnant with her daughter Sally about halfway through the promotion and tenure process. Mary felt strongly that she wanted to stay home as much as she could to take care of her new baby. She wanted to teach part-time and not have to worry about the stresses of spending hours in the library researching her articles. It's hard to remember that this was a world before computers. There was really no such thing as “working from home” when working on an article. What Mary needed was to have some extra time before the tenure decision was made.

We talked about this at great length, and I certainly supported her one hundred percent. But I truly thought she didn't have a chance of changing the immutable rule of Indiana University that the tenure decision is made in the sixth year and effective in the seventh. I had not taken into account Mary's remarkable powers of persuasion, her advocacy skills, or her persistence. She went to the dean and ultimately convinced him of the rightness of her plan. She was

fortunate, of course, that the dean at the time was the humane and family-friendly Jerry Bepko, who supported her and agreed to talk to the powers in central administration who oversaw such matters. After much discussion and immense amounts of paperwork had been exchanged, the decision was made. Yes, Professor Mitchell could work part-time for a semester, but the part-time semester would not count toward tenure. Hence, she would not be able to count that year toward the tenure track, and her tenure decision would have to be postponed for a year. This, of course, was exactly the result Mary had hoped for.

Many years later, the university had a great debate about whether there should be a formal policy on “stopping the tenure clock.” It was discussed by faculty from all of the schools in the university, and the decision was that Indiana University would adopt a formal policy that under appropriate circumstances, the tenure clock could be stopped. So ultimately, Mary’s view of what was sensible and right received official university sanction.

When Sally was joined by Clara, and Mary and her husband decided to homeschool their daughters, Mary determined once again that she needed to work part-time. However, she hoped to maintain her health and retirement benefits and, most importantly, her tenure status. Once again, she was able to persuade the administration to see the need for and benefit of providing her the flexibility she needed. Today, these kinds of accommodations are so commonplace that we hardly take note of them, but in the early days of women with young families on the faculty, Mary had to dream up something that could work for her, her family, and the law school and then figure out a way to get it done. I think that in so many ways, Mary paved the way for the next generation of faculty at the law school, particularly women. I firmly believe and am very proud that our law school is uniquely family-friendly, and I am convinced that in large measure, we have Mary to thank for that.

As Mary and I became more senior, our paths diverged. I began what I initially intended to be a brief stint in administration that ended up lasting ten years. As I tried my hand at administration, Mary grew into her role as a leader of the faculty. She was the chair at one time or another of almost every law school committee and was regularly elected to the Faculty Executive Committee, the only committee elected by the faculty. She tended to be asked to chair committees in years when it was clear there would be contentious issues to address. I’m certain this is because every dean and associate dean responsible for appointing chairs realized that she was masterful at conducting meetings in a dignified and respectful way, even those likely to be rife with acrimony and potential for hurt feelings.

Mary’s leadership style, I’m sure, was in large part a product of her Quaker background. She introduced an issue and then listened to the varying points of view, giving everyone equal time to express him- or herself. She always looked for points on which everyone agreed and then worked toward finding consensus. She attempted to allow those present to discern for themselves their common ground and how to accommodate their differences. Often, as the leader and listener, she would hear the common ground that the participants had failed to recognize and would then express it to them in a way that made sense. Her patience in this process was really quite remarkable to behold.

George Wright, Mary's great friend and colleague, pointed out to me that the feminist, activist Mary might bristle at being characterized as "patient." And she was certainly not patient when she saw a wrong that could be made right or an injustice that could be cured. Nor was she shy about making her own position on issues clear. But her manner of asserting herself, no matter how strongly she felt about an issue, was never strident or confrontational. At faculty meetings during discussions which could become quite contentious, she almost never entered the fray early. She listened carefully to everyone. When she spoke, her comments were always thoughtful and well-reasoned and demonstrated respect for every point of view in the debate. They were also invariably powerful and persuasive. And there were generally common themes in her views of most issues: "what is fair; what is just; how can we accommodate the needs of the most people; how can we be the most inclusive?"

In her approach to what I can only think to call "faculty politics," she was always honest and forthright, never engaging in closed-door strategizing to influence an outcome, even if she felt passionately about the issue. She came to her decisions through reflection and deep thought, and although she often had discussions with individual colleagues, she used the public fora of faculty meetings, committee meetings, or emails to faculty listservs to express her views. Everyone always knew where Mary stood on the issues. I do not believe that there is a person working in this building who did not admire her and trust her implicitly, even though he or she might have disagreed with her positions.

As to Mary's teaching, there are those who are in a better position than I to talk about her in this capacity: her former students. Nevertheless, there are a few things I would like to say about her commitment to teaching. "Commitment" is really far too mild a word; Mary was passionate about her teaching. Although not every student had an opportunity to take a course from Mary, for at least the last twenty-five years, all students at this law school have had Mary as a teacher at the very beginning of their law school careers at first-year orientation. Many faculty members speak to the first-year students at orientation on a variety of topics. Student surveys of orientation we have given over the years indicate that even after a few months, students remember very little of what is said at orientation. The one exception to this is that virtually all students remember Mary's talk on how to maintain balance in law school. She spoke to the students about the importance of wholeness and maintaining perspective while in law school. When course work seemed overwhelming, she impressed upon them the importance of spending time with family and making time for something they loved, whether it be music, running, cooking, or knitting. We've had students who years—even decades—later talk about how important Mary's orientation talk was to them. Some even attribute their ability to get through law school and their success in life to hearing this talk.

Many of you know that Mary was the Alan H. Cohen Professor of Law, and I'm sure you know it is a very great honor indeed to hold a named professorship. What you may not know is that this particular professorship was dedicated specifically to supporting a faculty member "who made a significant contribution in the area of teaching and who had a strong and sustained reputation in this area of responsibility." Although the decision on professorships is made by a campus-

wide “titled professorships committee,” the donor specifically supported Mary Mitchell for this professorship, and the committee agreed.

Mary’s course offerings over the years reflected her many interests. She loved teaching first-year students. She wanted to instill in them from the outset what she most valued about the law. She said about her teaching in a grant application years ago, “My primary aims in teaching are to ingrain in students a habit of rigorous reasoning to impel them continually to uncover issues and scrutinize beliefs, to open legal issues to interdisciplinary perspectives, and to keep legal issues always in the stream of moral and ethical discourse.” She started this process with her first-year contracts students. Her upper-level course offerings typically demonstrated her passion for justice for all and frequently focused on the easily abused, the underserved, and the often forgotten. In addition to her law school teaching, she taught two three-hour undergraduate courses at the Indianapolis Peace Institute.

Mary loved to teach. She loved teaching all her classes, but I believe the teaching she loved the most, with the possible exception of teaching her own children, was teaching the ICLEO students. For those of you not familiar with it, ICLEO is the Indiana Conference for Legal Education Opportunity.¹ This program was developed over ten years ago, through the efforts of Chief Justice Randall Shepard of the Indiana Supreme Court and the Indiana legislature, to provide minority, low-income, and educationally disadvantaged college graduates with assistance in pursuing law degrees and careers in the Indiana legal community. The ICLEO program is no small commitment for students or faculty. ICLEO is essentially a “boot camp” for pre-law students. It is a six-week residential summer program at one of the four law schools in the state that provides intensive instruction in three substantive areas of law and legal writing and analysis. The thirty or so students who participate receive extensive preparation for legal studies as well as tips for success in law school. They also develop a group of lifelong friends and close relationships with the professors teaching in the program. After the program, virtually all of the ICLEO graduates enroll in one of the four Indiana law schools. Our law school has been fortunate in most years to get the lion’s share of these students.

We also have been fortunate to have had the ICLEO program at our school four times since its inception, and Mary taught the segment of contract law each time. She loved teaching this course, and she loved the students who took it. And they loved her. She taught her students a great deal about the law of contracts, but more important by far, she instilled in them her conviction that each one of them could and would succeed in law school and in his or her career as a lawyer. As a testament to her, the members of her last ICLEO class came to her funeral en masse wearing their ICLEO shirts.

Any discussion of Mary’s teaching would be incomplete without mention of her work with students outside the classroom. Students streamed to her office at all hours of the day and night. She was welcoming and accessible to all to

1. See *About CLEO*, IND. CONFERENCE FOR LEGAL EDUC. OPPORTUNITY, <http://www.in.gov/judiciary/cleo/about.html> (last modified Mar. 18, 2010).

discuss their course work, their personal problems, or anything that was on their minds. The word “mentor” is so overused these days that I almost hate to use it to describe her, but I looked it up in the dictionary, and the definition was perfect: “a wise and trusted counselor or teacher.” That she certainly was! She was an astute listener, friend, and adviser to hundreds—probably thousands—of students who sought her counsel and compassionate ear outside the classroom over her three decades of teaching. And with Mary, it was never a question of just listening to this one and then going on to the next one. You couldn’t go to Mary for a good cry and then expect her to forget you. When she had concerns or had made suggestions, she made a point to follow up to see how things were going. There are many who claim they would never have made it through law school without her unflagging support and encouragement, as well as others who saw with her guidance that law school and the study of law was not right for them and now attribute their happiness in their chosen pursuits to her wise counsel.

In January, our colleague Joel Schumm nominated Mary on behalf of the law school for the Alvin S. Bynum Mentor Award, a campus-wide award given to a faculty member who has made truly extraordinary contributions and cumulative impact on the lives of students. The emphasis in selection of award recipients is out-of-class mentoring activities. I wish I had time to read all the letters in support of Mary’s nomination. I’ve picked just a couple of short excerpts. One former student wrote, “Had it not been for Professor Mitchell’s mentoring and tutelage, I have no doubt that I would not be the lawyer and person that I am today. Reading back over this letter, I still find my words inadequate in describing what a monument Professor Mitchell was in my life.” Another student wrote, “I found her to be unquestionably knowledgeable, patient, encouraging, and fully accepting of me—she was the first educator I ever met who believed in me without reservation.” At the campus honors convocation last month, the Alvin S. Bynum Mentor Award was presented posthumously to Professor Mary Mitchell. Professor Schumm stated in his letter of nomination,

We wish we had nominated Mary earlier for this award. She was certainly no less deserving last year or the year before than she is now. This is a sad reminder to us all of how important it is to love, admire and care for one another in the here and now, a lesson we could and should have learned from Mary, who never ceased teaching it.

My final topic is Mary as a community builder in the law school. I cannot overstate the importance of community in Mary’s life—every kind of community. I think that to her, all communities were an extension of family. She had an absolute horror of exclusivity or a sense that some might feel excluded or marginalized. Because her special focus was on family, she wanted all who were connected with the law school to consider themselves and be considered by others as an integral part of the law school family—faculty regardless of rank or status, librarians, students, administrative staff, administrative and faculty support staff, and maintenance staff. To Mary, all should be equally important and appreciated.

When we moved into this building in 2001, most of us felt enormous relief to be out of our cramped, somewhat tired and dingy surroundings across the street. We saw Inlow Hall as a dream come true, a beautiful building that filled

all our needs for student space, clinic space, classroom space, library space, and more. Mary, on the other hand, saw a giant limestone and glass box with walls and partitions that divided rather than united us. Instead of faculty walking from the parking lot through the crowded student lounge as we did in the old building, faculty now rode an elevator from a garage exclusively for the use of faculty and staff up to faculty office spaces separated from the rest of the building by large, closed doors. It was and is possible for a faculty member to get from car to office without ever seeing a student. Mary hated this and always made it a point to enter the building at ground level, to walk through areas where she saw students congregated, and to stop and talk to them. She also involved herself as much as she could in a variety of student activities. She advised several student groups, regularly participated in the law school talent show, and always baked pies for the Women's Caucus charity auction. She attended Minority Law Day and Admitted Students Day. In short, she wanted to be a part of any activity that connected us.

The year after we moved into the new building, the law school went through the excruciating experience all ABA-accredited law schools experience every seven years: the ABA reinspection process. As a part of this process, each law school writes a self-study, which is a lengthy document in which the law school talks about its strengths, weaknesses, and aspirations. All self-studies begin with the law school's mission statement. Virtually every law school has a three-part mission statement focusing on three areas: faculty teaching, scholarship, and service. Mary and I were both involved in the 2002 self-study—she as a faculty member on the Self-Study Committee, I as associate dean. Mary was adamant that our mission statement include a fourth component focused on community. I, traditionalist that I am, was in favor of sticking with the usual approach. But Mary's powers of persuasion were great, and she carried the day. The mission statement included a fourth component which states that the school will "promote[] a diverse, humane, and supportive community of persons."² For Mary, the beauty of this statement was that it included everyone in the building and everything he or she might be doing here, whether writing a book, teaching or taking a class, organizing meetings, or mopping floors.

This community building and insistence on inclusion demonstrates clearly that to Mary, everyone mattered. She had a gift for making all those with whom she came in contact know that they mattered and would never be overlooked by her. I could give dozens of examples of this, but I'll limit myself to one that relates directly to the law school community. Several years ago, she became concerned about her perception that to most of us, members of our building maintenance staff were overlooked and underappreciated. Yes, we all contributed money each holiday season to a gift for them, but to Mary, this was woefully inadequate recognition. She convinced the dean that we should have an annual luncheon devoted solely to honoring them. At the luncheon, each member of the maintenance staff is introduced individually by a member of the faculty, and information is given about his or her family and interests. This function was

2. IND. UNIV. SCH. OF LAW—INDIANAPOLIS, STRATEGIC PLAN 1 (2010), *available at* <http://indylaw.indiana.edu/news/strategicplan.pdf>.

incredibly important to Mary because to her, no community worth being involved in should have people who are invisible to anyone.

As I'm sure you can tell, I could go on and on, but I promise you I won't. But all I have said so far has been so serious, and I can't bear to end without saying just a little something about Mary's sense of fun. Who can forget Mary on Halloween appearing in one of her many marvelous costumes? My personal favorite was the clown costume, although her witch costume was also pretty terrific. And I daresay her first-year contracts students will never forget her appearance in class wearing the "the hairy hand" on the day they discussed *Hawkins v. McGee*,³ giving the concept of "the benefit of the bargain" indelible meaning.

Yes, Mary was a law professor, but she was so much more to everyone who knew her—in this place and everywhere she went. She was not a person with a litany of causes; rather, she was a person who recognized injustice when she saw it and did everything in her power to eradicate it. She was the one with the candle in front of the governor's mansion at midnight in thirty-degree weather the night of an execution. But she was never self-righteous or judgmental if those who might share her abhorrence of capital punishment chose not to join her in her chilly vigil.

As Vice Dean Paul Cox said to me when I asked him how he would characterize Mary and her role on the faculty, "she humanized us; she softened our sharp edges." Mary certainly did that, and without her, we must be vigilant to assure that our edges do not become so sharp that we are in danger of injuring one another.

That we had Mary in our midst for so long was a great blessing; that we lost her too soon is a great tragedy—one from which this law school community will not soon recover. But I have great confidence that there are many of us here and elsewhere in the world who will work to keep her memory and her legacy alive.

3. 146 A. 641 (N.H. 1929).