

# Indiana Law Review



Volume 29 No. 4 1996

## TRIBUTES

*Helen Garfield Tribute by Mary Harter Mitchell*

*Ronald L. Polston Tribute by William F. Harvey*

## 1995 SURVEY OF RECENT DEVELOPMENTS IN INDIANA LAW

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## ARTICLE

*The Justification of Physician-Assisted Deaths*

*Tom L. Beauchamp*

## ESSAY

*The Golden Anniversary of the Choice of Law Revolution:*

*Indiana Fired the First Shot*

*Geri J. Yonover*

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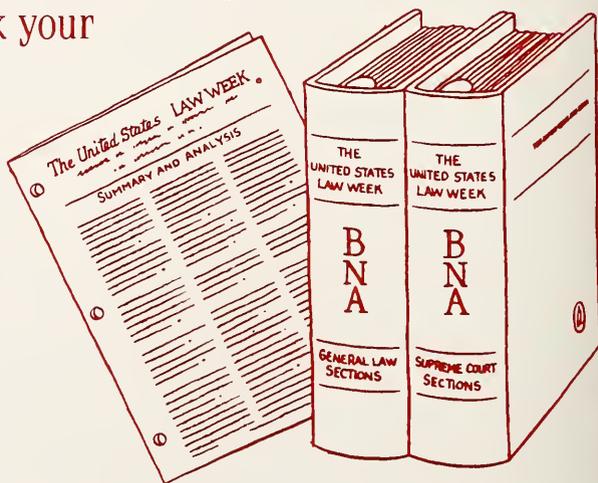
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- 1980-95, Professor, Indiana University School of Law—Indianapolis.
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*Bibliography:*

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# HELEN GARFIELD TRIBUTE

MARY HARTER MITCHELL\*

Due gratitude is a sign of right relation with the past. A theme of gratitude is most appropriate, therefore, for a tribute to a colleague who retired during our law school's celebration of its centenary year. The purpose of this Essay is to recognize an immense gratitude to Helen Garfield felt by her students and colleagues, and to record some achievements of her career in order to prompt more widely shared gratitude for the increment that this career adds to the life of this law school and of the law.

Helen Garfield earned her undergraduate degree in journalism at Northwestern University and her law degree at the University of Colorado, where she was honored with membership in the Order of the Coif. After law school she was admitted to the Bar in Colorado and served as Clerk for the Honorable Edward E. Pringle of the Colorado Supreme Court. Before coming to Indianapolis she practiced law in Boulder, Colorado, and taught at the Oklahoma City University School of Law. Garfield came to the Indiana University School of Law at Indianapolis in 1976 and taught here nineteen years, retiring in 1995. While at this law school she taught Constitutional Law, First Amendment, Fourteenth Amendment, Sex Discrimination, Family Law, Contracts, Corporations, and Legal Research and Writing.

Garfield's colleagues recall especially her reasonableness, her integrity, and her sense of humor—which could, when necessary, be pointed, but more often served to alleviate a tense moment or simply for fun. We also recall (and will miss!) her renowned roast beef dinner, served by unfailing tradition at faculty holiday parties. Helen Garfield was also a mentor for junior colleagues, especially newer women like myself, to whom she generously and unpretentiously offered her guidance and concern. Many of us also have been encouraged by the example of the roundedness of her life, for she is a scholar with devotion to family, a writer of both formal legal analysis and broad-humored Western melodramas, a feminist known for her intellect and charm, her scholarship and her roast beef dinners! She takes her work seriously and herself lightly, a valued quality in a faculty colleague.

Helen Garfield is a distinguished legal scholar whose rigorous analysis and fine prose have lifted worthy themes. Characteristically, Garfield contends for the rights of individuals against majorities. In this vein, her critique of Justice Bork's views of constitutional interpretation remains (when will it not be?) timely: “[m]ajoritarianism,” she reminds, “is the *means*, not the end, and liberty . . . is . . . the end as well as the means.”<sup>1</sup>

In addition, her writing both advocates and exemplifies an ideal of legal theory that “takes account of reality,”<sup>2</sup> that assesses justice by its realization, not in rules

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1. Helen Garfield, *Twentieth Century Jeffersonian: Brandeis, Freedom of Speech, and the Republican Revival*, 69 ORE. L. REV. 527, 568 (1990).

2. Helen Garfield, *Privacy, Abortion, and Judicial Review: Haunted by the Ghost of Lochner*, 61 WASH. L. REV. 293, 321 (1987).

abstracted from historical, social, and economic facts, but in particular lives and a particular history. This insistence on contextualized and grounded justice is, of course, a prime point of feminist legal theory, and Garfield's writing typically makes this point. For example, she criticized Indiana's new marriage dissolution law because its newly imposed *abstract* equality amounted *in reality* to harsh inequality for homemakers who had married many years earlier when laws and expectations were different.

Still another theme of Garfield's writing is her belief that law can be called to be higher and that law's reformation can be effectual to improve society. This story is told of Phillip II, king of Macedon and a notorious drinker:

Once when drunk he gave an unjust verdict in the case of a woman who was being tried before him. "I appeal!" cried the unfortunate litigant. "To whom?" asked the monarch, who was also the highest tribunal in the land. "From Philip drunk to Philip sober," was the bold reply. The king, somewhat taken aback, gave the case further consideration.<sup>3</sup>

In her field of expertise, Constitutional Law, where the Supreme Court's word may be taken in some sense as the final word, Garfield does not hesitate to appeal "from Philip drunk to Philip sober."

Given these themes in Garfield's own work, one is not surprised at her interest in Louis Brandeis: legal scholar and Supreme Court Justice, creative champion of reform, early articulator of the individual's right to privacy, advocate of replacing formalist legal doctrine with law that takes account of social and economic realities, "[p]rogressive to the core."<sup>4</sup> Garfield has written approvingly of his "lifelong concern with the values of privacy and autonomy"<sup>5</sup>—a phrase aptly applied to herself as well. Garfield's recent completion of a biography of Brandeis represents an impressive culmination and recapitulation of her rich scholarly life.

As Helen Garfield enters retirement, we congratulate her, literally we are grateful with her, for both her time among us and her time ahead.

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3. THE LITTLE, BROWN BOOK OF ANECDOTES 449 (Clifton Fadiman ed., 1985).

4. KERMIT L. HALL, THE MAGIC MIRROR—LAW IN AMERICAN HISTORY 224 (1989).

5. Garfield, *supra* note 2, at 297.



**RONALD W. POLSTON  
RETIREMENT TRIBUTE**

*Education:*

Eastern Illinois University, Charleston, Illinois, B.S. 1953.

University of Illinois College of Law, Urbana, Illinois, J.D. 1958.

*Employment:*

1958-64, Associate, Craig & Craig, Mount Vernon, Illinois.

1964-65, Partner, Craig & Craig, Mount Vernon, Illinois.

1965-68, Assistant Professor, Indiana University School of Law—Indianapolis.

1968-71, Assistant Dean, Indiana University School of Law—Indianapolis.

1968-72, Associate Professor, Indiana University School of Law—Indianapolis.

1972-95, Professor, Indiana University School of Law—Indianapolis.

1972-73, Visiting Professor, Monash University, Faculty of Law, Melbourne, Victoria, Australia.

1993, Lecturer, China University of Political Science & Law, Beijing, P.R.C.; Lecturer, N.W. China Inst. of Political Science & Law, Xian, P.R.C.

1995, Professor Emeritus, Indiana University School of Law—Indianapolis.

*Subjects Taught:*

Constitutional Law, Contracts, Conflicts of Laws, Oil and Gas, Property.

*Bibliography:*

## As a Student:

*Witnesses—Protection Against Self Incrimination*, 1956 ILL. L. F. 527.

*Religion as a Factor in Proceedings for Adoption and Custody of Children*, 1957 ILL. L. F. 114.

## Since Law School:

*Multiple Ownership and Mineral Conveyances*, 49 ILL. B. J. 720 (1961).

*Property Rights in Oil and Gas Interests*, in INDIANA CONTINUING LEGAL EDUCATION FORUM (1966).

*Considerations in Acquiring Real Estate & Sales of Residences*, in REAL ESTATE TAXATION, INDIANA CONTINUING LEGAL EDUCATION FORUM (1968).

*Legislation Existing and Proposed Concerning Marketability of Mineral Titles*, VII Land & Water Rev. 72 (1971).

*Survey of Indiana Property Law*, 8 IND. L. REV. 228 (1974).

*Mineral Conveyancing*, in MINERAL LAW OF INDIANA, INDIANA CONTINUING LEGAL EDUCATION FORUM (1984).

*Recent Developments in Oil and Gas Law*, 6 EASTERN MIN. L. FOUND. 19-1 (1985).

*Recent Developments in Oil and Gas Law*, 7 EASTERN MIN. L. FOUND. 19-1 (1986).

*Recent Developments in Oil and Gas Law*, 10 EASTERN MIN. L. FOUND. 19-1 (1987).

*Surface Rights of Mineral Owners—What Happens When Judges Make Law and Nobody Listens?*, 63 N.D. L. REV. 41 (1987).

*Selected Readings on Chinese Law* (1989) (prepared for use by students enrolled in the China Summer Program, Indiana University School of Law).

*Redefining the Relationship Between the Surface Owner and the Mineral Developer*, 12 EASTERN MIN. L. FOUND. 22-1 (1991).

*Fundamentals of American Conflict of Laws*, LAW REV. OF SOUTHWEST CHINA INST. OF POL. SCI. AND LAW. (1993) (Chongqing, P.R.C.) (published in Chinese).

THOMAS, THOMPSON ON REAL PROPERTY, ch. 46 *Fixtures*, ch. 63 *Licenses*, and ch. 65 *Profits a Prendre* (Michie 1994).

*Mineral Ownership Theory: Doctrine in Disarray*, 70 N.D. L. REV. 541 (1994).

*Current Issues in American Property Law*, 3 FOREIGN L. TRANSLATION & REV. 64 (Institute of Law, Chinese Academy of Social Sciences, Beijing, P.R.C. 1994) (published in Chinese).

*The Fixtures Doctrine: Was it Ever Really the Law?*, 16 WHITTIER L. REV. 455 (1995).

*The History of the Indiana University School of Law, Indianapolis*, 28 IND. L. REV. 455 (1995).

*Current Issues in American Contracts Law*, 1 FOREIGN L. TRANSLATION & REV. 70 (Institute of Law, Chinese Academy of Social Sciences, Beijing, P.R.C. 1995) (published in Chinese).

## PROFESSOR RONALD W. POLSTON BIOGRAPHICAL SKETCH

Ronald Wayne Polston was born in Raymond, Illinois, November 1, 1931, the son of Joseph Marion Polston and Minnie Wilson Polston. After graduation from the Raymond Schools in 1949, he obtained his B.S. degree from Eastern Illinois University in 1953, and then spent the next two years in the United States Army as a draftee during the Korean War. Upon return from the Army he attended the University of Illinois College of Law, obtaining an LL.B. in 1958.

During law school he was elected to the Board of Editors of the *Illinois Law Forum* (now the *Illinois Law Review*), and became Assistant Editor in his senior year. After graduation he became an Associate in the law firm of Craig & Craig in Mt. Vernon, Illinois. The one hundred year old firm had offices in both Mattoon and Mt. Vernon. Partnership was achieved in 1964. While in Mt. Vernon, he married Mary Ann Campbell, the daughter of Howard W. and Mildred Campbell. Mr. Campbell was the senior partner in the Mt. Vernon office of Craig & Craig.

In September of 1965, he left practice to join the faculty of Indiana University School of Law in Indianapolis, as an Assistant Professor. The subjects taught his first year were Property I and II, Conflicts of Laws, and Oil and Gas Law. Those courses remained his standard load through 30 years at the Law School. Oil and Gas Law has been his area of special interest, and the area in which most of his scholarly work appears. He was promoted to Associate Professor in 1968 and to Professor in 1972.

In 1967, when there was some doubt as to whether the Law School in Indianapolis would be allowed to commence a full time program and obtain autonomy from the Law School in Bloomington, he prepared a report for Elvis Stahr, the President of Indiana University, in which he outlined the need for a full time law school in Indianapolis. The president responded by authorizing the beginning of such a program in the 1969 school year. In the fall of 1968, he became Assistant Dean of the Law School and was charged with supervising the construction of the new Law School building, which had been authorized by the legislature in the previous year, and with organizing the full time program. During the next two years the new building was constructed, and furnished, and the full time program was inaugurated. The new building was completed in the fall of 1970 and at the request of Dean Cleon Foust, Assistant Dean Polston, remained in the administration for the next year to work out any problems in the new building and the newly begun full time program. He left the administration and returned to full time teaching in the fall of 1971.

In the 1969-70 school year, at the request of Michael Phillips, Speaker of the Indiana House of Representatives, he drafted the Indiana Dormant Minerals Act that was adopted by the legislature in 1970. The Act returns the ownership of severed mineral estates to the owner of the residual fee after twenty years of non-use of the mineral estate. The drafting of the Act is described in a law review article published in *The Land and Water Law Review* of the University of

Wyoming.<sup>1</sup> When the constitutionality of the Act was challenged he was engaged by the attorneys defending the Act to write the briefs in both the trial and appellate courts. The Act was upheld by the Indiana Supreme Court<sup>2</sup> and the United States Supreme Court.<sup>3</sup> The Act has since been the model for legislation in five other states.

In 1967, he and his wife adopted a daughter, Anne Campbell Polston, and in 1969, a son named Joseph Harrison Polston. During the 1972-73 school year, he took a sabbatical leave of absence and, with his family, spent the year in Melbourne, Australia, where he taught and studied at Monash University. While there he did research in the area of Australian mineral law and created a course, which he taught, called Australian Mining Law. During the course of that year the family went around the world; having traveled to Australia via Mexico, Tahiti, Fiji, and New Zealand, and returned via Bali, Singapore, Kuala Lumpur, Bangkok, Teheran, Athens, and Madrid.

Professor Polston served on all major Law School committees and served as Chair of most at various times. He also regularly attended the annual meetings of the Association of American Law Schools and the biennial meetings of Natural Resources Law Teachers sponsored jointly by the Eastern Mineral Law Foundation and the Rocky Mountain Mineral Law Foundation. In 1971, he served as Chair of the Faculty Appointments Committee of the Association of American Law Schools. Over the years he presented several programs for the Indiana Continuing Legal Education Forum in the mineral law area.

In the late 1960's, he volunteered to assist the newly organized National Attorneys Title Assurance Fund and was made a member of the Board of Advisers of that organization. The purpose of the organization is to preserve the role of the Indiana attorney in the real estate transaction. He served in that capacity for several years until the organization was restructured and he then became an officer in the new organization. He served in that capacity until his retirement at which time he resigned.

In 1986, he was asked to present a paper at the Annual Meeting of the Eastern Mineral Law Foundation in Pittsburgh. That began an association with that organization which resulted in the Law School becoming a governing member of the Foundation. Professor Polston represented the School as a Trustee of the Foundation until his retirement. During that time he presented papers at four of the annual meetings and those papers were published in the annual volumes for 1985, 1986, 1987, and 1991.<sup>4</sup>

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1. Ronald W. Polston, *Legislation Existing and Proposed Concerning Marketability of Mineral Titles*, VII LAND & WATER REV. 72 (1971).

2. *Short v. Texaco, Inc.*, 406 N.E.2d 625 (1980).

3. *Texaco, Inc. v. Short*, 454 U.S. 516 (1982).

4. Ronald W. Polston, *Recent Developments in Oil and Gas Law*, 6 EASTERN MIN. L. FOUND. 19-1 (1985); Ronald W. Polston, *Recent Developments in Oil and Gas Law*, 7 EASTERN MIN. L. FOUND. 19-1 (1986); Ronald W. Polston, *Recent Developments in Oil and Gas Law*, 10 EASTERN MIN. L. FOUND. 19-1 (1987); Ronald W. Polston, *Redefining the Relationship Between the Surface Owner and the Mineral Developer*, 12 EASTERN MIN. L. FOUND. 22-1 (1991).

When the Law School began a China Summer Program in Shanghai in 1987, Professor Polston became active in the Program. In 1988, he served as the Director of the Program in Shanghai, and in 1989, he handled the administration of the Program while another member of the Faculty served as the resident Professor in Shanghai. In that year he also compiled the course book that has been used in the Program in the ensuing years. In the Spring Semester of 1993, he took a sabbatical leave of absence and spent the semester in China where he lectured at China University of Political Science and Law in Beijing, the Northwest China University of Political Science and Law, in Xian, the Southwest China Institute of Political Science and Law, in Chongqing, and East China University of Political Science and Law, in Shanghai. At the end of that semester he served as the resident Professor for the Summer Program. While in China, he wrote papers on American law subjects that were translated into Chinese and published in Chinese law reviews.<sup>5</sup>

As a result of his interest in China he was instrumental in establishing the Peter Ho Scholarship, which was funded by Peter Ho, an alum of the school. The scholarship has provided tuition for two Chinese students who have attended Indiana University School of Law at Indianapolis, Liu Ji-Qing and Zhang Yi. Both students were given their first year room and board at the Polston home free of charge.

In the fall of 1993, he and Professor William Harvey commenced the restoration of the graduating class composites of the predecessor Law Schools, doing the cleaning and reframing themselves at a local frame shop. In the process he conceived the idea of celebrating the Centennial of the Law School in the following year. A Centennial Committee was formed with Professor Polston as Chair. Many activities were held in the 1994-1995 school year, including a symposium of the *Indiana Law Review* on legal history. Professor Polston presented a paper on the history of the Law School that was published as part of the symposium.<sup>6</sup> When it was discovered that there were no graduating class composites for the years 1967 through 1979, he conceived the idea of asking the graduates of those years to send him photos of themselves to be used in creating composites for those years. From the photos received, and from some taken from the application files of students, such composites were created. In creating the missing composites, Professor Polston copied more than a thousand photographs using his twenty five year old camera and copy stand. They were developed and printed by the IUPUI Photography Department and formatted as composites by the Medical School Illustrations Department.

Professor Polston's last day on the Faculty of the Law School was spent in Shanghai on June 13, 1995, when he put the final touches on the Summer Program for that year. Upon his retirement he returned to his hometown to live in a house within a couple of blocks of the one in which he was born.

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5. Ronald W. Polston, *Fundamentals of American Conflict of Laws*, LAW REV. SOUTHWEST CHINA INST. POL. SCI. & L. 110 (1993); Ronald W. Polston, *Current Issues in American Property Law*, 3 FOREIGN L. TRANSLATION & REV. 64 (1994); Ronald W. Polston, *Current Issues in American Contracts Law*, 1 FOREIGN L. TRANSLATION & REV. 70 (1995).

6. Ronald W. Polston, *History of the Indiana University School of Law—Indianapolis*, 28 IND. L. REV. 161 (1995).

# PROFESSOR RONALD W. POLSTON A PERSONAL RECOLLECTION AND TRIBUTE

WILLIAM F. HARVEY\*

Eight major institutional events occurred in the Indiana University Law School at Indianapolis in the 30 years before 1996. These are (1) reopening the Law School's day division. It was closed when Indiana University purchased the Indiana Law School in 1944. After an absence of twenty-five years, the day division reopened, and the Law School offered the only day and evening legal educational program in Indiana. (2) At about the same time, the Law School's alumni insisted upon the construction of the Law School's new building. It was occupied in 1970. (3) As a result, the Law School enrolled the largest law student body in the State of Indiana (by 1972, over 1100 students were enrolled). (4) An entirely independent Law School administration was established in Indianapolis. The School was no longer part of the Law School administration at Bloomington. (5) In 1975 the Law School in Indianapolis and the Law School in Bloomington were formally renamed as the Indiana University School of Law—Indianapolis, and the Indiana University School of Law—Bloomington. The Indianapolis Law School remained directly under Indiana University's administration in Bloomington until "IUPUI" was created in Indianapolis. (6) The University's President and the Trustees accepted the principle of "parity" in funding the Law Schools. This occurred as a result of the "Beesley Committee's"<sup>1</sup> recommendation

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\* Carl M. Gray Professor of Law and Advocacy, Indiana University School of Law—Indianapolis. A.B., 1954, University of Missouri; J.D., 1959, Georgetown University; L.L.M., 1961, Georgetown University.

1. The "Beesley Committee" was appointed by University President John W. Ryan, "to advise him on the utilization of Indiana University's resources for legal education." It convened on November 6, 1975, in the Conference Room at the Lilly Endowment, Inc., Indianapolis, Indiana. Its members were: Mr. Eugene N. Beesley, Committee Chairman (and Chairman of the Lilly Endowment), Mr. George B. Gavit, Indianapolis attorney with Ice Miller Donadio & Ryan (and the son of the late Dean Bernard C. Gavit of the Bloomington Law School. Dean Gavit was that Law School's dean when the Indiana Law School was purchased by Indiana University in 1944). Mr. Joe S. Hatfield, Evansville attorney, and senior partner of Fine, Hatfield, Sparrenberger & Fine (and the former President of the Indiana Bar Association), Mr. Robert A. Lucas, attorney (and a member of the Board of Trustees of Indiana University), the Honorable James E. Noland, United States District Court for the Southern District of Indiana, Mr. Millard H. Ruud, Executive Director of the Association of American Law Schools, the Honorable Richard M. Givan, Chief Justice of the Indiana Supreme Court, the Honorable John S. Hastings, United States Court of Appeals for the Seventh Circuit, Mr. Thomas S. Scanlon, attorney, and senior partner of Barnes, Hickam, Pantzer & Boyd, Indianapolis, Indiana, and Mr. Willard S. Boyd, President of the University of Iowa. The Committee took evidence from the Law School Deans, William F. Harvey, from Indianapolis, and Douglass G. Boshkoff, from Bloomington, and from their assistants, including Indianapolis Assistant Dean G. Kent Frandsen, selected third-year law students, and other persons. Among the recommendations made by the Beesley Committee, it said: "Each program should be encouraged to pursue its own method and approach to legal education and to capitalize on those institutions which add dimension to their existence. Parity in the distribution of financial resources is essential

in November 1975. (7) By 1979 the Law School had established the finest law library and legal collection in Indiana. The law library collection was among the top 25 in the United States.<sup>2</sup> It was Indiana's largest. (8) The remarkable history of the Law School and its equally remarkable alumni, too long forgotten or disregarded, was resurrected. This history demonstrates that the Indiana Law School opened in Indianapolis in 1894-95. Before that time it was, it seems, the Law School at DePauw University. This places the Law School's history to the time of the Civil War or before.

When thinking about a professor of law, a happy moment occurs when one knows that he teaches well, writes well, and dedicates himself to the legal education of his students. When the evidence of these achievements is in classes well taught and well received, in the professor's various legal publications that are well regarded and well accepted, and in court briefs or legislative enactment's that are effective and beneficial, then a measure is available. It provides an intellectually pleasant occasion and personal recollection.

Professor Ronald W. Polston taught well and he wrote well. He was well received by his students, alumni, and members of the legal profession. In these things he is distinguished.

In this Law School, he was much more. He was keenly aware of the essence of the institution where he worked and of which he was a part. He understood that a legal educational institution is defined by more than its curriculum, the persons who teach it, and the students who are taught. It is also defined by its institutional stability, its history, its alumni, the legal profession and the social community where it is found. They, too, give a law school shape, purpose, and function. They sustain it inside a large state organization called a university. A law school must have all of these assets and attributes, or there might not be a curriculum to teach or a student body to instruct.

This suggests that the division between the professional academic and the practicing profession, so often articulated and observed as if it were a clear divide, can create a vacuum that pulls some faculty and administrative persons into an isolating pursuit that leads to insulated chambers. Once there, they delight in notions of law and philosophy that give them, they believe, a superior status. This is recognized in their assertions that declare or infer an academic and social detachment from the daily realities of the profession and the administration of law. Arthur Koestler's reference to "the intellectual's estrangement from reality," describes the condition. Their intellectual existence becomes quite separate from the institution and the communities in which they live and work. They are in this world but they are not part of it. "*Question Reality*" is their automobile bumper sticker of choice.

These persons wallow in a belief that they are committed "to making a difference" or "to changing things" or "to making a better world with our

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to the enrichment of our State's legal development." *Report Of the Ryan Committee Of Special Consultants On Legal Education at Indiana University* 3.

2. This occurred during seven (7) years of dedicated effort and development. This history is beyond the scope of this discussion, but it is remarkable and it is an outstanding achievement.

policies,” because “as idealists, we understand history, and we can change it.” As far as law students are concerned, in this cosmic order a commitment to affirmative action actually means that the task of educating and preparing a law student to practice law is affirmatively avoided whenever possible. The art of teaching, the pursuit of constructive ideas, applied knowledge, academic ability, and contributions to the sustaining community have discounted importance except when offered as assurances to visiting alumni, legislators, parents, or prospective students. The widow who struggles in probate, the defaulted defendant who is lost in a clerk’s office or in a small claims court, the mother whose child is maimed by the drunken driver, the owner of a mineral right that provides a meager income, are disregarded or disdained because any one of them would require a commitment of time and energy that must be allocated to universal goals and global achievements.

When these faculty or administrative persons retire or *départ*, charity intrudes. We tend to think about them as “*le poete maudit*.” We see them as doomed poets and this allows their character to be brighter than it is or was. In deeper review, however, we might borrow from another poet and say that “Nothing in his or her time and career became this person like leaving it.”

Professor Polston was cut from a different cloth. He esteems accomplishment that is attained by intellectual effort. He respects heritage and culture, and he studied American and Chinese heritage and culture in particular. He can weigh an idea and then decide whether it is superior to a different or contrary idea. He does not think that objectivity is deceitful or that the rule of law and legal standards are farcical. Therefore he understands and he sustains values, hierarchy, tradition, and social stability. His breadth of intellect and understanding are extraordinary. He studies history and persons affiliated with it. He does not believe that he is superior to history or to persons who are gone. Thus he can not join in a rationale for condemning history and superimposing a revision upon it, or upon persons in the social order who appear to be associated with or derive from a history that others now renounce.

He knows that every ideology of the future has a blood-soaked past. This ability allowed him to listen to the fulminations of arrogant historicism, while dedicating himself to understanding the widow’s struggle in probate, the injured laborer’s claim for compensation, the shareholder’s concern about unproductive or wasteful management, or the child’s need for support payments.

He was unique as a faculty member and as an assistant dean in the Law School. He understood the requirements of institutional development, in addition to the necessity of a faculty’s applied function and theoretical development. He knew that each is necessary and that neither exists in an isolated condition. To this understanding he brought an unusual dimension into the academy and into this Law School. He was willing to act. He was willing to participate, to create, to construct, and to build. Moreover, he was willing to incur the substantial risks and barriers that can be placed before a faculty member, an assistant dean, or a dean, who brings these talents into a large university.

He developed the qualities of insight, energy, promptitude, and firmness. With these, and with limited use of the passive virtues of patience and tolerance, he did much more than make a breathless commitment “to change” or “to making

a difference" or some other kind of triumphal globalism. He actually constructed and he actually created. He was instrumental in both designing and administering the curriculum of the Law School's day division, and he developed a comprehensive plan for integrating it with the evening division. This occurred over the instinctive objection of several persons then in the Law School's administration, but with the eventual approval of the University's president of that time. He carefully superintended the actual construction of the law school building that opened in 1970. He could do this because he knew as much about the design and the construction of a building (especially an academic building) as any person formally employed in the University as "the building expert." Because of this ability and his willingness to use it, the building has provided outstanding accommodation to faculty and students during the last twenty-six years.

He was there at the "new beginning" when the Law School established an autonomous administration, and he shared fully in the huge undertaking of providing excellent legal education to over 1100 law students who, a short time earlier, were fewer than 400. Throughout, and in the intervening years, he was supportive of other faculty, the library, and the students.

His understanding of Indiana's history is impressive. With this talent he was a major force in the discovery and resurrection of the Law School's brilliant history, and in its Centennial Celebration in 1995. This provides, perhaps, the best place for an observation. It is the place to observe the mark of the man and the measure of his commitment.

The year of his retirement from the faculty, the Law School, and the University was 1995. Probably this was his busiest year. In addition to a full teaching load and all regular faculty duties, he was totally committed to the resurrection and restoration of the Law School's history. He chaired the Centennial Committee that organized a Centennial celebration that extended throughout the year. He wrote an excellent piece in the *Indiana Law Review*<sup>3</sup> about the School's history. He (and I) repaired, repainted, and restored about sixty class and faculty pictures. They begin a year or two after the school opened in Indianapolis in 1894-95. Additionally, he personally solicited and obtained pictures of graduates in the graduating classes between 1964 and 1979 (of which there was none before his efforts) and mounted, named, and framed them.

The remarkable history of the Law School and its highly accomplished alumni was revived and placed in clear view. University faculty, administrators, students, and the general public may know that in 100 years the Law School produced two (2) Vice Presidents of the United States,<sup>4</sup> seven (7) United States Senators,<sup>5</sup> many

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3. Ronald W. Polston, *History of the Indiana University School of Law—Indianapolis*, 28 IND. L. REV. 161 (1995).

4. Vice President Charles Warren Fairbanks, 1905-1909, and Vice President J. Danforth Quayle, 1989-1992.

5. Charles Warren Fairbanks (Rep.) 1897-1904; John W. Kern (Dem.) 1911-1917 (Senator Fairbanks was an original faculty member of the Indiana Law School. Senator Kern was a faculty member of a school of law that merged with the Indiana Law School. He was a candidate for Vice President with William Jennings Bryan, and probably suggested that Mr. Bryan speak to the student

members of the Federal Judiciary, the Indiana Supreme Court, and the Indiana Court of Appeals, about one-third of the sitting Indiana trial judiciary, a Judge<sup>6</sup> in the Nuremberg War Crimes Trials in 1945-46, an attorney<sup>7</sup> who defended several of the major Japanese War Criminals in Tokyo at the same time, the Majority Leader of the United States Senate as the United States entered World War I,<sup>8</sup> and Members of the House of Representatives. There are Indiana Attorneys General, United States Attorneys and prosecuting attorneys, famous defense counsel, bar association presidents, and the senior partners of many Indiana law firms.

The Law School granted admission—before 1900 and after—to racial minorities (at that time it was not, of course, a Big Ten Law School. It is now and it is the only Big Ten Law School that did this—a bit of history that ought to arouse pride, appreciation, and serious historical research), and to women (in the 1920s, women composed 20 to 30 percent of several graduating classes and some classes had from 40 to 60 graduates) and admission to many other sons and daughters of hard-working parents—or persons referred to in these times as “the working class.” Indeed, they did work, and how they did succeed! Only in America!

Professor Ron Polston and his small Centennial Committee were responsible for these discoveries and for permitting them to be known today.

He used his talents in full and active measure to the day he left. He is not a man who “went gently into that Good Night.” He enjoys each day if he is exhaustively engaged in it and if, at its end, he can return to his lovely and gracious wife, Mary Ann, so they may together embrace and love their new grandchild.

Indiana University, its Law School at Indianapolis, and its faculty, students, and graduates are greatly enhanced because of Professor Ronald W. Polston and his years of teaching and work. I am very pleased to know him as a friend and as a colleague of many years.<sup>9</sup>

body of the Law School, which he did at the School on February 17, 1908. It is a remarkable address. It is reprinted full text in William F. Harvey, *Fragments From Our Fleece: Vignettes From 100 Years in a Great Law School*, 28 IND. L. REV. 143, 145 (1995); Arthur R. Robinson (Rep.) 1926-1934; Frederick Van Nuys (Dem.) 1932-1944; Samuel D. Jackson (Dem.) 1944; J. Danforth Quayle (Rep.) 1981-1989; Daniel R. Coats (Rep.) 1989-.

6. Judge Frank N. Richman, a member of the faculty of the Indiana Law School.

7. Professor Floyd J. Mattice, a member of the faculty of the Indiana Law School until shortly before the United States entered World War II.

8. United States Senator John W. Kern (Dem).

9. Several thoughts and statements that appear in this Tribute are refined after they came to me from other persons. Those I recall are the Honorable John A. Danaher, the Honorable (later Chief Justice) Warren E. Burger, then on the United States Court of Appeals for the District of Columbia Circuit, for whom I was employed or worked; the Honorable Robert H. Jackson, who thought and wrote as clearly about legal education as any person in the past 60 years; Mr. Joseph Sobran, Mr. Arnold Beichman, and Professor Ronald W. Polston.

