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Dedication in Memory of William Dewey Rollison

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DEDICATION IN MEMORY OF WILLIAM DEWEY ROLLISON, A.B., LL.B., LL.M., LL.D. PROFESSOR OF LAW EMERITUS UNIVERSITY OF NOTRE DAME 1897-1971

Introduction

William D. Rollison was born in Bloomfield, Indiana, July 1, 1897. He graduated from Lyons High School in 1915 and served in the Army (private, Motor Transport Corps) in World War I. In 1918, he became the principal of Towner High School in Towner, North Dakota.

He left high school teaching for the legal profession and was admitted to the Indiana Bar in 1919. He earned both the A.B. and LL.B. degrees at Indiana University and, in 1922, joined the law faculty, as an assistant professor, at the University of Alabama. He was a co-founder and early editor of the *Alabama Law Journal.*

Professor Rollison left Alabama for Harvard and further law study; he earned his LL.M. in 1930 and joined the Notre Dame Law Faculty as an instructor. He was promoted to assistant professor in 1933, associate professor in 1936, and professor in 1945. One of his first assignments at Notre Dame was as faculty advisor to *The Notre Dame Lawyer.* He was responsible for the review's first thorough reorganization; it was under his guidance that the *Lawyer* became a quarterly publication.

His years at Notre Dame were years of busy teaching—of virtually every course in the curriculum—of steady scholarship, and of innovation. He was one of the first in the nation to reorganize the wills-trusts-future-interests area into a single, integrated course. His two-volume *Cases and Materials in Estate Planning* (1959) was among the first casebooks to cover all three traditional fields.[1]

He was a popular campus figure and a witty, learned classroom performer. In 1947, the Notre Dame Law Club decided, for the first time in its history, to specially honor one of the faculty. The guests of honor were Professor and Mrs. Rollison; the occasion was Mass and Communion breakfast. The choice of guest was a tribute to Professor Rollison's popularity, and the choice of occasion a tribute to the ease and comfort with which this gentle Protestant made himself a part of Notre Dame. It was the Rollisons' twentieth wedding anniversary, and the Professor's twenty-fifth year as a law teacher. In 1949, he received the University's Lay Faculty Award for distinguished service.

Professor Rollison was active in the South Bend community during all of his years at Notre Dame. He was a well-known figure at the Bar, a founding member of the South Bend Estate Planning Council, a contributor to and member of the South Bend Round Table (an erudite discussion society), and active in the Knife and Fork Club and the Lions Club. He was also a member of the American Bar Association, Gamma Eta Gamma, and Phi Alpha Delta. He is listed in *Who's Who in Indiana, Who's Who in Central States, Who's Who in Law* and *Who's Important in Law.*

1 He had already published, in 1939, his widely-used treatise on wills, and had contributed an array of law-review pieces in that field. See Appendix.

Professor Rollison retired from the faculty on August 31, 1963, to continue teaching as Distinguished Professor of Law at the Cumberland Law School of Samford University, in Birmingham, Alabama. In 1969, as a part of the Law School's one-hundredth birthday, he received the LL.D. degree from Notre Dame.

At Cumberland, he continued to write, to teach, and to inspire young lawyers. He was a vibrant member of that community until his death there on January 21, 1971. Someone once unkindly suggested that his distinguished and curly white hair was evidence of age and decline. Many of his students remember his answer: "Although there is snow on the roof, there is a fire in the hearth."

Mrs. Rollison survives and is living in Birmingham. She is a gracious and helpful resource in the preparation of this dedication. Several of us who were his students at Notre Dame, and who followed him into the full-time teaching profession, have contributed our memories of him, and our tribute, to this dedication issue. I was his student in 1960-61, the third year in which he taught in one course all of the field I was later to teach in his place. I remember him as a teacher who enjoyed the classroom and those who shared it with him, as an exacting and calm scholar, and as one of those special Notre Dame law teachers whose office was a comfortable place for small (and large) talk—and even, in his case, a place to smoke a free cigar.

He was a gentle, gracious lawyer and teacher and a proud part of the Law School's growth in wisdom and grace in the 33 years he was here. For some reason my most vivid memories of him are in the library, puffing on an illegal cigar in the reading room; and behind his desk in the classroom, saying a quiet prayer before we all plowed into ten pages on the rule against perpetuities. The smiling picture that begins this issue somehow fits both images. He was a happy, mildly irreverent scholar, and a reverent, happy teacher.

Thomas L. Shaffer[2]

Rollison as an Old-Fashioned Law Teacher

Since I graduated in 1960, and did not return to the faculty to teach until 1964, I missed the opportunity of working with Professor Rollison as a colleague. I was privileged to know him only as a student, but fortunate nonetheless.

When Dean O'Meara came to the Law School, he got the idea that wills, trusts and future interests should be taught as one integrated, functional course, called "Estate Planning," and he assigned it, naturally enough, to Rollison. Professor Rollison, with characteristic thoroughness, then produced his own set of materials, and our class was one of the first to use them.

Rollison was an old-fashioned kind of teacher. For him, the purpose of a law school was to impart knowledge, not to remake the world or end a war in Vietnam, and the primary purpose of a student was to acquire, not judge that knowledge. Professor Rollison, however, was no mere master tradesman in a trade school. Rather, he was a master craftsman who embodied, in a special sort

2 '61L; Dean, Notre Dame Law School.

of way, a philosophy of law and life that has largely gone out of style, though if I read them right, a lot of kids today are much closer to Rollison than they know. My kind of liberal in my day—can 1960 be so long ago?—arrived at law school when arguments over New Deal measures and McCarthyism were still the stuff of constitutional law. The civil rights movement had hardly begun, and draft counseling was unheard of.

Rollison's course, oriented as it was, was not one of the "in" courses; we tended to gravitate to the young Turks on the faculty, who had Harvard or Yale teaching-cards of more recent vintage. Professor Rollison's course in estate planning, in contrast, began with one practical question—what is the law?—and ended with another—how do you use it to draft or advise? My kind of liberal saw the law as an instrument for refashioning the world into the good society by the implementation of sound social policy. Rollison instead saw the law as something that kept the government in its place, leaving time for an individual to work out his own destiny, accumulate a little something, and then pass it on to his family. He knew, too, that the government could do evil as well as good, and that all things considered, it would probably do the latter. How many times did I hear him say—"That smacks of Statism!"—when one of us suggested a different rule might work a "sounder social result." Rollison seldom objected to the result as such, but he always saw, as we often did not, the danger in letting the law undertake to make over society in a judge's image of "sound social policy."

I think, too, that to have had a course under Rollison, with his white hair and courtly manner, must surely have been much as it would have been to have studied under Holmes himself. Holmes, of course, was a New England Yankee and Rollison was from the South, but there was little to distinguish in how the two men viewed the law.

To know what the law is, Holmes said somewhere, you have to know what it has been and what it is tending to become. Like Holmes, Rollison was not reluctant to ask those who studied the law with him to read the ancient texts for themselves and to master their learning, although of the 480 cases reported in his materials, 86 were decided within the ten years of the date when we used his materials, a feat not always easy to accomplish in wills, trusts, and future interests.

Holmes told us that, "A man may have as bad a heart as he chooses, if his conduct is within the rules,"[3] and that is the perspective from which Professor Rollison taught. How many times did I hear him say, "It doesn't make any difference what you are trying to do and how close you come, if you are still this side of the line." He came about as close as you can to teaching the law with the kind of neutral principles that operate the same for good men and bad men. He would have had to put up with a lot of abuse from some of the committed generation for his "failure" to make his witness manifest in what he taught, though, again, I feel his inherent dignity would have turned back most, if not all, of the lack of manners so characteristic of some of our children. And I know that our children, too, as they matured, would have come to see more wisdom in Rolli-

3 O. W. Holmes, The Common Law 110 (1881).

son's philosophy than seemed to be there then when our guys had the five votes and "they" had only four. Neutral principles of law make terribly good sense to the individual making his way in even today's world, and sometimes they require a special sort of commitment and entail a special sort of courage that is not always visible to the young. Professor Rollison did not pen them, and I never heard him quote them, but these words of Mr. Justice Story say a lot that I know he tried to teach:[4]

> Whenever legislation renders the possession or enjoyment of property precarious; whenever it cuts down the obligation and security of contracts; whenever it breaks in upon personal liberty or compels a surrender of personal privileges, upon any pretext, plausible or otherwise, it matters little, whether it be the act of many or the few, of the solitary despot, or the assembled multitude; it is still in its essence tyranny.

I can't say yet that they express my philosophy, but I understand and respect these thoughts more now than I did in 1960 when I was in one of the last of Professor Rollison's classes in estate planning at the Law School. Like good wine, Rollison seems better with age.

G. Robert Blakey[5]

Memorial to Professor William D. Rollison

In February, 1971, the legal profession and the teaching profession lost one of its greatest men in the person of Professor William D. Rollison. I knew Professor Rollison when I attended the University of Notre Dame during the years of the Second World War in 1942 through 1944. The memory of a tall, serious-looking gentleman walking through the corridors of the Notre Dame Law School is very vivid in my memory and those of my classmates. We met Mr. Rollison, who was our torts teacher, and our criminal law teacher. He seemed to be so profound, so serious, and yet so intense on teaching the various subjects to the freshman law students that he could not help but impress one as being a very fine forthright teacher. This became more evident as we progressed into the varying subjects. As law students, we were all afraid of most of our teachers, but in Mr. Rollison's case, we seemed to have a great deal of respect, as well as fear. He seemed to know so much about the subjects and he seemed to be trying so hard to see that we understood, not only the particular subject, but also the background which made up the law and the reasons for the law in the particular subjects.

He would sit slightly forward, bent over the desk, and with a booming voice would hammer home the points of the law. As the semester wore on in the freshman year, we still could not quite fathom Mr. Rollison. He seemed to be so deep in the subject that we could not quite follow him all of the way.

Then, one day in criminal law, we had just finished the subject, "robbery," and the next chapter in the book was devoted to the crimes of rape. Mr. Rollison turned the page to the chapter and, in a very deep voice, said "Gentlemen, we

4 J. STORY, MISCELLANEOUS WRITING 447 (1852).

5 '60L; former Professor of Law, University of Notre Dame; Chief Counsel, Subcommittee on Criminal Law and Procedure, United States Senate.

now turn to rape; however, since you are all experts in the subject and have read the chapter, we will now skip the chapter and we will turn to the chapter on murder." The twinkle in Mr. Rollison's eye was the dead tip-off that here was a teacher who not only had sincerity and a deepness of his subject, but also a very, very living sense of humor. The response in the class was a momentary lapse of complete silence and then the entire class burst into laughter. It was true we had all read the chapters on this particular crime and had read them well prior to our ever coming to them in the class on criminal law. Mr. Rollison, knowing law students to be what they are, and with his sense of humor, had gotten the point home to us very, very well.

This is an example of the great humor which this man had and as we learned to know him better in school, we found that this sense of humor was something which always tempered Mr. Rollison in his relationships with the students. Whenever a student got too serious with himself or with his subjects, so that it was hurting his understanding of a subject, Mr. Rollison could always insert an aside of humor with which the student would get himself back in proper perspective.

Mr. Rollison was not only a great teacher, but he was also a profound research man. His work on wills still stands in my library as one of the useful tools in drawing wills and handling estates.

I also remember an incident of Mr. Rollison's about his understanding of human nature. As seniors in the Law School, we had the first opportunity to put the Law Ball on in the Rockne Memorial. It was the first dance to be held in the Rockne Memorial during World War II. A class of only five seniors was rather small for the dance, but we wanted to make it a success. We, therefore, had to skip quite a few of our classes in order to work on the ball and get the place decorated. I can remember one morning when Mr. Rollison went to the class and there were only two students present. He inquired as to where the rest of the class was and someone reminded him that they were working on the Law Ball. Mr. Rollison said, "I believe I will walk down to the Rockne Memorial to see how the decorations for the Law Ball are coming. Would the rest of the class care to join me?" In this way we did not get charged with cuts, but we had Mr. Rollison present on the Rockne Memorial floor giving us help and guidance in trying to get the Law Ball ready. The dance was a success and Mr. Rollison and his lovely wife were part of the faculty which were honored at that particular time.

I also remember an incident after I graduated from the Law School which involved the beloved William D. Rollison. He appeared in my office one day and seemed to be quite upset that a local cleaning establishment had ruined his wife's dress. Mr. Rollison had gone into the cleaners several weeks before and had taken his wife's dress for cleaning. When he picked up the dress, they had charged him a $1.49, and upon getting home, he found the dress was completely ruined by some substance which the cleaner had used. The dress had holes in it and its colors had faded and it was a complete loss. Mr. Rollison wanted the cleaners sued. Being just in the practice of the law, I carefully started to draw a complaint which was based on the negligence of the cleaner. Mr. Rollison read

over the complaint and then, in a sly way, suggested that maybe a second count could be inserted in the complaint, namely, breach of contract. He stated that his theory was that he had made a contract with the cleaner to clean that particular dress for a charge of $1.49. He stated that the cleaners had not kept the contract and had breached the contract by returning the dress in the damaged condition. I agreed and we inserted a second count on breach of contract. When the trial of this case was held in one of the local courts, Mr. Rollison was the principal witness. We went through the entire case, Mr. Rollison testifying as to the facts as they occurred. The cleaner put on a perfect defense to the charge of negligence, namely, that they had used all reasonable means in cleaning the material and that the material apparently was not as it had been shown to Mr. Rollison to be and, therefore, that the entire matter was one of negligence and that they were not negligent of any handling of this garment. At the conclusion of the trial after both sides had rested, we merely pointed out that there was a contract made and, regardless of the fabric involved with the dress, the cleaner had not returned the dress in a good and clean condition. The court held for Mr. Rollison and awarded a judgment of $35.00. Mr. Rollison was very pleased with the verdict in this case and said that this was another example of how to put two theories to work in one complaint.

When Professor Rollison returned to Notre Dame as part of the centennial program, and was awarded his Doctor of Laws degree, it recalled very vivid memories to me and to my classmates, because here was not only a great teacher, not only a great man, not only a humanitarian, but a man with a great sense of humor who had interest in those he taught. Mr. Rollison will be missed in the legal profession, but he will also be missed as a teacher who had the understanding of his students at heart. Notre Dame can be proud that William D. Rollison was a Professor of Law in its Law School. He contributed much to its greatness.

Charles M. Boynton[6]

William Dewey Rollison—An Authentic Law Professor

Legal education as it is traditionally carried on in the United States is one of the most successful educational experiences yet developed for inculcating professional attitudes and competence. Through it persons gain an understanding of, and commitment to the legal process, a fairly sophisticated ability to analyze legal problems, and a good grasp of the art of advocacy, as well as some knowledge of legal principles and procedures. These are gained through the expenditure of a great amount of time and effort by teacher and student, particularly in the first year where what is traditionally known as the case method of study is more rigorously carried out. It has succeeded and will continue to succeed because of teachers like William Dewey Rollison.

Bill Rollison was an authentic teacher. He had the utmost respect for his students, for the educational process, and for the institution of law. He was a

6 '44L; Lecturer in Law, Notre Dame Law School.

master of his field, a tireless researcher, and a skilled classroom teacher. He treated students as coparticipants in the learning process, expecting them to responsibly prepare substantial amounts of material for consideration in class. Class was the time to probe and to synthesize, to jointly discover what the materials meant. His approach forced to the surface questions concerning the fundamental justice of legal rules and decisions and questions concerning the feasibility of concrete application of legal rules and concepts to everyday life.

His no-nonsense attitude was occasionally mistaken for harshness, a sentiment totally alien to his character. His door was always open to students—first, because to him students were important; second, because he considered these more personal legal discussions to be a vital part of the educational process. Finally he was a gentleman, automatically considerate and helpful.

Bill Rollison respected the legal educational process. He considered that he and it were doing something important. He took pride in being part of the process whereby professionally trained graduates of the Law School took their places as practicing lawyers in all parts of the country. He felt this imposed a weighty responsibility on the Law School to see that students were properly prepared to fulfill the duties of a lawyer. While all law faculty members share these time honored sentiments to a greater or lesser extent, to know Bill Rollison was to know how deeply he was committed to them.

He also respected the openness of the legal educational process. Politically a conservative, he respected the differing views of all members of the faculty and student body. In his quiet, gentlemanly way, he did as much to inculcate respect for civil liberties and individual freedom as the most zealous reformer. He believed deeply in the conservative way but held in even higher regard the value of an open legal educational process.

Finally, Bill Rollison had respect for the institution of law. His work was strong in both theory and application. The depth and comprehensiveness of his library research in wills are legendary. At the same time he was active in the local and state Bar and played a major role in the modernization of Indiana probate law and practice. We would hope that all community service efforts are motivated by concern for the community rather than self-aggrandizement. There never was any question about this with Bill Rollison. There was never any doubt his concern was for the improvement of the institution of the law to which he effectively and selflessly devoted his life.

Successful legal education doesn't just happen. It happens because of teachers like William Dewey Rollison.

Thomas F. Broden, Jr.[7]

A Remembrance of Professor Rollison

The scholarly contributions of Professor Rollison are undoubtedly cate-

7 '49L; Professor of Law and Director of the Institute for Urban Studies, University of Notre Dame.

gorized elsewhere, and attest to his reputation firmly established among those in the field in which he labored.

It is to his influence as a professor that we, his former students, are qualified to offer testimony. As Henry Adams said, "A teacher affects eternity; he can never tell where his influence stops."

The teacher of law is not inferior in rank to the scholar, because the law school is necessarily more than its library.

The spirit of a law school is really the common presence of the faculty, and during our tenure the impact of Professor Rollison on the spirit of the school was not to be doubted.

It may be stated without smugness by a graduate of ten years that the law student is without a sense of history. His legal education begins with the stripping away of the layman's half-truths and misconceptions, but is soon given over to recent cases and legislation, proposed reforms and present-day problems. The inevitable impression is one of rapid transition—the majesty of the law seems to rest not on past achievements or tradition, but solely on its utility today or tomorrow.

In this seeming tempest of change, the firm figure of Professor Rollison was real evidence of the force of tradition—no mere Mr. Chips provoking an unexamined nostalgia, but a vital force with roots in the past, analyzing the present, anticipating the future. And while time may dim the memory of detail, it compensates by providing a different clarity through affording perspective.

What seemed unthinkable during our tenure under the Dome has come to pass—a Notre Dame Law School without Professor Rollison.

Where a sense of history was otherwise in short supply, Professor Rollison was history. The rich tradition of law and legal scholarship seemed bound up in one man, and the assurance of its continuity evidenced by the strength of his presence.

A remembrance such as this would be seriously lacking if it did not acknowledge the warmth and approachability of Professor Rollison, whose door seemed always open and whose ear was ever available. The news of his passing is sure to evoke countless individual memories of his personal kindnesses.

Thank you, Professor Rollison, for so much of what was a Notre Dame legal education.

Gerald M. Gallivan[8]

Tribute to a Friend

Although he was truly a scholar and an academician who had a remarkable talent for conveying the essence of the law to his students, Professor Rollison will be best remembered by many of us for the continued interest and concern that he had for the individual student and his accomplishments. This personalized interest began in law school, but it continued throughout the legal career of his proteges. We have lost a real friend.

Edward J. Gray[9]

8 '61L; Associate Professor of Law, University of Wyoming.
9 '58L; Lecturer in Law, Notre Dame Law School.

About the Teacher William Rollison
. . . in the manner of Legal Realism[10]

"He was stimulating because of the antibodies he aroused."[11]

This remembrance is highly personal in telling how I, as one student, saw and experienced the teacher William Rollison. Some of his other admirers will explore, I am sure, his large corpus of published materials to assay their contribution to the law. Others can do it more competently, since estates and wills, where Rollison was an established expert, is not my abiding intellectual interest. But as a teacher, I am interested in the fine craftsmanship of a fellow teacher like Rollison. Therefore it is fitting for me to try to bring alive his personality as a teacher. He was a distinctive, powerful operator in the classroom. Decades of students were well instructed, and more importantly, many of them were challenged to higher levels of autonomous probing and reaching—which is the highest compliment for a teacher.

How did he do this? He combined a vast knowledge of the law (witness the books he carried to class, crammed with notes, yellowed clippings, tear sheets *et al.*, almost unmanageable in their bulk) with a highly distinctive style of thought-values and manners. He could grip the students' attention, especially new ones gathering for the first meeting of the torts class, a course he taught for many years and one of my favorites. New people are always confused, and the title "torts" is not helpful in giving a fellow an inkling of what to expect. Contracts, jurisprudence, legislation, criminal law, the rest of our first-year fare, are familiar categories. Torts, however, was very important, or so the scuttle-butt went.[12] So imagine a large class, seventy or eighty students filling up the seats, and oozing good thoughts about doing well. (For some of us, this resolution was like that of the confirmed party-goer, the morning after, who promises too much.)

In the center of this room on a high platform, sat Professor William Rollison, quietly fingering the edges of his much-used casebook. He peered at us, as we straggled in, through strikingly business-like glasses. This tall thin figure with a generous shock of white hair once or twice smiled at us—like a man who had observed this scene many times before, not bored with it but genially wise to the low-keyed theatrics of a first meeting with new law students. Then he began, I recall, an exposition on the spectrum of human frailties we call torts. It is a dismal list, extending from flying arrows over somebody's land, to planks dropped into the hold of a ship, to a dynamiter causing a nuisance, and on and on. He spoke with a deep, steady voice, and occasionally he would rise to an important point by almost barking it out. He would then pause, and grin slowly and deliberately, almost as if to say: "Do you see the importance of that point?

10 During the summer of 1971, as I am writing this memorial paper, I am also re-reading a number of papers clustered around the theme of Legal Realism, i.e., Holmes, Pound, Nelles, Jerome Frank, and especially Karl Llewellyn. Their thinking and style of view will be apparent, although, of course, any errors are my own.

11 FELIX FRANKFURTER REMINISCES, as recorded in talks with Dr. Harlan B. Phillips 36 (1960).

12 The rumor was that there were two critical courses, contracts and torts. If one mastered these, the rest would be, comparatively, a snap. This is probably good advice. Although I must admit I did not find the remainder that easy; certain areas of law are still a mystery. Peace, as to the question of *my* mastery of these two fields.

Mark it well! Do you agree?" If we were supposed to respond, we failed him. We were the greenest of greenhorns. We would not have interrupted this Legal Mind to mention that the building was on fire.

Of course, each one of us will remember a particular vignette about him that will "capture" somehow what William Rollison meant in our individual lives. It is highly personal exercise. As Polanyi puts it ". . . into every act of knowing there enters a passionate contribution of the person knowing what is being known."[13] For instance, if you had asked me that first day: "Can you learn from this man?" I would probably have answered in the negative. He was too old, too prim, too conservative and too Texan. (I will explain this allusion to Texas. Each student, I believe, brings an immense amount of luggage, or attitudinal conditioning—to use the more technical term—to the classroom. In 1952 when I first met Professor Rollison, it was the year my great hero, Adlai Stevenson, was running for the presidency. I was a stalwart Stevensonite, New Dealer and Northern Liberal. These caused me to wonder about Rollison. I thought he was from Texas because he looked and acted as *I* thought Texans did! To my mind, this automatically signaled conservatism and obstructionism to my wing of the Democratic Party. Rollison wasn't a Texan, and I did learn so much from him, *mea culpa!* Election years are not good times for the clinical approach. This error in first impression has not stopped me from making these judgments; albeit with better success I hope.)

Regardless of my initial misperceptions and apprehensions about Professor Rollison, he presided in that class with authority and effectiveness. You could almost hear the swirling of minds, struggling for order and mastery: "What did he say about trover?" "Does he like this decision?" "Where did he get that point?" Outside the classroom, we were haunted enough to explore further, to get it down right, or in my case, to find counterarguments for such "obviously" outdated views of self or society as "plainness, character, honesty, hard work, self-reliance, innocence, goodness and not necessarily knowingness."[14] Or as Frankfurter said of one of his highly dogmatic teachers: "He was stimulating because of the antibodies he aroused."[15]

What was Rollison's dogmatism? Where does he fit, given the different schools of jurisprudence and style of working with the law? Let me propose a "fit," although I hesitate to encapsulate a long and fruitful intellectual life so neatly. My summer mentor, Karl Llewellyn, describes a legal attitude that I find helpful in trying to explain Rollison. It is Llewellyn's famous Formal Style, the orthodox ideology of a few decades ago:

> That picture is clean and clear: the rules of law are to decide the cases; policy is for the legislature . . . . [and the legislature is the "enemy invaders"]. Opinions run in deductive form with an air or expression of single-line inevitability. "Principle" is a generalization producing order which can and should be used to prune away those "anomalous" cases or rules which do not fit . . . . to prune away anomaly is to vindicate Principles: large-scale

13 POLANYI, PERSONAL KNOWLEDGE: TOWARD A POST-CRITICAL PHILOSOPHY viii (1957).
14 *See* REICH, THE GREENING OF AMERICA 24 (1970), which, of course, are descriptive terms used by Professor Reich to paint his picture of the Consciousness I person.
15 *Supra* note 1.

> Order [Good Order is Consciousness I, which is private property, hard work, thrift, personal virtue, freedom from Washington, etc.] . . . . [What would be the Ideal Judge?] And it is a good judge's business to steel himself against emotion, and against deflection by sense or sense of justice which may run counter to "the law," lest such should lead him to neglect of his stern duty . . . .[16]

For me, this is how I recall Rollison, and it was this *Weltanschauung* that I reacted against. I do not imply an outright rejection, for the process of learning is more complex than the simple dualism of acceptance or rejection. If, of course, we are talking about autonomous learning and not blatant indoctrination on one side or muddled subjectivity on the other. The person trying to learn must dig and probe into the matter, going beyond his initial judgment or bias, and those of his teacher, too.

Martin Buber gives an example of what I mean by going beyond the "simple dualism of acceptance or rejection." He wants an interaction with the ideas of another, the dialogic model. Buber makes the setting of his example a drawing class, but it is, I believe, appropriate to all teaching, including the law classroom:

> The teacher of the "compulsory" school of thought [about how to draw] began with rules and current patterns. Now you knew what beauty was, and you had to copy it; and it was copied either in apathy or in despair. The teacher of the "free" school places on the table a twig of broom, say, in an earthenware jug, and makes the pupils draw it. If the pupils are quite unsophisticated, soon not a single drawing will look like another. *Now the delicate, almost imperceptible and yet important influence begins—that of criticism and instruction.* [Emphasis mine. Source of "criticism and instruction" would be fellow students, books, other courses, and most importantly, the Professor. We students did argue heatedly on the landing outside the door of the library and in the student lounge.] . . . . In the former instance the preliminary declaration of what alone was right made for resignation or rebellion; but in the latter, where the pupil gains the realization only after he has ventured far out on the way to his achievement, his heart is drawn to reverence for the form, and educated.[17]

Professor Rollison respected our views, but respect never led to passivity about telling us where we were wrong. Buber suggests that the teacher, using an "almost imperceptible, most delicate approach," might signal a disagreement with a student's position by "raising of a finger, perhaps, or a questioning glance."[18] Rollison's style was not quite that inhibited. He came on much stronger, but I never felt intimidated. He had too much confidence in his position to need the psychic subsidy of browbeating. A few times, however, I was badly battered by the strong winds of the logic, which grew out of his Formal Style.

Let me give an illustration of "dialogic" learning that I experienced by confronting and interacting with the ideas and style of William Rollison. In the

16 LLEWELLYN, THE COMMON LAW TRADITION—DECIDING APPEALS 38, 39 (1960).
17 Buber's address, "Education," given in 1925, reprinted in the collection of Buber's writings, BETWEEN MAN AND MAN 88.
18 *Id.* at 89.

Palsgraf case,[19] my sentiments were all for Mrs. Palsgraf. She was an innocent person quietly waiting for her train in a harsh complex of a city. She was not well-to-do, which fitted nicely with my "socialistic" tendencies. Wealth should be used to compensate a very productive society's victims. In addition to my social policy arguments, I thought I could extend the business invitee rule, to impose an insuror liability on the Long Island R.R., as one of its costs of doing business. Clearly, however, it was my New Deal mentality with its socialization of risks that monopolized my feelings about this case.[20] Professor Rollison, as I recollect, liked Judge Cardozo's conclusion, at least in this case; but he went to his own social policy arguments. Certainly they were different from mine. Let me try to restate them as I remember them:

> Is it fair to impose liability for an unanticipated consequence of helping a man to catch a moving train? Some consequences we can impose the duty to anticipate: he might fall; he might hurt somebody while jumping on; or he might drop and ruin his package; but *not* that the package dropped contained fireworks, which exploded, causing the weighing machine at the other end of the platform to strike Mrs. Palsgraf. [Up to this point, his analysis is pretty traditional. It is when Rollison moves into deeper justification, parrying the insurance-New Deal thrust, that we can see his world-view of the good life and justice.] The law should impose only duties that our reasonable man can handle. We want to encourage a certain level of foreseeability, and not go beyond. To do otherwise would be illogical and unfair. Men ought to be *free* from rules that make them liable, even though they have done nothing unreasonable. Punish them when they fail in their reasonable duties, but not more than that.

Professor Rollison never convinced me with his line of reasoning or his social values. But he did unsettle my certainty. For a time I was enamored by the elegance of his intellectual construction in this case and others. How clear and tidy it all was; this must be the way the legal mind operates. Such aberrants as impersonal social forces, harsh urban complexes, socialization of risks, welfarism, be damned! I was tempted to accept his views of society and law, but my "upbringing" was too indelible. He never gave up expounding his views, and he certainly provided me, and my classmates, with alternatives to the new Conventional Wisdom. For this, and also for his genuine interest in us, we are deeply in his debt.

John W. Houck[21]

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19 Palsgraf v. The Long Island R.R., 248 N.Y. 339, 162 N.E. 99 (1928). A male passenger carrying a package ran to jump aboard a subway train pulling away from the platform. A platform guard and the train conductor assisted the man onto the moving train. In the rush and excitement, the man's package was dislodged and fell on the tracks. It contained some type of fireworks, which exploded with considerable force, and toppled a weighing machine on Mrs. Palsgraf. She was waiting for her train to go to Rockaway Beach.

Is the Railroad liable?

20 While a student at the Notre Dame Law School, I was encouraged, after determining the facts of a case, to work out my own solution and reasons, then to find out what the court actually decided and why. It is more meaningful, it helps the memory, to record the court's rule and its reasoning, for examination purposes. But, more importantly, to practice one's own legal thinking and reasoning, and comparing the results with that of the court's, this sort of note making helps the student learn how to think autonomously and legally.

21 '55L; Professor of Management, University of Notre Dame.

Tribute to Professor William D. Rollison

When our class first entered the Law School in 1956, we had little idea of what scores of Notre Dame graduates already knew about Professor Rollison. He was teaching only seniors then and we were much too occupied with absorbing our first and second year professors to discover what was in store. But, undirected, the impressions filtered in. The tall, solemn figure, the vest, the bow tie, and the white hair moving quietly at any hour to and from the office to the rear of the law library. Often, if we did not see him, we could tell from the lingering trace of his cigar that he had just passed by. Professor Elton Rechter, in his freshman contracts class, might now and then mention Professor Rollison in such a way that we sensed the deep respect and mutual friendship of the two men. Without thinking, we already knew that here was a true legal scholar who was at home with the law and with Notre Dame. We did not yet realize the depth of this truth or the other dimensions of the man. As we entered his senior courses we assumed they would be dry and technical and covered with the dust of history and death. The hornbook, *Rollison on Wills,* was there to greet us, and with its uniqueness ground down by the demands of legal style, there was little warning to expect much other than the long hard work of legal learning under an old man who would be resting upon his legal laurels and doctrines. We found out differently. Although at the sundown of his career, Professor Rollison was engaged in the monumental task of translating the subject matter of wills, trusts and estates, and estate taxation, into functional teaching materials for the student of estate planning. There was no guaranteed royalty for this prodigious effort; we were the only direct beneficiaries. Along with this comprehensive overhaul of form into substance, Professor Rollison was generously responding to the challenge of the problem method that had been posed by Dean O'Meara.

Through Professor Rollison's initiative, live client families were brought in and the class was set up as a law firm to plan their estates. In retrospect, this was all the more remarkable since it occurred ten years before it became fashionable in law schools to secure special financing for experiments in clinical education. To our further surprise, beyond the classroom, Professor Rollison showed genuine enjoyment in exploring at great length with students any subject from politics to the fortunes of the Notre Dame football team to fishing in northern Minnesota. Simultaneously, there was a more significant, gradual revelation. Professor Rollison taught estate planning as a study of human psychology—never in a heavy-handed, ideological way, but with a wry sense of humor and suggestive questioning that brought forth a whole range of self-discovered insight. The deep-felt human need to be immortal by extending control from the grave, the tender illusion of precatory language between husband and wife, the sibling rivalry at work in will contests, all revealed themselves under his gentle prodding. He was not a cynic, but he did have a healthy skepticism about human motivation which emerged not in bitter commentary but in quiet deflation of human pretension. This wisdom, hard won through a lifetime of studying human behavior, he imparted in an art form which cannot be duplicated by the law

and social science methodology of today. Borrowing from a popular song of the day, we came to know him as "Rolly-Pop." It is a name which a decade later, in the age of the generation gap, might be mistaken for disrespect. For us it was a shorthand symbol of our deep affection for him.

John E. Kennedy[22]

William Dewey Rollison

No teacher in the recent history of Notre Dame Law School so richly mixed scholarship, warmth, and the joy of living as did William Dewey Rollison. Attending classes during the turbulent days following Pearl Harbor, we students were constantly amazed at the breadth of Bill's interest. Although his first love was the law of wills, he moved with equal facility into adminstrative law, military law and, later, estate planning. In a typical class day he would mount the podium with numerous books under his arm and a sheaf of yellow cap notes which "outlined" word for word the lecture of the day. As the bell rang, he began reading the notes in a somewhat droll, staccato voice very highly pitched. After a few minutes of this, he would lift his head gently, look out at the class, smile, and begin a teasing series of questions aimed at the author of the opinion read, or at a recent law review commentary on it, or at one of his own sometimes sleepy students (one of whom later became the first Governor of Alaska). Point made, he would brush back his silver hair, lower his head and begin reading anew from those famous yellow sheaves. Quick to puncture pomposity, Bill saved his longest needles for the Eastern establishment. A native of Alabama, he would say: "People in New York think the world ends at the *Hudson* River—they have a broader view than the boys at Harvard Law who think it ends at the *Charles* River." Himself a Harvard law graduate, the Professor took great fun at spoofing, and always with a broad smile.

Of the law professors under whom I have studied, I believe Professor Rollison had the greatest single influence on my professional career. He taught me to enjoy the sometimes dreary routine of legal research by comparing it to a treasure hunt for ideas and cases. He taught us patience with the legal process. He taught us to comment critically, but never negatively. He showed us the importance of the outline in writing either a paper or a law review article or a book. He made the law come alive and in this way he truly touched us with his fire of enthusiasm for law as a way of life.

I shall never forget when later, as Dean of the Law School, I phoned Bill in Alabama to tell him our faculty had voted him an honorary Doctor of Laws degree, to be awarded him on the 100th anniversary of the founding of the school. There was a long silence and finally he replied: "God has been good to me, Bill, and so has Notre Dame. Thank the faculty from the bottom of my heart." He received the degree and thrived on his final homecoming with us.

William Dewey Rollison, by his scholarly writings, his strong influence on his students and his sense of mission in life, will continue to inspire Norte Dame

22 '59L; Professor of Law, University of Kentucky.

legal scholars for generations to come. A gentle giant has passed. Indeed, God has been good to Notre Dame in sending him our way.

William B. Lawless[23]

Rollison the Teacher

Students usually regard professors not as human beings but as characters, performers, role-players. As I remember it, my classmates and I cast Professor Rollison as the stereotypical scholar: bookish, dry, abstruse, a slow talker who carefully measured his words, intellectually remote, not fully aware of what was going on in the world around him, even in the classroom. We were awed by the fact that he had published books, but that fact reinforced the stereotype.

He looked the part. I remember him as tall, with distinguished white hair and a scholarly stoop, the very image of a professor. I see that image stalking the library reading room and the stacks, laden with books and bits of paper with notes. As I visualize his office, it was piled high with books and seems to have been, for some reason, dimly lit. There was always the smell of cigar smoke; he was addicted to cigars.

I remember that he taught torts to my class and that we thought the subject impenetrable under his teaching. Negligence, in particular, baffled us. I was much surprised to discover, a few years later, that I knew a good deal about negligence. How did he do it? Wills, which he also taught us, seemed to us at the time to be a more successful teaching endeavor; we were aware of some communication between him and us. Still the dominant view among the students was not of a human being but of a *professor* with a rasping voice who put hard questions and harried us into giving the appropriate responses.

What was the reality? He was a serious, dedicated teacher and scholar. He was generous with his time. He put in long hours at the Law School and was always available to us if we wished to talk to him outside of class. I was in his office many times, discussing torts and wills, but also other matters. Those hours were an important part of my legal education. He was an intellectual, and he enjoyed intellectual engagement. I was the fortunate beneficiary of that, even though I was not fully aware of its value at the time. Without his influence, and that of Harold Gill Reuschlein and Anton-Hermann Chroust, I would have been much less aware of the possibility that the study of law could also be an intellectual adventure. Even for the great majority of my classmates who went on to practice and to public service, he dignified and elevated our conception of what we were studying and what we were going to do with our lives when we left Law School.

I would add one further point about Professor Rollison. My classmates and I, like all law students before and after us, judged the faculty who taught us. Our judgments were categorical, often cruel. But at bottom we divided our teachers into two groups: those whom we respected and others. We respected

23 '44L; former Dean, Notre Dame Law School; member of the New York Bar.

Rollison. I would like to think that he knew that and derived some satisfaction from it.

John Henry Merryman[24]

Teacher, Counselor, Colleague, and Friend

Few people have contributed so much to the image of law school, and to the formulation in its students of a deep sense of professionalism and of commitment to excellence, as Professor William D. Rollison. Bill Rollison—teacher, counsellor, colleague and friend. I knew him in each of these categories during my years at Notre Dame. And in each of them he contributed immeasurably to the role and the ideals of my life. In retrospect and from the view of the apprehensive indifference of a law student, he was a scholar, and a gentleman. He could be interrupted at any time—during the regular week, evenings or on weekends—as he worked in his office. From my view as a fellow member of the Notre Dame law faculty, Bill Rollison was a great man. He was a good teacher; he was a scholar of demonstrated capacity; he was a ready counsellor; and for those who dared penetrate the veneer of gruffness and solitary effort, he was a close friend. But he was more than that. He gave without reservation of himself for his profession, for the Notre Dame Law School, and for each of the students who labored under him and with him. Rollison, Richter, and Manion were the triumvirate that for years projected the image and provided the continuity of the Notre Dame Law School. It is sad that the full import of their contributions is not recognized until death.

Robert E. Sullivan[25]

Professor Rollison's students whose tributes do not appear here include: George A. Pelletier, '63L, Associate Dean, School of Law, Southern Methodist University; David T. Link, '61L, Professor of Law, University of Notre Dame; James S. Casey, '61L, School of Business Administration, Western Michigan University; John Speca, '52L, Professor of Law, University of Missouri, and Robert J. Affeldt, '51L, Professor of Law, University of Toledo.

24 '47L; Professor of Law, Stanford University.
25 '46L; Dean, School of Law, University of Montana.

APPENDIX

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