

Indiana Law Review



Volume 32 No. 2 1999

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INDIANA LAW REVIEW

(ISSN 0090-4198)

Published four times a year by Indiana University. Editorial and Business Offices are located at:

Indiana Law Review
735 W. New York Street
Indianapolis, IN 46202-5194
(317) 274-4440

Subscriptions. For the following academic year, subscription rates will be \$30.00 per four-issue (domestic mailing) and \$35.00 (foreign mailing). Unless the Business Office receives notice to the contrary, all subscriptions will be renewed automatically. *Address changes must be received at least one month prior to publication to ensure prompt delivery and must include old and new address and the proper zip code.*

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POSTMASTER: Send address changes to INDIANA LAW REVIEW, 735 W. New York Street, Indianapolis, Indiana 46202-5194.



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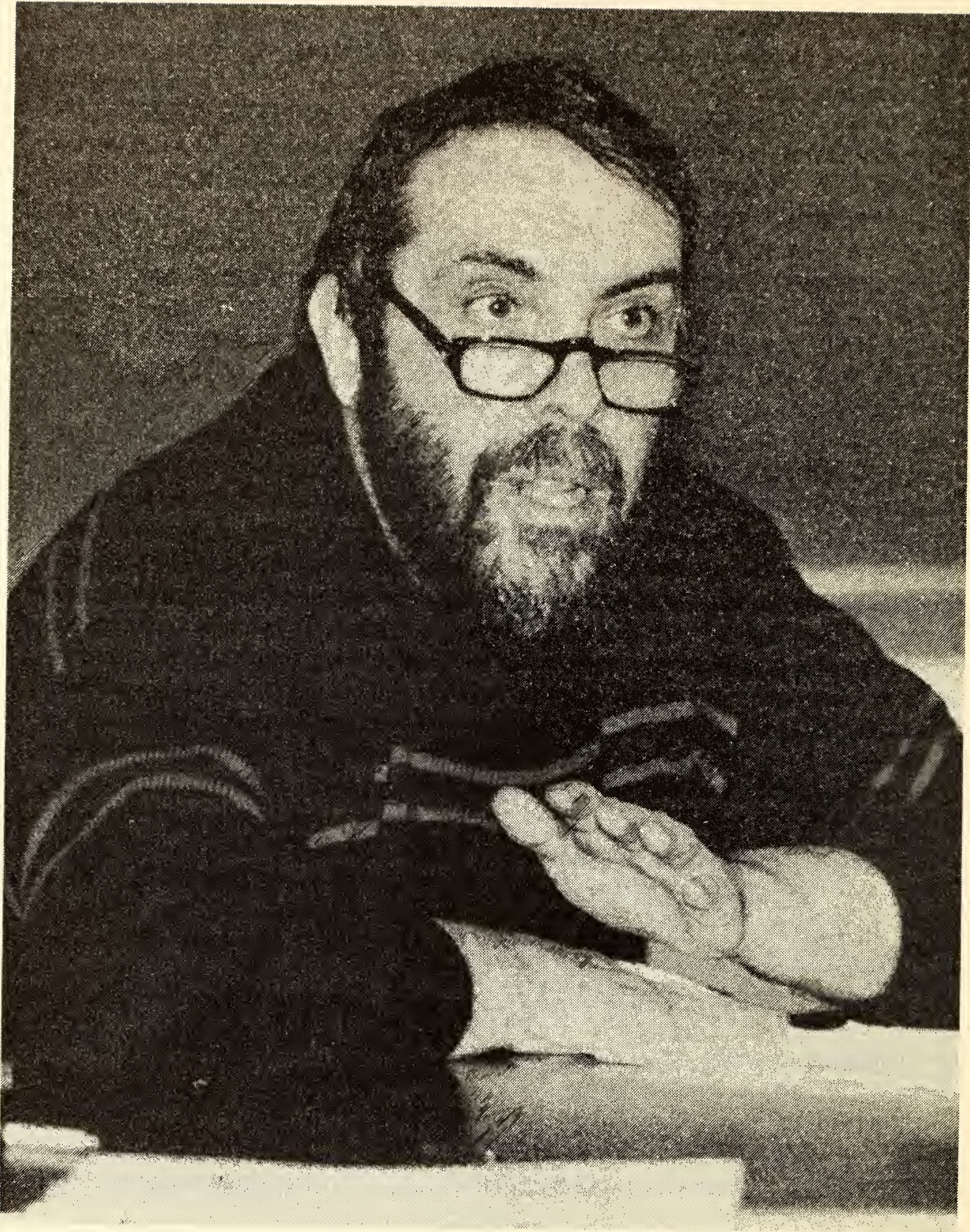
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TRIBUTE

A TRIBUTE TO KEN STROUD

JAMES W. TORKE*

Ken Stroud joined the faculty in 1972. I remember the occasion very well because, in an accidental way, I had something to do with the law school's good fortune.

In the summer of 1972, having completed my first year of teaching, I was assigned to teach the basic course in constitutional law. Ordinarily, this was a four-credit offering, but in order to fit it into the summer session, it was offered, on a one-time-only basis, for three hours. This special-bargain offer apparently caught the students' fancy, for over two hundred signed up. I felt somewhat overwhelmed by the prospect of grading some two hundred exams and appealed to Dean Bill Foust for some relief. Happily, Bill Foust thought he knew just the young man who might be able and, most importantly, willing, to step in on short notice. That young man was Ken Stroud, who at the time was working as a law clerk for Justice Roger DeBruler on the Indiana Supreme Court. Ken accepted the offer, and the law school has been richer ever since.

At Bill Foust's suggestion, Ken Stroud called me to get his bearings. We agreed to meet in my office. I assumed he must be either an intrepid or a very rash fellow to agree to teach constitutional law on less than a week's notice. When he entered my office, I was immediately struck by his forthright, down-to-earth, and cheerfully purposive manner. Our conversation took off with ease. It was soon clear to me that if he was intrepid, he was not rash; he had already given much thought to the subject. And I was also discovering that talk with Ken Stroud can flow like a river. Our friendship, and conversation, began then and has flourished ever since.

Ken acquitted himself so well that summer that he was offered a post as a visiting professor for the fall term. With hardly a pause, he took on the course in corporations—the one and only time, I think, that he ever taught it. A month and a half into the fall semester, the faculty was so pleased with his work that he was hired as a full-time, tenure-track professor. So it was much by good chance that Ken Stroud began his twenty-six year teaching career at the law school.

* * *

Ken Stroud grew up in Indianapolis. He attended Cathedral High School where he played a key role in its football powerhouses of the early 1950s,

* Professor of Law, Indiana University School of Law—Indianapolis.

receiving All-City honors in 1952 as a guard. After a year at Purdue University, where he discovered that engineering was not his metier, he joined the Army. He was accepted for special training in radio electronics, a program in which he found a special advantage in working amidst older and well-educated draftees. So the Army taught him about radios and, at Fort Huachuca, Arizona, where he was ultimately stationed, gave him a chance to play some more football; but, most importantly, his time in the service was formative in an unexpected way, for it was in the Army that he “began to read books” in a serious way.

After his military stint, he enrolled at Indiana University on the G.I. Bill. In two years, he earned a bachelor’s degree with a straight-A record and was elected to Phi Beta Kappa. Encouraged by one of his professors, he applied to Indiana University School of Law in Bloomington. A quick acceptance coupled with a sizeable scholarship offer enticed him to study law, which surely, at least to my mind, was his calling. In 1961, he earned his law degree and was elected to the Order of the Coif. But his intellectual thirst was only the more whetted, and he stayed in school for two more years of graduate study, this time in the philosophy of science. In 1963, he became an Assistant U.S. Attorney in the Southern District of Indiana.

Anyone who knows Ken Stroud knows that he led a life of physical as well as mental vigor. His on-the-road motorcycle (mo-tor-sickle, as he would say it) and whitewater rafting adventures are well-worn, but always well-told, tales. Then, not long after he began to practice law, serious injuries suffered in a motorcycle accident required years of convalescence and rehabilitation. He emerged to take a position as a law clerk with his former classmate, Justice Roger DeBruler, from whence he came to us.

* * *

University faculty are judged in three areas: teaching, scholarship, and service. Ken Stroud met the standards for each and became a tenured, full professor in 1978. His resume attests to his scholarly work. In addition to his several articles and manuals, he is the author of *Indiana Appellate Practice*, a standard guide for Indiana lawyers, which is in its second edition. His teaching efforts came to focus on criminal law, evidence, and appellate practice. In addition to teaching the basic courses in criminal law and evidence, he combined his areas of expertise with his criminal appellate work and created the course in appellate practice. What made this course uniquely rigorous was its use of live criminal appeals. During his academic career, Ken maintained a steady criminal appellate practice. Several of his pro bono clients—including the notorious Steven Judy—faced the death penalty, and two of his cases led to petitions for certiorari in the U.S. Supreme Court. As attorney of record, Ken utilized his cases as the focus of the appellate practice course. Week by week, he guided his students through each step in the appellate process culminating in an end-product that was tested in an actual judicial decision. He merged his legal and philosophical interests in his seminars in law and psychiatry, bio-ethics, and civil disobedience, which were always heavily enrolled. He was a superb classroom teacher who took his principal task—to train lawyers—with high seriousness.

His beginning students were always warned that they were being armed with lethal powers to do good or to do evil. His impact as a classroom teacher was confirmed by his students who, following his first year of teaching, chose him as the Outstanding New Teacher and three times thereafter awarded him the Black Cane Award as the outstanding teacher on the faculty. In addition to his pro bono representation of appellants in criminal cases, he served the University and the law school generously, for many years shouldering the chairmanships of a variety of crucial committees.

These categories of performance, as useful as they may be for organizing *curricula vitae* and awarding promotion and tenure, tend to mask, perhaps even distort, what the whole person brought to the institution. Ken Stroud's resume lists the basic data, but hardly hints at, much less displays, what he most importantly contributed to his colleagues and his students.

* * *

Ken Stroud is a consummate teacher. I have already reported the regard his students had for him. But beyond this, he is a teacher for all who will listen. Those of his colleagues and friends who read this tribute will understand what I mean when I say that he was my best teacher, that much of what I might have achieved as a teacher and scholar was built on lessons I learned from Ken Stroud.

His art is made up of three parts: hard work and thorough preparation; intellectual rigor and honesty; and, perhaps his rarest gift, an ability to engage others in conversation as supple, clear, and lively as a spring stream.

I have said that his teaching began with hard work and thorough preparation. I have known no other colleague who, right up to his retirement, put so much effort into preparation for each class. I experienced this ethic over the many summers in which other colleagues and I joined Ken in the study of legal philosophy. In those summers, I learned from him what it takes to gain a full and honest understanding of a text. The preparation, care, and discipline that he brought to this task became our prescription and rule. As a student and a thinker, he was adventurous but never satisfied with an easy understanding or superficial chatter. To every topic, he brought a broadly-informed mind that was without ostentation, an intellectual rigor free of rigidity, and a seriousness of purpose without self-importance. He always, in a favorite phrase of his, "stayed on the merits." Old friends have often heard him invoke his "spiral theory" of thought. To my understanding, the spiral theory is a way of looking at the world with a lawyerly eye: as soon as you come to grasp an argument from one side, you must turn and attack it from the other, and so on in an ever-rising spiral of insight. Thought never comes to rest.

I have noted that Ken Stroud has a special gift as a talker. In argument, he can be bold, muscular, aggressive, and even, with the right opponent, ferocious; but he is never unkind nor ever a bully. In conversation, he possesses an ease that can engage a great spectrum of people for, like any good talker, he has a universal interest in life.

He applied a comparable intensity and ethic to issues that arose within the law school. Discussion at faculty meetings was never complete without Ken

Stroud's measured analysis. I will always be able to hear him beginning, "It seems to me there are three separate issues involved here," and then, issue by issue, taking the problem apart to reveal its crux. He treated with moral care and concern not only the legal texts with which he worked, but also the people and the world around him. He acted from a sense of what had to be done, never for power or praise or for glory.

So it is the ethics of thought, the responsibilities of collegueship, and the example of a moral life which Ken Stroud most importantly brought to the law school. And it is these qualities that will most be missed when he retires.

In *The Meditations*, Marcus Aurelius lists some of the virtues which he had learned from the example of his friend and fellow Stoic, Maximus:

[T]o be of good cheer in illness and in all other misfortunes: a well-balanced disposition, sweet temper, dignified bearing; to perform one's appointed task without resentment; the fact that all men trusted him to mean what he said and to do whatever he did without malice; to be immune to surprise, undaunted, never hasty, dilatory or at a loss, never to be downcast or sneering or again angry or suspicious, but generous, forgiving, and truthful; to give the impression of one who cannot be corrupted rather than of one who has been reformed. Also that no one thought himself slighted by him, or would venture to consider himself his superior.¹

He could have been writing of Ken Stroud.

1. Marcus Aurelius, I THE MEDITATIONS 15 (G.M.A. Grube trans., Hackett 1983).