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In Memoriam: Professor Richard S. Harnsberger

Susan Poser*

This volume of the NEBRASKA LAW REVIEW is dedicated to the memory of Professor Richard S. Harnsberger, who passed away on March 29, 2012.

Professor Harnsberger was a native of Ashland, Nebraska and a 1949 graduate of the College of Law. A decorated officer in World War II who fought in the European theater, including Normandy, he attained the rank of Captain and earned five bronze stars. Professor Harnsberger joined the faculty of the College of Law in 1956 and took emeritus status in 1992. While at the Law College, he held the Cline Williams–Flavel A. Wright Professorship. He taught Constitutional Law, Water Law, Legal Profession, Oil and Gas, and Civil Procedure. He was a prolific scholar whose work gained national attention. In 1999, he was honored with the Groundwater Foundation’s 1999 Maurice Kremer Groundwater Achievement Award. The Nebraska State Bar Foundation presented him with its 2001 Outstanding Legal Educator Award. The Lawrence Berger and Richard S. Harnsberger Faculty Wing of the College of Law was dedicated in 2003. After taking emeritus status in 1992, he continued to teach or co-teach classes and seminars.

Professor Harnsberger personified what we all hoped and wished the law school could be, and what we on the faculty could be as teachers and scholars. Dick was incredibly smart and incredibly kind. He had a wicked sense of humor, and was admired, nay, adored, by generations of students, and by generations of colleagues.

I met Dick in 1994 when I first came to the Law College as a visiting assistant professor. During most of the eighteen years that I knew him, Dick continued to roam the halls, stopping in to talk with his many friends and colleagues about the news of the day; the latest Supreme Court case; or just to gossip. As the years went on, Dick would sometimes stop by my office and start speaking in what seemed like the middle of a thought, or the middle of a discussion we had started

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days earlier. Although it sometimes took me a few minutes to figure out what we were talking about that day, by the time the conversation ended I had always been stimulated to think of something new or interesting, or we had had a good laugh.

On April 12, 2012, there was a gathering at the College of Law of faculty, members of the Nebraska bench and bar, family, and friends to remember and honor Professor Harnsberger. At that gathering, we heard from three former students of Professor Harnsberger's: UNL Chancellor Harvey Perlman, Nebraska Supreme Court Justice Kenneth Stephan, and former President of the Nebraska State Bar Association, Robert Bartle. Professor John Lenich of the College of Law also presented remarks. In honor of Professor Harnsberger, these presentations are published in this volume.

Dick Harnsberger had a warmth, a wit, and a charm that will continue to make me smile for years to come. We are honored to dedicate this volume of the Nebraska Law Review to his memory and in that spirit to publish the remembrances of four of his distinguished students and colleagues.

Harvey S. Perlman*

Dick would not have us grieve at his death. Indeed, he would probably not like us making much of a fuss about it. He often objected to the standard tombstone inscriptions—the dates of birth and death separated by a dash, as though the dates were important, and all that was done in life was not. Dick had a long and productive “dash,” filled with accomplishments to be sure but, more importantly, populated with the strong personal relationships he formed and the many lives he fostered.

Indeed, Dick had such a memorable impact on those of us privileged to engage with him that his accomplishments were often overlooked. When you were in his presence, you did not think of him as a noted legal scholar—essentially a pathfinder in water management law. It was hard to imagine him marching across Europe with Patton's army or being a hard-nosed prosecutor in the county attorney's office. He was, for most of us, an amusing, bright, and complex character. Every encounter with him ended with at least a smile if not a laugh. Every conversation with him was provocative and more often than not he was the provocateur.

Certainly as a law student, most often as a colleague, and frequently as a friend, one left an interaction with him wondering about

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what he said, wondering about what he meant, and wondering about whether he was serious or trying to provoke a reaction. Leaving his physical proximity did not end the conversation because the nuances, the analogies, the metaphors stuck with you until you managed, often minutes or hours later, to make sense of them.

I knew Dick Harnsberger for a long time. It reminds me of the Irish toast that goes: “May all my friends live to be ninety and may I be around to sing at their wakes.” I began dating Susan in 1961 when I was nineteen and she was seventeen. Her parents were friends with Dick and Jean. The Harnsbergers would occasionally visit the Unthanks at their cabin on the Columbus lakes where Dick would often make the fourth for bridge.

More memorable for me, however, were the times I was present when Susan’s parents hosted their dinner club with the Harnsbergers and several other couples from the community. My impression was that being outspoken was a condition for membership in this club. All of the members, except Dick and Jean, were passionate supporters of Nixon and then Goldwater. Dick, you may know, was supportive of neither and, as you may guess, didn’t hide his lack of enthusiasm.

From these occasions, long before law school, I became familiar with his mode of argument, his use of the Socratic dialogue, the tortured analogies that became understandable only hours after they were uttered, the arguments that even the devil wouldn’t claim, the absolute refusal to stake out a clear position (or should I say a refusal to acknowledge a clear position) even when everyone knew what his position was! When I got to law school I learned these traits were not the result of pre-dinner cocktails—they were inherently Dick Harnsberger!

During my undergraduate days, my fraternity brother Steve Seglin and I worked at the Morris Paint store. Dick was an occasional customer. When I visited Dick in the hospital a couple of days before his death, he reported his vivid memory of walking into our class the first day and seeing those two paint store guys in the front row. Unfortunately my memory of that day was not seeing my old customer but the inane answers I gave to his first day grilling and my belief at the end of that hour that whatever had just occurred was a total mystery to me.

Like all of you, the memories of interactions with Dick are special. He provided me with my first real “case” while working as his research assistant in the summer after my first year in law school. He was ticketed turning left at Randolph and 27th street. We temporarily gave up worrying about the water law of Nebraska to focus on this injustice. He returned to the scene of the crime to discover that there was an argument to be made that the “No Left Turn” sign was par-

tially obscured and I discovered a statute in Nebraska that all traffic signs must be observable by a “reasonable person.”

We were successful in achieving a withdrawal of the complaint, proving to me that in law, the smoke you generate is often a more potent weapon than the fire—which, the more I think of it, described Dick’s teaching style—smoke that was a more effective tool than fire to provoke his students intellectual growth.

He was fortunate to share his life with two women who became important ingredients of his existence: his wife Jean and, after her death, his friend Bobby Williams, both of whom were his important soul mates. He retained his intellectual curiosity and his youthful vitality to the end. He continued to acquire new interests including a passion for women’s basketball.

When Susan saw him in the last month of his life in a rehabilitation center, he was still politically engaged, reading a copy of “The Week”—a magazine of politics, opinions, and cartoons—while watching CNN. During his and my last visit, he was harnessed to the multiple tubes and cords that are the signatures of modern medicine and yet, they had no impact that I could detect on his vibrancy, on his enthusiasm for conversation, on his infectious humor or his optimism.

I wrote in an issue of the NEBRASKA LAW REVIEW dedicated to Dick that knowing and interacting with him was one of those vivid experiences of law school that was shared by and thus connected more than fifty years of Law College graduates. He was unique, his mind worked in strange and wondrous ways, it worked constantly, it engaged anyone within earshot, and it made our own minds work better.

Our inventory of memories of Dick is now a finite number. Yet for most of us it is a large and rich storehouse. It is a testament to him that whenever any of us make a withdrawal from that storehouse we will be nostalgic, bemused, and extraordinarily grateful for the opportunity.

No, Dick would not have us grieve for him. He would not have us fuss over his death. His humility probably did not allow him, in his last hours, to even comprehend how vivid are the memories he left with us, how many lives he nurtured, how long his shadow will remain, or how much we will miss him.

Kenneth C. Stephan*

When I think of Professor Harnsberger, I remember a beautiful morning almost forty-five years ago. In the autumn of 1967, I was a

* Justice, Nebraska Supreme Court.

very young and very anxious first year law student, trying to make sense of what I had gotten myself into. I was seated in the main classroom of the old Law College building on 10th Street at the west edge of City Campus. The weather was warm and the classroom was not air-conditioned, so the windows were open. Professor Richard Harnsberger came to the podium and began talking about the Constitution. By the time he was finished, any doubts I may have had about my career choice had drifted out of those open windows. From that point on, I knew that I was where I wanted to be, doing what I wanted to do. Throughout his distinguished professional career, Richard Harnsberger was exactly where he wanted to be, doing exactly what he wanted to do. And he did it brilliantly.

Last week, I called my friend and classmate Jim Walters, who practices law in Atlanta. When I told him of Professor Harnsberger's passing, his first words were, "Harnsberger really loved the Constitution!" He truly did. And it was important to him that his students understood *why* he loved the Constitution. And so he taught them, employing his own unique blend of intellect, passion, and humor.

He would typically start out by saying, "Well, you're sitting in your law office in the middle of the afternoon with nothing much to do and the phone rings. This guy has been arrested and he is about to be arraigned and he needs advice." He would lay out the facts of this hypothetical defendant's problem, and then he would call on someone and ask, "What's the first thing you would do?" The student would do his or her best to identify and analyze possible constitutional issues. Professor Harnsberger would smile and say, "Well, probably the first thing you would do is figure out how to find your way the courthouse." The resulting laughter put everyone at ease, and he would then move on. But there was a point to the humor: unless you understand and successfully navigate through basic procedures, you will never reach substantive issues.

Another of Professor Harnsberger's favorite answers to his own "What's the first thing you would do?" question would be to reach into his suit coat and say, "You may want to consult your pocket Constitution." Again, the humor had a point. In his view, the Constitution was not simply a historical document to be revered but kept on a shelf. He regarded it as an everyday reference for the practicing lawyer, to be consulted regularly and always kept at the fingertips. Jim Walters and I both have pocket Constitutions. I usually keep mine in my briefcase. I think it was no accident that Professor Harnsberger carried his near his heart.

When Professor Harnsberger spoke of "The Great Man," we knew he was referring to Chief Justice John Marshall, whom he admired. When he muttered something about a "twenty-five watt bulb" in reference to the author of a more contemporary judicial opinion, we knew

that he was not particularly impressed with its reasoning. He encouraged us to strive for higher wattage.

Sometimes, Professor Harnsberger's humor came back at him. Neil Danberg recently reminded me of an incident that occurred on the first day of our Constitutional Law class. James Martin Davis entered the classroom a few minutes late, and not unobtrusively. Professor Harnsberger stopped talking and waited as Davis settled into his seat. He then smiled and asked, "Are you sure you're in the right place, Mr. Davis?" Without missing a beat, Davis smiled and shot back, "This is Creighton Law School, isn't it?" Harnsberger loved it, and Davis became one of his favorite targets.

I took Professor Harnsberger's classes in Constitutional Law, Pleadings, and Professional Responsibility. I did not take his Water Law class. I remember thinking at the time that this was a somewhat esoteric area of the law that I would probably never need to master. I couldn't have been more wrong. In most of the major water law cases which I have had a part in deciding over the last fifteen years, Professor Harnsberger's scholarly work was cited by the parties, the court, or both. He trained many of the skilled lawyers who argue water cases in Nebraska courts and elsewhere. He will long be remembered for his pioneering work in this area of the law which is so important to his beloved native state.

Professor Harnsberger was a friend and contemporary of my father-in-law, now retired Judge Donald R. Ross of the Eighth Circuit Court of Appeals. Both were decorated veterans of World War II, having served in the European Theater. Professor Harnsberger was an artillery officer and Judge Ross was a B-17 bombardier. After the war, both received their law degrees from this college. For many years, Professor Harnsberger would invite Judge Ross to speak to one of his classes. Afterwards, they would both tell me how much they enjoyed their time together with the students. Judge Ross is unable to be here today, but he has asked that I convey his deep admiration and respect for his departed friend and comrade.

In a letter of advice written to his brother, another leading figure of that generation stressed the importance of being happy in one's work. Dwight Eisenhower wrote: "Happiness in work means that its performer must know it to be worthwhile, suited to his temperament, and . . . to his age, experience and capacity for performance of a high order."¹ By that definition or any other, Richard Harnsberger must have found great happiness in his work. He devoted his life to the worthwhile cause of teaching students how to become good lawyers, proficient in their work and ethical in their conduct. He did it with style, grace, consummate skill, and personal humility. Being a law

1. STEVEN E. AMBROSE, *EISENHOWER: SOLDIER AND PRESIDENT* 49 (1990).

professor was perfectly suited to his temperament, experience, and capacity for performance of a high order. It was what he was born to do.

I suppose that a few law professors are feared by their students. I know that most are respected and admired. But Professor Richard Harnsberger was loved—for what he taught us, for how he taught us, and for who he was. Those of us whose lives and careers he touched will never forget him.

Robert F. Bartle*

I have known fine teachers. I have met distinguished scholars. I have worked with outstanding lawyers. Rarely, however, do all such qualities combine in one individual. Rarer yet: to know one who holds a law degree coincident with a shy personality and a reticence to talk about himself. Such was the stuff of Professor Richard Harnsberger.

We can pay him no greater tribute than that he left in his final instructions to family and loved ones: no visitation, no sermon, private services. However, no student, colleague, friend or lawyer has appeared to protest today's celebration of the life of the Professor, except, of course, Professor Harnsberger himself. In your mind's eye, you can picture "Harnsie" observing this gathering—from across the horizon—shaking his head, looking a bit put out, adjusting his reading glasses, and telling us "all this fuss is just a bit embarrassing."

So what was the mystique of Professor Harnsberger, perhaps the ideal teacher, scholar, colleague and friend? Was it the classic look of the law professor? In an issue of the NEBRASKA LAW REVIEW, most fittingly dedicated by the editors to Professor Harnsberger in the fall of 1987, Dean John Strong observed that "Dick looks so perfectly like a law professor, always neat, formal, slightly 'tweedy' and, in an era in which many law professors may easily be mistaken for rock guitarists, even a little anachronistic."¹

Strong went on to observe that he once acquired a tweed motoring cap to match Harnsberger's, but then noted, "I fancy that I never achieved quite the Chipsian quality that he derived from his." Indeed, Harnsie was much more Professor Chips than that stereotypical law professor we recall from the *Paper Chase*² film of 1973, that of Professor Kingsfield, portrayed by the imposing John Houseman. While the master of his classroom, Professor Harnsberger could not even imitate

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1. John William Strong, *Dedication*, 66 NEB. L. REV. 3 (1987).
2. THE PAPER CHASE (Twentieth Century Fox 1973).

the style of the stereotypical Houseman; after all, Harnsie was perhaps 5'4 and 130 lbs, wet. While others demanded respect through intimidation, the Professor preferred wit, with just a dash of humor, and perhaps a pinch of teasing.

What distinguished Professor Harnsberger was his ability to ask questions. And it was not just the mastery of the Socratic method which he illustrated in the classroom. Nor do I mean solely his effort to convince students and colleagues that the key to the winning argument is the advocate's ability to frame the question. No, I am not simply focusing on Professor Harnsberger's teaching ability when I assert that he was the master of asking the question.

The Professor employed the "art" of asking a question in all forms of discourse and conversation. It was part of his innate ability to listen. When current and former students were drawn to his office for counseling, he was able to employ the art of the question to both allow them to find answers themselves, and to emerge from his chambers feeling better about their conversation. The Professor also used the art of the questioning process to deflect the conversation from penetrating to his own achievements, accomplishments, or for that matter, even his personal life. In a very sincere way, Dick Harnsberger was always more concerned about learning about us—his students, friends and colleagues, than he was about revealing his own achievements or personal beliefs.

And so only a few knew Captain Richard Harnsberger served in a field artillery battalion during WWII, and was awarded the Bronze Star for his service in Normandy. A few knew that he began his career in private practice in 1949, and after six years in the so-called "real world," he served for a year in the Lancaster County Attorney's office, before teaching. Imagine, if you will, Deputy County Attorney Dick Harnsberger. Besides his immediate family, a few knew that he was a loving husband, father and grandfather, as well as a caring close friend to just a few more. Those were the quiet personal qualities of the Professor, which defined him beyond his vast scholarly achievements.

The father of our favorite teaching method, Socrates, despite being considered one of our greatest philosophers, left no writings at all. Most of what we know about his life and work comes from the writing of his disciples and his students, such as Plato. Like Socrates, Harnsberger left without allowing for sermons, diaries, or even a funeral tribute. But he left us with so many disciples. We are the colleagues and admirers of the wise Professor. It is for us, the students, to carry forward those quiet qualities of listening, tolerating, and teaching, asking the types of questions which make others around us feel so much an integral part of the conversation. So I ask, rhetorically, is there any question that he was the perfect teacher?

John P. Lenich*

My friend, Dick Harnsberger, was a man of great courage and great charm. His courage manifested itself on the battlefield during World War II and also manifested itself in his daily life. He had the courage to reach out to people he had never met before, to talk with them, to find common ground, and to make them his friends. He reached out to his fellow players on the Ashland High School football team, to his fraternity brothers at the University of Nebraska, to his fellow soldiers during the siege of Metz, to his coworkers at Stewart & Stewart, to his students at the College of Law—and he charmed them all. He even charmed some of the biggest names in show business.

When Dick was a youngster, about eight or nine, he took the train to Chicago with his mom and older brother to visit some relatives. One afternoon, they had lunch at a restaurant on State Street, not far from the State Theater where the Three Stooges were performing their vaudeville act. The Three Stooges weren't on stage at the time. They were instead having lunch in the very same restaurant, sitting at a table in the corner, protected by an army of waiters in white aprons.

Dick's brother dared him to go over and get the Three Stooges' autographs. Dick didn't move. His brother then double-dared him. And what younger brother can resist a double dare? So Dick headed off with paper and pen in hand, toward the table where the Three Stooges were sitting. The army of waiters protecting the table closed ranks to repel the young invader. And then Curly yelled, "Let the kid through!"

The waiters parted like the Red Sea and allowed Dick to pass by them and reach the table. As the Three Stooges were signing their autographs, Moe asked, "So, kid, where're you from?" Dick answered, "Ashland, Nebraska." The Three Stooges thought that was the funniest thing and started laughing and laughing. They just couldn't seem to stop. Dick wasn't sure why they thought his hometown was so funny—but he was sure of something much more important: he had their autographs.

Just as Dick was able to pass through the army of waiters to reach the Three Stooges that afternoon so many years ago, Dick was able to pass through the defense mechanisms that we all use to keep strangers at a distance. There was just something about him that made us want to get to know him, to spend time with him, and to make him our friend. Not surprisingly, he had lots of friends. We valued his friendship because he was somebody worth having as a friend. And he was a true friend, the kind of friend who would do anything for you. Well,

* Ross McCollum Professor of Law, University of Nebraska College of Law.

to be honest about it, I suppose I should say that he was the kind of friend who would do *almost* anything for you because sometimes Dick would just say no for reasons I couldn't understand.

For example, when I visited him in the hospital one evening, we watched a college basketball game and talked about everything and anything, from blood tests to John Grisham's newest novel, *The Litigators*, which we had both enjoyed reading, perhaps because it was set in Chicago and we both had Chicago connections.

As would often happen when talking with Dick, the time just flew by. At one point, I looked at my watch, was surprised at how late it was, and made a suggestion that I thought any good friend would have jumped on. I said, "Hey, Dick. It's almost ten o'clock. How about we watch *The O'Reilly Factor*?" "No!" He just wouldn't go there. Now a little later he did admit to the nurse that he read *The Omaha World Herald*—when he was really desperate. But *The O'Reilly Factor*, well, that was a bridge too far.

Even though Dick and I didn't see eye-to-eye when it came to politics, I could easily see why he had so many friends. He was a genuinely nice guy. He liked people. He found people interesting. He cared about people. In that respect, he was much like George Bailey, the fictional hero of that holiday movie classic, *It's a Wonderful Life*.

Now certainly there are differences between George Bailey and Dick Harnsberger. George Bailey was a businessman who ran a building & loan. Dick was a law professor who ran a classroom. George had a younger brother, Harry, who was a pilot during the war and came home afterwards. Dick had an older brother, Carl, who was a pilot during the war but didn't come home afterwards. George had four children and cherished them. Dick had two children and cherished them. George was helped through some tough times by an angel named Clarence. Dick was helped through some tough times by an angel named Bobby.

But despite these differences, both George Bailey and Dick Harnsberger had some things in common. They touched people's lives. They helped people. They made people laugh. They made people smile. They made a difference in people's lives and, in doing so, they made the world a better place. And that's why, like George Bailey, Dick Harnsberger really had a wonderful life.