

2020

Picturing Marty Gardner / Remembering Professor Martin Gardner / Remembering Marty Gardner / In Memoriam Professor Marty Gardner / In Memoriam to Professor Martin (Marty) Gardner

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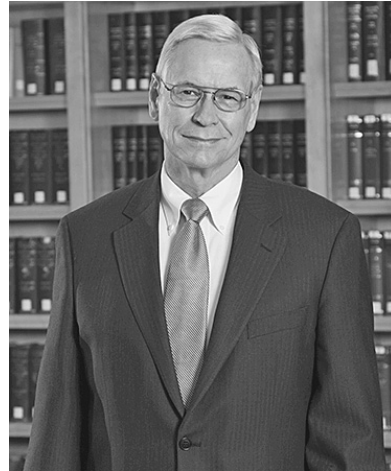
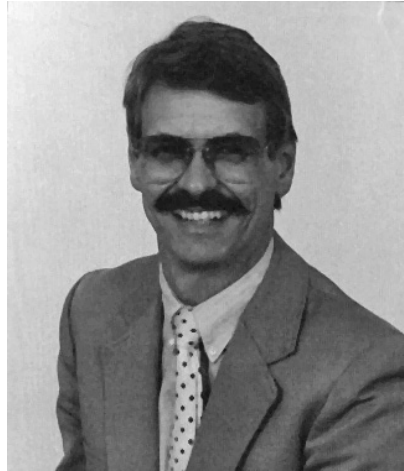
Recommended Citation

Steven L. Willborn, Robert Denicola, Richard G. Singer, Richard Moberly, and Anna W. Shavers, *Picturing Marty Gardner / Remembering Professor Martin Gardner / Remembering Marty Gardner / In Memoriam Professor Marty Gardner / In Memoriam to Professor Martin (Marty) Gardner*, 99 Neb. L. Rev. 1 (2020)
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Steven L. Willborn*

Picturing Marty Gardner



Marty Gardner was my colleague on the faculty for 40 years, my entire tenure with the Law College. I knew him from shortly after he joined the faculty when he looked like the picture on the left. And I saw him last on the Saturday before his death when he looked like the picture on the right. Because I knew Marty for so long, I hold many images of him in my mind. The two above and many, many more.

But Marty was much more than a colleague to me. He was also a good friend. Even a good friend, however, only knows a narrow slice of another person, especially one as multifaceted as Marty. Marty was deeply religious, a teacher, scholar, musician, athlete, parent, and many other things. I knew him in only a few of those roles. But in all the roles that I knew, and I'm confident in all of them, Marty's approach was guided by his underlying character, one of care, respect, and decency. Let me explain with three of the ways in which I knew Marty.

The first picture I have of Marty in my mind is from when I first arrived at the Law College in 1979. I think the first thing Marty said to me when I arrived in Lincoln was "Do you want to play basketball at noon?" Marty and a rotating gang played basketball two or three

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times a week at the nearby Nebraska Wesleyan campus. The group included students (who came and went), Wesleyan faculty members, a community member or two, Marty, and me. We did this for many years. One day shortly after I arrived, I was guarding him and I accidentally pushed my thumb into his eye socket. Hard. For the next few weeks, Marty sported a big patch over his eye. I never learned all the details, but it was a serious injury. For the next few years, Marty commented that it really wasn't a good idea for an untenured faculty member to attack a tenured faculty member before the crucial vote. For the next few decades, Marty reminded me with a smile how lucky I was that he was such a forgiving soul. But, of course, there was never any doubt about any of that. He *was* a forgiving soul. And he was very aware of the vagaries of sport, which inform us of the vagaries of life. A vagary that came to mind all too vividly with his sudden and unexpected death.

Another picture I have of Marty in my mind is from the late 1980s when his son, Josh, was playing basketball in high school. I went to several games with Marty to watch Josh play and to watch Marty watch Josh play. The latter was more interesting than the former. I saw Marty, helpless to do anything as Josh excelled in the moment (or didn't), hoping with all his might that the ball would bounce right, and knowing full-well about hope's futility. I was a new father then and just beginning to understand the deep yearnings of parenthood. I began to see the future by seeing Marty watch and hope and yearn for Josh.

The third picture I have of Marty in my mind is from recent years when I moved into the office next to his. I don't think I'm disclosing any deep secrets when I say that the faculty hallways are rather quiet on weekends. But I would go to the office on Saturdays, very early as is my wont, and Marty would come a bit later. When he arrived, we'd exchange a word or two in my doorway, usually about sport, then he'd retreat to his office and I would begin to hear a slight echo of classical music. I had always known Marty was very hard working, committed to his students and his scholarship. I learned that even more directly in those last few years. As I said, that is how I last saw him before his sudden death. And, even if Marty had somehow known what was to come, I expect I would probably still have seen him there that last Saturday. This is who he was. This is what he did. I expect I will always picture him this way: in my doorway, about to listen to the world's most beautiful music, and turning to begin work. But now the doorway is empty and the music never starts.¹

Godspeed, Marty Gardner.

1. But in another way, the music will never stop. You can still hear Marty playing Beethoven and Barnby on his beloved clarinet. <https://www.gpcw.org/audio/beethoven.mp3>; <https://www.gpcw.org/audio/barnby.mp3>.

Robert Denicola*

Remembering Professor Martin Gardner

*“I always wanted to be a law professor. I went to law school
hoping to do that.”*

Marty Gardner

Professor Martin Gardner liked his job. He spent forty-eight years in legal education and his quiet joy was evident in everything he did. He grew up in Utah, the son of Ralph and Elaine Gardner. According to Marty, his first noteworthy achievement was serving as the clubhouse boy for the Salt Lake City Bees, then the minor league AAA affiliate of the Cleveland Indians baseball team. He studied music and philosophy at the University of Utah, and then stayed on to earn a J.D. degree and serve as an editor of the *Utah Law Review*. As soon as he could, he made his way into law teaching as an Instructor at the University of Indiana. The University of Alabama hired him away as an Assistant Professor the following year, and four years later the Law College was fortunate to lure Marty to Nebraska. (Alabama knew what it had lost, and a decade later enticed Marty back for a year with a Distinguished Visiting Chair.) Ten years after his arrival at Nebraska, Marty was named the Steinhart Foundation Professor of Law and he remained a faculty member at the Law College for forty-three years.

Marty had several passions. His family and the Church of Jesus Christ of Latter Day Saints always took precedence, but law teaching, music, and Husker athletics followed close behind. He loved music, a passion he shared with his wife, Anne, an internationally-known flutist. Marty was an accomplished clarinet player with the Utah and Nebraska National Guard bands and several local music ensembles. It was not uncommon to hear music by Edward Elgar, Gustav Mahler, or Ralph Vaughan Williams escaping through Marty’s partially-opened office door.

Marty was also a persistently hopeful Husker fan. Every season brought renewed optimism that the Husker football team would return to national prominence and the men’s basketball team would win

* Margaret Larson Professor, University of Nebraska College of Law. A version of this remembrance appears in the NEBRASKA TRANSCRIPT.

its first ever game in the NCAA tournament. As the season progressed Marty would stubbornly cling to that optimism, spinning increasingly elaborate scenarios that could still produce the success that more rational fans knew was not to be. When it became obvious even to Marty that this was not to be the year, he would seamlessly pivot to next season, emphasizing the returning players, new recruits, and a more favorable schedule. (Marty never lost sight of his true priorities and gave away his basketball tickets to every Sunday game.)

As the Law College's resident Anglophile, Marty twice jumped at the opportunity to teach in our summer program at Cambridge University's Downing College. His interest in all things British traced back to his church mission in Bristol, England as an impressionable young man. He delighted in visiting a daughter living in Wales and recounted his pleasure at attending the annual Proms concerts at the Royal Albert Hall in London.

"In law school we plant the seeds for a lifetime of learning and growing."

Marty Gardner

Marty taught Criminal Law, Criminal Procedure, Family Law, and Juvenile Law at the Law College. (He initially took on the latter course to fill a curricular need at the College, but quickly made it his own). He genuinely enjoyed teaching, as evidenced by his repeated willingness to continue that pursuit during the summer, and not just at Nebraska. His reputation as a teacher made him a prized target for summer teaching at other law schools, including Washington University, North Carolina, BYU, Utah, Missouri, Tulsa, and Iowa. Marty was generous in every way, including with his time. Students regularly appeared unannounced at Marty's door, and he would turn off his music—no small sacrifice for Marty—and spend as much time as they desired discussing the intricacies of the Model Penal Code or the philosophical underpinnings of the sixth amendment. Those conversations would invariably include a heartfelt inquiry from Marty into the student's general well-being. He was a prolific scholar, always willing to put in time on a Saturday to move a project along. He wrote law school casebooks for courses on Criminal Law and Juvenile Law, as well as a popular student-oriented Juvenile Law treatise. The multiple editions of each of those works attest to their utility and impact. He had literally dozens of publications in law reviews, including top national journals at schools like Duke, Northwestern, Vanderbilt, and others. Marty wrote significant pieces analyzing controversies under the fourth, fifth, sixth, and eighth amendments, but he continually returned to his primary concern—the impact of the law on juveniles. He lamented the absence of a systematic theory of young persons' rights. He posited a right to rehabilitation for juvenile offenders and a right to a jury trial in cases seeking punitive dispositions. He pro-

moted student privacy rights and critically examined the constitutionality of strip searches in schools. The constitutional rights of juvenile offenders were a consistent focus of his work. Marty's final article, dealing with school interrogations, will be published posthumously in the *Nebraska Law Review*.

Marty helped out at the College of Law in other ways. He was part of a collaboration with the Law and Psychology Program on a grant investigating juror reactions to instructions on mental illness. He spearheaded the Law College's most recent accreditation review by the American Bar Association and the Association of American Law Schools. Every year he would make a recruiting trip to colleges in Utah that yielded a steady stream of new students for the Law College. That remarkable success was due in no small part to the welcoming and supportive network that Marty established to assist the students he had brought to Nebraska. Marty also served as the Reporter for the Nebraska Supreme Court Committee on Practice and Procedure in its revision of the Nebraska Criminal Jury Instructions. In 2009, Marty received the Law College Alumni Council's Distinguished Faculty Award.

"What we teach is important because it affects the lives of everyone in very significant ways, and students should develop a sense of that."

Marty Gardner

Marty Gardner will be missed and fondly remembered by the students, faculty, and staff at the College of Law, and by generations of our alumni. I will personally remember him as one of the kindest persons I have ever met.

Richard G. Singer*

Remembering Marty Gardner

Collaborations can often be difficult so when Matthew Bender suggested that Marty Gardner and I co-author a text book about criminal law, I was a bit leery. I had read Marty's writings, and knew that we shared an interest in the "just deserts" approach to criminal law. As it so happened, we had each been working on producing "supplements" to the case books we were using, and had separately approached MB about a book. MB suggested—no surprise—a joint work, introducing more materials on "just deserts" and the "excuse-justification" distinction than most case books then used. Ironically, while Marty and I had both begun our teaching careers at the University of Alabama, I had already left by the time he arrived, and we had never met. Because it is not unknown for academics to hold strong, even rigid, convictions, and to fight even after victory on an issue, it was with some trepidation that we held our first phone call. That one phone call (the days of email, much less Skype, etc., were far in the future) quelled those concerns. Marty was easy-going, gregarious, and authentically collegial. This was going to be not merely a fulfilling, but a fun, project. And so it proved over nearly twenty years.

Phone calls facilitated much of the work on the book. But before the final manuscript could be submitted, it was clear that we needed a prolonged session to iron out whatever differences had proved intractable over the phone, and to allow us to see, jointly, the pages to which we were referring. So Marty flew east, and we spent several days together, mostly at the dining room table, trudging amicably, page after laborious page, through our drafts. Marty's good grace, sense of humor, and ineffable gentility lightened the load. His insights into cases, and his common sense in selecting and editing material without a hint of ownership, made the entire experience a delight when it otherwise might have been a toil.

Somewhere between *mens rea* and the problems of self defense, Marty's love of baseball emerged. So, one bright afternoon we set the pages aside and headed to Veterans Stadium to watch the Philadelphia Phillies. I don't remember the score, or even who won. After the game, Marty returned home with at least three handfuls of souvenirs

* Distinguished Professor Emeritus, Rutgers Law School.

he had purchased at the Vet for himself and his children. The joint experience of that baseball game (and joint discussions about the virtue of every city apparently seeking a baseball franchise) made the return to *actus reus*, otherwise a dreaded task, plausible, even enjoyable.

Marty was never rattled, a character strength sorely needed when the first edition came out. Without going into painful details here, suffice to say that there were substantial difficulties with the printing, which required essentially recalling the volumes which had been sent out to fellow professors, and then doing a massive reprinting job. It was not an auspicious beginning. But Marty took the lead with MB and smoothed the ultimate path to publication. The following years saw following editions of the casebook, and on each occasion, working with him was always a pleasure.

I never saw Marty teach, but I can imagine that he was as generous, as patient, and as open with students as I found him in other contexts. This volume is clearly a testament to how his students have felt about him during his years at Nebraska. It stands as one of his many legacies, and I am grateful to the editors of this work to have been allowed to contribute even a few short words about the Marty Gardner I knew.

Richard Moberly*

In Memoriam Professor Marty Gardner

Professor Martin (“Marty”) Gardner loved teaching. I use the term “teaching” in both its everyday meaning—the *act* of teaching students—as well as the larger, broader use involving the entire *enterprise* of teaching. Marty loved not only teaching, but everything about being a teacher in a modern law school, which of course requires not only the ability to stand in front of a classroom, but also a dedication to scholarship and a willingness to build the institution of the law school itself. That said, although Marty excelled at the broader responsibilities of this enterprise throughout his 47-year career, what I will remember most about Marty was his pure love of the act of teaching—of having an impact on the way a student looked at and thought about the complex world in which we find ourselves.

This focus on his impact on students should not diminish Marty’s work on the other aspects of that broader enterprise of teaching, of being a law professor. Although I will leave claims about his scholarship to others who know more about criminal and juvenile law, it is clear that he wrote well and often. Just perusing his list of publications demonstrates the breadth of his research and the success of his writing. He published multiple editions of nationally published case books on criminal law¹ and juvenile law² He wrote dozens of articles on a range of topics, including the death penalty,³ criminal sanctions,⁴

* Dean, University of Nebraska College of Law.

1. See MARTIN R. GARDNER & RICHARD G. SINGER, *CRIMES AND PUNISHMENT: CASES, MATERIALS, AND READINGS IN CRIMINAL LAW* (2004, 2001, 1996, 1989).
2. See MARTIN R. GARDNER & ANNE PROFFITT DUPRE, *CHILDREN AND THE LAW: CASES AND MATERIALS* (2012, 2006, 2002); MARTIN R. GARDNER, *UNDERSTANDING JUVENILE LAW* (2009, 2003, 1997).
3. See Martin R. Gardner, *Mormonism and Capital Punishment: A Doctrine Perspective, Past and Present*, 12 *DIALOGUE* 9 (1979); Martin R. Gardner, *Executions and Indignities—An Eighth Amendment Assessment of Methods of Inflicting Capital Punishment*, 39 *OHIO ST. L.J.* 96 (1978).
4. See Martin R. Gardner, *Viewing the Criminal Sanctions Through Latter-day Saint Thought*, 2003 *B.Y.U. L. REV.* 861 (2003); Martin R. Gardner, *Illicit Legislative Motivation as a Sufficient Condition for Unconstitutionality Under the Establishment Clause—A Case for Consideration: The Utah Firing Squad*, 1979 *WASH. U. L. Q.* 435 (1979); Martin R. Gardner, *The Renaissance of Retribution—An Examination of Doing Justice*, 1976 *WIS. L. REV.* 781 (1976).

expert testimony,⁵ search and seizure law,⁶ prisoner rights,⁷ the rights of juvenile offenders,⁸ and the Sixth Amendment right to counsel.⁹ These articles appeared in numerous well-regarded journals, including *Northwestern Law Review*,¹⁰ *Vanderbilt Law Review*,¹¹ *BYU Law Review*,¹² *American Criminal Law Review*,¹³ *Ohio State Law Journal*,¹⁴ *Wisconsin Law Review*,¹⁵ and of course several in our own *Nebraska Law Review*.¹⁶ At a time when few, if any, law professors received research grants, in 1987 Marty and another professor were

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5. See Martin R. Gardner, *The Myth of the Impartial Psychiatric Expert—Some Comments Concerning Criminal Responsibility and the Decline of the Age of Theory*, 2 L. & PSYCHOL. REV. 99 (1976).
 6. See Martin R. Gardner, *Strip Searching Students: The Supreme Court's Latest Failure to Articulate a Sufficiently Clear Statement of Fourth Amendment Law*, 80 MISS. L.J. 955 (2010); Martin R. Gardner, *The Fourth Amendment and the Public Schools: Observations on an Unsettled State of Search and Seizure Law*, 36 CRIM. L. BULL. 373 (2000); Martin R. Gardner, *Searches and Seizures of Automobiles and Their Contents: Fourth Amendment Considerations in a Post-Ross World*, 62 NEB. L. REV. 1 (1983); Martin R. Gardner, *Consent as a Bar to Fourth Amendment Scope—A Critique of a Common Theory*, 71 J. CRIM. L. & CRIMINOLOGY 443 (1980); Martin R. Gardner, *Sniffing for Drugs in the Classroom—Perspectives on Fourth Amendment Scope*, 74 NW. U. L. REV. 803 (1980).
 7. See Martin R. Gardner, *Hudson v. Palmer—Bright Lines but Dark Directions for Prisoner Privacy Rights*, 76 J. CRIM. L. & CRIMINOLOGY 75 (1985); Martin R. Gardner, *The Defense of Necessity and the Right to Escape from Prison—A Step Towards Incarceration Free from Sexual Assault*, 49 S. CAL. L. REV. 110 (1975).
 8. See Martin R. Gardner, *Punitive Juvenile Justice: Some Observations on a Recent Trend*, 10 INT'L J. L. & PSYCH. 129 (1987); Martin R. Gardner, *Punishment and Juvenile Justice: A Conceptual Framework for Assessing Constitutional Rights of Youthful Offenders*, 35 VAND. L. REV. 791 (1982).
 9. See Martin R. Gardner, *Punitive Juvenile Justice and Public Trials by Jury: Sixth Amendment Applications in a Post-McKeiver World*, 91 NEB. L. REV. 1 (2012); Martin R. Gardner, *The Right to Be Free from Uncounseled Interrogation: A Sixth Amendment Doctrine in Search of a Rationale*, 63 BAYLOR L. REV. 80 (2011); Martin R. Gardner, *The Sixth Amendment Right to Counsel and its Underlying Values: Defining the Scope of Privacy Protection*, 90 J. CRIM. L. & CRIMINOLOGY 397 (2000).
 10. See Gardner, *supra* note 6.
 11. See Gardner, *supra* note 8.
 12. See Gardner, *supra* note 4.
 13. See Martin R. Gardner, *Section 1983 Actions Under Miranda: A Critical View of the Right to Avoid Interrogation*, 30 AM. CRIM. L. REV. 1277 (1993).
 14. See Gardner, *supra* note 3.
 15. See Gardner, *supra* note 4.
 16. See Gardner, *supra* note 9; Martin R. Gardner, *Decision Rules and Kids: Clarifying the Vagueness Problems with Status Offense Statutes and School Disciplinary Rules*, 89 NEB. L. REV. 1 (2010); Martin R. Gardner, *The Right of Juvenile Offenders to be Punished: Some Implications of Treating Kids as Persons*, 68 NEB. L. REV. 182 (1989); Gardner, *supra* note 6.

awarded \$400,000 to study juror reaction to “guilty but mentally ill” verdicts.¹⁷

Moreover, Marty was a consistent and positive citizen of the law school community, qualities that I grew to truly appreciate when I became dean a few years ago and looked to senior faculty members like Marty to provide a sense of camaraderie and project an institution-building ethos. For years he had recruited students to Nebraska from his home state of Utah and developed a tremendous pipeline to the law school. He returned every year to recruit more and then helped those students find a new home in the Cornhusker State. As one article noted in 2006, Marty helped grow the population of Utahans from just a handful to well over thirty through his personal efforts.¹⁸ In typical Marty fashion, he denied playing much of a role in bringing students to the law school; however, as one student noted in the article, “I wouldn’t be here if it were not for him.”¹⁹

Marty also recognized that the faculty played a crucial role in the operations of the law school. I will never forget, and always appreciate, an interaction I had with him when I became our interim dean in 2016. Our ABA accreditation review was imminent and I needed a faculty committee to write the required self-study. Given that I had just taken on the interim job, I hoped to have a senior faculty member lead the effort and I asked Marty to chair the committee. No one wants to do this job, especially someone in their fifth decade of teaching—it is time-consuming, under-appreciated, and detailed. Marty, ever the good citizen, never hesitated before fully committing to the effort. (Marty and the committee did a great job by the way—we flew through the accreditation process on the backs of their efforts!) I needed support from people like Marty, and he knew how important the process was—not only for accreditation (which was all but assured) but also for helping the College engage in a serious self-study on which we could build our plans for the future. Like most law professors, bureaucratic box-checking was not appealing to Marty. But, making Nebraska Law a great educational institution was.

Marty’s career is full of other markers of success. For example, he received the Steinhart Foundation professorship in 1987. He won teaching awards as well as the College of Law’s Distinguished Faculty Award from our Alumni Council. In other words, Marty clearly compiled an impressive scholarly record by any measure and he was an

17. See Trish Janka, *Jury Verdict Research: Exploring the “Guilty but Mentally Ill” Verdict*, NEBRASKA TRANSCRIPT, Fall 1989, at 9; *Professors Study Insanity Issue*, NEBRASKA TRANSCRIPT, Fall 1987, at 12.

18. See W. Jesse Weins, *Utah Connection: Thanks to Efforts of Prof. Marty Gardner, Many Utah Students Attend Law School in Lincoln*, NEBRASKA TRANSCRIPT, Spring/Summer 2006, at 11.

19. See *id.*

important and influential institutional player at the law school. However, I believe what really sustained Marty and fed his soul for most of his career was his love of teaching students.

In fact, the way he described his job seemed to change as his career progressed to reflect this passion for teaching students. In the beginning, the scholarly responsibilities of the job seemed to have been what first attracted him to a career in law teaching. When the University of Nebraska College of Law first hired Marty in 1977, he told an editor of the *Nebraska Transcript*, our alumni magazine, that he was excited about the job because, “I have academic or theoretical interests in the law and teaching is a way to pursue those (interests).”²⁰

Yet, he soon came to realize that his interaction with students would have a lasting impact on their lives and his. A decade later, another article in *The Transcript* made the point that Marty “strives to treat students decently without embarrassing them.”²¹ Marty said, “I am concerned about students’ feelings and when during the give and take [of the Socratic Method], I feel someone has been misunderstood and been hurt, I make a point to speak with them and apologize.”²² I had great professors in law school, but I am pretty sure none of them made student feelings such a priority.

This change could also be seen in how he chose to spend his time. While continuing to regularly publish case book editions and law review articles, Marty began teaching. A lot. He took on summer visiting appointments at the University of Missouri, the University of North Carolina, University of Alabama (as the John Sparkman Distinguished Visiting Professor), Brigham Young University, University of Utah, Washington University in St. Louis, the University of Tulsa, and the University of Iowa. In the twenty-nine years between 1983 and 2012, Marty taught all over the country during nineteen different summers, including several years at more than one institution. My best explanation for this relentless schedule relates to another of Marty’s loves—basketball²³—because I have this vision of Marty like

20. *Law Faculty Adds Gardner to Ranks*, NEBRASKA TRANSCRIPT, October 1977, at 8.

21. *Martin R. Gardner, Steinhart Foundation Professor*, NEBRASKA TRANSCRIPT, Winter 1988, at 10.

22. *Id.*

23. The NEBRASKA TRANSCRIPT is full of stories of Marty playing on the faculty basketball team in annual matches against the students. *See id.* (noting that Gardner plays basketball once or twice a week); *Rivalry Continues: Hoopsters v. Hoopsterettes*, NEBRASKA TRANSCRIPT, Summer 1988, at 10; *Students Challenge Faculty Hoopsters*, NEBRASKA TRANSCRIPT, Fall 1987, at 24; *Law Faculty Adds Gardner to Ranks*, NEBRASKA TRANSCRIPT, October 1977, at 8. Indeed, Nebraska Law professor and former dean Steve Willborn jammed his finger in Marty’s eye on a basketball court when Steve was a junior faculty member, *see* Steven L. Willborn, *Picturing Marty Gardner*, 99 NEB. L. REV. 1 (2020), but Marty was also incredibly gracious and forgiving, thus permitting Steve to continue in his career at Nebraska Law. It also did not stop Marty from continuing to play.

an NBA player in the off-season travelling to various high-level pick-up games, nominally to keep in shape but really to satisfy his passion for the game. He simply loved being in the classroom.

We can see this passion for teaching in the last profile the *Nebraska Transcript* ran on Marty, in 2011. During that interview, Marty:

[E]xplained that one of the most rewarding aspects of being a professor at Nebraska Law has been working with students. Although he finds the work fun, Gardner ultimately strives to instill in his students an understanding of the law's importance and how it can have a real effect in the world. "This business is serious, fascinating and fun," he said. "What we teach is important because it affects the lives of everyone in very significant ways, and students should develop a sense of that." Gardner also enjoys watching students learn and develop in the classroom, as well as go out into the world and become prominent lawyers in their communities. As Gardner sees it, "Being a lawyer is a lifelong endeavor. In law school we plant the seeds for a lifetime of learning and growing."²⁴

He was still interested in the deep issues, but he was discussing them as a means to an end— using those issues to change students' lives for the better. This is the Marty I came to know during my 15 years on the faculty at Nebraska—a teacher who thrived in the classroom. The Marty from the 1977 *Nebraska Transcript* article—the devoted scholar and deep thinker—was always there too, which is what made him such a success as a law professor.

We were fortunate to have him at Nebraska Law for these last four-plus decades. He was a great example for all of us on the faculty, a thoughtful colleague throughout his career, and a true professional. He succeeded at every part of being a law professor and, more importantly, at being human. I will miss his infectious laugh, his gracious demeanor, and his straight-as-an-arrow bearing. He made Nebraska Law a better place and I am grateful I was able to work with and learn from him.

24. Emily Rose, *After 34 Years, Gardner Finds Congeniality, Stability, Students Make Nebraska Law Incredibly Fulfilling Place to Teach, Research*, NEBRASKA TRANSCRIPT, Fall 2011, at 5.

Anna W. Shavers*

In Memoriam to Professor Martin (Marty) Gardner

I knew that Professor Martin (Marty) Gardner was unexpectedly going to have heart surgery during Thanksgiving week in 2019 and that he had made plans for completing his classes once he knew his recuperation was going to be longer than originally expected. I knew this because I was then serving as Acting Dean. Honoring his wishes for privacy, I had not shared this widely with my colleagues. I was waiting to hear the results of his surgery when I received the shocking news that Marty had passed away. Although still in shock, the difficult task fell upon me to notify our colleagues and students. We had lost a teacher, mentor, and friend.

We were all saddened and surprised. When someone leaves us suddenly and unexpected, I think it is natural for us to first reflect on what their absence from our lives will mean. I first met Marty when I joined the Law College faculty in 1989. He has been a great colleague of mine for 30 years. I began to develop a deeper friendship with him after I moved into the office next to him four years ago. He was a great person who had interests beyond the law. I knew Marty as a sports enthusiast, music lover, and musician. And of course, I knew that he loved his family. While he knew a lot about sports, I was most impressed by how much knowledge he had about recruits to the Huskers football team and his ever optimistic view of the team's performance. After being in the office next to him and having more personal conversations with him, I also learned how much he could empathize with others, especially me. Our conversations were sometimes monopolized by the humor of the fact that we were both getting older and could share stories and comparisons of our aches and pains.

What I observed most about Marty was his sense of fairness. This was exhibited on a daily basis in my interactions with him as a colleague but equally in his roles as a scholar and a teacher, and through his commitment to justice. His performance as a scholar and teacher was recognized in part when he received the Steinhart Foundation Professor of Law endowed chair.

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His scholarship was primarily in his area of expertise, criminal law, and more specifically the juvenile justice system. His scholarship provides abundant and extensive evidence of his sense of fairness. Take for example one of his more recent articles, *Youthful Offenders and the Eighth Amendment Right to Rehabilitation: Limitations on the Punishment of Juveniles*,¹ cited in *State v. Roby*.² In this article, Professor Gardner uses recent Supreme Court cases involving juvenile justice to make a case for emphasizing the goal of rehabilitation rather than punishment when the offender is a juvenile. As he describes it, “[T]he Court’s identification of adolescents as, among other things, singularly amenable to rehabilitation, thus designating them a categorically distinct class from adults” establishes a “new constitutional link to rehabilitation for adolescents.”³ He examines the original link to rehabilitation for the juvenile justice system but also cautions that this does not mean that an adolescent can never be tried as an adult. He provides a framework for making these decisions, including the recognition of the difference between adults and adolescents and individual assessments on the amenability to rehabilitation. As Professor Michele Alexander has stated, “[S]tudies have shown that youth of color are more likely to be arrested, detained, formally charged, transferred to adult court, and confined to secure residential facilities.”⁴ Professor Gardner’s framework could help address this aspect of mass incarceration that disproportionately affects African-American and other youths of color.

Professor Gardner’s teaching demonstrated his steadfast commitment to the students. This was exhibited in his teaching but it was not limited to interactions in the classroom. Shortly after I became Associate Dean for Diversity and Inclusions, I initiated discussions with the faculty on inclusive pedagogy. Professor Gardner was quite helpful in these discussions. He gave one example with respect to his recently published edition of his casebook, *Children and the Law: Cases and Materials*, co-authored by Martin Gardner, Marci A. Hamilton, and Anne Proffitt Dupre. This casebook examines the rights and protections afforded to juveniles. A decision was made to review and revise questions and examples to facilitate more inclusive discussions in the classroom but also to have students consider how the identities of juveniles might affect their treatment in the justice system. He also carried over these discussions into his Criminal Law class.

1. 83 TENN. L. REV. 455, 495 (2016).

2. 897 N.W.2d 127, 140 (Iowa 2017).

3. 83 TENN. L. REV. 455, 460–61 (2016).

4. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 118 (2010).

This brief memorial to Marty Gardner is not a measure of the size of the thanks we all extend to Marty for the friendship he gave to his colleagues and students and his dedication to the College of Law.