

INDIANA LAW JOURNAL

Volume 33

WINTER 1958

Number 2

FRANK E. HORACK JR., 1907-1957

MEMORIAL RESOLUTION†

The sudden death of Frank E. Horack Jr., in Vermillion, South Dakota, on November 25, 1957, was a great shock to all who knew him and a great loss to the University and to legal education in this country. In his busy, extremely productive career there were many outstanding achievements.

Professor Horack was born in Iowa City, Iowa, May 2, 1907. He graduated from the State University of Iowa in 1926 and from the Law School there in 1929; then he went to Harvard, where he received the Master's degree in Law in 1930 and the Doctorate in Law in 1931. His subsequent career was the fulfillment of the high promise and potentiality of the very precocious young man who took his doctorate at 24.

Immediately upon graduation from Harvard, Frank Horack received an appointment to the Law Faculty of the University of West Virginia, where he served from 1931-33. He was legal counsel to a Governor's Committee there in 1933-34, then went to Washington as Special Assistant to the General Counsel of the United States Treasury and, during that same time, he was also Legislative Counsel to the Governor of West Virginia. In 1935, he came to Indiana University where he served as professor of law during the remainder of his life. Although only 28 years of age at the time of his appointment, he had already given ample evidence of the high competence which later won him national recognition.

At Indiana University the principal facets of his career ripened into full effectiveness. From 1938-40, he served as a member of the Advisory Council of the Federal Marketing Law Survey and from 1939-42 he was an adviser to the General Counsel of the Federal Security Agency. In 1938, he was appointed to the Indiana Commission of the National Conference on Uniform State Laws and he served on that very important Conference for almost 20 years, receiving the high honor of life-

† Prepared by Ralph L. Collins, Jerome Hall and Leon H. Wallace.

membership in the summer of 1957. Professor Horack's experience in educational and administrative work led to his appointment at Indiana University to the Office of Military Information 1942-43 and Coordinator of the War Service Program, 1943-45.

Professor Horack became recognized as one of the country's leading authorities in the field of legislation, and the publishers of the standard work, *Sutherland on Statutory Construction*, selected him to bring out the third edition of that leading treatise, which was published in 1943 and followed by a supplement in 1956, with an additional one to appear in 1958. *Horack's Casebook on Legislation*, published in 1940, was a pioneer work in this emerging and increasingly important field of law; he edited the *Indiana Administrative Code*, published in 1941; and only last year he published, with Professor Val Nolan Jr., another pioneering casebook on *Land Use Controls*.

Professor Horack was a forthright, stimulating teacher who encouraged his students to develop independent, critical minds. He spent a great deal of time in consultation with students, and for many years he directed their research in the required thesis work. Without doubt he exerted considerable influence upon their thinking. He was a consistent, industrious researcher, pioneering in legislation and, more recently, in a newly developing field of zoning. In addition to his books, he wrote many articles and collaborated with others in the publication of important governmental reports.

Professor Horack's interest in legal education included active participation in the affairs of the Association of American Law Schools and he served on important committees, including that which revised the Association's constitution. His competence as a legal educator was further recognized by the American Bar Association in appointments to many inspection committees, whose function it was to visit various law schools, study their facilities and operations and recommend improvements. In this capacity, he inspected many law schools including those of Michigan, Minnesota, Wisconsin, and this year, Chicago, Yale and South Dakota universities. He also served on numerous public committees concerned with transportation and traffic, planning and zoning.

Professor Horack's expert knowledge of legislation and zoning led to many requests for assistance by various associations, states and cities. In recent years he wrote papers and lectured widely in the field of planning and zoning and the recognition accorded him may be indicated by the fact that he lectured at the Harvard School of Design and at the National Conference of the American Society of Planning Officials in San Francisco in March of 1957. Professor Horack's competence in

the field of legislation was widely recognized not only in his long service on the Uniform State Laws Commission, but also in many requests for his expert services in legislation. He drafted many federal and state bills which were enacted into legislation and he participated in the publication of studies on the legislative process and of legislative drafting manuals.

Not the least valuable of Professor Horack's services were those he rendered to the city of Bloomington, for example, as a member of the Bloomington Board of Zoning Appeals and President of the Bloomington Plan Commission. Frank Horack was deeply committed to the view that he was a citizen of Bloomington and of Indiana and he freely contributed many years of his expert services in the discharge of keenly felt civic obligation.

The above salient features of Frank Horack's contribution only suggest the fullness and diversity of his significant career. His colleagues, both in the Law School and in the University at large, will long remember him as a cooperative, extremely helpful associate in committee work and as a very productive scholar; his students will remember him as a stimulating teacher. There is real tragedy in the termination of such a career at an early age, when the maximum effectiveness had been attained and many years of creative work lay ahead. But while the faculty have been shocked and saddened by his untimely death, there is satisfaction in the realization that Frank Horack did so much so well. He and his achievements will live in the annals of the University as well as in the memory of his colleagues and students.

FRANK E. HORACK JR.

As yet, it is impossible for me to think of Frank Horack in the past tense. His spirit, blithe yet serene on the one hand, courageous and idealistically uncompromising on the other, will long pervade the halls and classrooms where he taught, and even the counters in his kitchen and mine, over which on many nights, in these past years, with tall drinks, we had so many spirited discussions, until we rejoined our wives in the bridge game which had ostensibly brought us together.

Frank had an insatiable curiosity to seek out and assess the problems of our society, whether that problem was one of the policies of the Department of Treasury of the United States, of the states of West Virginia, Indiana, or some other state, of civic planning for a great city such as metropolitan Chicago, or for Bloomington and other smaller communities, or a personal problem of one of our law students or one of the maintenance workers in the Law Building. He listened to any of these disturbing questions with equal consideration, and gave to them the same grave attention and respect.

He was equally accepted and equally respected in the ivory towers, the halls of the mighty, and in the homes of the common man. To him, the distinctions between these areas did not exist. All were a part of his universe.

It was of no concern to Frank if some student or law faculty member came to him with a problem which Frank had rather thoroughly researched, to the point that he would soon be able to produce a scholarly article on the matter. Frank did not give the applicant the specific results of his research, but he did ask him the precise questions which would lead his applicant to the same result which he had already achieved. He was not concerned that he had, in fact, given away something which would add to the intellectual stature of his own reputation. He shrugged off the whole matter with the observation that, "There is so much to be done, and if this individual does this bit, it will release me to concentrate on something else that needs doing."

I had come, a long time ago, to depend on the help of Frank Horack. On many matters of law school policy and decision which I posed to him, Frank never gave me the answer. But he proposed to me sharp and perceptive questions which inevitably led to the most desirable decision. On the day before he left on the trip from which he did not return alive, I told him over coffee, "We have an administrative question about which I would like to talk to you." Frank answered, "We'll get

together after I get back." More than once, in the past three months, I have instinctively thought, "I must talk this over with Frank" before I accepted the inevitability that Frank had passed on, at least to another level, which was presently unavailable to me.

Perhaps a student appraisal is more perceptive than mine. Shortly after Frank's death, I received a letter from one of his former students, James B. Young, which captures the living reality of Frank Horack as well as anything I could say further.

Therefore, I offer this unedited quotation, which seems to represent more than anything else which I have received the student evaluation of twenty years of Frank Horack's teaching:

"What an amazing man he was! Isn't it strange how one man can affect the lives of so many men—literally thousands? A few of us worked for him during 1954-55 on a pocket part for his revision of Sutherland's *Statutory Construction*. We were fortunate to know him better than the average student. Why did we work longer and harder for him than the other teachers? Why did we try to be more accurate—make a better report—a better answer—for a more critical approach to problems? I don't know what qualities exactly make up an outstanding teacher but whatever they are, they were all contained in Frank E. Horack Jr. The law school will never quite be the same without him. His intelligence amazed us all. One day in office conversation, I posed a question to him concerning insurance. He couldn't have been very current in that field but he scratched his head, took a drag on the ever-present cigarette and gave the answer directly and simply. He never was the scholarly sophisticate talking in realms of theory far above the student's legal head. Horack was the 'Little Dandy Plow and Tool Company from Green Pastures, Indiana.' As conversant with the peculiarities of Blue Gills at Yellow Wood Lake as with the intricate legislative process, Professor Horack was the unsophisticated legal scholar who painted the law as a vital answer to people's problems. All of us who knew him as a teacher are better lawyers because of him. Those of us who knew him personally are better people because of that friendship."

That was Frank Horack.

LEON H. WALLACE†

† Dean, Indiana University School of Law.

FRANK E. HORACK JR.

Frank E. Horack Jr., was a man of many interests which found expression in productive scholarship. It ever was a profitable experience to talk to him. He was a congenial individual, and a true and loyal friend. Many persons—students, former students, colleagues, and a wide array of people—are saddened over his untimely death.

His productive scholarship ranged over a surprisingly wide field of subjects—legal, quasi-legal, and non-legal. Among the areas in which he wrote were torts, criminal law, constitutional rights, administrative law and procedure, land use and controls, zoning, congressional investigations, the Uniform Commercial Code, pupils and their parents, and, of course, legislation, in which field he was both a pioneer and a leading authority.

Among his books, five in number and mainly in the casebook area, the first to appear was *West Virginia Cases on Criminal Procedure*, published in 1933. His first work on legislation, *Cases and Materials in Legislation*, was published in 1940. A second edition of this book appeared in 1954. He published thirty-one articles. These ranged over an extensive area of subjects.

Although he wrote with penetrating discernment and expressed himself well on a variety of topics, by common acceptance he did his best work in the field of legislation. Here was an area too long neglected in the curricula of the law schools, and in the discriminative thinking of the members of the profession. Frank Horack is entitled to high praise for the fine scholarship he contributed to this field of the law, and for the stimulation he gave toward focusing the attention of the law schools and of the profession on this subject. He went farther. He advocated that there be published a statutory digest similar to that which is published on case law. Lawyers and research scholars are greatly assisted by these digests in their search for case law, but in the study of legislation they have no guides short of working in an extensive law library and engaging in a laborious examination of the statutes of the separate jurisdictions. To demonstrate the potentialities of a digest on statutory law he ran a pilot study on two subjects. In his advocacy of a statutory digest, he had the enthusiastic support of the late Chief Justice Arthur T. Vanderbilt, of Barton H. Kuhns, formerly secretary and later president of the National Conference of Commissioners on Uniform State Laws, and,

may I add, of the writer. This was a project in progress, but not finished when Frank died.

I have written, in the main, about Frank's scholarly work and writings—fruitful accomplishments, indeed, in the all too short span of his life. But what we, who knew him well, cherish most in memory of him, was his warm and congenial personality. He was a friend, trusted and true. He died in the line of duty, while in the performance of an assignment for the Association of American Law Schools.

ALBERT J. HARNOT†

† Acting Dean, University of California School of Law (Los Angeles) and formerly, Dean, University of Illinois School of Law.

FRANK E. HORACK JR.

Writing *about* rather than *to* an esteemed friend and colleague chokes expression and darkly saddens the mood of thought. The prepositional shift deftly severs a life and leaves us clinging, somewhat helplessly, to fond memories, though enduring ones they will be.

Frank Horack endeared himself to many who sought to win their laurels, as he so notably did, in the field of law. His was a receptive ear, ever ready to listen to their problems; his was a critical eye, ever ready to warn them of pitfalls; his was a helping hand, ever ready to encourage and assist them in their work. It mattered not whether they sought to furrow in his own back yard. "The better for us all," he would say unselfishly. Even (some would say "especially") in Academia, such bigness in a man is rare. And still more rare is the *kind* of bigness that it was. It came naturally and quietly from within, not with any show from without. Time and again benefits were bestowed without any trace of the benefactor. Only accidentally through others would one later ever learn of the source. This is necessarily a fractional glimpse of a man—no sketch can ever attempt to be complete—but in reconstructing a character image, certain lines are bound to loom in prominence. Those of helpfulness, of selflessness and of a devotion to friends so stand out in the image of Frank Horack that they somehow would be communicated even to a stranger whose exposure to him was but fleeting.

He left not only a heritage of character, but also of mind. In the law, he was interested in deep jurisprudential and philosophical problems, but he chose not to pose them in the highly abstract language of the theoreticians. Frank Horack was far too earthy for this. He philosophized without being a philosopher. His method was to raise searching questions in the context of concrete situations—but questions that the great thinkers in a more formal way have asked and struggled with for centuries. And he not only asked, but also provided a great deal of leadership in searching for answers.

Time and again he asserted that the most important chapter in his path-breaking casebook on Legislation was the one on policy-making and the central problem of law was the relationship of means to ends. His mentor in this, it would seem, was Jeremy Bentham; the special Horack thrust in wrestling with this problem does credit to both names. Although his edition of *Sutherland on Statutory Construction* is still used by some who seek comfort and a sense of security in the various maxims

of interpretation, his own publicly expressed views on "The Disintegration of Statutory Construction" suggest a strong mooring to the Realist school, where the urge is to expose the naked emptiness of the so-called "rules" of construction and to focus on the creative rather than on the discovery aspects of judicial law. In so doing, considerations of policy, of ends and of the means to these ends were brought directly to the forefront of attention and discussion. Perhaps the work that best exemplifies the Horack mind is his brilliant piece on "The Common Law of Legislation." Here, with unerring accuracy, he pinpointed one of the knottiest problems in the law—the need to bridge the gap between judicial and legislative legislation. His effort here in synthesizing the two areas of law into one harmonious whole could well serve as an anthropologist's model for discovering the common elements of two seemingly diverse and irreconcilable cultures. He sought by this to advance the course of legal development from the orthodox common-law view, which regarded legislative law as something foreign to the legal system, to the view that it should be treated as a permanent part of the general body of law, to be reasoned from by analogy coordinately with judge-made law. And so determined was he to give coordinate status to lawyers practicing in the legislative forum that he urged the creation of a legislative lawyer's bar.

The classroom was not the only laboratory in which he worked, nor was he the detached ivory-tower scholar. He often tested his ideas in the rough and tumble of the practical world—as consultant to policy-makers, as the drafter of legislation, as parliamentary strategist—from the municipal level on up. His experiences would always come back as a check upon previously formulated theories. Theory first guided, but then yielded to experience when theory did not fit what was directly observed.

In the field of Legislation, he was, indeed, a pioneer. Ernst Freund and others did some early nudging and exploring, but it is Frank Horack who, by providing an imaginately organized national teaching tool, is to be credited with making Legislation an essential and honored course of study in the modern-day law school.

We shall miss Frank Horack. We shall miss him sorely as a man; we shall miss very much the leadership of his mind.

JULIUS COHEN†

† Professor of Law; Rutgers University.

FRANK E. HORACK JR.

Planning on the part of cities, towns and counties is a growing and ever increasingly important phase of community life throughout Indiana, and the nation, because of Frank E. Horack Jr. The best efforts in that direction on the part of administrative officials and planners would have been of little avail without the thoroughly sound legislative acts prepared by him. But of greater significance than preparing adequate legislation was his unique ability to incorporate into legislative acts the highest ideals and objectives of community planning into clear, understandable and direct language for the guidance of the public officials and planners, as well as citizen groups, the legal profession and the courts.

One of the happy circumstances of life is that when the need arises for a particularly effective individual to accomplish an especially difficult task, such an individual appears on the scene. This was the case in 1946, when a statewide committee formed by the Indiana Economic Council was looking for assistance in the preparation of a new planning and zoning enabling act for the State of Indiana to replace a crazy-quilt patchwork of previous acts, some of dubious value and certainly confusing in effect. The usual sources of assistance in such matters, the Legislative Bureau and the Attorney General's Office, were not available because of other pressing duties and obligations. An inquiry to the Dean of Indiana University Law School as to the availability of a staff member having an interest in such matters, who might assist the Committee, brought the reply that Frank Horack might be persuaded to undertake it. Arrangements were readily reached with Frank to take the assignment and the forces of nature contrived once again to put the right man in the right spot at the right time. This occasion, which produced the Indiana Planning and Zoning Act of 1947, proved for me to be the start of an association extending over a period of more than 12 years, during which time I was to know him as a hard-working associate, transforming ideas into legislative acts; as the President of a City Plan Commission for whom it was my privilege to serve as Consultant, and as a friend and adviser with whom conversations and discussions of mutual concern (mostly planning and zoning techniques, or bass fishing or duck hunting) carried on over an extended period, could be resumed immediately upon our getting together regardless of the length of time which may have elapsed since our last meeting. In a sense it might be said that our association was something in the nature of a "collaboration," if collabora-

tors can be said to consist of one party (me) who asks questions and another party (Frank) who answers them.

Among Frank's many contributions to the profession in which I have primary concern, was his ability to instinctively raise the provocative questions, which we planners should have raised ourselves, but didn't, as to practices and procedures concerning the administration of community plans and the content of ordinances designed to make those plans become realities. It was this quality which led to his being much sought after in this state and nationally in the field of drafting planning laws, and in challenging the planning profession, and I presume the legal profession, to move on to new devices and techniques for achieving the always hoped for results within constitutional limits. His interest in that field caused him to be called upon to draft the 1955 Act establishing the Metropolitan Planning Department for Marion County, the Area Planning Act of 1957 for Indiana, and similar acts for other states.

On at least two occasions he addressed the Annual National Planning Conference, in Boston in 1952 and in Philadelphia in 1954, expressing ideas for the improvement of planning standards and proposing solutions that will prove to set pattern in meeting some of the most vexing problems in planning administration. For example, Frank, together with many others interested in the equitable and effective enforcement of zoning, was very much concerned about the commonly accepted practice which places the responsibility for conformance to the ordinance upon the property owner,

“. . . who legally may be presumed to 'know the law' but who in fact does not. Enforcement is then in the unhappy position of prosecuting decent citizens under circumstances which appeal to the community as bureaucratic entrapment.

“In other words, the licensing device is good but the obligation is placed upon the wrong persons. The Contractor who holds himself out as a specialist, should be directly responsible for proper construction. The Contractor should be licensed with bonds conditioned upon proper compliance with zoning and building ordinances.”

In 1952 this was an entirely new concept in the field of planning administration. Later, such a provision in his Metropolitan Planning Act for Marion County, along with the remainder of that act, was adjudged by the Indiana Supreme Court to be constitutional.

At the Philadelphia meeting in 1954 Frank reiterated his confidence in the planning process when he stated,

"I do not wish to leave the impression that it is the responsibility of planning and zoning to cure all the ills of society, but conversely this fact should not be an excuse for reducing the standards of population density, ignoring building codes, or disregarding health and sanitary standards."

However, in pointing out some of the "failures" that have been experienced over the years since the institution of zoning in the United States, he fairly stated his philosophy when he said,

"If what I have said sounds hypercritical, remember that in spite of many obvious failures of zoning, it has kept pace with the revolution in urban transportation, with an unprecedented expansion in dwelling units, and with a growth in municipal services that could not have been foreseen 40 years ago. Thus, in spite of its shortcomings, the planning and zoning process must have been measurably successful or it would have been discarded years ago."

Frank's influence as a teacher, in and out of the Law School, will forever be acknowledged as his most profound contribution to the planning profession. He never hesitated in meetings with lawyers to direct their attention to the field of planning and zoning as a type of practice to be approached with appropriate equipment. I especially recall his address before the Indianapolis Bar Association several years ago when he pointed out that attorneys appearing before City Plan Commissions and Boards of Zoning Appeals should be prepared to present all of the basic facts directly related to a case before such bodies, in order that proper decisions, in light of the standards established by the Planning Act and local ordinances, will result. As a member of the Bloomington Plan Commission and Board of Zoning Appeals, Frank was very conscious of inadequate preparation of cases before them and of the deteriorating effect of such practice upon the structure and effectiveness of planning and zoning as instruments of community well-being. He carried this attitude into the classroom, and his students are well aware of his techniques in emphasizing the importance and necessity of carefully investigating all the facets of a case dealing with the use of property and the effect of *facts* as determinants upon which to make decisions affecting the land use plan for the community as a whole. But his teaching, certainly as far as planners are concerned, was not confined to meetings with lawyers or the classroom as is illustrated by his fine case book, prepared in collaboration with Val Nolan, *Land Use Controls*, deal-

ing with the statutory laws of land use. Prepared primarily for law students, it is rapidly being acknowledged by planners as a standard work for all professional people concerned with the subject.

We would like to have had a very much longer experience of learning what Frank had to give us, but we shall be forever grateful for the privilege of knowing him, learning from him and enjoying life with him in the short time allotted to us.

KENNETH L. SCHELLIE†

† President, Metropolitan Planners, Inc., Indianapolis, Indiana.

FRANK E. HORACK JR.*

I knew Frank for sixteen years. Others of his "boys," as he liked to call us all, no matter how unfitting the years have made that compliment, knew him longer, and some knew him better. In looking back though, we all seem to see the same Frank Horack, a man of perpetual youth, fresh, stimulating, full of verve and enthusiasm for every class he ever met, every job he undertook, and every student he ever knew, the slower with the better.

He was a very young man when he came to Indiana in the fall of '35. He wasn't exactly a novice; he'd been around some since he left Iowa City, but the bright young man from Harvard, West Virginia and Washington was still a little young for a full professor's chair at Indiana University. Yet it was all very fitting. Frank was cut out to be a young man all his life—a college graduate at 19, law graduate at 22, S.J.D. from Harvard at 24, and now, full professor at I. U. at 28. It was a fitting thing for legal education, too. Young men were needed and Indiana got one of the very best. But the great curiosity is that as the years drew on, as names on Indiana's roster like Willis, Bowman, Evens, and finally Gavit, came down to make way for new ones, Frank Horack never seemed to age. He added a little girth, and his hair-to-scalp ratio slipped a little, but as his colleagues and indeed his own "boys" aged around him, Frank Horack remained always that same youthful, courageous, liberal young man who came to Indiana twenty-two autumns before to help build probably a thousand young men into lawyers.

There must have been something about Frank's own wonderful zest for law teaching that helped persuade some of us, his "boys," to follow him into the same field. Val Nolan, Maurice Kirk, Bruce Townsend and myself ultimately became his colleagues, either in Bloomington or in Indianapolis,¹ and the others whom I can now recall are pretty well distributed across the country, with Dave Kochery in the east,² Keith

* After consultation with others of Mr. Horack's former students who have turned law professor, it is hoped that this short memorial approaches a composite, or collective evaluation based on the comments of all.

1. Mr. C. Ben Dutton of the Bloomington Division and Mr. Nelson G. Grills of the Indianapolis Division should also be included in the number, although both have returned to private practice.

2. David R. Kochery, University of Buffalo.

Mann in the west,³ Herman Trautman⁴ and Forrest Lacey⁵ in the south, Dallas Sands in the deep south,⁶ and M. C. Slough at Kansas.⁷ All of Frank's students know something of the peculiar, almost intuitive genius he had for arousing in everyone around him the best of their capabilities, but those of us who followed him into the business probably appreciate more than most others the magnitude of that inspiration. Being a law professor means nothing per se. It can be just as rewarding and just as frustrating as any other pursuit. Dean Slough dispels whatever false notions some may have about it when he says, ". . . there is nothing particularly magical about appearing before a class, posing as an authority of sorts, dispensing the usual information relevant to cases at hand." What was there about Frank Horack that made him different? Actually, he never posed as much of an authority on anything, though he had every right to; and he never dispensed much information, at least in the usual sense. What was it then?

Dallas Sands attributes his greatness to his "capacity to inspire, his ability to get everyone around him to do his best, and his qualities of depth and warmth of sympathetic understanding of people and their problems." Slough still carries, after twenty years, his first impressions of Frank and "his gift of imagination and creative talent that many of us reach for but never grasp." To Lacey, his great strength lay in "his ability to challenge and stimulate the intellectual capabilities of his students." Trautman remembers his shifting emphasis, under Frank, from particular rules of law and particular case holdings, to policy considerations, the "is" and "ought" problems of law, and ascribes to it all the development of an overriding general intellectual curiosity. And all this was not saved and set aside for the better students. Kirk points out that Frank "expected to find in every man a system of values to which that man would respond." Thus, "he would give to students—sometimes unsuspecting ones—responsibilities which those of us of less conviction could assign only with the gravest of doubts; and many men thus matured at his side."

Frank could do all this without half trying because he had an abiding curiosity himself about all things intellectual. And it wasn't limited to particular fields in which he might happen to be working at the moment. Kochery calls him "encyclopedic" in his interests and learning.

-
3. J. Keith Mann, Stanford University.
 4. Herman L. Trautman, Vanderbilt University.
 5. Forrest W. Lacey, University of Tennessee.
 6. C. Dallas Sands, University of Alabama.
 7. Major Carl Slough, Dean, University of Kansas.

There was no area with which he was not conversant. Slough, too, points to his breadth of interests, and Nelson Grills, who shared an early and endearing close personal friendship with him, was never able to run him out of ideas. Both Lacey and Kirk speak of his broad-range imaginative resourcefulness in techniques, what I can recall Frank's describing with a broad cigarette-in-hand gesture as "the swivel-hipped approach."

These qualities were honestly conceived too, not conjured up for mere impression on young minds. The man was incapable of intellectual dishonesty. Sands counts among his best qualities "his utter and uncompromising rejection of all sham, duplicity and hypocrisy." And Kirk points to the same thing in his research and writing, "He had the courage in his work to face squarely the conclusions to which the data led," and if he did not like those conclusions, then rather than tamper with them as a scholar, "he did what he could as a citizen to change the data" out of which they came.

There was about the man a powerful personality, a warm interest in people, a tolerance for their shortcomings, and above all, a certain hard-to-explain piquing atmosphere of challenge in all his relations. Just what it was is hard to pin down. Lacey remembers "Horack the chain-smoker, now pacing back and forth, now sitting cross-legged on the desk . . . challenging and stimulating intellectual capabilities . . . alertness . . . his ideas were fresh . . . a mind aware of reality and eager to point out potentialities for skillful legal techniques . . . analyzing instead of merely repeating someone else's words." Nolan, who did a book with him, speaks of the "electric . . . zestful . . . we're all in this together" spirit always about Frank. The same "we're all in this together" is echoed by Kochery, "he gave others the feeling that they were just as scholarly as he . . . this always had the effect of an unconscious feeling of 'knowing' or 'belonging' and the very gratifying feeling of contributing something to the solution of one of the many problems Frank always enjoyed struggling with."

It wasn't all in the classroom either. For Frank, though he would never have thought of it in such dreary terms, the educational process was a full-time thing, to be carried on outside the classroom as well as inside. So, as Maurice Kirk talked with him over coffee cups in the Varsity Pharmacy in Bloomington just a few evenings before he left us, he recalls the same warm bonds of exchange and profit that Slough looks back to over another pair of coffee cups nineteen years earlier, in the then new Student Union Building. And Herman Trautman, who never had a class with Frank, speaks of the same maturing influences

which we all experienced, coming to him from Law Journal meetings, hallway exchanges, office conferences and the other endless personal dealings which Frank always found time to enjoy with his "boys." Bruce Townsend never had a class with him either, but came to share the same rewards, as a graduate assistant helping with the Sutherland revision, and he carries still the same great enthusiasm for thoroughgoing research that Frank was able to breathe into all work worked with him.

We all have so many fond recollections; there was that atrocious little green car he drove through the war years and after; there was the baby blue, or was it pink, seersucker suit he bought one summer; and of course, there was always the nodding head, the twinkling eye and the first-name recognition he'd give us all as he strode puffing through the library on his way to the old office on the second floor.

That office, tucked away up there in a corner of Maxwell's musty second floor, that old untidy office with its mixed blues and browns of cigarette smoke, its overflowing dank-smelling ash trays, and its perpetual turmoil, housed a very young and great man. Now that he has gone on, it seems somehow rather fitting that the coincidence of a new law building in Bloomington has permitted the retirement of that old office from law school service, somewhat in the same manner as the uniforms of the greats in athletics are taken out of play in tribute to the men who wore them. If it were otherwise, what law professor in the years to come, could pass through that door which bore the legend, Mr. HORACK, and do justice to the old quarter?

BEN F. SMALL†

† Professor of Law, Indiana University School of Law, Indianapolis Division.

FRANK E. HORACK JR.

As Frank Horack's oldest colleague in years of service on the Indiana University Law Faculty, it is my privilege to give some impressions of him and to express an appreciation of his splendid contribution to our common task. Frank's death at fifty, when many years of creative scholarship lay ahead, is a tragic reminder of human limitations. But his life was full of the stirring sense of high endeavor and achievement. I knew him best as a member of the Indiana faculty and it was here that the potentialities of the precocious young man, who had obtained his doctorate at 24, ripened into mature scholarship and Frank became a leading authority in the field of legislation.

When I joined the Indiana Faculty in 1939 (Frank had already been there four years) he was its youngest member, but he more than held his own among that very able group of scholars. He was a man of independent mind and, after studying a problem, he did not hesitate to express a forthright opinion about it. He had the competent lawyer's gift of immediate recognition of crucial issues and the fortitude to defend his views regardless of opposition. The friendly attitude he brought from his native Iowa blended well with the gentle Hoosier culture. Although many divergent views were represented in faculty discussions and some issues cut very deep, I do not recall a single instance when an unkind word was spoken.

There were, of course, various conceptions among the faculty of what *the* ideal legal education was and how the students' three short years could best be spent. Frank was consistently among those who took a broad view of legal education. His principal contribution was his course in legislation which was conceived in a grand manner and taught with both practical and theoretical intention. In later years Frank devoted more time to zoning and planning, which also allowed his inquiring mind an ample terrain for pioneering experiment. As he came increasingly into contact with legislatures and their staffs and, later, with planning experts, engineers and other specialists in zoning, he brought to the faculty and Law School fresh, invigorating views of law emerging and in action in new areas. Legislation and jurisprudence had long been courses in the Indiana curriculum. And when a greatly expanded program of seminars and the inclusion of international law, comparative law, legal history and other so-called cultural courses were under con-

sideration, Frank was invariably in favor of venturing forward to enrich the curriculum and broaden its objectives.

The loss of a colleague of Frank Horack's stature leaves us weakened, and the skill and experience he contributed to the work of the faculty, especially in the fields of legislation and zoning are, in any direct sense, irreplaceable. But there was a robustness in Frank which in a like situation would have impelled him to urge his colleagues not to spend their energy in mourning their loss, but to roll up their sleeves and work harder. We must, however, be permitted to express a single demurrer and to state a plain fact. We, who for many years shared with Frank Horack a warm inspiring academic life, will not forget his enthusiastic contribution to it. Nor, as we carry on as best we can, shall we be unmindful of the educational ideals to which he was devoted. Nothing can really terminate that influence. In subtle ways that defy easy understanding while they are nonetheless potent, Frank Horack's work will long continue to influence legal education in this country.

JEROME HALL†

† Distinguished Service Professor of Law, Indiana University.

THE RECORDED CAREER OF FRANK EDWARD HORACK JR.†

Family:

Born May 2, 1907, Iowa City, Iowa, the only child of Professor
Frank E. and Elizabeth Grace (Collins) Horack
Married Helen Marie Sturgiss, Washington, D. C., 1940
Children: Frank Edward, III (born 1942)
Sabra Franceise (born 1947)

Education:

State University of Iowa, A.B., 1926; J.D., 1929
Harvard Law School, LL.M., 1930; S.J.D., 1931

Law School Service:

Assistant Professor of Law, West Virginia Univ., 1931-1934
Associate Professor of Law, West Virginia Univ., 1934-1935 (on
leave)
Professor of Law, Indiana University, 1935-1957
Faculty Editor, Indiana Law Journal, 1940-1947
Acting Dean, Indiana University, 1948-1949 (second semester);
assisted with administrative work, January to March, 1951
Visiting Professor of Law, Northwestern Univ., Summer 1941

University Administrative Service:

Secretary, Committee on Grants-in-Aid, 1938-1942
Editor, Indiana University Code, 1940
Director, Office of Military Information, 1942-1946
Coordinator, War Service Programs, 1942-1946
Member, Administrative Council, 1942-1946
Member, Administrative War Council, 1942-1945
Member, University Council, 1943-1945
Member, Domicile Committee, 1943-1945, 1947-1957
Member, Faculty Committee on Rules and Business, 1946-1948
[This committee prepared the 1947 Faculty Constitution.]
Member, Faculty Council, 1947-1949, 1957
Member, Insurance [and Retirement] Committee, 1947-1953, 1955-
1957
Faculty Member, Board for Review of Selective Service Defer-
ments, 1948-1949

† Compiled by Maurice B. Kirk, Assistant Professor of Law, Indiana University.
The compiler especially acknowledges the generous assistance of Mrs. Newell (Helene)
Cates, who was for many years secretary to Professor Horack.

Member, Committee on Curricular Policies and Educational Programs, 1953-1957

Service to Legal Education:

Member, Constitutional Amendments Committee of the Association of American Law Schools, 1950-1956 (Chairman, 1950-1953)

Member, Editorial [Advisory] Board, Journal of Legal Education, 1947-1951, 1953-1956

Member, Law School Advisory Committee [Panel of Law School Advisors] of A.A.L.S., 1947-1957

Chairman, Committee on Legal Education and National Defense of A.A.L.S., 1950-1953

Delegate of the A.A.L.S. to the American Council on Education, 1953-1957

Law School Visitor for the Section on Legal Education of the American Bar Association, 1946-1947, 1949-1950, 1956-1957, 1957

Governmental Service:

Counsel to the Governor's Committee on Efficiency and Economy, West Virginia, 1933-1934

Legislative Counsel to the Governor of West Virginia, 1934-1935

Special Assistant to the General Counsel, United States Treasury Department, 1934-1935

Member, Advisory Council, Federal Marketing Laws Survey of the Works Progress Administration, 1938-1941

[During this period the Survey prepared five studies: I. State Anti-Trust Laws; II. State Price Control Laws; III. State Milk and Dairy Legislation; IV. State Liquor Legislation; V. Inter-State Trade Barriers.]

Indiana Commissioner, National Conference of Commissioners on Uniform State Laws, 1938-1957 (elected Life Member, 1957)

Organizational Advisor to the General Counsel, Federal Security Agency, 1939-1942

President, City of Bloomington (Indiana) Plan Commission, 1947-1953, 1955-1957

Member, City of Bloomington (Indiana) Board of Zoning Appeals, 1947-1949 (Vice-Chairman), 1955-1957

Professional Organizations and Public Service:

National Conference for the Furtherance of Public and Social Aspects of the Law, 1940-1941 (Secretary), 1941-1942 (Executive Committee)

American Arbitrators Association, 1942-1943

- American Association of University Professors (President, Indiana Chapter, 1946-1947)
- Iowa Alumni Association (Vice-President, 1945-1948)
- Rotary
- Phi Kappa Psi
- Scabbard and Blade
- Phi Beta Kappa
- Phi Delta Phi Legal Fraternity (Province VII President, 1947-1955)
- Order of the Coif
- American Bar Association
- Indiana State Bar Association
- Committee on Apprenticeship and Placement of the Law Graduate, 1950-1951 (Chairman), 1951-1952
- Committee on Public Relations, 1950-1951
- Committee on Judicial Selection and Tenure, 1951-1952
- National Conference of Commissioners on Uniform State Laws (1937-1957)
- Member, Uniform Public Law Acts Section, 1937-1941
- Chairman, Section Committee on Uniform State Business Codes Act, 1937-1946
- Member, Section Special Committee on Uniform Act on House Trailer Regulation, 1938-1939
- Member, Section Special Committee on Uniform Act on Statutory Construction, 1939-1941; Chairman, 1944-1947
- Chairman, Conference Special Committee on Obsolete Acts, 1940-1941
- Member, Conference Special Committee on Review and Revision of Uniform and Model Acts, 1941-1946 (Chairman, 1941-1942)
- Member, Uniform Commercial Acts Section (Section A), 1941-1957
- Member, Section Special Committee on Revised Uniform Sales Act, 1941-1949
- Member, Conference Special Committee on the Uniform Commercial Code, 1946-1950
- Member, Uniform Social Welfare Acts Section, 1947-1949
- Member, Section Special Committee on Uniform Adoption Act, 1947-1952 (Chairman, 1947-1949)
- Member, Conference Standing Committee on Public Information, 1948-1949

- Member, Conference Special Committee on Law School Research, 1951-1957
- Member, Conference Special Committee on Statutory Survey, 1951-1957
- Member, Conference Special Committee on Conflict of Laws, 1953-1955
- Conference on Science, Philosophy and Religion, 1942-1957
- American Society of Planning Officials, 1952-1957
- Indiana Association of Planning Officials (Director, 1952-1953)
- Committee on Urban Transportation, 1954-1957
- National Committee on Uniform Traffic Laws and Ordinances, 1955-1957
- Consultant, Indiana Economic Council, 1949-1953, 1955-1957
- Consultant, Metropolitan Planning and Housing Council of Chicago, Illinois, 1955-1957
- Member, Board of Directors, Indiana University Employees' Federal Credit Union, 1955-1957

Publications—Books:

- West Virginia Cases on Criminal Procedure (mimeo.) (1933)
- Materials on Legislation (mimeo.) (1937)
- Cases and Materials on Relational Torts (mimeo.) (1937)
- Cases and Materials on Legislation (1940)
- Indiana Administrative Code (2 vols., 1941)
- Sutherland's Statutes and Statutory Construction (3d ed., 3 vols., 1943)
- Legislative Drafting Manual (mimeo.) (1952)
- Cases and Materials on Legislation (2d ed., 1954)
- Land Use Controls (with Val Nolan Jr.) (1955)
- 1956 Supplement to Sutherland's Statutes and Statutory Construction, 3d ed.
- 1958 Supplement to Sutherland's Statutes and Statutory Construction, 3d ed.

Publications—Articles and Book Reviews:

- Statutory Interpretation.—Light from Plowden's Reports, 19 Ky. L.J. 211-25 (1931)
- Vicarious Liability for Fraud and Deceit in Iowa, 16 Iowa L. Rev. 361-80 (1931)
- In the Name of Legislative Intention, 38 W. Va. L.Q. 119-31 (1932)
- Book Review, Criminal Justice in England, by Pendleton Howard, 38 W. Va. L.Q. 279-81 (1932)

- Constitutional Limitations on Legislative Procedure in West Virginia, 39 W. Va. L.Q. 294-322 (1933)
- Book Review, State Legislative Committees, by C. I. Winslow, 7 Tul. L. Rev. 302-05 (1933)
- Prosecution Appeals in West Virginia, 41 W. Va. L.Q. 50-64 (1934)
- After the Nebbia Case: The Administration of Price Regulation, 8 U. of Cin. L. Rev. 219-49 (1934) (with Julius Cohen)
- Federal-State Cooperation for Social Security: The Grant-in-Aid, 30 Ill. L. Rev. 292-313 (1935)
- Book Review, Woodruff's Cases on Quasi-Contracts, 3d ed. by Herbert D. Laube, 23 Calif. L. Rev. 554-55 (1935)
- Special Legislation: Another Twilight Zone, 12 Ind. L.J. 109-32, 183-202 (1936, 1937) (second part with Matthew E. Welsh)
- The Multiple Consequences of a Single Criminal Act, 21 Minn. L. Rev. 805-22 (1937)
- The Common Law of Legislation, 23 Iowa L. Rev. 41-56 (1937)
- Book Review, Principles of Conflict of Laws, by George W. Stumberg, 37 Colum. L. Rev. 1248-50 (1937)
- Book Review, Night and Day and the Conflict of Laws, books by Lorenzen, Kuhn, and Harper and Taintor, 5 U. Chi. L. Rev. 704-07 (1938)
- Do Legislators Think Like Judges?, 11 State Government 163-64, 177-78 (1938)
- Is the Anti-Trust Law Anti-Labor?, 3 Nat. Lawy. Guild Q. 17-24 (1940)
- Statutory Validation of Public Bonds, 7 U. Chi. L. Rev. 281-96 (1940) (with C. Ben Dutton)
- The Right to Hear [an editorial], 2 Bill of Rights Rev. 6 (1941) (published by the Bill of Rights Committee of the American Bar Association)
- Bicameral Legislatures Are Effective, 14 State Government 79-80, 96 (1941)
- Administrative Procedure: A Report and an Evaluation, 26 Wash. U.L.Q. 492-509 (1941)
- The Role of Law in a Democracy, in *Science, Philosophy and Religion* (Second Symposium of Conference on Science, Philosophy and Religion) 173-85 (1942)
- Under God and the Law, in *Approaches to World Peace* (Fourth Symposium of Conference on Science, Philosophy and Religion) 224-31 (1944)

- Constitutional Liberties and Statutory Construction, 29 Iowa L. Rev. 448-53 (1944)
- Book Review, The Michigan Administration Code, 38 L. Lib. J. 46-47 (1945)
- Congressional Silence: A Tool of Judicial Supremacy, 25 Texas L. Rev. 247-61 (1947)
- The Law: Bridge or Barrier, in *Approaches to Group Understanding* (Sixth Symposium of Conference on Science, Philosophy and Religion) 271-79 (1947)
- Book Review, Summary of American Law, by George L. Clark, 33 Iowa L. Rev. 605-08 (1948)
- The Future of Uniform Laws—The Commercial Code, 9 Ohio St. L.J. 555-70 (1948)
- Legislative Adaptation of Scientific Discovery, 28 Neb. L. Rev. 506-15 (1949)
- The Disintegration of Statutory Construction, 24 Ind. L.J. 335-52 (1949)
- Sex Offenses and Scientific Investigation, 44 Ill. L. Rev. 149-59 (1949)
- Book Review, Jeremy Bentham commemorative publications by Harrison and by Keeton and Schwarzenberger, 24 Ind. L.J. 607-10 (1949)
- Book Review, Local Government Law, by Jefferson Fordham, 35 Iowa L. Rev. 528-32 (1950)
- Cooperative Action for Improved Statutory Construction (in symposium on statutory construction), 3 Vand. L. Rev. 382-94 (1950)
- Book Review, The Growth of American Law: The Law Makers, by James Willard Hurst, 64 Harv. L. Rev. 866-69 (1951)
- Performance Standards in Residential Zoning, in *Planning 1952* (Proceedings, American Society of Planning Officials) 153-61
- Book Review, The Legislative Struggle, by Bertram M. Gross, 39 A.B.A.J. 1000 (1953)
- Book Review, Iowa Departmental Rules, edited by Charles W. Barlow, 39 Iowa L. Rev. 203-05 (1953)
- Objectives in the Field of Legislation, 6 J. Legal Ed. 18-23 (1953)
- How Small a House?—Zoning for Minimum Space Requirements, 67 Harv. L. Rev. 967-86 (1954) (with Val Nolan Jr.)
- Congressional Investigations: A Plan for Legislative Review, 40 A.B.A.J. 191-94 (1954)

Book Review, Legislative Drafting, by Reed Dickerson, 103 U. of Pa. L. Rev. 291-94 (1954)

Emerging Legal Issues in Zoning, in *Planning 1954* (Proceedings, American Society of Planning Officials) 146-55

Can American State Legislatures Keep Pace? (in symposium on legislation), 26 Rocky Mt. L. Rev. 468-86 (1954)

Land Controls in an Urban Society (in symposium on area development), 28 Rocky Mt. L. Rev. 502-17 (1956)

Sanctions Against Governmental Violations of Planning and Zoning Ordinances, 43 A.B.A.J. 745-46 (1957)

Miscellaneous Addresses and Papers:

*Plowden's Reports—Equity of a Statute, a paper, "Plowden's Sixteen Cases," and other materials which appear to be forerunners of the article, "Statutory Interpretation—Light from Plowden's Reports," 19 Ky. L.J. 211-25 (1931)

*Rebuilding in West Virginia—A Story of Fifteen Months of Legislation, a paper which probably was published as "Public Affairs Bulletin No. 7" by the West Virginia University Bureau of Government Research on July 1, 1934

*The Hocus-Pocus Science, a paper on the need for, and the content of, a course in legislation in the law curriculum which apparently was read at the annual meeting of the Association of American Law Schools, New Orleans, Louisiana, December 27-30, 1935

*Book Review, C. M. Hepburn's Cases on the Law of Torts, 2d ed. by Wm. P. Hepburn and A. H. Throckmorton (1935) [apparently unpublished]

*Alcohol City, a pamphlet published by the United States Treasury Department (G.P.O. 1936)

*Sibyl and the Constitution, apparently the paper, listed in the program as "Sybilline [*sic*] Political Theory and Constitutional Realism," which was read at the annual meeting of the Association of American Law Schools, Chicago, Illinois, December 29-31, 1937

*The Future of the Labor Movement in America, a paper the first line of which reads, "After Professor Yellen's interesting and pictorial discussion of the realities of the Labor movement, I am a bit hesitant to inject a general and philosophical tone into the discussion." [Professor Samuel Yellen of the Indiana University English Department has indicated that this probably

is a paper read at a symposium in the Law School in 1937 or 1938.]

*Are Legislators Human?, a paper bearing the note, "Speech delivered at Rotary Club at Bedford, Indiana, Sept. 22, 1938."

*Statutory Stare Decisis: A Legislative Common Law, a paper which bears a footnote as follows: "Condensation of a thesis advanced in 'The Common Law of Legislation,' 22 [23] Iowa L. Rev. 41 (1937)" and appears to be the article, "Do Legislators Think Like Judges?," 11 State Government 163-64 (1938)

The Development of Planning and Zoning in Indiana, an address delivered at First Annual Planning School, Purdue Univ., published by the State Planning Board of Indiana, Indianapolis, January, 1939

*De Facto Unicameralism, a paper which appears to be the article, "Bicameral Legislatures Are Effective," 14 State Government 79-80, 96 (1941)

Codification of the Indiana library laws (1942-1943)

*The Transformation of our Contemporary Culture into a Spiritual Culture: The Balance Sheet of Law and Religion, a paper read at a Chicago meeting of the Institute for Religious and Social Studies, January 29, 1946

*Book Review, Comments, Cases and Materials on Legislation, by Arthur Lenhoff (1949) [apparently unpublished]

Draftsman, A Model Law Enforcement Act (for the American Bar Association Committee on Organized Crime, 1951-1952)

Analysis of Indiana statutory law relating to local government (for the Marion County Metropolitan District Commission, 1952)

Draftsman, Health Administration Act of 1953, Ind. Acts 1953, Ch. 197

Draftsman, Five acts on planning and zoning enacted by the 1953 Indiana General Assembly

Indiana Park and Recreation Code (mimeo.) (for the Indiana Park and Recreation Association, 1952-53)

Zoning without Zones (an address before the Municipal Law Section, American Bar Association, August, 1954)

The Legislative Process (Educational Film, Indiana Univ., 1954-1955) [Editor, with others]

Draftsman, Metropolitan Area Planning and Zoning Act, Ind. Acts 1955, Ch. 283

- Draftsman, The Park and Recreation Law of 1955, Ind. Acts 1955, Ch. 311
- Mertopolitan Area Planning for Northeastern Illinois and Northwestern Indiana (for Metropolitan Housing and Planning Council, Chicago, 1956) [Reginald Isaacs, Director of study; Frank E. Horack Jr., Chief Legal Counsel]
- A Proposed Area Planning Law for Indiana (Indiana Planning Conference, Valparaiso, Indiana, November 30-December 1, 1956)
- Metropolitan Government and Planning Legislation (The Frank Backus Williams Memorial Lecture, Harvard Graduate School of Design, March 1, 1957)
- Non-conforming Uses and Zoning Administration [a round table program on zoning] (National Conference American Society of Planning Officials, San Francisco, March 15-22, 1957)
- Initial draft, Illinois House Bill 701, creating a Metropolitan Plan Commission for six counties in Northeastern Illinois (1957)
- Survey of State Statutory Law, for National Conference of Commissioners on Uniform State Laws, with particular attention given to state statutory law on mechanics' liens and on marriage and divorce. (At the time of Mr. Horack's death he was working with Dean Albert J. Harno and Mr. Barton Kuhns in an attempt to find financial assistance in the furtherance of the work on the Statutory Survey.)
- *A.F.I., a paper concerning a men's senior honorary society founded in 1915 on the campus of the State University of Iowa [no date]
- *The County Convict Labor Statute, a memorandum on a West Virginia statute which authorized the use of convict labor [no date]
- *Willful or Careless Refusal to Pay Money on Due Date, a footnoted memorandum pointed especially at the lack of direct precedent in Indiana [no date]
- *Is an Experiment Law?, a paper, read at a symposium "Indiana Studies in the Legal and Social Sciences," proposing the creation of a College of Social Sciences. [With this paper are filed other papers prepared for this symposium by such Indiana University faculty members as Dean Gavit of the Law School, Professor Conklin of the Psychology Department, Professors Robinson and Jellema of the Philosophy Department, Professor Kohlmeier of the History Department, Pro-

fessor Mueller of the Sociology Department, and Professors Moffat and Christenson of the Economics Department. Plans to publish these papers apparently never were fulfilled.] [no date]

*The Problem of the Junior Faculty Member, a paper dealing with the increase in counseling work and extracurricular responsibilities, with the increasing problem of faculty recruitment, and with problems of recognition, responsibility, and compatibility of surroundings [no date]

*Curriculum Adjustments and Academic Tenure, a paper outlining the background of its proposal that a study "be made with a view to formulating not only more explicit principles but an actual program for achieving flexibility in budget and curricula without jeopardy to the basic principles of tenure." [no date]

* Except as indicated no evidence has been found that the items marked with an asterisk (*) have been published. These items are available on loan from the Faculty Publications Section of the Archives of Indiana University, Bloomington, Indiana.