

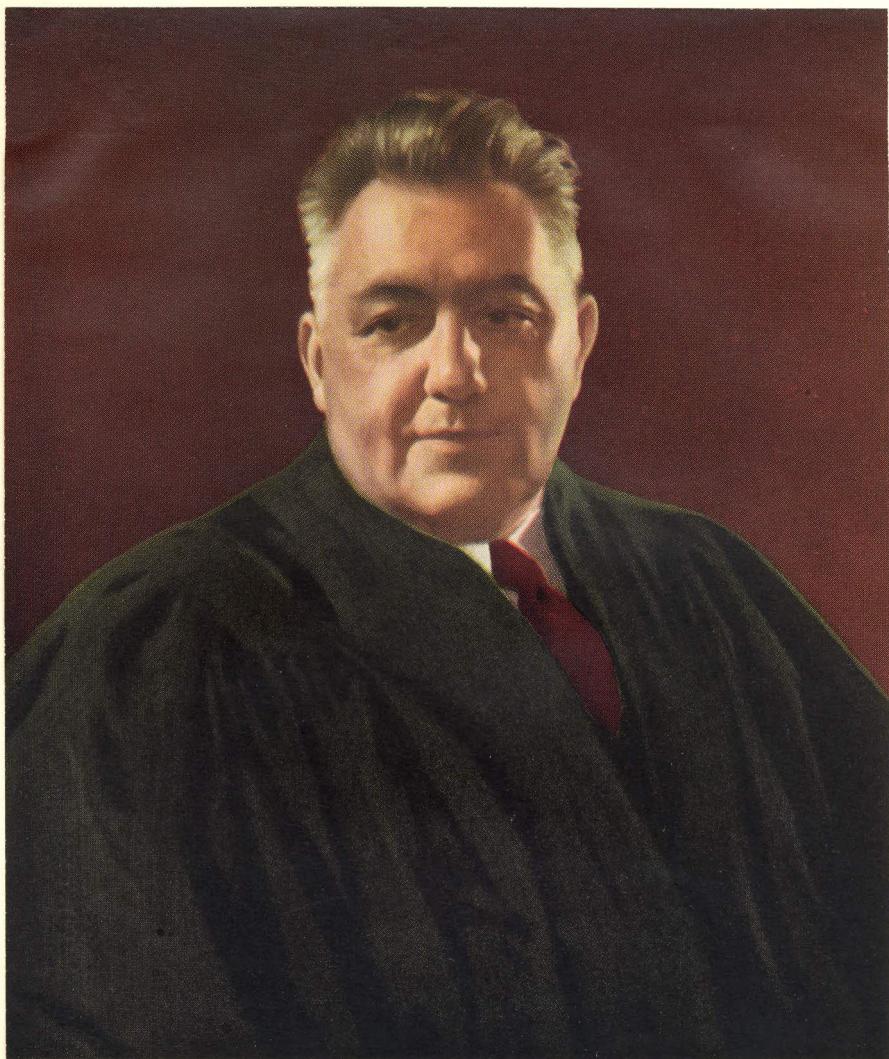
The Honorable  
Walter E. Treanor

In Respect to the Memory  
of  
The Honorable  
Walter E. Treanor



Proceedings had on the Fourteenth Day of April  
One Thousand Nine Hundred and Forty-two

*Before the*  
United States Circuit Court of Appeals  
for the Seventh Circuit



Hon. Walter E. Treanor

*Painted by Leopold Seyffert, Jr.*



At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago, and begun on the Seventh Day of October, in the Year of our Lord One Thousand Nine Hundred and Forty-One, and of the Independence of The United States of America the One Hundred and Sixty-Sixth.

On Tuesday, April 14, 1942, the Court met pursuant to adjournment, and was opened by proclamation.

Present :

Hon. Evan A. Evans, Circuit Judge, Presiding ;  
Hon. William M. Sparks, Circuit Judge ;  
Hon. J. Earl Major, Circuit Judge ;  
Hon. Otto Kerner, Circuit Judge ;  
Hon. Sherman Minton, Circuit Judge ;  
Kenneth J. Carrick, Clerk ;  
William H. McDonnell, Marshal.

There were also present and sitting with the Court :

Hon. John P. Barnes, District Judge ;  
Hon. William H. Holly, District Judge ;  
Hon. Michael L. Igoe, District Judge ;  
Hon. F. Ryan Duffy, District Judge.



## Memorial Resolution

*Mr. Patrick J. Smith of Indianapolis, Indiana, on behalf of the members of the Bar of this Court, addressed the Court as follows:*

On behalf of the Bar of this Court, leave is asked to present the following resolution:

RESOLVED, That the members of the Bar of the United States Circuit Court of Appeals for the Seventh Circuit express their deep regret at the death of Walter Emanuel Treanor, late Judge of this Court, and desire to record their appreciation of his high character and of his outstanding public service to his fellowmen, his state and nation.

He was born on November 7, 1883, at Loogootee, Indiana, the son of James Donnelly Treanor and Gertrude Sommers Treanor.

He began his public service prior to World War I as a teacher in the public schools at Petersburg, Indiana.

In 1912 he was graduated with honors from Indiana University with the Bachelor of Arts degree.

From 1912 to 1915 he served as principal of the Petersburg School. He became superintendent of the school in 1915, and served as such until 1917, when he enlisted in the Armed Forces of the United States, and thereafter served overseas with the rank of Lieutenant.

On December 9, 1916, he was married to Aline Elizabeth Jean, who with their daughter, Rosemary, survives.

After his discharge from the Army he entered law school. He received the Bachelor of Laws degree from Indiana University in 1922 and the degree of Doctor of Laws in 1923.

He held a professorship of law at Indiana University School of Law from 1922 to 1930. During the school year 1926-1927, Judge Treanor studied at Harvard College of Law, and in 1927 the degree of Doctor of Juridical Science was conferred upon him.

He edited the Indiana Law Journal from 1927 to 1930. In the latter year he was elected to a judgeship on the Indiana Supreme Court. After serving one six-year term, he was re-elected in 1936. On December 27, 1937, he was appointed to this Court where he served until his death on April 26, 1941.

Throughout his life Judge Treanor was a man of high courage. He was unafraid. While on the Indiana Supreme Court his liberal views found expression in strong dissenting opinions. Later majority opinions have accepted many of his views.

He respected the principle of stare decisis, but did not believe the law static. It was a growing concept ever changing to meet the need of expanding social consciousness.

His intellectual and moral qualities, tolerance, breadth of vision and personal charm endeared him forever to his fellowmen. His service to his state and nation will cause him to be remembered always.

BE IT FURTHER RESOLVED, that the Bar of the Seventh Circuit Court of Appeals now presents to the Court a portrait of Judge Walter Emanuel Treanor as a permanent memorial to a great man and a great jurist; that a copy of this resolution also be presented to the Court with a request it be appropriately spread upon the Court's records, and that the Chairman of the Bar's Committee provide the family of Judge Treanor with a copy thereof.

Submitted by the Committee on Resolutions.

PATRICK J. SMITH, *Chairman*  
CASPER W. OOMS  
MYRON H. GRAY  
KENNETH F. BURGESS  
B. HOWARD CAUGHRAN



## Presentation of Portrait



PROCEEDINGS upon the presentation of a portrait of The Honorable Walter E. Treanor, United States Circuit Judge, by the members of the Bar of the United States Circuit Court of Appeals for the Seventh Circuit, on Tuesday, April 14, 1942.

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*Mr. Charles P. Megan, of Chicago, Illinois, addressed the Court as follows:*

MAY IT PLEASE THE COURT:

We have come together to welcome the assurance given us that future generations of lawyers and judges will know the features of this judge, what manner of man he was to the sight. The painter has raised his work to the high level of art, and we are happy that one whom we so admired has been nobly pictured for all men to see.

It is not easy for us here in Illinois to speak of the life and work of Judge Treanor. We never knew Walter Treanor the school-teacher, Walter Treanor the Phi Beta Kappa college student, Walter Treanor the law professor, Walter Treanor the State Supreme Court judge. More than that, we but only knew the Walter Treanor of this portrait. For he was with us only three years, and when he came to us the hand of



death was already on him, although we knew it not, nor perhaps did he.

We record all this with grief and a deep sense of loss. It means that our personal acquaintance with him was not great, and that for closer knowledge we must go to the printed word, which does not tell all.

Walter Treanor was first in point of time, and possibly first in temperament and by choice, a teacher. He began teaching in that town in southwestern Indiana, not his birthplace, but which he always thought of as his home, where he himself had attended school, the county seat of Pike County, in the second tier of counties from the Ohio River and but one county removed from the Wabash, enshrined in Indiana song and story. Petersburg must be not far from the center of that great undefined territory,—called by a name whose origin is unknown, the good word “Hoosier,”—which, we are told, once reached across the Ohio into Kentucky, and deep into Illinois, comprising all the earlier Lincoln country. Indeed Lincoln spent the great formative years of his life, the fourteen years between seven and twenty-one, in this southwestern corner of Indiana. We begin then with Walter Treanor as a Hoosier schoolmaster, a title endeared to all the world by Edward Eggleston’s famous book; grade teacher in 1902, high school teacher of Latin and history for the next eight years (he never lost his love for either Latin or history), principal of the high school from 1912 to 1915, and superintendent of schools from 1915 to 1917. Then came the World War, and he went to France as a soldier, at thirty-five years of age. Returning to the United States in 1919 he began the study of law at thirty-six, and graduated in 1922.

Later he had a year of graduate study at the Harvard Law School.

From 1922 to 1930, with that one year out, he was a professor at Indiana University, teaching law and continuing to coach athletic teams (now with some difficulty because of a bad knee that developed out of his war service), and we are told that he was a very popular figure on the campus, as he naturally liked everybody, and everybody liked him.

Here we begin to learn what he was thinking about, for in this period he wrote a few comments for the *Indiana Law Journal*, which was founded after he joined the law faculty. In volume one, number one (January, 1926) we have what is, I believe, the first of Walter Treanor's writings generally available to the profession,—a four-page note giving a clear and lawyer-like exposition of a problem connected with the law of burden of proof, a field which today still furnishes difficulties for the highest Courts on either side of the Atlantic Ocean. In the next month's issue, Professor Treanor analyzed the "family purpose" doctrine in automobile accident cases, in an attempt to put the doctrine in its proper social and economic setting. In a note on a new point in agency, in the *Journal* for March, 1928, Professor Treanor challenged an opinion of the Indiana Appellate Court, gave the substance of the supporting cases clearly and succinctly, and concluded by saying boldly that "the members of the Indiana bar are entitled to a fuller and more adequate consideration, by the Supreme or Appellate Court, of the soundness of the agency doctrine" announced in the decision.

In the December, 1929, number of the *University of Pennsylvania Law Review* there is a review by Professor Treanor of a new case-book on suretyship. He discusses the change in the concept, and quotes an English judge's statement in 1876 about the rule that a surety is released by a binding extension of time, however short, and regardless of damages, the English judge saying frankly that this rule was "consistent with neither justice nor common sense," but that the rule had been generally established so long that it could only be altered by the legislature; and Professor Treanor contrasts this with the opinion of an American State Supreme Court, forty years later: "We hold that the extension of time of payment, unless resultant harm is shown, does not discharge a paid surety," suggests that the old rule is yielding under the strain of "men's actions and men's needs"; and concludes, jurist and teacher speaking together with one voice:

There ought to be a clearer appreciation on the part of the student that as the facts of life change, becoming more and more complex, legal doctrines must also change, must grow and expand, or else die. For it is true of suretyship law, as well as of law generally, that "the law must be stable, and yet it cannot stand still."

Here in 1929 we see the influence of his mentor Dean Pound, and a foreshadowing of his own judicial philosophy.

Then suddenly, out of a clear sky, he was asked to become a candidate for the Supreme Court of the State, and he agreed, and was nominated and elected: a very portent, a Democrat on the Indiana Supreme Court! This was in the fall of 1930, and he took his



seat on the bench early in January, 1931, only eight and a half years after graduating from law school. He was now forty-eight years old. Almost at once he was plunged into a distressing and most controversial case, which had divided the Court already, and was ultimately ruled on by a divided court. Thus early he had experience of something which was an outstanding part of his life for all his later years. For his career shows a baffling admixture of the things that Fortune sends. All of his advances in the world came unsought, perhaps not greatly desired, perhaps not desired at all. It may well be that of the different branches of his life's work he loved teaching best, and very likely he would have been happy as school superintendent in small cities, moving from one to another as Methodist ministers do, advancing a little in his profession, satisfied to be where he was, each time half regretting the change. He did not like political life, and on the day he first went on the bench in 1931 he gave up politics forever. On the other hand, the bench for him was not a quiet haven, where the storms of professional life were past. No, it was just the opposite. From his boyhood he seems to have been destined for a minority status. (As for his religious experience, it may be sufficient to say that his earliest childhood years appear to have paralleled those of another eminent mid-western judge, Chief Justice Ryan of Wisconsin.) It was not that he was fond of differing from others: on the contrary, hating nothing but intolerance, he was of that gentle nature to which dissent brings for the time an agony of mind, one instinct fighting against another, a deep longing for harmonious, unified, effective action, with all forces pulling together, pitted against an unbending loyalty to prin-



inciple. So, while all his life, it might almost be said, he was in a minority, yet he was constantly invited upward; taking the lowest place at the table, till one came and said: Friend, go up higher. This is the life that it was given him to live, for better or for worse.

Cardinal Newman helped the thinking of his contemporaries by writing a "Grammar of Assent," but no one has attempted to compose a Grammar of Dissent. Dissent is not calculated by the arithmetical process of counting up opinions. Physicists tell us that if two objects in the depths of space were found yesterday a certain distance apart, and today a greater distance, it is largely a matter of arbitrary convention whether we shall say that A has moved away from B, or that B has moved away from A. A distinguished legal scholar, who has written acutely on the philosophy of judicial dissent, is now a member of the Supreme Court of the United States, and is found now as one of a majority and now of a minority, and we speculate whether he has remained fixed and the Court has moved from side to side, or he has moved and the Court has remained constant. Of the details of all this the bar knows little. "The intimacies of the conference room," says the scholar-judge to whom reference has just been made, ". . . are illuminations denied to the historian. And it is not easy to disentangle individual influences in the combined work of a Court. . . . Divisions on the Court and the greater clarity of view and candor of expression to which they give rise, are especially productive of insight. Moreover, much life may be found to stir beneath even the decorous surface of unanimous opinions." "The considerations" (he goes on to say)

“that move a judge to yield concurrence in an opinion reaching an approved result through uncongenial doctrine are among the most teasing mysteries to a student of the Supreme Court. Long-term strategy or immediate fatigue, hopelessness of opposition or depreciation of the importance of the pronouncement, *bonhommie* of common labors or avoidance of undue division,—such are the factors that may restrain the expression of individual views.”

Be all this as it may, Judge Treanor on the Supreme Court of Indiana felt it his duty to advocate that which he thought right and just, although at times others could not be brought to accept his views. When the United States Supreme Court confirmed his dissent, as in the *Anderson case*, involving security of tenure for teachers, or the *J. D. Adams Manufacturing Co. case*, involving the validity of the Indiana Gross Income Tax Law with reference to receipts from interstate commerce, his mild spirit probably felt no elation, but only a passing shadow of regret that there could not have been agreement from the outset. Yet he had achieved what is said to be the crowning glory of the State Supreme Court judge who dissents from the decision of his fellow-judges, and thereafter has his view sustained by the Supreme Court of the United States: the stone that was rejected of the builders became the head of the corner.

Perhaps I should mention here the cases of injunctions restraining parties from filing personal injury suits against railroads in States remote from the scene of the accident. State Courts sometimes asserted the right to issue such injunctions, but the contrary view was announced by Judge Treanor for his Court



in 1937, and this is the view that has been accepted by the United States Supreme Court, in two very recent cases.

Few men of Judge Treanor's eminence on the bench have grasped so firmly and maintained so unswervingly the doctrine that what we live by is justice according to law. And so to this gentle and warm-hearted scholar the parties to the law-suit tended to recede into the background, and the principle of law to take the place it should occupy, the foremost place, for this is a government of laws and not of men. Humanitarian as he was, to the core, yet he had schooled himself to think of the law first, and persons afterwards, and this is one of the elements that constitute the judge: hard cases make bad law. The world would be a poorer place without the crusader for social and economic reform, but his place is not on the bench. And as in Eggleston's book the novelist that was in him (it has been said) overcame the preacher that was also in him, so the jurist in Walter Treanor got the upper hand of the sentimentalist; and that was well.

Yet at this stage of his career, as all his life, he was swimming against the current. He came on the bench at a time when the most prominent and influential members of the bar of the whole country were turning to the Courts and calling upon them to curb the actions of legislatures, State and national. The opinion which probably was the last that Judge Treanor delivered from the bench in Indiana, shows how different was his view from some of the then-current expressions of sentiment of the bar. The

subject-matter of the case was a painful one—divorce for insanity: the opinion ends with this clear brief statement of the relation between legislative power and the power of Courts with reference thereto:

Courts are bound to declare the law to be that which the General Assembly, acting within its constitutional power, enacts, be it wise or foolish as measured by our personal views, and even though it shocks our sense of justice and fairness.

This is very reminiscent of another of his masters, Holmes.

We are now approaching the end of Judge Treanor's service on the Supreme Court of Indiana. But one occurrence within this seven-year period must be noticed. It was the Harvard Tercentenary. In 1936 the first-born of American universities commemorated the three centuries of its life, and scholars were in attendance from all parts of the world. Among the law alumni invited was the Indiana scholar, with ten years of experience, not quite half of these as a law professor, more than half as a judge. It was to him a congenial gathering, expansive and progressive, a last term at school for one who never ceased to be a learner. The subject of the three-day celebration at the Harvard Law School was "The Future of the Common Law." A judge of the highest Court of England was one of the principal speakers. Summing up his own address Lord Wright said:

The common law is a living organism, and will, I believe, go on living and developing in the service of the cause of justice, maintaining its old tradition of deciding concrete cases on their merits and according to law on precedent or on the analogy of precedent except where a statute governs.  
. . . But . . . it will be less concerned with



the literal interpretation and reconciliation, in a narrow and technical spirit, of decided cases. The judges will think more of the spirit of the decisions and will strive to mold and control them so as to serve the exigencies of social welfare and justice.

Then Justice Stone, now Chief Justice of the United States, took up the story. He said:

Whether the constitutional standard of reasonableness of official action is subjective, that of the judge who must decide, or objective in terms of a considered judgment of what the community may regard as within the limits of the reasonable, is a question which the cases have not specifically decided. . . . The judge whose decision may control government action, as well as in deciding questions of private law, must ever be alert to discover . . . whether his own or the objective standard will represent the sober second thought of the community, which is the firm base on which all law must ultimately rest.

The learned Justice, after expressing "faith in the capacity of the common-law system to find adequate solutions of the problems of public and private law in a rapidly changing order," concluded as follows:

That faith must be inspired, not so much by the earlier history of the common law in America, as by its present, and by those unmistakable signs, which one may observe on every hand, of what its future is to be. . . . Despite the narrow and pedantic views which have at times retarded the progress of the common law and obscured our vision of its vital and essential qualities, at no stage of its history has it seemed to give such promise of carrying forward triumphantly the extraordinary task we have assigned to it.

Late in the afternoon of the third day of this great symposium Judge Treanor was called on for his comments. He was a prophet, a seer of the future, but his Indiana brethren tell us that notwithstanding his academic background they always thought of him as a very practical man. So he spoke at Harvard:

Legal rules, principles, standards, and concepts, which reasonably secured the economic liberty and welfare of the individual a few decades ago, may prove to be inadequate when applied to the corresponding problems of today. . . .

The result has been that many types of anti-social conduct have flourished because of the inherent limitations upon the capacity of both courts and legislatures to deal with situations which require individual treatment . . . and the test of abuse of discretion [by an administrative body] should be a genuine judicial test and not a test measured by the individual judge's ideas of the expediency of the administrative determination.

Thus he hoped that

the profession [bench and bar] may continue to make its indispensable contribution to the problem of administration of justice in accordance with law in our politically organized society with its ever increasingly complicated social and economic life.

“It is this aptitude of the common law” (said Judge Crane of New York as a final word), “this adaptability, this facing of present-day facts, which give it such power and usefulness.”

This was the spirit in which Walter Treanor judged men and causes, as he sat for seven years on the highest Court of his native State. A member of his bar has written of him:



He was a thoroughly independent thinker, with a strong tendency to brush away refinements and get at the actual merits of questions. . . . He was eminently fair, and unquestionably one of the finest characters who ever came to the supreme bench of our State.

We may perhaps convey to others some picture of Judge Treanor if we say that in his dignity of presence, his mild disposition, his uncompromising rectitude, his learning, he recalled to the minds of lawyers a great judge of an earlier day, Joseph Story.

Then, in 1938, unsought, as always, came his appointment to this Court, with its great sweep of power which we call *jurisdiction*, and its great record of service to the public.

When Walter Treanor reached us here in Illinois, he came into an atmosphere he knew well, an atmosphere of conservatism. It was *mundus alter et idem*, another world, and yet the same. The prevailing opinion of the bar tended to the sustaining of the *status quo*; but in the age-old antinomy of stability and change, what sets a man on one side rather than the other it is for the philosopher to explain, or the novelist, who looks into the hearts of men. In any event, Judge Treanor's days of dissent were not over. The gad-fly of principle still drove him, and would drive him as long as life should last. As one of his colleagues has said of all his colleagues, they were judges "possessing great independence of thought and holding varied political and economic views." That the *novus ordo seclorum* should change all else, and leave Courts the same, was not to be expected. Judges are not all printed off one plate, and there was room

for a Walter Treanor: he had his own place on the Court, and this his fellow-judges recognized in generous friendship.

We at the bar followed his career with deep interest, all of us greatly desiring to know what manner of man had come among us to sit on the judgment-seat.

He gave us the clue at once. At a dinner tendered to him by the Chicago Bar Association upon his coming to Chicago there was much life and gaiety, but at the very end of his remarks in response and acknowledgment he dropped a few words of serious thought, from which we had it confirmed that the new judge was a historian and legal scholar, with perhaps as much of the statesman's point of view as it is lawful for a judge to have. Speaking without notes, he said to us, very simply and informally:

“After all, there is a community, a brotherhood of ideas and a common background that makes us always feel at home with each other. Indeed it is a very interesting thing to me to realize that, after all, you and I could talk familiarly and understandingly with the members of our profession who lived and worked two hundred, three hundred, five hundred years ago, a thing of great significance, after all, because it is a recognition, when we think of that, of the continuity of the thinking, a recognition of the continued soundness of the views,—the traditions and the ideals of our profession. We could talk familiarly and understandingly with Coke” [I well remember this occasion: scholar as the Judge was, he pronounced the name ‘Cook,’ as the bearer of the name did, and every one else of the time], “the tough old common-law lawyer who thought that equity and all such things were a ruinous innovation that was going to destroy the beautiful symmetry of the common law. We could understand Bacon, too,



and the other upholders of the great new idea, because, after all, their conflict was the same conflict that was going on and will continue to go on between the opposing principles, or really the opposing ideas of government by law, as against government by discretion alone, or government by men; the administrative activity or function in government as distinguished from what we call the strictly judicial. And we could imagine Coke and Bacon and others, if they were here with us today, violently disagreeing, just as we do in our profession, on many of the things and many of the problems that confront us. And as we look back we have none of the bitterness in respect to the views of those men, because we realize now that there was merit in the conceptions, the ideas, of both, that it would have been disastrous to the growth and development of law and of political societies with which we are familiar if either one had lost, but it would have been equally ruinous if either one had supplanted entirely and excluded the other. And so today perhaps we have a deeper feeling of brotherhood and appreciation when we realize that we do find ourselves differing sometimes as bitterly as the men of old differed in our profession, and it may be that in the future as men look back they will see that there was good in even the most antagonistic positions and ideas of today. So I look forward in the hope of having a small part along with you in meeting and deciding, solving some of these problems which confront us and which are as serious as the ones which confronted the men of our profession in days gone by. If we can solve our problems as they solved theirs, we will perform a service which not only will reflect credit and honor upon our profession, but will add to the enduring of those traditional ideas of democratic government to which we are all devoted."

Such was Judge Treanor's first word to the bar of Chicago.

From this point on, it would have seemed that we here would have an opportunity of closer personal acquaintance with our new judge. But this was not to be. Indeed, Judge Treanor had but three more years of life before him. Gentle and kindly as ever, he yet retired more and more into the life of the student of law and its application to the affairs of men, a wide and great field, in truth, but more and more he plowed it alone, a solitary furrow. We continued to know him almost entirely from his opinions as delivered publicly in the cases that were argued before him.

But this is scarcely unique. Every judge of a reviewing court is known best in this way. Every opinion delivered is a fragment of a judge's autobiography, and for him, as indeed for all of us, there is (said Ruskin) no one final day of judgment; "every day is a day of judgment, and writes its irrevocable verdict in the flame of its west." This judgment, this verdict, Walter Treanor could await with quiet confidence. *Integer vitae, scelerisque purus*, this school-master taught us something more than law. Above all, he did what alone is straitly required of man: to do justly, and to love mercy, and to walk humbly with his God. In some sense he was here, as elsewhere for all his life, a stranger in a strange land, but there went before him by day a pillar of cloud, to lead him the way, and by night a pillar of fire, as the Lord promised, and he walked unafraid.

As a judge he won the trust and affection of his colleagues and of the bar. He gave judgment firmly, directly, but always temperately and with kindness. Even in dissenting opinions, which (says Justice



Frankfurter, whom I have already quoted) "have an impetus of individuality which makes expression freer"—we quite understand what the learned Justice means,—even in Judge Treanor's dissents the reader will search in vain for the slightest touch of asperity, for the least hint of rhetoric or heat. In the course of his long dissent in the controversial *Fansteel case*, he permitted himself to go no farther than this:

It is urged that an affirmance of the order of the Board is an approval of the unlawful acts of the employees. I understand the emotional appeal involved in that contention, but cannot comprehend its relation to a judicial consideration of the question before us.

"In Judge Treanor's work," wrote a colleague on this Court, "he carefully weighed and appraised conflicting values. But the result was always the product of the thinker."

His three years on the federal bench slipped quickly by. To the end he dissented freely, for his whole life was grounded in principle. This is a point of conduct that every man must decide for himself. Obviously Judge Treanor (with James Russell Lowell) believed that compromise makes a good umbrella but a bad roof. It is all in one's judgment of values, as his colleague observed. Who shall say that Judge Treanor's was not thoughtful and sincere? He went below the surface rubbish, below the shifting sands, deep down to the bed-rock. And yet, in this his life of paradoxes, he was the gentlest, the mildest, the most modest and self-effacing of men.



With all this, he had a singularly happy life. He died too soon, but his whole life was such that in the evening of any day he might have drawn his mantle about him and lain down for the last, long sleep, at peace with the world and himself. His name in our jurisprudence will grow ever greater. We shall see him more clearly as the years go on, and understand him better. Shall we not think of that as a foretaste of immortality? His body was borne to earth at Petersburg. It was his own home town, but he was a citizen too of the city not built with hands. His was a culture that is not foreign to our local soil, but indigenous, genuine, rooted in life; yet he was of kin, not only to the great spirits of this middle west, but to those of other lands and other times:

Hence in a season of calm weather,  
Though inland far we be,  
Our souls have sight of that immortal sea  
Which brought us hither;  
Can in a moment travel thither,  
And see the children sport upon the shore,  
And hear the mighty waters rolling evermore.

Judge, teacher, scholar, saint—we grieve at our loss. But we are proud and glad that Walter Treanor lived and worked among us. He has left us a precious memory, and we shall look on his face, as the artist has so well portrayed him, and remember him, and take courage and hope for all the years to come.

*Mr. Smith then introduced Mr. Carl Wilde:*

May I now present Mr. Carl Wilde, representing the Indiana Bar, whose address will conclude the Bar's Memorial Presentation.

*Mr. Carl Wilde, of Indianapolis, Indiana, addressed the Court as follows:*

It is a high privilege indeed to be permitted to appear in this presence, to speak, on behalf of the lawyers of Indiana, in honor of a man who was held in such affectionate esteem by the entire bar of Indiana as was Judge Treanor.

A native of Indiana; a graduate of her State University; a teacher in her public schools, and a professor of law at that university; a judge of her Supreme Court; and a lifetime resident of Indiana; Walter Emanuel Treanor was thoroughly a Hoosier. He possessed those homely qualities which we like to think of as being typically Hoosier: honesty, simplicity, industry, and loyalty. As is traditional with many of our eminent Hoosier lawyers and judges (and the same may be said of those of the other states in this circuit) he was a school teacher before he was a lawyer. He had an instinct and a gift for teaching. The profession of the teacher was dear to his heart; and after he left his desk at the law school at Indiana University to begin his career as a jurist, and throughout that brilliant career, he continued to be a member of the faculty, having always in his mind the thought that some day he might resume again his beloved vocation as a teacher of the law.

Judge Treanor had truly great qualities of heart, and mind, and soul, but it never occurred to him that he possessed these qualities, and he was as simple and kindly and unaffected in all he said and did as only such men who are wholly unaware of their greatness can be. No man was ever less pretentious than he was.

He had not that need of assuming a front of dignity to impress the world, which is so frequently the resort of lesser men, unsure of themselves or conscious of a lack of the ability required by their task. Dignity he had, innate and with no conscious thought, arising solely out of a disinterested singleness of purpose—to administer the law with regard to no considerations other than the attainment of justice as exact as the imperfections of human nature and of the vehicle of our legal system would permit.

To Judge Treanor the law was never static. He regarded it as a constantly growing and expanding system, susceptible always of improvement, and sufficiently flexible to meet the changing needs of our political, social, and industrial economy.

It happened that by political party membership Judge Treanor was a Democrat. He was, also, upon principle and by conviction, a devoted follower of the democratic doctrine to which all lovers of liberty under the law, regardless of political party affiliation, subscribe, that is: he believed that before the law all men are equal, and that to maintain such equality the mere indiscriminating application of the strict letter of a statute or a legal principle, without regard to their spirit and intent, will not suffice.

In his philosophical approach to legal problems Judge Treanor was undoubtedly of that school of thought generally called "liberal." Yet, even the most devoted adherent of the so-called "conservative" school could never entertain any doubt of the absolute integrity of thought and the honesty of purpose which actuated Judge Treanor in every decision which



he made, both while on the Indiana Supreme Court and on this Bench. His liberal views were to him the necessary corollary to his conviction that our system of law is a growing, expanding one, adaptable to a changing economic and social world, elastic enough to insure against the unyielding rigidity which stifles growth. His liberalism had no taint of the fanatic; nor had he any of the ruthlessness which characterizes the zealot. He was careful always to avoid as much as possible the hardship which so frequently results from a reversal of established and accepted rule. One of his best known decisions is *In Re Todd*, 208 Indiana 168, wherein he held constitutional an Act of the Indiana General Assembly giving the Supreme Court exclusive jurisdiction to admit attorneys to practice under such rules and regulations as it might prescribe. The question directly presented was whether the state constitution had been amended by the striking of the provision entitling all persons of good moral character, qualified to vote, to admission to practice law in all courts of justice. A majority of the electors who voted upon the amendment favored its adoption, but the number of those voting in favor of the amendment was much less than half the number of voters who cast their votes for political candidates at the general election in which the question of the proposed constitutional amendment was submitted. The Indiana Supreme Court had previously held, in a number of decisions, (with strong dissent in some of them) that a proposed amendment which is submitted to the electors at a general election fails of adoption unless it is approved by a majority of all those voting in such general election. Judge Treanor, a majority of the court concurring, reversed this rule, holding that

where the overruling of previous decisions of the Supreme Court will not produce uncertainty in titles, or introduce doubt and confusion in questions of property or contract, it is the duty of the court to correct its own errors, and the doctrine of stare decisis cannot be successfully invoked to perpetuate them. Using the simple, lucid language which he habitually employed, Judge Treanor said:

“When the overruling of previous decisions involves only a question of public interest in no way affecting private interests the rule of stare decisis does not control.”

As a result of the decision in the *Todd case*, Indiana, which had previously borne the reproach of having to admit to the practice of law all persons of good moral character who had attained their majority although they might possess none of the other essential qualifications, and whose courts had been compelled to resort to various subterfuges in an attempt to exclude unqualified persons, was enabled to take its place in the front rank of those states which have set the highest standards for admission to the bar.

It is apparent from the opinions written by Judge Treanor that he stood always upon the conviction that the law and the functions of lawyers and judges are always to be so coalesced and used, that the end achieved will be the doing of justice. The idea that the instrumentalities of our legal system could be used to foster oppression, to satisfy greed, to promote chicanery; this was to him abhorrent and intolerable. I think that the words ascribed to Richelieu in the play by Lord Bulwer-Lytton, might much more aptly have been said by Judge Treanor:



“For justice all place a temple,  
and all season, summer!”

Many men are born imbued with a deep love of liberty. More rarely, but still frequently, they come into this world possessed of an instinctive hatred of injustice. Much more rarely, they have that fine sense of perception and logical analysis which we usually refer to as the “legal mind” and which invariably marks the great lawyer. When all of these qualities happen to be combined in one man, we have a great judge. Judge Treanor had these qualities; they made him a great judge. His monument, more enduring than bronze or stone, is built of his decisions which appear in the reports of the Indiana Supreme Court and of this Court; and, long after all of us present here today have passed into the beyond, that monument will stand to attest his greatness and will still point the way of oncoming generations of lawyers and judges to the just application of the rules and principles of the law.

In the less than fifty-eight years of his life upon this earth Judge Treanor achieved distinction as a student, a teacher, a soldier, and a jurist. Few men, even those attaining a rich fullness of years, achieve a fraction of his accomplishments. His life well exemplifies the truth of the lines:

“We live in deeds, not years; in thoughts, not breaths;  
In feelings, not in figures on a dial.

We should count time by heart-throbs. He most lives  
Who thinks most, feels the noblest, acts the best.”

Indiana is proud of the judges it has had and which it has upon this Bench. Judge Treanor has taken his rank with the best of them. His portrait now takes



its place among the portraits of those other fine judges whose characters and capabilities have contributed to establish the eminence of this Court. The artist has done his work well. There is more, in this picture of Judge Treanor, than mere superficial resemblance. The skill of the artist enables the essential qualities of the man, those for which we loved and admired him, to shine forth from his painted likeness. The portrait is worthy of its subject. To say this is to bestow the highest possible meed of praise. There is no worthier place for it than here among the portraits of these other splendid men. The subject of the portrait is worthy of honor in any place.



*On behalf of the Court, Honorable Evan A. Evans, the Senior Circuit Judge of the Seventh Circuit, responded as follows:*

MEMBERS OF THE BAR OF THE SEVENTH CIRCUIT AND  
FRIENDS OF JUDGE TREANOR:

On behalf of the Court, I wish to express our appreciation of your generous action in presenting this life-like portrait of our late beloved friend and associate, Judge Walter E. Treanor. We gratefully accept it. It will be hung in an appropriate place.

It is, indeed, a most generous course which the Bar of this Court has followed for many years, of presenting portraits, oil paintings of high artistic quality, of each judge who has sat on this bench. We are fortunate, too, in having such a lobby wherein these portraits may be hung.

Personally, I like this portrait very much. I have looked upon it at least a dozen times, before and since it was completed. I am more than satisfied with it. Through it, Judge Treanor seems to speak to us, and we can almost talk to him.

We are pleased that you have honored Judge Treanor. Satisfaction is deep and genuine when a favorite friend, living or dead, is recognized and honored.

Our friend's life is so well known and has been so admirably stated by you who presented the memorials, that I shall add little. Yet, I feel the urge to say what is in my heart and on my tongue.

Simple, sincere, and conscientious was this associate who worked with us from January, 1938, to April, 1941. The number of these years was all too short, but long enough to endear him to us. Sweet and companionable, human and cheery—he had an unusually good sense of proportion. He possessed a sense of humor. He did not take himself too seriously. He wore well.

Thoroughly grounded and mature in his judgments of law and other public questions when he came to us, his opinions were, from the first, appreciated and sought.

Judge Treanor served eight years upon the Supreme Court of Indiana, and participated in 907 cases. He came to this court, therefore, a seasoned jurist. He was a member of this court for three and one-third years during which he sat in 380 cases.

Briefly told, the story of Judge Treanor is,—schooling and teaching. More schooling and more teaching. College and university courses. More teaching. Interruption while serving his country overseas in the World War. Two years did he thus give to his country. Then post-graduate university courses in law; then professor of law in a great university—eight years of it. Then membership on a great state supreme court, eight years more. Then he was selected for membership on this court.

He was chosen on his record alone, without political participation, prestige or influence. His appointment was unsought and unexpected by him. It was an honor to a deserving humble official,—a kind of a judicial



appointment which honored both the appointer and the appointee.

Each year of his life he was a little better equipped. Every half decade found him a little higher up the ladder of success; always placed there by others in appreciation of him. Every position he occupied, he well deserved. Each position he honored. Promotion never spoiled him. He was always the same—his feet on the ground, his eyes kindly, but his gaze steady and unflinching. How often his joyous laughter bespoke the sunny, optimistic nature which was ever his.

His views on public questions, legal and economic, were liberal. Not slavishly devoted to a fetish, he was nevertheless constant and loyal to his convictions. Surprisingly tenacious was this most modest man. Where convictions were strong, he was firm. He sought to convince, yet not to harshly offend.

This is no time to discuss divisions of opinion among courts of the land. Suffice is it to say of our court, or of any court composed of a plurality of judges, that its strength lies, not in the unanimity of its views, nor in the similarity of the political or social convictions of its members.

Rather, both its wisdom and the extent of its influence are traceable largely to the variety of the opinions of its members. Differences of opinion, of experiences, of habits, of ages, of early training and inheritances,—all contribute to the broader composite judgment of a court. They make for its greater wisdom and for a better court. Where all members entertain the same views and observe from the same view-

point, the objectives are always alike. They carry but one color. A Court so constituted lives next door to the noisy Bigotry family.

Judge Treanor brought his views, his varied experiences, his individual studies of public and private questions with him to this court. He helped to broaden the vision of the rest of us.

Notwithstanding all our pleasant recollections, the occasion is a sad one to each of us. Writing the last chapter of a book, even though it be a glorious story, carries an implication of defeat. Coming so early in Judge Treanor's life, when he was at the height of his mental powers and his career, it clouds a loving tribute to a friend.

It is thus, that  
    We must gently close the book  
    And place it in a favorite nook  
    "He fought a noble fight  
    "He battled for the right  
    "He has won the fadeless crown."  
    Gently, tenderly, close the book.



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