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Dedication

R. Bruce Townsend

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Frank R. Kennedy

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Bankruptcy Code and the Effect of Confirmation
on Creditors' Rights**

Edward B. Hopper, II

**When Can the Owners Participate in the Reorganized
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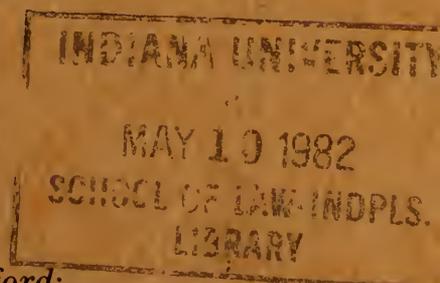
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Emotional Distress

The Indiana Death Penalty Statute

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This issue of the Indiana Law Review is fondly dedicated to Professor R. Bruce Townsend on the occasion of his retirement.



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MY TRIBUTE TO R. BRUCE TOWNSEND

It is my privilege to pay tribute to R. Bruce Townsend, Professor of Law, Indiana University School of Law, Indianapolis.

Literally thousands of young lawyers have benefited from his instructions. He has firmly held to the principle that the law is a discipline worthy of ethical practice. Adherence to the law and improvements to the law were cardinal virtues which he sought to instill in his students.

He is noted for inspiring his students and they have responded with loyalty to him. He has received numerous special awards from his students and the law school. His tenure as a mentor has been rewarded by the phenomenal success of many of his students. He has indeed had an illustrious career. It is my sincere hope—whatever pursuits he may follow in his retirement—that they will be as productive and rewarding as his tenure as a teacher of the law.

Words are somehow inadequate to express fully my admiration and respect for Professor R. Bruce Townsend.

DONALD H. HUNTER
Justice, Indiana Supreme Court

R. BRUCE TOWNSEND

I believe that no reasonable man would question that there is something different, if not unique, about a law professor who would sit in his office with an automobile hub cap perched atop his head, while awaiting student conferences.

I believe, also, that no reasonable man would deny the resourcefulness of any such professor who, when pressed for an explanation for his unorthodox behavior, could reply, with complete plausibility, that he was testing his students for awareness, curiosity, aggressiveness of spirit, directness, and diplomacy.

"The potentially great lawyers," he declares, "will notice and wonder. Then, with no qualms whatever, will look me straight in the eye and ask, without giving the slightest offense, 'Why in the hell are you wearing that hub cap?'"

"The ones who are completely absorbed in the question they came to ask and do not even notice the strange head gear will probably become legal scholars and writers."

"Those who notice and wonder but are reluctant to inquire for fear of offending would, in a bygone era, have been prime candidates for the diplomatic corps but, in this age, will become successful book salesmen; while those who observe and have their curiosity piqued, but resort to inquiry of others for their enlightenment, will be the investigators and adjusters."

As if by afterthought, he concludes, "Those who observe the curiosity but merely grunt or look away, knowing full well that I am never to be regarded as anything but a buffoon, they will become judges."

What manner of man is this R. Bruce Townsend? You will observe, from the above, that with the possible exception of those who make hasty judgments, Bruce sees the potential for every law student to be a "good" something. Perhaps it is this talent for the visionary that has inspired him and enabled him to touch the lives of young people.

I was well acquainted with Bruce before I knew him. That is to say that I was familiar with some of his works and with his reputation as a scholar, teacher, and writer for some considerable period of time before I met him in person. I do not recall when the latter occurred, which is expositive only of my memory and in no way indicative of the impression it made upon me. Probably, I was awed at the thought of meeting someone of such prominence in legal circles. If so, my veneration soon subsided. How can you revere one whose entire being exudes friendship and says, "Let's enjoy each other?" It seems that I have always known Bruce and that he has always been my friend.

It would serve no purpose to recount here Bruce's numerous contributions to the bench, bar, and academe of Indiana. I have never known him to refuse a request, whether it was merely to give counsel to a panicked young lawyer, to lecture at a seminar, or to write an article for a journal. His years of unselfish service and uncountable contributions to the legal community of this state, from both an academic and a practice standpoint, cannot be overstated. His special efforts and success with regard to the drafting and adoption of the Uniform Commercial Code and the Indiana Code of Civil Procedure are of particular note and evidence his keen perception and dedication to what the law should be—as well as to what it is.

It is my judgment, however, that the benefits derived by us from his efforts in those areas are mere by-products of his professional career. His true worth can be measured only by the knowledge he has imparted, by the values he has imbued, and by the will to challenge all that he has implanted into the minds of literally hundreds of practicing lawyers, many of whom are, or will become, prominent and influential citizens of their respective communities. The quality of his ability to influence and inspire young people is unsurpassed.

When I reflect upon my own law school days—forty-odd years ago—and upon my early years in the practice, one professor still stands out as the one who “put it all together” and made it all seem not only worthwhile but exciting, and he had a profound influence upon my life and career. When I visit today with those of the court research clerks who attended the Indiana University, Indianapolis Law School, it is Professor Townsend whom they remember and refer to with the reverence and affection that I still hold for my mentor.

Whether innately or by years of unrelenting effort, Bruce unquestionably is possessed of that elusive talent, difficult to define but easy to recognize, for communicating with and becoming close to law students. We are fortunate, indeed, that he elected to utilize his skills in a manner so beneficial to our society.

Because I know Bruce intimately, I know things about him that perhaps he does not know himself. For example, I know that law students have been his life. I know that he has agonized over his decision to retire at this time. I know that he questions the adequacy of his energy to perform, indefinitely, at par excellence, in the strenuous game he selected for his life's work. And I know that he believes, as I do, that it is better to leave the party a little early than to stay too late.

Personally, I never believed Bruce's account of why he wore the hub cap. I confess that I am prone to make snap judgments, and, had

I witnessed such outlandish behavior in anyone but him, my conclusion would have been precisely what he intimates. However, I do know Bruce, and I know why he did it. It was for the simple reason that that is what he felt like doing that day. It was upon that same occasion that he began to think of retiring. It felt so good!

So Bruce, thank you for your devoted and benevolent service, and thank you for being our friend. May you wear your hub cap in prosperity and good health.

DIXON W. PRENTICE
Justice, Indiana Supreme Court

ON BRUCE TOWNSEND

Bruce Townsend is a brilliant law teacher. For nearly forty years he has provided stimulation and has caused students to be interested in and excited about his subjects. Judging from all reports he was an extremely effective teacher in those days when World War II veterans returned to civilian life to attend law school in the late 1940's and early 1950's. He had a profound impact on those students and on those who came to the School in years following. In the past ten years I have watched him capture the imagination of each new wave of students who still flock to his classes and develop a profound affection for him. I know of no other teacher who has touched so many lives.

Bruce's teaching includes an extra dimension for Indiana lawyers. He has prepared written materials of various kinds which he has distributed in his courses. Some of these materials have been used by lawyers in practice. It is not unusual for lawyers and judges to make reference to Bruce's materials and I have heard lawyers say that they have settled important cases based on what was found in them.

Bruce has also had an extraordinary impact on the advancement of the law and its practice in Indiana. As a member of the Conference of Commissioners on Uniform State Laws he helped draft the Uniform Commercial Code and was instrumental in having Indiana become one of the early adopting states in 1962. He was also instrumental in the revision of the Indiana Rules of Trial Procedure and he played a significant role in Indiana's adoption of the Uniform Consumer Credit Code. His work on these major developments has provided an extraordinary contribution to the State of Indiana and has added an important extra quality to his work in the classroom.

Bruce has made an extraordinary contribution to the state through his service to the profession. Over the years he has been a superb lecturer in Continuing Legal Education Programs. I have worked personally with him in this type of forum and can testify that there are few lecturers who provide as much insight for lawyers or who are more popular than Bruce. I have seen him hold a group of lawyers spellbound. Moreover, Bruce makes himself available for questions from lawyers both at CLE programs and in his office. My estimate is that he receives nearly 1,000 phone calls per year seeking his advice on research issues. To the best of my knowledge he has never charged a fee for his consultation even though I am confident that there have been millions of dollars involved in the cases in which he has been asked advice. For example, in one case which was brought to my attention by a lawyer, Bruce actually dashed off a memorandum which gave the lawyers an ap-

proach which preserved an \$11 million financing arrangement.

Bruce is also a splendid colleague. He has worked long hours to uphold many parts of our law program. Even today he is often present at student functions and makes financial contributions to student activities that are unparalleled. He has always been available to help colleagues, particularly new teachers, and he played a major role in arguing the case for a new law building at Indianapolis in the 1960's.

Finally, Bruce is a good friend. I have come to know him well in the ten years that I have been at Indiana University. This has been a joy and honor for me. We all love him and we will miss him very much when he retires.

GERALD L. BEPKO
Dean, Indiana University
School of Law — Indianapolis

R. BRUCE

*Give me a log hut;
with only a simple bench;
Mark Hopkins on one end
and I on the other,
and you may have all
the buildings, apparatus
and libraries without him. —*

Some people at some time could perhaps sit around on logs endlessly informing others, but today's law teacher cannot. Were Mark Hopkins today imparting law to his students, he probably would be hopelessly out of date. Such is the penalty for any revolt against the grinding servitude to advance sheets and their accompanying blizzard of current commentary. Lest the reader assume these words are being written by one who no longer gives a darn about professional competence, I hasten to add that I am merely trying to make the point that the work ethic was probably invented, albeit reluctantly, by a productive law professor.

And the corollary to that point is that while much is made of Bruce Townsend's propensity for hubcaps, he really should have collected anvils, if anvils are an appropriate symbol of the work ethic. One of my earliest recollections of the "Indianapolis Division" of the Indiana University School of Law is that of the Saturday Regulars: Bruce, Dean Witham and Ben, later Dean, Small. After five days of study and research and at least three nights of teaching, those three could regularly be found in their offices on Saturday. Early on, this produced for Bruce an excellent 98 page article, *Creation of Joint Rights Between Husband and Wife in Personal Property*,² and for Ben, *Workmen's Compensation Law of Indiana*.³

I suspect that Bruce's schedule has not varied a great deal since then. This accounts for his storehouse of knowledge about the law in general and his intricate knowledge of its Indiana applications.

I have thought that law professors if classified by their chief instructional resources would fall into two main classifications, of course with many variables: the eclectics who tend to rely upon commentary, and the purists, like Bruce, whose first resource is case analysis and synthesis. The latter requires a high quality of case

¹James A. Garfield, then a member of the U.S. House of Representatives from Ohio, to Williams College Alumni in New York City, Dec. 2, 1871. Mark Hopkins was then President of Williams College.

²52 MICH. L. REV. 779 (1954).

³B. SMALL, WORKMEN'S COMPENSATION LAW OF INDIANA (1950).

recall which Bruce has; suggestion of any fact situation will generally produce from memory the volume and page of an Indiana case in point. Fine-tuned case analysis together with a capacity for organization, a slightly arcane sense of humor, and an ever-stimulating presentation made him a great teacher by anybody's standards.

Have we just described a pedant? Not really, but just in case this *ragout* needs a few more ingredients, add a weakness for shiny machinery, preferably about 12 cylinders, a good to excellent golf game, a middling to fair fishing skill, and a tolerant and loving family.

If the total describes a fellow you would like to know, then it is reasonably accurate.

And by and large, if there is any moral to this description it is not a new one, but one straight from Poor Richard⁴—diligence pays.

CLEON H. FOUST

Dean Emeritus, Indiana University
School of Law—Indianapolis

⁴Not Richard Bruce Townsend.

SOME REFLECTIONS ON THE RETIREMENT OF PROFESSOR R. BRUCE TOWNSEND

The retirement of a law professor of the stature of Bruce Townsend triggers a tangle of reactions for one who has known him and counted him a friend since the time Bruce was a graduate student in Bloomington, Indiana in the late '30s.

Since he has indicated that he is not only retiring but will be moving from our community, the first reaction, of course, is that he will be missed. His warm and friendly (if sometimes eccentric) personality, gentle (if sometimes sardonic) sense of humor and sincere concern for others which he brought to his work and his life in general are rare attributes which have endeared him over the years to students, fellow lawyers, judges and his many, many other friends.

It is difficult to pick out just a few things about Bruce that stand out in one's memories of more than forty years of association. There are, however, three that, to me, are of particular significance.

First, Bruce, above all else, is a teacher. He loves all aspects of the law and is excited by changes and new developments whether he personally regards them as good or bad. He is an in-depth researcher and competent writer, but I think his greatest joy has been found in the hours he stood before a class and indulged his creativity in finding new ways to stretch the minds of his students.

An aspect of his teaching life that must give him great satisfaction is the rapport that he developed with students, which then continued after his students became lawyers in their own right. Many of his former students still call him for advice, and I understand it is not uncommon for Bruce to be able to provide case and statutory citations in the course of a phone call which otherwise might have taken hours to run down in a library or which might even have been missed entirely.

Second, I think Bruce made a truly great contribution to his profession in his work as a Commissioner of Uniform State Laws in drafting and supporting the enactment of the Uniform Commercial Code. Thereafter, he went the "extra mile" in explaining this complex piece of legislation to the practicing Bar and the business community. He, with Professor Pratter of the Bloomington Law School, wrote a very scholarly commentary on the Code and together and separately they devoted uncounted hours to presenting seminars and talks and generally educating the legal and commercial community as to the import and technicalities of the new law.

Third, Bruce may have made his greatest contribution to the legal profession and to the judicial system in serving as Reporter for the Indiana Civil Code Study Commission which produced the Indiana Rules of Civil Procedure which became effective in 1970. As

Reporter, he did much of the required research himself and directed the research of the Commission staff. He had much to do with the structure of the Rules and was a very forceful influence as to their content.

In the course of his work, he prepared draft after draft of various sections and subsections, always thoroughly and with good grace despite the fact that he was performing this large task in addition to carrying a full teaching load. Not every provision that Bruce proposed to the Commission was accepted, as his zeal for what he considered needed law reform caused him to seek to include some matters which the more conservative (and perhaps less enlightened) lawyers and judges making up the Commission felt belonged elsewhere, if anyplace, in Indiana jurisprudence. However, Bruce fought for his position with skill and perception and earned the unqualified respect of each Commissioner. The official comments to the Rules are in large part his work product.

As indicated earlier, there are so many lives that Bruce has touched, so many people that he has helped, so many accomplishments to his credit as lawyer and teacher, that a few words cannot possibly accord him full recognition. Others will be commenting on the man, the lawyer, the scholar and the teacher, however, and it is my hope that out of the collection of brief essays, prepared on the eve of Bruce's retirement, at least something like a complete portrait will emerge.

Let me close my personal reflections by saying to Bruce, "Congratulations on many jobs well done and on a career which surely has been as satisfying to you as it has been meaningful to your constituents. Please return from time to time from the quiet with which you and your lovely Rachel intend to surround yourselves and share with us again your wisdom, insight, and humor."

C. B. DUTTON

Senior Partner, Dutton, Kappes, & Overman

IN RE THE ALLEGED RETIREMENT OF R. BRUCE TOWNSEND

I do not for one moment believe that R. Bruce Townsend is going to retire. Such a thing is as unthinkable as the Statue of Liberty suddenly sitting down to take a break. Professor Townsend may *say* he is going to retire and even go through the motions, but let him hear of an opportunity to teach and, like the old firehouse dog hearing the fire bell, he'll shortly thereafter be waving his arms and drawing figures on the blackboard before an astonished and awed audience.

I first met Professor Townsend when I began my teaching career at the Indiana University, Indianapolis Law School in January, 1970. I quickly became aware of what a special member of the faculty he was. His history included being a drafter of the Uniform Commercial Code; he was the guiding spirit behind Indiana's adoption of the Rules of Civil Procedure, and his phone constantly rang with calls from former students who were now judges, legislators, or lawyers needing his wisdom. He also stood out in other ways. I have seen him deliberately vote against his own motion in faculty meetings; I have stood apprehensively on the sidewalk while he dashed into the street to capture a muffler that had fallen off a passing car ("Why would anyone abandon this?" he would ask, perplexed — planning to clean it up and use it for decorative purposes). He is color-blind, and I remember the first time I was invited to his house and met his lovely wife Rachel. She greeted me warmly, and then surveyed R. Bruce's brown sports coat, pink shirt, and bright blue tie and said sorrowfully, "Oh, Bruce, you got out of the house this morning without me checking you over first."

When I began teaching Commercial Law, Professor Townsend became my guide and mentor. No one in the world knows as much about commercial legal problems and their resolution as R. Bruce Townsend, and he was ever willing to share his vast storehouse of knowledge with neophytes like myself (I called him at his home one evening during a ten minute break from a two hour class to ask if "order language" was needed when naming a "special indorsee" on commercial paper¹).

When talking about his early days as an advisor to the committee drafting Article 9 (Secured Transactions) of the Uniform Commercial Code, R. Bruce's eyes would glisten and he would say, with wonder in his voice, "Doug, can you imagine what it was like to be a young man sitting at the feet of the great Karl Llewellyn as he

¹The answer is no.

pulled together the forces that led to the Uniform Commercial Code?" R. Bruce was very proud of his own contributions to the Code (for example, being the first person to suggest that the statute of frauds ought not to protect someone who will admit that there was a contract as part of the pleadings, testimony, or otherwise in court²).

Professor Townsend is also a great teacher, winning multiple awards for his pedagogical talents, and inspiring his students for decades to practice the Townsend theories. His ideas so influenced Indiana law that one time when I was in North Carolina for a year as a visiting professor, I was able to read an opinion of the Indiana Supreme Court and know to a certainty that the theory adopted by the court was Townsend's creation alone, long taught, now law. Like an ocean, he has so beat against the rocks of legal learning in this state that the whole shoreline has been shaped by his persistent onslaught. And the state is better for it, too, having some of the most advanced legal positions in the United States as a result of the Townsend influence.

Finally, R. Bruce Townsend will be remembered as a great human being. Whether as husband, father, colleague, illustrator, mentor, golfer, scholar, "art" collector, legal bully, advisor, or, simply, friend, he has impressed all who have dealt with him as warm, wise, generous, and, all in all, a man to remember. I treasure all my experiences with him and the stories I can tell about him (most of which I dare not relate here), and on the occasion of his alleged retirement, I am proud to say that I am his friend and that I wish him well.

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²U.C.C. § 2-201(3)(b).