1986 SURVEY OF RECENT DEVELOPMENTS
IN INDIANA LAW

Contributors to This Issue

Susan Burke
Mary Beth Claus
Debra A. Falender
Kenneth J. Falk
Donna H. Fisher
Joseph M. Forte
Paul J. Galanti
Steven K. Huffer
Andrew W. Hull
Donald L. Jackson
Lynn Brundage Jongleux

Edward A. Keirn
J.B. King
Walter W. Krieger
Kathleen Givens Lucas
Roger L. Pardieck
Cathleen J. Perry
David M. Powlen
Edwin J. Simcox
Susan Stuart
David L. Swider
Lawrence P. Wilkins
Search thousands of law review and bar journal articles effortlessly on WESTLAW! It's like having a staff of experts always at your command. To answer your questions on taxation, Business Regulation, Bankruptcy, Securities. And more!

Find relevant articles instantly. Search the full text of articles using descriptive words, titles, author's names or any combination.

When you want to know what the experts say on your subject, turn to WESTLAW.

Find out more by contacting your West Sales Representative or by calling 1-800-328-0109 (or 612-228-2450).

WESTLAW®
Superiority That's No Illusion
The latest in the law from BNA

Securities Regulation & Law Report

When you need to keep up with rapidly changing financial market regulations, rely on BNA's Securities Regulation & Law Report. This weekly information service offers concise coverage of federal and state securities law and regulation; corporate governance and attorney responsibility; enforcement activities; commodity futures regulation; and accounting standards and practice.

Antitrust & Trade Regulation Report

If you must stay abreast of significant antitrust and trade regulation developments, rely on BNA's Antitrust & Trade Regulation Report. You'll receive weekly notification of key federal, state, and local news. Coverage includes the Department of Justice, the Federal Trade Commission, state and federal courts, and private enforcement.

Corporate Practice Series

Designed for corporate lawyers, BNA's Corporate Practice Series is a time-saving service offering a series of portfolios, prepared by practitioners, treating specific areas of corporation law.

The United States Law Week

For more than 50 years, The United States Law Week has been helping lawyers prepare briefs, argue points, and win cases. You can turn to this weekly information service for news and analysis of legal developments, precedent-setting cases, and full text of selected federal statutes. You'll also receive same-day notification of all Supreme Court decisions, in full text.

The Family Law Reporter

Keep up with the rapidly expanding field of family law with BNA's Family Law Reporter. Each week, you'll get nationwide coverage of precedent-setting cases in divorce, alimony, child custody, juvenile court cases, and tax aspects of family law. Reference file includes full text of federal laws, selected state statutes, and a quick scan summary of state divorce codes.

Media Law Reporter

For the latest decisions affecting the full range of communications law issues—including interpretations of the First Amendment, copyrights, and FOIA, turn to BNA's Media Law Reporter. Weekly coverage includes full text and digests of federal and state media law decisions on both print and electronic communications.

Call toll-free 800/372-1033
(In Maryland: 800/352-1400; Washington, D.C.: 258-9401) or write for our free catalog.
Please enter my subscription to the

INDIANA LAW REVIEW

NAME ____________________________

ADDRESS __________________________

_______________________________

Enclosed is $_____ for ____ subscriptions.

Bill me for _____ subscriptions.

Mail to:

INDIANA LAW REVIEW
INDIANA UNIVERSITY
SCHOOL OF LAW—INDIANAPOLIS
735 West New York Street
Indianapolis, Indiana 46202

Subscription Rates (one year):

Regular, $18.00; Foreign, $21.50; Survey, $10.00;
Single Issue, $5.00
Indiana Law Review

Philosophy, Jurisprudence, and Jurisprudential Temperament of Federal Judges
Hon. Ruggero J. Aldisert

Legal Issues Involved in Private Sector Medical Testing of Job Applicants and Employees
Leland B. Cross, Jr.
Douglas Craig Haney

Indiana’s Living Wills and Life-Prolonging Procedures Act: A Reform Proposal
Carol Ann Mooney

Coming in Volume 20, No. 2, to be available Summer 1987
Price $5.00
Send orders to
Indiana Law Review
Indiana University School of Law—Indianapolis
735 W. New York Street, Indianapolis, Indiana 46202

* * * * * *

The Board of Editors of the Indiana Law Review expresses its appreciation to Professor Thomas Allington for his invaluable production assistance.

* * * * * *
TABLE OF CONTENTS

Dedication—Gerald L. Bepko ........................................... x

I. Administrative Law
   A. Administrative Adjudication—Revised and Recodified
      .......................................................... Kathleen Givens Lucas 1

II. Business and Commercial Law
   A. Developments in Business Association Law
      .......................................................... Paul J. Galanti 19
   B. Article 9 of the Indiana Uniform Commercial Code in Transition
      .......................................................... Edward A. Keirn 61
   C. Indiana’s Uniform Commercial Code: Recent Developments
      .......................................................... David M. Powlen
      Edward A. Keirn 87
   D. The Indiana Business Corporation Law: Tool For Flexibility, Simplicity and Uniformity
      .......................................................... Edwin J. Simcox 119

III. Civil Procedure
   A. Amendments Curing Defendant Misnomers Under Trial Rule 15(C): A Bright Line Test of Prejudice for Relation Back?
      .......................................................... Steven K. Huffer 139
   B. Attorney’s Fees for Frivolous, Unreasonable or Groundless Litigation
      .......................................................... Andrew W. Hull 151

IV. Evidence
   A. Indiana’s Statutory Provisions for Alternative Testimony in Child Sex Abuse Cases: Is It Live or Is It Memorex?
      .......................................................... Susan Burke 161
   B. Evidentiary Use of Other Crime Evidence: A Survey of Recent Trends in Criminal Procedure
      .......................................................... Susan Stuart 183
V. Family Law
   A. Family Law: Equitable Distribution and Proper Valuation of Marital Property ..........Mary Beth Claus
      Cathleen J. Perry 211

VI. Insurance Law

VII. Labor Law
   A. Developments in Employment Discrimination Law ........................................Lynn Brundage Jongleux 243
   B. Recent NLRB Developments ..........David L. Swider 259

VIII. Professional Responsibility and Liability
   A. Developments in Professional Liability Law ........................................Donald L. Jackson 281

IX. Property and Estates
   A. Claims By and Against Decedents’ Estates ........................................Debra A. Falender 289
   B. Developments in Property Law ....Walter W. Krieger 305

X. Public Welfare and Social Security
   A. Recent Developments Under the Social Security Act ..................................Kenneth J. Falk 345

XI. Taxation
   A. Some Very Significant Developments in Indiana Taxation ..............................J. B. King 361

XII. Torts and Products Liability
   A. The Disappearing Rights of Plaintiffs Under a Legal Disability ..................Roger L. Pardieck 385
   B. A Multi-Perspective Critique of Indiana’s Legislative Abrogation of the Collateral Source Rule ............................................................Lawrence P. Wilkins 399

XIII. Workmen’s Compensation
   A. New Developments in Workmen’s Compensation Law: Accident Defined and New Thoughts on Crediting .........................................................Joseph M. Forte 437
Indiana University School of Law—Indianapolis
1986-87 ADMINISTRATIVE OFFICERS AND FACULTY

Administrative Officers
JOHN W. RYAN, Ph.D., President of the University
GERALD L. BEPKO, L.L.M., Vice-President
JEFFREY W. GROVE, J.D., Acting Dean
JAMES F. BINDLEY, J.D., Assistant Dean for Administration
G. KENT FRANDSEN, J.D., Associate Dean for Student Affairs
JAMES W. TORKE, J.D., Associate Dean for Academic Affairs

Faculty
THOMAS B. ALLINGTON, Professor. B.S., University of Nebraska, 1964; J.D., 1966; LL.M., New York University, 1971.
JAMES F. BAILEY, III., Associate Professor and Director of Law Library. A.B., University of Michigan, 1961; J.D., 1964; M.A.L.S., 1970.
JAMES F. BINDLEY, Assistant Dean for Administration and Director of Placement & Development, B.A., Loyola University, 1969; J.D., University of Kentucky, 1972.
PAUL N. COX, Professor. B.S., Utah State University, 1971; J.D., University of Utah, 1974; LL.M., University of Virginia, 1980.
CLYDE HARRISON CROCKETT, Professor. A.B., University of Texas, 1962; J.D., 1965; LL.M., University of London (The London School of Economics and Political Science), 1972.
DEBRA A. FALENDER, Professor. A.B., Mount Holyoke College, 1970; J.D., Indiana University, 1975.
G. KENT FRANDSEN, Associate Dean for Student Affairs and Associate Professor. B.S., Bradley University, 1950; J.D., Indiana University, 1965.
DAVID A. FUNK, Professor. A.B., College of Wooster, 1949; J.D., Case Western Reserve University, 1951; M.A., The Ohio State University 1968; LL.M., Case Western Reserve University, 1972; LL.M., Columbia University, 1973.
HELEN P. GARFIELD, Professor. B.S.J., Northwestern University, 1945; J.D., University of Colorado, 1967.
HAROLD GREENBERG, Associate Professor. A.B., Temple University, 1959; J.D., University of Pennsylvania, 1962.
WILLIAM F. HARVEY, Carl M. Gray Professor of Law. A.B., University of Missouri, 1954; J.D., Georgetown University, 1959; LL.M., 1961.
WALTER W. KRIEGER, Associate Professor. A.B., Bellarmine College, 1959; J.D., University of Louisville, 1962; LL.M., George Washington University, 1969.
DAVID P. LEONARD, Associate Professor. B.A., University of California at San Diego, 1974; J.D., UCLA School of Law, 1977.
ROBIN PAUL MALLOY, Assistant Professor. B.S., Purdue University, 1971; J.D., University of Florida, 1980; LL.M., University of Illinois, 1983.
WILLIAM E. MARSH, Professor. B.S., University of Nebraska, 1965; J.D., 1958.
SUSANAH M. MEAD, Associate Professor. B.A., Smith College, 1969; J.D., Indiana University, 1976.
MARY H. MITCHELL, Associate Professor. A.B., Butler University, 1975; J.D., Cornell Law School, 1978.
RONALD W. POLSTON, Professor. B.S., Eastern Illinois University, 1953; LL.B., University of Illinois, 1958.
KENNETH M. STROUD, Professor. A.B., Indiana University, 1958; J.D., 1961.
JAMES W. TORKE, Acting Associate Dean. B.S., University of Wisconsin, 1963; J.D., 1968.
JOE A. TUCKER, Assistant Professor, B.A., Houston, 1977; J.D., University of Texas, 1981.
JAMES PATRICK WHITE, Professor of Law. A.B., University of Iowa, 1953; J.D., 1956; LL.M., George Washington University, 1959.
LAWRENCE P. WILKINS, Professor. B.A., The Ohio State University, 1968; J.D., Capital University Law School, 1973; LL.M., University of Texas School of Law, 1974.
MARY WOLF, Visiting Assistant Professor of Law. B.A., Saint Xavier College, 1969; J.D., University of Iowa College of Law, 1974.
HAROLD R. WOODARD, Professorial Lecturer. B.S., Harvard University, 1933; J.D., 1936.

Emeriti

AGNES P. BARRETT, Associate Professor Emeritus. B.S., Indiana University, 1942; J.D., 1964.
CLEON H. FOUST, Professor Emeritus. A.B., Wabash College, 1928; J.D., University of Arizona, 1933.
JOHN S. GRIMES, Professor of Jurisprudence Emeritus. A.B., Indiana University. 1929; J.D., 1931.
MELVIN C. POLAND, Cleon H. Foust Professor of Law Emeritus, B.S. Kansas State University, 1940; LL.B., Washburn University, 1949; LL.M., The University of Michigan, 1950.
R. BRUCE TOWNSSEND, Cleon H. Foust Professor of Law Emeritus, A.B., Coe College, 1938; J.D., University of Iowa, 1940.

Legal Writing Instructors

VICKIE RENFROW, Lecturer. B.A., University of Northern Iowa, 1970; M.A., 1971; Ph.D., Indiana University, Bloomington, 1976; J.D., Indiana University, Bloomington, 1981.
JOAN RUHTENBERG, Lecturer. B.A., Mississippi University for Women, 1959; J.D., Indiana University, 1980.

Law Library Staff

CONSTANCE MATHS, Associate Librarian. B.A., 1973, Case Western Reserve University; M.S.L.S., 1974, Case Western Reserve University; M.A.I.R., 1976, Creighton University.
DEDICATION

I am honored to have been asked to comment on the significance of Gerald Bepko's appointment to the position of Vice President of Indiana University-Purdue University at Indianapolis. His selection to this post is a source of great enthusiasm and deep satisfaction for all who sense the importance of this excellent university.

Two days after being asked to write this dedication, I came across an ancient dispute resolution technique, the shadows of which sometimes reappear during heated moments in federal court.

The information came to me while I was helping our sixth-grader review for a test in social studies. It seems that the early Eskimos, who were indeed wise in prizing self-control while simultaneously allowing the world to ventilate, developed a process referred to as "name-calling." When two people were in dispute, the tribe set up a contest in which the two faced off and were encouraged to be as foul-mouthed to one another as was humanly possible. (Imagine the partisan cheering on the sidelines!) This barrage of abuse went on until the crucial, telling moment: when one of the participants finally grew red-hot and lost his temper. The price of such loss of self-control was vanquishment: the one who lost control lost the contest.

This dedication assignment and that piece of historical information miraculously coincided, allowing me to find a beginning for this assessment of Jerry's unique gifts, which hold so much promise for the University. I'll begin by observing that Jerry would have been a good Eskimo. In all my experience, I have never known him to lose his temper. That capacity will probably prove to be more significant in terms of his ultimate success as a university administrator than anything else.

Jerry's ability to undergo great provocation without losing either perspective or control is related to a number of other aspects in his character. There is, first of all, a twinkle in him, a droll, self-effacing wit that is wonderfully easy and wonderfully understated. But there is also in that wit a certain quickness, like the flash of gold discreetly hidden, which signifies a mind ready to communicate fully and efficiently without trekking through endless details. Jerry is not only humorous, he is also fully alert, and it is that alertness which informs his political instincts so adroitly and enables him to foster collegiality among the faculty and cooperation in the community. He perceives and knows how to merge and mobilize various factions, and he knows instinctively how to manuever
this already great institution, whose leadership he has assumed, toward even more noble accomplishment.

Jerry's abilities don't end with his adeptness at mobilizing people and at tapping into their potentialities for the good of the University. He remains, on a personal basis, both sensitive and loyal. While he is very good at getting people to help the University, he is also a genuinely nice person. His upbeat, contagious enthusiasm makes you want to sign on to help. People wound up wanting to give their services to the Indianapolis Law School because they wanted to do right by Dean Bepko. I know, because I have many times myself been the subject of his appeals to speak, to do seminars and committee work and so forth. But even when you're being enlisted in such projects, Jerry has a masterful touch: first, he does not exploit those who would help; second, he does not push willing helpers into areas in which they have no legitimate background or business; and third, he senses when he might be coming to the well once too often; he is careful not to cross that fine line beyond which he risks asking too much.

At a time when the fortunes of the Indianapolis campus and the city of Indianapolis are closely intertwined, and when the University can profit richly by drawing upon civic expertise and leadership throughout Indianapolis, this level of prudent regard for individuals is essential. It promises to the University that inestimable gift: lasting goodwill.

In canvassing Jerry's extraordinary fitness for his new appointment, I must mention another trait which I think stands at the center of his ability to mobilize people: his personal modesty. Jerry is not a flashy man, and the lights of his ego are toned down enough to let others do most of the shining. And just as human beings almost instinctively attack and seek to bring down the flashy egotist, so they are moved in some inner way to augment and assist the soul who is modest. Jerry's modesty draws people to him, and through him, to the University, and all this gives him great potential to serve the cause of education.

Many of the characteristics which we see so clearly in Jerry — his easy self-control, his sensitivity to others, his prudence, modesty, and self-effacing wit — are each traits which point in a certain direction. They add up to a superior sense of human balance which we sometimes call detachment, and which leads a human being to levels of objectivity and clarity that, when possessed by persons in public life, serve everyone's interest.

One final word: Some will not be aware that in his past, Jerry Bepko was for a time an FBI agent. I suppose there are a few who would find in that a flaw, undervaluing the high sense of justice that motivates most, though, of course, not all, agents. As for myself having been a United States Attorney and an assistant United States Attorney and having put together many cases with a variety of agents, I have come to know that
the best agents exemplify that same persistence, discretion, loyalty, and balance that are Jerry's mark as well. I have always thought I would like to have had the opportunity to try a case with Jerry on my side. In the larger sense, I know now that I have gotten my wish.

The Honorable Sarah Evans Barker
Judge, United States District Court
Indianapolis