

Indiana Law Review

INDIANA UNIVERSITY

JUL 11 1995

SCHOOL OF LAW-INDPLS
LIBRARY



Volume 28 No. 2 1995

CENTENNIAL YEAR
1894/1895—1994/1995

CENTENNIAL SYMPOSIUM ISSUE

Symposium: Then, Now and into the Future:
A Century of Legal Conflict and Development

Lawrence P. Wilkins

Introduction

Ann Marie Piscione

ARTICLES

Fragments From Our Fleece: Vignettes From 100 Years in a Great Law School

William F. Harvey

History of the Indiana University School of Law—Indianapolis

Ronald W. Polston

A Short History of Hearsay Reform, with Particular Reference to
Hoffman v. Palmer, Eddie Morgan and Jerry Frank

Michael Ariens

The New Woman Lawyer and the Challenge of
Sexual Equality in Early Twentieth-Century America

Virginia G. Drachman

Looking Backward, Looking Forward: A Century of Legal Change

Lawrence M. Friedman

Balancing Acts: Crisis, Change, and Continuity
in American Family Law, 1890-1990

Michael Grossberg

The Warren Court: Yesterday, Today, and Tomorrow

Kermit L. Hall

Why the Nuisance Knot Can't Undo the Takings Muddle

Louise A. Halper

One Hundred Years of Modern Legal Thought:
From Langdell and Holmes to Posner and Schlag

Gary Minda

Law and Endangered Species: Is Survival Alone Cause for Celebration?

John Henry Schlegel

NOTES

Medical Malpractice Acts' Statutes of Limitation
as they Apply to Minors: Are they Proper?

Scott A. DeVries

Indiana's Neglect of a Dependent Statute: Uses and Abuses

Kenneth D. Dwyer

Proposal for a "Lawful" Public School Curriculum:
Preventive Law From a Societal Perspective

Patricia L. Van Dorn

Career Move.

No doubt you plan to start a successful legal career soon, so here's a tip:

Start reading *Law Week* now. While you're still in law school.

Why? Because top attorneys nationwide read *Law Week* every week, and as you know, it's never a bad idea to follow in the footsteps of the best. But more importantly—

Law Week gives you complete coverage of today's most important cases, with immediate notification of precedent-setting court decisions in every legal field, plus unparalleled Supreme Court reporting.

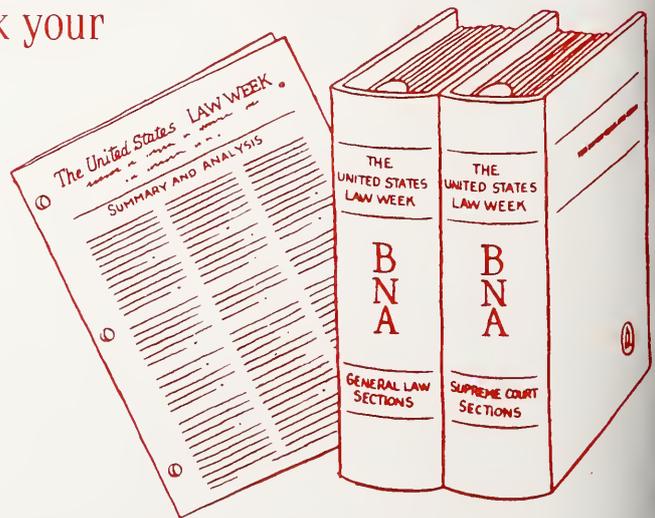
Indeed, *Law Week* puts *you* on the cutting edge of American law.

What better way to start a successful legal career.

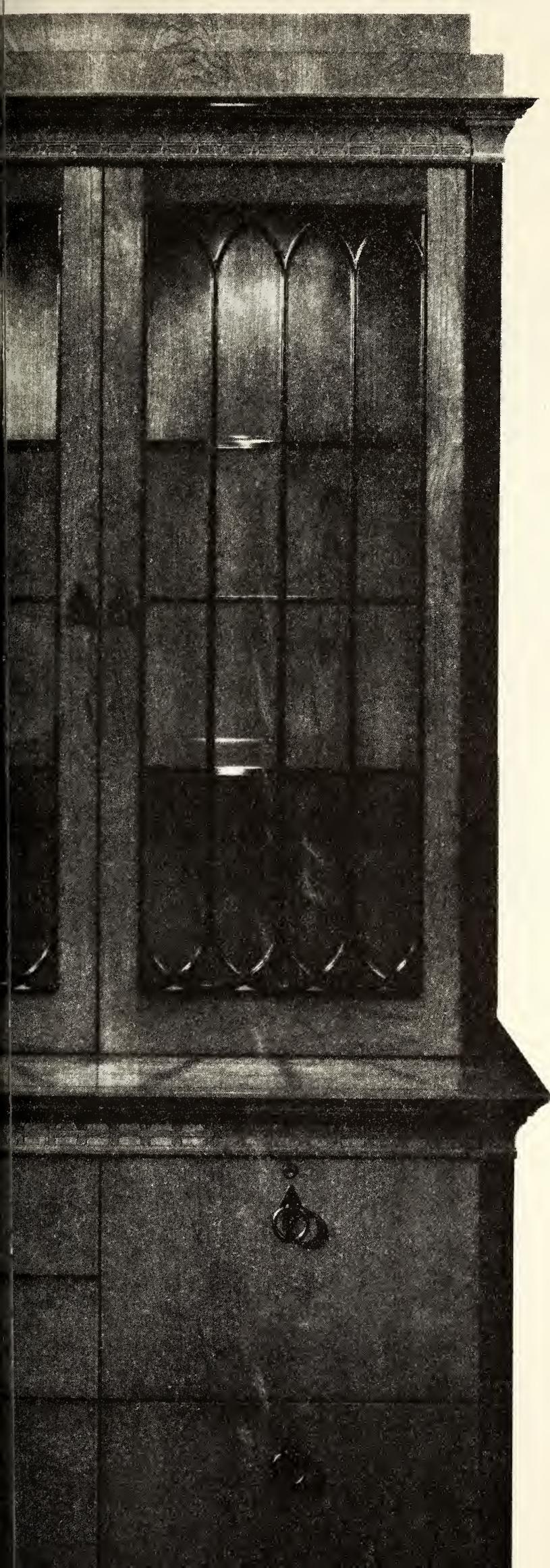
Make your move now. Ask your professor for details on *Law Week's* low student rates today.



The Bureau of National Affairs, Inc.
1231 25th Street, N.W.
Washington, D.C. 20037
202/452-4200



The United States
Law Week



Innsbruck,
affordable
elegance.

Compellingly lean with
graphic beauty,
Innsbruck's Biedermeier
style is the comprehensive
historical furniture collection
for today's offices. This
series is influenced by
architectural elements and
classic European themes.

Innsbruck, designed for
Kimball by the
Purdom-Tatum Partnership.



Kimball Office Furniture Co.
A Division of Kimball International Marketing, Inc.
1600 Royal Street Jasper, Indiana 47549
800.482.1818

Blakley's

DESIGNER FLOORS

"The Best In The Business Since 1902"

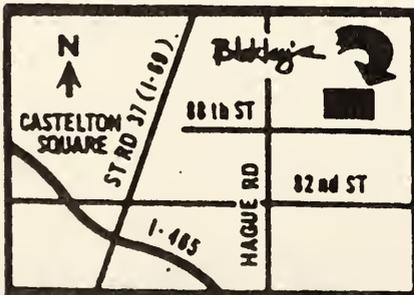
FULL LINE OF

• CARPETING • RUGS • VINYL FLOORING



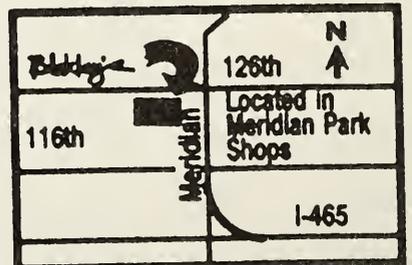
842-9600

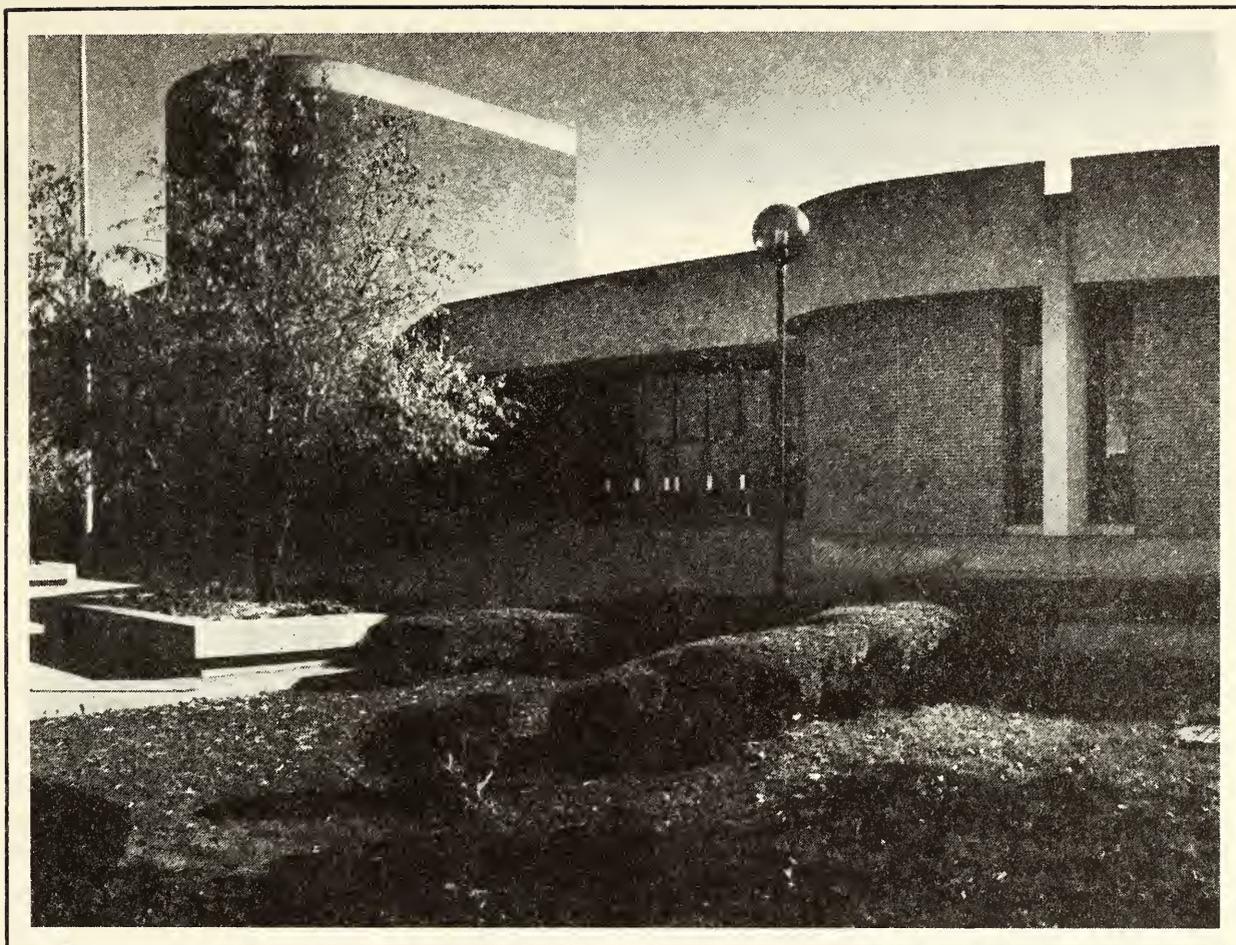
8060 East 88th Street



575-0440

12480 N. Meridian Street





**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, \$25; Foreign, \$28; Student, \$17 (4 issues)
Single Issue, \$8; Survey Issue \$17;
Centennial Issue \$12

Indiana Law Review

Volume 28

1994-95

Editor-in-Chief
Megan E. Clark

Executive Editor
Notes and Topics
Scott A. DeVries

Executive Editor
Articles
Lisa Dillman

Executive Managing Editor
Kenneth D. Dwyer

Symposium Editor
Ann Marie Waldron
Piscione

Note Development Editors
Mark Colucci
Elizabeth B. Searle
Angela Stemle
Patricia L. Van Dorn
Melissa S. York

Articles Editors
Tina M. Cooper
Dina M. Cox
Jennifer F. Perry
Gretchen E. Snelling

Associate Editors

Brian L. Burdick
R. Trevor Carter
Elizabeth Cierzniak
Amy Corsaro
Angela Craney
Doreen J. Gridley

Gina M. Hicklin
John Hakes
R. Scott Lewis
Ginger Mosier Ringenberg
Candace L. Sage

Editorial Assistant
Katherine S. Dwyer

Faculty Advisor
Debra A. Falender

**The Indiana Law Review
Symposium Committee**

Megan E. Clark
Mark Colucci
Angela Craney
Scott A. DeVries
Kenneth D. Dwyer
Shawn Hamacher
Deborah G. Hepler

Mark Lindsey
Ann Marie Waldron Piscione - Chair
Elizabeth B. Searle
Jennifer Shoup
Carla Stagnolia
Angela Stemle
Patricia L. Van Dorn

Faculty Advisor: Debra A. Falender

Faculty Symposium Co-Directors

David R. Papke
Lawrence P. Wilkins

**Law School
Centennial Committee**

Faculty:

Ronald W. Polston - Chair
William F. Harvey
Kenneth M. Stroud
Lawrence P. Wilkins

Alumni:

Hon. Robert H. Staton '55
Robert H. Everitt '65
Julia M. Blackwell '78
Margaret G. Robb '78

Students:

Phillip G. Day
Michael J. Sacopulos

Dean:

Norman Lefstein

*Assistant Dean
for External Affairs:*
Jonna Kane

Indiana University School of Law—Indianapolis

1994-95 ADMINISTRATIVE OFFICERS AND FACULTY

Administrative Officers

- MYLES BRAND, *President of the University*. Ph.D. in Philosophy, University of Rochester (New York).
- GERALD L. BEPKO, *Vice-President for Long-Range Planning, Indiana University; Chancellor, Indiana University-Purdue University at Indianapolis and Professor of Law*. J.D., IIT/Chicago-Kent College of Law; LL.M., Yale University.
- NORMAN LEFSTEIN, *Dean and Professor of Law*. LL.B., University of Illinois; LL.M., Georgetown University.
- THOMAS B. ALLINGTON, *Associate Dean for Academic Affairs and Professor of Law*. B.S., J.D., University of Nebraska; LL.M., New York University.
- JONNA M. KANE, *Assistant Dean for External Affairs*. J.D., Indiana University—Indianapolis.
- RACHEL B. KEARNEY, *Assistant Dean for Student Affairs*. J.D., New York University School of Law.
- JONI D. THOMPSON, *Assistant Dean for Development*. M.A., Ball State University.
- ANGELA M. ESPADA, *Assistant Dean for Admissions*. J.D., Indiana University—Bloomington.
- GEORGE DREMONAS, *Acting Director of Career Services*. J.D., Indiana University—Indianapolis.

Faculty

- CYNTHIA M. ADAMS, *Lecturer in Law*. B.A., Kentucky Wesleyan College, J.D., Indiana University—Indianapolis.
- THOMAS B. ALLINGTON, *Associate Dean and Professor of Law*. B.S., J.D., University of Nebraska; LL.M., New York University.
- EDWARD P. ARCHER, *Professor of Law*. B.M.E., Rensselaer Polytechnic Institute; J.D., LL.M., Georgetown University.
- JAMES F. BAILEY, III, *Professor of Law and Director of Law Library*. A.B., J.D., M.A.L.S., University of Michigan.
- GERALD L. BEPKO, *Vice President for Long-Range Planning, Chancellor, and Professor of Law*. B.S., Northern Illinois University; J.D., IIT/Chicago-Kent College of Law; LL.M., Yale University.
- ROBERT BROOKINS, *Associate Professor of Law*. B.S., University of South Florida; J.D., Ph.D., Cornell University.
- DANIEL H. COLE, *Associate Professor of Law*. A.B., Occidental College; A.M., University of Chicago; J.D., Lewis and Clark College; J.S.M., Stanford Law School.
- PAUL N. COX, *Professor of Law*. B.S., Utah State University; J.D., University of Utah; LL.M., University of Virginia.
- KENNETH D. CREWS, *Associate Professor of Law and Library and Information Science*. B.A., Northwestern University; J.D., Washington University; M.L.S., University of California, Los Angeles; Ph.D., University of California, Los Angeles.
- CLYDE HARRISON CROCKETT, *Professor of Law*. A.B., J.D., University of Texas; LL.M., University of London (The London School of Economics and Political Science).
- DEBRA A. FALENDER, *Professor of Law*. A.B., Mount Holyoke College; J.D., Indiana University—Indianapolis.
- DAVID A. FUNK, *Professor of Law*. A.B., College of Wooster; J.D., Case Western Reserve University; M.A., The Ohio State University; LL.M., Case Western Reserve University; LL.M., Columbia University.
- PAUL J. GALANTI, *Professor of Law*. A.B., Bowdoin College; J.D., University of Chicago.
- HELEN P. GARFIELD, *Professor of Law*. B.S.J., Northwestern University; J.D., University of Colorado.
- HAROLD GREENBERG, *Professor of Law*. A.B., Temple University; J.D., University of Pennsylvania.
- JEFFREY W. GROVE, *Professor of Law*. A.B., Juniata College; J.D., George Washington University.

WILLIAM F. HARVEY, *Carl M. Gray Professor of Law & Advocacy*. A.B., University of Missouri; J.D., LL.M., Georgetown University.

PAUL T. HAYDEN, *Professor of Law*. B.A., Yale University; J.D., University of California, Los Angeles.

MICHAEL R. HEISE, *Visiting Assistant Professor and Director Program in Law and Education*. A.B., Stanford University; J.D., University of Chicago; Ph.D., Northwestern University.

W. WILLIAM HODES, *Professor of Law*. A.B., Harvard College; J.D., Rutgers, Newark.

LAWRENCE A. JEGEN, III, *Thomas F. Sheehan Professor of Tax Law and Policy*. A.B., Beloit College; J.D., M.B.A.; The University of Michigan, LL.M., New York University.

HENRY C. KARLSON, *Professor of Law*. A.B., J.D., LL.M., University of Illinois.

WILLIAM ANDREW KERR, *Professor of Law*. A.B., West Virginia University; J.D., LL.M., Harvard University; B.D., Duke University.

ELEANOR D. KINNEY, *Professor of Law and Director of the Center for Law and Health*. B.A., Duke University; M.A., University of Chicago; J.D., Duke University; M.P.H., University of North Carolina.

WALTER W. KRIEGER, *Associate Professor of Law*. A.B., Bellarmine College; J.D., University of Louisville; LL.M., George Washington University.

NORMAN LEFSTEIN, *Dean and Professor of Law*. LL.B., University of Illinois; LL.M., Georgetown University.

LYNN A. MCDOWELL, *Clinical Instructor*. B.S. Indiana University; J.D., Indiana University—Indianapolis.

DEBORAH MCGREGOR, *Lecturer in Law*. B.A., University of Evansville; J.D., Georgetown University.

SUSANAH M. MEAD, *Professor of Law*. B.A., Smith College; J.D., Indiana University—Indianapolis.

MARY H. MITCHELL, *Professor of Law*. A.B., Butler University; J.D., Cornell Law School.

JAMES P. NEHF, *Professor of Law*. B.A., Knox College; J.D., University of North Carolina.

THOMAS R. NEWBY, *Lecturer in Law*. A.B., J.D., Indiana University—Bloomington.

LESLYE A. OBIORA, *Assistant Professor of Law*. LL.B., University of Nigeria; LL.M., Yale Law School; J.S.D. Candidate, Stanford Law School.

DAVID R. PAPKE, *Professor of Law and American Studies*. A.B., Harvard College; J.D., Yale University; M.A. in American Studies, Yale University; Ph.D. in American Studies, The University of Michigan.

RONALD W. POLSTON, *Professor of Law*. B.S., Eastern Illinois University; LL.B., University of Illinois.

FRAN QUIGLEY, *Visiting Assistant Professor of Law*. B.A., Hanover College; M.A., Indiana University—Bloomington; J.D., Indiana University—Indianapolis.

JOAN M. RUHTENBERG, *Director of Legal Writing*. B.A., Mississippi University for Women; J.D., Indiana University—Indianapolis.

ANDREW T. SOLOMON, *Lecturer in Law*. A.B., University of Michigan; J.D., Boston University.

JUNE O. STARR, *Associate Professor of Law*. B.A., Smith College; M.A., Columbia University; Ph.D., University of California, Berkeley; M.S.L., Yale University; J.D., Stanford Law School.

KENNETH M. STROUD, *Professor of Law*. A.B., J.D., Indiana University—Bloomington.

JAMES W. TORKE, *Professor of Law*. B.S., J.D., University of Wisconsin.

JOANNE ORR VAN PELT, *Clinical Instructor*. J.D., California Western.

JAMES PATRICK WHITE, *Professor of Law and Consultant on Legal Education to the American Bar Association*. A.B., University of Iowa; J.D., LL.M., George Washington University.

LAWRENCE P. WILKINS, *Professor of Law*. B.A., The Ohio State University; J.D., Capital University Law School; LL.M., University of Texas.

MARY T. WOLF, *Director of Clinical Programs*. B.A., Saint Xavier College; J.D., University of Iowa.

Emeriti

AGNES P. BARRETT, *Associate Professor Emerita*. B.S., J.D., Indiana University.

CLEON H. FOUST, *Professor Emeritus*. A.B., Wabash College; J.D., University of Arizona.

- MELVIN C. POLAND, *Cleon H. Foust Professor of Law Emeritus*. B.S., Kansas State University; LL.B., Washburn University; LL.M., University of Michigan.
- R. BRUCE TOWNSEND, *Cleon H. Foust Professor of Law Emeritus*. A.B., Coe College; J.D., University of Iowa.

Law Library Faculty

- JAMES F. BAILEY, III, *Professor and Director of Law Library*. A.B., J.D., M.A.L.S., University of Michigan.
- MINDE C. BROWNING, *Assistant Director for Readers' Services*. B.A., Western Michigan University; M.L.S., Indiana University; J.D., Indiana University School of Law—Indianapolis.
- CHRIS E. LONG, *Visiting Catalog Librarian*. B.A., Indiana University; M.A., Indiana University; M.L.S., Indiana University.
- MAHNAZ K. MOSHFEGH, *Acquisition/Serials Librarian*. B.A., National University of Iran; M.S., Tehran University; M.A., Ball State University; M.L.S., Ph.D., Indiana University.
- KIYOSHI OTSU, *Computer System Specialist and Catalog Librarian*. A.A., Parkland College; A.B., M.S., C.A.S., University of Illinois.
- TERENCE L. ROSE, *Reference Librarian*. B.G.S., M.I.L.S., University of Michigan.

Indiana Law Review

Volume 28

1995

Number 2

Copyright © 1995 by the Trustees of Indiana University

TABLE OF CONTENTS CENTENNIAL SYMPOSIUM ISSUE

Symposium: Then, Now and into the Future: A Century of Legal Conflict and Development	<i>Lawrence P. Wilkins</i>	135
Introduction.....	<i>Ann Marie Piscione</i>	139
ARTICLES		
Fragments From Our Fleece: Vignettes From 100 Years in a Great Law School	<i>William F. Harvey</i>	143
History of the Indiana University School of Law—Indianapolis	<i>Ronald W. Polston</i>	161
A Short History of Hearsay Reform, with Particular Reference to <i>Hoffman v. Palmer</i> , Eddie Morgan and Jerry Frank	<i>Michael Ariens</i>	183
The New Woman Lawyer and the Challenge of Sexual Equality in Early Twentieth-Century America	<i>Virginia G. Drachman</i>	227
Looking Backward, Looking Forward: A Century of Legal Change	<i>Lawrence M. Friedman</i>	259
Balancing Acts: Crisis, Change, and Continuity in American Family Law, 1890-1990	<i>Michael Grossberg</i>	273
The Warren Court: Yesterday, Today, and Tomorrow	<i>Kermit L. Hall</i>	309
Why the Nuisance Knot Can't Undo the Takings Muddle	<i>Louise A. Halper</i>	329
One Hundred Years of Modern Legal Thought: From Langdell and Holmes to Posner and Schlag	<i>Gary Minda</i>	353
Law and Endangered Species: Is Survival Alone Cause for Celebration?	<i>John Henry Schlegel</i>	391

Volume 28

Number 2

NOTES

- Medical Malpractice Acts' Statutes
of Limitation as the Apply to
Minors: Are they Proper?*Scott A. DeVries* 413
- Indiana's Neglect of a Dependent
Statute: Uses and Abuses*Kenneth D. Dwyer* 447
- Proposal for a "Lawful" Public
School Curriculum: Preventive
Law From a Societal Perspective*Patricia L. Van Dorn* 477

The INDIANA LAW REVIEW (ISSN 0090-4198) is the property of Indiana University and is published quarterly by the Indiana University School of Law—Indianapolis, which assumes complete editorial responsibility thereof. Subscription rates: one year \$25; foreign \$28. Please notify us one month in advance of any change in address and include both old and new addresses with zip codes to ensure delivery of all issues. Send all correspondence to Editorial Assistant, Indiana Law Review, Indiana University School of Law—Indianapolis, 735 W. New York Street, Indianapolis, Indiana 46202. Publication office: 735 W. New York Street, Indianapolis, Indiana 46202. Second class postage paid at Indianapolis, Indiana 46201.

POSTMASTER: Send address changes to INDIANA LAW REVIEW, 735 W. New York Street, Indianapolis, Indiana 46202.



The entire text of this Law Review is printed on recycled paper.

INDIANA LAW REVIEW

(ISSN 0090-4198)

Published four times a year by Indiana University. Editorial and Business Offices are located at:

Indiana Law Review
735 W. New York Street
Indianapolis, IN 46202
(317) 274-4440

Subscriptions. The current subscription rates are \$25.00 per four-issue (domestic mailing) and \$28.00 (foreign mailing). Unless the Business Office receives notice to the contrary, all subscriptions will be renewed automatically. Address changes must be received at least a month prior to publication to ensure prompt delivery and must include old and new address and the proper zip code.

Single and Back Issues. Current single regular issues may be obtained from the *Law Review* Business Office for \$8.00. Current Survey issues may be purchased for \$17.00. The Centennial Issue may be purchased for \$12.00. Please enclose payment with order. Complete sets and single issues of prior volumes are also available from the *Law Review* Business Office. Unless a claim is made for non receipt of issues within one year of the mailing date, we cannot guarantee supplying the issues without charge.

Manuscripts. The *Indiana Law Review* invites submission of unsolicited manuscripts. All citations should conform to *A Uniform System of Citation* (15th ed. 1991). Manuscripts should be submitted in duplicate and double-spaced with wide margins. The *Indiana Law Review*, as a matter of policy, promotes the use of gender-neutral language, and alternate use of the female or male pronoun is intended to refer to both female and male.

Copyright: Copyright 1995, The Trustees of Indiana University. Except as may be expressly provided elsewhere in this publication, permission is hereby granted to reproduce and distribute copies of individual works from this publication for nonprofit educational purposes, provided that copies are distributed at or below cost, and that the author, source, and copyright notice are included on each copy. This permission is in addition to rights of reproduction granted under Sections 107, 108, and other provisions of the U.S. Copyright Act.

