

# Indiana Law Review



Volume 30, No. 4 1997

## TRIBUTE

*Debra A. Falender Tribute by Lawrence P. Wilkins*

## 1996 SURVEY OF RECENT DEVELOPMENTS IN INDIANA LAW

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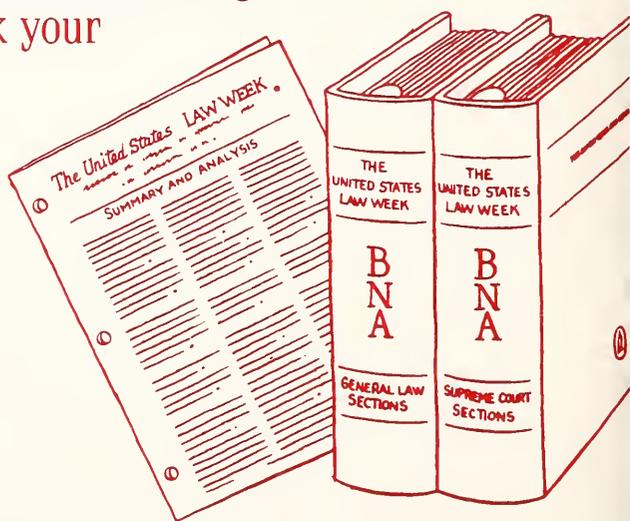
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**DEBRA A. FALENDER**  
**RETIREMENT TRIBUTE**

*Education:*

Mount Holyoke College, South Hadley, Massachusetts, A.B. 1970.  
Indiana University School of Law—Indianapolis, J.D. 1975,  
*summa cum laude.*

*Clerkship:*

1975-76 Law clerk to the Honorable Robert H. Staton, Indiana Court of Appeals.

*Academic Appointments:*

1976-79 Assistant Professor of Law, Indiana University School of Law—Indianapolis.  
1979-85 Associate Professor of Law, Indiana University School of Law—Indianapolis.  
1989-90 Associate Dean for Student Affairs, Indiana University School of Law—Indianapolis.  
1985-97 Professor of Law, Indiana University School of Law—Indianapolis.

*Honors and Awards:*

Faculty Prize for Outstanding Scholarship, Leadership, and Contributions to the School of Law, presented by the Faculty of the Indiana University School of Law—Indianapolis to a graduating senior, 1975.

Outstanding New Professor Award, presented by the Student Bar Association of the Indiana University School of Law—Indianapolis, 1977-78.

*Subjects Taught:*

Decedents' Estates and Trusts, Fiduciary Administration, Future Interests, Real Estate Transactions, Land Use Planning, Real Property, Contracts.

*Bar Admissions:*

Indiana (1975-present).

United States District Court for the Southern District of Indiana (1975-present).

*Professional Memberships:*

American Bar Association

Member, Committee on Creditors' Rights in Estates and Trusts, ABA Section of Real Property, Probate, and Trust Law, 1985-91.

Indiana State Bar Association

Member, Probate Reform Committee of the Probate, Trust, and Real Property Section, 1995-96.

Member, Rights of Surviving Spouses Subcommittee, and Will Subcommittee, of the Legislation Committee of the Probate, Trust, and Real Property Section, 1986-87.

Chair, Notice to Creditors Subcommittee of the Legislation Committee of the Probate, Trust, and Real Property Section, 1986-89.

Indianapolis Bar Association

Member, Estate Planning Section Council, 1993-95.

Member, Estate Planning Section Council Nominating Committee, 1991.

Member, Estate Planning Section Council, 1988-90.

*Bibliography:*

Books and Book Supplements:

1 HENRY'S INDIANA PROBATE LAW AND PRACTICE (8th ed. D. Falender 1989) (and cumulative annual supplements).

5 HENRY'S INDIANA PROBATE LAW AND PRACTICE (Forms) (8th ed. J. Kolb & D. Falender 1989) (and cumulative annual supplements).

HENRY'S PROBATE LAW AND PRACTICE Cumulative Supplements, 1996, 1995, 1994, 1993, 1992, 1991, 1990, 1989, 1988, 1987, 1986, 1985, 1984, 1983, 1982, and 1981 (7th ed. J. Grimes 1979, 1980).

In progress: Volumes 2, 3 & 4 HENRY'S INDIANA PROBATE LAW AND PRACTICE (8th ed.)

Articles:

*Claims By and Against Decedent's Estates*, 20 IND. L. REV. 289 (1986).

*Notice to Creditors in Estate Proceedings: What Process is Due?*, 63 N.C.L. REV. 659 (1985), cited in *Tulsa Professional Collection Services Inc. v. Pope*, 485 U.S. 478 (1985).

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*Decedent's Estates and Trusts, 1980 Survey of Recent Developments in Indiana Law*, 14 IND. L. REV. 291 (1981).

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*Decedents' Estates and Trusts, 1978 Survey of Recent Developments in Indiana Law*, 12 IND. L. REV. 142 (1979).

*Property, 1978 Survey of Recent Developments in Indiana Law*, 12 IND. L. REV. 269 (1979).

*Property, 1977 Survey of Recent Developments in Indiana Law*, 11 IND. L. REV. 232 (1978).

*Trusts and Decedents' Estates, 1977 Survey of Recent Developments in Indiana Law*, 11 IND. L. REV. 330 (1978).

*Protective Provisions for Surviving Spouses in Indiana: Considerations for a Legislative Response to Leazenby*, 11 IND. L. REV. 755 (1978).

Note, *The Proposed New Bankruptcy Act*, 7 IND. L. REV. 852 (1974).

**Other Published Materials:**

Trusts, Bar Review Course Outline, Trusts, updated 1982, 1983 (with Poland).

Outlines and Articles Accompanying Speeches (published by ICLEF): Basic Will Drafting, 1995; Estate Planning & Administration, 1992; Legal Issues for Incapacitated Persons, 1992; Estate & Guardianship Administration, 1989; Trusts, Estates, and Guardianship Developments, 1988; Guardianships, 1988; Trusts and Estates Developments, 1987; Uniform Marital Property Act, NATAF, 1986; Estates and Trusts, 1982, 1983, 1984; Property, NATAF, 1982.

**Speeches, Testimony, Etc.:**

Presentation, Reaching Nonprobate Assets, Indiana State Bar Association Section on Estate Planning and Probate, Oct. 1996.

Lecture, Reaching Nonprobate Assets, Indianapolis Bar Association Mini-Seminar, June 1995.

Lecture, Simple Wills, ICLEF Basic Will Drafting Seminar, Jan. 1995.

Lecture, Conflicts of Interest and Ethical Considerations in Estate Planning, ICLEF Estate Planning and Administration Seminar, Dec. 1992.

Lecture, Alternatives to Guardianships, ICLEF Legal Issues for Incapacitated Persons Seminar, Apr. 1992.

Debate, The Uniform Marital Property Act, Indianapolis Bar Association, Feb. 1992.

Workshop Presenter, The Uniform Marital Property Act: A Route to Family Fairness, 1990 Conference on Women and the Legislative Process, sponsored by the Indiana Foundation for Education on Gender-Based Discrimination, Nov. 1990.

Speech, Estate Planning for the Client with a Disabled Child, Annual Meeting of the Estate Planning and Administration Section of the Indianapolis Bar Association, Oct. 1990.

Lecture, Claims Against Decedents' Estates, ICLEF Estate and Guardianship Administration Seminar, July 1989.

Seminar Chair, ICLEF Trusts and Trustees Seminar, Apr. 1989.

Panel Member, Common Law Property Rules and Concepts, Indiana Fairness Coalition, Oct. 1988, Oct. 1990.

Lecture, Trusts, Estates, and Guardianship Developments, Indiana Update Seminar, Sept. 1988.

Lecture, Termination of Guardianships, in Removal of Guardians, and Foreign Guardians, ICLEF Guardianship Seminar, June 1988.

Lectures, Trusts and Estates Developments, Indiana Update Seminar, Sept. 1987.

Seminar Presentation, Uniform Marital Property Act, sponsored by the National Attorneys' Title Assurance Fund, with Dan Furhh of Marquette Univ., Apr. 1986.

Testimony before Legislative Committees considering the Uniform Marital Property Act, June 1985, Jan. 1986, Feb. 1989, July 1990.

Presentation, Notice to Creditors in Estate Proceedings, Indiana State Bar Probate Section Meeting, Oct. 1985.

Lecture, Recent Developments in Probate and Trust Law, Indiana Judicial Conference, Sept. 1985.

Speech, Estate Planning Considerations for the Handicapped, Workshop sponsored by Parents and Professionals Advocating for the Handicapped, Aug. 1985.

Presentation, Estate Planning Considerations for the Handicapped, Governor's Conference on the Handicapped, Oct. 1984.

Bar Review Lectures on Trusts, Professional Education Corporation, June 1982, Jan. 1983, June 1983, Jan. 1984, June 1984, Jan. 1985, June 1985, Jan. 1986, June 1986, Jan. 1987.

Lectures, Indiana Law Update, Trusts and Estates, May 1981, May 1982, May 1983, Mar. 1984.

Speech, Recent Developments in Real Estate Law, National Attorneys' Title Assurance Fund Annual Meeting, Apr. 1982.

Hearing Judge, Indiana Housing Authority Eviction Proceeding, Oct. 1981.

Speech, Construction Liens under the Uniform Simplification of Land Transfers Act, ICLEF Mechanics Lien Seminar, Spring 1981.

Speech, Network of Women in Business Luncheon, Nov. 1980.

*Board Memberships:*

Association for Retarded Citizens of Indiana

Member, Task Force on Guardianship, Advocacy and Protective Services, 1986-88.

Member, ARC Advisory Committee for the ARC Master Trust, 1988-present.

Park Tudor School

Member, Board of Directors, 1987-93.

Chair, Board Education Committee, 1990-93.

Legal Services Organization of Indiana

Member, Board of Directors, Nov. 1983-May 1989.

Chair, Board Personnel Committee, 1986-89.

# TRIBUTE TO PROFESSOR DEBRA A. FALENDER

LAWRENCE P. WILKINS\*

Professor Debra Ann Falender retired from law teaching at the end of this term. If you know Professor Falender then you know that she has not even begun to approach the age that most of us must attain to retire. You may then wonder, “why is she getting a *tribute* for quitting early? Here’s a woman still in the bloom of youth,<sup>1</sup> who still has lots of legal educational stuff to do<sup>2</sup> and she’s *retiring*?” “For Pete’s sake,”<sup>3</sup> you may be exclaiming, “she hasn’t earned enough gray hair yet to be allowed to retire!” To those questions I can only reply that she has been hanging around<sup>4</sup> this place for a quarter century now, and I suppose that is about the time frame when one begins to think seriously about “Golden Years” activities, and she has apparently given in to the impulse.<sup>5</sup> However, I also have determined that since she has shortened her teaching career by about twenty years or so, this “tribute” need not be in the usual format. If you agree, read on. If you don’t agree, the footnotes may be helpful.<sup>6</sup>

Debra Falender came to Indianapolis to attend prep school, and that move created an immediate shortage of prospects for the cheerleading squad at the Jonesboro, Indiana High School. The wider horizons provided at Tudor Hall School for Girls—doubtless valuable in many ways—alas, held no outlet for Debby’s cheerleading talents. It may well be that her frustration at being deprived of the opportunity for expressing her leadership qualities in that manner shaped her approach to the challenges of adult life.

In pursuit of higher education, she matriculated at Mount Holyoke College. Following the example set by many other college students in her generation she quickly set her sights on her future career, and immediately embarked on a rigorous program of preparation for the profession, majoring in the History of Art. She learned quickly, and soon discovered the fundamental truth of the philosopher’s rhetorical question: “Why spend weeks writing a twenty-page paper

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\* Professor of Law, Indiana University School of Law—Indianapolis. B.A., Ohio State University; J.D., Capital University; LL.M., University of Texas.

1. I am not at liberty to reveal Professor Falender’s age, but I can tell you that she has not yet received a solicitation letter from AARP.

2. When she closed her textbook and walked from the classroom for the last time, she cut short by many years, if not decades, a remarkable career in legal education.

3. Actually, she’s retiring for the sake of a family dream of living in the Rocky Mountains of Colorado.

4. She has invested an enormous amount of energy and dedication in the law school’s mission, and she has contributed to the school an unmatched combination of teaching, scholarship and service. Her departure will leave behind a rich albeit unfinished tapestry of legal professional work and collegial relationships.

5. A graduate of this law school, she has been a stalwart of the institution almost from the day she arrived in 1972.

6. Now that you are looking at the footnotes, you probably should know that the text and the footnotes will tell the Debra Ann Falender story in two different ways. I will leave it to you to decide which carries the greater truth.

when an all-nighter the day before it's due will work nicely?" In the little spare time that she allowed herself away from her studies she organized the campaigns of friends interested in running for student government offices.

Upon graduation, she soon brought all of that undergraduate preparation and her new learning in the arts to bear upon practical things. She began work in a family-owned business. Her job was to program computers. During the year that she spent interacting with machines, she also had occasion to observe some exemplary expressions of the lawyerly craft and decided she would give that profession a whirl.

In law school, she quickly established herself as a leader, and emerged from the proving-grounds of first-year classes among the top achievers in her class.<sup>7</sup> She recalls that first year as involving nearly round-the-clock commitment to scholarly pursuits: (1) playing Bridge; (2) reading all the cases; (3) playing Bridge; (4) making outlines; (5) only then allowing a relaxing round of Bridge. In the second year she was not able to put all of that important groundwork to as much use as she would have liked. She spent most of that year writing a Note for the *Indiana Law Review* and writing a brief for her Moot Court team. She has often lamented that those activities left much less time for Bridge. In her senior year, she decided to while away some idle hours serving as the editor-in-chief of the *Indiana Law Review*.<sup>8</sup> As the most significant accomplishment of her tenure as editor-in-chief of Volume 8 she counts the last-minute discovery that the word "foreword" had been misspelled in the foreword.<sup>9</sup>

The historical matter you've just read, as you might have guessed, is related to you as Debbi Falender herself told it to me. Now I will tell you what I know of Debbi Falender, my friend and colleague of seventeen years.

Debbi is a very well-organized person and likes things around her to be orderly.<sup>10</sup> Out of the necessities imposed by her busy schedule, she has developed a disciplined and successful method of organizing and accomplishing her tasks and priorities. She devised a list system well before the several well-known self-help manuals popularized the technique of making lists. Her desk top at any given time will contain any number of lists with some items checked, some not, some with lines drawn through, and some lined-through and checked. Before undertaking any important task, she organizes it, considers the feasibility of the organization, perhaps revises the plan, and then carefully executes it according to the plan.

7. She was tied with two others for the top position in her class.

8. Debbi has been a model of organized industriousness for all of us. Welcoming the challenges of balancing her responsibilities as legal educator, community leader, wife (she is married to Steven Falender) and mother (she is the mother of three children: Phillip, Ellen and Mark. She took on the duties of editor-in-chief of the *Indiana Law Review* while she was pregnant with Phillip. Phillip graduated this spring from the University of Colorado. Twins Ellen and Mark are eighth-graders at Aspen Middle School).

9. I am not making this up.

10. She once told me that she didn't care for Jazz or Blues because she doesn't like music that doesn't proceed according to a plan.

Once engaged with a project, her drive to produce an excellent result takes over. She is able to maintain extraordinary focus upon the task, often writing and revising at her desk for long hours at a time without a break. Her ability to tackle and master even the most difficult of legal subject matter is well-documented by her student Note in the *Indiana Law Review* discussing the Report of the Commission on Bankruptcy Laws of the United States of 1973. That Note evaluated the Report's review of the bankruptcy administration system and proposals for revision. Her scholarly efforts for the past decade have been dedicated to the major revision of *Henry's Probate*, a multi-volume treatise that practitioners have found to be a valuable resource. Her marathon efforts on that work have brought it to light for practitioners much sooner than should have been anticipated.

Her clarity of expression in writing has drawn the notice of the U.S. Supreme Court and others. The Supreme Court relied heavily upon her 1985 law review article on notice to creditors in estate proceedings, and several commentators since have written analyses of her approach.<sup>11</sup> She has, in her scholarship, added to the language of the law, coining the terms "short term" and "long term" nonclaim statutes<sup>12</sup> to refer to statutes barring claims of a decedent's creditors who fail to timely present their claims against the estate.

She has often dealt with faculty governance issues using her powers of gentle persuasion and Socratic dialogue in dealings with colleagues.<sup>13</sup> Her technique is so natural, yet so refined—and so quick is she to give credit to others—that those who enter dialogue with her often leave it feeling as if the ideas that develop from the discussion are their own and not Debbi's. Whether in discussions or her writings, whether in informal exchanges, classroom dialogue, or formal faculty debates she has, over the years, expressed an abiding concern for careful deliberation of the issues and fairness to all participants in that deliberation as well as a concern for good results.<sup>14</sup>

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11. *Tulsa Prof'l Collection Servs., Inc. v. Pope*, 485 U.S. 478, 479-80, 488-89 (1988). See Sarajane Love, *Estate Creditors, the Constitution, and the Uniform Probate Code*, 30 U. RICH. L. REV. 411, 428-30, 437, 456 (1996); Thomas L. Waterbury, *Notice to Decedents' Creditors*, 73 MINN. L. REV. 763, 779 (1989).

12. Debra A. Falender, *Notice to Creditors in Estate Proceedings: What Process is Due?*, 63 N.C.L. REV. 659, 667-69 (1985). See Waterbury, *supra* note 11, at 764 n.9, 771 n.50.

13. Not always fully appreciated by some.

14. Examples in her scholarship alone will suffice. See, e.g., Debra A. Falender, Note, *The Proposed New Bankruptcy Act*, 7 IND. L. REV. 852, 879 (1974) ("The recommendations of the Commission for changes in the substantive law affecting wage earner plans evidence an attempt to more realistically balance the interests of debtors and creditors in the hope of fostering such plans."); Falender, *supra* note 12, at 706 ("Estate proceedings cannot use tradition and inertia to justify unfairness."); Debra A. Falender, *Protective Provisions for Surviving Spouses in Indiana: Considerations for a Legislative Response to Leazenby*, 11 IND. L. REV. 755, 796 (1978):

One thing is clear, especially after *Leazenby*: The legislature must act if anything is to be done to prevent overprotection and underprotection of surviving spouses in Indiana. The *Leazenby* court should not be criticized for refusing to assume the responsibility for

She has continued to fulfill her early promise of leadership. She helped found a group of colleagues on the faculty who call themselves the Female Law Faculty. This group, referred to by its acronym, "FLF," and pronounced, with tongue in cheek, "fluff," always seems to have a marvelous time in its luncheon discussions. I cannot tell you much about this group or its activities because I have been summarily and most unjustly denied participation. I do know that several female faculty members consider Debbi to be a mentor.

Debbi has maintained a tireless loyalty and dedication to the law school. In 1987 she chaired the dean search committee that recruited Norman Lefstein as the dean of the school, and Norm's tenure has been one of the longest in the school's history. Shortly after assuming the office, Norm showed his gratitude to her by asking if she would assume the duties of Associate Dean for Student Affairs, which she did for two years.

Debbi has readily, if not eagerly, accepted and applied modern technology to her tasks. In the early years of incorporation of desktop computing into professorial tasks, the machinery in Debbi's office always represented state-of-the-art. When presentation software offered valuable new ways for helping students grasp and interact with material, Debbi quickly adopted it in her teaching technique.

In her teaching, she has applied all of her stellar qualities of organization, leadership, dedication, loyalty, perspicacity, and clarity of expression. Her first thoughts are always for her students, and she has constantly striven to find new opportunities for learning in the law school experience. Her classroom demeanor, teaching skills and technique were a combination favored by students, and her advanced level courses were always over-subscribed. She was also a leader in efforts to incorporate concerns for ethical principles in the curriculum.

As Debbi moves from her shortened but stellar teaching career to other pursuits,<sup>15</sup> she will be long remembered here as an excellent teacher, administrator, and colleague. More importantly, we will miss her as our friend, and we will look forward to her visits with great anticipation.

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counteracting underprotection. The responsibility for counteracting both underprotection and overprotection is that of the legislature.

15. She says she is leaving the best job in the world to live in the best place in the world. See *supra* note 3.