

WHY LAW REVIEW SURVEY ISSUES ARE A GOOD IDEA

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INTRODUCTION

On the several occasions that the editors of the *Indiana Law Review* have invited me to introduce their annual survey issue, I have always tried to do more than summarize the contents. Instead, I have used the moment to write about broad topics like lawyers and writing,¹ the state of the profession,² and the state of the Indiana Supreme Court.³ These have been advantageous opportunities to place in print ideas about where we Indiana lawyers are heading.

In the course of preparing these introductions, however, I have sometimes reflected on the place of survey issues in the modern profession and in the modern law school. These editions are remarkable in many respects, a few of which I describe here.

I. THE PLACE OF SURVEY ISSUES

While there are relatively few quantitative measures of law journal activity in American law schools, it is plain for all to see that the number of journals is growing steadily and that most of this growth is occurring in specialized areas.⁴ By definition, this expansion through specialization means that the amount of scholarship laying claim to the general interests of the mainstream legal profession has declined as a percentage of all new scholarship in print. The rise of specialized publishing likely bears some correspondence to the shift in law school curricula towards interdisciplinary and theoretical "law and . . ." courses, like law and economics, law and literature, and so on.

In any event, it barely takes mentioning to remind the reader what the average practitioner thinks about the general relevance of law journals. Lawyers use words like "arcane" and "narrow" to describe the writing which appears in so much of today's law school journals, authored almost entirely by professors and edited almost entirely by law students. "They're talking only to each other," practitioners say, with some justification. When you can find articles in print with

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1. Randall T. Shepard, *On Lawyers and Writing: Pass the Constitutional Mustard, Please*, 28 IND. L. REV. 811 (1995).

2. Randall T. Shepard, *Lawyer-Bashing and the Challenge of a Sensible Response*, 27 IND. L. REV. 699 (1994).

3. Randall T. Shepard, *Indiana Law, the Supreme Court, and a New Decade*, 24 IND. L. REV. 499 (1991).

4. Ten years ago, for instance, the Indiana University law schools each published one general purpose law journal. Now, the school at Indianapolis also features the *Indiana International and Comparative Law Journal*, and the school at Bloomington is home to the *Indiana Journal of Global Legal Studies*, and the *Federal Communications Law Journal*.

titles such as "The Genesis of Russian Secured Transaction Law Before 1917,"⁵ and "Linguistic Indeterminacy and the Rule of Law: On the Perils of Misunderstanding Wittgenstein,"⁶ you can say with some confidence that the paradigm has shifted at the editors' desks in America's 179 accredited law schools. The trend toward publishing in narrow niches will surely continue, inasmuch as it reflects broader trends toward increased specialization in the academy. Would anybody like to argue the contrary before a jury of twelve lawyers chosen at random?

Let me say, not to be misunderstood, that I enjoy reading law journals and that I consider myself a better lawyer because of it. I appreciate keenly the hard work of authors laboring over the detailed writing required for journal publication and the grinding toil of the student editors who bring it all to press. I mention the current state of journal publishing not so much to lament it (indeed, I am not sure I do lament it) but rather to illuminate the setting in which the *1995 Survey of Recent Developments in Indiana Law* exists. Survey issues may have once been part of the mainstream of academic publishing. In the present day, however, the continued dedication of the *Indiana Law Review* to this project speaks volumes about the level-headedness of its leadership. They are swimming a little against the current. I think they are swimming in a good direction.

There are many ways of viewing the benefits flowing from the effort of producing this law review's survey issue, three of which I mention here.

II. THE SURVEY ISSUE AND THE PRACTITIONER

First, the survey issue is a way of speaking to practitioners about the fields of law that still bring the overwhelming majority of clients into lawyers' offices: tax, property, torts, business law, worker's compensation, and the like. In an age when publicity is so often focused on megafirms and legal boutiques, almost half of all American lawyers still practice in very small law firms.⁷ Indeed, a third of all American lawyers in private practice are sole practitioners, and the proportion of sole practitioners appears to be rising.⁸ The topics treated in this survey are the fields these lawyers traverse day to day to help clients with their legal problems.

Can practitioners find out about changes in case law, statutes, and regulations anywhere else? Of course they can, but there is absolutely nowhere else they can find it compiled and analyzed so comprehensively—and with so little investment of their own time.⁹ Working lawyers both recognize and value this benefit. It is

5. Konstantin Osipov, *The Genesis of Russian Secured Transaction Law Before 1917*, 42 CLEV. ST. L. REV. 641 (1994).

6. Christian Zapf & Eben Moglen, *Linguistic Indeterminacy and the Rule of Law: On the Perils of Misunderstanding Wittgenstein*, 84 GEO. L.J. 485 (1996).

7. LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 36 (A.B.A. Section of Legal Education and Admissions to the Bar, 1992).

8. *Id.*

9. In the oft-quoted words of President Lincoln, "A lawyer's time and advice is his stock in trade."

not an accident that the legal update seminar held each fall that supplies its participants with a copy of this survey issue is frequently the largest continuing legal education event in Indiana each year.¹⁰

The survey issue also offers its review of the year in a way that constitutes more than "information." It provides synthesis of seemingly disparate developments by people who are recognized as the best in their fields. How could you do better than reading about the year in workers' compensation law as reviewed by the chair of the Indiana Workers' Compensation Board;¹¹ the year in tax by the state's leading tax professor;¹² or "who's voting with whom on the Supreme Court?" by the court's most prominent observer.¹³ Authors brought together in the survey are people who know their field like the back of their hand and who devote dozens of hours to thinking and writing about the trends they observe.

Finally, the survey issue and the fall seminar, sponsored as it is by the law school's alumni association and the education arm of the state bar association, forge a stronger relationship between law faculty, students, and practitioners. Practitioners in many other states wish that such bonds existed in their venue.

III. THE SURVEY ISSUE AND THE AUTHORS

Second, in the course of developing this issue, the law review recruits a broader range of authors than ordinarily find their way into most law journal publishing. It recruits prominent judges,¹⁴ lawyers from leading firms,¹⁵ and counsel for the disciplinary commission,¹⁶ to mention a few. Plainly this broader array of talent is in and of itself a bonus both to the law review and its' readers, and the breadth of vision attending its collection of viewpoints is stronger in its diversity than otherwise would be the case.

More subtly, engaging these practitioners and judges as writers may itself serve to move the law next year and the year after. It creates an occasion for people who shape the law to think formally about where it is headed. It sharpens

10. The I.C.L.E.F. seminar routinely draws approximately 350-400 attendees. By contrast, the highly publicized program in which the flamboyant Johnnie Cochran lectured on jury selection just two months after the Simpson trial drew 133—including 15 complimentary attendees.

11. G. Terrence Coriden & Daniel Foote, *1994 Survey of Recent Developments in Worker's Compensation*, 28 IND. L. REV. 1141 (1995).

12. Lawrence A. Jegen, III & John R. Maley, *1994 Developments in Indiana Taxation*, 28 IND. L. REV. 1089 (1995).

13. Kevin W. Betz & Andrew T. Deibert, *An Examination of the Indiana Supreme Court Docket, Dispositions, and Voting in 1994*, 28 IND. L. REV. 853 (1995).

14. Gary L. Miller & Kelly Rota-Autry, *Recent Developments in Indiana Criminal Law and Procedure*, 28 IND. L. REV. 819 (1995).

15. John R. Maley, *1994 Federal Civil Practice and Procedure Update for Seventh Circuit Practitioners: A Year of Adjustment*, 28 IND. L. REV. 891 (1995).

16. Charles M. Kidd et al., *Survey of 1994 Developments in the Law of Professional Responsibility*, 28 IND. L. REV. 1013 (1994).

questions they might plan to litigate in cases to come. When the legal director of the Indiana Civil Liberties Union, for example, spends hours thinking and writing about recent developments in state constitutional law,¹⁷ he undoubtedly acquires a clearer sense of what arguments might be viable or which cases may ripen in the future. Just as *Brown v. Board of Education*¹⁸ did not “just happen” but was carefully planned, important litigation is frequently the product of study and organization. I believe that both the authors contributing to this issue of the law review and their readers will be better litigators, better *law-creators*, by virtue of their own engagement in this endeavor.

IV. THE SURVEY ISSUE AND INDIANA

A third and sustaining feature of this edition of the *Indiana Law Review* is that it focuses on a real place, our state, where the fates of individuals and institutions rise and fall. Inasmuch as so many American law schools want to be “national” schools doing “national” things, the survey issue finds itself in a category shunned by a good many other journals. I say it is a great category to occupy.

Ah, yes, it is all part and parcel of the great “national school/state school” debate, the “scholastic school/training school” business. Someday when I have nothing better to do I will manage to sort it all out in my own mind and put it down on paper.

In the meantime, there is one thing I know for sure. Indiana is growing again; more people move to this state every year than move out.¹⁹ Indiana is also a place where more and more lawyers want to practice. At last summer’s admission ceremony for new lawyers, I was surprised at the number who crossed in front of the bench to announce they were from someplace other than Indiana. The number of people asking to come here to practice on the basis of other state licenses continues to grow; petitions for such admission have doubled since 1990.²⁰ The clerk’s office of our court tells me that there are now 17,182 total lawyers with Indiana licenses, of whom 13,477 hold active licenses.

These lawyers are here doing remarkable things in Indiana, like reforming the representation of indigent defendants in capital cases, as detailed by one of its chief architects, the dean of this law school.²¹ Capital litigation reform is a

17. Richard A. Waples, *Recent Developments Under the Indiana Constitution*, 28 IND. L. REV. 1067 (1995).

18. 348 U.S. 886 (1954).

19. Susan Brudvig, *Indiana Continues to Grow*, IND. BUS. REV., Mar. 1, 1996, at 6.

20. The Board of Law Examiners tells me that 28 people sought admission on foreign license in 1990. Last year 53 applied. This year the number of applicants will apparently be something like 70 or 80. Although the gross numbers are relatively small (less than ten percent of attorneys licensed here each year), the trend is significant because the attorneys doing this are experienced practitioners who are either moving to Indiana or growing their practice here.

21. Norman Lefstein, *Reform of Defense Representation in Capital Cases: The Indiana Experience and its Implications for the Nation*, 29 IND. L. REV. 495 (1996).

development of national import, recognized by the *New York Times*,²² the American Bar Association,²³ and the Conference of Chief Justices.

Sometimes the idea of being "national" means being relevant to everybody in general and nobody in particular. Great law, however, is best when it is actually applied. Likewise, great national places are local places where great things happen.

The annual survey issue of this law review helps make all of us—lawyers and judges—better practitioners. We believe that improving the rule of law is vital to making this place of nearly six million people safer, more decent, and more prosperous.

CONCLUSION

In short, the editors of the *Indiana Law Review* do the right thing by dedicating a substantial amount of their energy each year to this project. We are all in their debt. You will find beneath this cover some of the very best thinking and writing about what good Indiana practitioners have done to advance the law in the year just past. If you spend the time, you will also gain some insight into what may be about to happen in the year to come and what you can do to affect it. It is all time well spent. Long live the Annual Survey!

22. Tina Rosenberg, *The Deadliest D.A.*, N.Y. TIMES, July 16, 1995, at F22.

23. For example, within the ABA there exist multiple groups working to improve representation in capital cases. Among these are the ABA Post Conviction Death Penalty Representation Project and the Death Penalty Committee or the ABA Section of Individual Rights and Responsibilities. See, e.g., Jim T. Priest, *Pro Bono Aid Needed Now More Than Ever*, A.B.A. J., June 1996, at 66; Suzanne D. Strater, *The Juvenile Death Penalty: In the Best Interests of the Child?*, HUM. RTS., Spring 1995, at 10.

