# Indiana Law Review



C. 2

Volume 33 No. 4 2000

INDIANA UNIVERSITY

SEP 1 3 2000

SCHOOL OF LAW-INDPLS. LIBRARY

#### 1999 SURVEY OF RECENT DEVELOPMENTS IN INDIANA LAW

#### **CONTRIBUTORS TO THIS ISSUE** *The Honorable Chief Justice Randall T. Shepard*

Joseph R. Alberts Greg N. Anderson Kevin W. Betz Lisa Dillman James A. Garrard Lawrence A. Jegen, III Charles M. Kidd Susan W. Kline Kyle A. Lansberry Rosalie Berger Levinson Mark A. Lindsey John R. Maley Tammy J. Meyer Angela D. O'Brien George T. Patton, Jr. Kendall S. Schnurpel Joel M. Schumm Richard K. Shoultz Jana K. Strain Lloyd T. Wilson, Jr. Judy L. Woods Carol Modesitt Wyatt

#### ARTICLE

Beyond Dead Reckoning: Measures of Medical Injury Burden, Malpractice Litigation, and Alternative Compensation Models from Utah and Colorado David M. Studdert Troyen A. Brennan Eric J. Thomas

# Family In Law.

In 1933, BNA first published *The United States Law Week*. With that first issue, BNA set a new standard for high-quality legal reporting and research. Following *Law Week*'s precedent, BNA has since launched a family of information services for legal professionals.

BNA's notification services cover key areas of the legal field. They include: Family Law Reporter; BNA's Bankruptcy Law Reporter; Business Law Adviser; Corporate Governance Report; Mergers & Acquisitions Law Report; BNA's Patent, Trademark & Copyright Journal; and Criminal Law Reporter.

Whichever publication you choose, you'll notice the family resemblance — comprehensive, accurate, in-depth coverage.

Ask your professor for details on low student rates for BNA information services.



The Bureau of National Affairs, Inc. 1231 25th Street, NW Washington, DC 20037 Customer Relations: 1-800-372-1033 email: riskfree@bna.com http://www.bna.com



## **Indiana Law Review**

Volume 33

1999-2000



*Editor-in-Chief* Lorena Bray Driscoll

Executive Managing Editor Pamela J. Hensler

Executive Articles Editors Joshua P. Hollingsworth Theresa M. Moore

Articles Editors Grace M. Baumgartner Terry E. Hall Shawn A. Neal Michelle L. Neff Patrick James Olmstead James C. Owen Tara J. Stapleton Chris A. Wrede Executive Notes and Topics Editor Erin E. Heuer Lantzer

> Symposium Editor Jennifer K. Bagby

Note Development Editors Jamie R. Brashear Amanda J. Dickmann Kelley A. Karn Susan W. Kline Cynthia A. Muse Jill M. Oeding

Associate Editors

Brittany R. Abernathy Elijah D. Farrell A. Jack Finklea Mary Jane Frisby Chad J. Melchi Gregory A. Neibarger Patrick A. Scheiderer

Tiffany A. Sharpley

\_\_\_\_\_

Michael J. Adler Matthew T. Albaugh Richard C. Ascroft Jill Baniewicz Michelle L. Blank Todd J. Cochran Julee C. Fischer Matthew D. Fisher Alexander D. Forman Katherine S. Green Members

Eliza Houston Angela K. Imel Kathryn L. Infanger David J. Karnes Tina L. Korty Stephanie Hardy Moore Kenneth J. Munson Danel M. Nickels Jennifer Pruitt Jennifer E. Riley

Editorial Specialist Chris Paynter

Faculty Advisor David R. Papke Libby L. Roberts Jason M. Schiesser Ann Williams Schneider Gene Schulstad Howard A. Setzer Michele L. Stevenson Ann L. Thrasher Jonathan Yarling

#### 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 46202-5194 (317) 274-4440

Subscriptions. For the following academic year, subscription rates will be \$30.00 per four-issue (domestic mailing) and \$35.00 (foreign mailing). Unless the Business Office receives notice to the contrary, all subscriptions will be renewed automatically. Address changes must be received at least one 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 \$10.00. Current Survey issues may be purchased for \$20.00. The Symposium Issue may be purchased for \$15.00. 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 nonreceipt 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 *The Bluebook A Uniform System of Citation* (16th ed. 1996). Manuscripts should be double-spaced with standard one-inch 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 2000. The Trustees of Indiana University. Except as may be expressly provided elsewhere in this publication, permission is hereby granted to produce and distribute copies of individual works from this publication for nonprofit education 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.

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. Following academic year subscription rates will be: one year domestic \$30.00; foreign \$35.00. 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 Law Review Specialist, *Indiana Law Review*, Indiana University School of Law—Indianapolis, 735 W. New York Street, Indianapolis, Indiana 46202-5194. Publication office: 735 W. New York Street, Indianapolis, Indiana 46201.

POSTMASTER: Send address changes to INDIANA LAW REVIEW, 735 W. New York Street, Indianapolis, Indiana 46202-5194.

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

# Indiana International & Comparative Law Review

The Indiana International & Comparative Law Review, published by the Indiana University School of Law—Indianapolis since 1991, is a student-edited law journal which provides a forum for the discussion and analysis of contemporary issues in public and private international law. The Review publishes articles by prominent legal scholars, practitioners, and policy makers from around the world, as well as student-written notes and comments.

The Review is published twice annually, with a periodic third issue devoted to a specific topic in international or comparative law. In 1994, in conjunction with the Italian Academy for Advanced Studies in America at Columbia University, the Review published a special issue on the political and social aspects of Italian law. In 1996, the Review published an issue addressing various aspects of Chinese law.

Name	Visa Mastercard
School/Firm/Business	Credit Card Number
Address	Expiration Date
City, State, Zip Code	Signature (Required)

I enclose \$\_\_\_\_\_\_ for \_\_\_\_\_ subscriptions to the Indiana International and Comparative Law Review (Subscriptions \$18.00 per year within the U.S./\$21.00 per year outside the U.S.). Please make your check payable to Indiana International & Comparative Law Review.

Mail to:	Executive Production Editor
4	Indiana International & Comparative Law Review
	735 West New York Street
	Indianapolis, Indiana 46202

Digitized by the Internet Archive in 2011 with funding from LYRASIS Members and Sloan Foundation

http://www.archive.org/details/indianalawreview33400unse

#### **1999-2000 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., ITT/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.
- SUSANAH M. MEAD, Associate Dean for Academic Affairs and Professor of Law. B.A., Smith College; J.D., Indiana University—Indianapolis.
- CYNTHIA BAKER, Director, Program on Law and State Government. B.A., J.D., Valparaiso University.
- ELIZABETH L. DECOUX, Assistant Dean for Student Affairs. J.D., Mississippi College School of Law
- ANGELA M. ESPADA, Assistant Dean for Admissions. J.D., Indiana University-Bloomington.

JONNA M. KANE, Assistant Dean for External Affairs. J.D., Indiana University—Indianapolis.

KAREN MARKS, Director of Career Services. B.S., St. Joseph's College; M.S., Illinois State University.

JONI D. THOMPSON, Assistant Dean for Development. M.A., Ball State University.

#### Faculty

- CYNTHIA M. ADAMS, Lecturer in Law. B.A., Kentucky Wesleyan College; J.D., Indiana University— Indianapolis.
- THOMAS B. ALLINGTON, Professor of Law. B.S., J.D., University of Nebraska; LL.M., New York University
- EDWARD P. ARCHER, Professor of Law. B.M.E., Renesselaer 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.
- FRANK BOWMAN, Associate Professor of Law. B.A., Colorado College; J.D., Harvard Law School.
- ROBERT BROOKINS, Professor of Law. B.S., University of South Florida; J.D., Ph.D., Cornell University.
- DANIEL H. COLE, M. Dale Palmer Professor of Law. A.B., Occidental College; A.M., University of Chicago; J.D., Lewis and Clark College; J.S.M., J.S.D., Stanford Law School.
- JEFFREY O. COOPER, Assistant Professor of Law. A.B., Harvard University; J.D., University of Pennsylvania.
- PAUL N. COX, Centennial Professor of Law. B.S., Utah State University; J.D., University of Utah; LL.M., University of Virginia.
- KENNETH D. CREWS, Associate Dean of the Faculties for Copyright Management and 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).
- JAMES D. DIMITRI, Lecturer in Law. B.S., Indiana University; J.D., Valparaiso University School of Law.
- GEORGE E. EDWARDS, Associate Professor of Law and Director, Program in International Human Rights Law. B.A., North Carolina State University; J.D., Harvard Law School.
- PAUL J. GALANTI, Professor of Law. A.B., Bowdoin College; J.D., University of Chicago.
- 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.
- FRANCES WATSON HARDY, Clinical Associate Professor of Law. B.S., Ball State University; J.D., Indiana University—Indianapolis.

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.

- ELEANOR D. KINNEY, Samuel R. Rosen Professor of Law and Co-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.
- RONALD J. KROTOSZYNSKI, JR., Paul E. Beam Fellow and Associate Professor of Law. B.A., M.A., Emory University; J.D., LL.M., Duke University.
- NORMAN LEFSTEIN, Dean and Professor of Law. LL.B., University of Illinois; LL.M., Georgetown University.
- LYNN A. MCDOWELL, Clinical Associate Professor of Law. B.S. Indiana University; J.D., Indiana University—Indianapolis.
- DEBORAH MCGREGOR, Lecturer in Law and Assistant Director of Legal Writing. B.A., University of Evansville; J.D., Georgetown University.
- SUSANAH M. MEAD, Associate Dean and 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, Cleon H. Foust Fellow and Professor of Law. B.A., Knox College; J.D., University of North Carolina.
- DAVID ORENTLICHER, Samuel R. Rosen Professor of Law and Co-Director of the Center for Law and Health. A.B., Brandeis University; J.D., M.D., Harvard College.
- JOANNE ORR, Clinical Associate Professor of Law. B.S., Indiana State University; J.D., California Western.
- DAVID R. PAPKE, R. Bruce Townsend Professor of Law and Professor of 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.
- H. KATHLEEN PATCHEL, Associate Professor of Law. A.B., Huntington College; J.D., University of North Carolina; LL.M., Yale University.
- FRAN QUIGLEY, Clinical Associate Professor of Law. B.A., Hanover College; M.A., Indiana University-Bloomington; J.D., Indiana University-Indianapolis.
- FLORENCE WAGMAN ROISMAN, Associate Professor of Law. B.A., University of Connecticut; LL.B., Harvard Law School.
- RICHARD J. ROSS, Associate Professor of Law. B.A., J.D., Ph.D., Yale University.
- JOAN M. RUHTENBERG, Clinical Professor of Law and Director of Legal Writing. B.A., Mississippi University for Women; J.D., Indiana University—Indianapolis.
- E. GARY SPITKO, Assistant Professor of Law. A.B., Cornell University; J.D., Duke University Law School.
- 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.
- JAMES W. TORKE, Carl M. Gray Professor of Law. B.S., J.D., University of Wisconsin.

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.
- LLOYD T. WILSON, JR., Lecturer in Law. B.A., Wabash College; M.A., Duke University; J.D., Indiana University School of Law-Bloomington.
- MARY T. WOLF, Clinical Professor of Law and Director of Clinical Programs. B.A., Saint Xavier College; J.D., University of Iowa.

#### Emeriti

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

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

DAVID A. FUNK, Professor of Law Emeritus. 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. HELEN P. GARFIELD, Professor of Law Emerita. B.S.J. Northwestern University; J.D., University of Colorado.

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

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

- WILLIAM ANDREW KERR, Professor of Law Emeritus. A.B., West University University.; J.D., LL.M., Harvard University; B.S., Duke University.
- MELVIN C. POLAND, Cleon H. Foust Professor of Law Emeritus. B.S., Kansas State University; LL.B., Washburn University; LL.M., University of Michigan.
- RONALD W. POLSTON, Professor of Law Emeritus. B.S., Eastern Illinois University; LL.B., University of Illinois.

KENNETH M. STROUD, Professor of Law Emeritus. A.B., J.D, Indiana University-Bloomington.

#### Law Library Faculty

JAMES F. BAILEY, III, Professor and Director of Law Library. A.B., J.D., M.A.L.S., University of Michigan.

RICHARD HUMPHREY, *Reference Librarian*. A.A., Brewton-Parker Junior College; B.A., Georgia Southwestern College; M.L.S., University of Kentucky.

WENDELL E. JOHNTING, Assistant Director for Technical Services. A.B., Taylor University; M.L.S., Indiana University.

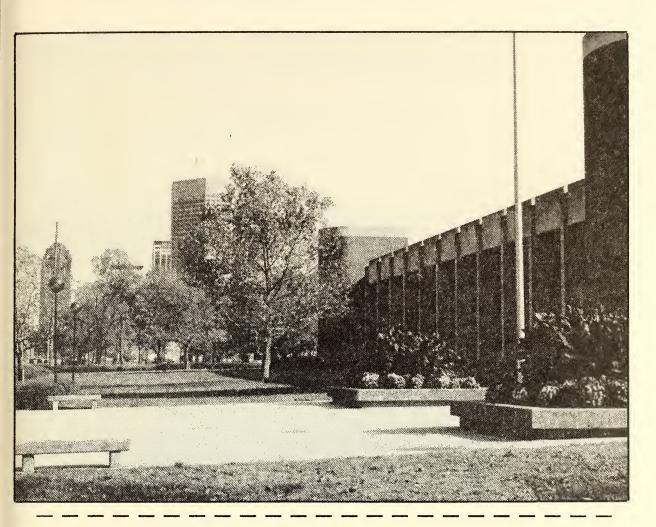
BRUCE KLEINSCHMIDT, Reference Librarian. B.A., Furman University; J.D., University of Louisville; M.L.S., University of North Texas.

CHRIS E. LONG, 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. A.A., Parkland College; A.B., M.S., C.A.S., University of Illinois.

4



### Please enter my subscription to the INDIANA LAW REVIEW

	Enclosed is \$	for
ADDRESS:		
ADDRESS		
NAME		

Mail to: ATTN: Law Review Specialist at

#### **INDIANA LAW REVIEW**

subscription(s)

INDIANA UNIVERSITY SCHOOL OF LAW—INDIANAPOLIS 735 West New York Street Indianapolis, Indiana 46202-5194

For the following academic year, the subscription rate for four issues will be: \*Domestic, \$30; Foreign, \$35; Student, \$20\* \*Single Issue, \$10; Survey Issue, \$20\* \*Sumposium Issue, \$15\*

\*Symposium Issue, \$15\*

.

## **Indiana Law Review**

#### Volume 33

2000

Number 4

Copyright © 2000 by the Trustees of Indiana University

#### **TABLE OF CONTENTS**

#### SURVEY\*

I.	Introduction		
	Why Changing the Supreme Court's Mandatory		
	Jurisdiction Is Critical to Lawyers and Clients		
	Chief Justice Randall T. Shepard	1101	
II.	Supreme Court Review		
	An Examination of the Indiana Supreme Court Docket,		
	Dispositions, and Voting in 1999		
	Kevin W. Betz	1109	
	Mark A. Lindsey		
III.	Civil Procedure		
	1999 Developments in Federal Civil Practice for Seventh-		
	Circuit Practitioners		
	John R. Maley	1123	
IV.	Constitutional Law		
	State and Federal Constitutional Law Developments		
	Rosalie Berger Levinson	1143	
<b>V.</b>	Contract Law	•	
	1999 Survey of Indiana Contract Law		
	Jana K. Strain	1179	
VI.	Criminal Law and Procedure		
	Recent Developments in Indiana Criminal Law and		
	Procedure		
	Joel M. Schumm	1197	
	James A. Garrard		
VII.	Employment Law		
	Survey of Employment Law Developments for Indiana		
	Practitioners		
	Susan W. Kline	1233	
III.	Indiana Appellate Procedure		
\$	Recent Developments in Indiana Appellate Procedure:		
	New Appellate Rules, a Constitutional Amendment, and a		
	Proposal Course T. Buttern In	1075	
	George T. Patton, Jr.	1275	

\*Survey period is October 1, 1998 through September 30, 1999 (unless otherwise noted in an Article).

IX.	Insurance Law		
	Survey of Recent Developments in Insurance Law Richard K. Shoultz	1311	
	Lisa Dillman		
X.	Product Liability		
	Survey of Recent Developments in Indiana Product Liability Law		
	Joseph R. Alberts	1331	
XI.	Professional Responsibility		
	Survey of the Law of Professional Responsibility Charles M. Kidd	1265	
	Greg N. Anderson	1365	
XII.	Property Law Reconstructing Property Law in Indiana: Altering		
	Familiar Landscapes		
	Lloyd T. Wilson, Jr.	1405	
XIII.	Taxation		
	Developments in Indiana Taxation	1455	
	Lawrence A. Jegen, III Kendall S. Schnurpel	1455	
<b>N/1</b> × 7			
XIV.	Telecommunications Law Recent Developments in Telecommunications Law		
	Angela D. O'Brien	1497	
XV.	Tort Law		
	Recent Developments in Indiana Tort Law		
	Tammy J. Meyer Kyle A. Lansberry	1545	
XVI.	UCC Law Survey of 1999 Indiana Cases on the Uniform		
	Commercial Code		
	Judy L. Woods	1611	
XVII.	Worker's Compensation		
	1998-1999 Brings New Developments to Indiana's		
	Worker's Compensation Law Carol Modesitt Wyatt	1625	
	ARTICLE		

Beyond Dead Reckoning: Measures of Medical Injury Burden, Malpractice Litigation, and Alternative Compensation Models from Utah and Colorado

> David M. Studdert 1643 Troyen A. Brennan Eric J. Thomas