

Indiana Law Review

Periodical
Collection

C.2



Volume 34 No. 1 2000

SYMPOSIUM
LAW SCHOOLS AND THE LEGAL PROFESSION:
A CONFERENCE IN CELEBRATION OF TWENTY-FIVE
YEARS OF SERVICE BY JAMES P. WHITE

Foreword
James P. White

INDIANA UNIVERSITY
JUN 28 2002
SCHOOL OF LAW-INDPLS.
LIBRARY
What the Profession Expects of Law Schools
Chief Justice Randall T. Shepard

What the Legal Profession Expects of Law Schools: A Response
Robert A. Stein

Legal Education: Professional Interests and Public Values
Deborah L. Rhode

Temporary Distance Education Guidelines Provide
Opportunities for Flexibility and Innovation
Harry J. Haynsworth

The Challenge to Diversity in Legal Education
Herma Hill Kay

Response to Dean Herma H. Kay's Affirmative Action Paper
Henry Ramsey, Jr.

NOTES

The Impact of the *Washington Legal Foundation Cases* on Pharmaceutical
Manufacturer Practices in the United States
Richard C. Ascroft

Policing the Self-Help Legal Market: Consumer Protection or
Protection of the Legal Cartel?
Julee C. Fischer

Intrusion and the Media: An Old Tort Learns New Tricks
Jennifer L. Marmon

Fee Audits Cut More Than Fat Out of Bills, Cutting Heart
of Insurance Defense
Liberty L. Roberts

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.



BNA

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>





Editor-in-Chief
Matthew T. Albaugh

Executive Managing Editor
Ann L. Thrasher

Executive Articles Editors
Jason M. Schiesser
Howard A. Setzer

Articles Editors
Michelle L. Blank
Katherine S. Green
Eliza Houston
Kathryn L. Infanger
Tina L. Korty
Kenneth J. Munson
Ann M. Schneider
Eugene Schulstad
Jonathan Yarling

Executive Notes Editor
Danel M. Nickels

Executive Topics Editor
Angela K. Imel

Note Development Editors
Jill R. Baniewicz
Todd J. Cochran
Alexander D. Forman
David J. Karnes
Liberty L. Roberts
Michele L. Stevenson

Associate Editors

Michael J. Adler
Richard C. Ascroft
Julee C. Fischer
Matthew D. Fisher

Jennifer L. Marmon
Stephanie Hardy Moore
Jennifer E. Riley

Members

Jill Acklin
Jay Adams
John S. Bjerke
Kathryn E. Bunnell
Matthew W. Conrad
Robyn S. Crosson
Lucy R. Dollens
Thomas R. Ewick
Andrew R. Falk
Caren Geppert
Mary Margaret Giannini

Hilary Guenther
Timothy Hammons
Daniel J. Hancock
Carl Hayes
Whitney Hinkle
Paul Jefferson
Barclay T. Johnson
Paul M. Jones, Jr.
Andrew S. Kosegi
Kelly Lewis
Dana L. Luetzelschwab

Michael T. McNally
Rodney L. Michael
Preston B. Ray
Tiffany A. Rider
Justin F. Roebel
Peter Siddiqui
Sarah Snoeberger
Michael G. Stites
Lauren Toppen
Paul D. Vink
Peter J. Young

Editorial Specialist
Chris Paynter

Faculty Advisor
David R. Papke

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 *Indiana 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 *Indiana 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* (17th ed. 2000). 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. 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 46202-5194. Periodicals postage paid at Indianapolis, Indiana 46201.

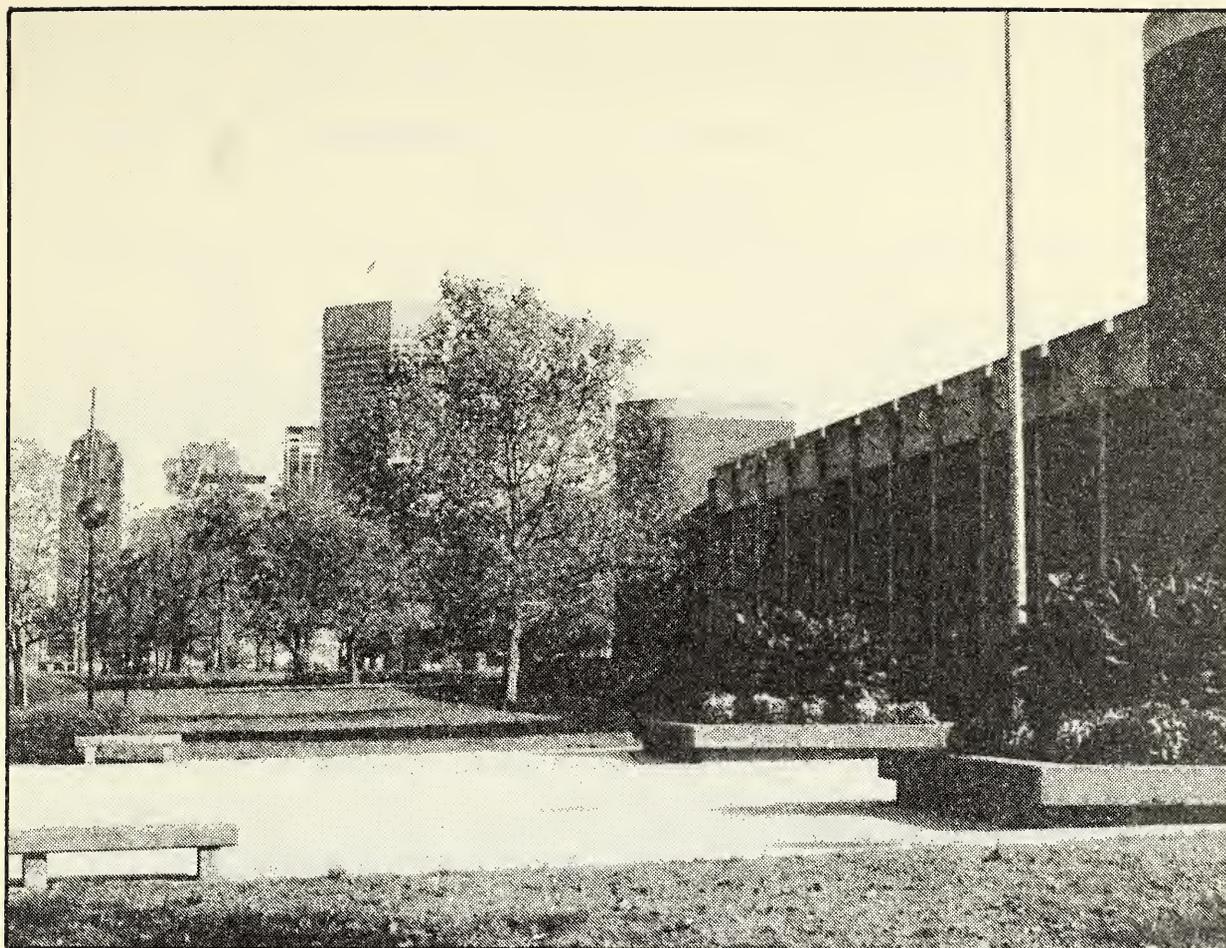
POSTMASTER: Send address changes to INDIANA LAW REVIEW, 735 W. New York Street, Indianapolis, Indiana 46202-5194.



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



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



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

NAME

ADDRESS:

Enclosed is \$ _____ for _____ subscription(s)

Mail to: **ATTN: Law Review Specialist**
at

INDIANA LAW REVIEW
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

Symposium Issue, \$15

Indiana University School of Law—Indianapolis

2000-2001 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.
- THOMAS B. ALLINGTON, *Associate Dean and Professor of Law*. B.S., J.D., University of Nebraska; LL.M., New York 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.
- SHANNON L. WILLIAMS, *Director of Career Services*. B.S., Indiana University—Indianapolis.
- 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, *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., ITT/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 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.D., 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.
- ANDREW R. KLEIN, *Professor of Law*. B.A., University of Wisconsin; J.D., Emory University School of Law.
- 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.
- FLORENCE WAGMAN ROISMAN, *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, *Associate Professor of Law*. A.B., Cornell University; J.D., Duke University 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—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.
- DEBRA A. FALENDER, *Professor of Law Emerita*. A.B., Mount Holyoke College; J.D., Indiana University—Indianapolis.
- 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; J.D., LL.M., Harvard University; B.S., Duke University.

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

WILLIAM E. MARSH, *Professor of Law Emeritus*. B.S., J.D., University of Nebraska.

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.

JUNE O. STARR, *Associate Professor of Law Emerita*. 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 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.

MIRIAM A. MURPHY, *Associate Director of Law Library*. B.A., Purdue University; J.D., M.L.S., Indiana University—Bloomington.

KIYOSHI OTSU, *Computer System Specialist*. A.A., Parkland College; A.B., M.S., C.A.S., University of Illinois.

Indiana Law Review

Volume 34

2000

Number 1

Copyright © 2000 by the Trustees of Indiana University

TABLE OF CONTENTS

SYMPOSIUM

LAW SCHOOLS AND THE LEGAL PROFESSION: A CONFERENCE IN CELEBRATION OF TWENTY-FIVE YEARS OF SERVICE BY JAMES P. WHITE

Foreword	<i>James P. White</i>	1
What the Profession Expects of Law Schools	<i>Chief Justice Randall T. Shepard</i>	7
What the Legal Profession Expects of Law Schools: A Response	<i>Robert A. Stein</i>	15
Legal Education: Professional Interests and Public Values	<i>Deborah L. Rhode</i>	23
Temporary Distance Education Guidelines Provide Opportunities for Flexibility and Innovation	<i>Harry J. Haynsworth</i>	47
The Challenge to Diversity in Legal Education	<i>Herma Hill Kay</i>	55
Response to Dean Herma H. Kay's Affirmative Action Paper	<i>Henry Ramsey, Jr.</i>	87

NOTES

The Impact of the <i>Washington Legal Foundation Cases</i> on Pharmaceutical Manufacturer Practices in the United States	<i>Richard C. Ascroft</i>	95
Policing the Self-Help Legal Market: Consumer Protection or Protection of the Legal Cartel?	<i>Julee C. Fischer</i>	121
Intrusion and the Media: An Old Tort Learns New Tricks	<i>Jennifer L. Marmon</i>	155
Fee Audits Cut More Than Fat Out of Bills, Cutting Heart of Insurance Defense	<i>Liberty L. Roberts</i>	179

ERRATA

In Issue Four of Volume 33 of the *Indiana Law Review*, the article *Beyond Dead Reckoning: Measures of Medical Injury Burden, Malpractice Litigation, and Alternative Compensation Models from Utah and Colorado* appeared, authored by David M. Studdert, Troyen A. Brennan and Eric J. Thomas. At the conclusion of the article, the authors presented several tables. Proper attribution for each of the tables was erroneously omitted. In addition, a row of data in Table 6 reporting cost information from Utah was excluded. The *Indiana Law Review* wishes to apologize to its readers and to the authors for these inaccuracies.

Table 6 is re-printed in its entirety to show complete data. Portions of the data reported in Tables 1-7 originally appeared in the following publications:

Table 1. Eric J. Thomas et al., *Incidence and Risk Factors for Adverse Events and Negligent Care in Utah and Colorado in 1992*, 38 MED. CARE 261 (2000).

Tables 2-4. David M. Studdert et al., *Negligent Care and Malpractice Claiming Behavior in Utah and Colorado*, 38 MED. CARE 250 (2000).

Table 5. Eric J. Thomas et al., *Costs of Medical Injuries in Colorado and Utah in 1992*, 36 INQUIRY 255 (1999).

Tables 6-7. David M. Studdert et al., *Can the United States Afford a "No-Fault" System of Compensation for Medical Injury?*, 60 LAW & CONTEMP. PROBS. 1, 31 (1997).

TABLE 6.

**AFFORDABILITY OF PREFERRED NO-FAULT MODELS IN UTAH AND COLORADO
(MILLIONS, DISCOUNTED TO 1992 DOLLARS)**

State	Estimates of Preferred No-Fault Models	Current Malpractice System Costs
Utah	\$ 54.9 *	\$ 55-60
Colorado	\$ 82.0 †	\$ 100-110

* Based on use of Swedish compensable events; health care costs; \$100,000 cap on pain and suffering; four week disability period; no household production; 66% wage replacement.

† Based on use of Swedish compensable events; health care costs; pain and suffering; eight-week disability period; no household production; full wage replacement.

