

Indiana Law Review

Periodical
Collection



Volume 35 No. 2 2002

SYMPOSIUM

CAUGHT IN THE MIDDLE: THE ROLE OF STATE INTERMEDIATE APPELLATE COURTS

Caught in the Middle: The Role of State Intermediate Appellate Courts
Edward W. Najam, Jr.

Supreme Court Monitoring of State Courts in the Twenty-first Century
Michael E. Solimine

Supreme Court Monitoring of State Courts in the Twenty-first Century:
A Response to Professor Solimine
Jeffrey W. Grove

Appellate Reform: The Appellate Process Task Force Model
Gary E. Strankman

The Special Professional Challenges of Appellate Judging
Randall T. Shepard

The Practice of Precedent: *Anastasoff*, Noncitation Rules, and the Meaning of
Precedent in an Interpretive Community
Lauren Robel

Citability and the Nature of Precedent in the Courts of Appeals:
A Response to Dean Robel
Jeffrey O. Cooper

Thinking About the Supreme Court After *Bush v. Gore*
Linda Greenhouse

Oral Argument: Does It Matter?
Warren D. Wolfson

Address from Chief Judge Eagles
Sidney S. Eagles, Jr.

Managing Caseflow in State Intermediate Appellate Courts: What Mechanisms,
Practices, and Procedures Can Work to Reduce Delay?
Richard B. Hoffman
Barry Mahoney

LECTURE

International Codes of Research Ethics: Current Controversies and the Future
Robert J. Levine

NOTES

Choosing Life: Proposing Immunity for Mothers Who Abandon Their Newborns
Jill M. Acklin

Giving Until It Hurts: Prisoners Are Not the Answer to the National Organ Shortage
Whitney Hinkle

Strengthening Motivational Analysis Under the Establishment Clause: Proposing a
Burden-Shifting Standard
Paul Jefferson

INDIANA UNIVERSITY

MAY 08 2002

SCHOOL OF LAW-INDPLS
LIBRARY

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*.

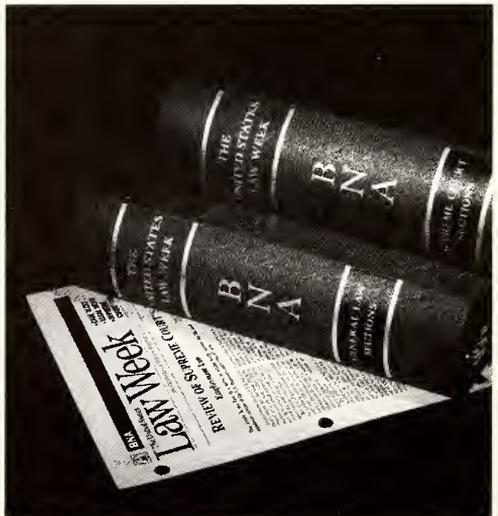
Whichever publication you choose, you'll notice the family resemblance — comprehensive, accurate, in-depth coverage.

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
Peter J. Young

Executive Managing Editor
Mary Margaret Giannini

Senior Executive Editor
Matthew W. Conrad

Symposium Editor
Paul Jefferson

Executive Notes Editor
Andrew R. Falk

Executive Articles Editors
Barclay Thomas Johnson
Sarah Snoeberger

Articles Editors
Kathryn E. Bunnell
Thomas R. Ewick
Timothy A. Hammons
Daniel J. Hancock
Carl Hayes
Preston B. Ray
Tiffany A. Rider
Peter Siddiqui
Michael G. Stites

Note Development Editors
Jill M. Acklin
Lucy R. Dollens
Hilary Guenther
Whitney L. Hinkle
Andrew S. Kosegi
Paul D. Vink

Associate Editors

Jay Adams
John S. Bjerke
Caren Geppert
Paul M. Jones, Jr.
Kelly A. Lewis

Dana L. Luetzelschwab
Michael T. McNally
Rodney L. Michael
Justin F. Roebel
Lauren Toppen

Members

Dawn M. Adams
David R. Brimm
Gregory A. Cox
Jeffrey M. Cromer
Monica S. Doerr
Jennifer L. Dolak
Homer W. Faucett
Amy S. Ford
Adam Assad Gaha
Janet A. Gongola
Kellye M. Gordon

Brian K. Groemminger
Elaine L. Guidroz
Brett J. Henry
Lucy A. Khairy
Polly J. Kubesch
Kirby W. Lee
Scott Linneweber
Katherine E. McCanna
Michael P. O'Bryan
Joseph E. Parrish
Bonnie B. Phillips

Julianna M. Plawecki
Kevin S. Price
David E. Roberts
Cara L. Schaefer
Amy L. Schoettle
John J. Schroeder
Shannon M. Shaw
Andrij B. Susla
Terry Thomson
Laura E. Trulock

Editorial Specialist
Chris Paynter

Faculty Advisors
Andrew R. Klein
George Wright

INDIANA LAW REVIEW

(ISSN 0090-4198)

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

Indiana Law Review
Lawrence W. Inlow Hall
530 W. New York Street
Indianapolis, IN 46202-3225
(317) 274-4440

Subscriptions. Current subscription rates for an academic year are \$30.00 (domestic mailing) and \$35.00 (foreign mailing) for four issues. 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 2001. 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. Current subscription rates for an academic year are: one year domestic \$30.00; foreign \$35.00. Send all correspondence to Editorial Specialist, *Indiana Law Review*, Indiana University School of Law—Indianapolis, Lawrence W. Inlow Hall, 530 W. New York Street, Indianapolis, Indiana 46202-3225. Publication office: 530 W. New York Street, Indianapolis, Indiana 46202-3225. Periodicals postage paid at Indianapolis, Indiana 46201.

POSTMASTER: Send address changes to INDIANA LAW REVIEW, Lawrence W. Inlow Hall, 530 W. New York Street, Indianapolis, Indiana 46202-3225.



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.

_____	___ Visa	___ Mastercard
Name		
_____	_____	_____
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
Indiana International & Comparative Law Review
Lawrence W. Inlow Hall
530 W. New York Street
Indianapolis, Indiana 46202-3225



**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

Lawrence W. Inlow Hall
530 West New York Street
Indianapolis, Indiana 46202-3225

For an *academic* year, the subscription rate for four issues is:

Domestic, \$30; Foreign, \$35; Student, \$20

Single Issue, \$10; Survey Issue, \$20

Symposium Issue, \$15

Indiana University School of Law—Indianapolis

2001-2002 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*. B.S., Northern Illinois University; 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.
- JEFFREY W. GROVE, *Associate Dean, Professor of Law, and Director, China Summer Program*. A.B., Juniata College; J.D., George Washington 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.

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.
- 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.
- JAMES D. DIMITRI, *Lecturer in Law*. B.S., Indiana University; J.D., Valparaiso University School of Law.
- JENNIFER ANN DROBAC, *Associate Professor of Law*. B.A., M.A., Stanford University; J.D., J.S.D., Stanford Law School.
- 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, *Associate Dean, Professor of Law, and Director, China Summer Program*. 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.
- ROBERT A. KATZ, *Associate Professor of Law*. A.B., Harvard College; J.D., University of Chicago Law School.
- 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.
- ROBERT E. LANCASTER, *Clinical Associate Professor of Law*. B.A., Millsaps College; J.D., Tulane Law School.
- NORMAN LEFSTEIN, *Dean and Professor of Law*. LL.B., University of Illinois; LL.M., Georgetown University.
- GERARD N. MAGLIOCCA, *Assistant Professor of Law*. B.A., Stanford University; J.D., Yale Law School.
- 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 Analysis, Research and Communication*. 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, Professor of Law, and Director, European Law Program*. 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.
- H. KATHLEEN PATCHEL, *Associate Professor of Law*. A.B., Huntington College; J.D., University of North Carolina; LL.M., Yale University.
- FLORENCE WAGMAN ROISMAN, *Paul Beam Fellow and Professor of Law*. B.A., University of Connecticut; LL.B., Harvard Law School.
- JOAN M. RUHTENBERG, *Clinical Professor of Law and Director of Legal Analysis, Research and Communication*. B.A., Mississippi University for Women; J.D., Indiana University—Indianapolis.
- JOEL M. SCHUMM, *Lecturer in Law*. B.A., Ohio Wesleyan University; M.A., University of Cincinnati; J.D., Indiana University School of Law—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*. 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.
- R. GEORGE WRIGHT, *Professor of Law*. A.B., University of Virginia; Ph.D., Indiana University; J.D., Indiana University School of Law—Indianapolis.

Emeriti

- EDWARD P. ARCHER, *Professor of Law Emeritus*. B.M.E., Rensselaer Polytechnic Institute; J.D., LL.M., Georgetown University.
- AGNES P. BARRETT, *Associate Professor of Law Emerita*. B.S., J.D., Indiana University.

- CLYDE HARRISON CROCKETT, *Professor of Law Emeritus*. 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 Emerita*. A.B., Mount Holyoke College; J.D., Indiana University—Indianapolis.
- CLEON 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.
- 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.
- 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.



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

Indiana Law Review

Volume 35

2002

Number 2

Copyright © 2002 by the Trustees of Indiana University

TABLE OF CONTENTS

SYMPOSIUM

- Caught in the Middle: The Role of State Intermediate
Appellate Courts *Edward W. Najam, Jr.* 329
- Supreme Court Monitoring of State Courts in the
Twenty-first Century *Michael E. Solimine* 335
- Supreme Court Monitoring of State Courts in the
Twenty-first Century: A Response to
Professor Solimine *Jeffrey W. Grove* 365
- Appellate Reform: The Appellate Process Task
Force Model *Gary E. Strankman* 375
- The Special Professional Challenges of
Appellate Judging *Randall T. Shepard* 381
- The Practice of Precedent: *Anastasoff*, Noncitation
Rules, and the Meaning of Precedent in
an Interpretive Community *Lauren Robel* 399
- Citability and the Nature of Precedent
in the Courts of Appeals:
A Response to Dean Robel *Jeffrey O. Cooper* 423
- Thinking About the Supreme Court After
Bush v. Gore *Linda Greenhouse* 435
- Oral Argument: Does It Matter? *Warren D. Wolfson* 451
- Address from Chief Judge Eagles *Sidney S. Eagles, Jr.* 457
- Managing Caseflow in State Intermediate Appellate
Courts: What Mechanisms, Practices,
and Procedures Can Work to
Reduce Delay? *Richard B. Hoffman* 467
Barry Mahoney

LECTURE

- International Codes of Research Ethics: Current
Controversies and the Future *Robert J. Levine* 557

NOTES

- Choosing Life: Proposing Immunity for Mothers
Who Abandon Their Newborns *Jill M. Acklin* 569

- Giving Until It Hurts: Prisoners Are Not the Answer
to the National Organ Shortage *Whitney Hinkle* 593

- Strengthening Motivational Analysis Under the
Establishment Clause: Proposing a
Burden-Shifting Standard *Paul Jefferson* 621