

Indiana Law Review

Periodical
Collection

C. 2



INDIANA UNIVERSITY

AUG 28 2003

SCHOOL OF LAW, INDPLS.
LIBRARY

Volume 36 No. 3 2003

TRIBUTES

Tribute to Harold Greenberg
Norman Lefstein

A Tribute to Professor James F. Bailey, III,
and a Review of His Work
William F. Harvey

SYMPOSIUM

Reexamination of the Benefit of Publicly Funded Private Education for
African-American Students in a Post-Desegregation Era
Kevin D. Brown

Race and Money, Courts and Schools: Tentative Lessons from Connecticut
Peter D. Enrich

Inequitable Equilibrium: School Finance in the United States
Jeffrey Metzler

The Convergence of Education and Law: A New Class of Educators and Lawyers
Sarah E. Redfield

ARTICLES

Freedom, Responsibility, and Risk: Fundamental Principles Supporting
Tort Reform
Deborah J. La Fetra

Evidentiary Issues in Federal Prosecutions of Violence Against Women
Tom Lininger

The Judge Has No Robes: Keeping the Electorate in the Dark About What Judges
Think About the Issues
Alan B. Morrison

LECTURE

The Ethical Law School
Graham Zellick
James P. White Lecture on Legal Education

NOTES

The FHAA's Reasonable Accommodation & Direct Threat Provisions as Applied to
Disabled Individuals Who Become Disruptive, Abusive, or Destructive in Their
Housing Environment
Jennifer L. Dolak

Prescriptions for Change: The Hatch-Waxman Act and New Legislation to Increase
the Availability of Generic Drugs to Consumers
Janet A. Gongola

Personal Privacy on the Internet: Should It Be a Cyberspace Entitlement?
Brian Keith Groemminger

A Hot Debate in the Summer of 2001: *State v. Oakley's* Excessive Intrusion
on Procreative Rights
Katherine E. McCanna

Top Level Domain Reorganization: A Constitutional Solution to
Legislative Attempts at Internet Regulation
David E. Roberts



Raise the Bar

BNA's *United States Law Week*

For 65 years, *U.S. Law Week* has consistently raised the standard of excellence in legal reporting. Today's *Law Week* is a powerful research and notification tool that does more for you than ever:

- **Case Alert:** A summary and analysis of the most significant court opinions nationwide, with electronic access to full text.
- **Legal News:** Reports on non-judicial developments, including legal analysis and perspective, important legislation, and administrative rulemakings.
- **Supreme Court Today:** Daily coverage of the status of every case before the U.S. Supreme Court and all Court proceedings.
- **Supreme Court Opinions:** Full text of decisions, with headnotes and counsel listings, daily online, weekly in print.

There's no more complete, authoritative way to keep up with all areas of the law than *U.S. Law Week*.

FREE TRIALS!

In print for 5 weeks FREE! CALL 800-372-1033

On the Web for 15 days FREE!

GO TO www.bna.com/trials/lwex511.htm

Visit BNA's Professional Information Center
<http://litigationcenter.bna.com>



BNA

Indiana Law Review

Volume 36

2003

Number 3

Copyright © 2003 by the Trustees of Indiana University

TABLE OF CONTENTS

TRIBUTES

- Tribute to Harold Greenberg *Norman Lefstein* 465
- A Tribute to Professor James F. Bailey, III,
and a Review of His Work *William F. Harvey* 469

SYMPOSIUM

- Reexamination of the Benefit of Publicly Funded
Private Education for African-American
Students in a Post-Desegregation Era *Kevin D. Brown* 477
- Race and Money, Courts and Schools:
Tentative Lessons from Connecticut *Peter D. Enrich* 523
- Inequitable Equilibrium: School Finance
in the United States *Jeffrey Metzler* 561
- The Convergence of Education and Law: A New
Class of Educators and Lawyers *Sarah E. Redfield* 609

ARTICLES

- Freedom, Responsibility, and Risk: Fundamental
Principles Supporting Tort Reform *Deborah J. La Fetra* 645
- Evidentiary Issues in Federal Prosecutions
of Violence Against Women *Tom Lininger* 687
- The Judge Has No Robes: Keeping the Electorate
in the Dark About What Judges Think
About the Issues *Alan B. Morrison* 719

LECTURE

- The Ethical Law School *Graham Zellick* 747
James P. White Lecture on Legal Education

NOTES

- The FHAA's Reasonable Accommodation &
Direct Threat Provisions as Applied to
Disabled Individuals Who Become Disruptive,
Abusive, or Destructive in Their
Housing Environment *Jennifer L. Dolak* 759
- Prescriptions for Change: The Hatch-Waxman Act
and New Legislation to Increase the Availability
of Generic Drugs to Consumers *Janet A. Gongola* 787
- Personal Privacy on the Internet: Should It
Be a Cyberspace Entitlement? *Brian Keith Groemminger* 827
- A Hot Debate in the Summer of 2001:
State v. Oakley's Excessive
Intrusion on Procreative Rights *Katherine E. McCanna* 857
- Top Level Domain Reorganization: A Constitutional
Solution to Legislative Attempts at
Internet Regulation *David E. Roberts* 883

Indiana Law Review

Volume 36

2002-2003



Editor-in-Chief

Kirby W. Lee

Executive Managing Editor

Brian K. Groemminger

Senior Executive Editor

Katherine E. McCanna

Symposium Editor

Kellye M. Gordon

Executive Notes Editor

Bonnie B. Phillips

Executive Articles Editors

Horner W. Faucett, III

Janet A. Gongola

Articles Editors

David R. Brimm

Gregory A. Cox

Jennifer L. Dolak

Elaine L. Guidroz

Brett J. Henry

Julianna M. Plawecki

Kevin S. Price

John J. Schroeder

Terry Thomson

Note Development Editors

Amy S. Ford

Scott J. Linneweber

Joseph E. Parrish

David E. Roberts

Shannon M. Shaw

Laura E. Trulock

Associate Editors

Dawn M. Adams

Jeffrey M. Cromer

Polly J. Dobbs

Monica S. Doerr

Adam Asad Gaha

Lucy A. Khairy

Michael P. O'Bryan

Amy L. Schoettle

Andrij B. Susla

Members

E. Renee Backmeyer

Jeffrey S. Beck

Michael A. Benefield

J. Michael Bowman

Jessica L. Burks

Jamie B. Dameron

Paula K. Davis

Shelley S. Fraser

Kevin J. Gfell

Cassandra A. Giles

Anthony H. Green

J. Matt Harnish

Barbara L. Hendrickson

Heidi K. Hughes

Hannah Kaufman

Adam J. Krupp

Melissa Lindley

Kevin L. McLaren, Ph.D.

Alexander L. Mounts

Michael J. Natali

Kathryn E. Ours

Sarah L. Pierce

Jeffrey D. Preston

Peter J. Prettyman

C.W. Raines, III

Julie D. Reed

Nathaniel Saylor

Jared A. Simmons

Christopher G. Stevenson

Allan A. Wasson

Michael D. Wilhelm

Stephen M. Worth

John C. Wright

Editorial Specialist

Chris Paynter

Faculty Advisors

Andrew R. Klein

R. 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. Claims for nonreceipt of current year's issues must be made within six months of the mailing date. Back issues may be ordered from: William S. Hein & Co., Inc., 1285 Main St., Buffalo, NY 14209-1987, (800) 828-7571, (716) 883-8100 fax, mail@wshein.com (e-mail for orders).

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 2003. 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 that 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

School/Firm/Business

Address

City, State, Zip Code

Subscriptions within the U.S. are \$18.00 per year and outside the U.S. are \$21.00 per year. I enclose \$ _____ for _____ subscription(s) to the *Indiana International & Comparative Law Review*. 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 West New York Street
 Indianapolis, Indiana 46202



**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



THE UNIVERSITY OF CHICAGO
LIBRARY

1950

1951

1952

1953

1954

1955

1956

1957

1958

1959

1960

1961

1962

1963

1964

1965

1966

1967

1968

1969

1970

1971

1972

1973

1974

1975

1976

1977

1978

1979

1980

1981

1982

1983

1984

1985

1986

1987

1988

1989

1990

1991

1992

1993

1994

1995

1996

1997

1998

1999

2000

2001

2002

2003

2004

2005

2006

2007

2008

2009

2010

2011

2012

2013

2014

2015

2016

2017

2018

2019

2020

2021

2022

2023

2024

2025

Indiana University School of Law—Indianapolis

2002-2003 ADMINISTRATIVE OFFICERS AND FACULTY

Administrative Officers

- GERALD L. BEPKO, *Interim President, Indiana University and Professor of Law*. B.S., Northern Illinois University; J.D., ITT/Chicago-Kent College of Law; LL.M., Yale University.
- WILLIAM M. PLATER, *Interim Chancellor, Indiana University-Purdue University—Indianapolis*. B.A., M.A., Ph.D., University of Illinois.
- ANTHONY A. TARR, *Dean and Professor of Law*. B.A., LL.B., University of Natal; LL.M., Cambridge University; Ph.D., University of Canterbury; Ph.D., Cambridge University.
- THOMAS B. ALLINGTON, *Associate Dean for Technology and Professor of Law*. B.S., J.D., University of Nebraska; LL.M., New York University.
- JEFFREY W. GROVE, *Associate Dean for Graduate Studies, 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 KANE MACDOUGALL, *Assistant Dean for External Affairs*. J.D., Indiana University—Indianapolis.
- CAROL B. NEARY, *Director of Development*. B.A., Indiana University—Indianapolis.
- SHANNON L. WILLIAMS, *Director of Professional Development*. B.S., Indiana University—Indianapolis.

Faculty

- CYNTHIA M. ADAMS, *Clinical Associate Professor of Law*. B.A., Kentucky Wesleyan College; J.D., Indiana University—Indianapolis.
- THOMAS B. ALLINGTON, *Associate Dean for Technology 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, *Interim President, Indiana University 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.
- WILLIAM C. BRADFORD, *Assistant Professor of Law*. B.A., M.A., University of Miami; Ph.D., Northwestern University; J.D., University of Miami School of Law; LL.M., 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, *Associate 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.
- ROBIN KUNDIS CRAIG, *Associate Professor of Law*. B.A., Pomona College; M.A., The Johns Hopkins University; Ph.D., University of California; J.D., Lewis and Clark School of Law.
- 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, *Clinical Associate Professor of 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.
- NICHOLAS GEORGAKOPOULOS, *Professor of Law*. Ptyhion Nomikis, Athens University School of Law; LL.M., S.J.D., Harvard Law School.
- 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.
- LINDA KELLY-HILL, *Professor of Law*. B.A., J.D., University of Virginia.
- 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, *Professor of Law and Dean Emeritus*. LL.B., University of Illinois; LL.M., Georgetown University.
- MARIA PABON LOPEZ, *Assistant Professor of Law*. B.A., Princeton University; J.D., University of Pennsylvania Law School.
- GERARD N. MAGLIOCCA, *Assistant Professor of Law*. B.A., Stanford University; J.D., Yale Law School.
- 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, *Clinical Assistant Professor of Law*. B.A., Ohio Wesleyan University; M.A., University of Cincinnati; J.D., Indiana University School of Law—Indianapolis.
- ANTHONY A. TARR, *Dean and Professor of Law*. B.A., LL.B., University of Natal; LL.M., Cambridge University; Ph.D., University of Canterbury; Ph.D., Cambridge University.
- JAMES W. TORKE, *Carl M. Gray Professor of Law*. B.S., J.D., University of Wisconsin.
- 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., *Associate Professor of 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.
- PAUL J. GALANTI, *Professor of Law Emeritus*. A.B., Bowdoin College; J.D., University of Chicago.
- HELEN P. GARFIELD, *Professor of Law Emerita*. B.S.J., Northwestern University; J.D., University of Colorado.
- HAROLD GREENBERG, *Professor of Law Emeritus*. A.B., Temple University; J.D., University of Pennsylvania.
- 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.
- 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.
- JAMES PATRICK WHITE, *Professor of Law Emeritus*. A.B., University of Iowa; J.D., LL.M., George Washington University.

Law Library Faculty

- JAMES F. BAILEY, III, *Professor and Director of Law Library*. A.B., J.D., M.A.L.S., University of Michigan.
- MARY HUDSON, *Reference/Circulation Librarian*. B.A., Ball State; M.L.S., Indiana University.
- 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.
- 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.



