2001 SURVEY OF RECENT DEVELOPMENTS IN INDIANA LAW

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

Matthew T. Albaugh
Joseph R. Alberts
Kevin W. Betz
Ellen E. Boshkoff
Timothy C. Caress
Leah M. Chan
Jeffrey O. Cooper
Douglas E. Cressler
Harold Greenberg
Lawrence A. Jegen, III

Charles M. Kidd
Susan W. Kline
Katherine Amy Lemon
Rosalie Berger Levinson
JoEllen Lind
Joel M. Schumm
Peter A. Siddiqui
P. Jason Stephenson
Lloyd T. Wilson, Jr.
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.


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: lw@bna.com
http://www.bna.com
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 2002. 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.
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

School/Firm/Business

Address

City, State, Zip Code

_ Visa _ Mastercard

Credit Card Number

Expiration Date

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.


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.


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.


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. NEHFF, 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 SPI TKO, 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., Renesselaer 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; L.L.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. JOHNING, 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.

MAHN AZ K. MO SHA PEGH, 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.

# TABLE OF CONTENTS

## SURVEY

### I. Introduction
Making Good Law Requires More Lawyers  
*Randall T. Shepard* 1111

### II. Supreme Court Review
An Examination of the Indiana Supreme Court Docket, Dispositions, and Voting in 2001  
*Kevin W. Betz* 1117  
*P. Jason Stephenson*

### III. Appellate Practice
A Year of Transition in Appellate Practice  
*Douglas E. Cressler* 1133

### IV. Civil Procedure
Recent Developments in Civil Procedure  
*JoEllen Lind* 1157

### V. Commercial and Consumer Law
Indiana’s Revised Article 9 and Other Developments in Commercial and Consumer Law  
*Matthew T. Albaugh* 1239

### VI. Constitutional Law
State and Federal Constitutional Law Developments  
*Rosalie Berger Levinson* 1263

### VII. Contracts and Sales of Goods
Recent Developments in the Indiana Law of Contracts and Sales of Goods  
*Harold Greenberg* 1297

### VIII. Corporate Law
Corporate Law: A Year in the Life of Indiana Corporate Law  
*Leah M. Chan* 1321

### IX. Criminal Law and Procedure
Recent Developments in Indiana Criminal Law and Procedure  
*Joel M. Schumm* 1347
X. Employment Law
Survey of Employment Law Developments for Indiana Practitioners

Susan W. Kline 1369
Ellen E. Boshkoff

XI. Evidence
The Continuing Complexity of Indiana Rule of Evidence 404(b)

Jeffrey O. Cooper 1415

XII. Product Liability
Survey of Recent Developments in Indiana Product Liability Law

Joseph R. Alberts 1427

XIII. Professional Responsibility
Survey of the Law of Professional Responsibility

Charles M. Kidd 1477

XIV. Property Law
Fulfilling the Deterrent and Restitutionary Goals of the Security Deposits Statute and Other Developments in Indiana Property Law

Lloyd T. Wilson, Jr. 1501

XV. Taxation
Developments in Indiana Taxation

Lawrence A. Jegen, III 1541
Peter A. Siddiqui

XVI. Tort Law
Recent Developments in Indiana Tort Law

Timothy C. Caress 1583
Katherine Amy Lemon

Volume 35 Number 4