

Indiana Law Review

INDIANA UNIVERS

JAN 17 2006

SCHOOL OF LAW-INDIANAS.
LIBRARY



Volume 39 No. 1 2005

ARTICLES

Ties that Bind and Restraints on Lawyer Competition:
Restrictive Covenants as Conditions to the
Payments of Retirement Benefits

Robert W. Hillman

The Supreme Court, Rule 10b-5 and the
Federalization of Corporate Law

Mark J. Loewenstein

Overwork and Overtime

Shirley Lung

NOTES

Hoosier Inhospitallity:
Examining Excessive Foreclosure Rates in Indiana

Brian M. Heaton

Child Abuse Witness Protections Confront *Crawford v. Washington*

Laurie E. Martin

True Believers?: Problems of Definition in Title VII Religious
Discrimination Jurisprudence

Susannah P. Mroz

The Dormant Commerce Clause:
Economic Development in the Wake of *Cuno*

Mary F. Wyman



BNA's Law School Program

**Multiple platforms, more choices
—for staff and students.**

Delivery of timely information is one of the cornerstones of BNA's success. Now, BNA delivers services electronically, through IP authentication, to all law school faculty staff and their students.

By subscribing to any of four law school-wide electronic packages or building your own custom package, you can give your students access to the same valuable information as practicing attorneys. They'll conduct research and follow changes in the law in the same way senior partners do. Your students will not only be prepared for internships and clerkships, they'll be better equipped for any job.

To learn more about BNA's law school program, call BNA Customer Service at **800-572-3374** or visit us at **www.bna.com/lawschool**.



BNA[®]

Essential information. Expert analysis.

Indiana Law Review

Volume 39

2005-2006



Editor-in-Chief

Laurie Ellen Martin

Executive Managing Editor

Seema Ramesh Shah

Senior Executive Editor

Brian Drummy

Symposium Editor

Derek C. Julius

Articles Editors

Jonathan B. Burns

Heather Cummings

Lauren Catherine Dougherty

Brian M. Heaton

Tyler James Kalachnik

Michael A. Lang

Matthew T. Lord

Stephen A. Riga

Executive Notes Editor

Matthew Besmer

Executive Articles Editors

Susannah P. Mroz

Mary F. Wyman

Note Development Editors

Laura Allen

Rebecca A. Ballard

Elisha Marie Comer

William McHenry Horne

Stefan Kirk

Miranda Rose Richard

Alexis N. Sumner

Lisa D. Updike

Associate Editors

Kimberly Michelle England

Justin W. Evans

Ryan Andrew Hamilton

Trent A. Wright

Members

Russell L. Brown
Kimberly W. Chowning
Tonya L. Combs
Craig A. Defoe
Teresa A. Griffin
Amy Gilliatt
Jennifer Girod
L. Taylor Hall
Suzanna Hartzell-Baird

Douglas R. Healey
Cathy A. Hewitt
Bill Hogg
Karl F. Horlander
Anthony J. Hornbach
Jason Howard
H. Max Kelln
Andrew J. Kossack
Bri L. Kovac

Lisa Lafferty
Krysten Lester
Michelle R. Maslowski
Heather Moore
Sean Obermeyer
Stephanie L. Thielen
Eric T. Thieme
Eva F. Wailes
Emily L. Yates

Editorial Specialist

Chris Paynter

Faculty Advisor

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). Back issues are also available in an image-based format through HeinOnline, www.heinonline.org.

Manuscripts. The *Indiana Law Review* invites submission of unsolicited manuscripts. All citations should conform to *The Bluebook A Uniform System of Citation* (18th ed. 2005). 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 2005. 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.

ANNOUNCEMENT

Indiana University School of Law - Indianapolis has established a new specialty law review focused specifically on health care law and policy:

**INDIANA HEALTH
LAW REVIEW**

The scope will include bioethics, malpractice liability, managed care, anti-trust, health care organizations, medical-legal research, legal medicine, food and drug, and other current health-related topics.

**Detach and mail this subscription form today
so you can receive future issues**

Subscription Price: \$10.00

- Per Issue
- Automatic Renewal
- Foreign Mailing Is Extra

Mail To:

Indiana Health Law Review
Indiana University School of Law – Indianapolis
Lawrence W. Inlow Hall, Room 136C
530 W. New York Street
Indianapolis, IN 46202-3225

Questions?

Email: ihr@iupui.edu
Phone: (317) 278-9519
www.indylaw.indiana.edu/~ihr

Mailing Address:

Name/Title _____
Company/School _____
Address _____
City _____ State ___ ZIP _____
Email _____

Payment Method: Enclosed
(Make Check Payable to
INDIANA HEALTH LAW REVIEW)

Bill Me Later

Indiana University School of Law—Indianapolis

2005-2006 ADMINISTRATIVE OFFICERS AND FACULTY

Administrative Officers

- ADAM W. HERBERT, *President of the University*. B.A., M.A., University of Southern California; Ph.D., University of Pittsburgh.
- CHARLES R. BANTZ, *Chancellor, Indiana University-Purdue University—Indianapolis*. B.A., M.A., University of Minnesota; Ph.D., The Ohio State University.
- SUSANAH M. MEAD, *Interim Dean and Professor of Law*. B.A., Smith College; J.D., Indiana University School of Law—Indianapolis.
- THOMAS B. ALLINGTON, *Associate Dean for Technology and Professor of Law*. B.S., J.D., University of Nebraska; LL.M., New York University School of Law.
- ANGELA M. ESPADA, *Associate Dean for Student Services and Admissions*. J.D., Indiana University School of Law—Bloomington.
- JEFFREY W. GROVE, *Associate Dean for Graduate Studies and Professor of Law*. A.B., Juniata College; J.D., George Washington University Law School.
- ANDREW R. KLEIN, *Associate Dean for Academic Affairs and Paul E. Beam Professor of Law*. B.A., University of Wisconsin; J.D., Emory University School of Law.
- JONNA KANE MACDOUGALL, *Assistant Dean for Development and External Affairs*. J.D., Indiana University School of Law—Indianapolis.
- TERESA (TERRI) J. CUELLAR, *Director of Technology Services*. B.S., St. Bonaventure University, New York.
- JO-ANN B. FELTMAN, *Director of Administration and Finance*. B.A., DePaul University.
- CLAIRE GROVE, *Director of the LL.M. Program*. B.A., Indiana University; J.D., Indiana University School of Law—Indianapolis.
- PATRICIA KIMBERLY KINNEY, *Director of Admissions*. B.S., Purdue University; J.D., Indiana University School of Law—Indianapolis.
- CAROL B. NEARY, *Director of Development*. B.A., Indiana University.
- SHANNON L. WILLIAMS, *Director of Professional Development*. B.S., Indiana University.

Faculty

- CYNTHIA M. ADAMS, *Clinical Associate Professor of Law*. B.A., Kentucky Wesleyan College; J.D., Indiana University School of Law—Indianapolis.
- THOMAS B. ALLINGTON, *Associate Dean for Technology and Professor of Law*. B.S., J.D., University of Nebraska; LL.M., New York University School of Law.
- CYNTHIA BAKER, *Associate Clinical Professor of Law and Director, Program on Law and State Government*. B.A., J.D., Valparaiso University.
- JUDITH FORD ANSPACH, *Professor of Law and Director, Ruth Lilly Law Library*. B.S., M.L.S., Kent State University; J.D., Mississippi College School of Law.
- GERALD L. BEPKO, *Indiana University-Purdue University—Indianapolis Chancellor Emeritus, Indiana University Trustee Professor and Professor of Law*. B.S., Northern Illinois University; J.D., ITT/Chicago-Kent College of Law; LL.M., Yale Law School.
- WILLIAM C. BRADFORD, *Associate 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.
- KAREN E. BRAVO, *Assistant Professor Law*. B.A., The University of the West Indies; J.D., Columbia University School of Law; LL.M., New York University School of Law.
- ROBERT BROOKINS, *Professor of Law*. B.S., University of South Florida; J.D., Ph.D., Cornell University.
- KENNETH D. CHESTEK, *Clinical Associate Professor of Law*. B.A., Pennsylvania State University; J.D., University of Pittsburgh School of Law.
- DANIEL H. COLE, *R. Bruce Townsend Professor of Law*. A.B., Occidental College; A.M., University of Chicago; J.D., Lewis and Clark Law School; 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 Law School.
- PAUL N. COX, *Centennial Professor of Law*. B.S., Utah State University; J.D., University of Utah College of Law; LL.M., University of Virginia School of Law.
- ROBIN KUNDIS CRAIG, *Professor of Law*. B.A., Pomona College; M.A., The Johns Hopkins University; Ph.D., University of California; J.D., Lewis and Clark Law School.

- KENNETH D. CREWS, *Associate Dean of the Faculties for Copyright Management; Samuel R. Rosen Professor of Law and Professor of Library and Information Science*. B.A., Northwestern University; J.D., Washington University School of Law; 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, *Professor of Law and Director, Program in International Human Rights Law*. B.A., North Carolina State University; J.D., Harvard Law School.
- FRANK EMMERT, *John S. Grimes Professor of Law and Executive Director, Center for International and Comparative Law*. Erstes Juristisches Staatsexamen (J.D.), University of Munich Law School; LL.M., The University of Michigan Law School; Ph.D., University of Maastricht; Diploma, European University Institute.
- 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 and Professor of Law*. A.B., Juniata College; J.D., George Washington University Law School.
- FRANCES WATSON HARDY, *Clinical Associate Professor of Law*. B.S., Ball State University; J.D., Indiana University School of Law—Indianapolis.
- JOHN LAWRENCE HILL, *Professor of Law*. B.A., Northern Illinois University; J.D., Ph.D., Georgetown University.
- 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 School of Law.
- HENRY C. KARLSON, *Professor of Law*. A.B., J.D., LL.M., University of Illinois College of Law.
- 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, *Hall Render Professor of Law; Co-Director of the Center for Law and Health and Executive Director, Latin American Law Program*. B.A., Duke University; M.A., University of Chicago; J.D., Duke University School of Law; M.P.H., University of North Carolina.
- ANDREW R. KLEIN, *Associate Dean and Paul E. Beam 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 College of Law; LL.M., Georgetown University Law School.
- MARÍA PABÓN LÓPEZ, *Assistant Professor of Law and Co-Director, Latin American Law Program*. B.A., Princeton University; J.D., University of Pennsylvania Law School.
- GERARD N. MAGLIOCCA, *Associate Professor of Law*. B.A., Stanford University; J.D., Yale Law School.
- ALLISON MARTIN, *Clinical Associate Professor Law*. B.S., J.D., University of Illinois.
- DEBORAH MCGREGOR, *Clinical Associate Professor of Law and Assistant Director of Legal Analysis, Research and Communication*. B.A., University of Evansville; J.D., Georgetown University Law School.
- SUSANAH M. MEAD, *Interim Dean and Professor of Law*. B.A., Smith College; J.D., Indiana University School of Law—Indianapolis.
- MARY H. MITCHELL, *Alan H. Cohen Professor of Law*. A.B., Butler University; J.D., Cornell Law School.
- NOVELLA NEDEFF, *Clinical Associate Professor of Law*. B.A., J.D., Indiana University.
- JAMES P. NEHF, *Cleon H. Foust Fellow and Professor of Law*. B.A., Knox College; J.D., University of North Carolina Law School.
- 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 School of Law.
- ANTONY PAGE, *Assistant Professor of Law*. B. Comm., McGill University; M.B.A., Simon Fraser University; J.D., Stanford Law School.

- H. KATHLEEN PATCHEL, *Associate Professor of Law*. A.B., Huntington College; J.D., University of North Carolina Law School; LL.M., Yale Law School.
- FLORENCE WAGMAN ROISMAN, *Michael D. McCormick 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 School of Law—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.
- JULIE-ANNE TARR, *Professor of Law*. B.A., University of Wisconsin-Madison; J.D., Cornell University; LL.M., Monash University; Ph.D., University of Queensland.
- LAWRENCE P. WILKINS, *William R. Neale Professor of Law*. B.A., The Ohio State University; J.D., Capital University Law School; LL.M., University of Texas School of Law.
- LLOYD T. WILSON, JR., *Associate Professor of Law and Director, Central and Eastern European Law Program*. 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 College of Law.
- R. GEORGE WRIGHT, *Michael D. McCormick 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 Law School.
- JAMES F. BAILEY, III, *Professor of Law Emeritus*. A.B., J.D., M.A.L.S., The University of Michigan.
- 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 School of Law—Indianapolis.
- DAVID A. FUNK, *Professor of Law Emeritus*. A.B., College of Wooster; J.D., Case Western Reserve University School of Law; M.A., The Ohio State University; LL.M., Case Western Reserve University; LL.M., Columbia Law School.
- PAUL J. GALANTI, *Professor of Law Emeritus*. A.B., Bowdoin College; J.D., University of Chicago Law School.
- HELEN P. GARFIELD, *Professor of Law Emerita*. B.S.J., Northwestern University; J.D., University of Colorado School of Law.
- HAROLD GREENBERG, *Professor of Law Emeritus*. A.B., Temple University; J.D., University of Pennsylvania Law School.
- WILLIAM F. HARVEY, *Carl M. Gray Professor of Law & Advocacy Emeritus*. A.B., University of Missouri; J.D., LL.M., Georgetown University Law School.
- W. WILLIAM HODES, *Professor of Law Emeritus*. A.B., Harvard College; J.D., Rutgers University School of Law—Newark.
- WILLIAM ANDREW KERR, *Professor of Law Emeritus*. A.B., West University; B.S., Duke University; J.D., LL.M., Harvard Law School.
- 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 College of Law.
- KENNETH M. STROUD, *Professor of Law Emeritus*. A.B., J.D., Indiana University—Bloomington.
- JAMES W. TORKE, *Professor of Law Emeritus*. B.S., J.D., University of Wisconsin.
- JAMES PATRICK WHITE, *Professor of Law Emeritus*. A.B., University of Iowa; J.D., LL.M., George Washington University Law School.

Law Library Faculty

- JUDITH FORD ANSPACH, *Professor of Law and Director, Ruth Lilly Law Library*. B.S., M.L.S., Kent State University; J.D., Mississippi College School of Law.
- DRAGOMIR COSANICI, *Head of Reference*. B.A., Michigan State University; M.I.L.S., University of Michigan; J.D., University of Kansas.

- DEBRA DENSLAW, *Reference Librarian*. B.A., Franklin College; M.S., University of Illinois, Urbana-Champaign; J.D., Valparaiso School of Law.
- 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.

Indiana Law Review

Volume 39

2005

Number 1

Copyright © 2005 by the Trustees of Indiana University

TABLE OF CONTENTS

ARTICLES

- Ties that Bind and Restraints on Lawyer Competition:
Restrictive Covenants as Conditions to the Payments
of Retirement Benefits *Robert W. Hillman* 1
- The Supreme Court, Rule 10b-5 and the Federalization
of Corporate Law *Mark J. Loewenstein* 17
- Overwork and Overtime *Shirley Lung* 51

NOTES

- Hoosier Inhospitality: Examining Excessive Foreclosure
Rates in Indiana *Brian M. Heaton* 87
- Child Abuse Witness Protections Confront
Crawford v. Washington *Laurie E. Martin* 113
- True Believers?: Problems of Definition in Title VII
Religious Discrimination Jurisprudence *Susannah P. Mroz* 145
- The Dormant Commerce Clause: Economic
Development in the Wake of *Cuno* *Mary F. Wyman* 177

