2007 SURVEY OF RECENT DEVELOPMENTS IN INDIANA LAW

CONTRIBUTORS TO THIS ISSUE
The Honorable Chief Judge John G. Baker

Joseph R. Alberts
Greg N. Anderson
Bryan H. Babb
Christopher A. Brown
Daniel K. Burke
Carl Butler
Tom D. Conley
Mark J. Crandley
Meredith A. Devlin
Michael A. Dorelli
Ice Miller LLP
Lawrence A. Jegen, III
Jon Laramore

Tanya D. Marsh
Ann L. Thrasher Papa
Jeff Papa
James Petersen
Joseph W. Ruppert
Michael G. Ruppert
Joel M. Schumm
Joni L. Sedberry
Richard K. Shoultz
Stephen A. Starks
P. Jason Stephenson
Robert B. Thornburg
Lewis S. Wooton
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.
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 2008. 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.
Please enter my subscription to the

INDIANA LAW REVIEW

Name

Address

Enclosed is $______ for ______ subscription(s)

Mail to: ATTN: Editorial 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 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
Indianna International & Comparative Law Review
Lawrence W. Inlow Hall
530 West New York Street
Indianapolis, Indiana 46202
In 2003, Indiana University School of Law - Indianapolis established a specialty law review focused specifically on health care law and policy:

**INDIANA HEALTH LAW REVIEW**

The scope of the INDIANA HEALTH LAW REVIEW includes 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 to receive future issues**

**Subscription Price: $20.00**
- Two (2) Issues
- Automatic Renewal
- Foreign Mailing Is Extra

**Mail form to:**
Indiana Health Law Review  
Indiana University School of Law – Indianapolis  
Attn: Executive Business Editor  
Lawrence W. Inlow Hall, Room 136C  
530 W. New York Street  
Indianapolis, IN 46202-3225

**Questions?**
Email: ihlr@iu.edu  
Phone: (317) 278-9519  
www.indylaw.indiana.edu/~ihlr

**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

2007-2008 ADMINISTRATIVE OFFICERS AND FACULTY

Administrative Officers

MICHAEL A. McROBBIE, President of the University. Ph.D., Australian National University.

CHARLES R. BANTZ, Chancellor, Indiana University-Purdue University—Indianapolis. B.A., M.A., University of Minnesota; Ph.D., The Ohio State University.

GARY R. ROBERTS, Dean and Gerald L. Bepko Professor of Law. B.A., Bradley University; J.D., Stanford University.

PAUL N. COX, Vice Dean and Centennial Professor of Law. B.S., Utah State University; J.D., University of Utah; LL.M., University of Virginia.

ANGELA M. ESPADA, Associate Dean for Student Services. B.A., Indiana Central University; M.A., Indiana University; J.D., Indiana University School of Law—Bloomington.

JONNA KANE MACDOUGALL, Assistant Dean for Institutional Advancement. B.S., M.A., Indiana University; J.D., Indiana University School of Law—Indianapolis.

CLaire Grove, Assistant Dean for Graduate Studies. B.A., Indiana University; J.D., Indiana University School of Law—Indianapolis.

Teresa (TERRI) J. Cuellar, Director of Technology Services. B.S., St. Bonaventure University, New York.

ELIZABETH ALLINGTON, Director of External Affairs. B.A., Indiana University; M.A., M. Phil., New York University.

JOYCE M. HERTKO, Director of Major Gifts. B.A., Knox College; M.S., Western Illinois University; Ph.D., Indiana University.

PATRICIA KIMBERLY KINNEY, Director of Admissions. B.S., Purdue University; J.D., Indiana University School of Law—Indianapolis.

AMANDA KAMMAN, Director of Development. B.A., Indiana University.

VIRGINIA MARSHAND, Director of Administrative and Fiscal Affairs. B.A., M.P.A., Indiana University; J.D., Indiana University School of Law—Indianapolis.

HEATHER MCCABE, Director, Public Health Law Program, William S. and Christine S. Hall Center for Law and Health. B.A., M.S.W., Indiana University; J.D., Indiana University School of Law—Indianapolis.

CHASTITY THOMPSON, Director of Professional Development. A.S., B.A., Alabama State University; M.B.A., Auburn University; J.D., Indiana University School of Law—Indianapolis.

LAWANDA W. WARD, Director of Pro Bono Program and Public Interest. B.A., Murray State University; M.A., Illinois State University; M.S., Old Dominion University; J.D., Indiana University School of Law—Indianapolis.

Faculty

CYNTHIA M. ADAMS, Clinical Associate Professor of Law. B.A., Kentucky Wesleyan College; J.D., Indiana University School of Law—Indianapolis.

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.

CYNTHIA BAKER, Clinical Associate Professor of Law and Director, Program on Law and State Government. B.A., J.D., Valparaiso University.

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.

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.


JEFFREY O. COOPER, Associate Professor of Law. A.B., Harvard University; J.D., University of Pennsylvania Law School.

PAUL N. COX, Vice Dean and 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.
ERIC DANNENMAIER, Associate Professor of Law. B.A., Drury College; J.D., Boston University; LL.M., Columbia University; M. St., Oxford University (cand.).

JAMES D. DIMITRI, Clinical Associate Professor of Law. B.S., Indiana University; J.D., Valparaiso University School of Law.

JENNIFER ANN DROBAC, Professor of Law. B.A., M.A., Stanford University; J.D., J.S.D., Stanford Law School.

GEORGE E. EDWARDS, Carl M. Gray 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, Harold R. Woodard Professor of Law. Pythion Nomikis, Athens University School of Law; LL.M., S.J.D., Harvard 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.

LINDA KELLY HILL, M. Dale Palmer Professor of Law. B.A., J.D., University of Virginia.


HENRY C. KARLSON, Professor of Law. A.B., J.D., LL.M., University of Illinois College of Law.

ROBERT A. KATZ, Professor of Law. A.B., Harvard College; J.D., University of Chicago Law School.

ELEANOR D. KINNEY, Hall Render Professor of Law, Co-Director of the William S. and Christine S. Hall 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, Paul E. Beam Professor of Law. B.A., University of Wisconsin; J.D., Emory University School of Law.

ROBERT E. LANCASTER, Clinical Professor of Law, Director, Chinese Law Summer Program. B.A., Millsaps College; J.D., Tulane Law School.

NORMAN LEIFSTEIN, Professor of Law and Dean Emeritus. LL.B., University of Illinois College of Law; LL.M., Georgetown University Law School.

MARÍA PABÓN LÓPEZ, Associate Professor of Law and Director, Latin American Law Program. B.A., Princeton University; J.D., University of Pennsylvania Law School.

GERARD N. MAGLIOCCA, 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, 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 William S. and Christine S. Hall Center for Law and Health. A.B., Brandeis University; J.D., M.D., Harvard College.

JOANNE ORR, Clinical Professor of Law. B.S., Indiana State University; J.D., California Western School of Law.

ANTONY PAGE, Associate 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.

MICHAEL J. PITTS, Associate Professor of Law. B.S.J., Northwestern University; J.D., Georgetown University Law Center.

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 Associate Professor of Law. B.A., Ohio Wesleyan University; M.A., University of Cincinnati; J.D., Indiana University School of Law—Indianapolis.

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, Lawrence A. Jegen III Professor of Law. A.B., University of Virginia; Ph.D., Indiana University; J.D., Indiana University School of Law—Indianapolis.

Emeriti Faculty

THOMAS B. ALLINGTON, Professor of Law Emeritus. B.S., J.D., University of Nebraska; LL.M., New York University School of Law.

EDWARD P. ARCHER, Professor of Law Emeritus. B.M.E., Rensselaer Polytechnic Institute; J.D., LL.M., Georgetown University Law School.


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.

JEFFREY W. GROVE, Professor of Law Emeritus. A.B., Juniata College; J.D., George Washington University 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, Carl M. Gray 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.

DEBRA DENSLOW, Reference Librarian. B.A., Franklin College; M.S., University of Illinois, Urbana-Champaign; J.D., Valparaiso School of Law.
RICHARD HUMPHREY, Reference Librarian. A.A., Brewton-Parker Junior College; B.A., Georgia Southwestern College; M.L.S., University of Kentucky.


CHRIS E. LONG, Catalog Librarian. B.A., Indiana University; M.A., Indiana University; M.L.S., Indiana University.

STEVEN R. MILLER, Reference Librarian. B.S., Lebanon Valley College of Pennsylvania; M.A., Dominican University; M.S., Northwestern University; J.D., The John Marshall Law School.

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, Automated and Media Services Librarian. A.A., Parkland College; A.B., M.S., C.A.S., University of Illinois.
# Indiana Law Review

**Volume 41** 2008 **Number 4**

Copyright © 2008 by the Trustees of Indiana University

## TABLE OF CONTENTS

### SURVEY

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Authors</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.</td>
<td>Introduction</td>
<td>Now or Never: Reforming Indiana’s Court System</td>
<td><strong>John G. Baker</strong> 817</td>
</tr>
<tr>
<td>II.</td>
<td>Supreme Court Review</td>
<td>An Examination of the Indiana Supreme Court Docket, Dispositions, and Voting in 2007</td>
<td><strong>Mark J. Crandley</strong> 839&lt;br&gt;<strong>P. Jason Stephenson</strong>&lt;br&gt;<strong>Carl Butler</strong></td>
</tr>
<tr>
<td>III.</td>
<td>Appellate Procedure</td>
<td>Developments in Indiana Appellate Procedure: Appellate Rule Amendments, Remarkable Case Law, and Refining Our Indiana Practice</td>
<td><strong>Bryan H. Babb</strong> 853&lt;br&gt;<strong>Stephen A. Starks</strong></td>
</tr>
<tr>
<td>IV.</td>
<td>Civil Procedure</td>
<td>Recent Developments in Indiana Civil Procedure</td>
<td><strong>Michael A. Dorelli</strong> 883&lt;br&gt;<strong>Daniel K. Burke</strong></td>
</tr>
<tr>
<td>V.</td>
<td>Constitutional Law</td>
<td>Indiana Constitutional Developments: Incremental Change</td>
<td><strong>Jon Laramore</strong> 923</td>
</tr>
<tr>
<td>VI.</td>
<td>Criminal Law and Procedure</td>
<td>Recent Developments in Indiana Criminal Law and Procedure</td>
<td><strong>Joel M. Schumm</strong> 955</td>
</tr>
<tr>
<td>VII.</td>
<td>Evidence</td>
<td>Recent Developments in Indiana Evidence Law</td>
<td><strong>Jeff Papa</strong> 997</td>
</tr>
<tr>
<td>VIII.</td>
<td>Family Law</td>
<td>Recent Developments: Indiana Family Law</td>
<td><strong>Michael G. Ruppert</strong> 1021&lt;br&gt;<strong>Joseph W. Ruppert</strong>&lt;br&gt;<strong>Joni L. Sedberry</strong></td>
</tr>
</tbody>
</table>
IX. Health Care Law
Survey of Recent Developments in Health Law
Ice Miller LLP 1081

X. Insurance Law
Survey of Recent Developments in Insurance Law
Richard K. Shoulitz 1115
Lewis S. Wooton

XI. Intellectual Property Law
Developments in Intellectual Property Law
Christopher A. Brown 1139

XII. Product Liability
Survey of Recent Developments in Indiana Product Liability Law
Joseph R. Alberts 1165
James Petersen
Robert B. Thornburg

XIII. Professional Responsibility
Survey of the Law of Professional Responsibility
Greg N. Anderson 1213

XIV. Property Law
Recent Developments in Indiana Real Property Law
Tanya D. Marsh 1237

XV. Taxation
Recent Developments in Indiana Taxation
Lawrence A. Jegen, III 1271
Meredith A. Devlin
Tom D. Conley

XVI. Tort Law
Recent Developments in Indiana Tort Law
Ann L. Thrasher Papa 1345

Volume 41 Number 4