

# Indiana Law Review

Periodical  
Collection

C.2



Volume 32 No. 4 1999

## WOMEN AND THE LAW: FACING THE MILLENNIUM

### INTRODUCTION

Introduction to Women and the Law: Facing the Millennium

*Indiana Law Review*

*The Honorable Ruth Bader Ginsburg*

### ARTICLES

Examining Race and Gender Bias in the Courts:

A Legacy of Indifference or Opportunity?

*Justice Myra C. Selby*

Protecting the Hand that Rocks the Cradle: Ensuring the  
Delivery of Work Related Benefits to Child Care Workers

*Debra Cohen-Whelan*

The Rugged Feminism of Sandra Day O'Connor

*Judith Olans Brown*

*Wendy E. Parmet*

*Mary E. O'Connell*

Feminists & Contract Doctrine

*Debora L. Threedy*

On Mirror and Gavel: A Chronicle of How Menopause  
Was Used as a Legal Defense Against Women

*Phyllis T. Bookspan*

*Maxine Kline*

### REVIEW ESSAY

Orthodoxy and Heresy: The Nineteenth Century History  
of the Rule of Law Reconsidered

*Richard P. Cole*

### NOTES

The Managed Care Plan Accountability Act

*Heather Hutchinson*

Private Police: Defending the Power of Professional Bail Bondsmen

*Holly J. Joiner*

A New Understanding of Specific Act Evidence  
in Homicide Cases Where the Accused Claims Self-Defense:  
Striking the Proper Balance Between Competing Policy Goals

*Mary Kay Kleiss*

Compliance Under ERISA Section 404(c) with Increasing  
Investment Alternatives and Account Accessibility

*Keith R. Pyle*

IANA UNIVERSITY

AUG 16 1999

PL 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](mailto:riskfree@bna.com)  
<http://www.bna.com>





**MINDE C. BROWNING**  
**1958-1999**

The *Indiana Law Review* dedicates this issue to Minde C. Browning for her friendship and commitment to the *Law Review*. Minde, herself a graduate of the Indiana University School of Law—Indianapolis, was a member of the law library faculty for ten years. She served as Assistant Director for Reader Services and Assistant Director of the Program for Management of Legal Information Systems.

Minde provided constant guidance for *Law Review* editors and helped new *Law Review* members to better understand reference services and database searches. She also helped maintain the *Law Review*'s website, including the placement of back issues at the site.

The *Indiana Law Review* deeply feels the loss of Minde's support, patience, talent, and energy.



*[The text in this section is extremely faint and illegible. It appears to be a list of items or a table with multiple columns and rows.]*



*Editor-in-Chief*  
Kelly S. Thompson

*Executive Managing Editor*  
Karen Butler Reisinger

*Executive Notes and Topics Editor*  
Heather S. Hutchinson

*Executive Articles Editor*  
Angela R. Martin

*Symposium Editor*  
Kristyn E. Kimery

*Articles Editors*  
Marjorie M. Campbell  
Angela L. Hamm  
Mary Kay Kleiss  
Erica S. Miller  
Melanie D. Pennycuff  
Coleen R. Williams

*Note Development Editors*  
Katrina M. Clingerman  
Kim L. Johnson-Spratt  
Holly J. Joiner  
Christa L. Klopfenstein  
Keith R. Pyle  
Nissa M. Ricafort  
Mark J. Stewart  
Christopher M. York

---

*Associate Editors*

John M. Bradshaw  
Adam F. Cox  
Greg J. Duncan  
John A. Girod  
Suzanne J. Murphy

Cathy A. Niemeyer  
Kim R. Sorg-Graves  
Amy L. Stewart  
Gene A. Wheeler

---

*Members*

Brittany R. Abernathy  
Jennifer K. Bagby  
Grace M. Baumgartner  
Jamie R. Brashear  
Lorena Bray  
Amanda Dickmann  
Elijah D. Farrell  
A. Jack Finklea  
Mary Jane Frisby  
Terry E. Hall

Pamela J. Hensler  
Erin E. Heuer  
Joshua P. Hollingsworth  
Kelley A. Karn  
Susan W. Kline  
Chad J. Melchi  
Dee Ann Miller  
Theresa M. Moore  
Cynthia A. Muse  
Shawn A. Neal

Michelle L. Neff  
Gregory A. Neibarger  
Jill M. Oeding  
Patrick James Olmstead  
James C. Owen  
Patrick A. Scheiderer  
Tiffany A. Sharpley  
Tara J. Stapleton  
Chris A. Wrede

---

*Editorial Specialist*  
Chris Paynter

*Faculty Advisor*  
David R. Papke

---



# 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*  
735 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**  
735 West New York Street  
Indianapolis, Indiana 46202-5194

For the following academic year, the subscription rate for four issues will be:

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

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

**\*Symposium Issue, \$15\***



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



Volume 32 Executive Board: Back Row: Kelly S. Thompson (Editor-in-Chief); Karen Butler Reisinger (Executive Managing Editor); Kristyn E. Kimery (Symposium Editor). Front Row: Heather S. Hutchinson (Executive Editor Notes and Topics); Angela R. Martin (Executive Articles Editor).

## **WOMEN AND THE LAW: FACING THE MILLENNIUM**

In celebration of the *Indiana Law Review's* first all-female Executive Board, this issue explores the relationship between women and the law. We extend our thanks to Professor Florence Roisman for planting the seed that germinated into this issue; and Professor David Papke for encouraging us to implement our ideas for progressing the *Law Review*.

INDIANA LAW REVIEW

(ISSN 0090-4198)

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

*Indiana Law Review*  
735 W. New York Street  
Indianapolis, IN 46202-5194  
(317) 274-4440

**Subscriptions.** For the following academic year, subscription rates will be \$30.00 per four-issue (domestic mailing) and \$35.00 (foreign mailing). 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 *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 *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* (16th ed. 1996). 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 1999. 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. Following academic year subscription rates will be: one year domestic \$30.00; foreign \$35.00. Please notify us one month in advance of any change in address and include both old and new addresses with zip codes to ensure delivery of all issues. Send all correspondence to Law Review Specialist, *Indiana Law Review*, Indiana University School of Law—Indianapolis, 735 W. New York Street, Indianapolis, Indiana 46202-5194. Publication office: 735 W. New York Street, Indianapolis, Indiana 46202-5194. Periodicals postage paid at Indianapolis, Indiana 46201.

POSTMASTER: Send address changes to INDIANA LAW REVIEW, 735 W. New York Street, Indianapolis, Indiana 46202-5194.



The entire text of this Law Review is printed on recycled paper.

## Indiana University School of Law—Indianapolis

### 1998-99 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*. J.D., IIT/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.
- 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.
- KAREN MARKS, *Director of Career Services*. B.S., St. Joseph's College; M.S., Illinois State University.
- JONI D. THOMPSON, *Assistant Dean for Development*. M.A., Ball State University.

#### Faculty

- CYNTHIA M. ADAMS, *Lecturer in Law*. B.A., Kentucky Wesleyan College; J.D., Indiana University—Indianapolis.
- THOMAS B. ALLINGTON, *Professor of Law*. B.S., J.D., University of Nebraska; LL.M., New York University
- EDWARD P. ARCHER, *Professor of Law*. B.M.E., Rensselaer Polytechnic Institute; J.D., LL.M., Georgetown 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., IIT/Chicago-Kent College of Law; LL.M., Yale University.
- ROBERT BROOKINS, *Professor of Law*. B.S., University of South Florida; J.D., Ph.D., Cornell University.
- DANIEL H. COLE, *Professor of Law*. A.B., Occidental College; A.M., University of Chicago; J.D., Lewis and Clark College; J.S.M., Stanford Law School.
- JEFFREY O. COOPER, *Assistant Professor of Law*. A.B., Harvard University; J.D., University of Pennsylvania.
- PAUL N. COX, *Professor of Law*. B.S., Utah State University; J.D., University of Utah; LL.M., University of Virginia.
- KENNETH D. CREWS, *Associate 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.
- CLYDE HARRISON CROCKETT, *Professor of Law*. A.B., J.D., University of Texas; LL.M., University of London (The London School of Economics and Political Science).
- JAMES D. DIMITRI, *Lecturer in Law*. B.S., Indiana University; J.D., Valparaiso University School of Law.
- 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, *Professor of Law*. 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.
- MICHAEL R. HEISE, *Assistant Professor of Law and Director, Program in Law and Education*. A.B., Stanford University; J.D., University of Chicago; Ph.D., Northwestern University.
- W. WILLIAM HODES, *Professor of Law*. A.B., Harvard College; J.D., Rutgers, Newark.
- 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.
- ELEANOR D. KINNEY, *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.
- RONALD J. KROTOSZYNSKI, JR., *Assistant Professor of Law*. B.A., M.A., Emory University; J.D., LL.M., Duke University.
- NORMAN LEPSTEIN, *Dean and Professor of Law*. LL.B., University of Illinois; LL.M., Georgetown University.
- 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 Writing*. 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, *Professor of Law*. B.A., Knox College; J.D., University of North Carolina.
- DAVID ORENTLICHER, *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.
- DAVID R. PAPKE, *R. Bruce Townsend Professor of Law and Professor of American Studies*. A.B., Harvard College; J.D., Yale University; M.A. in American Studies, Yale University; Ph.D. in American Studies, The University of Michigan.
- H. KATHLEEN PATCHEL, *Associate Professor of Law*. A.B., Huntington College; J.D., University of North Carolina; LL.M., Yale University.
- FRAN QUIGLEY, *Clinical Associate Professor of Law*. B.A., Hanover College; M.A., Indiana University—Bloomington; J.D., Indiana University—Indianapolis.
- FLORENCE WAGMAN ROISMAN, *Associate Professor of Law*. B.A., University of Connecticut; LL.B., Harvard Law School.
- JOAN M. RUHTENBERG, *Clinical Professor of Law and Director of Legal Writing*. B.A., Mississippi University for Women; J.D., Indiana University—Indianapolis.
- E. GARY SPITKO, *Assistant Professor of Law*. A.B., Cornell University; J.D., Duke University Law School.
- JUNE O. STARR, *Associate Professor of Law*. B.A., Smith College; M.A., Columbia University; Ph.D., University of California, Berkeley; M.S.L., Yale University; J.D., Stanford Law School.
- KENNETH M. STROUD, *Professor of Law*. A.B., J.D., Indiana University—Bloomington.
- JAMES W. TORKE, *Professor of Law*. B.S., J.D., University of Wisconsin.
- JAMES PATRICK WHITE, *Professor of Law and Consultant on Legal Education to the American Bar Association*. 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.
- MARY T. WOLF, *Clinical Professor of Law and Director of Clinical Programs*. B.A., Saint Xavier College; J.D., University of Iowa.

#### Emeriti

- AGNES P. BARRETT, *Associate Professor Emerita*. B.S., J.D., Indiana University.
- CLEON H. FOUST, *Professor 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 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.
- WILLIAM ANDREW KERR, *Professor of Law Emeritus*. A.B., West University University.; J.D., LL.M., Harvard University; B.S., Duke University.

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 Emeritus*. B.S., Eastern Illinois University; LL.B., University of Illinois.

#### Law Library Faculty

JAMES F. BAILEY, III, *Professor and Director of Law Library*. A.B., J.D., M.A.L.S., University of Michigan.

MINDE C. BROWNING, *Assistant Director for Readers' Services*. B.A., Western University; M.L.S., Indiana University; J.D., Indiana University School of Law—Indianapolis.

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.

KIYOSHI OTSU, *Computer System Specialist*. A.A., Parkland College; A.B., M.S., C.A.S., University of Illinois.





# Indiana Law Review

Volume 32

1999

Number 4

Copyright © 1999 by the Trustees of Indiana University

## TABLE OF CONTENTS

### WOMEN AND THE LAW: FACING THE MILLENNIUM

#### INTRODUCTION

- Introduction to Women and the Law: Facing the Millennium  
*Indiana Law Review*  
..... *The Honorable Ruth Bader Ginsburg* 1161

#### ARTICLES

- Examining Race and Gender Bias in the Courts:  
A Legacy of Indifference or  
Opportunity? ..... *Justice Myra C. Selby* 1167
- Protecting the Hand that Rocks the Cradle:  
Ensuring the Delivery of Work Related  
Benefits to Child Care Workers ..... *Debra Cohen-Whelan* 1187
- The Rugged Feminism of Sandra Day O'Connor  
..... *Judith Olans Brown* 1219  
*Wendy E. Parmet*  
*Mary E. O'Connell*
- Feminists & Contract Doctrine ..... *Debora L. Threedy* 1247
- On Mirrors and Gavel: A Chronicle of How  
Menopause Was Used as a Legal Defense  
Against Women ..... *Phyllis T. Bookspan* 1267  
*Maxine Kline*

#### REVIEW ESSAY

- Orthodoxy and Heresy: The Nineteenth Century  
History of the Rule of Law Reconsidered ..... *Richard P. Cole* 1335

#### NOTES

- The Managed Care Plan Accountability Act ..... *Heather Hutchinson* 1383
- Private Police: Defending the Power of  
Professional Bail Bondsmen ..... *Holly J. Joiner* 1413

A New Understanding of Specific Act Evidence  
in Homicide Cases Where the Accused  
Claims Self-Defense: Striking the Proper  
Balance Between Competing Policy Goals . . . . *Mary Kay Kleiss* 1437

Compliance Under ERISA Section 404(c) with  
Increasing Investment Alternatives and  
Account Accessibility . . . . . *Keith R. Pyle* 1467

Volume 32

Number 4