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# Indiana Law Annotated

*Vol. 23 No. 14*  
*December 2, 2002*

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## HOFFMANN TO TESTIFY ON DEATH PENALTY LAW

On Tuesday, Dec. 3, Professor Joseph Hoffmann will appear before a committee of the Illinois Senate to testify about the "Fundamental Justice Amendment," a proposal that would affect the way the Illinois Supreme Court reviews death penalty cases. Professor Hoffmann was involved in drafting the amendment, which provides:

"In addition to any procedural grounds for relief from a death sentence that may otherwise be authorized by law, the Supreme Court shall, for first degree murder committed on or after the effective date of this amendatory Act of the 92nd General Assembly in which the death penalty is imposed, have the authority to overturn the death sentence, and order the imposition of a term of imprisonment under Chapter V of the Unified Code of Corrections, if it finds that the death sentence is fundamentally unjust as applied to the particular case. If the Supreme Court finds that the death sentence is fundamentally unjust as applied to the particular case, independent of any procedural grounds for relief, it shall issue a written opinion explaining this finding, but in no event shall such a finding serve as precedent for the appellate review of any other case in which a sentence of death is imposed."

The purpose of the amendment is to authorize the Illinois Supreme Court to review the facts and circumstances of every death penalty case, to make sure that the jury's decision on the merits of imposing the death penalty was correct. As explained in a proposed statement of legislative history that will accompany the amendment:

"This amendment provides the Supreme Court with a new kind of authority that it did not previously possess: the authority to reverse a death sentence that is fundamentally unjust, without any need to identify a procedural error at trial or sentencing to justify such a reversal. The kind of decision contemplated here is factual rather than legal in nature, and is essentially similar to the one made by the jury in the first instance: upon consideration of all of the facts and circumstances concerning the crime and the defendant, does the defendant deserve the death penalty? In our system of justice, the jury generally has the primary responsibility to make this decision. But when the death penalty is at issue, and when the consequences of error or

misjudgment are so great, it seems appropriate to allow another decisionmaker to take a second look at the facts and circumstances, to ensure the fundamental justice of the death sentence imposed by the jury."

"This amendment is designed to eliminate any inappropriate pressure on the Supreme Court, in a case where the Court may feel that the death sentence is fundamentally unjust, to identify a procedural error to justify reversal of the death sentence. The amendment authorizes the Court, in such a case, simply to reverse the death sentence on the merits. This direct approach will produce fewer adverse systemic impacts than the current requirement of a finding of procedural error to justify a reversal. Such findings of procedural error affect many more cases than the one before the Court, and inevitably lead to reversal in some other cases even though the death sentence in such cases was completely justified. Findings of procedural error also inevitably lead to additional litigation over the complex procedural rules that govern whether, and when, various claims of procedural error can be raised on appeal and in post-conviction proceedings. This amendment is designed to reduce, in the long run, the current excessive emphasis on procedural litigation in capital cases by providing the Supreme Court with the authority to reverse fundamentally unjust death sentences on the merits, without regard to any procedural rules of any kind."

If the Illinois Senate adopts the amendment, it will then go to the Illinois House for consideration later in the week, and ultimately to the desk of Governor Ryan for his possible signature. If the amendment is not adopted this week, however, it will likely be re-introduced in the new Illinois legislature in January.

Professor Hoffmann also wrote an op-ed piece that was published in Sunday's *Chicago Tribune*, explaining the "Fundamental Justice Amendment" and advocating for its adoption.

## **NEWS FROM THE FACULTY**

The Judicial Division of the American Bar Association has asked Professor **Charles Geyh** to serve as the scholar in residence at the ABA's 2003 annual meeting (if you are curious as to how one "resides" at a meeting and whether it involves sleeping on conference room tables, so is he). He will succeed our 2002 Harris lecturer, Akhil Amar, in that post.

## **NEWS FROM CAREER SERVICES**

### **LUNCHTIME PARTY THIS FRIDAY**

Join us for an end-of-semester celebration on Friday in the Student Lounge. We will start at noon and party till the food runs out.

## **NEWS FROM STUDENT ORGANIZATIONS**

### **FEMINIST LAW FORUM CELL-PHONE DRIVE**

Are you a technophile? Do you know someone who always has the latest cell phone? Not sure what to do with all those old phones? Donate them to Middle Way House; they will use your phone to save a life. The FLF will have a collection table outside the library from 11:00 a.m. 1:00 p.m. Monday and Tuesday before Thanksgiving as well as Monday through Wednesday after break so you may bring those old cell phones from home.

## **INTERNATIONAL CAFE SOCIETY**

The International Law Society will have fresh brewed coffee for sale on Tuesday and Wednesday, Dec. 3 4 in the Law School lobby from 8:00 a.m. to 11:00. This great tasting coffee will cost only a dollar!

## **ANNOUNCEMENTS**

### **3L ELECTED TO ICLU BOARD**

Paul Newman (3L) has been elected to serve on the state board of the Indiana Civil Liberties Union (ICLU). He replaces Steve Sanders, formerly a long-time administrator in the office of the Dean of Arts and Sciences, who left Bloomington in the fall to enter law school at the University of Michigan.

### **CHANGE IN PROCEDURE FOR SCHEDULING EVENTS**

ALL e-mail about reserving classrooms must be sent to BL-LAW-EVENTS. Debbie Eads will no longer be scheduling rooms, so it will avail you naught to drop by her office. Mail must be sent to the correct address, bl-law-events (for Outlook users) or bl-events-law@exchange.indiana.edu (for non-Outlook users). Please include the date and time of event, length of time room will be needed, classroom requested and number of people attending event. Requests should be sent at least one week before the event and include the name of the person requesting, the organization planning the event, and an e-mail address. Confirmations will be sent by reply e-mail. Thank you!

### **AUDIO - VIDEO SERVICES**

Requests for AV services may be sent to Beth at av@exchange.indiana.edu. Please include the name of your group and the e-mail address of the contact person, a description of what you want to do, and the date, location, starting time and duration of the event. Requests must be made at least 48 hours in advance and will be confirmed by e-mail.

**ILA:** Please visit our Web site at [www.law.indiana.edu/pubs/ila/ilacurrent.html](http://www.law.indiana.edu/pubs/ila/ilacurrent.html). The ILA is published every Monday with news about the coming week. If you have questions about an item appearing in the ILA, please contact Leora Baude (e-mail lbaude@indiana.edu or phone 855-2426).

**Submissions:** Information and articles for the ILA should be submitted by **Friday at 10 a.m.** for inclusion in Monday's edition. Please e-mail all submissions to [ila@indiana.edu](mailto:ila@indiana.edu).