

JAMES ALEXANDER TANFORD
Indiana University Maurer School of Law
Bloomington, Indiana 47405
tanford@indiana.edu

CURRENT POSITION

Professor Emeritus of Law, Indiana University -- Bloomington
Of Counsel, Epstein Seif Porter & Beutel, LLP, Indianapolis, IN

TEACHING AREAS

Trial Practice and Procedure, Evidence, Pretrial Civil Litigation, Civil Procedure, Law and Psychology,
Civil Rights & Liberties, Constitutional Litigation, Clinical Education

PRACTICE AREAS

Constitutional law, interstate wine shipping, domestic violence, family law
Consultant in evidence, trial advocacy and professional ethics
Expert witness in effective assistance of trial counsel cases

ACADEMIC POSITIONS

Indiana University School of Law, Bloomington: 1979-present.
Ralph Fuchs Faculty Fellow, 2010-11
Faculty Fellowships, 1989-95.
University of Iowa College of Law: Visiting Scholar, 1989.
Washington Univ. School of Law, St. Louis: Visiting Professor, 1985.
Duke University School of Law: Instructor, 1977-79.

EDUCATION

A.B., Princeton University 1972.
J.D. with Distinction, Duke University School of Law 1976.
LL.M., Clinical Legal Education, Duke University School of Law 1979.
C.I.C. Post-Doctoral Fellowship, Psychology of Juror Behavior, University of Iowa 1985.

HONORS AND DISTINCTIONS - Legal

“Keeping Cross-Examination Under Control” selected as best article on cross-examination for 25th
anniversary issue of Am. J. Trial Advocacy.
Teaching Excellence Recognition Award, 1998
Indiana Supreme Court Rules of Evidence Committee, 1992-93.
ICLU Richard Zweig Cooperating Attorney Award, 1993.
Mordecai Society Award for Teaching Excellence, 1979.
International Academy of Trial Lawyers Student Advocacy Award, 1976.
Duke Law School Trial Competition Team, 1975-76.
University's Nominee, Lilly Endowment Faculty Open Fellowship, 1991.

HONORS AND DISTINCTIONS - nonlegal

University's Nominee, Lilly Endowment Faculty Open Fellowship, 1991.
USATF track official. Big Ten Finals 2019. NCAA Regional Meet, 2022.
IHSAA track official. Sectionals, regionals and state finals, 2014-present
2006 Indianapolis Colts Community Quarterback Award for outstanding community service.

SELECTED PUBLICATIONS

BOOKS

The Pretrial Process 3d edition (CAP 2022)

The Trial Process: Law, Tactics and Ethics 4th edition (CAP 2009)

Indiana Trial Evidence Manual 9th ed. (Lexis 2023)

Nanny & Domestic Help Legal Kit (Sourcebooks 1999)

Civil Liberties in Cyberia: Constitutional Law on the Electronic Frontier (editor) (ICLU 1994)

Handbook on Religion in the Schools (w/ Kennedy; Indiana State Teachers Association 1994).

ARTICLES

How to Write Good Legal Stuff (web, 2009, with E. Volokh)

E-Commerce in Wine, 3 **J. Law & Econ. Policy** 275 (2007)

Objections During Opening Statement, 1 **Ind. Civ. Litig. Rev.** 221 (2004)

The Limits of Closing Argument, 1 **Ind. Civ. Litig. Rev.** 111 (2004)

The Ethics of Evidence, 25 **American Journal of Trial Advocacy** 487 (2002)

The In/Into Controversy, 91 **Northwestern Univ. Law Review** 637 (1997).

The Death of Graduation Prayer: Parrot Sketch Redux, 24 **Journal of Law & Education** 423 (1995).

Keeping Cross-Examination Under Control, 18 **American Journal of Trial Advocacy** 245 (1994)

Thinking About Elephants: Admonitions, Empirical Research and Policy, 60 **UMKC L. Rev.** 645 (1992)

Novel Scientific Evidence of Intoxication (Exxon Valdez), 82 **J. Crim. Law & Crim.** 579 (1991).

Law Reform ... Following Empirical Research on Jury Instructions, 25 **Law & Soc. Rev.** 155 (1991).

What We Don't Teach in Trial Advocacy 41 **Journal of Legal Education** 251 (1991).

The Limits of a Scientific Jurisprudence: Supreme Court and Psychology, 66 **Ind.L.J.** 137 (1990).

Racism in the Adversary System: Use of Peremptory Challenges, 63 **So. Cal. L. Rev.** 1015 (1990),

The Law and Psychology of Jury Instructions, 68 **Nebraska Law Review** 71 (1990)

Better Trials Through Science: Psychologist-Lawyer Collaboration, 66 **N.C. L. Rev.** 741 (1988).

An Introduction to Trial Law, 51 **Missouri Law Review** 623 (1986).

Closing Argument Procedure, 10 **Am. J. Trial Ad.** 47 (1986)

Rape Victim Shield Laws and the Sixth Amendment, 128 **U.Pa.L.Rev.** 544 (1980).

CHAPTERS

Psychology in Judicial Policy Decisions, chapter in **4 Research in Law and Policy Studies** (1995).

The Law and Psychology of Jury Instructions, chapter in **Psychology and Law: The Broadening of the Discipline** (J.P. Ogloff ed., 1991).

A Trial Lawyer's and Trial Practice Professor's Reaction (to Chapter 5: Participatory Persuasion in Closing Arguments: the Trial of Julius and Ethel Rosenberg), in **Communication and Litigation** 173 (J. Schuetz & K. Snedaker eds. 1988).

BOOK REVIEWS

This Week on the Talk Shows: The Litigation Explosion (Review of Walter K. Olson, *The Litigation Explosion: What Happened When American Unleashed the Lawsuit*) 8 **Adelphia Law Journal** 157 (1992).

SCHOLARLY PAPERS

"Interpreting *Granholtm*," Wine, Beer & Spirits Law Conference, Charlottesville, Oct. 2009.

"Wine Retailer Direct Shipping," Wine, Beer & Spirits Law Conference, Seattle, Sept. 2008.

"What Next in the Wine Wars -- E-Commerce and the Constitution," Geo. Mason Univ., May 2006.

"Lawyers' Use of Social Science, History and Economics as a Function of Interdisciplinary Education," Law and Society Assoc., Budapest, July 2001; American law-Psychology Assn, Austin 2002.

"The Impact of Interdisciplinary Education on Lawyers' Understanding and Use of Social Science," Law & Society Assoc., Aspen, June 1998.

"Does Interdisciplinary Education Affect Lawyers' Use of Psychology?" European Conference on Psychology and Law, Stockholm, August 1997.

"Thinking about Elephants: Empirical Research and Legal Change." Indiana University Center for the Study of Law and Society, February 1992.

"Phonetic-Acoustic Analysis of Voice Recordings from the Exxon Valdez: Was the Captain Drunk?" 1992 American Psychology-Law Society, San Diego.

"Whatever Happened to Elwork Sales & Alfini? A Retrospective on the Research on Juror Comprehension of Instructions." 1990 Law and Society Association, Berkeley.

"Judicial Use of Curative Instructions The Role of Psychology in Law Reform." 1990 American Psychology-Law Society, Williamsburg.

"Thirty Years and Still Waiting: The Negligible Effect of Empirical Research on the Use of Curative Instructions." 1989 Law and Society Association, Madison.

"The Prospects of a More Scientific Jurisprudence: Lessons from Law and Psychology." Univ. of Miami Law School, February 1989; West Virginia University Law School (William J. Maier Fund), February 1989.

"The Role of Psychology in the United States Supreme Court's Jurisprudence of Trials." 1988 European Conference on Law and Psychology,

"Irreconcilable Differences: Psychology and the Normative Structure of Trials." 1988 Law and Society Meetings, Vail.

"An Introduction to Trial Law." Univ. of Iowa College of Law, January 1986.

PROFESSIONAL & CONTINUING LEGAL EDUCATION PRESENTATIONS & MATERIALS

"Evidence, Litigation and Ethics," Clark County, IN, 2021

"Update on Supreme Court Free Expression cases," ACLU Annual Supreme Court Update, Indianapolis, 1981-2016.

"Evidence Best Practices," Evansville Bar Assoc., Oct, 2012.

"Free Expression in the 2011 Term," ACLU Annual Supreme Court Update, Indianapolis, Oct. 2012.

"The Future of the Three-Tier System," ICLEF Aug. 2009.

"Ethical Argument," Ind. Trial lawyers Assoc., Nov. 2008.

"Speech and Association Cases in the 2007 Term: It's Good to Be Rich." ACLU Annual Update; the Supreme Court, Indianapolis, Oct. 2008.

"Future of Internet Retail Wine Sales," Wine & Spirits Law Conference, Sep. 2007, New Orleans

"Recent Supreme Court First Amendment Cases," Supreme Court Update, Nov. 2006, Indianapolis.

"Expert Witnesses," Indiana Trial Lawyers Assoc., Nov. 2006

"Retailer Direct Shipping," Wine & Spirits law Conference, Sep. 2006, Phoenix.

"The Ethics of Experts," Indiana Def. Trial Counsel Assoc., Nov. 2005

"The Commerce Clause: Suddenly Sexy" ICLU Forum, Nov. 2005

"Wine distribution laws after *Granholm*," Wine & Spirits Law Conference, Oct. 2005, Chicago.

"The Ethics of Evidence" Indiana CLE Forum, December 2004

"Evidence Foundations," Indiana CLE Forum, October 2004

"The Great Direct Shipping Debate," Wine Beer & Spirits Law Conf., Las Vegas, Oct. 2004.

"Freedom of Speech in the Supreme Court's 2003 Term," ICLU Forum, December 2003.

"Electronic Evidentiary Issues: The Technological Revolution of the Internet, Computers, Digital Photography, and Zip Drives," Indiana Def. Trial Counsel Assoc., October 2003.

"Civil Liberties in Time of War," ICLU, December 2002.

"Evidentiary Foundations," Indiana CLE Forum, December 2002.

"The Establishment Clause" School Vouchers and Beyond," ICLU, November 2002.

"Evidence: Past, Present & Future," Allen County Bar Assoc., October 2002.

"Electronic Evidentiary Issues," Indiana State Bar Association, September 2002.

"The Essentials: Evidentiary Foundations," Indiana CLE Forum, December 2001.

"Freedom of Speech," in The 2000-2001 Supreme Court Term: A Review, ICLU.

"Initial Ethical and Evidentiary Issues in Business Litigation," Indiana CLE Forum, March 29, 2001.

“Free Exercise Clause,” ICLU Forum on The First Amendment, Dec 15, 2000
 “Anatomy of a Murder: Revisited: Ethics in Criminal Trials, Indiana University CLE Seminar on Current Issues in Criminal Law, Nov. 1999.
 “First Amendment Cases,” ICLU Forum on Civil Liberties & the Supreme Court: As the Century Turns, Oct. 29, 1999.
 “Vouchers and Other Methods of Funding Private Religious Schools,” IU Alumni CLE Seminar The Court, the Congress, the President, and the People: Contemporary Controversies in Constitutional Law, Sept. 17, 1999.
 “Update on Scientific Evidence and Daubert,” Indiana CLE Forum, July 30, 1999.
 "Evidence: Three Years Under the Rules," Indiana Judicial Conference (1997).
 “Expert and Scientific Evidence,” Indiana CLE Forum on Emerging Issues Under the Rules of Evidence (1997)
 "Ethics of Evidence," Alumni CLE Program, December 1997; and February, 1998 (Marion County Prosecutor's Office)
 “The Religion Cases,” Indiana Civil Liberties Union CLE program How Bad Is It? -- The 1996 Supreme Court Term (1997).
 “Municipal Government and Constitutional Law,” Indiana Municipal Lawyers Assoc CLE program Municipal Law XIV (1997).
 “Effect of Tort Reform on Evidence and Trial Procedure,” Indiana CLE Forum on The Practice of Law Under Tort Reform (1995).
 “Problems of Interpretation in the Indiana Rules of Evidence: One Year Later,” Indiana CLE Forum on The 1994 Rules of Evidence Roundup (1994).
 “Examining Expert Scientific Witnesses after *Daubert*,” IU School of Law Alumni CLE program on The Law as Laboratory: The Role of Science in Evidence and Environmental Law (1994).
 “Equality Rights Under the Indiana Constitution,” Indiana Civil Liberties Union CLE program on Litigation Under the Indiana Bill of Rights (1994).
 “Rights of Assembly,” Indiana Civil Liberties Union CLE program on Litigation Under the Indiana Bill of Rights (1994).
 "Everything You Always Wanted to Know About the New Indiana Rules of Evidence But Were Afraid to Ask," Evansville Bar Association, February 11, 1994.
 "The Top 10 Ways the New Indiana Rules of Evidence Will Change Your Life," Indiana Trial Lawyers Association 29th Annual Institute: No One Does it Better (1993).
 “Foundations, Exhibits, and the Rule of Prejudice,” Indiana Prosecuting Attorneys' Council CLE program on Relevancy--The Outer Limits (1988).
 “Keeping Out Prejudicial Evidence,” Indiana CLE Forum on Evidence: Keeping it Out (1988).
 “Impeachment,” Indiana CLE Forum on Evidence 1983 (1983).
 “The Recent Evidence Decisions of the United States Supreme Court,” Indiana CLE Forum on Evidence 1981 (1981).

LECTURES & COLLOQUIA

“The Past and Future of *Granholt*” Univ. of California Berkeley, Oct. 2012.
 “What Next in Direct Wine Shipping?” Nat’l Alcoholic Beverage Control Assoc., Boston, June 2006.
 “Direct Interstate Wine Shipments,” Nat. Conf. on State Legislatures; August 2000.
 “Constitutionality of Direct Interstate Wine Shipments,” Nat. Conf. of State Liquor Administrators, Nov. 2000.
 “Free Exercise Clause,,” ICLU Forum on The First Amendment, Dec 15, 2000
 “Vouching for Education,” Federalist Society, Feb. 23, 1999.
 "Maintaining Your Motivation to Finish the Race," National BLSA Academic Retreat, October 1996.
 "Sex and Censorship in Cyberia," Purdue University, April 1996.
 "Why We Don't Need a School Prayer Amendment," ICLU conference on Civil Liberties and the 104th Congress, December 1995.
 "State Action in Cyberspace," Civil Liberties in Cyberia: Constitutional Law on the Electronic Frontier

conference, ICLU, December 1994.
 "What's Wrong with Prayer in the Schools, Anyway?" Invited opposition speaker at Rutherford Institute debate on high school graduation prayer, March 23, 1994.
 "Sexual Orientation in Divorce and Custody Cases." Sexual Orientation and Indiana Law Conference, ICLU, October 1993.
 "The Indiana Rules of Evidence: A Peer Review of Articles 1-4," ICLEF, October 1993.
 "The New Indiana Rules of Evidence," Monroe County Bar Assoc., September 1993.
 "Introduction to the New Rules of Evidence: Articles VII, VIII and IX," Indiana Judicial Conf., September 1993.
 "The New Indiana Rules of Evidence: Hearsay Rules." Indiana Judges Association, September 1993.
 "Novel Scientific Evidence of Intoxication: The Exxon Valdez Case." Indiana University Board of Trustees, September 1991.
 "Recent Trends in Evidence." Indiana Trial Lawyers' Assoc, November 1990.
 "Trial Law." Iowa College of Law Trial Advocacy CLE Program, November 1986.
 "The Influence of the Conviction-Maximization Principle on the Development of Trial Law." Notre Dame Law School, November 1985.
 "The Phony Issue of Children's Rights: Child Witnesses in the Courtroom." Indiana Civil Liberties Union, Bloomington, Indiana, March 1985.
 "The Lesser-Known Witness Privileges." Indiana Judicial Center Conference, February 1984.

SERVICE

Ombuds, IU-Bloomington faculty grievance process, 2020-present
 Chair, Indiana University Policy Review Committee, 2017-23
 President, IU-Bloomington Faculty, 2017-18
 Bloomington Faculty Council 2006-09, 2014-18, 2022-24 (executive committee 2006-08, 2016-18)
 Seventh Circuit Rules Advisory Committee, 2015-18
 Indiana Univ. Diversity and Affirmative Action Committee (chair) 2006-09
 Indiana Supreme Court Rules of Evidence Committee, 1992-94.
 Executive Director, The Philippa Beatty Charitable Foundation, Bloomington IN, 1999-2018
 Coach, St Charles School track and field team, 2005-2018
 IHSAA & USATF track official

LEGAL EXPERIENCE

Admitted: U.S. Supreme Court; 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th & 11th Circuits; IN, NY, NC.
 Counsel of record, *Granholm v. Heald*, 540 U.S. 460 (2005)
 Briefed and argued 30 cases in federal courts of appeals and Indiana Supreme Court
 Expert witness on litigation

1. Reasonableness of attorneys fees, two cases 2012-22
2. Effectiveness of trial counsel in criminal cases, several case for Indiana State Public Defender, 1985-90; *Owens v. State*, 29C01-1804-PC-002640 (2022)

Pro Bono Cases -ACLU cooperating attorney 1992-present

1. *Collins v. Day*. Constitutionality of farmworker exception to worker's compensation law.
2. *Barnett v. Haslar*. Police action shooting.
3. Directed litigation over high school graduation prayer, statewide, March-June, 1993.
4. *Dvorak v. City of Bloomington* (restrictive zoning ordinance)
5. *Bridenbaugh v. O'Bannon I* (constitutionality of Good Friday as state holiday)

Pro Bono cases - lead or co-counsel

1. *City of Bloomington v. Gul*. Constitutionality of city weed ordinance.
2. *Collection Assoc. v. Paul*. Unfair debt collection practices
3. Adoption, divorce, name change, probate cases
4. *Robinson v. Monroe County I*. Log cabin exemption from building codes.
5. *Robinson v. Monroe County II*. Illegal firing of county civil defense director, civil rights.

6. Stant v. State of Indiana (challenging “Major Moves” I-69 legislation)

Amicus curiae briefs

1. Tennessee v. Baird, U.S. Supreme Court (2019)
2. Porter v. State, Indiana Supreme Court (1996)
3. Brown v. State, Indiana Supreme Court (1997)
4. Ford Motor Co. v. Ammerman, Indiana Supreme Court (2000)
5. Schultz v. Ford Motor Co., Indiana Supreme Court (2005)

Private Practice, Durham, North Carolina, 1977-79

Assistant District Attorney, New York, New York; 1976-77.

TRACK & FIELD

Middle School Program Director, Indiana Assoc of Track & Cross-Country Coaches clinic (2011-13)

USATF certified official. NCAA regional finals 2022, Big Ten finals 2019.

Sprints and jumps coach, Cross-country coach, St. Charles Middle School 2008-21

Sarasota County Games for Life 2008, 1st place long jump, 2nd place 100m and 200m

Florida Senior Games State Championships 2008, 2d place long jump and javelin, 4th in 100 m

Indiana Senior Games State Championships

2009: 4th place long jump, 5th place 100m and 200m

2010: 1st place, triple jump; 2nd place discus; 3rd place 100m, 4th place long jump

South Lake Tahoe All-Comers meet, 2009, 1st 100m, masters division