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INDIANA COURT OF APPEALS HEARS ORAL ARGUMENTS

The Indiana Court of Appeals will hear oral arguments on November 18 at noon in the Moot Court Room. This will be Judge Robertson's last oral argument outside of the statehouse before his retirement in December. The case synopsis is attached to this issue of ILA. All students are encouraged to attend.

NEWS FROM TOKYO

from Professor Joe Hoffman

Hello to all of you in the IU Law community! This is the second in my series of irregular columns from Tokyo, Japan, where I'm spending this year as a Visiting Professor at the University of Tokyo.

My seminar at the Faculty of Law, on the subject of "Criminal Justice in the United States," is now in full swing. Like most classes at Japanese universities, my seminar meets only once a week (on Tuesdays from 5 p.m. to 7 p.m.). Also like most classes here, the reading assignments for students in my seminar are rather minimal -- about four pages a week -- although, because the assignments are in English, it's not quite as easy as it sounds. Japanese university students tend to take many more classes than their American counterparts (often more than ten or fifteen at a time), so it's understandable that there's not a lot of outside reading. Still and all, most people here would agree that Japanese universities are less academically intense than American ones -- perhaps because Japanese students desperately need the break, after six years of rigorous, pressure-packed junior-high and high-school study leading up to the all-important university entrance examinations. It's often said that the university years provide Japanese students with a
well-deserved "break" between high school and the ultimate grind of daily life as a "salaryman" in a corporate office.

(By the way, every year more and more Japanese women enter careers in corporations, making the traditional term, "salaryman," increasingly outdated -- but, at the same time, the working world here still tends to be largely a "man's" world...and there's still not a single woman serving in the Japanese cabinet, nor on any of the nation's top courts.)

In addition to the weekly preparation for my seminar, I'm also spending a lot of time learning about the Japanese criminal justice system, and I'm continuing to study the Japanese language. In my seminar, along with the undergraduate and graduate law students, there are four Japanese criminal-procedure professors, two criminal defense lawyers, a police-agency research scholar, and a Tokyo district-court judge -- so I am getting plenty of help as I gradually try to figure out how police investigations and criminal-court proceedings work here.

As for the language study, I'm becoming convinced that I must be missing some essential gene that's necessary for learning a second language (note to Roger Dworkin -- have they located such a gene yet, as part of the Human Genome Project?). But I will keep trying ("gambatte," as the Japanese say!) -- I'm now attending a two-hour Japanese class every Monday, Wednesday, and Friday morning, at the University of Tokyo.

Two weeks ago, I had the chance to get together for an evening with four young Tokyoites who completed their graduate law degrees at IU-Bloomington last year. Hiroshi Okada is working in the intellectual-property office of Hitachi Corporation; Junichi Yamada is with the credit and legal department of the Kawasho Corporation; Miki Matsuki (one of those new "salarywomen") is in marketing and administration for Kawasaki Heavy Industries; and Hisato Matsubara is working in the international business section of Mitsubishi Materials Corporation. We had a great time eating sashimi and drinking sake, and reminiscing about Bloomington and IU -- especially Yamada-san, who was a season-ticket holder for the Indiana Pacers and is missing the start of the new NBA season. I am hopeful that we can make these informal "reunions" a regular part of my time here in Japan.

On a more serious note, some of the very same corporations for which our alums are working are now in hot water, as part of a major series of "sokaiya" scandals that have been sweeping through Japan. "Sokaiya" are so-called "corporate racketeers" -- organized criminals who manage to extort large sums of money from large Japanese firms. It's truly amazing to see how many top Japanese companies have been caught in the scandal. For example, all four of the "Big Four" Japanese securities firms have recently been implicated, and all four have already suffered trading suspensions and other penalties as a consequence of the scandal. Many top officials of the "Big Four" firms have resigned in disgrace.

(This, by the way, has opened a previously closed door for foreign competitors. In October, two U.S. securities firms, Merrill Lynch and Morgan Stanley, finished one-two in market share of trading on the Japanese stock exchange, the first time in history that foreign firms have claimed any of the top spots in Japan. Meanwhile, the combined market share of the Japanese "Big Four" dropped from 30.69% in January 1997, to only 18.38% in October. And most observers expect
the "Big Four" to lose even more ground, largely because of further punishments to be imposed in the scandal and growing public distrust.)

Other corporations implicated in the "sokaiya" scandal are Mitsubishi Motors, Mitsubishi Electric, Dai-Ichi Kangyo Bank (one of the world's top five -- and the bank where I keep my own money here!), Toshiba Corporation, and all six of the Hitachi group companies.

So how do the "sokaiya" manage to cause so much trouble? (Coincidentally, and perhaps presciently, Erick Parker, a recent IU law graduate, wrote a research paper on the "sokaiya" phenomenon for my "Law and Society of Japan" seminar a couple of years ago -- long before the word, "sokaiya," became front-page news in Japan. Erick, if you happen to read this column, thanks for giving me a "head start" on understanding the current scandal!)

Basically, "sokaiya" operate by purchasing enough shares of a company's stock to entitle them to attend the annual corporate shareholders' meeting. Then, they contact the (usually mid-level) officials of the corporation who are responsible for arranging the shareholders' meeting, threatening to disrupt and prolong the meeting with various allegations of illegal or unethical corporate behavior. Faced with such threats, the officials make large payments to the "sokaiya," hoping to ensure that the annual meeting will go quickly and smoothly. Sometimes, "sokaiya" are even hired by corporate officials to help keep the annual meeting under control, by stopping others (through the use of physical force, if necessary) who might want to raise "uncomfortable" issues at the meeting.

Often, the allegations involve the unsavory activities of the "sokaiya" themselves, or those of affiliated organized-crime groups. This is because big Japanese corporations, wary of resorting to the inefficient and costly formal legal system, sometimes turn to so-called "yakuza" organized criminals to help resolve certain kinds of disputes -- such as "persuading" recalcitrant owners to agree to sell their properties to the corporations, when those properties are needed to put together major real-estate developments (note to Jeff Stake -- what's the law-and-econ view about this kind of property dealing?). So the corporations get themselves into a kind of vicious circle -- working with shady "yakuza" characters to grease the skids of commerce, then later being blackmailed by "sokaiya" with information about the same shady operations. Other situations reportedly involve threats by "sokaiya" to reveal personal indiscretions by corporate officials, such as illicit love trysts.

Perhaps the most interesting questions, for me, are these -- Why do Japanese corporations care so much about the character of their shareholders' meetings, anyway? Why not simply tell the "sokaiya" to get lost, and then weather the storm of a nasty and lengthy annual meeting? No matter how distasteful the allegations, would anyone really pay much attention to what known "sokaiya" might say at a shareholders' meeting?

There are many theories, but no clear answers, to these questions. Some people say it's because the mid-level officials, who usually deal with the "sokaiya," can't take the chance of "losing face" with their senior management by having the annual meeting become disrupted. Others say it's because the same mid-level officials are afraid of the implied threat of violence, against them or their families, if they don't pay off the "sokaiya." Still others say -- with a seemingly straight face
-- that it's because the managers and directors of Japanese corporations tend to be very old, and they wouldn't be capable of surviving a long, unruly shareholders' meeting!

In any event, the unfolding scandal seems to catch more big Japanese companies every day, and shows no sign of letting up. Apparently, the "sokaiya" have been extorting money in this way for quite a long time, but only now are their activities finally being widely publicized. Many criminal prosecutions are underway, against both the "sokaiya" and many of the relevant corporate officials. It's the big news story around here these days.

Well, that's enough about Japan for now. Next week, I'll get a chance to see a different part of East Asia, as I leave Tokyo temporarily for a five-day trip to Taipei, Taiwan (ROC). While in Taiwan, I'll be delivering lectures at the Law Faculty of National Taiwan University (where the Dean, T.Y. Lin -- who's also Taiwan's leading constitutional-law scholar -- is a former graduate student of our own Dean, Fred Aman) and at the Taiwanese Ministry of Justice. I will also meet with a group of Taiwanese law students who are interested in graduate law study in the U.S. -- hopefully, a few of the best will decide to pursue their studies in Bloomington! Anyway, I am certainly looking forward to the experience of visiting Taiwan, and I plan to write about it in my next column.

Until then, take care, and bye for now. -- Joe Hoffmann

NEWS FROM THE FACULTY


Marshall Leaffer participated in the Fordam Corporate Law Institute: International Antitrust Law and Policy, held on October 16-17 in New York City.


NEWS FROM STUDENT AFFAIRS OFFICE

SENIORS

It is quite likely that there will be a Bar Review course next summer at our school for students taking the Illinois as well as the Indiana Bar. There may also be enough interest for a Review for New York and California. In order to assess that interest, students considering those states should tell Dale in Room 024.

SUMMER SCHEDULE - 1998
Upperclass courses and clinics for the summer are:

Conflict of Laws (3 credits, Shreve)
Commercial Transactions (the Sales and Secured Transactions version) (4 credits, Markell)
Trial Process (3 credits, Bethel)
Remedies (2 credits, Conrad)
Family Law (3 credits, Conrad)
Comparative Constitutional Law (2 credits, Zoller)
Environmental Issues in Business Transactions (2 credits, Spalding)
Legal Professions (2 credits, TBA)
Negotiations (2 credits, Fromm)

**ENVIRONMENTAL INTERNSHIPS**

An opening still exists for a Second or Third Year student interested in interning one day per week at the Department of Environmental Management or the Environmental Adjudication Office. See Associate Dean Fromm and submit a resume. Two credits of B710 may be earned.

**UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES CLINICAL PROJECT**

The UNHCR will take one or two of our students for the summer of 1998 for a non-paying B710 Clinical Project in Brussels, Belgium. Although primarily for students who have completed two years of law school, students graduating are eligible to apply as well, provided they are able to finance their stay. Fluency in French (both speaking and writing) is required.

The open period for applying is November 10 through December 1. Please see Dean Fromm if you have interest and wish to apply.

**NEWS FROM CAREER SERVICES**

**ISBA MINORITY CLERKSHIP PROGRAM**

The Indiana State Bar Association's Opportunities for Minorities Committee will once again sponsor the Minority Clerkship Program for the summer of 1998. This program creates opportunities for first and second year law students to clerk with employers throughout the State of Indiana during the summer of 1998. More than 15 employers have already registered to participate, and there are more to come. Student applications will be available in the CSO on November 14, 1997 and will be due back to the CSO by noon December 3, 1997. The application will require multiple resumes and copies of a cover letter addressed to the Committee. Students should use the cover letter to express their interest in the program.

**FIRST YEAR CLASS MEETS**
Dean Fromm and Dean Robel will be meeting with all members of the first year class to discuss options for this upcoming summer (e.g., work, clinical, volunteer, classes, volunteer for credit). Attend this very important meeting to learn about the issues and to consider available options. Dean Fromm and Dean Robel will meet with students on Wednesday, November 19 at noon in the Moot Court Room.

PILF SUMMER FELLOWSHIP INFORMATION MEETING

Students interested in obtaining a PILF fellowship for this summer should attend the PILF Summer Fellowship Information Meeting. At the meeting former recipients will talk about their experiences. The participant's summer jobs represent a variety of public interest organizations and unique job experiences. There will also be a representative from PILF to answer questions about the application process. The meeting will be held on Monday, November 4 at noon in Room 120.

NEWS FROM STUDENT ORGANIZATIONS

CHRISTIAN LEGAL SOCIETY

The Christian Legal Society holds a Bible study every Tuesday at 7:00 p.m. All students and faculty are invited. The group meets in the library lobby.

WOMEN'S LAW CAUCUS

Women's Law Caucus invites the law school community to attend a discussion about the rise of the Promise Keepers and similar groups, such as the Suitable Helpers. The discussion will focus on these groups' message about gender roles. The meeting will be held on Tuesday, November 18 at 5:00 p.m. in Room 122. Refreshments will be served.

Women's Law Caucus will be having its final meeting of the semester on Wednesday, November 19 at 12:15 in Room 122.

THE FEDERALIST SOCIETY

The Federalist Society for Law and Public Policy Studies wishes to thank Professor David Williams for provoking a lively discussion on "The Second Amendment and the Right to Revolution in Late 20th Century America" last Wednesday at the Irish Lion.

This week the Society will sponsor a lecture by Cardozo Law School Professor Marci Hamilton on Wednesday, November 19 at 4:15 p.m. in the Moot Court Room. She will be speaking on "The Religious Freedom Restoration Act Is Unconstitutional. What Next?"

Hamilton successfully represented the petitioners in Boerne v. Flores, the case in which the Supreme Court this past summer held RFRA to be an impermissible exercise of Congressional enforcement power under the Fourteenth Amendment. Professor Daniel Conkle will deliver a
ten-minute response to Professor Hamilton's speech. Ample time for questions from the audience will follow.

For more information, contact Kristofor Hammond at 339-5045 or Kristi Prutow at 334-7749.

**PILF FELLOWSHIP MEETING**

PILF will have an informational meeting on Monday, November 24 at noon in room 120, to discuss the PILF summer fellowships. Those interested in seeking funding for summer internships should attend. The application process will begin with your second semester job search.

**ANNOUNCEMENTS**

**CLOTHING AND TOY DRIVE**

Time to clean out those closets and toy boxes! PHI DELTA PHI and the Christian Legal Society are sponsoring a clothing and toy drive to benefit the needy. A box will be placed downstairs near the SLA bookstore from November 17-December 5 for any clothing or toys you wish to benefit needy families during the Holiday Season. Thanks for your help!

**INDIANA BASKETBALL TICKETS FOR CHILDREN**

Complimentary tickets to Indiana Basketball games are available to children ages 3-13 and their accompanying adult. Persons are limited to one request. The tickets must be used in the company of a child, and the tickets cannot be resold. Contact Jessica Kerr (1L) at 855-4114 or 323-2136 for details.

**LIMITED SUPPLY OF BOXERS LEFT**

Tomorrow will be the last chance to purchase “Indiana Legal Briefs.” The Environmental Law Society will be selling the flannel boxers in the lobby on Tuesday from 11:30 - 1:00. The supply is limited and will not be reordered, making this the final opportunity to purchase a pair for your holiday gift list.

**SNYDER VISITING SCHOLAR**

Dr. Earl A. Snyder, an alumnus of Indiana University School of Law and Cambridge University, has generously provided support for a student (current 2L or 3L) from Indiana University to work at the Research Centre for International Law of Cambridge University during the summer or early fall of 1998.

Mr. Snyder will provide air fare, a housing and meal allowance, and a stipend, worth together more than $4,000. The Centre contemplates that the Snyder Scholar will be in residence for about three months and will either participate in an ongoing project of the Centre or be assigned
a project of his or her own. Because the Centre expects the Snyder Scholar to work on an international law project, applicants must have had international law or equivalent courses. The Snyder Scholar should also be committed to further study of or practice in international law. Applicants can demonstrate this commitment by listing courses taken in the international law area, research in international law topics, employment in the international arena, knowledge of languages, career goals and extracurricular activities.

Applicants should provide the following: (1) a resume; and (2) a statement of commitment to international law and a personal research agenda.

Please provide your name, address and a phone number where you can be reached here in Bloomington. Return your completed applications to Dale Calabrese in Room 024 by Tuesday, January 13, 1998.

The preliminary selection committee will consist of faculty. Interviews may be required. The final selection will be made in late January by Mr. Lauterpacht, Cambridge University professor and one of the premier lawyers on the international front.

EVENTS, LECTURES

JOHN KYLE SPEAKS ON THE PRACTICE OF ENVIRONMENTAL LAW

Professor Rob Fischman and the Environmental Law Society invite all students to hear Practitioner John Kyle speak on the practice of environmental law and how to best prepare for an environmental practice. There may also be some discussion of Title V permitting in Indiana. Mr. Kyle will speak today (Monday, November 17) at noon in Room 120. Bring your lunch!

INDIANA COURT OF APPEALS ORAL ARGUMENTS: CASE SYNOPSIS

IN THE COURT OF APPEALS OF INDIANA
CHARLES W. WRIGHT
Appellant-Defendant
vs. No. 10A01-9706-CR-194
STATE OF INDIANA
Appellee-Plaintiff.

APPEAL FROM THE CLARK SUPERIOR COURT NO. 3
The Honorable Steven M. Fleece, Judge
Cause No. 10E01-9501-CF-62
CASE SYNOPSIS

Charles W. Wright was convicted of Intimidation, a Class D felony, and three counts of Harassment, all Class B misdemeanors, for threatening the life of Dr. Bruce Geer, after Dr. Geer refused to prescribe a controlled substance for Wright. Thereafter, on May 1, 1995, Wright was sentenced to three years imprisonment for intimidation and six months for each count of
harassment. The sentences were to be served consecutively for a total sentence of four and one-half years.

During his incarceration, Wright filed a civil action against Dr. Geer alleging medical malpractice. Shortly thereafter, on July 5, 1996, Wright filed a petition to modify his sentence. Prior to the modification hearing, Wright wrote a letter to Dr. Geer expressing his intent to terminate his civil action against him in the event his sentence was modified and he was permitted to serve the remainder of his sentence on probation. Due to Wright's letter, Dr. Geer did not contest the sentence modification. The trial court then granted Wright's petition, suspending the remainder of his sentence and ordering him to serve his remaining sentence on probation. Thereafter, Wright dismissed his lawsuit against Dr. Geer.

As a condition of his probation, Wright was prohibited from contacting Dr. Geer or any member of his family. On December 27, 1996, however, Wright filed another civil lawsuit against Dr. Geer, alleging common law negligence, destruction of the doctor/patient relationship and harassment. Subsequently, the Clark County Sheriff's Department served Dr. Geer with Wright's summons, complaint and a set of interrogatories which had been filed with the complaint.

In response, the State filed a petition to revoke Wright's probation. In particular, the State claimed that Wright had violated the "contact" provision of his probation by filing the lawsuit against Dr. Geer and serving him with a summons and interrogatories. Following the revocation hearing on February 26, 1997, the trial court revoked Wright's probation, finding that Wright had violated the "contact" order. The trial court then ordered Wright to serve the remainder of his executed sentence. Wright now appeals the revocation of his probation.

PARTIES' CONTENTIONS

Wright claims that the trial court erred in revoking his probation. First, Wright asserts that he was denied due process because he was not adequately notified that filing a lawsuit would violate the "no contact" order of his probation. Wright concedes that a direct personal contact or an indirect contact in the form of a telephone call or written correspondence may be considered a contact. However, he claims that he could not have known that his action of filing a lawsuit against Dr. Geer would violate his probation. Wright also argues that, although IND. CODE .35-38-2-2.3 gives a trial court broad discretion in imposing conditions of probation, the statute does not permit a defendant access to the courts. Finally, Wright claims that, denying him access to the courts by preventing him from filing a civil action, violates his rights under the First Amendment to the United States Constitution and Article 1, Section 12 of the Indiana Constitution.

In response, the State contends that Wright was sufficiently apprised that he was prohibited from contacting Dr. Geer by filing a lawsuit against him because the court provided Wright with the terms of his probation in writing and orally at the modification hearing. The State further argues that Wright should have known that he was prohibited from communicating with Dr. Geer in any manner because the trial court informed Wright during the modification hearing that he no longer needed to contact Dr. Geer, having previously expressed his apologies to Dr. Geer in a letter. The State also contends that Wright was aware that he was prohibited from filing a lawsuit against
Dr. Geer because his sentence for intimidation and harassment had been aggravated on the basis that he had abused the legal system by filing several frivolous lawsuits in the past against different parties. Additionally, the State asserts that, as part of the trial court's broad discretionary powers, the court was permitted to impose conditions of probation reasonably related to [Wright's] rehabilitation, pursuant to I.C. 35-38-2-2.3, and to impose conditions upon Wright's suspended sentence. Specifically, the State contends that the Ano contact provision was reasonably related to Wright's rehabilitation because it sought to prevent Wright from harassing and intimidating Dr. Geer, the same conduct which caused Wright to be convicted. Finally, the State contends that the Ano contact order did not violate Wright's constitutional rights under the First Amendment or Article 1, Section 12, because it was not unduly intrusive.

CALENDAR

MONDAY, NOVEMBER 17

... Practitioner John Kyle speaks on the practice of environmental law and preparing for an environmental practice, noon, Room 120.

...Pictures for the Graduating Class Composite.

...Clothing and toy drive begins -- box for contributions downstairs near the SLA bookstore; continues through December 5.

TUESDAY, NOVEMBER 18

...The Indiana Court of Appeals will hear oral arguments, noon, Moot Court Room.

...Purchase "Indiana Legal Briefs" from The Environmental Law Society, 11:30 - 1:00, lobby.

...Women's Law Caucus discusses Promise Keepers, Suitable Helpers and gender roles, 5:00 p.m., Room 122.

...Christian Legal Society Bible study, 7:00 p.m., library lobby.

WEDNESDAY, NOVEMBER 19

...Dean Fromm and Dean Robel meet with all members of the first year class to discuss options for this upcoming summer, noon, Moot Court Room.

...Women's Law Caucus, final meeting of the semester, 12:15, Room 122.

...Cardozo Law School Professor Marci Hamilton hosted by The Federalist Society for Law and Public Policy Studies, 4:15 p.m., Moot Court Room.

MONDAY, NOVEMBER 24
...PILF Summer Fellowship Information Meeting, noon, Room 120.

**ONGOING**

...UNHCR Clinical Project open application period through December 1. See Dean Fromm.

...Applications accepted for Snyder Visiting Scholar. See Dale Calabrese, Room 024.

...Student applications for ISBA Minority Clerkship Program available in the CSO.