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Indiana Law Annotated

Vol. 14 No. 6
February 16, 1998

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News from the Faculty

Professor Heidt's latest article, "Incenting Bioprospecting: The Occasional Need for a Right to Lie" will appear as the lead article in *The University of California--Berkeley Technology Law Journal* set for publication in May. Craig Jones (3L) and Brian Drumm (2L) worked for Professor Heidt on this article.

Professor David Fidler's article "Legal Issues Arising from the Development of Antimicrobial Resistance in the Era of Emerging Infectious Diseases" has been accepted for publication in *Emerging Infectious Diseases*, one of the world's leading periodicals devoted to emerging infectious disease issues. The U.S. Centers for Disease Control and Prevention publishes the peer-reviewed journal.

News from Student Affairs Office

SUMMER B710 INDEPENDENT CLINICAL PROJECTS

First and Second Year students interested in a summer experience with the US Attorney's Office in Louisville (interviewing here on February 12), the Department of Environmental Management and Environmental Adjudication Office (both Indianapolis), and the Utility Consumer Counselor's Office (Indianapolis), among some others should see Dean Fromm as soon as possible.

BAR REVIEW COURSES

Seniors and graduating LLM/MCL students who wish to take the New York or Illinois state bar exams this summer and wish to take a possible Bar Review course here for those states should

call 800-621-0498 ext. 282 and speak with Ann Glynn about your interest. Assuming adequate interest, there will be bar review courses.

MULTI-STATE PROFESSIONAL RESPONSIBILITY EXAM

One more notice for second and third year students: The MPRE exam will be held here on Friday, March 13. There will be a Bar Review on Saturday, March 7, from 9 a.m. to 4 p.m. See your BAR/BRI student reps in the lobby on February 10 to sign up for the review. The applications to take the exam are available in Room 024. The early deadline for the standard \$48.00 application fee is February 13. The fee is \$96.00 for those applying between February 14 and March 4.

LOANS FOR 1998-99

Now is the time to focus on making sure that you submit your FAFSA (Free Application for Federal Student Aid) renewal form. If you have not received your renewal form (or you are a new borrower), you should fill out a new application form (available in Room 024 and the Financial Aids Office). The deadline for priority consideration (i.e., to insure that your loans are available in a timely manner) is March 1. The Financial Aids Certification (FAC) form is not required for loans for the academic year. However, it is required for loans you may wish to receive for this SUMMER. Again, forms are available in both offices. Private loan applications for amounts in excess of \$18,500 are not yet available. You will receive notice when they are. See Dean Fromm if you have any questions.

EDUCATIONAL OPPORTUNITY FELLOWSHIP APPLICATIONS

Applications to be considered for an EOF are available in Room 024. These fellowships are awarded to students who, for one reason or another, have been unable to fully develop their scholastic abilities, and thus have not performed as well as they think they could.

SUMMER STUDY ABROAD PROGRAMS

A few spaces remain for the SPEA-sponsored summer programs in Paris and Brussels (May 18-29) and in Bonn, Frankfurt, and Geneva (May 31-June 12). Each program is worth two credits. Applications are available in Room 024.

PRESIDENTS' COUNCIL MEETING

There will be a brief meeting of all presidents and chairs (or a designee) of law school organizations on Monday, February 16, at noon, in Room 120.

SCHOLARSHIP AND FELLOWSHIP APPLICATIONS FOR 1998-99

Application forms for next year will be available in Room 024. The deadline for applying will be in early April.

BAR APPLICATIONS

Indiana State Bar applications for the July exam are available in the Recorder's Office. The mailing deadline for the application is April 1, 1998.

News from Career Services

GO BACK INTO THE MARKET

A 2L recently took CSO's advice about getting back into the market for a position in a large firm. A couple of weeks ago she sent out about 75 letters along with resumes to large firms in a variety of geographic markets. Although in using this method she received a fair number of rejections, she did come away with an offer from a good firm on the east coast.

When asked about her experience, she had several things to say. First, you must realize that this is a hit-or-miss proposition and prepare yourself for rejection. Also, you must be prepared to pay for your travel to interviews. Firms are not willing to pay for your first interview; your willingness to go to them is an indication of desire and commitment.

If you are interested in a large firm setting and you have not gotten back into the market, now is the time to do so. If you wait too much longer, the opportunity may be lost. Also remember, that you can normally go 5-10 % outside of a firm's criteria but not much more. Check NALP forms and other firm information.

NOTIFY EMPLOYERS ABOUT JOB SEARCH STATUS

If you have accepted summer or post-graduate employment, it is your responsibility to notify any potential employers with whom your job search status is still open. This means not only employers with whom you have interviewed, but also employers from whom you may not have heard anything. It is a professional courtesy to let an employer know you have accepted an offer and to politely take yourself out of the running. This includes judges to whom you have sent clerkship applications and all other legal employers. If you have any questions about the policy, please stop in the Career Services Office.

FROM LAW STUDENT TO LAWYER

Representatives from three major law firms in Indianapolis will share their insight on employer expectations of new attorneys. Topics will include hourly billing, keeping a calendar, receiving feedback, social and community obligations, office demeanor, dealing with supervisors and more. Be prepared for your new career. The visiting lawyers will share their insights with students on Thursday, February 26 at noon in Room 122.

STATE COURT CLERKSHIPS

Current clerks with the Indiana Court of Appeals will talk about the benefits of clerking at the state court level, post-graduation. The discussion will include how to apply to the courts, and interview strategies. Court clerks will discuss their experiences, Wednesday, March 4 at 12:15 p.m. in the Moot Court Room (Room 123).

News from Student Organizations

OUTLAW

At this week's meeting Outlaw members will discuss progress on the newsletter, upcoming speakers, and a social event taking place Wednesday at Bullwinkle's. The meeting will be held Tuesday, February 17, at 5:05 in Room 121.

Those going to Bullwinkle's on February 18 should meet in the law school lobby at 10:30 p.m.

FEDERALIST SOCIETY

The Federalist Society's Lawyers at the Lion Series continues this Thursday, February 19 at 6 p.m. at the Irish Lion. Professor Steve Johnson will discuss actions Congress can take to tame the IRS tax code. Professor Johnson will reveal his plan in a speech entitled "Ending Social Engineering in the Tax Code: A Search for the Holy Grail?" Since the enactment of the Internal Revenue Act of 1954, the income tax code has grown from 744,000 words in 1955 to 5,557,000 words in 1994--an increase of 647 percent. The 1954 Act has since been revised 431 times.. Everyone is welcome at the Irish Lion this Thursday at 6 p.m.

The Society will hold a meeting for members this Wednesday, February 18 at 12:15 p.m. in Room 120. For more information on either the Lawyers at the Lion Series or general meetings, contact secretary Kristi Prutow at 334-7749 or kprutow@indiana.edu.

SHERMAN MINTON MOOT COURT

It is time once again for Sherman Minton Moot Court arguments. The 32 second-year students who survived the competition last semester are back for more. The octofinal round begins on Monday, February 23. Arguments will take place Monday through Friday at 6:00 p.m. and 8:00 p.m. in the Moot Court Room. This is a head-to-head, single elimination format. The final round will take place at 8:00 p.m. on March 4. All arguments are open to the public, so come out and see these exciting elimination rounds.

ABA

ABA will meet on Monday, February 9 at noon in Room 122.

CHILDREN AND THE LAW DISCUSSION GROUP JOB FAIR

The Children and the Law Discussion Group will host its annual job fair on Wednesday, February 18 at 12:10 in Room 216. Speakers will include Gary Chaves from the Juvenile Division of the Marion County Prosecutor's Office; Steve Galvin from the Monroe County Office of Family and Children; and Seth Lahn, associate director of the Child Advocacy Clinic. Come and learn about the opportunities available in children's law and how to find them. Snacks will be served.

Announcements

DIVERSITY RESOLUTION

As many of you know, the IUPUI Law School was the site of a serious attack on diversity last month. Last week a forum was held to discuss the offensive nature of the attack and areas in which this law school can improve diversity. One of the ways to improve diversity is not just discussion, but action. In an effort to work toward a more diverse and equal law school system, now and in the future, the 7th Circuit Law Schools (this includes IU) would like to bring forward a resolution to the American Bar Association calling for disciplinary action on accredited law schools that do not foster diversity or are the site of multiple attacks on diversity.

Your input, assistance, outreach, and participation in this resolution would be greatly appreciated. Please e-mail kferrier@indiana.edu or lwoodard@indiana.edu with suggestions and comments, so that we may represent IU appropriately at the Spring 7th Circuit meeting.

TEACHER OF THE YEAR NOMINATIONS

The Teacher of the Year Committee would like students to voice their opinions on who should be this year's recipient of the Teacher of the Year Award. Please e-mail your nominations, in any format and any length, to SLA student liaison Erika Schneller, (e-mail ESCHNELL). The committee will accept nominations through this Friday, February 20.

DO YOU SPEAK A FOREIGN LANGUAGE?

A variety of study, internship and employment opportunities exist for students with language skills. The School would like to know if you have good skills in a language other than English, so that we can direct information about those opportunities to you as they come to us. Please send an email to lrobel@indiana.edu with your name, the language(s) you speak, and whether you would describe yourself as fluent (i.e., you can speak, read and write well).

CIVIL RIGHTS POSITION AVAILABLE

Have you taken Civil Rights or Federal Jurisdiction? Would you be interested in applying for a paid summer position with a plaintiff's civil rights attorney in Indianapolis? Send an email to Dean Robel at lrobel@indiana.edu.

ABA REPRESENTATIVE NEEDED

Do you want to be active in shaping the future for lawyers and law students across the nation. Can you help your fellow students achieve their goals through the ABA? You may be just the person IU is looking for. Apply for the ABA Representative position for IU. All you need is a one page essay expressing your interests in and knowledge of the ABA and your personal commitment. Please submit your essay to the mailbox of K. Ferrier (2L) by February 20. If you have any questions, please e-mail kferrier@indiana.edu.

SUMMER FEDERAL COURTS CLINIC

Students in Federal Courts Clinic intern in the chambers of federal judges in Indianapolis. Students wishing to be considered for the clinic this summer should submit a resume and a writing sample to Dean Robel by February 16. For more information, please email Dean Robel at lrobel@indiana.edu.

SUMMER INTERNSHIPS---PAID AND UNPAID---WITH THE INDIANA ATTORNEY GENERAL

If you would like to be considered for a paid internship with the Indiana Attorney General's Office for the summer, you need to get your application in to the Office of the Chief of Staff, Dennis Lee, within the next week to 10 days. If you would like to be considered for an unpaid internship for credit, you need to get your resume to Dean Robel by February 20. Students are free to apply for a paid internship, and an unpaid internship if they don't get the paid one. Just let Dean Robel know that you have in fact also applied for a paid position.

Events, Lectures

LECTURE: WHEN A CHILD IS THE CLIENT

Professor Orenstein's Legal Profession class and the Children and the Law Discussion Group invite students to a lecture entitled, "When A Child is the Client" delivered by Kenneth Falk, Esq., of the Indiana Civil Liberties Union. The lecture will take place on Monday, February 16, at 11:00 a.m. in Room 125.

1-HOUR LECTURE ON SUBSTANCE ABUSE REQUIREMENT FOR OHIO BAR

On February 25, at 11:00 a.m. in Room 125, Professor Orenstein's Legal Profession class will discuss substance abuse in the legal community. Students planning to take the Ohio Bar should attend this lecture (or will have to pay for the privilege of watching an Ohio Bar-sponsored video later). Anyone who is interested in the topic should feel free to join the class.

COURT ROOM DRAMA AS CULTURAL MICROCOSM: PATTEN SERIES PRESENTS ROBERT FERGUSON

Robert Ferguson, Professor of English and Law at Columbia is the next lecturer in the Patten Series. His work examines American culture as reflected in judicial practice. He will be lecturing on the evenings of Tuesday, March 3, in Education, Room 1120 at 7:30 p.m. and Thursday, March 5 at the same time and place. His overview topic is "Courtroom and Community in American Culture." Individual titles of the lectures are (1) "Watching Justice Fail: Spectacle and the Female Victim in Trials of National Transformation" and (2) "Seeing Justice Done: Ritual and Trial Performance in Television America."

MPRE

The MPRE will be held on Friday, March 13. The Lawyers Bar Review is sponsoring two free MPRE review sessions. The first session will be held on Wednesday, March 4, from 6:00 p.m. - 10:00 p.m. in Room 121. The second session is Saturday, March 7, from 9:00 a.m. - 1:00 p.m. in Room 122. To reserve your seat call 1-800-595-5523.

STUDENTS TAKING THE INDIANA BAR EXAM

On Wednesday, February 18, the Lawyers Bar Review is sponsoring an informal get-together at Nick's. Free pizza and beer will be provided. Take this opportunity to meet Kevin Betz, co-creator and president of the Lawyers Bar Review. Kevin will answer questions about the bar exam, bar review, and MPRE review. Kevin will also bring samples of the course outline material.

BARRISTER'S BALL

The Law School's Annual Barrister's Ball will be held on Saturday, February 21, 1998 at Terry's Banquet & Catering in the upstairs formal dining room off of 17th Street. The attire is semi-formal, and a sit-down dinner will be served. There will be music, a cash bar and a lot of fun for the entire law school community. Dinner will be served at 7:00 p.m. Diners will have their choice of a beef, chicken or vegetarian entree. Tickets go on sale in the law school lobby on Monday, February 9 from noon to 2:00 p.m. daily through February 20. Tickets are \$18.00 per person and \$32.00 per couple. This event is sponsored by the Black Law Student's Association. We hope to see all of you there for a night of dancing and fun.

Calendar

MONDAY, FEBRUARY 16

...Presidents' Council Meeting, noon, Room 120.

...Resume and a writing sample for Federal Courts Clinic interns to Dean Robel.

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Tuesday, February 17

...Outlaw Meeting, 5:05 p.m., Room 121.

Wednesday, February 18

...Children and the Law Discussion Group Job Fair, 12:10, Room 216.

...Outlaw at Bullwinkle's, meet in law school lobby 10:30 p.m.

FRIDAY, FEBRUARY 20

...Resumes to Dean Robel for summer internships.

SATURDAY, FEBRUARY 21

...Barrister's Ball, Terry's Banquet and Catering, 7:00 p.m.

THURSDAY, FEBRUARY 26

...Visiting lawyers share insights, noon, Room 122.

SUNDAY, MARCH 1

...Deadline, priority consideration for financial aid.

MONDAY, MARCH 2

...Sign up deadline for Law Library Interrogatories.

TUESDAY, MARCH 3

...Paton Series, Education, Room 1120, 7:30 p.m.

WEDNESDAY, MARCH 4

Court clerks discuss their experiences, 12:15 p.m., Moot Court Room (Room 123).

THURSDAY, MARCH 5

...Paton Series, Education, Room 1120, 7:30 p.m.

FRIDAY, MARCH 6

...SLA Annual Casino Party.

SATURDAY, MARCH 7

...Bar Review, 9:00 a.m.-4:00 p.m.

MON.-TUES., MARCH 9-10

...Law Library Interrogatories.

FRIDAY, MARCH 13

...MPRE Exam.

WEDNESDAY, APRIL 1

...Mailing deadline for Indiana State Bar applications for the July exam.

Notes from Tokyo

from Joe Hoffman

While sitting here in my frigid apartment, I've been reading a very interesting (and provocative) short article on "Japan and International Law," written by a prominent Japanese professor of international law at Sophia University in Tokyo. So I thought I'd write and tell you about it.

According to Professor Shinya Murase (who also served as a legal officer at the U.N. in the early 1980's), the starting point for international law in Japan was the arrival in Tokyo's harbor of U.S. Commodore Matthew Perry and the so-called "black ships" in 1853. (This historical event, by the way -- which forced the re-opening of Japan to the rest of the world after more than 250 years of virtually total isolation -- remains an event of singular significance for the Japanese. It is mentioned almost daily around here, usually with strongly negative overtones, and is often described as a major and direct causal factor behind everything from World War II to the current East Asian financial crisis...)

Professor Murase notes with some resentment that Townsend Harris, the first U.S. Consul General for Japan (who was once played by John Wayne in a popular Hollywood movie), "gave the Japanese authorities 'in the field' instruction on the subject of modern international law, repeatedly invoking 'the law of nations' in his dealings with them. While it was primarily the disparity in power between Western nations and Japan that produced the subsequent unequal treaty relations, Japan's ignorance of international law and lack of diplomatic skill led to the imposition of certain burdens that might well have been avoided."

During the early years of the Meiji Period (after 1868), Professor Murase explains, "[t]hrough bitter experience, ... the Japanese gradually acquired knowledge and skill in legal manipulation in order to achieve their objective." Japan tried to prove to the West that it was a "civilized nation" by rigidly adhering to the international rules of war during the Sino-Japanese War of 1894-95, but did not succeed in revising the original "unequal treaties" with Western nations until after defeating Russia in the War of 1904-05.

Meanwhile, Japanese intellectuals and statesmen were diligently studying international law:

"These scholars of the first generation expected much of international law. Most of them believed that nations were actually bound by natural law, which European and American writers on international law mentioned in the introductory chapters of textbooks. ... Japanese scholars optimistically interpreted the law of nations as a system of universal justice and righteousness that would eventually bring equality in the 'family of nations.'

"Shortly afterward, however, the Japanese began to notice the cold reality of international society and its law. The gap between great expectations and harsh reality seems to have been the root of Japanese ambivalence toward international law, which continued for decades before World War II. Thus, for example, an idea expressed by the educator Yukichi Fukuzawa (1835-1901) in his famous remark that 'one hundred volumes of international law and numerous treaties of amity are not worth a single cannon' became a common perception among the Japanese."

Even a popular song, taught to Japanese elementary-school children in the 1880's, expressed the following view: "The British in the west, The Russians in the north, Be alert, my countrymen! The treaties they conclude, Cannot be trusted at heart, Even if there's Law of Nations, Once a crisis should occur, Might is the law of the jungle, Let's be prepared for it!"

In another major blow to early Japanese confidence in international law, the Permanent Court of Arbitration in 1905 ruled against a Japanese tax claim that had been filed against England, France, and Germany in the so-called "Japanese House Tax Case." This outcome apparently was completely unexpected in Japan -- Professor Murase reports that Japan's lead counsel was so convinced of victory that he declared he would perform hara-kiri (ritual suicide) if Japan lost the case. (Professor Murase doesn't mention whether the Japanese lawyer ever carried out his rather rash promise!) After the decision, Japanese commentators accused the court of racism, and Japan's overall attitude toward international law began to change.

In the words of Professor Murase: "Having developed into an imperialistic power itself, Japan tended to rely more on force than on law. In the dark age of militarism, from 1931 to 1945 in particular, Japan audaciously disregarded international rules.

"It should be noted, however, that the law-abiding attitude during the first five decades after the opening of Japan and the power-oriented attitude of the following four decades were largely two sides of the same coin. From the outset international law appeared to be a strong and sophisticated system of outside pressure that Japan could not manipulate or refuse to accept. Their early experience instilled in the Japanese people a sense of frustration and a feeling of being victimized by the international society of the time. Therefore, the law-abiding attitude of that period did not actually result from a readiness to commit Japan to the basic values of modern international law; rather it was based upon patience and tolerance with a view to obtaining the status of a 'civilized nation' as quickly as possible, until Japan was admitted to the club of Western countries; once recognized as a major power, Japan found it less necessary to adhere to the principles and rules of international law. The latent hostility toward and frustration with international law gradually became overt, with the consequence that Japan began to deviate from international norms without scruple."

Have things changed in Japan during the post-World War II era? Professor Murase thinks so, "because Japan's postwar attitude toward international law has derived more from voluntary will than from inevitable circumstances." (Personally, I wonder whether this is really true...) Yet, still, "some people in Japan have certain erroneous perceptions about the role of international courts," such as the mistaken belief that the International Court of Justice was acting within the scope of its legitimate jurisdiction when it issued a controversial "advisory opinion" in 1996 on the legality of nuclear weapons. In this regard, Professor Murase notes that the only ICJ dissenter, on the subject of jurisdiction, was Judge Shigeru Oda of Japan -- who thus made a "significant contribution to preserving the integrity of the court," despite the fact that he was "subjected to unwarranted criticisms and accusations in Japan."

What does the future hold, with respect to international law in Japan? Professor Murase believes that "the attainment of the maturity of Japan with regard to international law is still to be strongly hoped for." But first, Japanese scholars will have to do a much better job of educating the Japanese public about international law, if it is to have a positive effect instead of once again serving as a lightning rod for public discontent in Japan.

Meanwhile, Japanese scholars must also remedy their relative lack of significant academic contributions to the larger world of international law: "While Japan's trade imbalance has been much complained of by Western countries, the situation is reversed with regard to academic exchange ... Japanese scholars have been great importers and consumers of the works of European and American scholars and practitioners of international law, but unfortunately, there has been very little export from Japan." Professor Murase concludes by suggesting that an upcoming trilateral conference of international-law scholars from the U.S., Canada, and Japan, to be held in Ottawa in October 1998, will help to solve this problem (two such conferences have already been held, in Tokyo in 1994 and in Atlanta in 1996).

It's certainly interesting to reflect on how different the world of international law looks from the perspective of a country like Japan, which (at least in the pre-World War II period) saw itself as being on the losing end of almost all international agreements and adjudications. In any case, Professor Murase's article provides a lot of food for thought.