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Law Prof takes Gubernatorial Stand

By Bruce Antrim

Professor Patrick Baude has played an instrumental part during the last five months in what may be the strongest Democratic bid for the Indiana’s Governor’s office in many years.

Last November, at the request of Evan Bayh’s campaign manager Joe Hogsett (a former student of Baude’s) Baude joined a panel that was to give an authoritative opinion on Bayh’s residency. The panel included retired Indiana Supreme court justice Dixon Prentice and Dean David Link of the Notre Dame Law School.

Bayh’s campaign organized the panel in defense of a challenge in November from Indiana Republicans. The Republican Party claimed that is not even sex, the most important issue for law student is grades. Grades are to a law student what delegates are to a presidential candidate: they tell you where you stand in the world and whether or where you will get a job.

Never mind that we all know that grades reveal little about a student’s knowledge or understanding of the law. And many times, grades also tell little about the amount of work a student has done. We all know enough about subjectivity to know any grading system is inherently fallible.

Never mind all that because legal employers, many of whom had average grades themselves, are hell-bent on using grades as the sole hiring criterion. “Employers put too much emphasis on grades,” said Mary Kay Moody, director of placement. “I have to repeat that over and over to employers.”

Since our law school is notorious for its deflation of grades -- rather than the norm of inflation at most top law schools -- several law school committees are reviewing the school’s grades.

Dean Bryant Garth notes that there is no policy on grades at I.U., but it is more of a culture, “It’s a culture of fairness among colleagues,” Garth said. “If one professor in a first-year course sets a mean of 2.8 and another sets the mean at 3.0, the section at 2.8 would see that as unfair.

The greatest force for inflating the grade culture seems to be the job market. “Our students have a clear disadvantage in placement because of grades,” said Moody. She said employers focus on the grade point average and incorrectly compare a 3.0 student at I.U. to a 3.3 student at a similarly ranked school and the I.U. student loses. But the 3.0 student at I.U. could well be a better candidate for the job, except that I.U. deflates its grades while most other schools inflate.

Moody admits that lower grades indicate that I.U. is a more rigorous school. She said that this reasoning works at some law firms. At Kirkland & Ellis in Chicago, for example, I.U. alumnus Jeff Kennedy effectively sells that logic to the hiring committee. But, she adds, at many other law firms the hiring committee simply looks at the grades.

Further, many firms on the coasts are just not familiar with I.U.‘s grading system. Moody said this has become a more significant administration addresses grades.

By Kevin Betz

Indiana Supreme court justice Dixon Prentice and Dean David Link of the Notre Dame Law School.

Bayh’s campaign organized the panel in defense of a challenge in November from Indiana Republicans. The Republican Party claimed
Letter from Dean Garth

I am pleased to announce officially that Professor Douglass Boshkoff will be the recipient of the first Leon H. Wallace Teaching Award. Leon Wallace, who died in 1985, was Dean of the Law School from 1952 to 1966. His family and friends thought the best way to honor his memory would be to establish a teaching award in his name, and we are quite pleased to implement that idea.

This award culminates two years of work. Last year the Teaching Committee recommended procedures for selecting the recipient, and we followed those procedures this year. Three students -- one chosen for academic performance, a second to represent SLA, and a third to represent student organizations, canvassed student opinions, drew also on their own experiences, made recommendations, and then discussed them with me. The three students worked very hard, and we all agreed that Professor Boshkoff would be an outstanding first choice. I was pleased to hear the students emphasize Professor Boshkoff's diligent preparation, his ability to draw on his experience to the benefit of students, his challenging style of teaching that helps students to more lasting skills and insights than are necessary simply to learn a body of substantive law, and his ability to treat students with concern and respect. Our congratulations to Professor Boshkoff and thanks for the excellent work of Michael Allison, Matt Guttwein, and Mary Zappia.

The Exordium

The Exordium is published by the Student Law Association with the help of student volunteers. The next issue will be available in the fall. The editors are currently accepting articles and letters for publication for that issue. Items should be turned in to Ben Beringer's mailbox. All opinions expressed in the Exordium are those of the individual writer and do not necessarily reflect the view of the students, faculty, administrators or University. The editors reserve the right to edit any letters or articles or reject items which do not fulfill editorial goals.

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Contributors: Kevin Betz, Jeff Koehlinger, Dean Bryant Garth, Andy Ward, Amy Smith.

Grades

problem recently because I.U.'s on-campus interview list has expanded from 60 firms in Indiana and the Midwest to 224 from all across the country.

Class rank also does not clarify the issue because I.U. uses the imprecise bar charts to rank students, and often the student in the 2.8 to 3.0 range is with a large cluster of other students, without any long-term impact on the reputation of the school.

Associate Dean Terry Bethel said he became interested in the issue because he had heard a lot of discussion about grades without knowledge of all the facts. He said he also intended to conduct a systematic review of the grading patterns at I.U.

“What we may have here is just a de facto system of Pass High Pass, and Honors like they have at Yale,” Bethel said. “Since I’ve been here, we’ve had good enough students that grades below “C” are rarely necessary.

“But if we inflate grades, we’re not doing a service to anyone by graduating someone who should have quit or been flunked out,” he said.

The faculty is basically split, Bethel said, between those who think grades are too low and those who want to keep them the same. He indicated that those in favor of change are generally the younger faculty and those opposed to change are the older faculty.

Garth said he opposes change, but added, “I can live with anything.” Garth said he believes the lower grades give I.U. the reputation as a rigorous school and any inflation would deteriorate the image.

cont. pg. 7
Terms of art?

What follows is a list. It is not a top ten list. It is not a "laundry list". It is not "your average garden variety list". It is a list of words and definitions, and it is presented in its original, unedited form. I hope.

Well then, exordiri.

bootstrapping: what you do for your first five or so years at a giant law firm; "Say, weasel, could you strap those on for me? Oh, and a shine tomorrow."

efficiency: a talismanic icon, worshipped by a few misguided souls; also called Posneritis,

carrel: a person who spends virtually every waking moment at a carrel

care-hole: a person who speaks in a normal tone of voice while sitting at a carrel

bluebook, black letter, blue laws, blackacre: what did I do to be so black and blue?
mime: a waste of DNA

Hobson's choice: should Calvin throw the brick, or the rock, through the window?

passing the bar: see kidney stone

hip: the group of people that make the time to listen to jazz

hung jury: a jury of twelve men who all--well, that's enough of that one

Bork: to question at length, with an eye to adversity; "The professor borked me heartily the other day."

CD: 1) for Posnerites, certificate of deposit; 2) for the hip, compact disc

Socratic method: suicide by hemlock

brief: anything long and time consuming

sieve pro: new from Ronco!

pro bono: what dogs and public interest lawyers end up working for

hornbook: a temptation of the devil; "You don't want to make a fool of yourself in class again, do you?"

habeas corpus: a come-on in a Latin bar, usu. coupled with "...but I also respect your mind."

dictum: what the lawyer did to his clients by charging $300 an hour; ba-dump-bump

Baude

that Bayh did not qualify for candidacy under the Indiana Constitution's residency requirements for the office of Governor.

The question with which the Bayh campaign charged Baude and the panel was whether Bayh fulfilled the Indiana Constitution's five year residency requirement. It is a question of first impression in Indiana.

Professor Baude had to decide whether the interpretation of the term "residence" in the Indiana Constitution should be actual physical residence or domicile. If the standard was physical residence, Bayh would not qualify because he lived in Virginia during 1983 and 1984 while he worked in a Washington D.C. law firm.

A unanimous panel adopted Baude's determination that the term "residence" in the residency requirements refers to domicile. Thus, if Bayh intended to return to Indiana as he claimed he did, he would also retain his Indiana residence for the purpose of running for Governor.

Baude originally supported Frank O'Bannon in the Democratic race at the time of the formation of the panel in November. The Bayh campaign did not feel that his support for O'Bannon would affect his legal opinion on Bayh's residency, however.

Before Baude's announcement on January 24, O'Bannon, the strongest - and apparently only serious opposition for the Democratic nomination dropped out of the Governor's race and agreed to run on the ticket with Bayh for Lieutenant Governor.

Although Bayh's Republican opposition will probably challenge Baude's analysis of Bayh's residency status in the Indiana Supreme Court, Bayh and his supporters are campaigning confidently toward the November election. Bayh won his first battle in court against a Republican supported opposition in mid-March.
By Greg Castanias

Some started law school just a couple of weeks after their undergraduate days ended; some put a summer or more between them. One thing is certain, though: law school is like nothing they had ever done before.

Approaching the end of the first year of law school, the 1L now finds it hard to remember when the anticipation of law school forced the imagination into full flower. Was it going to be like "The Paper Chase" with the round-the-clock work and sado-masochistic professors? Was this Conkley guy going to be like Kingsfield?

Perhaps as the I.U. prelaw program suggests, the nascent 1L read the book named for them, One-L by Scott Turow. Basically, though, the 1L mind was a swirl of expectations with no connections with experience.

That in mind, The Exordium surveyed first-year law students. The survey consisted of four questions and was handed out unscientifically. Responses came in from approximately fifty percent of the surveys handed out.

The survey shows that while the Socratic method here is not as painful as expected, the 1L is disappointed with a couple of things including the grading process and fellow students.

The Socratic Method. "It is almost never as bad as "The Paper Chase" or One-L, but it is still humiliating to be frightened and unsure of oneself, especially when what renders one unsure is a classroom arrangement that suggests at once the patriarchal family and a Kafka-like riddle state." While this quote comes from Professor Duncan Kennedy of Harvard Law School (in his Legal Education and the Reproduction of Hierarchy) and not one of our student surveys, it is an appropriate summary of the responses dealing with the Socratic Method.

With few exceptions, most students responding appear pleased with the less-stringent Socratic presence in the Indiana law classroom.

The Grading Process. The surveys document a concern over what the professors (and even the law school administration) were not doing about grades: telling students how to get them.

There was a prevailing attitude that professors could do a lot better job explaining to students what they would be evaluated upon. Though the tutorial instructors put together an exam-taking workshop, many students found it inadequate in handling individual professorial idiosyncrasies. No one suggested that grading was too lenient.

The Fellow Students. There is a great potential for bias in this area. Since students were asked specifically about their peers' attitudes, the survey might have drawn some to "look for" a certain type of opinion. Though expecting many of the responses to indicate that law students were a peculiar bunch, never did I expect the vehemence of the answers.

I expected a lot of answers about "the unexpected cooperative attitude of students." About half of the surveys used adjectives like "gunner" and "cutthroat" in describing fellow students.

I expected responses to indicate that the typical law student was detached, afraid to make too many friends, and afraid to help fellow students too much in fear of allowing the fellow student to pass them on the curve. Instead, I received responses indicating that the 1L's, in general, are even more critical of their peers. They feel their peers' attitude is something like, "I'm not very interested in becoming too close to anyone since I have to compete with them for the few A's and B's; then maybe for Law Journal, and finally for interviews and jobs. I can't be friends with people who have the power to take my career away from me."

The "I Love the Law, I Hate Law School" Response. My favorite comment out of all of the surveys said something like this. It beautifully summed up the comments about the professors and the comments about the students.

"I hate law school" is not to be interpreted as "I hate studying case law" or "I should have gone into the Peace Corps (or my Daddy's business) after graduation." Rather it is a response to the perceived inability of the law students to connect with their fellow students effectively. "I hate law school" means exactly that.

There's the adversarial nature of the grading process to be sure but there's also the arbitrary nature of it all. One exam where a few will feast but most will starve causes students to not only have to learn the subject well, but better than their classmates. And if that isn't enough to throw students into an
SURVEY SAYS...

1. Has law school differed from your expectations? If so, how?
   "Not at all as traumatizing as people would lead you to believe." "Socratic Method not pushed vigorously." "Less student interest in subject matter than I'd thought there would be." "Tense at times." "Less 'black-letter' than I'd expected." "The work's not as hard, but the pressure makes up for it." "Law has become like the rest of our society: a rich man's dream and a poor man's nightmare."

2. In your experience, what is the best thing you've found about law school?
   "I am learning how to see things from a different perspective." "The relaxed atmosphere." "Classes that rely on participation." "The teachers and classmates are really interesting." "Attinging to cope with some of the people and professors." "Faculty commitment, quality of faculty." "Great cafeteria." "Law school forces one to think logically." "The people care about how law effects [sic] society and citizens."

3. In your experience, what is the worst thing you've found about law school?
   "The cliques are worse than in high school." "Utter lack of interaction with/help from upperclass students." "Lack of true friendship, but it was the same way during undergrad life so I guess things are not that bad for me." "The library isn't open long enough and the socratic method is killing at times." "Tutorial is a nuisance, but it could be worse." "Law professors getting their kicks out of 'railing' on students (beyond the point where it's an educational experience)." "That there is very little (perhaps even an inverse) correlation between studying hard and getting good grades." "The attitude of my fellow classmates. The 'gunner' theory lives long and dies hard at Indiana. There should be more comraderie and sportsmanship." [One respondent couldn't think of the worst thing about law school and left the space blank].

4. What is your perception of the attitudes of your fellow law students? Are they in general different from your fellow undergraduate students?
   "People less willing to work together and share resources." "More intense and hard-working but also more cynical." "A little devoted to getting drunk [same person who couldn't think of anything wrong with law school]." "Worrying about being competitive takes something away from our education here." "More politically and current issue aware. However, also more competitive and cutthroat." "Less materialistic than I might have expected." "Law students are here because they want to learn, or they leave."

existential crisis, they have to mind-read the professor's expectations. No longer do we have the control over our own lives that we once thought we had.

The one thing that continually scares me is that we think that it's all going to get better after we leave law school when we exchange our Coffee-and-Maalox diets for the dollars-and-sex L.A. Law diet. What if nothing changes? What will we be waiting for then?

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Friedman Reveals Study At Large Law Firm Symposium

By Amy Smith

In 1986, Chief Justice William Rehnquist's Indiana University School of Law dedication address issued a challenge to law schools to shift their studies, "to the broad area of how legal services are delivered."

As a beginning response to that challenge came "Rehnquist Revisited: A Symposium on the Growth of the Large Law Firm and Its Effect on the Legal Profession and Legal Education."

A particularly interesting empirical study was elaborated on by Lawrence M. Friedman, a law professor at Stanford University. Friedman is currently heading a study of law, lawyers, and the legal profession in the Silicon Valley. Specifically, the project looks at the response of the legal community at Palo Alto, California, to the change in demand for particular expertise coinciding with the growth of technological industry in the area.

In Palo Alto in 1950, the general population numbered 50,000 and the legal population was negligible. In 1988, the Palo Alto legal population had increased to over 1,000. Why were so many lawyers attracted to this area?

The technology industry began much as any fledgling industry -- a few people with ideas and some working capital started garage businesses. These entrepreneurs had much engineering and computer knowledge, but they had no legal knowledge. To these small businesses with new unique products, the large firms in surrounding cities could offer nothing over the smaller Palo Alto firms except higher fees. These new groups of lawyers developed general skills and grew along with their clients. The small law firms had contacts in the area and could guide the technological businesspeople in their business growth. Since then, as the technology industry has grown and become more specialized, so have the law firms in the Palo Alto area, thus becoming more like the traditional law firms in other cities.

Eventually, Mr. Friedman would like to compare other industries to find further similarities and differences in the way the legal profession adapts to external environmental demands.

Graduation ceremony finalized

By Andy Ward

There will be a few changes on Graduation Day this year. President Ehrlich, has decided to hold a university-wide ceremony in the stadium at 10:00 a.m. on Saturday, May 7. In the past, there were several ceremonies at different locations from Friday to Sunday.

There will be a platform, designed by well-respected set designer and I.U. faculty member C. David Higgins, at the South end of the field. The President will confer the degrees from this vantage point. University Chancellor Herman B. Wells will also speak briefly. Graduates will be seated facing the platform on the football field. Family and friends will be able to find unrestricted seating in the East and West stands.

The ceremony will finish at Noon. Law school graduates and their families, however, have other activities ahead of them. There will be a luncheon for law students and guests at the I.U. Foundation from Noon until 2:30 p.m. The luncheon tickets are $5.50 per person and can be purchased from Sonja in Room 024.

The Law School Senior Recognition Ceremony will take place at 3:00 p.m. at the I.U. Auditorium. Seating for family and friends will be unrestricted. Dean Bryant Garth will make opening remarks followed by Student Speaker, Doug Ballantine. Next, the Gavel Award will be presented to Professor Joseph Hoffman. The graduates will then be recognized individually by Dean Leonard Fromm.

Following the recognition portion of the ceremony, U.S. Representative Lee Hamilton will deliver the keynote address.
NEWS BRIEFS

PILF Pledging
The Public Interest Law Foundation has nearly reached the halfway point of its $10,000 fundraising drive to support student fellowships. In its first week, the group raised $4,500.

Mooters to Nationals
The moot court team of Kerry Connor and Ian McLean placed 2nd in Carbondale to qualify for the ABA/National Appellate Advocacy Competition to be held in Toronto in August. The team of Robin Jackman and Greg Norrod made it to the semi-finals but were beaten by the eventual winners, Southern Illinois University.

Is there such a thing as a "Free Lunch?"
For any first or second-year students who plan on attending the afternoon graduation ceremony and would be willing to take tickets at the luncheon and to be ushers at the ceremony, the Graduation Committee will provide lunch at the foundation. If you are interested, contact Dean Fromm.

Recorder's Office Losing Veteran
Carol Gillum, Academic Records Assistant in the Recorders Office, is resigning from the Law School Staff June 3. Carol was a faculty secretary for two years, and has been in the Recorders Office for 8 years. She is getting married in June and will accompany her new husband to Marshall, Illinois.

Federalist Society Symposium

By Jeffrey S. Koehlinger
On Saturday, March 26, The Indiana University chapter of the Federalist Society, in conjunction with the Intercollegiate Studies Institute, presented its second symposium of the school year titled "Administrative Law and the Constitution." The chief aim of the symposium was to examine the delegation doctrine and the effect of the rise of the federal bureaucracy on states rights.

The morning session addressed the issue of the delegation doctrine and whether it is consistent with our constitutional scheme of separation of powers for an administrative law body to wield both executive and legislative powers. The morning panel included Mr. Paul Kamenar, the executive legal director of the Washington Legal Foundation (a conservative public interest group), and Professor Julia Lamber, an administrative law professor here at the law school, and Ms. Caroline Kuhl, a former Justice Department deputy attorney general and current member of the Los Angeles firm of Munger Tolles & Olson.

The morning panel was in substantial agreement on a number of issues. First, there was consensus that this is a rapidly expanding area of constitutional litigation. Second, all agreed that there is vast disagreement as to what are the causes of the problem of increased delegation of legislative authority to administrative bodies, as well as to what would be an effective solution. Finally, all agreed that the problem of increased delegation cuts across traditional political lines.

The afternoon session addressed the rise of the federal bureaucracy and the erosion of states rights. The panelists included Mr. Joseph Morris, director of the Office of Liaison Affairs and assistant attorney general at the Justice Department, Professor Donald Gjerdingen, a constitutional and administrative law professor here at the law school, and Mr. Eugene Hickock, a professor at Dickinson College.

Chapter President David Bell commented that he was pleased with the overall quality of the speakers and that the delegation and separation of powers doctrines were good issues for the Federalist Society to examine. Since these issues cut across political lines and really get at federalist ideals, he believes they provide a specific answer to recent criticisms that the chief aim of the Federalist Society is to pursue a politically conservative agenda. Bell also commented that the Indiana chapter was forging some new ground since this is an issue that he Federalist Society has not addressed in the past.

Grades
Moreover, most employers would quickly catch on to the inflated grades.
Bethel said there are still a lot more facts to be gathered before any decision is made.

NEXT ISSUE: The Women's Experience in Law School.
The Exordium

Sports

Fence, field foil 'Feasors

by Andrew Buroker

Another law school team ventured to the East Coast last weekend to compete in a national tournament. However, this was not the ABA, Trial Process, or Moot Court team. It was the Tortfeasor softball team.

This is the first year I.U. has been invited to participate in the University of Virginia National Invitational Law School Softball Tournament. In its 5th year, the tournament attracted 38 teams from 32 law schools. Top teams participating this year included Georgetown, Virginia, Columbia, Penn, Yale, NYU, St. Johns, Cornell, Boston University, George Washington, Washington & Lee, William & Mary, Connecticut, New England, Florida, Villanova, Vanderbilt, Hofstra, and George Mason. Michigan and Ohio State represented the Big Ten with I.U.

I.U.'s team consisted of the two finalists in last fall's S.A.C. law school tournament. As a team, they also won last summer's University intramural tournament. Members include Coach Ben Beringer, John Broden, Andy Buroker, Mike Deam, Mark Dudley, Dave Macknick, Mike Marrese, Pat Miller, Dan McNamara, and Chris van Natta.

Weather played havoc with this year's schedule as torrential rains turned the fields into mud bowls. Said Coach Beringer, "In all my years of softball, I've never had the chance to play in an infield of quicksand."

I.U. faced Michigan first on a soggy, muddy field nearby Thomas Jefferson's home at Monticello. Michigan jumped to a 2-0 lead in the 2nd with strong infield hits. The 'Feasors bounced back in the third to tie it at 2-2 with a double by Beringer and 3 more singles. Despite tremendous defense by left fielder John Broden, Michigan found they could elude Broden's spectacular ice cream cone catches by knocking the ball over the short left field fence. Michigan hit 2 home runs to jump out 4-2 in the 4th.

I.U. came back in the 6th on a triple by Mike Deam to close to within one, but the rally fell short with only one hit in the top of the 7th, and Michigan won 4-3.

I.U. then faced a hitting William & Mary team which found the outfield gaps at key moments. I.U. scored two runs in the 2nd to stay close at 5-2. But the strike zone began escaping I.U. as 3 pitchers walked the game away to William & Mary, 12-2.

I.U. was scheduled to play Connecticut in its third game but torrential rain and hail canceled further Saturday competition. A revamped single elimination schedule was arranged for Sunday, but late game times forced I.U. to depart early to return to Bloomington for oral arguments and perspective's papers.

In the final game, Virginia defeated Boston to capture the title. The 'Feasors, all first years, enjoyed the beautiful scenery at UVa, a school steeped in colonial history and Thomas Jefferson mystique. The team also got to see newly confirmed Supreme Court Justice Anthony Kennedy during his visit to the law school for an ABA meeting.

Unfortunately, the rain-marred tournament was not as successful for I.U. as anticipated, but the 'Feasors hope to return next year to compete again for the National Law School Softball Championship.

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