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Harris Lecture Brings Barbara Babcock to Campus

By Eric Vermeulen

Imagine, if you will, a time when women and minorities were not allowed to enter the legal profession. While this seems absurd by today's standards, we only have to travel back to the late 19th century to find a clause in the California code which said only white males could become lawyers.

However, that was all changed by a “strong-minded” woman from Indiana who was the subject of the 1990 Addison W. Harris Lecture given recently at the law school. The lecture, entitled “From Homemaker to Constitution Maker: Clara Shortridge Foltz and the 1879 California Constitution,” was delivered by Professor Barbara Babcock of Stanford University, and told the story of Clara Foltz’s struggle to gain several basic rights for women.

According to Babcock, Foltz was born in Jasper County, Indiana, in 1849. Her father, Elias Shortridge, was a fiery minister whose success was measured by the great number of souls he was reputed to have saved. In reference to his daughter’s sharp intellect and oratorical skills, Shortridge once said, “I’m sorry that she was not born a boy, for she would have been a great lawyer.” His statement was more prophetic than even he could have guessed.

Following a brief training period, Foltz first worked as a teacher—a job she held for only a year. In 1864 she eloped with Jeremiah Foltz, and soon homemaking became her main occupation. However, when her husband left and went to Oregon (possibly in an effort to desert his family), she had no choice but to round up her children and move westward in hopes of finding him.

The family was eventually reunited, and ended up living in San Jose, California. In order to make some extra money, they took in boarders, one of whom was a lawyer and legislator. This boarder was so impressed by Mrs. Foltz’s intelligence that he gave her the writings of Kent to study, and thereby started her on a long path of legal education.

While she studied law, Foltz became a strong advocate of women’s suffrage, and lectured frequently on the subject. However, when she divorced her husband for desertion and adultery, she found she could not support her five children on the lecture circuit, so she turned to...
Grade Posting a Troublesome Issue
By Leonard D. Fromm

Because of complaints about the public posting of grades last year, no spring grades were posted for general viewing this past summer. By way of review, those complaints were primarily two. First, some thought that posting violated privacy or confidentiality concerns in that comparing exam numbers across courses, especially smaller ones, identified individuals. Second, some thought that the experience of standing at the board to find one’s grade was dehumanizing or, at least, needlessly anxiety provoking.

It was indicated that the alternative methods used for grade notification last summer, i.e. through the mail or by stopping at the Recorder’s Office during limited hours, would be experimental and open to more discussion. Probably the primary question for each student was and is the following: Is the convenience of getting grades quickly and easily off the board a value that outweighs the confidentiality and privacy concerns? Comments received since the summer reflect that student opinion is divided about which method is best. While that might not be surprising, it does not leave a clear message about whether to post grades or not.

In an attempt to see if the desires of both sides can be met, a proposal to allow each student to choose to have grades posted or not is currently on the table. Unless a serious, meritorious objection is raised by November 15, the following method will be used to find out one’s grades for fall 1990 courses:

Grades for all students will be posted by exam number for all courses (except selected courses with small enrollments) unless a student does not want his or her grades posted. Grades for selected courses with small enrollments will be posted at the Recorder’s Office. That student may put just his or her name on each envelope, meaning that the student will pick up the envelope at the Recorder’s Office, or may put a stamp and address on the envelope, and the grade will be sent by mail. Grade distributions and the average grade for each course will be posted on the board as well as included in individual envelopes. A student must submit envelopes by the end of the exam period if he or she does not want grades posted. Grades for selected courses with small enrollments will be picked up in the Recorder’s Office as in the past.

Any comments about the above procedure should be directed to the Student Law Association or me. Assuming that this method will be used this January, we will review it this spring and hopefully decide then on a set method to use in the future.

Oops...

You might have noticed an unusually high number of typographical and layout errors in the September issue of The Exordium. Last month’s issue was the first issue produced using new computer and software systems. Difficulties with the new systems led to several errors and delays in the production schedule. This issue should be much better. We apologize to any authors whose stories were affected. We will not let it happen again.

--Eds.

Prison from pg. 1

Boat Flotilla, some uncharged with any crime, are housed), or the medical facilities. Yet all in all, the majority of the students found the tour of the prison to be an eye-opening, illuminating, and most sobering experience. After the tour, most of the students were convinced that there could be worse places to spend a few years than in law school.

ILAC is planning to sponsor another tour to the penitentiary in Terre Haute for all interested students. The tour is scheduled for mid-January and if possible, the prison officials will make an effort to have the tour at a time that will not conflict with law school classes.
The 9 Live Crew:  
As Paranoid and Schizophrenic as They Wanted to Be  

By Pamela Ayo Yetunde

I never thought it would happen to me, but it did. My friends and former colleagues on the “fringe” of left-wing thought warned me that if I went to law school I would “sell out” to the conservative camp. The 2 Live Crew case amounts to a liberal-radical cause, and I support their “right” to be as nasty as they want to be. What is my crime then? I agree with Robert Bork’s proposition that if “obscenity” can be banned, then flag desecration can be prohibited. I wonder if Bork would agree with my proposition that it is because of the evolution of the “clear and present danger” test in the Sedition Cases during World War I, and the subsequent “use” of that language in Miller v. California, that “obscenity” can be banned today.

I think that Bork would secretly agree with me that the unspoken impetus for the Supreme Court’s interpretation of the 1st Amendment as allowing for the abridgment of the “freedom of speech” is the continuing paranoia that citizens who disseminate “obscene” materials and citizens who desecrate the flag will encourage other citizens to come to disrespect authority. This paranoia has a historical basis at least as far back as the Old Testament, when Moses returned to find his people engaging in immoral behavior. When Moses tried to persuade his people to live by the Word, they rejected him and God’s law. God and Moses, in turn, not only abridged their “freedom of expression,” but punished them with a sentence to everlasting hell.

The paranoia which permeated the Sedition cases has put the Supreme Court justices in a position where they must act as parents patriae on an issue that seems de minimis non curat lex, not only to me, but even to many of my ideological foes. Many of us are asking whether a performance by the 2 Live Crew and the sale of their recording “As Nasty As They Wanna Be” presents any danger of inciting antisocial or immoral behavior, and if so, why should expression encouraging such behavior be prevented in light of the First Amendment.

To many, an antisocial and immoral society is an unpatriotic society, and an unpatriotic society is an insurgent force which, when called to serve its country — say U.S. forces in Saudi Arabia -- may refuse to comply. Is that not obscene? I now ask you, with a warning that you might be either offended or sexually aroused, or both, to read and evaluate this passage for its “obscene” content:

Our Court once so ever Supreme in these United States it seemed an idea had no price in the marketplace of ideas.

Under those goddamn robes they reamed abusing their power, they creamed and it felt real, real nice the Constitution against their device.

The courts use the Miller v. California (1973) (a Supreme Court case where the court carried over the “clear and present danger” language from the Sedition cases) test as a justification for allowing states to ban obscenity:

1) Whether the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interests;

2) Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law (use the state statute of your choice);

3) Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

4) Whether you really give a dam. (I added this one.)

Should a Supreme Court justice ask me for my views, I would suggest a rule to this effect:

Should one prove: 1) they exhibited immoral or antisocial behavior as a result of having been exposed to the particular expression in question; 2) that they did not assume the risk of exposure; 3) that the person who made the expression in question intended to encourage immoral or antisocial behavior with the purpose of rendering the citizen resistant to governmental authority, then the state has a substantial governmental interest in protecting the complainer.

Under Miller, my passage would be considered “obscene” in some communities, but it is also political (unless you still believe the Supreme Court is removed from politics). Here is where the schizophrenia of the Sedition cases justices rears its ugly head. The Supreme Court has held that political speech is of the highest rating on the “Top One Speech Chart,” however political speech loses its value when a “clear and present” danger exists that the ideal will become a reality through violent means (in other words, when it becomes criminal).

Had the courts during the Sedition cases explicitly narrowed their opinions to the issue of speech encouraging violent anarchy only, and added a phrase such as “The freedom of speech is not absolute when that speech is directed toward the violent overthrow of the government, and when the “clear and present danger” of overthrow is ascertainable...and that is all we hold,” then the Supreme Court, and even lower courts, would not be in the quandry it is in today.

I hope the next obscenity case is heard by a jury composed of intelligent people, like the jury in the 2 Live Crew case, and that the jury will feel compelled to give the correct verdict -- acquittal -- but next time for the right reasons. The jury decided that the 2 Live Crew's music did not meet the third part of Miller. I am hard pressed to believe that they found serious literary value in the lyrics or serious artistic value in the rhythm of the raps they heard in court. I suspect the jury acquitted the 2 Live Crew for two reasons:

1) They found the Miller test itself Iacked...
Law & Sports Society Tackles Issues With Unique Twist

By David Sorenson

Imagine advising a pro football team on its contractual obligations to a hold-out superstar running back, or representing an injured athlete bringing a tort claim against a school. For many who are irresistibly drawn to sports, practicing law provides an excellent marriage of occupation and interest. Yet one need not be an ex-athlete or armchair quarterback to become hooked. Increasingly, legal issues in the sports field offer fresh perspectives, new challenges, and tremendous opportunities to all prospective lawyers.

IU is fortunate to have a Law and Sports Society dedicated to furthering students' knowledge and understanding of the law as it affects sports. Now in its second year, the Society has arranged workshops, held panel discussions, and sponsored visiting speakers in furtherance of its goals. However, no such organization would be complete without a social component. The Society also assembles teams for intramural competitions and convenes "special meetings" to watch major sporting events.

Highlighting October was the group's trip to Chicago to attend DePaul University's second annual national conference on legal issues in intercollegiate athletics. Athletic directors, coaches, lawyers for universities, and others joined the IU representatives. Distinguished panelists covered topics such as federal and state regulation of intercollegiate athletics, contractual problems (in dealing with coaches, the media, and other universities), and NCAA rules and enforcement procedures.

The Society opens November with a panel discussion on Tuesday the 6th concerning "Risk Management in Professional Sports." Featured will be Jim Schaaf of Schaaf & Associates, whose sports consulting firm has extensive professional football and baseball experience, particularly with the Kansas City Chiefs of the National Football League.

Knight Anderson, Vice-President of the Society, worked with faculty advisor Linda Sharp to arrange the event. In addition to shedding light on an important sports law topic, Schaaf's appearance highlights the emergence of the sports "boutique" firm. Years ago, the practice of sports law only related to a limited number of issues. "Now," commented Anderson, "the trend is for sports consulting groups and law firms to handle all legal aspects of an athlete's life -- from the sports contract itself to product endorsements and even divorce proceedings."

Emerging sports law practices mirror the phenomenal growth of sports in America and the world. The challenges and opportunities, particularly so near to the sports "mecca" of Indianapolis, will only continue to grow in the near future.

The IU Law and Sports Society is self-funding, and encourages any interested students to become involved. Find out more about the Society at the November 6th panel discussion, or later in November during their annual tee shirt sale.

November Events

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<td>Law School Barn Dance</td>
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<td>PILF Meeting</td>
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<td>Law &amp; Sports Panel</td>
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<td>Wednesday, November 7</td>
<td>Career Placement Office &amp; Sports Panel</td>
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<td>Spring Registration -- 2Ls</td>
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<td>Career Placement Office</td>
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<td>Tuesday, November 13</td>
<td>Women's Caucus Panel Discussion</td>
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<td>on Sexual Harassment</td>
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No Solace for First Year Students

By Kent Zepick

Law has evolved greatly throughout history. Its development reflects the changing needs and standards of society. But from the days of Oliver Wendell Holmes, Jr., to this year’s batch of 1Ls at IU, one truth remains: first years detest the Socratic Method.

The technique intimidates all 1Ls; they suffer from sweaty palms, nervous stomachs, and heart palpitations, and then they wake up for their first class. A minor crisis occurs at the beginning of each hour. The air is thick with dread and anticipation as the student wonders if they will be intellectually mugged and then tossed aside into the academic junkyard. Students look downward, fearing eye contact might encourage the professor to call on them. Escaping class offers no permanent reprieve. The grim reaper eventually claims everyone. The fear is irrational yet primordial. It is the fear of exposure. Classmates will see the student as an intellectual fraud, a phony, an academic imposter whose admissions file passed the admissions committee’s scrutiny only because the secretary spilled coffee on the student’s file, blotting out a substandard LSAT score. Even the grill man at Wendy’s has a higher IQ.

Second years take perverse delight in the first year’s misery, third years offer empty words of encouragement, but professors alone console students by assuring them that law school teaches legal neophytes to “think like a lawyer.” This skill represents the holy grail of law school, the gateway to the professional promised land. It eases the misery of first year and gives it purpose. Or does it?

Surely no one likes legal thinking; it demands adjustment. Social science and humanities majors thought “roadmaps” belonged in Rand McNally and that “IRAC” was the country that invaded Kuwait. Stare decisis and legal doctrine stifle creativity and are nothing less than intellectual censorship.

Engineers and scientists find legal thinking too philosophical. For them, legal opinions resemble quicksand, formless and sloppy. After all, law is about rules; rules involve answers. The Israelites surely did not conduct “balancing tests” after receiving the Ten Commandments.

These different perceptions symbolize the problem with legal thinking. No one agrees what it is; no one knows what it is.

Little wonder. Law school throws a spate of intellectual curveballs at the unwitting first year. Consider legal writing, an obscure dialect of English to be sure. The vocabulary predates Methuselah. The sentences lead students on wild goose chases as they try to retrieve wayward verbs. It’s as if the subject carried a communicable disease. Are you, a naive but perceptive first year student who can surely see the writing on the wall, starting to get the picture?

For the select few who piece together the puzzle of legal thinking, the world may indeed be their oyster. But they pay a price. Legal thinking possesses those who possess it. Peer into the crystal ball. Envision contract lawyers demanding good consideration from their clients for weekly allowance. Picture litigators cross examining befuddled teachers about Johnny’s report card. Imagine romantic overtures such as: “Honey, I’m going to tell you I love you; honey, I’m telling you I love you; honey, I just told you I love you.”

Disaster lurks beyond the home. No less than social standing is at stake. Guilt by association may fail courtroom evidentiary standards, but reputations have been ruined by the mere suggestion of improper associations. The following syllogism is instructive:

I think like a lawyer
Dan Quayle is a lawyer
I think like Dan Quayle

You have been duly warned.

Myths never die easily; law school myths are no different. The truth may be disillusioning, but better to be disillusioned than illusioned. So let law school myths take their place alongside other myths: the Tooth Fairy, the Easter Bunny, and the aesthetic quality of Brooks Brothers’ suits.

If these revelations are too shattering, Wendy’s is looking for a new grill man. Sure, the pay is low but the job offers predictable hours, low stress, and frequent client contact — major considerations for would-be lawyers. Suits are required but they are provided at no cost. The polyester content is a little high, but with their mosaic of colors, they mix and match better than those Brooks Brothers’ bodybags.

Yetunde from pg. 3

serious juridical value (but that was not the issue).
2) They were actually convinced by the defendants’ expert witness that rap with misogynist lyrics is widely accepted as having serious value in African-American culture.

I hope that the jury did not come to their decision based on the defendants’ evidence. Misogyny in “art” exists within most, if not every ethnic group represented in the United States. As we reaffirm the notion that African-Americans should be judged by a subjective standard, on the issue of whether “rape to rap” or “rap to rape” is “obscene,” because the sensibilities of African-Americans are less frail, then we are not talking about constitutional principles at all.

Neither the Miller test nor any other test matters as much as the community’s power to create a preference for other lyrics, or if it wishes, other art forms. Let’s face it honestly. All the paranoia and schizophrenia that led to the banning and regulation of speech did not stop us from becoming “immoral” and “antisocial,” but our nation is still secure, and even more expansionist than ever. The justices of the Sedition cases would be shocked to know that “In God We Trust” Americans desire having our “prurient” interest appealed to, but they would be proud to know that we rarely entertain, let alone speak, of the notion of revolution.
BLSA's Gong Rings Successful

By Jennifer Herrick

Bear's Place barely had enough standing room the afternoon of October 19 when BLSA (Black Law Student Association) held its 10th annual Gong Show involving the law school staff, faculty, and student body.

Coordinated by committee members Dave Stuart, Gerald White, Reggie Campbell, and Eleanor Parker, the show included a variety of acts ranging from hilarious and off-beat performers to obviously talented entertainers. In addition to scheduled acts, active involvement of the audience through door prizes and "stand-up" joke telling provided amusement.

The selected panel of judges also greatly contributed to the success of the show. Serving as judges responsible for rating the acts were Professor Schornhorst, Professor Robel, and Professor Tanford. One of the judges, Professor Robel, even supplied a joke when the emcee, Dave Stuart, referred to one of her "detailed" chalkboard stick drawings depicted in class.

The show ended with one of Dean Fromm's law professor jokes and his accordion accompanied performance of "The Beer Barrel Polka." The Best Single Male award went to Juan Diaz, Best Female to "Pretty, Pert, and Pre-sumptuous," and Best Group to "High Doodle Hoe Down."

Reaction to the event was generally positive. "It's a great way to bring students and faculty together," commented Dean Fromm. From musical presentations to endless Purdue jokes, the offerings were well received by an enthusiastic and supportive audience of students, faculty, staff, and guests.

Harris from pg. 1

the practice of law. Unfortunately, standing in her way was the California code, which said only white males could work as lawyers.

But Foltz was not to be denied. She lobbied for what was known as the "Women Lawyers" bill at the 1878 session of the California legislature and, along with her good friend Laura Gordon, got the measure through. Ironically, she achieved passage by arguing that, if women were allowed to work alongside men in the legal profession, it would enable them to become better wives and mothers.

Foltz returned home to study for the bar exam and, later that same year, became the first woman in California to pass it. Through considerable effort she was finally granted a license to practice. She set up an office in San Francisco and got cases right away due to her popularity and fame as an activist. This was unusual, since suffragettes were generally viewed as odd people at that time, and were often called "strong-minded," which, as Professor Babcock noted, was no compliment in those days. However, as one newspaper reporter wrote of Foltz, "There is nothing indicative of the typical strong-minded woman in her."

Foltz was later involved in a court battle over her right to attend classes at Hastings, the state's oldest law school, and played a major role in the passage of the first California laws to outlaw sex discrimination. Professor Babcock, who was the first woman to teach at Stanford Law School, came upon Foltz's story while looking at a 1970's sex discrimination case that was decided upon one of the anti-discrimination clauses that Foltz had managed to get written into the California Constitution.