

## **ISBA LEGAL EDUCATION CONCLAVE 2010:**

### **The New Normal: How our Profession is Facing the Challenges Posed to its Structures, Values and Diversity by Transformational Changes in the Legal Economy**

September 24-25, 2010  
Indiana University School of Law-Indianapolis

#### **I. Recognition and Appreciation:**

Co-Chairs Chasity Thompson and Gail Peshel thank immediate Past Indiana State Bar Association President Roderick Morgan, President Jeffrey Lind, the ISBA staff, Conclave committee members, including the Conclave report writing team composed of Ted Waggoner, Don Lundberg and Julia Orzeske, Connor Reporting, CourtCall, Indiana Bar Foundation, Indiana University School of Law-Indianapolis, Indiana University Maurer School of Law, Valparaiso University School of Law, the Indiana State Bar Association, the panelists, presenters, scribes and attendees without whose time and commitment this program would not have been possible.

#### **II. Introduction:**

History of Conclave in Indiana

The Conclave movement has a rich history in Indiana. There have been four conclaves held in Indiana. Each was successful in its own way.

Conclave 1 - Bridges between the Bar and the Law Schools, Indiana State Bar Association President Peter Bomberger, Conclave Co-Chairs S. R. “Chic” Born & Norman Lefstein, Date: February 28-March 1, 1997. The first Conclave resulted in a substantial rewrite of the Admission and Discipline Rules, Creation of PLEADS (the ISBA section on Professional Legal Education, Admission and Development), the deletion of three year grace period for CLE for newly admitted attorneys and the establishment of the required Applied Professionalism Program for newly admitted attorneys; and addition of a performance-based section to the Indiana state bar exam. This program was “the beginning of an ongoing dialogue among the bench, bar and academia on issues of related concern on the direction of the profession and the education and development of those in and entering the profession.”

Conclave 2 - Legal Education and the Core Values of the Profession. The second Conclave was held October 18-19, 2002, under the leadership of ISBA President James Bourne, the Conclave Chair was Jeffrey Lind. Among other things, this Conclave resulted in the adoption of the Business Licensee Rule that requires attorneys who are not licensed in Indiana to obtain a Business License to practice law from the Board of Law Examiners and subject themselves to Indiana CLE requirements and to the jurisdiction of the Disciplinary Commission.

Conclave 3 - Transition from Law Student to Lawyer, was the theme of the third Conclave held June 8-9, 2007 under ISBA President Richard Eynon and Conclave Chairs: Deans Susanah Mead (Acting Dean IU Indy) & Lauren Robel (IU Maurer). The event's attendees explored how law schools and the practicing bar can work together to help newly admitted attorneys become successful and ethical practitioners. There was a thorough review of new ABA accreditation guidelines that require law schools to provide meaningful practice opportunities to law students. Changes to Legal Education over the prior 15 years was reviewed in depth to determine if the changes are helping the bench and bar in the actual practice of law. At this conclave the groundwork for Mentor Match was laid. There was significant discussion about the efforts at each law school to improve the quality of the education and the addition of clinical coursework for the law students to better prepare them for the practice of law.

The New Normal: Facing the Challenges. The fourth Conclave and the subject of this report, was held September 24-25, 2010 under ISBA President Roderick Morgan. President Morgan appointed Deans Gail Peshel and Chasity Thompson as co-chairs for this program. President Morgan emphasized to his Conclave Co-Chairs that he wished to examine how diversity is working (or not) in the legal profession and what changes could be made by Conclave participants to make meaningful and lasting changes in their respective areas to help ensure a diverse practice in the future.

1. A Conclave Committee was appointed by the ISBA and Co-Chairs. This Committee was a broad cross-section of the legal practice and included state and appellate judges, practitioners, regulators, paralegals, and educators. The Conclave Committee members are listed in the appendix to this report.
2. The Conclave Committee developed a guest list that represented all areas of practice within the three areas of the Conclave: Judiciary, Bar and the Academy. A special invitation was sent by Chief Justice Shepard to the invited guests (sample invitation in appendix). The purpose of this personal invitation was to ensure that decision and policy makers who could execute the recommendations from the Conclave would be in attendance. Additionally, the program was advertised to attorneys to guarantee that others would have an opportunity to be heard and to participate.
3. The Committee and Co-Chairs determined that given the current economic environment, several areas including diversity demanded the attention of the Conclave. The agenda for the Conclave and the breakout descriptions are included in the appendix to this report.
4. The program was approved by the Indiana Commission for Continuing Legal Education for 5.8 hours of CLE credit, of which 2.5 hours were ethics. 2.5 hours of non-legal subject credit were allowed for the non-substantive topics.

**The Conclave Committee scheduled five breakout sessions designed to discuss challenges to the legal profession, in the context of the current economic environment. A brief summary of each breakout session and the highlights of the days' discussions follow:**

### **Resiliency in the Face of Stress: The Law School and Law Practice Experience**

Speaker: G. Andrew Benjamin, J.D., Ph.D., ABPP

Leader: Donald R. Lundberg

The challenges related to resiliency in the face of lawyer and law student stress was set up by the following statement:

Law School is a stressful experience. In ways both similar and different, so is practicing law. The lawyer's role as agent often calls upon us to absorb much of our clients' case-related emotional baggage. We are sometimes a single turn of events away from seeing our clients change from allies to enemies. We often work in a zero-sum-game environment. Jurisdictional deadlines are constantly pressing. Competition for clients and cases is relentless. We stay too late at the office. The lawyer's role as amoral agents often calls upon us to act in ways that we would not act as independent moral actors. Recent studies suggest that the law school experience itself can be psychologically debilitating. Other studies point to much higher rates of depression and alcoholism in the legal profession than in the general population. Family and other emotional relationships suffer. Occasional lawyer suicides, by lawyers we know, shock us. If this doesn't describe our own experiences, we know it describes other lawyers we know. Is it naïve to think that law students and lawyers can find personal fulfillment in the practice of law or is abandonment of that goal a price we must pay for being lawyers? How can law students and lawyers stay healthy in the face of these stresses? To the extent the stress of practicing law cannot be eliminated, how can it be managed? How can we protect our emotional well-being and sense of moral integrity given the realities of law practice? This session will explore the current thinking on these questions and ways to teach resilience in the face of those stresses so we can have personally fulfilling lives as lawyers.

In an effort to more fully define the problem, the group developed a list of related issues and concerns:

- Substance abuse and mental health problems are over-represented in the legal profession compared to the general population. Scientific studies have demonstrated this. The legal professional has traditionally been in denial about the existence of these problems. This presents a significant barrier to making progress. On the other hand, the lawyer assistance movement has brought increased sensitivity and resources to bear on these problems.

- Research also reveals that entering law students compare favorably to the general population in terms of mental health. In fact, their measures for psychopathological symptoms are better than other students, except depression, which is similar and of low incidence. Research further shows that law students quickly show an increase in mental health problems when compared to other student populations as they progress throughout law school. Problems with a sense of well being, emotional health and healthy motivation and values appear in the first year of law school and persist throughout law school. This progression does not reverse as law students graduate and move into law practice.
- Law school environments and the legal education process appears to have a negative impact on students' mental health and well being. Some factors identified as contributing to this are:
  - Heavy work loads, including very high required levels of reading assignments.
  - Pedagogical techniques that create many occasions for law student to feel embarrassed before their peers. This is sometimes associated with the Socratic method or, more likely, improper implementation or abuse of the Socratic method.
  - An unrelenting competitive environment marked by constant comparison with one's peers.
  - The absence of regular feedback to evaluate students on a frequent basis or to assist them in self-evaluation.
  - Loneliness and social isolation. Social isolation has been cited as a major factor in suicides.
  - High stakes examinations where success or failure is measured by performance on a single examination or other evaluation tool.
  - "Time famine," which is a perception that there is inadequate time to attend to law school obligations in addition to maintaining other interests appropriate to a healthy lifestyle.
  - It is a source of stress that law students accumulate large amounts of debt at a time when they have reduced current earning capacity and uncertainty about future earning capacity.
  - These factors contribute to stress, cynicism and hostility. In addition to being risk factors for mental illness, they lead to physiological changes that can contribute to the development of cardiovascular disease that will manifest itself later, often within 30 years. Studies have shown that hostile and cynical law students are more than four times more likely to die prematurely due to cardiovascular disease than the general population.
  - Law school negates healthy values, like intimacy and a sense of community and replaces them with less healthy values, like motivation by external rewards, status and comparative worth.
  - It substitutes competition and anxiety as motivators for motivation based on personal enjoyment and values.

- Law school habituates students to the frustration of fundamental needs like attention to healthy routines, self-esteem, relatedness, authenticity and security.
- Lawyer mental health does not compare favorably with the general population
  - Women lawyers have a much higher incidence of obsessive-compulsive disorder, anxiety and alcohol problems than the general population of women. Their rate of depression is similar to the general population's.
  - Male lawyers also have much higher incidence of obsessive-compulsive disorder, anxiety and alcohol problems than the men in the general population. Unlike women lawyers, they also have a significantly higher incidence of depression than men generally.
- Lawyer discipline problems are associated with addictions.
  - 27% of discipline problems and 60% of malpractice problems are alcohol related according to one study.
  - Another study concluded that between 50% and 75% of discipline problems are alcohol related.
- The practice of law is stressful. Some contributing factors to the stress of law practice are:
  - Unchallenging legal work, or feeling obligated to work in a non-preferred area of the law, perhaps because of economic considerations rather than actual interest.
  - A disconnect between the amount of time spent on an activity and the expected economic return from that activity.
  - Feeling trapped in representations of clients with whom the lawyer does not feel compatible.

**Recommendation 1:**

Engage in further study of ways to counter-act deterioration of law student mental health and sense of well-being over the course of the law school experience.

Areas of study should include the effectiveness of pedagogical techniques and greater availability of alternative learning environments, including clinical education and client counseling training.

**Actions:**

- Encouragement of clinical and non-traditional learning opportunities that focus on productive lawyer-client relationships.
- Counseling in debt reduction.

- Externships to inspire and teach interpersonal skills.
- Assignment of upper-class mentors to entering students.

**Recommendation 2:**

Make training readily available to practitioners to assist them in addressing factors that contribute to stress in the practice of law.

Addressing stress in the practice of law should take into account the three-fold contributing factors addressed above of unchallenging work, the disconnect between effort and remuneration, and lawyer-client incompatibility. A "Rule of Two" suggests that for law practice to be fulfilling, two of three variables must be met in every representation: (1) The client and lawyer should be able to work well together; (2) The representation should involve the work the lawyer finds interesting or challenging; and (3) Unless the lawyer consciously takes a matter on as a *pro bono* representation, the lawyer should be confident that he or she will be fairly compensated for the representation, consider a major source of this stress results from attorneys working with the “wrong” clients in the “wrong” practice. Informal (mentoring and personal) relationships and formal programs (CLE) should help attorneys actively choose both their area of practice and cases as well as connect with the right clients.

**Actions:**

Continuing education programs should be designed and offered to assist lawyers by providing concrete strategies for applying the discipline to their law practices necessary to achieve an acceptable level of fulfillment and well-being; including techniques for developing and maintaining cooperative and productive relationships with clients, how to come to a clear understanding with the client about the scope of the services to be provided, dealing effectively with difficult clients, self-protectively documenting the work done for the client, and how to structure engagement agreements with clients that optimize constructive lawyer-client relationships. Because these are issues that tie in with lawyer competence and effective client relationships these CLE programs should be eligible for continuing legal education credit.

**Recommendation 3:**

Seminars and other programming should be designed and made available to practitioners to assist them in positive techniques for reducing the stress of law practice.

Whether as a component of continuing legal education programming or under the auspices of the Indiana Judges and Lawyers Assistance Program, strategies for reducing stress should be made readily accessible to lawyers. Some techniques for dealing with stress include:

- Openly addressing health and satisfaction problems as legitimate issues of importance to the bar.
- Engaging in daily periods of reflection.
- Acting in ways that do not conflict with personal values.

- Creating safe environments for lawyers to relate with each other about problems associated with practicing law.
- Combating lawyer isolation to neutralize its damaging effects and activate group empowerment.
- Providing specific training to lawyers in how to identify and do something about professional colleagues who are in distress.

## **Billable Hours or Alternative Fee Arrangements**

Leader: Mary Feldhake,

Panelists: Cathy Treen, Michele Henderson and Tom Davis

### **Recommendation 1:**

Since the 1920's, law firms have increasingly focused on billable hours as the primary and proper measure for billing for services to clients. It is the recommendation of the conclave that this method of billing for value be reconsidered by lawyers and law firms of all sizes, for legal matters of all types.

The history of billable hours is a mystery, but the use of billable hours seems to be related to the industrial time studies of laborers conducted by Frederick Winslow Taylor. Auditors who found such scientific theory appealing tried to apply the same efficiencies to law practice. The theory went that if a project could be handled in 2 hours by firm A or 1½ hours by firm B, assuming the same billable hourly rate, then legal expenses would be lower using firm B.

Analysis and experience show that time is a measurement that does not matter much to clients. Clients, for the most part are not worried about how many hours or minutes a certain project takes so long as they know that the value added to the project by the law firm is greater than the additional cost of having the lawyer involved in the project. Research shows clients want quality results relative to the cost of representation. Time does not measure the important component of value added for the client.

Approximately 20% of business work is currently being handled on an alternative fee arrangement. Insurance defense work is seldom handled other than on an hourly basis, while plaintiffs' personal injury work is predominately handled on a value added or contingent fee basis. 80% of law firms say that alternative fee arrangements are available, but in-house counsel dispute that. In-house counsels admit a reluctance to engage in a change from the system that is in place, although the Corporate Counsel study advocates a need for a change in legal billing.

For large law firms that employ teams of lawyers for certain projects, the measurement of hours is a cost coverage method of billing, with a guaranteed profit priced into each hour for each associate who is billed and collected. Clients are fighting back since much of what the clients perceive to be occurring is training young lawyers on the clients' fees instead of obtaining high quality experienced legal work.

If hourly billing clients were not so often surprised by the final bill, this issue may not be a serious concern.

**Recommendation 2:**

Provide business education to law students and firm leaders to address why pricing matters, and to teach proper methods of establishing prices. Include ethical instruction to meet the extraordinary demands the Rules of Professional Conduct place on lawyers in pricing legal services. Law schools should teach law students needed business practices including how to make a living as a law student and how to effectively bill for services.

Other business entities regularly establish set prices for simple and complex business projects, such as architects, contractors or even car mechanics (although car mechanics have the advantage of a Chilton's Manual). It is troubling that the law, which considers itself one of the original professions, has been unable to commit to performing a set scope of work at a committed price subject to change only when the client or the legal circumstances require a modification. One problem with such a process is the "sticker shock" from giving a quote that fully covers the expected work on a case, and includes some aspects of the potential events involved in a lawsuit.

Lawyers tend to be risk averse, while in business the rule is that rewards tend to follow risk. Alternative Fee Arrangements are designed to transfer the risk component from only the client to both the client and the law firm, in an effort to increase the opportunity for fees to increase. The counter point to increasing the risk of greater fees is the increased risk of lesser fees.

One of the presenters, an insurance company lawyer and in-house counsel who supervises legal fees expressed a preference for flat fees over a series of projects. This supports a "portfolio view" of the legal work done for repeat clients. Risk is minimized if a client pays a reasonable fee for multiple cases, expecting a few to have extraordinary demands, while a few will be easier to resolve than would normally be expected. Many attorneys in smaller firms who have occasional clients with differing type of problems will need to work harder to address fairly pricing the one time event as there are fewer opportunities to financially recover from a misstep.

Obviously changes in scope will require changes in fee arrangements. If a case becomes simple due to an admission of liability or if a case becomes more complex due to the introduction of additional parties or new theories that were unforeseen or generally unforeseeable at the time of the engagement, then a modification of the fee arrangement (some would call a "change order") will be necessary. Of course Rule 1.8 of the Rules of Professional Conduct needs to be addressed in modification of existing fee agreements.

**Recommendation 3:**

Law firms are going to have to take the lead in moving to alternative fee arrangements.

While client calls for different fee arrangements are growing, lawyers are going to have to make alternative fee arrangements possible, and promote them, in order to move to a more professional, potentially value added style of pricing legal services. Until law firms are ready to offer alternative fee arrangements, clients are generally going to be hesitant to engage those law firms that are reluctant to adopt an alternative fee style of billing.

**Recommendation 4:**

Courts need to become familiar with and supportive of pricing legal services in innovative ways.

Courts that regulate the profession will need to be more clear and straight forward in the approval of alternative fee arrangements when the opportunities arise. The inherent tension between the reasonable fee requirement of Rule 1.5 of the RPC and the agreement between an attorney and a client for a lawyer to take on added risk will need to be addressed. The acceptance of risk may result in a fee that appears to be unreasonable to those who are unfamiliar with the risk undertaken. An example is the lawyers who brought the multistate tobacco settlement cases, and recovered a percentage of the recovery for fees as a result. These attorneys often spent years and hundreds of thousands or millions of dollars in expert witness fees, and funding research projects in order to show the dangers of tobacco use. State Attorney Generals willingly agreed to percentage contracts with the attorneys, until the success of the litigation showed that the percentage contracts resulted in large, and sometime extraordinary recoveries by the attorneys who were capable to produce the result, and willing to take the risk on the cases. Courts need to make clear that actual risks followed by reward can be an appropriate agreement between a client and her attorney, so long as the client understands the risks and the scope of the fee.

**Actions:**

1. Law Schools, ISBA Sections, Indiana Continuing Legal Education Forum, and other CLE providers, the Disciplinary Commission, the Bar and lawyers need to engage in and provide quality educational opportunities to learn the following items:
  - a. Why a client would accept an alternative fee arrangement;
  - b. Why a lawyer or law firm would adopt and offer an alternative fee arrangement;
  - c. Which alternative fee arrangements will be most successful in which kinds of cases;
  - d. How courts should address and respond to alternative fees;
  - e. Why alternative fees are often more ethical than hourly fees; and
  - f. How lawyers can discuss alternative fee arrangements with clients in a way that is helpful to the client and to the profession.
2. Seek clarification on issues of Alternative Billing from the Courts and the Disciplinary Commission.
3. Produce Model Fee Agreement Checklists.

4. Encourage Value Pricing educational programs, to build understanding and acceptance across the profession and with clients.
5. Help the Law Schools find effective methods to educate law students about the business of the practice, and the best practices and methods of engaging in proper billing for legal services.
6. Engage business and trade associations to enter into discussions to promote advancements to the use of different fee arrangements.

### **Relevant Projects and Suggested Partners:**

1. Engage in such actions as stated above, and follow up with the educational components to those actions with the educators at the law schools and the continuing education providers.
2. Litigation, Real Property Trust & Estate, Business Law, Corporate Counsel and General Practice, Solo & Small Firm Sections, the Disciplinary Commission, PLEADS, Indiana Docs, Attorney Fee Dispute Committees, ICLEF and other continuing education providers, *Res Gestae*, *Indiana Lawyer*.
3. Non-bar partners could include, if they are willing, the Indiana Chamber of Commerce, major trade associations, major publications such as the *Indianapolis Business Journal*, the *Indianapolis Star*, and business editors from other major cities around the state.

### **Diversity in the Law**

Leaders: Julia Orzeske and Sheila Corcoran

Panelists: Michael Dalrymple, Hon. Calvin Hawkins, Magistrate Jill Marcrum, Camille Wiggins and G. Michael Witte

Moderator: Michael Tolbert

### **Recommendation 1:**

Continue to educate attorneys and others about the value of having a diverse practice and the ethical responsibility to avoid bias and prejudice by words and conduct.

Diversity can mean many things. All involved seem to agree diversity is a desirable goal. But diversity has many different meanings depending on who you are talking to. Attorneys should examine different definitions; the motivations and goals, and various approaches to achieving diversity. We must continue to push past our comfort zones and engage the provocative questions. For example, when does accommodating one person become discrimination against another? Kim Boyle, the keynote speaker, attended this breakout session and was generous with her thoughts about how to proceed.

**“A problem is completely solved when there is no evidence that a problem ever existed, when the noteworthy becomes commonplace.” Kim Boyle**

Initially it was brought to the group's attention that despite efforts to be diverse in establishing the panel for the discussion, no Hispanic attorney was finally included. Exercising discretion, no mention was made that a legal leader of Hispanic heritage had been an early candidate for the keynote, but could not join the conference. The oversight was noted and efforts will be made in the future to include as many racial ethnic groups as are self-identified in the profession in future programming efforts. This discussion illustrated the sensitivity of this topic and the necessity to address diversity concerns at every stage of program planning, including the backup plans that occasionally need to be implemented.

Attorneys and their associations must continue to ask "What can and what must be done to diversify the profession?" Attorneys must always consider their own conduct in light of Rule 8.4 of the Rules of Professional Conduct that provides a baseline for unacceptable behaviors with regard to bias or prejudice.<sup>1</sup>

**Actions:**

The ISBA shall continue to engage in meaningful discussions about diversity and to actively engage in diverse practices in its promotion, hiring and leadership of the bar. ISBA programs and initiatives shall take into account whether planned activities address and advance diversity in the profession.

**Relevant Projects and Suggested Partners:**

Assign diversity as a potential topic to future Conclave planning committees. Request the Board of Governors to institute a diversity plan which asks Sections and program planners to consider whether planned activities can or should include diversity as a focus and whether the speakers and panelists represent and encourage a diverse profession. The Mentor Match program is a place where different cultures can be bridged. Encourage sections that represent diverse populations to have liaisons to substantive areas and to participate in planning section and bar-wide activities. The Indiana Bar Foundation and ICLEF can be encouraged to consider the issues around diversity in their performance of their duties to the profession.

**Recommendation 2:**

Celebrate diversity in the practice.

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<sup>1</sup> Rule 8.4(g) of the Rules of Professional Conduct pronounces it professional misconduct "for a lawyer to engage in conduct, in a professional capacity, manifesting, by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, sexual orientation, age, socioeconomic status, or similar features." There are no comments to assist lawyers in interpretation of this statement. The profession is not hampered in the lack of commentary, but also has not aggressively acted against lawyers who violate the rule until recently. See *In Re: Thomsen*, (Ind. 2005) 837 N.E.2d 1011, and *In Re: McCarthy* (Ind. 2010) 938 N.E.2d 698 for cases that have enforced Rule 8.4. There is a cultural disapproval perceived as existing by many, but not by all who are intended to be protected by this rule.

It is important to promote the visibility of diverse professionals in courts, government, law firms, corporations and law schools. The State Bar Association should examine who are successful in each of these areas and honor those who have created and perpetuated good programs and those who have excelled in those programs.

Trailblazers and “firsts” should be recognized and memorialized in our profession.

**Actions:**

The ISBA shall recognize those attorneys, businesses and firms who have made diversifying the practice a priority. The ISBA should recognize and memorialize trailblazers and their experiences by collecting oral histories of “firsts” and by publishing a trailblazer edition of *Res Gestae*.

**Relevant Projects and Suggested Partners:**

Cast a wide net to government, law firms, corporations and law schools to discover which ones have effective diversity programs. Recognize them along with the attorneys and law students who have thrived in those programs. Honor these entities and individuals in a public way through regular *Res Gestae* features, the ISBA website and an annual awards ceremony. Collect oral histories and memorabilia of our “firsts” and display them prominently, perhaps at an annual ISBA meeting. Invite partnerships with PLEADS; a Conclave Action Follow up Committee; the Written Publications Committee; Women in the Law Committee, Latino Affairs Committee and Diversity Committee.

**Recommendation 3:**

Assist in the continuation of ICLEO and in recognizing its founders and participants for their success.

ICLEO was identified as one of the exceptional programs that have successfully promoted diversity in the practice of law in Indiana. Successful programs include those that practice what they preach with a forceful approach and intentionality.

**“Develop a specific diversity plan that is explicit, overt and with real commitment.” Kim Boyle.**

**Actions:**

The ISBA shall help determine what ICLEO needs are and offer to assist with a longitudinal study (if it has not been done already) of ICLEO fellows who are now in practice. “Where are they today?” Feature this organization in the trailblazer edition of *Res Gestae*.

**Relevant Projects and Suggested Partners:**

PLEADS, Diversity Committee, Latino Affairs Committee and Women in the Law Committee.

**Recommendation 4:**

The hiring of minority clerks shall be facilitated around the state by replicating successful local bar and national programs.

The sinking economy has resulted in fewer formal clerking opportunities, including those established through diversity programs. Despite this, the Evansville Bar has a successful minority clerkship program that brings minority law students to their area over the summer to work in participating law firms. Likewise, the ABA minority judicial clerkship has continued to function and produce opportunities for law students. There is no reason why these programs cannot be replicated, bringing law students to homogenous practice areas and to court work.

**Actions:**

The ISBA shall use Evansville Bar Minority Clerkship and the ABA minority Judicial Clerkship programs as templates to model and uplift clerking opportunities around the state. The ISBA shall publish an article in *Res Gestae* featuring the success of the Evansville Bar Minority Clerkship and the ABA minority judicial clerkship programs.

**Relevant Projects and Partners:**

Put Evansville Bar's forms and guidelines on the ISBA website and offer the forms to local bars to duplicate. Create a partnership with the Evansville Bar to promote program on a statewide basis. Create a program featuring former Evansville Bar Minority Clerks to educate other bars about such a program. Duplicate ABA Minority Judicial Clerkship program on statewide basis.

Assign to PLEADS, Diversity Committee, Women in the Law Committee, Latino Affairs Committee, Federal Judiciary Committee and Appellate Practice Section. The ISBA shall explore asking for assistance from Justice Frank Sullivan, Jr., and G. Michael Witte who both have vast knowledge and experience in this area.

**Recommendation 5:**

The bar must address the "pipeline" issue, the dropout rates of minorities and underserved populations, to ensure there are people to attend college and ultimately law school. Also noted, there are attorneys who are blind, but none known who are deaf.

**Actions:**

Assign a task force to research local needs at the elementary level to assist at risk students and follow them through high school and college.

**Relevant Projects and Suggested Partners:**

PLEADS, Women in the Law Committee, Latino Affairs Committee and Diversity Committee and seek the opportunity for representation among others, such as The Indiana Department of Education. Seek to participate in Career Days at the School for the Deaf and the School for the Blind. Tie into

existing mentoring programs at the high schools to provide further enrichment regarding legal opportunities to the students.

## **Educating Lawyers in the Changing Economy**

Leaders: Seth Lahn and Hannah Buxbaum

Panelists: Mike Blinn, Steve Badger, Fred Cate, Carrie Hagan, Carol Silver and Susan Stuart.

### **Recommendation 1:**

It is appropriate for the law schools to start designing greater flexibility in legal education, by recognizing that the historic model of “one size fits all” used in legal education since the 1870's is no longer feasible and should be reexamined by giving students greater personal responsibility for and greater investment in the specific design of his or her legal education from the earliest stages.

The legal education process has been debated since the formation of law schools, and has been criticized since the case law method led by Harvard Law school in the 1870's and Dean Langdell has become the preeminent method of instruction with lecture and Socratic Method questioning of law students. As the population of law students has changed from historic upper middle class males to a broad mixture of men and women of all ethnic and economic backgrounds, the narrowly focused teaching style has been shown as less effective for the current students.

Law students are approaching law school in greater numbers after choosing to be removed from the high school to college to law school track of years past. Many law schools are encouraging some work experience between the completion of college and matriculation to law school. Many second career students are joining the student body. Part time law school has opened the field to new and exciting educational opportunities. With students of different experiences, the law schools are finding the opportunity to provide greater personal responsibility to be a massive challenge and a great opportunity. The many areas of law that practitioners are undertaking no longer fit a narrow mold, and therefore providing responsibility to students that match their desire for their future impact on the world is making greater sense to law school faculties.

### **Recommendation 2:**

The assurance that every student will have access to at least one major practice oriented experience in law school, whether through clinic, externship, simulation course or pro-bono work, is recommended.

The changes in the legal economy, the massive layoffs of associates and junior partners in large law firms around the country and the world have awakened law school faculty and administrators that times have radically changed for their students. Often heard students' complaints about finishing school, yet still being unprepared to file a law suit or to argue a case, that once were thought met by moot

court opportunities or law journal opportunities are now recognized as legitimate concerns. Law schools have begun and should be encouraged to continue to provide more practice oriented experiences for their students. Working with local firms, clerkships, and clinic experiences which allow students to meet with and have representational responsibility for actual clients is educational and helps to prepare students for future opportunities in the legal field.

Opportunities such as shadowing, externships, clerkships are all effective ways of teaching a student to apply the lessons in a safe and secure environment, while there are opportunities to learn and educators or professionals to help put those lessons learned into the appropriate context. As recognized in recommendation 1 that not all students come from the same path, it is also clear that not all students take the same journey upon leaving law school and such the law schools need to provide tools for a variety of career choices often times other than the choices made by alumni and professors themselves.

### **Recommendation 3:**

Law schools need to continue the focus on changes that are affecting the schools, the students and the field of law.

Law schools should continue to gather the kind of research and scholarship that will educate the whole profession about how students and young lawyers assimilate the professional norms required to be a competent lawyers and how students learn their craft. Is the first year program of teaching college graduates how to “think like a lawyer” still the primary responsibility of the first year of law school? Is the third year of law school being properly used to prepare students to approach the profession as a member ready to make serious contributions to the practice of law? Law faculty and administration need to lead the discussion of the needed changes in the field.

The law schools need to determine whether the Law School Survey of Student Engagement (LSSE) and the Center for the Study of Global Legal Education are compiling accurate and informative data and are interpreting the data in a way that promotes better education, improvement in the curricula and a focus on healthy student expectations, relationships and opportunities in the law.

### **Actions:**

1. The four law schools in Indiana could organize a national scholarly conference on the growing body of data and the growing body of theories about student learning patterns and experiences in order to promote improvements in legal education not only among the four Indiana law schools, but among law schools nationwide.
2. Address educational opportunities after the JD is awarded, in continuing education in specialty fields, mentoring opportunities for students studying

## **Technology in Practice: Friend and Foe for the Indiana Practitioner**

Leader: Mary Feldhake

Panelists: Mark Dinsmore, Erin Durnell, Rebecca Hendricks and Tim Shaw

### **Recommendation 1:**

There should be ample continuing education programs available (whether or not for credit) that are based on attorneys' technological needs assessment with regard to data retention policies, spoliation policies, emerging hardware and software and data base hosting options.

There is a wide range of skills among the users of technology in the legal practice. Use and knowledge of technology is fluid, with some attorneys constantly upgrading their knowledge and skills and others relying completely on staff or old-school methods of data and document management. The ISBA and ICLEF have an opportunity to bridge the gap between these two extremes of practitioners.

### **Actions:**

The ISBA shall survey the practicing bar (with appropriate participation and input from ICLEF) to determine what education is needed about which technologies. Provide that information to ICLEF and the appropriate ISBA Bar Sections as well as the law schools for their preparation of law students.

### **Relevant Projects and Suggested Partners:**

Establish base level competencies for attorneys and with the assistance of academic curriculum designers, construct training modules that will help attorneys attain that level of competence through coursework, mentoring and on the job training. Partners include ICLEF, program planning committees, PLEADS, and law schools.

### **Recommendation 2:**

The ISBA shall establish a presence in the practice as the go-to source for legal technology issues at the base level and beyond.

Technology selections for law firms must be based on a cost/benefit analysis of the right tool. Security is also a concern, taking into consideration who will have access to the data, and from what locations; how it will be stored; whether it can be restored; how long it should be kept and in what form.

Law Practice Management (LPM) tools have the potential to reduce physical space needs by allowing documents to be stored electronically rather than on paper. However, if an attorney is not comfortable with an electronic storage tool, the tendency will be to keep paper documents. With remote access to documents and use of electronic timekeeping, attorneys can access information from almost anywhere. This accessibility can lead to greater attorney efficiency.

Deciding what tools to use and how to use them is a time consuming and daunting process. The ISBA is in the unique position of being able to interface with vendors and encourage pilot projects the results of which may be shared with its membership.

**Actions:**

Host a regular column, write-in, or feature on technology in *Res Gestae* and the ISBA website. Items to be included are electronic discovery issues, new technologies, metadata and how to choose LPM tools. The ISBA shall solicit authors who have expertise on these subjects and who are willing to write.

The ISBA shall consider establishing an LPM Director position, such as other states have, to assist members in finding the legal and technological resources to meet this recommendation.

**Relevant Projects and Suggested Partners:**

Written Publications Committee or editorial staff, LPM Committee, General Practice, Solo and Small Firm Section, and IndianaDocs Committee.

**Recommendation 3:**

Make quality technology vendors available to the Bar and build education opportunities (such as mock trials, depositions, conferences etc.) around those products.

Attorneys shall be aware of evolving technologies such as iPads, smartphones and other devices which make data more mobile and accessible. There are discussions about connectivity through cloud computing, internet enabled devices, VOIP, teleconferencing, and web conferencing which will make the previously impossible easily possible, such as conferences with people who are homebound, as well as to provide access to technology to rural areas.

Attorneys shall continue to review the appropriate use of social media, such as blogs, Facebook, Linked In, Twitter and Podcasts and consider whether those media add business value to their practice.

**Actions:**

Suggest to meeting chair of the Annual Meeting a focus on technology of LPM tools. Solicit vendors using this umbrella topic. Feature an article in *Res Gestae* two months prior to that annual meeting covering products that will be featured at the ISBA meeting.

**Relevant Projects and Suggested Partners:**

ISBA staff, LPM Committee, ISBA Annual Program Chair, Solo/Small Firm planning committee, PLEADS Sections. Perhaps partner with educational delivery department of a local university to see how technology is being used in college and law school settings.

## **FOLLOWUP PLAN FOR THE CONCLAVE**

**“Good thoughts are not any more than good dreams unless they are executed.” Kim Boyle.**

The Conclave Co-Chairs formulated the Action Items, and where appropriate suggest responsible persons (which may include ISBA sections or committees) to assist the Bench, Academy and Bar to implement the ideas created and developed at the Conclave.

These suggested Action Items are referred to ISBA Immediate Past President Roderick Morgan and current President Jeffry Lind for further consideration and to invite the entities most capable to create a lasting impact from the efforts of the Conclave participants and conveners.

### **CONCLUSION**

#### **Information to be used in planning future Conclave programs:**

A narrative of results of evaluation forms, feedback from staff and information from the Conclave committee.

- Consider asking the president-elect to appoint the next conclave committee, and hold the Conclave toward the end of the presidential year.
- Establish a theme from the earliest call of the committee.
- Immediately ask key-note or plenary speakers to participate
- Bring co-chair from various constituencies, bench, bar and academia.
- Maintain the occasional 4-5 year nature of the Conclave.

**Respectfully submitted,  
Conclave Co-Chairs**

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**Chasity Thompson**

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**Gail Peshel**