



**JAMES F. BAILEY, III**

## A TRIBUTE TO PROFESSOR JAMES F. BAILEY, III, AND A REVIEW OF HIS WORK

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When a person holds a joint appointment as a law school librarian and a law school professor, when he is tenured in both the faculty tenure system for the law school and in the Indiana University library system, by what standard is he reviewed and remembered? Rather clearly, two are available. The first measures him as a professor of law. Professor James F. Bailey, III is a meticulous scholar who taught International Law, Legal Bibliography 1 and 2, Law and Development in the Hispanic World, and Lexis and Westlaw. He taught these courses well, and he was highly appraised by his students and his peers. He was an Exchange Scholar from Indiana University to Universidad de Sevilla, in Seville, Spain, and to Eotvos Lorand University of Budapest, Hungary. He graduated from the University of Michigan with a B.A. degree, (after he was admitted to Phi Beta Kappa) and then from the law school at the University of Michigan. He has important and extensive publications in multiple volume sets.

There is more. He is a linguist. He is bilingual in English and Spanish, and he works reasonably well in French, German, Italian, Portuguese, Swedish, Dutch, Norwegian, Danish, and Catalan.

The second reviews his thirty years as the Indiana University School of Law at Indianapolis Law Librarian—perhaps this was first for Professor Bailey, and his law professorship was second, even though each has been an almost total commitment.

Another question appears: how does one review thirty years of work as the law school's librarian?

C. Taylor Fitchett, the director of the University of Virginia Law Library, suggests an historical inquiry. She states that Frances Farmer, her predecessor at Virginia's Law Library,

would not recognize her library [at Virginia] today. A couple of decades ago, when she was librarian, there was no LexisNexis or Westlaw and no Internet—just books that numbered in the thousands rather than the hundreds of thousands. Independent publishers of U.S. legal materials thrived, and most of them actually resided in the United States. Document delivery took weeks instead of minutes . . . .<sup>1</sup>

Like Virginia, three decades ago, this law school's library did not have

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1. C. Taylor Fitchett, *Information Anxiety: Librarians Lend Lawyers a Hand*, VA. LAW., Dec. 2002, at 21. Frances Farmer, Virginia's great law librarian, was a professional friend. Discussions with her were memorable because she was so well-informed, and because she was "old school" or "all Virginia." In remembering her, I am reminded of the statement "To Be A Virginian: Either by Birth, Marriage, Adoption, or even on one's Mother's side, is an Introduction to any State in the Union, a Passport to any Foreign Country, and a Benediction from Above." The author was anonymous, but Frances Farmer was the essence of the statement.

LexisNexis or Westlaw or the Internet. (It did have one gasping photocopy machine that it did not own.) Unlike Virginia, it did not have sufficient books to sustain the day and night school students in their work and study. Much worse, there were no active plans to get them or to remedy these conspicuous deficiencies.

In addition to understanding the law school library in 1974 when Professor Bailey arrived, his evaluation requires awareness of the library's history, the conduct of the University administration when the law school would live or die with its library, the demands, issues, and crises that confronted him upon arrival, and whether there is an appreciation of his work in that context.

Upon his arrival in 1974, major problems threatened the library and the school's future. They were:

1. Between 1944 and 1970, there was no day division in the law school. When Indiana University bought the Indiana Law School in 1944, an outstanding private law school with a day and evening division,<sup>2</sup> it closed the day division. It remained closed until, at the law school faculty's insistence, a day division was opened in 1970. This was two years after the law school reestablished an autonomous administration that was separate from the IU Bloomington law school.

The day division came "online," so to speak, with several major problems. The greatest was the fact that no plans were made for creating a law library that would support the day division. At that time, the library barely sustained classes in the evening division of the law school.

Between 1968 and 1973, before Professor Bailey's arrival, the law school administration did not request a dime's expansion in the law school's library budget. The University administration offered none other than a routine increase, if that, and at that time IUPUI was little more than someone's pipe dream.

Of course the University administration was delighted with the very large increase in tuition fees and charges that the new day division provided. It should have been pleased. In reopening the day division, the law school had by far the largest student enrollment (in total number of students and in enrolled hours

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2. In general, the Indiana Law School's history in Indianapolis runs to the decade of the 1890s. Before that time, it was the law school of DePauw University in Greencastle, Indiana. At DePauw, it seems to have existed from a time that preceded, probably, the Civil War. It was a successful part of DePauw University. However, about 1890, for reasons that remain unclear or not researched, it was closed. The faculty moved that law school from DePauw to Indianapolis. They formed a private corporation and reopened the school. Years later, the Indiana Law School acquired the Benjamin Harrison Law School, also a private law school in Indianapolis, and it was the leading school of law in Indiana. During World War II, its student enrollment dropped to very few. If it had sustained itself until the fall of 1945, there would have been too many students to enroll. The IU Law School in Bloomington did not have more students enrolled in 1944 than the Indiana Law School, but it did have a lifeline to state money. With pockets filled with state-supplied cash, IU saw its chance and stepped in to buy the school. Considering the assets and reputation of the Indiana Law School, IU paid, it seems, about five cents on the dollar. One might speculate whether the Robber Barons ever "grabbed as much on the cheap."

computed on a Full Time Equivalent (FTE) basis) among the four Indiana law schools. It was all gain, no cost, and no commitment: a university president's or other high university administrator's notion of paradise.<sup>3</sup>

2. A policy of the Trustees of Indiana University opened its libraries to the public. This was a grand idea and a policy easily implemented if one were in Monroe County, Indiana, where IU's main campus at that time was located. In that bucolic community, if twenty non-student persons entered the law library in a calendar year, it would have been astonishing. In Indianapolis, however, over fifty lawyer, non-lawyer, and non-student library patrons arrived each day of the week.

Moreover, because the building and the physical library facility were excellent (and beautiful) medical students from the IU School of Medicine soon found their way into a seat in the law library for valuable hours of sound and silent study. They were welcomed, and the almost non-existent law library administrative staff did the best it could to shoulder this additional burden.<sup>4</sup>

In that year, the University's campus chancellor was a medical doctor. He was a former dean of the University's medical school. He understood that students who used a library had to have a seat in which to sit. If the law school library provided a seat for medical students, then that was the purpose of a law library.

3. The Indiana Legislature meets in the State Capitol. It is less than a mile from the law school and its library. It seemed that every staff person who worked in the Legislature needed assistance from the library or its facility and library assets, such as they were. Fortunately, many of those persons were law students who understood the enormous strain that these conditions imposed on a very limited facility.

4. These conditions existed without email, personal computers, CD ROM, LexisNexis, Westlaw, Microsoft or Apple, and all related research instruments.

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3. Some of the details are these: The book budget in Professor Bailey's first year was \$70,000 compared with a book budget today of about one million dollars and an annual expenditure of more than two million for *all* library purposes. To give some perspective on these figures, the 1973 book budget was *half* the book allocation at Wayne State University, from which Professor Bailey came. Even with \$140,000 in Detroit, it was exceedingly difficult to maintain a decent collection, and the meager \$70,000 book budget in Indianapolis was particularly crippling to the law school's programs. As indicated in the text of this review, all informed faculty and the law school administration were especially concerned about this unfortunate situation because the American Bar Association settled upon a full accreditation inspection in the fall of 1974, after postponing the inspection for a year and a half—during which the cumulative conditions in the law library became worse and worse and the peril of disaccreditation grew and grew.

4. The staff was not adequate to provide appropriate support for law school programs. There were three and a half librarians: Susan Taylor, Chris Stevens, Barbara Rainwater (half-time as reference librarian), and Bailey. In addition, there were only four clericals (secretary, serials, loose leaf filing, and U.S. government documents). Funding for staffing was so limited the library had no full-time person to cover the circulation desk; rather, this vital function was staffed only by persons paid from the part-time wages budget.

5. Prior to 1974, the law library possessed nothing in microform.

6. Finally, and not least, the law school confronted an ABA accreditation in 1974, one that had been postponed from 1972-73 during the time when the school's dean and administration were changed. In the law school, one concern was anticipated: the law library could not long sustain the demands placed upon it.<sup>5</sup>

As Professor Bailey and a few others, including important and informed law school alumni, knew, there was no direction to go other than "up." These conditions generated decisions and a determination to exceed minimal standards and to build a great law library.

Immediately, major efforts were made. The following events occurred, and none was related to or caused by the ABA accreditation activity:

A. In 1974, the Indianapolis Foundation made a \$30,000 matching grant to the law library, the first such grant ever given to a public institution. It was clear recognition of the stark financial condition in which the law school and the library found themselves. Almost immediately, this grant was matched through generous giving by law school alumni.

B. The late, great Professor John S. Grimes donated \$10,000 to the library for the purchase of materials on legal philosophy.

C. Professor Bailey made arrangements to receive sets of legal materials collected and distributed gratis by the U.S. Library of Congress. Alumni in the Washington, D.C. area carefully monitored the availability of these materials and, with Professor Bailey, made certain that they were directed to the law library in Indianapolis.

D. West Publishing Company "came to the rescue" through very generous financial terms provided by Mr. Arnold O. Ginnow, its Executive Vice President, and Mr. David Little, its regional manager. The law school, its library, and Indiana University very greatly benefited from them. In addition to being important corporate executives, they were first-class legal scholars, editors, and lawyers.

Within the year, the library expanded its holdings from about five state digests to all forty-eight states available. Legal research projects could now be divided among fifty states, and the intense usage and concomitant deterioration of basic materials were no longer focused on three or four states. Additionally, the library secured all state legal encyclopedias, multi-volume practice sets, jury instructions, official state court reports published for a number of states by West, and hundreds of hornbooks and treatises.

E. Indiana Chief Justice Norman Arterburn, also a first-class legal scholar, judge, and lawyer, arranged with me as the law school's dean to have the entire British Commonwealth Collection of the Indiana Supreme Court Library relocated to the law school's library. This was done in the summer of 1974,

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5. During that ABA accreditation visitation, it seemed to the law school administration and other informed persons that the ABA wanted to establish its own agenda for legal education in Indiana and use the law school's accreditation as an instrument for that objective. As a result, 1974 was merely the beginning of this activity. See *infra* note 7.

adding thereby more than 10,000 volumes to the library collection. Some of these materials were rare and out of print items.

In short, the library's United Kingdom holdings were immeasurably improved, as were the collections for Australia, Canada, Ireland, New Zealand, and South Africa.

F. Additionally, the Indiana Supreme Court determined that the best place for its treatise collection was at the law school. Retaining only the most up-to-date materials needed on its premises, the court sent hundreds of boxes of nineteenth and twentieth century treatises to the law school. The library's research collection was incredibly enriched by thousands of new acquisitions, most of which were legal classics of their time and definitely out-of-print.

At that time, Chief Justice Arterburn explained that for years his court had been a depository of the Supreme Court of the United States. As a result, the U.S. Supreme Court's bound briefs and records were deposited in the IU Law Library in Bloomington, where they remain to this day. If his court could do this for Bloomington law, the chief justice reasoned, it could extend the same treatment to Indianapolis law. Since that time, Indianapolis law has given extraordinary protection to the court's Commonwealth Collection.

G. In 1977, the law library was designated a full depository for United Nations publications, an envied and unique status held by not more than half-a-dozen law school libraries. Depository status provided a great boost for collection growth and provided a solid research collection when, some years later, the *Indiana International and Comparative Law Review* was founded. As the recently established Center for International and Comparative Law begins its work, it will have an excellent international and comparative collection on which to build its future efforts.

Today, the library also possesses a small but impressive rare book collection. The oldest item is a 1577 original of Fitzherbert's *Graunde Abridgement*, published in the reign of Elizabeth I. Other rare titles include laws and constitutions of the Native American peoples (some written in Cherokee or Choctaw with the matching English on facing pages), the Revised Statutes of Indiana published in German for the mass of newly arrived immigrants, legal publications from Hawaii when it was an independent Polynesian kingdom, the ancient Hindu Institutes of Manu, and Eighteenth Century English and Irish legal materials (including reprints of the Domesday Book of William the Conqueror). Today's library's Rare Book Room provides a suitable temperature and humidity controlled home for these wonderful ties to the past.

Except for part (D), all of the major additions that parts (A) through (G) describe cost Indiana University nothing. The cost of purchase of the materials described in part (D) was spread across the next three budget years, without a penny of interest or shipping costs.

Cost-free, major library acquisitions usually cause high university administrators to smile or experience contentment—if their keen sense of envy does not overwhelm them.

H. The library was the first law school library in Indiana to offer Lexis and Westlaw terminals. At an early date, Professor Bailey was a leader in seeing that Lexis and Westlaw classes were made a mandatory part of the regular legal

research and writing program. In those early days of automation, librarians invested countless hours in small-group classes, providing hands-on training in automated legal research. How it has changed since then! The library now offers three state-of-the-art computer class/workrooms; there are data and power outlets at every library carrel; many students own their own laptops; and the competing database owners provide on-site instructors!

I. Additionally, the library was the first law school library in the state to have its own OCLC (library utility consortium) terminal whereby book and serial cataloging was automated. As a result of our early entry into these automated procedures, and the devoted labors and great expertise of our catalog librarians, this library was one of only three or four in the entire nation that was invited to contribute its cataloging to a national data base of the U.S. Library of Congress. In short, this library's high quality work (along with a few other libraries) was recognized and served as a national standard. No other law library in Indiana (and few in the region) has received such an honor.

J. A substantial microform collection was commenced. It has grown to the equivalent of about 200,000 volumes and includes virtually all Congressional publications from the 1700s to date, records and briefs of the U.S. Supreme Court from the beginning, and an extensive civil law collection (France, Spain, Germany, et al.). It has a fine collection in canon law, thousands of recommended treatises, and an extensive collection of international law texts, treaties, and European Community publications.

As a result of these major activities, when the year 1979 closed, the law school's library was the twenty-third largest in the United States, and it was the finest law library collection in the history of Indiana. This was no mean achievement. The person who superintended this effort was Professor James F. Bailey, III.<sup>6</sup>

The six years beginning in 1974 and ending with 1979 were among the most innovative, creative, and productive years in the law school's history.<sup>7</sup> They

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6. In those years, the law school administration gave total support to this development. During that time, there were but three deans. In addition to myself, there were Associate Dean G. Kent Frandsen and Associate Dean Marshall J. Seidman, whose support and assistance were invaluable. They, Professor Bailey, some committed faculty and several alumni, the law school's Board of Visitors, and three University Trustees assured the law school's future.

7. The ABA accreditation process continued from year to year. It reminded me of the great Dickensian novel, *Bleak House*, or that part of *Bleak House* that identified the story of a public wrong: delays in the English Court of Chancery. Those delays are illustrated by the court action of Jarndyce and Jarndyce. About that suit, the author said

[it] drones on. This scarecrow of a suit has, in course of time, become so complicated that no man alive knows what it means. The parties to it understand it least . . . . Innumerable children have been born into the cause; innumerable young people have married into it; innumerable old people have died out of it. Scores of persons have deliriously found themselves made parties in Jarndyce and Jarndyce, without knowing how or why; whole families have inherited legendary hatreds with the suit. The little plaintiff or defendant, who was promised a new rocking-horse when Jarndyce and

brought a law library from essentially nothing into excellence and greatness. They are a tribute to and a review of the work of Professor James F. Bailey, III. This is the measure of the man that remains in my memory. It is a very fond recollection.

### *Anecdotal Moments*

There are several. Some are interesting, some humorous, and some describe the times:

One amusing story from the last thirty years has to do with copy machines in the library. Prior to Professor Bailey's arrival in 1974, the law school faculty had set up a corporation to lease and maintain a copy machine in the library. (That's how short funding really was!) Actual copying was maddeningly slow, and paper copies were so glossy one could not write on them. But copies were made. Once expenses were paid, proceeds from the copy machine were set aside for student scholarships. Now, nearly thirty years later, the library has several dozen state-of-the-art copy machines, some of which copy simultaneously on both sides, collate pages, print on colored paper if desired, and create a final product in mere seconds.

In this true story, two things seem to appear: a faculty that considered students first, which is always a happy moment, and the evolution of photocopy machines.

The library has had its disconcerting events. One remembers a time when library staff came running with the tale that someone had climbed over the second floor balcony railing and was tottering inches from a serious fall, singing and laughing. Security was called. The fellow was pulled back. It was discovered that, because he had not taken his insulin that morning, he was suffering from diabetic shock.

The library also had its cast of characters. Another library story concerned a person who seemed to work as a lawyer, on and off in the Lawyers' Room, during almost all of the hours the library was open. This continued for a rather

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Jarndyce should be settled, has grown up, possessed himself of a real horse, and trotted away into the other world. Fair wards of court have faded into mothers and grandmothers; . . . there are not three Jarndyces left upon the earth perhaps; . . . but Jarndyce and Jarndyce still drags its dreary length before the court, perennially hopeless.

CHARLES DICKENS, BLEAK HOUSE 4 (P. F. Collier & Sons, New York, 1911).

And so it seemed with the ABA's inspection. On a daily basis, it consumed time, energy, and money until 1978. Then it summarily ended with a letter of full accreditation. This followed a sincere and effusive apology from the chairman of the inspectors' superintending committee, who was also a federal district judge in Chicago. The apology was extended in a personal conversation in his office in the Dirksen Building in Chicago after all facts and circumstances were made known to him.

The creation of a great law library was not the result of the ABA's activity; it occurred in spite of it.



long time. He was well kempt, dressed in clean shirt and blue jeans, and carried a lawyer's black briefcase. No one doubted he was an attorney as he greeted people upon entry to the library, inhabited the Lawyers' Room for significant periods of time, and used the local-only telephone for what appeared to be business calls. But he was role-playing, for reasons that were never known. He was caught in his masquerade when he approached Professor Bailey with the story that a friend of his produced movies and wanted to use the law school as a setting. Somewhat interested at first, Jim became more and more suspicious as the tale became more elaborate and involved. When the library checked with the campus police, it turned out that the man was a well known street person who was already banned from other IUPUI buildings.

Last but not the least, Professor Bailey was deeply involved in keeping the law library independent and responsible directly to the law school dean and faculty. Because of an earlier experience in Detroit, Jim at once identified a bureaucratic power play to remove much of the law school's control over the library and transfer it to a Bloomington locus. He brought the matter immediately to my attention.

Together we fended off the attempt to merge the law library's administration into a system where lines of authority ran not to the law school dean but rather to an administrator located on the Bloomington campus. He was a man not known to either of us. However, his feelings reached such a sore point that word came back to Jim and me that this non-law administrator was going "to punch us in the face if he ever ran into us, and we had better stay out of Bloomington."

Neither of us was "punched out." Each of us went to Bloomington when regular university business required. However, for some reason, one had a feeling that the movie classics *Shane* or *High Noon* should have been reintroduced for showing on the Bloomington campus, or that they should have been made available to that Director of the IU Libraries.