

Indiana Law Review

Volume 39

2006

Number 3

PROGRAM ON LAW AND STATE GOVERNMENT FELLOWSHIP SYMPOSIUM

Integrity in Public Service: Living Up to the Public Trust?

INTRODUCTION: THE ROLE OF LAW, LAWMAKERS, AND CITIZENS IN ESTABLISHING PUBLIC TRUST

CYNTHIA A. BAKER*

Designed to challenge us to a better understanding of the relationship between law and public integrity, the 2005 Program on Law and State Government Fellowship Symposium brought together a stellar faculty from around the state and nation to discuss how laws, lawmakers, and citizens shape the ethical standards and behavior of public officials and employees. The fifth fellowship event since the Program on Law and State Government's inception in 1997, *Integrity in Public Service: Living Up to the Public Trust?*, embodied the Program's mission of fostering the study and research of critical legal issues facing state governments.¹ A vital component of the Program on Law and State Government, the Fellowships offer an extracurricular academic opportunity for students interested in contributing to the contemporary scholarship of law and state government.² Like the symposium, the articles and remarks collected in this review result from the ideas, research, and work of the 2005 Program on Law and State Government Fellows, Michael Montagano³ and Shariq Siddiqui.⁴

* Clinical Associate Professor of Law and Director, Program on Law and State Government, Indiana University School of Law—Indianapolis. B.A., *with distinction*, 1998, Valparaiso University; J.D., *magna cum laude*, 1991, Valparaiso University School of Law.

1. The Program on Law and State Government Fellowship Symposium, *Integrity in Public Service: Living Up to the Public Trust?*, was held on September 29, 2005, in the Wynne Courtroom of Indiana University School of Law—Indianapolis.

2. Awarded on a competitive basis, the Program on Law and State Government Fellowships allow two students the opportunity to work together for one year exploring a topic of their choice concerning a critical legal issue facing state governments in exchange for a tuition credit of up to \$5000. Working under the guidance of the Director of the Program on Law and State Government, Fellowship responsibilities include hosting an academic event and collaborating to write an academic paper on the Fellowship topic.

3. Program on Law and State Government Fellow, 2005. J.D. Candidate, 2006, Indiana University School of Law—Indianapolis; B.A., 2003, DePauw University.

4. Program on Law and State Government Fellow, 2005. Ph.D. Candidate, 2007, Indiana University; J.D., 2005, Indiana University School of Law—Indianapolis; M.A., 2004, Indiana University; B.A., *with distinction*, 1996, University of Indianapolis.

The study of the value judgments that imbue the term “integrity” with individual and communal meaning is neither discrete nor easily understood. Integrity remains something that all of us would like to have, not only in our public officials and leaders, but in every one of our concentric circles of communities, public and private.⁵ Some statistics and scholarly research shared at the symposium indicate that public mistrust has replaced the public trust. What do these statistics mean, and what is the role of law in response?

Is a perception of a degradation of public trust a function of an increase in poor behavior (self dealing, using public office for private gain, dishonesty) on the part of our public servants? Or is it a function of the larger fabric of mistrust of institutions, public and private, that has filled the news pages, radio waves, and web-pages in the last ten years? Is it, perhaps, a function of the tremendous amount of information and the speed with which we learn information about leaders that fail to “live up the public trust”? Or is the degradation of public trust, real or perceived, a counterintuitive result of the explosion of ethics laws passed by state and local governments in the past twenty years? Regardless of the difficulty of measuring the public’s trust in government, we, as lawyers and as citizens of a democracy, have a vested interest in understanding the value of that trust and understanding how our laws and our governments affect that trust.

The 2005 Fellowship Symposium began with Program on Law and State Government Fellow Michael Montagano’s remarks regarding state legislative ethics. Noting that, “high moral and ethical standards among State Senators are essential to the conduct of free government,”⁶ Mr. Montagano explored the body of laws, rules, and cultural norms that shapes how elected officials address ethical dilemmas inherent in a representative democracy, paying specific attention to how those dilemmas may be exacerbated in a state, like Indiana, with a part-time citizen legislature.

Ms. Roberta Baskin, the recipient of over seventy journalism awards during her accomplished career as an investigative journalist and currently serving as the Executive Director of The Center for Public Integrity, delivered the morning address. She examined the role of citizens and the media in picking up where law sometimes cannot reach, that is, into that thick set of social norms that distinguishes right from wrong within discrete cultures. Ms. Baskin discussed The Center for Public Integrity’s State Projects’ conclusion that disclosure does not lead to accountability without accessibility and context. Undoubtedly, the initiative continues to raise citizen awareness concerning the wealth and power of those we elect to make our laws at the state government level. In her singularly influential role of watching the watchdogs, Ms. Baskin addressed the challenges facing the media and citizens in interpreting the increasingly polarized public discourse on what type of public integrity we expect from our elected leaders. Ms. Baskin’s contributions to this discourse reminded symposium attendees that, as citizens within a representative democracy, Americans cannot

5. See MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2003).

6. IND. SENATE, STANDING RULES AND ORDERS 87 (2005), available at <http://www.in.gov/legislative/session/senate1.pdf>.

accept “not doing anything illegal” or “but, I meant well” as rationales for unethical behavior.

The morning panel discussion entitled, *Models and Directions for Legislative Ethics in Indiana*, featured Edward D. Feigenbaum,⁷ Peggy Kerns,⁸ and Indiana State Senator J. Murray Clark.⁹ The panel addressed the importance of matching citizen expectations of public integrity with a combination of rules of conduct, ethics education, and disclosure laws. Steve Schultz, General Counsel to the Governor of Indiana, delivered the luncheon address and compared the governmental and corporate responses to doing business in the age of transparency. Mr. Schultz noted that in the corporate and government worlds, earning the public trust depends on transparency. In discussing the challenges concomitant to today’s rising expectations and unprecedented access to public information, Mr. Schultz described several executive orders, laws, and policies passed in 2005 to make Indiana a national model for state government ethics.

The afternoon session began with Program on Law and State Government Fellow Shariq Siddiqui’s presentation of his paper, *State Government Design and Incentives for Local Codes of Ethics*. Addressing ethics laws applicable to paid and unpaid government employees and appointed, rather than elected, officials, Mr. Siddiqui’s presentation reminded symposium attendees that our struggle for integrity in public service is not a new one. Specifically, Mr. Siddiqui retold a story from Plutarch’s history about Pericles’ sculpture of Pallas Athena. Pericles, the ruler of Athens, commissioned Phideas to sculpt the work for the Parthenon, a public building. According to Plutarch’s history, the sculptor’s adornment of the goddess’s shield with images of himself and his patron resulted in the artist being tried, convicted, and imprisoned for abusing the public trust. In contrast to the retribution dealt to sculptor Phideas so long ago, Mr. Siddiqui suggested that attainment of public trust in today’s world requires understandable codes of ethics, meaningful, accessible disclosure of information concerning conflicts of interest, and consistent enforcement of breaches of unethical conduct.

The afternoon address by Dean Patricia Salkin¹⁰ presented contradictions in prevailing case law regarding government lawyer-client confidentiality. Dean Salkin’s address, *Confidential Conversations Between Government Lawyers and Their Clients: Fact or Fiction?*, brought symposium attendees up to date on recent legal developments concerning judicial recognition of the attorney-client privilege. Then, she shared her scholarship about how government attorneys can manage their work, and their client’s confidences, in this nuanced milieu of changing interpretations of professional responsibility for the government attorney.

7. Executive Director, INGroup.

8. Director, Center for Ethics in Government at the National Conference of State Legislatures and former Representative, Colorado General Assembly.

9. Senator to the Indiana General Assembly (1994-2006) and former Chairperson, Indiana Senate Ethics Committee (2000-04).

10. Associate Dean, Professor of Law, and Director, Government Law Center, Albany Law School.

The symposium's second panel discussion, *Government Models of Integrity: Codes of Ethics Explored*, featured Professor Edward Charbonneau,¹¹ Carla Miller,¹² David Maidenbergh,¹³ and Dean Patricia Salkin. The panelists shared their experiences of various approaches to achieving expectations, codes, and standards of public integrity from Central Indiana; Jacksonville, Florida; Albany, New York; and Northwest Indiana. In doing so, the panel addressed the strengths and weaknesses of each component of achieving public integrity: setting aspirational goals, establishing definitions for ethics and public integrity, creating workable ethics law at the state and local levels, education, and providing meaningful enforcement.

The 2005 Fellowship symposium confronted a vast array of ideas, legal approaches, philosophies, laws, and government models that were integral to many of my conversations with Program on Law and State Government Fellows since December 2004. As the custodian of the Program on Law and State Government Fellowship experience at Indiana University—Indianapolis, it is my sincere hope that the articles and remarks presented in this volume invite readers to contemplate the question around which this symposium was created: What are the roles of lawyers, lawmakers, and citizens in establishing the public trust? The Program on Law and State Government thanks the Indiana Law Review for continuing the dialogue between state governments and the academic community by including the symposium pieces in this issue. The Program on Law and State Government also thanks all of those who made scholarly contributions to the 2005 Symposium, especially those whose articles are published here. Finally, the Program on Law and State Government celebrates the work of the 2005 Fellows, Michael Montagano and Shariq Siddiqui.

Cynthia A. Baker
Director, Program on Law and State Government
October 2005

11. Professor of Political Science, Indiana University Northwest.

12. Representative, Council on Governmental Ethics Law and Ethics Officer, City of Jacksonville, Florida.

13. Former Director, Indiana State Ethics Commission.