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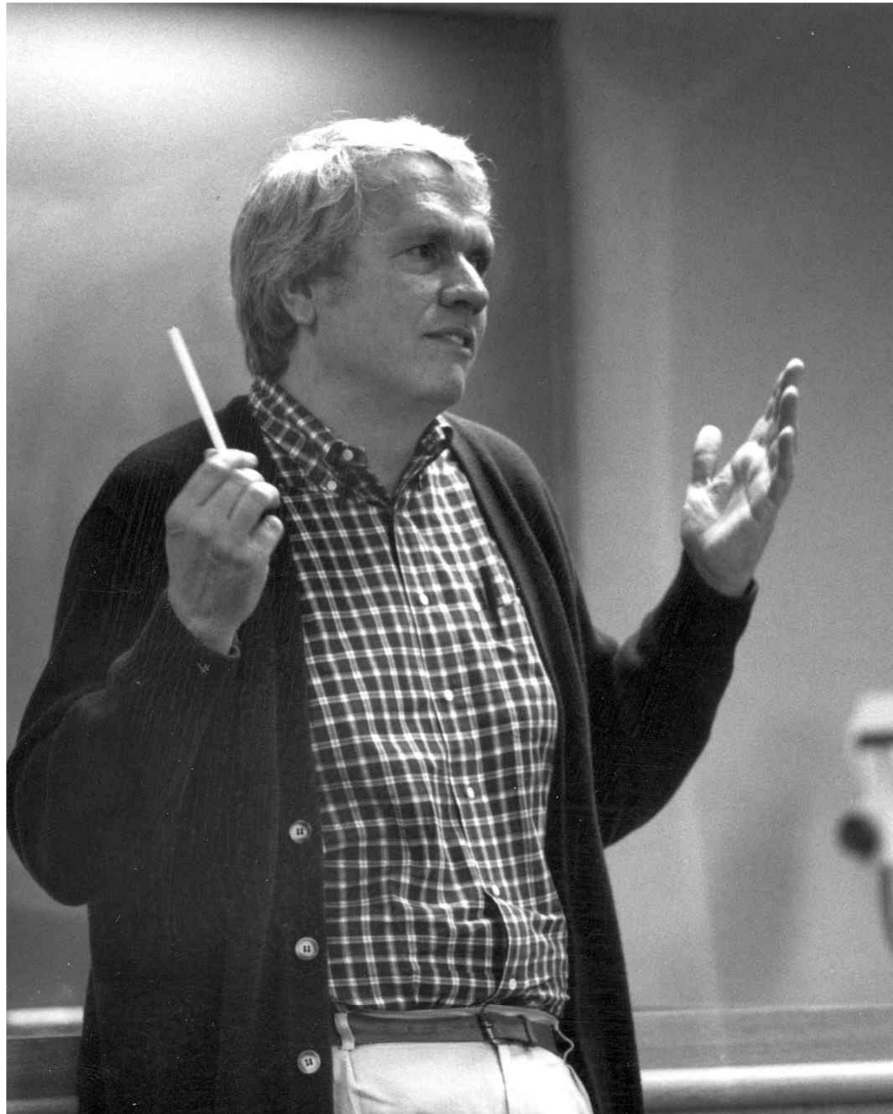
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A Tribute to Patrick Baude

The Board of Editors dedicates Volume 86 of the *Indiana Law Journal* to the memory of Patrick Baude, who taught at the School of Law from August 1968 until his death in January 2011, and who served for many years as the faculty advisor for the *Indiana Law Journal*. As evidenced below, Professor Baude's influence spread far beyond the bounds of his classroom walls, and his presence in the Law School's community will be sorely missed.

WITH GRATITUDE FOR PATRICK BAUDE:
DISCERNING SCHOLAR AND ENERGIZING TEACHER

RANDALL T. SHEPARD*

The monumentality of Pat Baude's decades of contributions to his students, to the legal academy, and more generally to the people of Indiana makes it seem almost impossible that he could no longer be with us. And writing about the scale of his many gifts to us leaves me wondering where even to begin.

I am confident that other writers will brighten these pages with accolades about the impact Pat Baude had on generations of law students, the guidance he provided as faculty advisor for this journal, his service to our profession in positions such as president of the Board of Law Examiners, and his advocacy at the Supreme Court of the United States.¹ Knowing how well those stories and others will be told, I will focus on Pat's scholarly contribution to the thinking on state constitutions, particularly the Indiana Constitution, and on his effort to help make Indiana's judiciary and legal history more accessible to the public whom our profession serves.

In an age when most academics find federal jurisprudence irresistibly alluring, Baude often lent his clear thinking and readable style to the pedagogy of state constitutional law. His dedication to the subject became clear to me when I encountered him at a panel discussion the law school organized on this very topic (most likely at Pat's instigation). In 1986, he published an article in this journal posing the question, *Is There Independent Life in the Indiana Constitution?*² It was an ambitious discussion in which Baude brought to light multiple areas where the Indiana Constitution provides more protection than the federal Constitution or has presaged a subsequent federal constitutional development. What Pat wrote was, one might even say, a legal homily to one of the organic documents that govern the American experiment in self-government.

Baude continued to write on this state's constitution, and in 1993 when the Indiana Supreme Court laid out a comprehensive doctrinal framework for our freedom of expression provision through the decision in *Price v. State*,³ Baude

* Chief Justice of Indiana. A.B., 1969, Princeton University; J.D., 1972, Yale Law School; LL.M., 1995, University of Virginia School of Law.

1. *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991).

2. Patrick Baude, *Is There Independent Life in the Indiana Constitution?*, 62 *IND. L.J.* 263 (1986).

3. 622 N.E.2d 954 (Ind. 1993).

asked, *Has the Indiana Constitution Found Its Epic?*⁴ He wrote the article, Pat declared, “to convince you to read the opinion.”⁵ And he went on to expound the virtues of the majority and dissenting opinions in *Price*, arguing that Indiana constitutional law warranted a higher rank in American legal discourse.

Pat Baude also inspired and advanced a multitude of projects to make Indiana’s judiciary and its judicial history more accessible to the public. He penned an essay entitled *Indiana’s Constitution in a Nation of Constitutions* for our volume on *The History of Indiana Law*.⁶ Baude described the rich history of our original 1816 Constitution and the subsequent 1851 Constitution and then took the reader on an engaging tour of the document. The Legal History Series of the Indiana Supreme Court reprinted this essay as a stand-alone pamphlet, and citizens by the thousands now take these home after visits at the Indiana State House and at Corydon, Indiana, where our original Constitution was written.

Pat Baude’s contributions to the canon in the field of Indiana Legal History also included the biographies of Indiana Supreme Court Justices James H. Jordan and Leander J. Monks, which he researched and wrote for the book *Justices of the Indiana Supreme Court*.⁷ The crisply printed volumes that comprised the fruits of this final effort arrived from the printer just before his death.

Patrick Baude’s scholarship on state constitutional issues (and of course, his legendary insights into the federal side of this topic) and his many gifts to public understanding of the rule of law have made our society a more decent place. Our own assignment will be, somehow, to build on what he has given us. We owe him nothing less.

4. Patrick Baude, *Has the Indiana Constitution Found Its Epic?*, 69 IND. L.J. 849 (1994).

5. *Id.* at 850.

6. Patrick Baude, *Indiana’s Constitution in a Nation of Constitutions*, in THE HISTORY OF INDIANA LAW 21 (David J. Bodenhamer & Randall T. Shepard eds., 2006).

7. Patrick L. Baude, *James H. Jordan*, in JUSTICES OF THE INDIANA SUPREME COURT 179 (Linda C. Gugin & James E. St. Clair eds., 2010); Patrick L. Baude, *Leander J. Monks*, in JUSTICES OF THE INDIANA SUPREME COURT 183 (Linda C. Gugin & James E. St. Clair eds., 2010).

A VAST LIGHT

LAUREN ROBEL*

*Oui, je sais qu'au lointain de cette nuit, la Terre
Jette d'un grand éclat l'insolite mystère*

- Stéphane Mallarmé
Quand l'ombre menaçait . . .

My inbox brimmed and overflowed with notes from stricken alumni scattered across the years and the planet. All contained small variations on the theme of palpable loss writ large, for a teacher many had not seen in years or even decades. I watched as the subject line, “The Best Teacher I Ever Had,” duplicated itself again and again across the screen. I understood. Pat Baude was the best teacher *I* ever had.

How do some teachers summon this certain sense of gratitude and impact across the years? Some are unfailingly kind and generous at a time when kindness and generosity leave a particular mark.¹ Some consistently and gently set uncompromisingly high standards. Some embody a set of inspirational professional values that lead their students to understand the social importance of the life’s work they are choosing.² Pat was all of that.

What was most distinctive about Pat as a teacher, though, was the quality of his mind.

It was magnificent.

Pat’s mind was beautiful in its brilliance and its nobility. Both words come to English from Old French, like Pat himself. Brilliance describes exactly the way his mind made diamonds of coal, and then pierced them with light, creating a dazzling spectrum of color. He took the visible and ordinary and showed—indeed, created—the invisible and extraordinary. Nobility of mind begins to suggest the capaciousness and loftiness of Pat’s intellect, but I am thinking as well of the noble metals, so-called because of their rarity and incorruptibility. Pat’s mind was a brilliant set in gold, the most noble of the metals.

In his best novel, Henry Fielding wrote, “The jeweller knows the finest brilliant requires a foil.”³ So were we to Pat. What was most distinctive about Pat’s teaching was how he revealed that mind to us in the course of his classes. In a quiet way, with humor and humility, without flashiness—as he undoubtedly understood that he needed to keep from blinding the rest of us with the enormity of his power to

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1. One graduate wrote, “His humanity was as huge as his intellect.”

2. One former student wrote from New Zealand, “Pat was responsible for instilling in me a strong dislike of bullies and a desire to help underdogs. This led to a career suing banks and a strong interest in helping the Tibetan people. I wonder how many other students’ lives were touched by Pat in this way without them being aware of it?” I was struck by how many of the graduates who wrote had gone into public service.

3. HENRY FIELDING, *THE HISTORY OF TOM JONES, A FOUNDLING* 137 (Wordsworth Classics 1992) (1749).

illuminate—he demonstrated how a brilliant mind unravels, unspools, scrutinizes, frames, reframes, and reassembles, the hardest legal problems he could think to present to us.

As a student, I was dazzled. As one of his former students said, “I felt I was sitting at the feet of Aristotle.” He made the simple complex—indeed, maddeningly difficult. His gift was not to make complex subjects comprehensible. Instead, it was to make students appreciate and relish complexity, difficulty, and nuance. He did not organize taxonomies. Rather, he thought, beautifully and out loud, and he invited students to do the same. I can tell you that some of our school’s most distinguished alumni credit their success to this simple requirement in Pat Baude’s classes.

It was important in Pat’s classes to put your pen down and listen, carefully. Because what first appeared alchemical became . . . possible. It was possible to learn to turn an idea not just by halves, but by slivers: slightly, subtly, supplely. If you engaged with him, and listened, he showed you how—not as well as he could, of course, but well enough to start a professional life, to begin to understand the meaning of being responsible for the lives of others, and to grasp what mastery would look like, if you kept at it for the rest of your days. This is why Pat was not simply brilliant, but a brilliant teacher. This is what his students owed to him. This is why gratitude and love for this man poured from the corners of the earth into my email on that sad day in January, when the words repeated themselves again and again and again, his students bearing witness to his profound legacy.

PATRICK L. BAUDE: COLLEAGUE, MENTOR, AND FRIEND

DANIEL O. CONKLE*

Not so long ago, Pat Baude walked into the faculty lounge, joining a group of colleagues for lunch. Someone turned to him and said, “Pat, we had a question the other day that we thought you could answer.” If the question had been for anyone else, I might have guessed the topic. Not so for Pat. The question could have been about constitutional law, his main area of academic expertise. But it could have been about politics, or world affairs, or history, or wine, or indeed almost anything. I have never known anyone who was more widely read or who had a more inquisitive mind. Nor anyone who shared his wisdom with greater generosity, humility, or wit.

Pat and I had a mutual interest in constitutional law, and I’ll always remember our give-and-take on constitutional issues great and small. Actually, I’ll remember quite a bit more “taking” than “giving.” When I arrived at the law school in 1983, I was a novice in the field. By contrast, Pat was already a master. By a stroke of good fortune, I was assigned Room 331 for my office, giving me ready access to Pat, who was just next door in Room 329. He welcomed my questions from the very beginning, and he continued to do so for more than a quarter century. I never stopped asking.

Pat had an incredible memory, and his encyclopedic knowledge extended to virtually every corner of constitutional law. He knew the history of the Constitution and the nuances of the Supreme Court’s contemporary constitutional doctrine. He was an expert in state constitutional law as well, especially that of Indiana. His knowledge of judicial decisions was striking, often extending well beyond the four corners of the opinions as written.

Let me offer but one example of Pat’s knowledge and wit. Some fifteen years ago, a former student, Scott Idleman (by then himself teaching law at Marquette), sent Pat and me bottles of barbecue sauce from Ollie’s Barbecue in Birmingham, Alabama. Back in 1964, Ollie’s refused to serve blacks in its family-owned restaurant, a practice that gave rise to the Supreme Court’s famous decision in *Katzenbach v. McClung*.¹ Offering a sweeping interpretation of Congress’s power to regulate interstate commerce, the Court ruled that the Civil Rights Act of 1964 properly extended to Ollie’s.² Pat was grateful for Scott’s gift, but he felt compelled to point out, by e-mail, that the sauce was “not constitutionally authentic.” He explained:

At the time of the Supreme Court decision, Ollie’s Barbecue was located on a fairly narrow road across the mountain from downtown Birmingham. This modern sauce, however, comes from a new facility located right by the side of the interstate highway (though there is no exit at that exact point).

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1. 379 U.S. 294 (1964).

2. *See id.* at 298–305.

Because it came from the new location, Pat wrote, he was “able to find enough in your sauce to turn the color of legal litmus paper (at least!), but that does not really validate the original decision.” I keep this e-mail with my teaching notes, and there it will remain, giving me a reason to smile and to think of Pat every time I teach the Commerce Clause.

A few years ago, as he anticipated semi-retirement, Pat moved to a new office, on the other end of the third floor. But I will always remember him as my neighbor, in the best sense of the word. He was an ever-present teaching and research consultant. He was a delightful lunchtime companion and a scintillating conversationalist. But more than anything, he was a trusted colleague, mentor, and friend. I treasure his memory, and I will miss him dearly.

REMEMBERING PATRICK BAUDE

LAURA J. COOPER *

When I arrived at the law school, in the fall of 1971, I was part of an unusual class. Many of the students were older, having been out of school for a few years. Men had served in the military during the Vietnam War or done things to avoid serving in the War. Women, just awakening to the notion that a career in the law could be truly open to them, came to law school from other occupations or from raising children. We were eager to return to an academic life, but, after years away from college, some of us were unsure of our ability to reengage our minds in the demanding intellectual challenges of law school. Patrick Baude was the ideal teacher for such a class. Although he was himself relatively new as a professor, he was already a master of the classroom. He brought to each class infectious enthusiasm for the subject matter. His mind was fast and smart, but he didn't use it to show off or intimidate. Instead, with a twinkle in his eye and a smile on his face, he led us each day to new insights and understandings. He spoke quickly, as if each idea needed to rush out to make room for the next one pushing to emerge. He inspired us to want to learn so that we could join him in his intellectual journey and spirit of discovery. We yearned to do what he could do with legal ideas. (Although we knew that we would never match his ability to answer questions with not only citation of case names but also precise page citations!)

Later, in my last year of law school, I had the opportunity to see Pat Baude at work in a different setting. Pat had agreed to represent a federal prisoner whose pro se complaint had been dismissed by the district court.¹ The case was on appeal to the U.S. Court of Appeals for the Seventh Circuit. He invited me and another student, Sarah Singleton, to work with him in writing the brief. It was a fantastic experience for me to be both his student and his collaborator, to see his creative legal mind at work up close. As this was in the days before student practice rules permitted students to appear in the Court of Appeals, Pat presented the oral argument before the court while we observed. Oral argument was the perfect showcase for his legal talents—energy, quickness of mind, clarity of speech, and mastery of both big issues and small details. As we left the courtroom, we were in awe of the performance we had just seen and asked him how many oral arguments he had done before to be able to do it so well. He told us this was his first.

It is with deep sadness that I mourn his untimely passing. But it is with deep gratitude that I celebrate all that he gave to me and to generations of law students at Bloomington who were fortunate enough to be in his classrooms.

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1. *King v. United States*, 492 F.2d 1337 (7th Cir. 1974) (holding that the Administrative Procedure Act required the U.S. Parole Board to provide applicants with a statement of reasons if parole was denied).

PAT BAUDE—TEACHER, GOURMET, OENOPHILE, FRIEND

ROGER B. DWORKIN*

Pat Baude and I arrived in Bloomington almost simultaneously in the summer of 1968, two kids pretending to be law professors. We joined a warm community that contained an amazing collection of great teachers—Val Nolan, Harry Pratter, Doug Boshkoff, Tom Schornhorst, Bill Oliver, and Jerome Hall, to mention a few. Pat and I may not have known what we were doing, but we knew that we wanted to be part of that group.

For Pat, becoming a great teacher was simply a matter of developing his astounding innate abilities. Brilliant, dedicated, an avid reader, and a great communicator, how could he fail? Pat and I often discussed teaching. He went into the classroom with a scrap of paper containing a few illegible words written in red ink. I went in with elaborate notes, filled with questions and responses to all the plausible answers I could think of. Pat began each class by asking the hardest question he could think of, and working his way down the difficulty ladder until the brightest students began to catch on. Then he worked back up. I began with the easiest question I could think of and worked up to just beyond where the students could go. With his method Pat brought enlightenment to generations of students, and he never failed to be a favorite of the brightest members of the class.

One could go on for pages about Pat's abilities as a teacher, but there was much more to him than that. He was an avid servant of the profession and the community, serving as chair of the Board of Bar Examiners and the Bloomington Public Safety Commission, among other posts. But for those of us who were lucky enough to know him, our greatest memories of Pat are as gourmet, wine lover, and friend.

The IU law faculty that Pat and I joined contained some amazing cooks. I hope none will be offended when I say that Pat was the best. He had an unerring sense of taste and a lively culinary creativity that made a meal at Chez Baude an event not to be missed or forgotten.

Pat's great sense of taste and his commitment to do everything he tackled spectacularly made him a great connoisseur and collector of wines. Late in life he founded his own wine blog. Earlier he educated and spread joy among his colleagues by sponsoring Friday afternoon wine tastings in the faculty lounge until a prudish janitor blew the whistle.

Pat could taste everything, not just food and wine. Once a colleague and I held a beer tasting party with a wide variety of beers, good, bad, and indifferent, served from unmarked containers. All the guests rated the beers. The winner by a mile was Budweiser. The only person who got the ratings "right," that is as international beer experts had them, was Pat. Budweiser was not at the top of his list.

Of course, one's qualities as teacher, gourmet, bon vivant, and man of taste cannot capture the essence of a person. More than any of these things, what Pat Baude was to me was my friend, my best friend, for forty-three years. We talked about everything. If I needed advice, he gave it. If I didn't want it, he kept his mouth shut. We were so close that people often thought we agreed about

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everything. In fact, except for teaching, food, wine, and our love for our law school, we disagreed about almost everything—politics, the law school curriculum, internal campus goings on. Who cared? Real friendship is not based on agreements. It is a kinship of affection and respect. Pat had my lasting affection and my deepest respect. My life was richer for having Pat Baude as my friend. It is poorer now that he is gone.

PATRICK BAUDE: SCHOLAR, TEACHER

JEFFREY E. STAKE*

I don't know what to write. I've lost my memory. Not just memories, which we all lose over time, but a portion of the universe that once held my memories, that being Pat Baude's brain. Pat's memory was so extraordinary that eventually I stopped being surprised when he remembered things I had forgotten I ever said. And I was not special. The library of tapes in Pat's head included words and ideas spoken by thousands, as well as words written by many more. It was an extraordinary catalogue, all indexed and ready for instantaneous replay whenever the situation called for it. Pat absorbed it all.

Not only could Pat recall ideas, he could usually express them more cogently and more elegantly than had their original authors. Once during our lunchtime discussion in the faculty lounge, someone asked what might be said from the perspective of critical legal studies. Pat responded immediately with a perfectly formed critique, just as a critical legal scholar might have written it, or wished he had written it. Moreover, his gifts didn't stop with the ideas of others; original insights poured from him in instant reaction to what he heard. His comments on a speech were often more illuminating than the headlined presentation. I once asked Pat to be a panelist providing commentary on a paper, and he said he'd be happy to help out. Did he ever. Pat could have ripped the paper to shreds. But that was not his style. He found wonderful points in the work, some of which were actually there, and then elaborated on them. In hundreds of conference panels that I have seen, that was the single most constructive oral commentary that I've witnessed. No matter the context, Pat would make Indiana University proud.

Count yourself among the luckiest of law students if you were assigned to his class. Having attended elsewhere, I could not have been his student, but I did once pretend to be one. Shortly after arriving here, I asked some of our best teachers whether I could audit a class. These teachers, in the supportive spirit of IU, were all happy to oblige, and I spent a few edifying hours learning effective teaching techniques by watching them work with our students. Unfortunately, however, observing Pat's teaching did not help at all. Sitting at the back of his class, I did learn constitutional law and I did learn constitutional history. But I also learned that I would never, ever, be able to teach like Pat Baude. I was daunted. Nothing Pat did was something I could mimic. It was wonderful. One interesting and challenging idea followed another. Connections emerged from thin air, and all without any notes. I'd have to find other models to emulate; this one was far beyond me.

Dictionaries define a "scholar" to be a learned or erudite person. That was Pat; his knowledge was encyclopedic. Often, back in the day when the faculty had time for brown-bag lunches together, an argument would pass back and forth among some of us until, in a lull, Pat would pipe up with facts and law that none of us knew, and that would settle the issue. I knew better than to argue with Pat. We had lots of discussions, but not arguments. I would say something, he would correct me, and that was usually the end of it. I do recall one instance, in an argument about

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addiction to gambling, when I refused to accept his view of the matter. No more than fifteen minutes after I had returned to my office from lunch, I got an e-mail message from Pat with a link to a source indicating that I was right. He was almost never wrong, but was eager to acknowledge it if he was.

I frequently darkened his office door to consult him on a point of constitutional law, on which subject his knowledge was profound. He was always gracious in his response, inviting me in and motioning for me to take a seat. He had plenty of time to help. And after I left, he would routinely follow up with citations to both ancient and new sources that would help me pursue the point further. He was old-school in manner, while completely current in mind.

Pat could also be very funny. When he spoke to the students in our “last lecture” series, many years ago, Pat said that he was lucky to teach constitutional law because he did not have to be funny. All he had to do was read aloud what justices had written and the audience would dissolve in laughter. I imagine his students did laugh often, but not because Supreme Court opinions are so hilarious.

If Pat were here, he would have pulled a better story from my memory. And he’d have told it with insights that I cannot conjure up, and made you laugh. But he is not. I’ve lost my memory, and colleague, and friend. Our school has lost a splendid scholar, and we’ve all lost a brilliant teacher.