

Maurer School of Law: Indiana University

Digital Repository @ Maurer Law

Articles by Maurer Faculty

Faculty Scholarship

1976

Indiana's Rule 13: The Killy-Loo Bird of the Legal World

Douglass G. Boshkoff

Indiana University School of Law

Follow this and additional works at: <https://www.repository.law.indiana.edu/facpub>



Part of the [Legal Education Commons](#), and the [Legal Profession Commons](#)

Recommended Citation

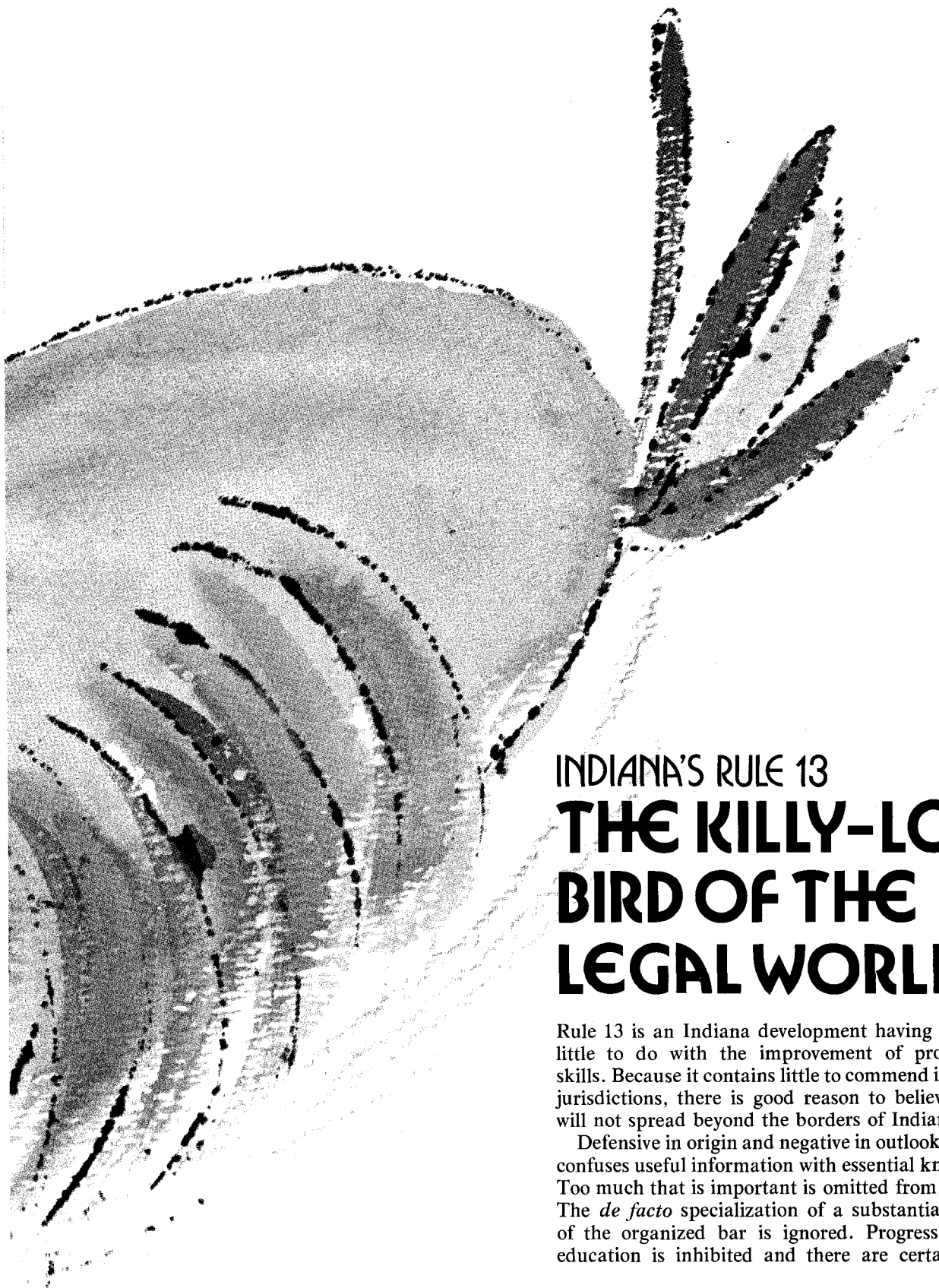
Boshkoff, Douglass G., "Indiana's Rule 13: The Killy-Loo Bird of the Legal World" (1976). *Articles by Maurer Faculty*. 2132.

<https://www.repository.law.indiana.edu/facpub/2132>

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Repository @ Maurer Law. It has been accepted for inclusion in Articles by Maurer Faculty by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.



LAW LIBRARY
INDIANA UNIVERSITY
Maurer School of Law
Bloomington



INDIANA'S RULE 13 **THE KILLY-LOO BIRD OF THE LEGAL WORLD**

Rule 13 is an Indiana development having relatively little to do with the improvement of professional skills. Because it contains little to commend it to other jurisdictions, there is good reason to believe that it will not spread beyond the borders of Indiana.

Defensive in origin and negative in outlook, Rule 13 confuses useful information with essential knowledge. Too much that is important is omitted from the rule. The *de facto* specialization of a substantial portion of the organized bar is ignored. Progress in legal education is inhibited and there are certain heavy

BY DOUGLASS G. BOSHKOFF

*Professor and former Dean, Indiana University
School of Law, Bloomington*

costs associated with the rule that will become painfully apparent as the years pass.

Rule 13 was instituted following substantial criticism by the State Board of Law Examiners for a pass rate of 75 percent on the July 1973 bar examination. Indiana had traditionally had a high pass rate, often around 90 percent. Students and bar examiners sought an explanation for the drastic change. Both groups blamed course selection. This rationale offered students an excuse which did not reflect on their intellectual skills and gave the bar examiners an explanation other than the unpopular one that standards had been raised.

Rule 13 was formulated without any systematic study of student bar examination performance. In an article published in the *Journal of Legal Education*, we have argued that the bar examiners had no justification for concluding that the failure to take certain courses had an adverse effect on bar examination performance. Even if this argument is not persuasive, it must be recognized that Rule 13 equates professional competence with bar examination performance. It is likely that many other jurisdictions will look further in seeking a definition of professional distinction.

The most disturbing characteristic of Rule 13 is its terrible negativism. One usually thinks of educational reform proposals in a positive sense: there are new needs to be met. Rule 13 does not have this affirmative element. It directs us to go back in time, to stop changing. It has attracted widespread support in Indiana because it prevents progress and controls the supposedly radical element in legal education.

Prescribing two thirds of the law school curriculum, it has had an adverse effect on student course selection. Many important subject matter areas and practice skills (including a course thought important by the Clare Committee) are not found in Rule 13. What is omitted is just as significant as what is included. Experiment and incremental change in legal education

are inhibited. Development of clinical legal education opportunities becomes much more difficult under the Indiana rule. Nobody has ever suggested that most of the prescribed courses are not important. But so are many other courses which Rule 13 excludes.

Rule 13 confuses important information with essential knowledge. Any fragment of legal knowledge is absolutely essential to the lawyer who needs to use it. Law schools attempt to meet such situational needs by offering a wide variety of electives. There is relatively little we teach which must be mastered by every student who wishes to become a competent practitioner. I believe that prior to the adoption of Rule 13 law schools were doing a good job of conveying to students those items of universally essential information which do not derive importance from specific practice opportunities. The Rule now directs law schools to concentrate on information which one group of lawyers believes is important.

Once the practicing bar grasps the distinction between important and essential information, the philosophical weakness of the Indiana rule is revealed. I predict a rapid development of practitioner sophistication as proposals for mandatory continuing legal education proliferate. Minnesota recently adopted MCLE.

We are told, however, that: "The Minnesota rule requires no specific subjects in which courses must be taken. The matter was discussed, but the final conclusion was that individuals will normally enroll in subjects that have the greatest appeal and value to them which, in most instances, will also be those areas of the law in which most of their practice occurs. There was also recognition of the fact that the varieties of practice are so great that it would be virtually impossible to identify a core of essentials that everyone ought to have."

These are exactly the same arguments that have been advanced by law professors favoring a more comprehensive elective legal education program. ¶

COMPETENCY

(Continued from page 16)

He began by asking two questions: why had several persons failed the bar examination and written with little competency? Why had some of those persons expressed to him great bitterness at the law schools from which they had graduated?

He found, after analyzing the results of 200 bar examination papers, that many of the examinees had not taken courses in the subjects in which they were being tested. If they had, the courses were all too often non-courses. The result was a kind of charade: course titles might be familiar (e.g., evidence, procedure or contracts), but course content bore small resemblance to reality.

When the court's attention was directed to this development by the board and its president, members of the court began their own exploration into the

matter. We discovered that a student, who can express himself rather well on a written examination, may indeed pass the bar examination without taking some subjects in law school, because cumulative grading is used in the examination, i.e., failure is not contingent on passing all sections of the examination.

Due to this discovery, it was clear that our court might be certifying persons to practice law in Indiana and for the federal judiciary in Indiana, who were not, in fact, prepared to give the effective legal assistance to which their clients were entitled—whether in civil or criminal matters or cases.

ASSURING CITIZENS OF GOOD COUNSEL

Our breadth of concern covered not only trial and appellate advocacy but reached to every level of the law practice. One graduate, when asked why he did