Vol. 13, No. 1 (February 1989)
STUDENTS FLAUNT NEGOTIATIONS SKILLS

By Brian Lehrer

While law students may fancy themselves as budding Clarence Darrow, eloquently invoking time-honored principles before a rapt courtroom, the reality is hardly so romantic.

Since most cases never get to trial, lawyers often have to rely on honed negotiating skills rather than gifted elocution to serve their client’s interests.

"Most of law is negotiating," said Paige Gabhart, a 3rd year. "If you are going to work in the legal field, you need negotiation skills of some sort."

Last November, Gabhart and partner Gwendolyn McCarty, also a 3rd year, represented Indiana University in its maiden voyage to the fifth annual ABA Negotiations Competition. Law schools from six states mouthed off at Valparaiso University in Valparaiso, Indiana to see what school would represent one of twelve regions at the nationals in Denver.

Northwestern University talked their way to top honors, while I.U. finished in the middle of an impressive pack that included schools from Illinois, Indiana, Michigan, Minnesota and Wisconsin.

"On balance it was a worthwhile experience," Gabhart said. "We kind of got our team together at the last minute and were up against schools that had in-house competitions for team selections."

Gabhart and McCarty were selected from a pool of interested students who had completed Dean of Students Leonard Fromm’s Negotiations class.

Gabhart said the competition was worthwhile but has some kinks that need to be worked out.

"I think the panel of judges should be better prepared," he said. "Judges differed among themselves as to how they are supposed to score."

Judging panels consisted of three lawyers and one sociologist, who evaluated competitors’ interpersonal skills.

Each team is given a side of a dispute and they have one month to prepare to argue. Their arguments are based on the fact pattern and the relevant case law. The object is to get the best settlement for your client without going to trial.

The purpose of the tournament is to reflect the reality that all lawyers engage in negotiating.

"Negotiating is one skill that all students need to develop and improve upon in law school," Fromm said. "However, the Negotiations classes are relatively new in all law schools."

According to Gabhart, Negotiations was one of the more enjoyable and practical classes he has taken at the school. The class, which he took over the summer, consisted of daily negotiating sessions and two out-of-class video sessions.
Grades
By John Bessler

After spending three blissful weeks in Minnesota over Christmas break, with no assignments or legal research memos to worry about, I returned to Bloomington full of anticipation. Anxious not only to reunite with friends at Nick's, I was also desperate to know how I had performed academically my first semester of law school.

Much to my dismay, however, only my Civil Procedure grade had been reported by the first day of classes (thankfully, Professor Shreve has this thing about punctuality). So, like the rest of my classmates, I engaged in the masochistic ritual of checking the grade board everyday for new postings. Over the next three weeks, the grades trickled in one by one, with Professor Schornhorst dropping the final bombshell on January 30th—a day that will live in infamy for many 1L's.

In the end, my marks weren't the best, but they weren't the worst either. Such is life, I suppose. No matter how well you do, you always want to do better. And, barring four F's, no matter how poorly you do, you always could have done worse.

Unfortunately, competition for grades is a necessary evil. While the system can sometimes promote hard-work and creativity, it becomes unhealthy when egos get hurt because individual grades do not match expectations.

Although it sounds like a cliché (probably because it is), the key thing to remember is that grades aren't everything. As Professor Conrad might say, "You have to look at the forest, not the individual trees." While the "big picture" mentality won't stop me from seeking those elusive A's, it does serve as a warning not to put all my eggs in the "academic" basket.

For, like the mythical god of Justice, who holds the scales of life and order in balance, academic performance is just one factor to consider when engaged in self-evaluation. Indeed, the importance of grades pales in comparison to the importance of good friendships. If you ask me, not only will friends help me get through life better than a few strokes on a report card, but they also be a lot easier to come by than A*'s.

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The Exordium

The Exordium is published by the Student Law Association with the help of student volunteers. The next issue will be available in March. The editors are currently accepting articles and letters for publication for that issue. Items should be turned in to John Bessler's mailbox. All opinions expressed in The Exordium are those of the individual writer and do not necessarily reflect the view of the students, faculty, administrators or University. The editors reserve the right to edit any letters or articles or reject items which do not fulfill editorial goals. Any upcoming events should be put in Pete Raack's mailbox for publication in the next issue.

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Career News

• Indiana Job Interview Program to be held February 24-25 in Embassy Suites North in Indianapolis. Seven employers have signed up for interviews 1st, 2nd and 3rd year students. Get information in the Career Services Office. DEADLINE: February 8 at noon.

• A new letter from Dean Garber available to use in explaining the grading system and overall performance of grades compared to many other schools. The Office of Career Services will be circulating this letter. Students may wish to send a copy to employers they are contacting outside our immediate area.

• Watch for on-campus interviews this spring. Several firms seeking third years have already canceled because no one signed up.

• When you accept a job, please send out an employment information form to The Office of Career Services, who will inform future students of the market. Statistics on the Class of 2006 are available now.
International Law . . . from Geneva to Bloomington?

by Christopher Wheeler

So you think Indiana is about the safest place in the world that smacks of anything international? Think again, says Mary Ellen O'Connell, our school's newest professor. Think Paula Cooper, the center of a current international rage on the question of capital punishment for minors. Think El Lilly, the manufacturer of anabolic drug alleged to have killed teens in England. Even I.U. president Thomas Ehrlich is an international lawyer. But more immediately, courses in international law have returned to our classrooms.

In the “long and proud tradition” of the likes of Amos Hershey, a famous turn-of-the-century professor, and Ambassador Fatouros of Greece, O'Connell will lead another assault on the study of international law at the I.U. School of Law.

This spring, she will offer to interested students Public International Law, a three credit class, and, hopefully, in the fall, International Business Transactions, also a three credit course. But, O'Connell emphasizes, all students can benefit from the study of international law.

That is because attorneys—even Indiana attorneys—are with increasing frequency encountering in their practices issues of an international nature, especially those attorneys working for a medium or large firm. With 170 or so sovereign countries and an enlarged sense of global awareness, international law becomes more and more important to the everyday lawyer. Not only does international law offer problems that might interest us as students, but it offers problems that should interest us as informed citizens.

For example, while working in Washington, D.C., the last three years (Covington and Burling), O'Connell gave advice on the location of as yet undetermined international boundaries, investigated rights of air route owners under the differing international aviation treaties, and participated in international arbitration between Iran and the United States over the law of expropriation.

These encounters are representative of the issues that may arise in these newly-offered courses. You say they are boring? Then how about issues like the shooting of Libyan jets, the reflagging of Kuwaiti tankers, funding the contras, acid rain, family law, or trade with South Africa or Canada? And in the future, to help students receive a rounded international law education, she may offer seminars in subjects like armed conflict, human rights, and international remedies.

What can the average Indiana law student do with this sort of knowledge? Besides the normal day-to-day work of the sort already mentioned, a student may choose to work with a governmental agency, like the State or the Commerce departments, or for a public interest group like Amnesty International, the World Wildlife Fund, or the International Committee of the Red Cross, all of which employ full and part-time international law attorneys.

Nor need you be especially concerned with things like foreign languages or living overseas. English has replaced French as the language of international law (but of course knowing other languages is useful). Furthermore, American facilities are readily available for research purposes. Our own library, for example, is “wonderfully” endowed with a wealth of resources, containing United Nations’ publications, United States’ treaties, and European economic literature, according to O'Connell. These things, together with new technology like the telefax, enable today’s international lawyer to be in immediate touch with overseas clients. Of course, jaunting off to exotic places isn’t too bad, either.

If your interest is piqued, you may investigate other international law stuff like the International Law Society, the London Law Program, or the Jessup Moot Court Competition, which this year concerns diplomatic immunity and economic sanctions.

Mary Ellen O’Connell is herself well-versed in international affairs. After graduating from Indianapolis’ Warren Central High School and then Northwestern, she travelled to England to obtain an M. Sc. from the London School of Economics and a L.L.B. from Cambridge in international law. She then got her J.D. from Columbia. In addition to working on a book on armed conflict, she is writing papers on the new United Nations’ treaty against torture and the United States’ case against Nicaragua, recently heard in The Hague at the International Court of Justice.
CLASSES Sponsors Euthanasia Symposium

By Tom Tozer

Euthanasia will be the topic of a symposium February 9 from 4 to 6 p.m. in the Moot Court room. The event, sponsored by the Christian Legal Society (CLS), will include as speakers I.U. law professor Roger Dworkin, local pastor Rev. Douglas Webster, I.U. religion professor David Smith and Carol Ebling, director of a local hospice for the aged and terminally ill.

The panel will discuss some of the legal, moral, social and ethical implications of euthanasia. A one-hour question and answer session will follow brief remarks by the speakers.

Dworkin, who has published articles on recombinant DNA, genetics and a 1973 contribution to the I.U. Law Journal entitled "Death in Context," is currently working on an article on euthanasia. "Death in Context" focused on problems in creating a legal definition of death and concluded that society should rely on different definitions of death depending on the legal context—why it matters to know whether someone is dead.

Smith is professor of Religious Studies at I.U. and is a prominent ethicist.

Webster is pastor of Evangelical Community Church in Bloomington and is a former professor of theology and ethics at Ontario Theological Seminary in Toronto, Ontario. He also is a sponsor of CLS. Webster recently returned from a teaching assignment at his former post where he led a seminar on medical ethics.

Ebling is director of the Hospice of Bloomington, a midway house for people who do not want to remain in the hospital but are physically unable to return home. The hospice offers a practical alternative to the extraordinary means of prolonging life now offered by medical technology.

The purpose of the forum is to "make students aware of the implications of euthanasia. How society takes care of its weakest members and what that says about us," said CLS president David Steiner.

"As Christians, we place a high value on life, and it's troubling to us that what has historically been thinkable has lately become debatable," Steiner said.

"We should err on the side of life rather than on the side of personal choice," he said. But there also can be harm done by "taking all the dignity out of it by dragging it on with no end."

Euthanasia - A Personal Choice?

By Tom Tozer

The fact that I'm a Christian may lead a few readers to think I have some pat answer about euthanasia. But I don't. To me the word "mercy-killing" itself seems wishy-washy, as if it can't decide whether it wants to be Florence Nightingale or Freddy Krueger.

David Steiner, president of the Christian Legal Society, says we should "err on the side of life" when considering ending a life out of mercy. Contrary to popular belief, the phrase "Choose Life" wasn't coined by George Michael and Wham!, but comes from the Bible in Deuteronomy 30: 19. And it's to this rule that Steiner's view points.

But I still wonder what we should do when rules, even God's rules, clash with mercy. The god I believe in is a god of laws—i.e., there's some stuff you're supposed to do—and of mercy. Hmmm. Sounds like a dilemma between formalism and substantive justice. The "law" aspect of God suggests that we don't have an absolute right to decide whether we live: these questions are not ours to decide merely on "personal choice," because God might have something to say about it.

On the other hand, Jesus did miracles on the sabbath, when "work" was forbidden, which got him into hot water with some lawyers and priests. He chose mercy over the formal law. And when he saved the adulteress from the crowd that wanted to stone her, as the law commanded, he again chose mercy and sent the crowd packing. (Of course, in both stories Jesus was showing mercy in order to save life, not to end it.) There's more to these stories than this, but they at least imply that for the god of law and mercy sometimes mercy counts more.

One reason to oppose a personal "choice" view is that leaving these decisions to personal choice erodes any line between euthanasia and suicide. The belief in our unbounded power or right over life may lead to a FRAM Oil Filter philosophy of life—you can feed worms now, or you can feed 'em later—ending in a waste of life among those who should have this "right" vis-a-vis our own lives: While we have this "right," vis-a-vis other people, maybe it doesn't hold against the Creator.

The problem with saying the decision about euthanasia should be just a matter of personal choice is that ultimately it has to be. It has to be because it depends on what you believe and where your hope is.

"The belief in our unbounded power or right over life may lead to a FRAM Oil Filter philosophy of life—you can feed worms now, or you can feed 'em later. . ."
Euthanasia - Who Decides?
By Patrick L. Baude

It would be a wonderful world if we could always reason to morally correct choices. Our failings would then be no more than weaknesses of the flesh, and our lawmakers could define their role as little more than stiffening our spines to the task of righteousness.

But we often find ourselves confronted with tragic choices in which there is not simply a correct course of action. There is no principle of action we can generalize, one widely shared among people with a morally compassionate point of view, and be confident that we know the right thing to do.

In a way, some abortions present similar problems to those of euthanasia. Take, for instance, the case of a pregnant woman who has undergone amniocentesis and learned late in her pregnancy that the fetus has Down's Syndrome and spina bifida. I don’t know what the right thing for her to do is. Most of us haven’t been there either: “Yet one cannot reach a convincing resolution to a problem like that without imagining the agony of the parents in making the decision, without imagining the life of the child.”

Maybe this is a category of action that we should not attempt to govern by systematic rules like the criminal law. Criminal law is supposed to reaffirm those things to which we agree, and in those cases it is appropriately used to punish people who transgress moral norms which society generally shares. We may want to recommend punishment for euthanasia because the law should set an example, should point the way for those who have the strength and strengthen those who know the way.

But when used to punish activity that is not almost universally regarded as immoral, as some mercy killings are not regarded, the criminal law instead tears society apart. It leads to systematic non-enforcement and contempt for the law.

I am convinced that laws permit-

a choice between two acts which both seem immoral—for instance, prolonging the suffering of a woman wracked with the pain of terminal cancer and the alternative of killing her at her own request—the question is, who has the right to decide?

Laws against euthanasia protect the sanctity of life. But allowing a defense of necessity, where a defendant must prove the social desirability of his act compared to the alternative, lets juries reconcile law and community mores on a case-by-case basis. Maybe that is the best we can do.
Committee Proposes New Grade Reporting System

By Ben Beringer

As the last of the grades find their way into the "window of woe," students are looking to tally up the GPAs and translate them into the figure that will look more favorable to employers: class percentage.

To make the calculation, the most important tool for I.U. job-seekers has been the bar graph. However, the graph may have seen its final days. During the semester, the Placement Advisory Committee has spent in excess of ten grueling hours trying to hammer out a percentile ranking proposal that would replace the bar graph. (See accompanying articles.) According to committee members, the consideration of a percentile ranking system has been attributed to deficiencies in the bar graph.

"A free-floating miss-mush" is the way Placement Coordinator Mary Kay Moody described the graphs. Moody explained, "Although employers who frequently interview on campus could understand the bar graphs, new employers had problems—problems we don't have to put them through."

With approximately 25-30 percent of visiting employers to the Placement Office being newcomers, Moody feared increasing indifference to the graph, more reliance on grades, and consequently, less consideration for I.U. law students when matched up with their counterparts from other "inflationary" law schools.

The Administration has taken numerous steps to address job-seeker's victimized by I.U.'s non-inflationary grade practices. Recently, Dean Bryant Garth has written a letter which explains the school's grading practices and sets out median grades. Rather than rationalize a low GPA in the cover letter, the Garth letter can serve as an explanatory enclosure.

The percentile ranking systems promises to be another step away from reliance on grade comparisons. In its fifth, and close to final, draft, the percentile system would assign the range of GPAs within a given percentile. The percentiles would be calculated out to the 50 percent mark and anyone in the bottom half of the class would not receive a percentage ranking.

The committee stopped at 50 percent to benefit students with low GPAs. "The new system will help people in the bottom quarter by not telling them exactly where they are in the percentages," says Professor Jeff Stake, chairman of the Placement Advisory Committee.

Although the proposal is in fine-tuning stages, the faculty will have to evaluate the ranking system and vote to approve the changes.

RATIONALE

The bar graph was created several years ago to deal with the problems inherent in ranking each student in a class, particularly the notion that the grading process can accurately place students in a numerical rank from 1 to 200. Although a number of schools still use the numerical ranking system, many have gone to a percentage system similar to the one proposed.

The Placement Committee believes that the bar graph, although it has positive features, has caused problems for both students and employers. The information provided gives opportunities to make errors in the calculation of class standing. Students must understand the meaning of the bars in the bar graph, and they must accurately add up the percentages associated with each of the bars on the graph. Even then, the data may be unclear as to whether students are in the top, middle, or lower part of a particular bar. Such vague or approximate representation by students often is not favorably received by employers. Moreover, accidental as well as intentional misrepresentations can result in severe, undesirable consequences for students.

Employers hiring our students care about their law school performance, both absolute (G.P.A.) and relative (class standing). They can more about grade point averages if useful information on class standing is not available. The absence of directly comparable, class standing information increases employer reliance on grades. Since our grades are not as inflated as those at many competitor schools, any grade orientation may reduce job opportunities for some students. Promulgating information on a percentile basis for the top half of the class conforms to classifications commonly used by employers and may help those students with the job search. Conversely, fine gradations of information about class standing for students not in the top half of the class may reduce opportunities for those students. Not giving percentiles for those in the bottom half is likely to be less harmful to those students than the current bar graph.

In summary, (compared with the bar graphs,) the communication of percentile information in terms commonly used by employers and students would decrease the likelihood of mistakes in calculation, would decrease pressure to make vague or unprovable representations to employers, and would help more (or hinder fewer) students in their search for jobs.

(If you care to express an opinion on this proposal, please write your comments, reasons, and suggestions on a sheet of paper and leave it with the Placement Office. It would also be helpful if you would include your current G.P.A. and year of expected graduation on that note.)

Thank you,

Placement Advisory Committee
PROPOSAL

The Placement Committee proposes that the Recorder prepare for public distribution a percentile table like the following for each class. Percentile tables would be prepared in August that would include grades through the spring semester and in March that would include grades from the prior summer and fall semester. The Recorder would calculate each student’s grade point average to two decimal places and present that average on the transcript. The bar graph, which is prepared only in August, would be discontinued.

CLASS OF 1988
(183 students)

CLASS STANDING OF CUMULATIVE GRADE POINT AVERAGE

as of October 27, 1988

<table>
<thead>
<tr>
<th>Cumulative Grade Point Average</th>
<th>Class Standing</th>
</tr>
</thead>
<tbody>
<tr>
<td>at least 3.72</td>
<td>top 1% of class</td>
</tr>
<tr>
<td>3.57</td>
<td>top 2%</td>
</tr>
<tr>
<td>3.53</td>
<td>top 3%</td>
</tr>
<tr>
<td>3.45</td>
<td>top 5%</td>
</tr>
<tr>
<td>3.33</td>
<td>top 10%</td>
</tr>
<tr>
<td>3.21</td>
<td>top 15%</td>
</tr>
<tr>
<td>3.17</td>
<td>top 20%</td>
</tr>
<tr>
<td>3.14</td>
<td>top 25%</td>
</tr>
<tr>
<td>3.03</td>
<td>top 33%</td>
</tr>
<tr>
<td>2.96</td>
<td>top 40%</td>
</tr>
<tr>
<td>2.88</td>
<td>top half</td>
</tr>
</tbody>
</table>

A student must have at least the grade point average on the left in order to claim the standing on the right.

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The Marine Corps Judge Advocate Selection Team will be interviewing Tuesday, 21 February 1989.

FOR MORE INFORMATION, CALL...
1-800-621-8009
Calendar of Events

Monday, February 6
I.U. International Law Newsletter - 2nd Issue

Wednesday, February 8
International Law Association - Foreign Student Speaker Series
MARTINA GLAISER “Conflicts of Law in the Federal Republic of Germany”

Thursday, February 9
Christian Legal Society Meeting 12:00 p.m. Rm. 210
Phi Alpha Delta Meeting 12:00 p.m. Rm. 112
Christian Legal Society Forum on Euthanasia 4:00-6:00 p.m. Rm. 12
Inmate Legal Assistance Clinic Meeting 4:30-5:30 p.m. Rm. 13

Thursday, February 16
Christian Legal Society Meeting 12:00 p.m. Rm. 210
Women’s Caucus 12:00 p.m. Rm. 112
Inmate Legal Assistance Clinic Meeting 4:30-5:30 p.m. Rm. 13

Saturday & Sunday, February 18-19
Jessup Moot Court Team - Regional Competition
Wayne State University Law School

Thursday, February 23
Christian Legal Society Meeting 12:00 p.m. Rm. 210
Phi Alpha Delta Meeting 12:00 p.m. Rm. 112
Inmate Legal Assistance Clinic Meeting 4:30-5:30 p.m. Rm. 13

Friday, February 24
Public Interest Law Foundation
Demurrer’s Club 4:00 p.m. Nick’s

Monday, February 27
Public Interest Law Foundation
Solicitor’s Meeting 7:00-9:00 p.m. Rm. 112

Thursday, March 2
Christian Legal Society Meeting 12:00 p.m. Rm. 210
Inmate Legal Assistance Clinic Meeting 4:00-6:00 p.m. Rm. 12

Saturday, March 4
Parents and Partners Day 9 a.m.-1 p.m. Rm. 12
SLS Has a Reunion

Student Legal Services held a reunion on Saturday, February 4 after an Indiana-Minn. basketball game. Student Legal Services is a campus organization in which second and third year law school students assist university students with their legal problems. The reunion picnic was well attended by former interns from around the nation who spent the afternoon eating, imbibing and swapping stories about their former law school days.

faces about the law school

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University of San Diego
2L Switches Out of Study Mode by "Remote Control"

By Steve Kobak

Question: What supervillian did Victor Buono play on "Batman?" In case that was too easy, try answering this one: What were the names of the twins that lived above Felix and Oscar's apartment in the "Odd Couple?"

If you know the answers to these stumpers and consider yourself a master of television trivia, then you probably missed a golden opportunity to capitalize on your knowledge when the talent coordinators for MTV's "Remote Control" visited I. U. last fall in search of contestants to appear on what is arguably television's wackiest game show. One trivia ace who knew a good thing when he saw it was 2L Bob Schwarz, who seized the opportunity of a semester and won a free trip to the Disney studios in Orlando, Florida, and a slot on "Remote Control" through his expertise in couch potato lore.

While all other law students were enjoying the rituals of the pre-finals frenzy, Schwarz had to fly to Orlando the day before the show's taping and languish in the posh surroundings of the Peabody Hotel. He noted that a protracted stay in the hotel's jacuzzi, coupled with an in-room bar and an unlimited supply of Tanqueray and tonics severely dulled his competitive edge on show day.

Nonetheless, once the cameras began to roll, Schwarz dug deep within himself and blitzed through the show's early rounds before nearly blowing a 35 point lead in the final speed round. After a shower of Fruit Loops and a brief commercial break, Schwarz was led to a Craftmatic adjustable bed to face the last obstacle standing in the way of a Mitsubishi Mirage—the dreaded nine screen "monolith." For those who have never seen "Remote Control" before, this final task might seem relatively simple—the contestant has 30 seconds to identify as many of the nine videos being flashed simultaneously on the screens as possible. However, Schwarz will attest to the fact that even the most dedicated music video aficionados (himself included) crossed up by the monolith and win the car.

Despite his failure to gather enough points for the Mitsubishi, Schwarz still walked away from the show with plenty of booty, including twelve obscure CD's such as Anne Murray Christmas Album, two Skinny Puppy disks, a mini-t.v., a Sherwood car stereo, MTV La run/bike skateboard (of no idea what the hell this is or how spelled), a Mr. Microphone-like device called a Singalodian, LA shoes, and assorted MTV apparel in all, Schwarz seems to have weathered this intense dose of popular culture remarkably well and noted with "If I had only watched a couple hours of 'Headbangers Ball,' perhaps I would have won the car."

In case you're wondering, the answers to the beginning questions are King Tut and the Pigeon...