Vol. 15, No. 1 (April 1991)

Follow this and additional works at: https://www.repository.law.indiana.edu/exordium

Part of the Legal Education Commons, and the Legal Profession Commons

Recommended Citation
https://www.repository.law.indiana.edu/exordium/44

This Newsletter is brought to you for free and open access by the Law School Publications at Digital Repository @ Maurer Law. It has been accepted for inclusion in Exordium by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.
Putting Nature in Its Place

By Eric Vermeulen

Most people would agree that we must take action relatively soon to protect our environment from further harm. However, there seems to be less agreement on the type of action to take.

While there is growing support for an environmental protection amendment to the U.S. Constitution, even that has been the topic of much debate. Some feel such an amendment should establish the right of every American to enjoy a clean environment, but at least one man has a slightly different approach to the matter.

Lynton Caldwell, professor emeritus of the IU School of Public and Environmental Affairs, believes that spelling out individual responsibilities with regard to the environment—rather than individual rights—would be a more effective plan of action. He recently explained his position at a program sponsored by the Environmental Law Society.

Professors Discuss Sexual Harassment

By Robin Hammer

Recently, students and faculty filled room 124 to attend a panel on sexual harassment and discrimination in the legal profession sponsored by the Law Caucus for Women's Concerns. Professors Julia Lamber, Ann Gellis, and Rebecca Rudnick and Instructor Lisa Bingham discussed the relevant law, experiences in the profession, and recent studies.

Professor Lamber started the presentation with a discussion of the relevant law and recent Supreme Court cases. The Rehnquist court has held that sexual harassment and gender discrimination present causes of action under Title VII of the 1964 Civil Rights Act, although that may not be apparent from the face of the statute. Courts have further recognized two types of harassment: "quid pro quo," which includes blatant advances such as sex in return for a promotion, and "type two" or "environmental harassment," which is an indirect form of behavior that creates a work atmosphere inhospitable to women. For example, environmental harassment includes an office situation where the majority of male supervisors had sexual relations with women who were then promoted faster than other female co-workers, leaving the women who did not acquiesce working in an atmosphere that was hostile to females. Professor Lamber concluded with the caveat that extreme cases are easy to recognize, but that the hard cases lie somewhere in the middle.

According to Caldwell, an environmental amendment to the Constitution is warranted because the Framers could not have foreseen the devastating effect modern technology would have on the environment. In addition, he says that the environment certainly deserves at least as much attention as the issues of prayer in school and flag burning, both of which have recently been the subject of amendment discussions.

Caldwell feels that an amendment to the Constitution imposing environmental responsibilities is the best way to insure that something gets done. During the past twenty-five years or so, environmental issues have been too easy to sweep under the rug for several reasons. These reasons include the compromising nature of Congressional legislation, the deliberate pace of the judicial system, and the absence of any accountability throughout the entire process.

With an amendment that creates responsibility, we can avoid the problems associated with political compromises and place the burden firmly on our own shoulders. "Nature can't hold Mankind accountable," says Caldwell, "but government can [do so] on behalf of Nature."

Currently there are about fifty countries with environmental constitutional amendments. Most of these are Third World nations. This makes it even more imperative that the U.S. adopt an environmental amendment since, as Caldwell puts it, "more is expected of the United States than of other nations."

Caldwell, who has been a faculty member at IU since 1956 and has written ten books and over 200 articles on the environment, warns that we must act now to "sharpen our tools of enforcement," with regard to environmental preservation. If we do not, he feels we will be depriving future generations of the right to choose the type of environment in which they will live.
Law and Sports Panel Weighs Risk Management Issue

By David Sorenson

Consider the numbers from professional football alone: Eleven teams in the 1960’s, compared with thirty expected by 1993; spectator attendance of four million in 1966, against seventeen million in 1989; the $200,000 television contracts for the one-half of the AFL and NFL teams lucky enough to secure them in the 1960’s, contrasted with the $30 million each team pockets from television rights alone today.

As these figures suggest, America’s fascination with sport has grown at an impressive rate. That growth has spurred a corresponding demand for lawyers to oversee the trouble-free functioning of sports organizations, especially in terms of protecting the bottom line. The Law and Sports Society recently convened a panel of experts to discuss the importance of risk management in sports and the crucial role that lawyers play in that process.

Mr. Jim Schaaf, President of Jim Schaaf and Associates and former general manager for the Kansas City Chiefs, opened the panel discussion by heralding the age of the “sports entrepreneur.” Sophisticated business practices have transformed sport in many ways from a “passion” into an investment. Pioneering owners like Bill Veeck and Charles Findley have relinquished control of their teams to investors most concerned with turning a profit. Enter the sports agent, whose valued skills are suited for everything from contract negotiations to creating risk avoidance strategies. In 1988, for example, Schaaf’s Kansas City Chiefs were crippled by sixteen player injuries within a three-week period. Revenues and attendance nose-dived, along with the team’s post-season hopes. But Schaaf’s foresight in addressing the team’s risks saved the organization’s “financial” season. The “Team Temporary Total Disability Insurance” Schaaf purchased for the Chiefs, and which many other teams have since adopted, is but a large-scale version of the protection sought by most individual players. With skyrocketing salaries and valuable athletic talents to protect, insurance clauses have become integral aspects of contract negotiations. Where do lawyers come in? Their unique abilities, according to Schaaf, are ideally suited to advising and negotiating such deals.

Echoing Schaaf’s comments was Mr. Larry Stevens, Indiana University Director of Risk Management, who then focused on the host of factors that enter into the risk management equation. The welfare of the players is of course the primary concern, although there is considerable debate (particularly in college programs) over just how much is owed to them. Beyond that, liability risks exist throughout the sports venue, from the parking lot to the spectators in the stands. Major colleges such as IU attempt to manage risk with foresight and prevention, balancing the pressure to win with the safety of the players and the goals of the program. Tragedies such as the death of Loyola-Marymount basketball player Hank Gathers last year may be unavoidable, but while a program cannot hope to lessen the sense of loss, it can attempt to control its liability and hope to minimize such risks.

While many potential risks are obvious in major events, they are frequently overlooked on the smaller scale. Mr. Darryl Neher, Account Executive with K&K Insurance Group, addressed this issue from the standpoint of the insurer. His organization specializes in assessing an endless variety of sporting risks, from the Indy 500 to the local 3 on 3 basketball tournament. Reflecting the standpoint of the insured was Mr. Paul Stanzione, Director of the Monroe County YMCA. Both dissect programs into discrete “insurable” segments. As complex as that can become, such attention to detail can dramatically decrease exposure. Not surprisingly, organizers of single day events such as basketball tournaments frequently neglect to address their risk exposure. Thus the advice and expertise lawyers can bring to bear on such problems, large and small, make them valuable commodities in the sports marketplace.
New Dean Must Balance Conflicting Issues

Open Letter To: Dean Search Committee, Faculty, and Students

From: Cynthia A. King

RE: Student Concerns

I am writing this memo to express what I perceive to be the student views concerning the selection of the future Dean. As I cannot hope to capture all students' opinions as to the individual candidates, I think it will be more fruitful for me to state the issues that students feel a new Dean must face and the qualities that we feel a Dean must possess in order to address those issues.

When we started the Dean search, we talked to faculty and students and then got together to discuss what we as a committee considered to be the issues facing the law school. As the search continued, the focus of the committee changed. No longer did the faculty on the committee feel that there were "problems" for a new Dean to correct; rather, a new Dean's role would be to guide and continue to motivate the faculty--a "vision thing." As a student, my perception of the process has been in complete opposition. I started the search believing that students were well represented by faculty and that our problems were minor. I now feel that the greatest issue facing a Dean is creating an environment in which both faculty and students can consider themselves an important part of the law school community. I have listed below the three major areas of concern.

1) The Dean must strike a balance between teaching and scholarship.

Obviously a first-rate law school will have first-rate scholarship and teaching. In many ways these two interests often appear to be at odds. At IU we have a little of both, and in moving the law school into the future the Dean will have to find a careful balance. Students come to law school to learn to be lawyers; we come to be educated. Faculty who are wonderful scholars but are unable to impart that knowledge may increase the rank of the law school, but they do little to educate students. Should IU have a reputation for turning out first-rate journal articles or first-rate attorneys? If we want a reputation for both, then we need a Dean who is able to strike a balance between the interests of the faculty and the interests of the students.

2) A Dean must realize that a law school is made up of faculty and students and that both are necessary for the success of the law school.

It is my sense that faculty often feel two things about the student role in the law school: 1) that we are apathetic and 2) that because of the transitory nature of the student body, any changes suggested by current students should be taken with a grain of salt because the next set will have completely different concerns. We seem for the most part quite apathetic, but we are not. We care a great deal about our education and the impact our input has, students will feel that they are an integral part of the entire law school community. They will care about what happens. Until that time we will continue to feel that we are "victims" of a system in which we have no recourse for unjust policies.

Why should we care when every time we ask for change, our concerns go unanswered or our requests for change are turned down?

3) The new Dean must want to communicate with students as well as faculty.

Often when I meet with administrators and faculty about student concerns, I am told that those concerns have already been addressed or that a faculty committee is "studying" them. If that is the case, why don't students hear about what is being done? Every semester we are asked to evaluate our professors--what happens to those evaluations? How does the Dean utilize student comments? Why do professors with consistently bad evaluations get tenure? The new Dean must open up the channels of communication. This goes hand in hand with my second point: if students are made aware of how their concerns are being addressed and of the impact their input has, students will feel that they are an integral part of the entire law school community. They will care about what happens. Until that time we will continue to feel that we are "victims" of a system in which we have no recourse for unjust policies.

I realize these may sound like familiar complaints, but familiar complaints are often symptoms of unanswered--not unanswerable--problems. The students want a Dean who will include us in searching for the answers to the issues that concern the law school.

Cynthia King (3L) is a student member of the dean search committee and a SLA representative.
Employer Trapped Between Conflicting Laws

By Charles Freeland

Johnson Controls, Inc., a Milwaukee based manufacturer of automobile batteries, including the Die Hard brand for Sears, finds itself caught between potentially conflicting objectives of the law. In UAW v. Johnson Controls, heard in September by the Supreme Court, the company is being sued by a group of unions, including the United Auto Workers, and a group of female employees for violation of Title VII of the 1964 Civil Rights Act, which prohibits discrimination in employment practices on the basis of gender. The company does not deny the discrimination but claims authority under the "bona fide occupational qualification" (BFOQ) provision of the Civil Rights Act.

It seems that certain jobs in the battery manufacturing process expose workers to higher levels of lead than other jobs. Even these jobs with higher lead exposure are within the exposure limits established by OSHA, however, for both men and women. The problem faced by the company has to do with research which shows the higher lead levels of these jobs can cause damage to fetal tissue. In order to prevent injuring fetuses, and to avoid the potential tort exposure implicit in such injury, the company refuses to employ women of childbearing age in the higher lead-exposure jobs.

Civil rights on the one hand. Tort exposure on the other hand.

The union's position is that gender can never be a BFOQ under the Civil Rights Act despite at least one decision to the contrary. (Torres v. Wisconsin Department of Health and Social Services, 639 F.Sup. 271, 278 (E.D. Wis. 1986), where men were excluded from certain guardian positions at women's prisons.) The unions say that the women should be free to decide for themselves to accept the higher lead exposure or not depending on their own preferences and circumstances. They believe that allowing the company to exclude them is paternalistic and discriminatory.

The company's concern could be relieved, they propose, by simply giving them a waiver of responsibility. More broadly, the union is concerned that an exception to the hard-won rights of women in the workplace would be just the beginning. If this policy is ratified by the Court it will open the door for more and more "bona fide" discrimination.

There is more than a little irony in the union's argument. Unions in general, and the UAW in particular, since their inception, have been champions of governmental regulation of industry. Child labor laws, working hours limitations, minimum wage laws, even OSHA itself, are all examples of regulation heartily endorsed by the UAW. The common thread running through such regulation is, of course, the short circuiting of individual bargaining and choice. Whether one approves of such controls or not, it is hard to deny that their effect is to superimpose societal values onto the employee-employer relationship at the expense of any autonomy that might otherwise negotiate a different set of working conditions.

In all of these cases the union believes the political process is a better decisionmaker than the individual. When it comes to the jobs at Johnson Controls, however, the union is all for individual autonomy. "Let the women decide for themselves. After all, it's their body." One has to wonder if they would expend as much time and as many resources to defend a male worker who decided he would work in lead exposure even higher than OSHA would permit. After all, it's his body. Or, better yet, would the unions come to the aid of an unemployed nineteen-year-old woman who was willing to work for less than minimum wage but prevented from doing so by force of discriminatory legislation?

A more serious practical problem than the unions' philosophical inconsistency is their response to the company's potential tort exposure. If anyone doubts that such exposure would be real and extremely serious, they need look no further than the bankrupt Johns-Manville Company and its enormous liability to workers exposed to asbestos. The union seems to believe that if a woman signs a waiver of some sort then everything will be okay. It is, of course, highly doubtful that an employee, desiring to expose herself to dangerous levels of lead in order to make more money, can legally bargain away her right to bring a tort suit later on should she become ill. Moreover, it is quite clear that she cannot bargain away the rights of her unborn children.

The unions have tried to frame the issue in this case in terms of a woman's right to control her own body. Clearly, women do have such a right, as do all human beings. But to claim such a right extends to compelling an employer to violate the duty of care imposed on it by law goes too far. A woman does, indeed, have the right to control her own body. If she wants to be a burglar, however, her right does not extend to controlling her body into your apartment.

If the union has its way there will be no safe haven for Johnson Controls. There is no economically feasible alternative manufacturing process. The union has never even suggested in court that there is such an alternative. If the company must comply, the Exordium Act as construed by the UAW it will expose itself to the nightmare of overwhelming civil liability to countless individuals yet unborn. If it continues to do what it can to avoid such a nightmare it
Exclusion From Jobs Would Set Dangerous Precedent

By Suzanna Wilson

UAW v. Johnson Controls, 866 F.2d 871 (7th Cir. 1989), represents what may well be the biggest setback to women's movement since Bradwell v. Illinois, 16 Wall. 130 (1873), where the Supreme Court decided that women were meant to be mothers and wives, not lawyers. This case is particularly dangerous because, if the Court upholds the Seventh Circuit, the door will be open for employers in all areas to exclude women from jobs merely because some potential fetus may be harmed. (Note that this policy does not deal with potential children, or already existing fetuses, but instead concerns potential potential children.)

If Johnson Controls is upheld, federal and state governments, employers, and husbands/lovers may be able to prevent women from smoking, consuming alcohol, using controlled substances, and doing other things to their bodies merely because some existing or potential fetus may be harmed. Judges may finally be able to put women in jail to ensure that they do not harm fetuses that they may be carrying. See, e.g., Jost, Mother Versus Child, A.B.A.J., April 1989, at 84 (noting that in the past decade judges have permitted at least 17 Caesarian sections to be performed on unconsenting women and have put women in jail to protect fetuses). But what about the women in all this? Remember, for every fetus (at least with existing technology) there is a woman attached.

The most interesting aspect of the Seventh Circuit's majority opinion is that although Johnson Controls was brought as a Title VII sex discrimination suit, the opinion emphasizes the importance of protecting potential fetuses and not existing women. In a few (and I do mean a few) places the court and the company state that Johnson's policy is also designed to protect women. See, e.g., Johnson Controls at 879, 883, 884. However, the opinion itself focuses solely on the harmful effects lead may have on fetuses. It does not reveal whether women are more harmed than men by lead, nor (as Judge Easterbrook's dissent mentions, id. at 917) does it convincingly demonstrate that male exposure to lead is less harmful to fetuses. Because these discussions are absent, the Seventh Circuit cannot claim that this case was appropriately decided under Title VII.

As the court notes, under Title VII women may be excluded from job opportunities where performing such a job would be a substantial health risk to the woman. Id. at 886. Further, employers may not use myths about what is appropriate or habitual for women to exclude them from certain positions. Id. Despite these requirements, however, the court did not find Johnson's policy to violate Title VII.

The majority states: "The requirement of a substantial health risk to the unborn child effectively distinguishes between the legitimate risk of harm to health and safety which Title VII permits employers to consider and the [myths or purely habitual assumptions] that employers sometimes attempt to impermissibly utilize to support the exclusion of women...." Id. (emphasis added, footnote omitted). Amazingly (or not), the court equates unborn children and potential fetuses with women. In doing this, the court is doing exactly what it says Title VII forbids: it is using the mythical and outdated assumption that all women want, plan to, and will bear children to justify Johnson's discriminatory policy. (I am ignoring the fact that the policy seems to have adopted the "fertile octogenarian" assumption from the rule against perpetuities -- even women of 50 and 60 years of age are forbidden to work in the high-dead environments. See id. at 907 (Posner, J., dissenting.).)

In further support of its determination, the court equates justifications for Johnson's policy with those for laws requiring motorcyclists to wear helmets. Id. at 898. Although the justifications may be the same -- the idea that society will pay for the consequences if such policies/laws are not enacted -- the analogy is pretty crass. In fact it merely further's the image of women as machines (baby-making machines) to be manipulated by anyone who pleases. No matter the analogy, many situations exist where "more is at stake" than the individual woman's [or man's] decision to risk her [or his] own safety...." Id.

The potential cost to society for harm to potential potential children should not be and is not a justification compelling enough to warrant excluding existing, capable women from entire job classifications. Could it be that these were the highest paying jobs in the plant and too many men were losing out to women, so the company felt compelled to take affirmative action to protect men?

Even if these arguments are unconvincing, everyone must agree that this case has serious implications for women's rights. As Judges Posner and Easterbrook assert, a case of such importance should not be decided on a motion for summary judgment. Hopefully the Supreme Court will at the very least remand the case for the trial it deserves.

Employer from pg. 4 will be guilty of gender discrimination in the workplace.

Would a union victory in court be good for anyone? The unions and the women they represent believe winning the suit would open up a range of jobs for women, not just at Johnson Controls but also at other companies with similar problems. They are sadly mistaken. A union victory would more likely sound the death knell for auto battery manufacturing in the U.S. Johnson Controls, or any other U.S. battery maker, simply could not operate under such conditions. There is still such a concept as responsibility to shareholders.

A union victory, however, would not be without some beneficiaries. Foreign battery manufacturers, most likely Korean and Japanese, would quickly have the entire U.S. market to themselves. These companies do not, of course, have to comply with the UAW's version of the law. Not only would the plaintiffs not get access to the higher paying, higher exposure jobs, but thousands of jobs now held by men and women would be transferred overseas. Does such a result make any sense to anyone outside of Molly Yard's immediate circle of friends?

Should the Supreme Court invent a rationale for deciding this case in favor of the unions, we will have an opportunity to witness the reductio ad absurdum of the feminine-extremist argument played out on the lives of real people. The tort lawyers would love it.
Public Interest Law Experiencing Resurgence at IU

By Amy M. Huffman

Everyone knows that lawyers make lots of money. They work in fancy offices for firms with multiple names, interpreting obscure statutes and contract in syntax akin to Greek, and spend most of their waking hours in the tomes of the law library.

But not all lawyers. About five percent of every law school class will pass up the lure of high salaries for the constant court experience and daily client contact of aiding the legal needs of the poor or of a philanthropic organization.

Although many students enter law school with the best intentions to work in public interest areas...most are socialized and seduced by legal culture to follow the "suits"...public interest areas...to follow the "suits"...public interest areas and defend the homeless, the migrant workers, or the Redwood forest, most are socialized and seduced by legal culture to follow the "suits"...lawyers who flock to large firms and live a life closer to L.A. Law than Perry Mason.

But a new era of student activism is gleaming through the usual haze of classes on corporations, property, and tax at the IU School of Law at Bloomington. Several student organizations that advocate public interest law have seen a dramatic increase in membership in the last two years.

At the Inmate Legal Assistance Clinic, for instance, President Michael Q. Murray says membership is up from eight students last year to about 70 at the first meeting this year. This clinic offers students the opportunity to provide legal aid to the prisoners at the federal penitentiary at Terre Haute.

Murray attributes the growth to the increase in age in the first year class. "They are a little older, with the average around 24 or 25 years old. They see the value of volunteer involvement, but they do not want to get prisoners out on technicalities. It is student activism, but also a bit more conservative than traditional 1960's utopian activism."

The Environmental Law Society also saw an increase in membership over the last two years, up from 30 students in 1988 to about 85 this year. Jeff Cox, the society's president, sees the interest as an outgrowth of greater awareness of environmental issues and a growing job market in environmental law.

Professor Patrick Baude believes that a significant factor in the resurgence of public interest visibility in the legal profession may be the entrance of women who are more concerned with "realistic balancing of professional advancement and social and personal responsibility."

But socialization by the faculty, although sometimes subtle, is a heavy factor against maintaining a commitment to public service and a "human feeling" for justice. "We reinforce and value grades, and give approval for a certain style of thinking and behaving which is an original, crisp, neutral, and detached style," said Baude. "Those who work in public interest law believe this detached viewpoint may not be consistent with a commitment to social justice."

But low salaries and the heavy debt load created by tuition loans also play a role in discouraging students from pursuing altruistic goals. Mary Kay Rother, director of the Office of Career Services in the law school, said, "Clearly, I talk to students who would like to do the work of public interest law and literally can't do it. They have family obligations and school loans and just cannot go to Washington and work for an organization like Public Citizen for $25,000 when they face repayment of $30,000 in school loans."

In an effort to increase the numbers of law students who choose public interest legal careers, four IU School of Law students in 1986 began a support group called the Public Interest Law Foundation (PILF). The group defines public interest lawyers as those who work for traditionally underrepresented populations. They work as public defenders or in Legal Services Organizations and activist groups such as those advocating civil liberties, free speech, or a clean environment.

Today, more than 45 members actively lobby students, alumni, and faculty to contribute about $12,000 annually to summer fellowships that enable students to work in jobs where they would otherwise be volunteers.

The National Association for Public Interest Law (NAPIL) was also founded in 1986 as an umbrella organization for many local PILFs. This year, NAPIL is represented in 92 law schools which distributed $1.2 million in fellowships last spring.

At IU, PILF is lobbying for a poverty law class to be taught next fall and it is discussing the addition of a pro bono graduation requirement to the curriculum.

Also, PILF will institute a loan forgiveness program to help students pay their $30,000 to $40,000 student loans...see Public Interest on pg. 7
The Pledge That Counts

By Sharon Mollman

"Equal Justice Under the Law." A nice idea; carved above the entrance of the U.S. Supreme Court, it is even inspiring. Unfortunately, justice in America costs money, money that many don’t have. For those who can’t afford legal representation, equal justice is reduced to an elusive ideal which can never be reached.

The Public Interest Law Foundation (PILF) is trying to change that.

Public interest law groups are dedicated to providing legal services to those who cannot afford legal representation. There is an ever-increasing demand for such help, and an ever-shrinking budget. Providing legal services costs money: even law students cannot afford to work for free. PILF fills the gap by financing the costs of the service. PILF fellowships, funded by contributions from law students and faculty, are granted to qualified students with low-paying or unpaid summer jobs in public interest law. Previous recipients have worked in areas ranging from the Environmental Defense Fund to the ACLU; from Legal Aid to the Lambda Legal Defense Fund. Three years ago, PILF solicited $3,000 from students and faculty. Last year, PILF was able to fund three $3,000 fellowships. As interest in public interest law continues to increase, so does the confidence of the Fellowship Fundraising Committee. This year, their goal is to raise enough money for six fellowships.

Part of that confidence comes from the special boost given by another student organization. The Black Law Student Association (BLSA) is donating the proceeds from its annual fundraiser, the Barrister’s Ball, to the PILF fellowship fund. Each year BLSA selects a charitable project to support; this year the recipient was PILF’s fellowships.

Most of the funding for the fellowships comes from student and faculty contributions. Knowing that students have no money left by spring semester, PILF asks students to pledge a little of the money that they expect to earn this summer. Some employers feel so strongly about contributions to PILF that they will match the student’s pledge. Help fund a friend’s fellowship. When a PILF member asks for your support, remember that elusive ideal and help make “equal justice under the law” a reality.

It should be more than “a nice idea.”

Public Interest from pg. 6

despite low-salary public interest jobs. The program has been successful at 30 other law schools and could begin at IU as early as next year.

JauNae Hanger, co-chair of PILF, believes loan forgiveness is a big step for the IU School of Law. “It shows a commitment from the administration that it will support public interest ideals with money in providing the start-up grant,” she said. She believes that loan forgiveness will take away the fears of many students about both supporting themselves and paying enormous debts on lower salaries.

But the IU School of Law Assistant Dean of Students, Leonard Fromm, believes something more is at work than heavy debt. “Students are swimming against materialist values. Are loans the engine or the caboose? Once a student’s commitment to serving the public interest has waned,” he said, “some will use loans as the final rationalization to give up those loftier goals.”

Professor Baude agrees that while some students are just “greedy,” maturity is also a factor. “It is easy to talk about changing the world when you don’t understand what’s involved at age 22. You’re much more realistic at age 25 when you have to pay the rent every month.”

The pressures of the hiring process are also a factor in deterring public interest students. Because the law school operates an extensive on-campus interviewing program that only large firms can afford to use, many students feel they are “running late” if they don’t interview in October while the recruiters in the high-priced suits from the large firms are looking.

The hiring schedule for public interest jobs is much different. Students must contact organizations on an individual basis, and hiring is done only as needed and usually in the spring. Students usually pay their own way for a first interview at the organization itself, a sharp contrast to the lush accommodations many firms provide for second and third interview rounds. According to Rothery, the message students pick up in the halls from “the suits” is that “the next rung on the ladder to success is to go to a big firm.”

But some students may be able to reach a happy balance between their youthful ideals and realistic concerns. Andrea Isaacs is a second-year student working toward a joint degree in law and environmental science through the School of Public and Environmental Affairs. She remains committed to the environmental movement, but is interviewing on campuses with several medium-sized firms. “I want the experience of a firm for now, but I’m looking only at ones that match the perspective of what I want,” Isaacs said.

Jim Oliver, a second-year student who works part-time in the Monroe County Prosecutor’s Office, interviewed on campus 26 times with Indianapolis firms. Although he likes his current work, he doesn’t want to stay with such a low-paying job forever. “Sometimes I wonder why I work for $5 an hour when classmates who aren’t better students than I am are working for $700 a week. It would be nice to make money for a change in a larger firm, but I’m more interested in work that will keep my interest for the next 40 years and the prosecutor’s office doesn’t give me that.” However, Oliver does think that he may begin in the prosecutor’s office before going to a larger firm.

Finally, the state of the economy may create greater interest in public interest jobs simply through the lack of hiring in large firms this year. Jeff Cox believes students will look for alternatives and realize that public interest jobs offer what large firms often can’t with their 60 to 80-hour work-weeks -- a life outside of the firm’s law library.
Searching for Number One

By Kent Zepick

Anyone who doubts our society's obsession with "being number 1" simply needs their attention directed to day number 1 of our calendar. The January 1 blitzkrieg of bowl games fuels debate among the football faithful over what team is best in the land. Consensus is as elusive as the whims of voters from the AP and UPI polls.

A similar intramural squabble permeates legal society. Closest to home, the debate for institutional prestige colors the relationship between the Bloomington and Indianapolis branches of the School of Law. Comeupance of the other is the secret wish of administrators on each campus. A higher passing rate on the Indiana bar exam would achieve the result quite nicely, thank you.

So what do the numbers tell us? First, some background information.

Over the last five years approximately half of each graduating class at Bloomington has taken the Indiana bar exam. Second and third in terms of popularity are Illinois and Michigan. Surprisingly, more graduates take the California bar exam than Kentucky's or Ohio's. On average, IU/Bloomington law students take bar exams for 25 different states.

IU/Bloomington graduates show their mettle on the Indiana exam. In 1990, ninety-two percent of the applicants to the Indiana bar were successful. Harassment from pg. 9

Bloomington students also fare well beyond state lines. "Our students meet or exceed the average passing rate in most states," said Dean Fromm. For example, over the last five years approximately 85% of applicants to the Illinois bar from Bloomington were successful. Over the same period only 81.5% of the entire pool met the standards of the Illinois bar. This year 83% of Bloomington applicants to the Illinois bar were successful.

Passing any bar exam still is a struggle. "Most students don't pass an exam by a wide margin. Few students 'ace' the exam," said Fromm. Indiana applicants need to score 175 points out of a possible 250 to pass. Few scores exceed 200.

However, failure does not banish an applicant to professional oblivion. Indiana automatically offers three chances to pass its test; a fourth opportunity is sometimes given through special approval. The appeals process grants yet another option. Applicants to the Indiana bar can appeal the number of points awarded for any answer. Indiana applicants receive copies of both their own answers and model answers provided by the bar examiners. If an applicant believes they have been given short shrift, they can appeal by writing a legal brief. "Basically, the applicant looks up sources that buttress their answer," said Fromm.

But how do we compare to IU/Indianapolis, or put more appropriately, how do they compare to us? For now at least the debate is as fruitless as those football debates. Fromm believes comparisons between Bloomington and Indianapolis applicants to the Indiana bar are dicey. "The only statistics we get are the percentage of our students that pass a particular bar exam and the overall pass rate of all applicants to that bar," Fromm said. "We don't get pass rates for other schools."

Other factors muddy the picture. Each school's applicants to the Indiana bar may represent different academic cross-sections of their respective graduating classes. Furthermore, only 50% of the Bloomington graduates take the Indiana bar exam compared to 90% of the Indianapolis graduates.

All in all it makes for interesting discussion, but Fromm doubts that any inferences can be drawn from whatever differences do exist. "I don't know if it's worth any bragging rights," Fromm concluded.

Harassment from pg. 9

stop laughing at such jokes. Ms. Rudnick also remarked that unlinking gender from work did not require a tough and hostile demeanor, but that women should exercise their right to ask a firm about its policy regarding women and sexual harassment and discrimination.

The evening concluded with a question and answer period in which all the panelists commented on the difficulty of dealing with these issues when they are confronted by an individual. They observed that only through open and candid dialogue between genders would the problem begin to be addressed.

Harassment from pg. 9

stop laughing at such jokes. Ms. Rudnick also remarked that unlinking gender from work did not require a tough and hostile demeanor, but that women should exercise their right to ask a firm about its policy regarding women and sexual harassment and discrimination.

The evening concluded with a question and answer period in which all the panelists commented on the difficulty of dealing with these issues when they are confronted by an individual. They observed that only through open and candid dialogue between genders would the problem begin to be addressed.

Harassment from pg. 9

stop laughing at such jokes. Ms. Rudnick also remarked that unlinking gender from work did not require a tough and hostile demeanor, but that women should exercise their right to ask a firm about its policy regarding women and sexual harassment and discrimination.

The evening concluded with a question and answer period in which all the panelists commented on the difficulty of dealing with these issues when they are confronted by an individual. They observed that only through open and candid dialogue between genders would the problem begin to be addressed.

Harassment from pg. 9

stop laughing at such jokes. Ms. Rudnick also remarked that unlinking gender from work did not require a tough and hostile demeanor, but that women should exercise their right to ask a firm about its policy regarding women and sexual harassment and discrimination.

The evening concluded with a question and answer period in which all the panelists commented on the difficulty of dealing with these issues when they are confronted by an individual. They observed that only through open and candid dialogue between genders would the problem begin to be addressed.
Ehrlich: No. I don’t see why there should be. Obviously they are both law schools and that is an overlap of mission. There are strengths here and there are strengths in Indianapolis, but there is no reason that they shouldn’t.

Exordium: What strengths do you see in the law school here and what direction do you want to see the law school move in the future?

Ehrlich: Well its strengths are its people. Physical resources are excellent, obviously. It has a relatively new set of facilities. We need to continue to build human resources, which are faculty, students, and staff, and we need to continue to support the library, too. But that means more support for faculty, more support for students and student scholarships, more support for library and library acquisitions, as well as the staff. That is not to say that I think that things are in bad shape now, because they are not. There isn’t a crisis or anything like that, but I think we want to keep strengthening the school and keep getting better.

Exordium: Are there any major concerns in the legislature regarding the law school?

Ehrlich: Not that I am aware of. The school has a lot of support from the legal community and it can get more. It can be more visible and be seen in the state and beyond. It is a national law school, not just a state law school, but we are a public university with a particular set of obligations to the state, and I think everyone in the law school recognizes that.

Exordium: Then what do you see as the obligations of the law school to the state?

Ehrlich: The first one is to educate its citizenry who want to go to law school. That is why the majority of the students are Indiana students. We also have an obligation to provide support for a variety of public agencies that we can help, to help the bar, and to help the institutions of the legal system.

Exordium: What was your reaction to the results of the ABA inspection of the law school this past year?

Ehrlich: I was very pleased with the law school. There are always places where you can get better. And if you, that is anybody, don’t think you can get better, then you are in trouble. The law school can get better just like every other part of the University. But having said that, I think I was pleased. I think that the ABA review committee didn’t understand a couple of things that were in fact going on and that has been clarified, but I think I am pleased with the school. There are problems with it, but that is true almost anywhere.

Exordium: How will RCM affect the law school?

Ehrlich: It will give the dean and his or her colleagues a clearer handle on what the whole costs and the whole income of the school are. The purpose of the Responsibility Centered Budgeting is to enable those with responsibility to set their academic priorities and then to shape the budget around those priorities. I think that has happened on the whole in the law school, more than others, because it is more self-contained and smaller. I don’t think it will have a major effect one way or the other.
President Ehrlich Teaches International Law

By Kevin Belt

This year IU law students were offered an unusual class taught in an unusual way. The Seminar in Armed Conflict was taught as a team by Professor Mary Ellen O'Connell and Thomas Ehrlich, the president of IU.

The format of the class was divided in half. For the first half of the semester, President Ehrlich and Professor O'Connell alternated lead class sessions about international law with respect to armed conflict. The second half consisted of students' presentations. The students chose recent armed conflict situations, chose opposing sides, and then prepared and argued a case as if they were before the International Court of Justice. Each two-person team also wrote a paper together, because President Ehrlich believes strongly in the benefit of teamwork.

Professor O'Connell was pleased with the results. "The students did a good job with the conflict cases and came up with new approaches to the problems," she said. "They brought together facts from a number of sources."

The format of the class also worked well, despite problems related to teaching this particular subject. Ehrlich said that to his knowledge a class such as this has never been done before, at least not with published materials. Therefore, Professor O'Connell and President Ehrlich had to research the materials themselves. The end result satisfied both of them. "We liked the way the class went this year and will keep the basic elements in place, with the exception that it will be linked by television to a group in Indianapolis," said O'Connell.

Professor O'Connell is looking forward to teaching the seminar with President Ehrlich again next year. Teaching the course as a team helped her to discuss ideas about the law, teaching, and organizing the class. "I enjoyed team teaching with President Ehrlich immensely," she said. "I certainly benefited from his long experience in teaching."

The Exordium recently interviewed President Ehrlich about the Seminar in Armed Conflict. He also shared views on issues facing the law school and the University. The following are excerpts from the interview.

Exordium: How did you come to teach a class at the law school?

Ehrlich: I have been teaching undergraduate classes since I came to IU, but not law school classes. I had wanted to teach at the law school and this subject was one that interested me. When I learned that Professor O'Connell was also interested, it seemed a natural to me that I could work with her as a partner. I hadn't taught international law since I left Stanford Law School. I had written some about it but hadn't taught, so I needed a partner and a tutor, as it were. When we decided to teach the class we had no idea that the Iraqi invasion of Kuwait would take place and that it would be as topical as it is. We had assumed that we would use the U.S. invasion of Panama as a focal point to go back through the legal issues involving the threat or use of force, and the ways in which the law acts to constrain, shape, and justify the use of force, much as it does in the domestic realm. To me it is a fascinating and important topic with a lot of good material. As far as I know, a seminar like the one which we are giving has not been done before, or at least not with published material, so it is important to do the materials ourselves. Fortunately Professor O'Connell had a very good start on that aspect.

Exordium: How did you find the students to be in your class?

Ehrlich: Very bright. They are interesting and well motivated, just a very good group. They do just what I like and hoped would happen, which is challenge me to think about the issues from new perspectives. We spent the first half of the class analyzing sources, institutions, and doctrines of international law with relation to the use of force. The second half we took a series of case studies and in teams of four each student argued about one of the seven cases we used. Out of that we wanted to get a richly textured understanding of dozens of situations, because we talked about the Cuban Missile Crisis, the Cyprus crisis, Suez, Vietnam, and a number of others as well as those seven. My own strong sense is that the 90's can be a time when there is a strong resurgence of action through the U.N. If that is to occur, it is very important for the nations of the world to set standards for using force, that is when and under what circumstances, and that is just what these crises were about.

Exordium: What are some of the more important goals you hope to accomplish by teaching these students?

Ehrlich: Of course there are lots of things. These students, whether they are involved in international affairs or not, will be leaders in their community. To keep engaged, as I think a number of them will after discussing these issues with them for a semester, is very important. A number of them may be in fact involved more directly through the government or otherwise. But my sense at least, is that international law, even when force is involved, has a very important role. That role involves the testing case because it is the hardest case, the case where the actions seem the most outside the bounds of law and yet even there, as we have seen over and over, the law has a very important role to play. So if it does there, it certainly does in the arena of international affairs where the use of force is not involved.

Exordium: How do you see the University's role in support of the law school and what strength do you think there is to that support?

Ehrlich: IU is blessed with two very good law schools, the one here in Bloomington and the one in Indianapolis. The campus here supports the law school here in every way it can, and the same is true in Indianapolis.

Exordium: Then, do you see any problems in the future with the Bloomington and Indianapolis law school co-existing?

see Ehrlich on pg. 9