1988

The Advocate (Vol. 19, Issue 9)

The Advocate

Marshall-Wythe School of Law

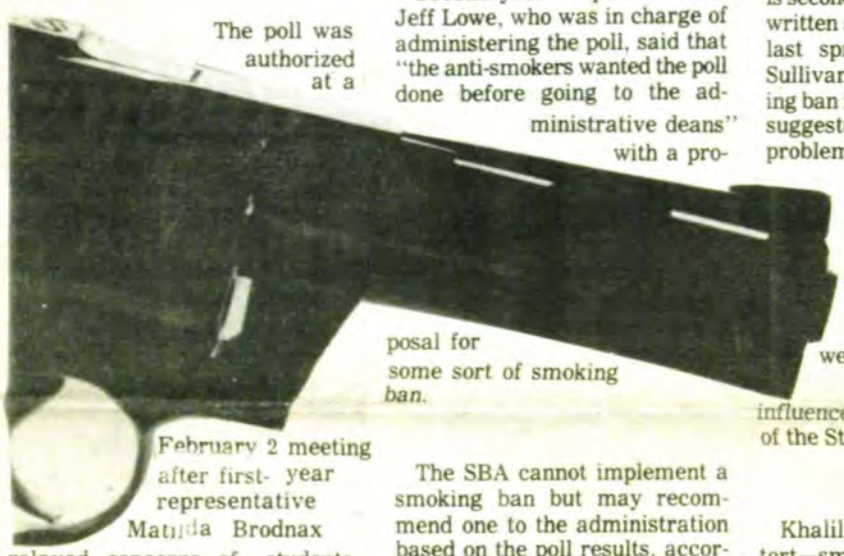
America's Oldest Law School

Volume XIX, Number 9 | Thursday, February 25, 1988 | Eight Pages

Smoking Out Opinions

By Phillip Steele

SBA poll results show an overwhelming number of respondents favoring some sort of smoking restriction at the law school. One hundred students voted for a total ban on smoking, 77 voted to ban smoking in the lounge, 76 voted for no change, and nineteen voted to ban smoking in the lobby, fifteen people preferred a smoking area.



The poll was authorized at a February 2 meeting after first- year representative Matilda Brodnax relayed concerns of students who were dissatified with the current smoking policy, which allows smoking in all areas except the library and classrooms, according to SBA President Leigh Ann Holt.

Advocates on both sides of the issue appeared at the meeting, according to Holt. She said that effects of second-hand smoke, allergic reactions, and aesthetics were all cited as reasons to ban smoking to some extent.

Holt continued, "It appeared the smokers did not have a problem with some area being designated 'non-smoking'. The disagreement came on the area."

Second-year representative Jeff Lowe, who was in charge of administering the poll, said that "the anti-smokers wanted the poll done before going to the administrative deans" with a proposal for some sort of smoking ban.

The SBA cannot implement a smoking ban but may recommend one to the administration based on the poll results, according to Holt.

Lowe planned to report the results at a special meeting on February 23 or at the regular meeting on March 1.

Bill Hicklin, a second-year smoker, said he sees "no reason a compromise on the ban can't be reached." As an example, he said, the lounge could be split between smoking and non-smoking areas.

He expressed concern that the loudest voices are being heard on the side of a total ban, while "there is almost no activity by the smokers."

One of those backing a total ban is second-year Carl Khalil. He has written several letters, beginning last spring, to Dean Timothy Sullivan asking for a total smoking ban in the law school. Sullivan suggested that Khalil take up the problem with the SBA, writing this summer that "while school retains the power to adopt regulations along the lines you've proposed, we would be very much influenced by recommendations of the Student Bar Association."

Khalil sees smoking as "a tort—smokers inflicting harm on others. It's not fair to let a small group of people ruin things for the majority." He said Sullivan should enforce a partial ban even if the majority of respondents voted for no change.

Disinterested third-year Ed Shaughnessy said the proposals for smoking bans are "ridiculous." Contrary to Khalil's theory, Shaughnessy said a "small group of [anti-smokers] are telling another small group of people what to do."

As support for his position, Khalil cites a Washington-state appellate decision which held that a state employee could establish a common-law action for negligence because her employer ignored her complaints about second-hand smoke. **McCarthy v. State Department**, 730 P.2d 68 (Wash. App. 1986). The court ruled that the trial court should have given the employee a chance to prove that her pulmonary disease was not covered under state worker's compensation law.

Poll results

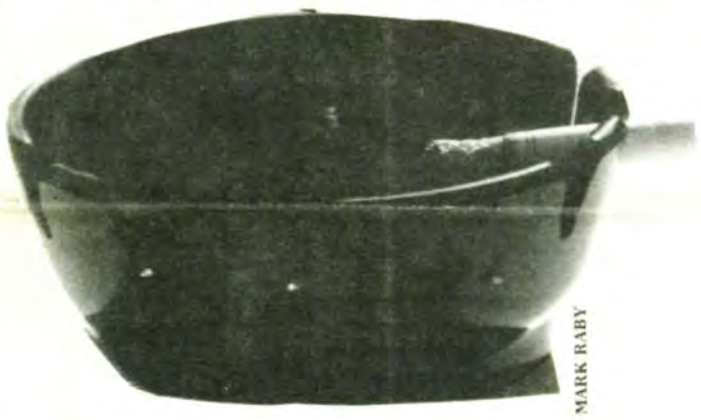
1. **Smoking banned everywhere, Non-smokers - 90; Smokers - 10.**

2. **Smoking banned only in lounge, Non-smokers - 72; Smokers - 5.**

3. **Smoking banned only in lobby, Non-smokers - 18; Smokers - 16.**

4. **No change in current policy, Non-Smokers - 60; preference for some sort of smoking area, Non-smokers - 10; Smokers - 5.**

287 responses out of approximately 530 students.



MARK RABY

Speaker Competition Open to 3L's

The William & Mary Commencement Committee has announced its competition to select the student speaker for the 1988 Commencement Exercises. The person chosen will represent all graduates at commencement by delivering an address on a topic of his/her choosing. The only stipulation is that the topic must be a theme of institutional interest, i.e. a theme to which any graduate could relate. Any person, graduate or undergraduate, receiving a degree in May is eligible to apply.

The selection process is as follows:

By Friday, March 4, persons wishing to apply must submit to the Office of the Dean of Student Affairs (203B James Blair Hall):

1 A two page personal statement describing why the candidate wishes to be the Commencement Speaker and providing any other information which might be pertinent to the student's candidacy for this honor.

2. A five-page sample of creative writing. This writing sample might be something the student has used for a class or it may be an original piece written specifically for the competition. The topic of the paper should not be the subject on which the student intends to speak.

3. At least one recommendation from a faculty member. The faculty recommendation should address the thoughtfulness of the applicant and the applicant's ability to articulate ideas.

By March 23, three to five finalists will be selected. Each finalist will be asked to make a five-minute oral presentation to the election committee and will have a brief interview with the committee.

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Inter Alia — Letters to the Editor

Legal Righting

Applause! At last the Curriculum Committee has responded to student outcry with an ambitious proposal to substantially revise the Legal Writing-Appellate Advocacy program. The proposal would replace Legal Writing, Appellate Advocacy, Lawyering Process, Legal Profession and Trial Practice with a comprehensive two-year program that seeks to resolve many of the problems that plague the current requirements.

The proposal would replace large lecture sessions with a "law firm" concept that emphasizes small group sessions, feedback, self-editing and group dynamics. Each firm would consist of approximately fourteen student "associates," a teaching assistant "junior partner" and one faculty "senior partner."

The Committee's plan deserves praise for recognizing the need for a comprehensive approach and attempting to simulate a real-world setting. Each firm would confront a variety of ethical and practical problems. Students would learn negotiation strategies and interview techniques and receive a variety of drafting assignments formats, like contracts and wills, in addition to traditional memos, motions and briefs.

At the same time, the program needs significant refining to correct many of the current inadequacies of the skills curriculum without creating new ones.

The Committee proposal recommends a pass/fail grading system for six of the eight credits and only requires one hour of class time a week. Given the pressures on students, the faculty cannot expect students to take the writing curriculum seriously, unless it gives the program the same academic status and provides students with the same motivation as other courses. When a B+ means the *same as a C-, what student is going to make the extra effort at the expense of another class?*

Even more egregious is the decision to staff the program with adjunct faculty. This year's experience of having a legal writing professor with dual commitments should have taught the Committee how crucial out-of-class access is to the learning process. Part-time writing teachers with full-time private practices bring with them the promise of limited access, questionable commitment to the program, and little consistency from year to year.

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The Advocate
Marshall-Wythe School of Law

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Published every other Thursday during the academic year except during exam and vacation periods. Funded in part by the Publications Council of the College of William and Mary.

Opinions expressed in this newspaper do not necessarily represent those of the entire editorial board or of the students, faculty or administration of the Marshall-Wythe School of Law.

Letters to the Editor should be typed at double-spaced on 8½x11 paper. The deadline for inclusion in the Thursday edition is Monday at 5 p.m. The Advocate reserves the right to edit submissions for reasons of space and clarity.

Printed by the Virginia Gazette

Write On, Professor

Dear Editor:

It is rumored — Mike Hillinger might disapprove of that nonreferential pronoun, but this is an exception — that the Professors Hillinger may leave Marshall-Wythe in favor of another law school. This follows the prospective or announced losses of Professors Butler, Coven, Edmonds, George, Nichol, Rendleman, and Williams.

Rumor further has it that one of their reasons may be the treatment accorded Mike Hillinger here.

If Professor Hillinger resents his treatment, he does so with some cause. His legal-writing course is the bane of first-year students regardless of who teaches it. Most students consider themselves superior writers already, and their resistance to Hillingers' ministrations knows no bounds. Many of them graduate from Marshall-Wythe in firm possession of the same constipated writing habits they had when they entered. All they've learned about writing, legal or otherwise, is how to scribble slurs about Hillinger on bathroom stalls.

The legal-writing and appellate-advocacy programs draw persistent criticism from other professors as well, especially when class attendance drops as memo *deadlines approach. Hillinger's* position is not enhanced by political realities: here, as in most other law schools, these programs command the meagerest measure of academic prestige.

In the face of all this, Professor Hillinger perseveres, shouldering a work load as big as the man himself — he teaches far more students than anyone else in the school — and bearing it, by and large, with patience and grace. Mountains of papers cross his desk, each page demanding thoughtful scrutiny. To an endless stream of 350 wounded egos he opens his office for sympathetic advice. Winter evenings and weekends are given over to supervising oral competitions. In return for these efforts, Hillinger gets a triple whammy: disrespect from the students, disregard from the faculty, disdain from the profession. And low pay besides.

If Hillinger-bashing remains one of the most popular sports in this school, we can scarcely blame Mike and Ingrid for searching out greener pastures. We may wonder, however, how we'll manage to replace them. Or whether we can. Sincerely,

John W. Field

Auction Reaction

Dear Editor:

Last Thursday, Law Students involved in The Community sponsored its first annual dinner and date auction at Trinkle Hall. The event was a great success! The proceeds, totaling $1,306 will be donated to the Public Service Fund to be used as a scholarship for a W&M student to work in a public interest firm this summer.

I'd like to thank you all of the people who worked so hard to make the auction a success. The list is too long to name each individual but special thanks are in order for Tonia Jones, Richard Kruegler, Tom Sotelo, Kathie Amspacher, Ingrid Olson, Margaret Lee, Marc Taylor, Martha Leary, Victor Snead and The Wailing Cats who donated their time and talents to the cause.

There were 22 auctionees who deserve a around of applause, it took quite alot of courage to get up on the stage, and all of you were terrific. The audience and bidders should also be commended. They contributed a lot of energy, support, good humor and money to the cause.

24 local restaurants and businesses donated dinners, lunches, movie tickets and gift certificates to the event. They were all more than happy to help the students at Marshall-Wythe and we are grateful to them for their support.

This event was special that local businesses and law students came together to raise money to give something to the community.

Thanks again to everyone who contributed to the even!

Cathy Lee

Texan Clears Air

Dear Editor:

I write in response to a portion of an article entitled "1Ls Air Legal Writing Concerns" which was published in the February 11, 1988 edition of **The Advocate.** Specifically, I wish to correct the "spirit and letter" of the comments regarding the Texas jurisdiction which Ms. Horwatt attributed to me.

First, I had no complaint with the Texas jurisdiction selected for Sections A-3's and B-3's open memorandum, because of my familiarity with the jurisdiction's numerous quirks. Instead, I suggested, during the SBA meeting, that teaching assistants should review a potential jurisdiction for idiosyncracies prior to Professor Hillingers' choosing it for the open memorandum. I hoped that this type of review would result in either the selection of another jurisdiction more amenable to the limited research skills of a 1L student or the advising the students of jurisdictional problems at the time the memorandum is assigned. I do not think, however, we should overlook the reality, expressed by Eric Cantor, that we will deal with different jurisdictions, each with its own peculiarities throughout our legal careers. Thus, we must be able to handle competently all problems, both legal and jurisdictional, which will confront us in the future.

Second, Ms. Horwatt quoted inaccurately some of my comments regarding the Texas courts system. There was a dual appellate court system (i.e., Texas Courts of Civil appeals and Texas Court of Criminal Appeals) before 1981. In 1981, the Texas voters approved an extension of the jurisdiction of the intermediate appellate courts to include most criminal cases. Since September 1, 1981, virtually all cases may be appealed only to the Texas Courts of Appeals, formerly the Texas Courts of Civil Appeals. The route of a case appealed from a court of appeals depends whether it is a civil or a criminal case. Civil cases are taken to the Texas Supreme Court and cirminal cases are taken to the Texas Court of Criminal Appeals. Texas Rules of Form (5th ed. 1983).

At this point, I am sure very few care about the Texas jurisdiction. I have heard that some 1Ls have sworn never to practice law in the Lone Star state as a result of the open memorandum. It's really not such a bad place—ask Jeff Yeats! Anyway, you've confronted the worst and survived (as long as you think of armadillos as armor-clad puppies).

Kimberly Thompson
1L

Funds Found

To the Editor:

We can all celebrate now! —Ed Shaughnessey has stopped pouting. The SBA has miraculously found money for his ATLA team. According to the SBA president, it was "money that we did not know we had." Happy, Eddie?

Mara K. Clariett

Fair Notice

Student Contacts

Just a reminder that applications for next year's Students Contacts are due by 5:00 p.m. on Friday, February 26, in Dean Galloway's office. Applications may be picked up from Gloria Todd.

All interested first-and second-years are encouraged to apply.

BLSA Law Day

The Black Law Students Association thanks all faculty, staff, alumni, and students who participated in the First Annual BLSA Law Day. These participants made the event a big success.

Walls Come Down

On Saturday, February 26th, Law Students Involved in The Community will be working on a Housing Partnership project in Williamsburg. We will be removing some of the walls at Mrs. Green's home so that electrical and plumbing work can be completed. Anyone who is interested in helping is welcome to attend. We will be meeting in the lobby of the law school at 9:00 a.m. on Saturday. Please join us!!

Peregrination

by Jeff Yeats

Did somebody say Nag's Head?

Oh, no. No, no, no, no. Not yet. It's just barely Spring Break.

The maddening social whirl must be sucking in some of our weaker minds, conspiring with the weather, inducing an onslaught of Spring Fever. I know it has affected this previously bent, folded, spindled, yea, mutilated brain.

First, I made passing mention of an old role-reversal game, a crude but well-intended socialization technique. Time passes, as it does, and two weeks later I have no visible support for my idea and absolutely no offers of escort.

This situation led to some published moaning about lack of support AND of any particularized interest, although both were developing without my knowledge. Even as I was submitting my bi-weekly, post-deadline emission, the vivacious Mara Clariett was constructing signs to promote a Sadie-Hawkins approach to the Barrister's Ball. Then, the day after my plight is publicized, I am swept off my feet by a kind invitation from Connie Karassas.

Now it's time to extend my heartfelt thank-yous to those lovely, talented and independent ladies who decided to take a chance on something different—and in so doing salvaged both my idea and my self-esteem. Thank you, ladies, and thanks to all the others who have participated in the spirit of the thing.

Unfortunately, all this success went straight to my head. Overwhelmed by an unexpected rush of self-confidence, I went off the deep end. Within a week the old cynic found himself attending a semi-dry affair designed to benefit a truly worthy and constructive cause on this campus. At first, he was admiring the courage (read: cojones) of those who stood up to be counted, priced, haggled-over and finally cast to whichever whim of fate was carrying the most cash or illicit beer, or both.

As the night progressed, however, a feverish edge crept into the bidding. Amazingly, the distaff began pushing prices higher. Fiercely, even violently, they upped the ante. Across the gender line, bunds of venture capitalists formed, for the stakes there were rare. Some of the most heated and treacherous activity was centered, naturally, right up front. Screaming, slobbering representatives of both persuasions and all three classes resembling a spawning frenzy.

In the back of the hall, cynicism eroded, a primitive stirring commenced, something forgotten began to emerge. I struggled with it for many minutes while it gained strength from the battle and eventually overrode my resistance.

A sudden hush fell across the room when the auctioneer, our own Rich Kruegler, called my name. I was puzzled. Why was everything so quiet? Why had he called my name? (I found my right hand above my head.) In it, a bidder's card twitched so wildly the number was but a blur.

In the silence, the man Kruegler droned a three-count that ate my March lunch money as I tried to make sense of the preceding few moments. Why was my heart pounding? What had moved me to such extreme action? What, indeed, had I done? A trembling hand filled the spaces on my check with less than legible figures.

Outside, slamming beers in the brisk night air, the cardiocascular normalized the twitching stopped, the fog slowly left my brain. Thoughts began to take meaningful form. A picture of the beautiful Jeannie Berube in a pool of soft light, slightly abashed amid the intense attention she received from the snarling crowd. Of its own volition my hand clenches, streaks into the air, just missing Mr. Ebert's innocent nose and demands notice from the auctioneer. The long, expensive countdown follows, then a roar from the crowd. A terrified feeling, would they attack?

No attack, but another strange flash: Lee Marvin, three times drunk, stumbling through a tight and raucous crowd of gold-miners, suddenly realizing they were bidding on the Mormon's extra wife. At once he gathers all the consciousness his intemperance has left to him and bellows, "Whatever the bid is... I double it," promptly falling face first into the muddy boom-town street.

But that wasn't right, either. I started drinking only after I spent all that money. And I managed to keep from doing a flop on the Trinkle Hall tile.

This thing has more primal roots than mere intoxicants or buffoonery. It runs much deeper. I stalked the Green Leafe for a couple of hours, trying to convince myself it wasn't an outbreak of Constructive Participation. Even that would be too shallow. Besides, I'm not ready for another image change; haven't gotten quite used to the last one yet.

After losing two days to utter confusion, the answer started taking shape Sunday evening. It seems I was drawn into a game I could not win. Not purposely; it wasn't a rigged game. With more practice I might learn to win at this game. Still, when the game is defined in terms peculiar to me, the answer becomes obvious.

It was a cruel test. Pitting the outer limits of my budgetary judgment against some of the most cunning temptations on God's green earth leaves a man of my proclivities with few options. Money and I never really got along in the first place, and I learned long ago that contests of this sort need to be taken to their finish. In my case, an inherent lack of discipline is outcome determinative.

Ah well, here's to temptations, good causes, and independent people. Three things that make life worth law school.

Baby Barristers

by Will Murphy

Evan Mecham was elected Governor of Arizona when he received a plurality of votes in Arizona's last gubernatorial contest. He revealed almost immediately that he has the political acumen of a goldfish and that to complement this trait he possesses the sensitivity of a brick. He quickly alienated the state legislators, even driving off many Republican party stalwarts.

But it wasn't until he rescinded the Martin Luther King Jr. state holiday that Mecham got national attention and criticism. This is ironic since that was probably the best decision he made the entire time he was in office. The criticism he received from outside of Arizona was ridiculous. This is not to say that King did not do enough to warrant a holiday. He remains a controversial figure, but there is no doubting that he altered the course of history.

Bruce Babbit, the previous governor and until recently a candidate for the Democratic Presidential nomination, installed the holiday by executive fiat. When Mecham took office, the State Attorney general advised him that the holiday was illegal. It seems that the governor only can declare observance days. A paid state holiday must be declared by the legislature, not done so.

When Mecham announced that he was rescinding the holiday, he was criticized across the country and the inevitable accusations of racism were raised. In addition to the fact that the holiday was illegal, a contention that the anti-Mecham forces did not seem willing to address, Mecham pointed out that it would cost the taxpayers of Arizona millions of dollars. This did not slow the critics, many of whom were from states that had only installed such a holiday in very recent years and most of whom would not have had to help bear the cost of the holiday.

Eventually Mecham installed a non-paid observance day, the most his office empowered him to do. By his own admission this is what he should have done in the first place. But perhaps those who were so quick to criticize should consider the legalities, the importance of the separation of powers in a state government, and the cost to others before they cry "foul" and raise accusations of bigotry.

From the Right
Women & Homosexuals

by Mike Davidson

Recent controversies within the Press and the court system have highlighted the debate over the role women and homosexuals should play in the military. Women have challenged the current policy of excluding them from combat and combat-related specialties, while homosexuals have challenged the military's blanket exclusion of such individuals from the Armed Forces.

Women have no role in combat or combat units for two reasons. First, as a general rule, women are not as strong physically as men and combat is a physically demanding activity. Even in peacetime it is not unusual for an American soldier to march great distances with as much as a 150-lb. load, without adequate sleep, for several days and be required to conduct attacks throughout the entire period. In Vietnam that sort of thing was the norm. Even with all the whiz-bang high-tech equipment in the military inventory, wars are eventually won by the common foot soldier who is oftentimes reduced to killing his opponent with a knife, a shovel, or his bare hands. Of course, there are a small minority of women who could handle the physical demands of combat; but the cost of sorting them out from the thousands of recruits would be overwhelming. Determining a proper standard to sort out such women would also be burdensome. Also, once this standard had been determined and the eventual political pressure to see these women succeed came to bear on the military, whatever standard had initially been developed would quickly be watered down to satisfy such pressure. The introduction of women into the service academies and into Army paratrooper training are two recent examples of this. As a prerequisite to paratrooper training, men were required to be able to perform a certain number of pullups (the rationale was that, to control a 'chute, the trooper had to pull on the harnesses). Women, however, were not required to perform such pull-ups. Unfortunately, our enemies do not observe the dual sets of standards and insist on killing American soldiers on an equal-opportunity basis.

Second, women should be excluded from combat for psychological reasons. With women in the unit, men retain their individuality at the expense of unit cohesion. Soldiers cannot concentrate on the welfare of the unit as a whole first. Also, the psychological impact to the folks at home of seeing on the CBS evening news some 18-year-old woman with her brains spattered all over her shirt is more shocking than seeing a male soldier in the same setting. The nation is conditioned, to a certain extent, to seeing male dead and wounded. There is a certain tolerance for that sort of sight. I know that sounds callous, but war is, by definition, an ugly thing. It never was anything else and will never be anything else. As Vietnam taught us, any future protracted conflict will ultimately be decided in favor of the nation whose population has greater staying power-who can tolerate the ugliness of warfare longer than the other side. For America, that tolerance would be reduced by inserting women into the ugliness.

Homosexuals should be excluded from the military for entirely different reasons. Although a cross-section of society, the military is generally a much more conservative and "masculine" institution than the rest of society. The presence of a homosexual in a unit has an adverse effect on morale and unit cohesion. It challenges the integrity of the rank-and-command structure. Rank generates only authority. Respect must be earned. If the leader cannot gain that respect, he or she is ineffective and will fail. In peacetime, this may only be inconvenient; but in periods of hostility, the cost is calculated in lives and limbs. Mutual respect and trust are essential in a combat unit; in the case of a homosexual, these may be unascertainable.

Several commentators on the issue have drawn parallels between the arguments justifying the exclusion of homosexuals from the military and similar arguments justifying the segregation of blacks within the military before the Korean War. Granted, there are many similarities and the arguments in both cases reflect the social prejudices of the time. Blacks, however, were objected to in terms of ability. After their stellar performances on the battlefields of World Wars One and Two, any such misgivings fell by the wayside. The performance of the black soldier and officer in Korea and Vietnam further secured their place on the honor roll of military history.

Unlike the racial minority, homosexuals are not challenged on the basis of their abilities. Many homosexuals have proven to be capable soldiers in combat. Homosexuals are objected to because of the effect thay have on other soldiers and on the unit. The social prejudice against homosexuals in the military has not receeded to a point where the introduction of the homosexual soldier would not adversely affect morale or preclude destroying the efficiency and integrity of the rank-and-command structure. Morale and discipline are the cornerstones of the military's ability to effectively function and fight. The homosexual soldier adversely affects both. The military is simply not ready for the homosexual soldier.

America is like an egg. The hard shell protects the yoke and whites as the military protects America with all its inherent rights, freedoms, and benefits. When the shell is pierced all else is endangered. Although the military will obey civilian authority and do as told with respect to homosexual soldiers and female combatants, both actions will challenge the survival of the shell and all that lies inside.

Righting . . .

Continued From Page Two

Likewise, teaching students how to write is very different from being able to write well; many fine writers cannot explain their talent. Although the Committee has promised a "training program," one has to question how effective attorneys and upperclass students will be without the benefit of a background in education or English. If the Administration is truly committed to upgrading the writing program, it should find funding for additional full-time faculty to teach the course.

Another disappointment results from the plan to remove Legal Profession from the course offerings. Although the Committee promises that ethics will be interwoven throughout the new curriculum, the proposal attempts to condense too much material into too little classtime. When classes meet only once a week, and writing assignments must be completed, one suspects that ethics will be the first subject to be left by the wayside.

Although the Curriculum Committee's proposal is a step in the right direction, it falls far short of addressing important problems. As faculty and students carefully weigh the merits and shortcomings of the program, they should evaluate whether they are righting a wrong or merely replacing one set of inadequacies with another.

—S.M.M.

BOB LEWANDOWSKI

Jon Jester and Jeff Yeats re-enact the first meeting between John Smith and Pocahontas.

Dean Comments on Faculty Flight, Graduation

by Steven M. Mister

At his first open meeting of the semester, Dean Sullivan announced Monday Feb. 22 that Justice Thomas of the Virginia Supreme Court will speak at this year's graduation. Sullivan said that because of the "confusion as to who represented the class as the official voice of the graduation committee," the administration was forced to make the speaker decision.

The Dean also addressed concerns by students that Phi Beta Kappa Hall, the current commencement location is too small. Although he said he realized that students are strictly limited as to the number of graduation tickets they receive, he dismissed alternatives like moving the law school graduation outside or staggering commencement services with other departments so that Williams and Mary Hall may be used instead.

In response to a concern about the high rate of faculty turnover this year, Sullivan said students should not be alarmed. "This is nothing out of the ordinary. Any school with the prestige and reputation of faculty like ours will have years like this. These things come in cycles," the Dean said.

Sullivan announced that two new faculty member's have already accepted offers from Marshall-Wythe. Professors Rod Smolla and Linda Malone, a husband and wife team like their predecessors, will replace Professors Nichol and George. Smolla will head the Institute of the Bill of Rights.

The school will hire at least one entry level professor, but has decided to fill the remaining openings on a "visiting status" basis to allow the school to "look over the new teachers first, rather than make permanent obligations."

However, the Dean refused to express any opinion about a student suggestion that new faculty present a one-hour symposium to the law school as an additional criterion by which to evaluate prospective teachers. Instead he said the matter would have to be considered by the Hiring Committee.

Discussing the prosposed new dormitory behind the law school, an investigation of possible private financing is the current cause of delay. Initially scheduled for groundbreaking last fall, the housing complex has been the subject of focus groups and a campus poll this year after inital construction bids came in well above the amount allocated by the state.

The present design calls for apartment-style facilities that will be completed in three phases. When complete, the complex will include athletic facilities and a swimming pool, Sullivan said. "If we're lucky, we may break ground by next fall," he said.

New lounge furniture, originally promised to have been delivered last fall is still the object of bureaucratic paperwork, according to Sullivan. Confusion about whether the furniture could be constructed in one of Virginia's penitentiaries or could be purchased on the open market has delayed the process.

Sullivan remarked, "We'll be lucky if we see [the furniture] before the end of the year," noting that he was glad he didn't have to furnish the new placement wing through the same procurement system.

Another source of contention, the opening and then closing of additional parking spaces, also left students unsatisfied with administrative treatment. Sullivan said the grassy area would be reopened "whenever it's not too muddy" and remarked that money has been approved by the General Assembly for new permanent parking. However, an earlier promise to place gravel over the grass evaporated when the Buildings and Grounds Department for the college told administrators they didn't have the money to buy gravel.

In light of recent complaints by students and professors regarding faculty evaluations, the Dean noted that the Faculty Status Committee has "taken under advisement" the possibility of revising the questionnaires. Sullivan said he was well aware of the concern, but could not predict what the committee's recommendation would be.

Dean Sullivan reminded students that the ABA Accreditation team would be evaluating Marshall-Wythe next week. He said students should be "cheerful and energetic in class" and show the evaluators what a great place William & Mary is.

Sports Lawyers Living Off Handouts

By Jon Hudson

If you have a high tolerance for cut-throat competition, shady operators smoking big cigars, unconscionable contracts and long hours, then Sports and Entertainment Law may just be what you are looking for.

Josh Kaufman is a partner in Washington D.C.'s Goldfarb and Singer, Founder and Executive Director of Volunteer Lawyers for the Arts, and a full-time practitioner of sports and entertainment law. On Tuesday, Feb. 23 he addressed about 25 Marshall-Wythe students at a presentation sponsored by the ABA Forum Committee on Sports and Entertainment Law and the Career Planning and Placement office.

Kaufman started by defining four markets for Sports and Entertainment Law: Los Angeles, New York, Nashville and Everywhere Else. By phrasing things this way, he was emphasizing that outside of these cities a lawyer will probably not find any place to practice this rather narrow specialty full time. Add to this the problems inherent in a specialty which is not a "body" of law at all, and the picture of the beginner in private practice "winging it alone" begins to emerge.

Before this somewhat grim picture became too painful, Kaufman's good humor and genuine appreciation of his clients began to show through. He is a professional actor and artist as well as a lawyer, and his antecdotes included references to going to openings, "pulling prints," "shopping tapes," and stage directions.

Some of his most fascinating illustrations were highly idiosyncratic to special areas. For example, cross-collateralization is the norm in recording industry contracts; starving fine artists tend to want to pay in art rather than cash.

Performers and athletes have particular problems in merchandizing and publicity rights to their face or name, as they may be marital property, alienable or descendable. Artists are involved in the troublesome area of trying to copyright their style (which Mr. Kaufman analogized to current litigation over "look and feel" of computer interfaces). Throughout, a bottomline absolute was that "*EVERYTHING*" has a tax impact.

As he closed, Kaufman gave a series of suggestions for breaking into this difficult field. To become known, he suggests that one go to every opening or show and hand out cards (surreptitiously). Next, he proposes writing articles in non-law journals and newspapers, and giving speeches to bring you to the attention of prospective clients. There are also many volunteer opportunities which can open doors to both jobs and clients.

Ultimately though, for those who had nurtured hopes of starting out as entertainment or sports lawyers, the surest advice seemed to be, "just be in the right place at the right time." Sound counsel, firmly based in reality, but just a little hard to plan for. Oh well.

RODNEY WILLET

Arts and entertainment lawyer Josh Kaufman

Dating for Dollars

by Tad Pethybridge

Abraham Lincoln would have been shocked. More than a dozen decades after his Emancipation Proclamatin heralded the end of slavery as a legitimate institution in the United States, last week we witnessed—here in the cradle of liberty—human beings once more being bought and sold on the auction block. And everyone had a blast.

The event was the Dinner Date Auction, held last Thursday at Trinkle Hall by the Law Students Involved in the Community. The auction was held to benefit LSIC's Public Service Fund, which supplements the salaries of students choosing to work in low-paying public service jobs. Seventeen male and five female first-year volunteers auctioned off their company on dinner dates donated by 24 local restaurants and businesses. The event raised over $1300.

The evening began with a skillful, wide-ranging set by the law school-based band, the Wailing Cats. The Cats entertained the crowd with deft covers of tunes by artists ranging from R.E.M. to Van Morrison, and from the Stones to Smokey Robinson (including the cover version of "Tracks of My Tears" done by the English Beat). A few of the bolder audience members were moved to dance. The activity which took place in the ballroom's aisle, however, was nothing compared to that which would follow in a few minutes.

When the auction finally got under way, it was an amusing, somewhat reserved event. Winning bids for the first few dates were in the $20-$40 range, also the approximate range of the gift certificates involved. Not quite halfway into the auction, however, the tone of the evening changed drastically when John Fendig's personal statement (provided by each participant and read as an introduction) caught the crowd's fancy. Fendig revealed that his ideal date was "at the employee's cafeteria at the Farm Fresh," and that in five years he hoped to be "practicing in New York City, defending Tim Murphy from paternity suits." This so amused the crowd that the pleasure of John's company—at the Blue Rose Cafe, no less—brought a winning bid of $71.

After that turning point, bidding for the remaining dates was raucous and frenzied. The few remaining dates with ladies brought average winning bids of over $75. The dates bringing the highest prices were with a select few gentlemen, the pleasure of whose company at dinner required writing not two but three digits in one's checkbook. The higest winning bid of the evening was $102, for a date with first-year representative Dan Perry. Dates with Victor Snead and Mike Miller brought $100 each. Another first-year representative, Matilda Brodnax, deserves special note: when the value of the dates she purchase ($156) is added to the winning bid for her date (a pre-Fendig bargain at $40), Ms. Brodnax single-handedly accounted for almost 16% of the $1235 raised in bids. When the door receipts were added to the evening's proceeds, the LSIC had raised $1306.59 for the Public Service Fund.

The event's primary organizer, first-year student Cathy Lee, said she was astonished by the event's overwhelming success. "I just can't believe it went this well. Those people just went crazy." Crazy or not, the event seems destined to be repeated. The recently elected chair of LSIC, Tom Sotelo, said, "It went really well; we raised almost a full stipend. Now we're going to sit down and analyze it and find out what we can do to make it better next year."

RODNEY WILLET

The Dinner Date Auction was definitely a cash and carry affair. Here Henry Hopkins picks up his purchase, mouthwatering Matilda Brodnax. No word yet on the refund policy.

RODNEY WILLET

Over Dan Perry's protest, Rich Krugler raises a fashion objection.

THE ADVOCATE IS NOW ACCEPTING APPLICATIONS FOR THE FOLLOWING POSITIONS:

Managing Editor

Handle the day-to-day running of the most widely read law school newspaper in Colonial Williamsburg. Coordinate the News, Feature, Sports, Layout and *Photography departments. Write editorials.*

Copy Editor

Proofread copy for style, grammar Monday night, Tuesday. Wednesday proofread copy at the Virginia Gazette. Chief Copy Editor has editorial responsibilities. Some familiarity with journalism and Associated Press style preferred.

News, Feature, Sports Editor

Assemble staff of crack reporters to cover events relevant to students of Marshall-Wythe. Generate story ideas and assign stories at bi-weekly meeting. Write editorials.

Photography Editor

Assemble staff of photographers to cover stories in coordination with News, Sports and Features departments. Must have an ability to develop black & white film.

Production Manager

Cut and paste together the newspaper on Wednesday night. No experience required. Patience, creativity and attention to detail a must. Must be able to lay out with many people in a small room for long hours at a time.

Circulation Manager

Pick up newspaper from the Virginia Gazette, distribute at various locations in the community. Maintain a filing system for back issues of the newspaper.

Business Manager

Generate the budget from the newspaper, process bills and revenue, general accounting duties.

Sales Manager

Solicit advertising from local merchants, help design ads. Collect commission.

PLEASE CONTACT CHERI LEWIS OR GERRY GRAY FOR MORE INFORMATION OR AN APPLICATION.

Faculty Profile

Criminal Expert Serves Time at M-W

By Charles Fincher

Yale M. Kamisar, one of the premier scholars in criminal law, is a visiting professor at M-W School of Law. A native of New York, Professor Kamisar earned his A.B. from New York University and his LL.B. from Columbia, where he was a member of the **Columbia Law Review.**

Professor Kamisar was an associate in the Washington, D.C. law firm of Covington and Burling from 1955 to 1957; he later left private practice to become an associate professor at the University of Minnesota School of Law. Professor Kamisar is currently Henry K. Ransom Professor at the University of Michigan. His areas of expertise are criminal procedure, criminal law, and Constitutional law.

A forceful, energetic man, Kamisar is upset that Americans tend to hold the Constitution as a mere showpiece, rather than as a guiding document. As an example, he says people express wholehearted agreement with the provisions of the 4th Amendment; yet, those same people, when confronted with the exclusionary rule and unreasonable search and seizure, complain of legalistic shackling of law enforcement.

Pacing the room—occasionally striking the desk—Kamisar revealed it has always been politically popular to complain of unreasonable restraints on police. William Howard Taft, in 1905, complained that there were not enough executions. Another commentator, Simms, argued in 1920 that social workers prevented effective law enforcement. Even though there was no **Miranda** (police must inform suspects of their rights before statements can be used as evidence) and no **Escobedo** (right to an attorney) for people to point to as inhibiting police investigation, the same arguments were used then.

Kamisar feels there will always be an underlying "tension between the rights of individuals and law enforcement." His assessment of the future is "very pessimistic," as a few acts of terrorism in this country could cause a panic in which the people would relinquish a substantial portion of their individual rights in favor of increased police measures.

Professor Kamisar appreciates being involved in the Bill of Rights Institute and meeting such individuals as Professors Williamson, Nichol and LeBel. He describes Marshall-Wythe as a "nice tour of duty." Next year he hopes to be involved in a conference on criminal procedure here. Currently, he is working on a lecture on mercy killing and a book on criminal justice.

RANDY REPCHECK

Visiting professor Yal Kamisar in a pensive mood

BENCH CLASSICS

Of Mice and Cons

A group of prisoners in the Suffolk County Jail (New York) caught and tamed a mouse. One day a jailer found Morris (as he had been named) and flushed him down a toilet. The prisoners sued the warden, complaining **inter alia**, that Morris was "subjected to discriminatory discharge and otherwise unequally treated."

The suit failed on grounds that the inmates themselves were "guilty of imprisoning Morris without a charge, without trial and without bail," as well as a finding that the other mice at the prison were not treated any better.

Morris' requiem was provided by the judge when he observed, "As to the true victim the court can only offer again the sympathy first proffered to his ancestors by Robert Burns . . ." The judge then quoted from Burns' **To a Mouse**, which goes in part:

I'm truly sorry man's dominion
Has broken Nature's social union,
An' justifies th' ill opinion
Which makes thee startle
At me, thy poor, earth-born companion
An' fellow mortal

and ends:

The best laid schemes o' mice an' men
Gang aft a-gley.

Morabita v. Cyrta, 9 Crim. L. Rep. 2472 (N.Y. Sup. Ct. Suffolk Co. Aug. 26, 1971).

Submitted by Jon Hudson

FOR THE RECORD

The Advocate regrets its statement that Professor Corr alleged Professor Coven "tampered" with his tenure record.

In our last issue, the first sentence of the third paragraph in the lead story states that "the complaint includes allegations that Sullivan and Coven tampered with Corr's tenure record . . ."

The complaint does not allege that Coven tampered with the tenure record.

Note Writer Defies Odds

by Lee Bender

Third-year Susan Winchell is making history in the upcoming Vol. 29, No. 4 issue of the **William & Mary Law Review**: she will be the first "non-law review" Marshall-Wythe student ever to be published in the **Review**.

Written originally for last fall's seminar in Education Law Winchell's note is "Discrimination in the Public Schools: Dick and Jane Have AIDS". According to Winchell some public schools have categorically denied admission to children with AIDS; private schools can admit or deny whomever they choose, based on their own criteria. Children most often contract AIDS from blood transfusions or through their mothers and tend to live longer than adults with the disease. Estimates indicate that 2,000 children are now infected and that by 1991 10,000-20,000 children will have AIDS or AIDS-Related Complex (ARC).

Winchell states that she has always been interested in educational issues, and she wrote this paper because AIDS is a "hot topic". She is talking to the office of the Attorney General of North Carolina about employment next year in their educational division. Susan "plan[s] to have a continued interest" in AIDS in the classroom and to pursue the matter.

Winchell submitted her paper to the **Review** when she heard of a "spot open" in one of the upcoming issues. She "was pleasantly surprised" when her paper was accepted for publication. She says she did not write her paper with the **Review** in mind, but when she discovered from a friend that it happened to fit the note guidelines of the **Review**, she thought, "nothing ventured, nothing gained." Winchell believes that people in the law school are unaware of the fact that the Law Review will accept non-law-review students' papers if they meet the standards; and students should be encouraged to submit their works. These guidelines are not difficult to meet. So, "why not?"

Constitutional, Statutory, and Regulatory Concerns

The federal government, through the Centers for Disease Control (CDC) in Atlanta, has issued guidelines for dealing with AIDS-infected children. The government starts with the presumption that these children can attend school. However, the CDC advises schools to set up screening panels to determine if the individual child has any extraordinary behavioral problems—like biting—that might make him or her more apt to transmit the disease. According to the CDC, there is presently no reason to think AIDS can be transmitted through casual contact. Many states have adopted these guidelines; however, they are not mandatory or binding on the states but merely a set of policy positions.

Can a public school discriminate against children with AIDS and keep them from attending school with their peers? Susan's analysis focuses on two laws: the equal protection clause of the 14th amendment and 504 of the Rehabilitation Act of 1973.

Under the equal protection clause, education is not a fundamental right and those with AIDS are not a suspect class; therefore, AIDS-infected children will not be able to overcome strict-scrutiny analysis. Nor will these children be able to pass the rational-basis test; the Supreme Court gives great deference to states, especially on issues the state is entitled to regulate under its police powers, such as public health and safety. AIDS-infected children might be able to argue effectively under a heightened level of scrutiny in a particular fact-specific case; but Winchell points out that there is no guarantee of success and "no definitive answers from the Supreme Court are forthcoming."

IS Aids a "Handicap"?

Under 504 of the Rehabilitation Act of 1973, a handicapped individual cannot be discriminated against, based solely on his handicap, in a program that receives

Continued on Page Four

M-W Hosts Intercourse on Sexual Harrassment

by John Fagan

The Mary and William Society sponsored a talk on employment discrimination this past Tuesday. Anne Greever, a partner at the Richmond law firm of Hunton & Williams and a M-W graduate, spoke for an hour on sexual harassment in the workplace. According to Greever, she chose to speak on sexual harassment because "anyone with a law degree who walks into a cocktail party sooner or later will be asked about sexual harassment." Greever made several points that could help anyone ever cornered over gin and tonics.

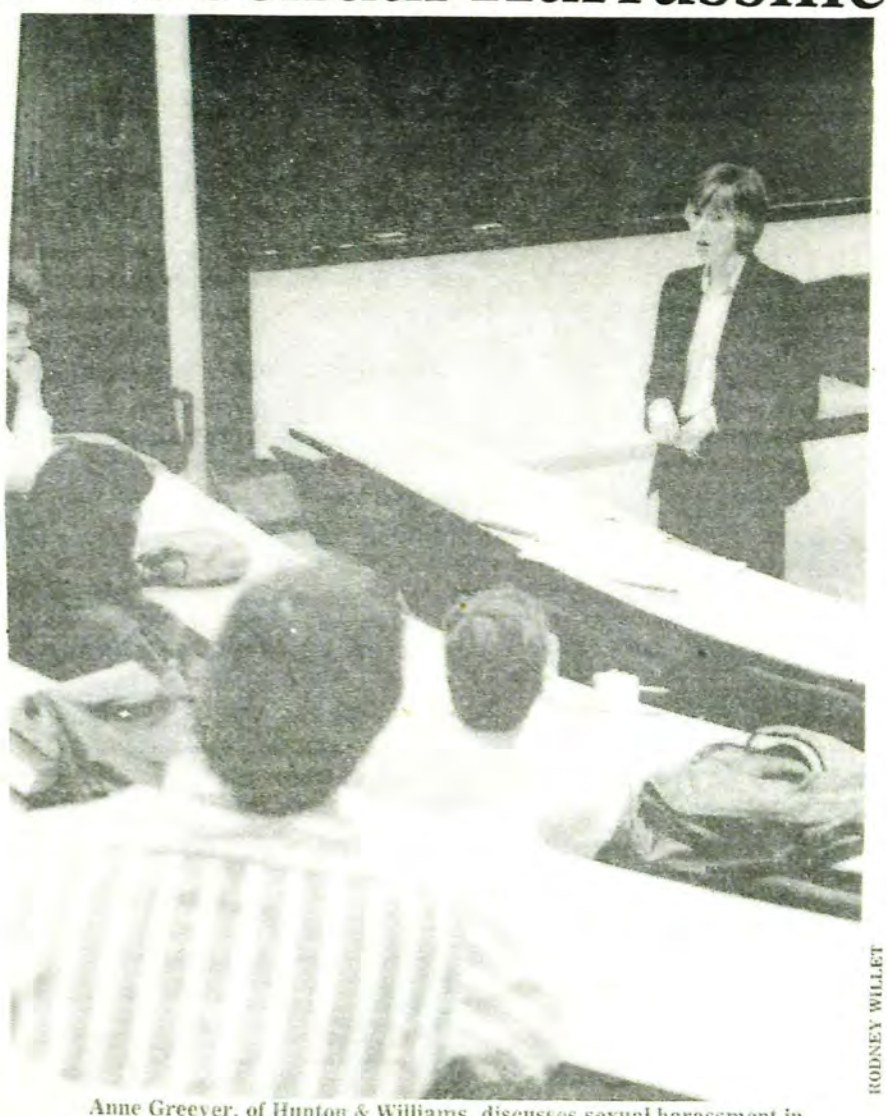
The Equal Employment Opportunity Commission has defined sexual harassment as "unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature" to which submission is made a condition of employment, used as a basis for employment decisions or creates an intimidating or offensive working environment.

There are two types of sexual harassment. The first is *quid pro quo* or "hop in the hay" harassment. This occurs when a management level employee conditions employment benefits on submission to sexual advances. Employers are almost always liable for this type of harassment based on the agency theories which are at the heart Title VII. The second type of harassment is the creation of an offensive working environment. Employers will be held liable when they knew, or should have known, of the harassment and failed to take prompt remedial action.

According to Greever, until recently employers were reluctant to deal with sexual harassment out of embarassment. Any investigation normally consisted of the alleged perpetrator's boss calling in him or her (males can allege and prove sexual harassment) and saying, "Joe, I don't know what happened. I don't want to know what happened, but just don't let it happen again." This changed in 1986 when the Supreme Court indicated that a more thorough investigation would be necessary to shield an employer from liability.

Greever spent much of the hour discussing how clients should be counseled in order to avoid suits or prosecute actions. The victims of harassment should always first try to stop the harassment themselves. If that does not work, a complaint should be lodged with management, otherwise the victim will be unable to prove that the employer knew or should have known of the harassment. The employer, on the other hand, should provide a system of reporting that allows the victim to bypass his or her immediate supervisor, as the supervisor is often the cause of the problem. Employers should also conduct follow-up investigations to ensure that harassment does not continue after an initial warning has been given.

In the end, sexual harassment can only be ended by effective education and an employer policy which makes clear that sexual harassment will not be tolerated, Greever said. The best education is not of the classroom type, however. Greever observed that there is no better educational tool for individual supervisors and employers alike than a process server on the doorstep delivering the news that they are being sued for $3 million.



RODNEY WILLET

Anne Greever, of Hunton & Williams, discusses sexual harassment in law firms.

Law Note . . .

Continued from Page Six

federal financial assistance. Probably all public schools fall within this category. The issue in the §504 analysis is simple: who is a handicapped individual? According to Winchell, children who have AIDS or ARC are clearly covered by the Act. But are children who do not manifest physical symptoms (asymptomatic carriers) handicapped? Winchell maintains that they are, citing the Supreme Court's 1986 decision in **School Board of Nassau County v. Arline** for support.

In **Arline**, the Court expressly reserved the question whether asymptomatic carriers of AIDS were protected by §504. In the case, a school teacher had contracted tuburculosis twenty years before and had been treated for it. She was fired when she had a relapse, because she was found to be contagious. Under §504, a handicapped person is someone who has a record of physical impairment or is perceived to have a physical impairment. The plaintiff in **Arline** had such a record, but the Court could not distinguish this record from her contagiousness.

Susan argues that children with AIDS are perceived to have a handicap, and that, therefore, a school board cannot meaningfully separate contagiousness from the perception. Furthermore, this seems to be in accord with the legislative history of §504. According to the Supreme Court, "Congress was as concerned about the effect of an impairment on others as it was [about] the effect of an impairment on an individual." Therefore, Winchell argues, asymptomatic carriers as well as AIDS victims should be considered handicapped under §504.

Ultimately, she concludes, "children of AIDS, or any victim of AIDS, in any stage of the development of the disease, should not be discriminated against because they're contagious; and this should be prohibited under both the Equal Protection Clause and §504. But the real bottom line is that I think we have to continue to educate the public about this disease. Even if the feds come down and say that children with AIDS are handicapped and can attend public school, the real tradegy won't be solved until the public has an appreciation of the fact that AIDS is not transmitted through casual contact; we need a more objective and reasoned approach to alleviate the public's apprehension and the victim's tragedy."

AMY BIRKIMER

Law review editor Margery Bugen demonstrates her life beyond the law. Bugen took first place in her section of the horse jumping competition at a horse show hosted by William and Mary Saturday, Feb. 21. The College team topped a ten-team field in its first home meet in three years. Overall for the year, the team is in second place, trailing Mary Washington but just ahead of UVa. The next show is Saturday, Feb. 28 at Sweet Briar.

I.M. Roundup

by Larry Schimmels

Basketball

A-League Men

The Law School's own Soul Rats came up short in a hard-fought contest Monday Night against the Grafflers. With only twelve seconds to play in the game the score was tied, 48-48, but the Soul Rats failed to convert a free-throw opportunity and lost 51-48. The Rats missed 4 consecutive free-throws in the last two minutes. The Grafflers now lead the division as the Rats fell to 1-2.

On the 17th the Soul Rats met Last Gasp in a Marshall-Wythe match-up. The Rats emerged on top by a final score of 61-41, but Last Gasp played admirably. R.J. Scaggs led Last Gasp with 13 points, and Tim Schuler added 10 points. Greg Hairston had 8 points in the first-half, but had to leave the game due to a cut above the eye he received in a collision with Tom Kohler. Greg required nine stitches.

Neil Keezee led the Rats with 10 points. Dave Cozad had 8 points and Billy Power added 6 points. The Rats equaled their record at 1-1, and Last Gasp dropped to 0-3.

Also in A-leage are Round Mound, who have a record of 0-1-1.

B-League Men

On Monday Night Lord Porter suffered a disappointing loss by a 59-36 score in their final regular season game. The team is led by Jeff Porter, Mark Newcomb, and Doug Anderson. Lord Porter finished at 1-3.

On Sunday two more law school teams found themselves pitted against one another. This time, Cunning Litigants surpassed Whining Girlfriends from Hell by a final 52-35 score. Litigants finished their regular season with a 3-1 record; Whining Girlfriends fell to 2-1.

On the 18th Bill Frazier's Painting finished their regular season with a 28-20 victory over Nicks. Parker Brugge led the team with 15 points, scoring the last basket of the game on an impressive reverse lay-up. The team improved to 3-1.

On the 17th the Dipsomaniacs improved their record to 2-1 with a 49-37 win over Mobile Homeboys. Mark "Brambo" Bramble shot for an uncanny 20 points, and John "Hoops" Fagan added a season high 6 points.

Brasco's Bodyguards, that B-League experiment in "no actual experience necessary" basketball, has forged a remarkable 1-2 record in its division, despite the heart-breaking absence of its namesake, who suffered an injury to his slam-dunking hand. The Bodyguards have managed to pull together behind a makeshift lineup which has seen twelve different starters. After an 8 point loss to Marriot and a mystifying 3 point loss to No Fat Chicks, the 'Guards came back to score a shocking 31-30 upset of the Pi Lam B team. Leading the resurgence, Scott Carney hit for 12 points, including several key outside shots in the second half, while Darren Burns scored 11, including a three-point play down the stretch. Newly traded-for Pedro Fay teamed up with Mike Fuchs in the playmaking backcourt, while Jeff Craig and Ken Roberts blocked opponents' attempts to penetrate the baseline.

Unfortunately more injuries haunt the 'Guards, as point guard Mike Kracker and forward Craig have been lost for the season to freak leg injuries. It remains to be seen whether John Fendig, Mike Miller, Gene Elder, Don Collins, and Tim Murphy can come to the rescue in Tuesday's bid for an upset against first place DNA.

Co-Rec

In Co-rec basketball, Jammers (or Jamhers) continued to roll, winning twice to improve to an impressive 3-0. Jammers beat JQS by a 55-39 final score, and won Sunday, 52-35. Led by Janet McGee, Liz McGrail, and Jean Hernon, Jammers appear unbeatable.

Women

The Women's law school basketball team, Learned Hands, are now 1-2 awaiting their final regular season game.

Indoor Soccer

Criminal Procedures won last Monday by a 7-1 final score. Leif Nissen scored 4 goals, Sinclair Banks added 2 goals, and Pat MacQueeney scored 1.

Selection Speaker

Continued from Page One

Additional information will be requested from the faculty references of finalist. The Committee to select the Student Speaker will consist of two seniors, one graduate student, one faculty member, and the Chairman of the Commencement Committee.

By April 1, the Speaker will be selected and announced to the College community.

For further information, call extension 4387 or visit James Blair Hall 203B.

Speaking Of Sports

by Larry Schimmels

After a week of Olympic competition one thing is certain: the United States does not have a corner on winter sports. In fact, the USA's achievement in terms of medals is quite short of spectacular. At the time of writing, US team members have won only four medals, only two gold. Hopefully in the final week, this will improve.

I have heard abundant talk about the USA hockey team. Naturally I'm disappointed, but I don't think they played all that badly. There are many things that factored into Team USA's performance, not all of them within the team's control. Sure, they play an aggressive rushing style that spawns defensive gaps, but this is not a detriment. Team USA is outsized and probably outskilled in these games. Their plan is to use the only advantage they have: speed. It worked for the most part until they ran into a buzzsaw named Friesen who recorded over 30 saves. I saw Friesen play once and I remember the game very well. Dennis Savard had a hat trick in the first period on his way to a five goal night. For those of you who don't know who Dennis "Savior faire" Savard is, he is the starting center forward for the Chicago Black Hawks. Yes, I'm talking about the NHL. Friesen played at least one season in professional hockey, probably more. Team USA is devoid of any professional hockey players, as well it should be (but that's a different column). There is one more interesting note here. If I remember correctly, Friesen, who plays for the West German National Team, was born in Ontario. You figure it out.

Also, Team USA, formed eight months ago, consists entirely of 18 to 20 year-olds. Up until the team was formed these players were far from drinking buddies, and if they knew each other at all it was because they were on opposing teams. On the other hand, the other teams in international hockey consist of players much older with much more experience. More than half of the Soviet National Team played in the 1984 Olympics. The members of the other national teams are at their atheletic prime when they reach the Olympics; the only advantage that the members of Team USA have is that they are at their sexual prime. It may be fun but it doesn't win hockey games.

The apparent solution to the USA competitive problem is to form the team earlier with more experienced players, but this is not easy. Getting good older players means looking to the NHL. Although the International Olympic Committee (IOC) has lifted the ban on former professional players, I know of few players who would leave a high paying job for a year just to play in the Olympics, particularly because hockey careers on the average are short, shorter than even in the NBA. It might be easier to draft all the good hockey players into the army. That is, after all, what the Soviets do. But until then the USA will have to play hockey the way they played this year.

I'm curious why the USA is not more competitive in skiing. I don't know enough about the competitive aspect of the sport to comment. If you do, please tell me, I'd really like to know. However, I think that if the IOC makes freestyle skiing an official Olympic sport the USA might have a chance.

The one bright spot is the skating teams, both figure and speed skating. These two areas account for all of the medals won so far. While the USA skaters are less than dominant, they have turned in some good performances. Look for more medals from the women.

The men speed skaters could be good if they get all their problems worked out. Flaim is young and talented, and Dan Jensen will be better as long as he doesn't have any more sisters and can finally learn to stand on skates. What struck me most this year is the threatened suit. I have never heard a more ripe case for Rule 11 sanctions. Don't get me wrong, there are some things in sports which are ripe for litigation. However, the discretionary judgments of a coach are not. In athletics, the right of an athlete to participate is based solely on a coach's determination of that athlete's abilities. The coach is the ultimate arbiter. If you cannot prove to him that you deserve to play, you go grab some pine, shut up, and wait for your next chance to prove his judgment wrong. Anything else is not competitive sportsmanship. After all, isn't that what these two weeks are about?

The bottom line is that the United States is not as competitive in the winter sports as they are in the summer ones. But I'm not sure that's any big loss. The most dominant nation in Calgary is East Germany. It is clear, however, that (if I may paraphrase) they "breed 'em that way." The USA neither wants nor needs that.