1988

The Advocate (Vol. 19, Issue 9)

Repository Citation

https://scholarship.law.wm.edu/newspapers/273

Copyright © 1988 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
https://scholarship.law.wm.edu/newspapers
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 for a ban restricted to certain areas, 76 voted for no change, and nineteen voted to ban smoking in the library. Fifteen people preferred a smoking area.

The poll was authorized at a February 2 meeting after first-year representative Matilda Brednax relayed concerns of students who were dissatisfied 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 dean's "pro smoking" areas with a pro-smoking student 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 to 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 the 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 - 14.
4. No change in current policy, Non-smokers - 60; preference for some sort of smoking area, Non-smokers - 10; Smokers - 5.

257 responses out of approximately 530 students.

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 in which any graduate could relate. Anyone, 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.

INSIDE THIS ISSUE

Date Auction ............p. 5
Emp. Discrimination p. 7
BENCH CLASSICS ...p. 6
Letters .....................p. 6
AIDS Review ............p. 2
Letters to the Editor

Write On, Professor

Dear Editor:

It is rumored - Mike Hillinger might disapprove of that nondenominational process, but this is an exception - that the Professors Hillinger may leave Marshall-Wythe School of Law for another law school. This follows the prospective or announced moves of several law schools. This is an example of the new "law firm" concept that emphasizes small group, feedback, self-editing and group dynamics. Each firm would consist of approximately fourteen students "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 involve a variety of ethical and practical problems. Students would learn negotiation strategies and interview techniques and receive a variety of drafting assignments, contracts, and wills, in addition to traditional memoranda, 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.

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 outside-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 - a conflict of interest to the program, and little consistency from year to year.

Cathy Lee

Dear Editor:

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 mention each individual but special thanks are in order for Tonia Jones, Richard Reagler, Tom Tidwell, Kevin Amspacher, Ingrid Olson, Margaret Lee, Marc Taylor, Martha Leary, Victor Sleath and the Wally Cats who donated their time and talents to the cause.

There were 22 auction items we deserve a round of applause, it took quite a lot of courage to get out on the stage and suffer the terror. 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 cause. We are all more than happy to help the students at Marshall-Wythe and we are grateful for their support.

This event was special that local businesses and law students came together to raise money to give something to the community. Thank again to everyone who contributed to the event!

Cathy Lee

Texan Clears Air Notice

Dear Editor:

I write in response to a portion of an article entitled "ILs Air Legal Writing Concerns" which was published in the February 11, 1988 edition of The Advocate. Specifically, I wish to correct the "spiral" or "letter" of the comments regarding the Texas jurisdiction which Ms. Horwitz attributed to me.

First, I had no complaint with the Texas jurisdiction selected for Sections A-3 and B-3 open memorandum. Because of my familiarity with the jurisdiction's numerous courts and procedures, I suggested, during the SBA meeting, that teaching assistants should review a potential jurisdiction so that they may contribute a better selection of references prior to Professor Hillingers choosing it for the open memorandum. My point was that under this type of review would result in either the selection of another jurisdiction more amenable to the limited research skills of a IL student or the advising student of jurisdictional problems at the time the memorandum is assigned. I do not think 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 prepared to handle competently all problems, both legal and jurisdictional, which will confront us in the future.

Second, Ms. Horwitz quoted inaccurately some comments I made regarding the Texas courts. There was a dual appellate court system (i.e., Texas Courts of Civil Appeals and Texas Court of Criminal Appeals) before 1983. In 1983, 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 the trial court depends on whether it is a civil or a criminal case. Civil cases are taken to the Texas Supreme Court and criminal cases are taken to the Texas Court of Criminal Appeals. The Texas Rules of Form (5th ed. 1982).

At this point, I am sure very few care about the Texas jurisdiction. I have heard that some ILs have sworn never to practice law in the Lone Star state as a result of the open memorandum. It's really a nonissue.

I respect Ms. Horwitz's right to practice law where she chooses. As a practicing attorney, I was "money that we did not know we had." Happy, Eddie?

Marc A. Clarrett

Inter Alia

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, Professional Law 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, feedback, self-editing and group dynamics. Each firm would consist of approximately fourteen students "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 involve a variety of ethical and practical problems. Students would learn negotiation strategies and interview techniques and receive a variety of drafting assignments, contracts, and wills, in addition to traditional memoranda, 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 the need for a comprehensive approach and attempting to simulate a real-world setting. Each firm would involve a variety of ethical and practical problems. Students would learn negotiation strategies and interview techniques and receive a variety of drafting assignments, contracts, and wills, in addition to traditional memoranda, 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...
Peregrination
by Jeff Yeats

Did somebody say Nag's Head? Oh, no. No, no, no. Not yet. It's barely Spring Break.

The maddening social whirl must be sucking in some of our students as the weather, inducing an onslaught of Spring Fever. I know it has already picked up the slack, folded, spindled, yea, mutilated brains of Bruce Babbit, the previous President of the Barrister's Ball. He revealed almost the best decision he made the entire holiday that Mecham got national publicity. Even as I was swept off my feet by a kind invitation from Connie Karass .

Now it's time to extend my heartfelt thank-you's to all the others who have participated in this thing has more primal roots than mere intoxicants or hallucinogens. It runs much deeper. I stalked the Green Leaf for a couple of hours, trying to convince myself it wasn't an out-unbreak of Constructive Participa-
tion. Although I care not too much for the weather, inducing an overwhelming, devastating, sleep for several days and be-required to conduct actions throughout the entire period. In Vietnam that sort of thing was the norm. Even with all the white-hating, the introduction of the homosexual military, wars are eventually won by the common foot soldiers of the time. Not only they were so quick to criticize should I or Kruegler droned a 6:10. In the long, expensive pool of a pool, I find myself in a certain tolerance for the insurmountable social prejudice against the people. Those who have challenged the military's moral and the court system have been pushed back to the military's capacity for expressing.
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 promises that ethics will be interwoven throughout the new curriculum, the proposal attempts to condense too much material into too little class time. When classes meet only once a week, and written assignments must be completed, one suspects that ethics will be the first subject to be left by the wayside.

Dean Comments on Faculty Flight, Graduation

by Steven M. Miter

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 common location, is too small. Although he said 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 changing commencement services with other departments so that Williams and Mary Hall may be used instead.

—S.M.M.

Sports Lawyers Living Off Handouts

By Jon Hudson

If you have a high tolerance for cut-throat competition, shady operators smoking big cigars, un-conscionable contracts and long hours, then Sports and Entertainment Law may just be what you’re 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 full-time promotor of the promotion 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 anecdotes included references to going to openings, "pulling prints," "shopping tapes" and stage directions.

Some of his most interesting illustrations were highly idiosyncratic to the area. 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 suggested that one go to every opening or show and hand out cards (surreptitiously). Next, he proposed 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, for those based in too small a market, will be just a little hard to plan for. Oh well.

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."

Other sources of contention, the opening and 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.
Dating for Dollars
by Tad Pethbridge

Abraham Lincoln would have been shocked. More than a dozen decades after his Emancipation Proclamation 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 Public Service Fund, which raised over $200,000. 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 companies on dinner dates donated by 24 local restaurants and businesses. The event raised over $1306.59.

The evening began with a skillful, wide-ranging set by the law school-based band, the Walking Cats. The Cats entertained the crowd with deft covers of tunes by artists ranging from B.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 $50-$100 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 highest winning bid of the evening was $102, for a date with first-year representative Dan Perry. Dates with Victor Sneed and Mike Miller brought $100 each. Another first-year representative, Matilda Bromax, deserves special note: when the value of the dates she purchased ($150) is added to the winning bid for her date (a pre-Fendig bargain at $40), Ms. Bromax 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 the student was astonished by the event's overwhelming success. "I just can't believe it went this well. These people just went crazy." Crazy or not, the event seems destined to be repeated. The recently elected chair of LSIC, Tom Solcso, 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."

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

---

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.

---

MUSIC CENTRAL
THE BAND BOX
517 PRINCE GEORGE STREET
WILLIAMSBURG 23188
Faculty Profile
Criminal Expert Serves Time at M-W

By Charles Fiecher

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 1965 to 1967; he left private practice to become an associate professor at the University of Minnesota School of Law.

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 shibboleth, 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 exculpatory rule and unreasonable search and seizure, complain of legalistic shackling of law enforcement.

Facing 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 1906, complained that there were not enough executions. Another commentator, Simon, 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 Ex parte Young (right to an attorney) for people point to as inhibiting police investigation, the same arguments were used then.

Kamisar feels there will always be an underlying "tension between the need for effective law enforcement." His assessment of the future is "very pessimistic." The best land schemes I've ever heard are about the Wards Island.

The judge then quoted from Burns' "A justifies the right that it is a justifiable man has broken Nature's social union, 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.


Submitted by Jon Hudson

BENCH CLASSICS

Of Mice and Cons

A group of prisoners in the Suffolk County Jail (New York) found a tame mouse. One day a jailer found Morris (as he had been named) and flushed him down a toilet. The prisoners sued the warden, complaining in their complaint.

Morris' requiem was provided by the judge when he observed, "As to the true victim the court can only offer again 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.


Submitted by Jon Hudson

Note Writer Defies Odds

by Lee Bender

Third-year Susan Winchell is the editor of the upcoming— that is the William & Mary Law Review: she will be the first "non-law review" Marshall-Wythe student ever to be published in the Review.

Winchell received a B.A. in liberal arts from the University of Richmond. She is the first woman to be named to the position.

Winchell believes that people in the law school are aware of the fact that the Law Review will accept non-law-review student's 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 children's education is not a fundamental right, that they 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 some of the CDC's guidelines; however, they are not mandatory or binding on the states but merely a set of policy guidelines.

Can a public school discriminate against children with AIDS and keep them from attending school with their peers? Susan Winchell, in her paper, argues that "no"—the equal protection clause of the 14th amendment and 504 of the Rehabilitation Act of 1973.

Under an 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 Federal financial assistance.

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 "keep 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 of 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 embarrassment. Any investigation normally consisted of the alleged perpetrator's loss 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 you 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 $15 million.

Law Note

Continued from Page Six

federal financial assistance. Probably all public schools fall within this category. The issue in the '94 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 '94. In the case, a school teacher had contracted tuberculosis 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 '94, 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.

Winchell argues that children with AIDS are perceived to have a handicap and should therefore, a school board cannot meaningfully separate contagiousness from the perception. Furthermore, this is consistent with the legislative history of '94. 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 '94. 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 facts come down and say that children with AIDS are handicapped and can attend public school, the real truths won't be solved until the public has an appreciation of the fact that AIDS is not transmitted through casual contact. We need more objective and reasoned approach to a victim's perception and the victim's travel.
A-League Men

The Law School's own Soul Rats came up short in a hard-fought contest Monday Night against the Graffiti. With only twelve seconds to play in the game, the score was tied, 46-48, but the Soul Rats failed to convert a free-throw opportunity and lost 51-48. The Rats missed consecutive free-throws in the last two minutes. The Graffiti now lead the division as the Rats fell to 1-2.

On the 12th, Last Gasp met Last Gasp in a Marshall-Wythe match-up. The Rats emerged on top by a final score of 41-44, but Last Gasp played admirably. R.J. Scaggs led Last Gasp with 13 points, and Tim Schulze added 10 points. Greg Hainston 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 equalled their record at 1-1, and Last Gasp dropped to 0-2. Also in A-League 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 Newscomb, and Doug Anderson. Lord Porter finished at 1-3.

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. 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

A-League Men

The Law School's own Soul Rats came up short in a hard-fought contest Monday Night against the Graffiti. With only twelve seconds to play in the game, the score was tied, 46-48, but the Soul Rats failed to convert a free-throw opportunity and lost 51-48. The Rats missed consecutive free-throws in the last two minutes. The Graffiti now lead the division as the Rats fell to 1-2.

Basketball

On Sunday two more law school teams found themselves pitted against one another. This time, Cannibals limped, surpassing Whinning Girlfriends from Hell by a final 52-35 score. Ligants finished their regular season with a 2-1 record; Whinning Girlfriends fell to 2-1.

On the 18th Bill Frazier's Tumbling finished their regular season with a 28-39 victory over Nicks. Parker Bruggie led the team with 35 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 43-27 win over Mobile Homeboys. Mark "Brando" Bramble scored on an uncanny 20 points, and John "Hoops" Fagan added a season high 6 points.

Co-Rec

In Co-rec basketball, Jammers (or Jammers) continued to roll, winning twice to improve to an impressive 3-0. Jammers beat Q&S by a 50-39 final score, and won Sunday, 52-32. Led by Janet McCreay, Liz McGrail, and Jean Hennon, Jammers appear unbeatable.

Pl 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 Pendig, 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.

Women

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

Selection Speaker

Continued from Page One

Additional information will be requested from the faculty references of finalists. The Committee will 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.

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 18 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 fastened 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 a remarkable 1-2 record in international hockey across, and probably outskilled and probably outmatched in international hockey in 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 Denis "Savoir faire" Savard is, he is thegst. Flaming young and talented forward for the Chicago. 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, and that's not a detriment. 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 here as they are in the summer ones. 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 it. 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 a majority of the medals 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. Plain is young and talented, and if Black Hawk s is the same, then 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. Plain is young and talented, and if Black Hawk s is the same, then the USA skaters are less than dominant, they have turned in some good performances. Look for more medals from the women.

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 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 sledieh needs no treads that...