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## Amicus Curiae (Vol. 10, No. 10)

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# AMICUS CURIAE



Marshall-Wythe School of Law College of William & Mary

Vol. XIII No. 8

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## JM To Tap Fellows

The John Marshall Society was formed by the Virginia Bar Association to extend its efforts toward improving the quality of justice and the development of law in the Commonwealth. The Association is examining all aspects of law and lawyering in Virginia. It is a part of its continuous effort to serve the public by striving for better laws, better legal education, better courts, better lawyers and better delivery of legal services. This mammoth task has been aided by the efforts of interested law students.

The Association asked each of the four law schools in the state to form a research arm, in the nature of a law review type organization, comprised of a limited number of second and third year students who are interested in working with the Association to reach its goals. Each law school organization is known as a Chapter of the Society and the students are deemed Fellows of the John Marshall Society. The participants have an opportunity for legal writing and research, legislative drafting, empirical research and most importantly, are assigned as nonvoting members of Association committees or as assistants to members working on special projects.

The rewards for Fellows are not academic credit or money (except travel expenses, if any), but the personal satisfaction of participation in a worthy

enterprise, the honor and prestige of selection, and the opportunity to meet and know leading members of the Virginia Bar. The latter could be most rewarding for students who will be seeking employment in the Senate. I have appointed Professor Walck to advise and assist the chapter at Marshall-Wythe.

Five or six first year students will be chosen as Fellows to work next year with the Fellows of the present second year class. The present members of the John Marshall Society are: Mr. Philip H. Bane, Mr. Peter B. Brown, Mr. Michael P. Cotter, Mr. Jay R. Fries, Ms. Janet S. Dunlop, Mr. Gary S. Marshall, Ms. Carol M. Marx, Ms. Nancy A. McBride, Ms. Rebecca B. Smith, Mr. Robert W. Wooldridge, Mr. James L. Osborne, and Mr. Peter H. Bornstein. Selections will be based on academic performance, special accomplishments, particular interests and faculty recommendations.

Those students interested in applying should provide Dean Spang on or before March 23 with a short letter of application, resume and names of faculty members to be contacted for recommendations. Those students interested in living and working in Virginia should have a special interest in becoming members.

## M-W Hosts Tourney

Teresa Creef, Robin Cockey, and Joe Lagrotheria represented Marshall-Wythe in the annual Marshall-Wythe Invitational Moot Court Tournament Saturday, February 24. The tournament was held in the Great Hall of the Wren Building and in the Moot Courtroom. The three finished at the top of last semester's Moot Court program, and thus won the right to compete in the tournament.

Schools represented in the tournament were Marshall-Wythe, Wake Forest (last year's winner), Duke (last year's runner-up), Washington and Lee, and the University of Richmond.

Judges included Judge John Butzner of the Fourth Circuit Court of Appeals; Judge Robert Mehridge and D. Dortch Warriner of the U.S. District Court in Richmond; and Chief Judge Walter Hoffman and Judges Calvitt Clarke, Richard Kellam, and John MacKenzie of the U.S. District Court in Norfolk.

This year's problem involved a sex discrimination attack on veterans-preference hiring. The problem is based on an actual Massachusetts case now before the Supreme Court. Attorneys on

both sides of that case supplied some of the information necessary for the problem.

The tournament consisted of two initial rounds. Marshall-Wythe, Duke and Richmond emerged with the best records. Based on submitted briefs, Duke and Richmond were then chosen to compete against each other to determine winner and runner-up positions.

The University of Richmond won the awards for the best team, best oralist and best brief. Duke was the runner-up.



Robin Cockey, Teresa Creef, and Joe Lagrotheria.

## Feigen Fasteaus To Speak At Women And Law Conference

by Bessida White

The Mary and William Women's Law Society will hold a Conference on Women and the Law on Saturday, March 17 at the Holiday Inn 1776. Guest luncheon speakers will be attorneys Brenda and Marc Feigen Fasteau of New York City. The Feigen Fasteaus have a long history of involvement in women's rights and since 1974 have had their own firm, Fasteau and Feigen. They have a four year old daughter, Alexis Feigen Fasteau.

Brenda Feigen Fasteau is an honor graduate of Vassar College and the Harvard School of Law. After law school she was employed with the Boston firm of Rosenman, Colin, Kaye, Petschek, Freund and Emil. She is a founder and former chief executive officer of the Women's Action Alliance and is a former director of the American Civil Liberties Union Women's Rights Project. Ms. Fasteau is a former consultant to the United States Department of Justice's Civil Rights Division and was an honorary President's fellow at Columbia University in 1977-78. She is a founder of the National Women's Political Caucus and was national vice-president of the National Organization for Women (NOW) while still in Law School. Ms. Fasteau has had articles appearing in numerous publications including Ms. Magazine, The Village Voice and New York Magazine.

Marc Feigen Fasteau received his bachelor's degree from Harvard College and his master's degree from Georgetown University. He graduated magna cum laude from Harvard Law School and was editor of the Harvard Law Review. Following graduation from law school he was selected to clerk for Associate Supreme Court Justice Abe Fortas but did not do so due to Justice Fortas' retirement. Mr. Fasteau served as a research fellow at the Institute of Politics at Harvard and then was an associate with



the New York firm of Janklow and Trautman. He is the author of a book, *The Male Machine*, published by McGraw-Hill in 1974, and has had articles appearing in Ms. Magazine and Psychology Today.

The Feigen Fasteaus wrote the appellants' briefs submitted to the United States Supreme Court by the American Civil Liberties Union (Amicus Curia) in *Frontiero v. Richardson* and *Kahn v. Shevin*, two of the major sex discrimination cases. They recently co-authored "May A State Rescind its Ratification of a Pending Constitutional Amendment?" which appeared in the Spring 1978 issue of the *Harvard Women's Law Journal*.

The conference agenda will include 19 different workshops which are described below. Persons running workshops include: Sylvia Clute, attorney, Francis, Hubbard, Tice and Warren (Richmond), Chairwoman of the Board of the WomensBank; Randall Johnson, attorney, Hill, Tucker and Marsh (Richmond); Anita Posten, attorney, Vandeventer, Black, Meredith and Martin (Norfolk); Elaine Jones, associate counsel, NAACP Legal Defense Fund, Washington, D.C.; the Honorable Elise Heinz, attorney and Virginia delegate from Arlington; Katherine Jewett, clerk, United States

District Court for the Eastern District of Virginia (Richmond); Susan Perry, staff attorney for Congresswoman Shirley Chisolm, Washington, D.C.; Janis McDonald, attorney, Hirschkop and Grad (Alexandria); Jean Cunningham, former Labor lawyer with Ford Motor Company and Reynolds Metals, currently a private practitioner (Richmond); and Mary Clare Hale, director of the American Civil Liberties Union Virginia Farm Worker's Legal Project (Exmore). Brenda Feigen Fasteau will do the workshop on Pornography and Media Exploitation of Women and Marc Feigen Fasteau will be a panelist in the Equal Rights Amendment workshop. There will be two workshop sessions in the morning and two in the afternoon with each session running for approximately one hour and a half.

Registration for the conference is \$10.00 which includes lunch. Those persons who do not wish to attend the luncheon may register for \$3.00. The deadline for registration is March 10. Free child care will be provided but parents are asked to pack a brown bag lunch since only milk and cookies will be provided.

Please see page 2 for Agenda and descriptions of Workshops.

## SBA Officers This Month

SBA elections will be held on March 23 (President) and March 29 (all other offices). The available positions are: President, Vice-President, Secretary, Treasurer, Director of Alumni Relations, Third Year Representative (2), and Second Year Representative (2). Nominations are to be made by a declaration of candidacy

containing the date, the office you wish to run for, how you want your name to appear on the ballot, and your signature. The deadline for Presidential nominations is March 16 at 5:00; the deadline for nominations for other offices is March 26 at 5:00 (thus enabling a defeated candidate for President to run for another office).



# Women's Conf. Cont.'d

## AGENDA

8:15-9:00 a.m.	Registration Coffee and Doughnuts
9:00-9:30 a.m.	Opening Session
9:30-11:00 a.m.	Workshops
11:00 a.m.-12:30 p.m.	Workshops
12:30-2:00 p.m.	Luncheon Guest speakers Brenda and Marc Feigen Fasteau
2:00-3:30 p.m.	Workshops
3:30-5:00 p.m.	Workshops

## WORKSHOPS

**Divorce, Legal Separation, Alimony, Child Support, and Custody**  
A look at the effects of employment on women's rights to alimony and child support; visitation rights; dual custody; division of property and the role of fault; fault vs. no-fault divorces.

### Property and Inheritance Rights

A discussion of inequities under current legislation and the need to guarantee equal protection; property rights in existing marriage and during separation and divorce; property rights and contractual arrangements in non-marital relationships; emphasis on Virginia law but will include rights in community property states versus those in common law property states.

### Equal Credit Opportunities for Women

A discussion of the development of equal credit rights for women and how legislation has responded to equal credit needs; the right to privacy and how to protect it while still obtaining credit; current problems in denial of equal credit; remedies and how to enforce the Equal Credit Opportunity Act.

### Sexism in the Legal Process

Problems that confront the feminist attorney within the legal system; how to maintain one's feminist awareness and to avoid selling out to the system; the conflict between effectively representing your clients and directly confronting sexist attitudes in the courtroom; the ethical dilemma of being asked to defend someone accused of rape, child abuse, or wife abuse; overcoming the "presumption of incompetence" — convincing clients that you are an effective advocate.

### Employment Discrimination

A review and analysis of recent cases on sex discrimination in employment; the effectiveness of Title VII and the Equal Pay Act; the implications of *Bakke* and *Weber v. Kaiser Aluminum*; pregnancy-based discrimination; equal pay for work of equal value; remedies including EEOC, Office of Federal Contract Compliance, state and local Human Rights Commissions.

### Trial Tactics and Procedural Issues in Title VII Cases

A technical workshop designed for practitioners litigating Title VII cases; whether to allege an individual or a class action; certifying the class; bifurcation, discovery, proof at trial; understanding Title VII defenses; making a record for appeal, settlement.

### Private Non-Employment Discrimination

An overview of the problems of private sex discrimination; challenging federal funding of all-male organizations; discriminatory disbursement of funds by charitable organizations; sex discrimination in public accommodations such as restaurants, hotels, bars, male-only clubs and athletic organizations.

### Legal Rights of Lesbians

An examination of legal strategies for obtaining the rights and protections guaranteed by the Constitution, including privacy, freedom of speech, freedom of association, due process and equal protection; discrimination against lesbians in housing and employment; current trends in lesbian custody cases; the "Dade County type" ordinance.

### Congressional Hodgepodge

An overview of the issues before this Congress which impact heavily upon women, blacks, poor people, etc.; displaced homemakers, higher education reform, SBA minority business laws; including a practical "how-to" for lobbying for these kinds of concerns.

## REGISTRATION FORM

Name \_\_\_\_\_  
Address \_\_\_\_\_

Enclosed is \$10.00 registration to include lunch.

Enclosed is \$3.00 registration for the workshops only.

I will need child care for \_\_\_\_\_ children, ages \_\_\_\_\_

This form may be given to any Mary and William member or mailed to Mary and William Women's Law Society, 517 Richmond Road, Williamsburg, Virginia 23185.

Submit by March 10.

### Rape: An Overview

A survey of recent decisions and legislative developments; constitutional issues and ethical considerations; treatment of the victim by police and at trial, including sexual history and corroboration; shelters and crisis lines; interrelationship of racism and sexism.

### Reproductive Freedom

An overview of where we stand judicially, legislatively, and politically on abortion, sterilization, and contraception; exposition of the move to erode the "right to choose."

### Women in the Military

A survey of sex discrimination in the armed forces including bias in promotions, disciplinary actions and discharges; military occupational specialties (MOS's) still closed to women; VA benefit discrepancies based on sex; sex discrimination in recruitment programs.

### Pornography and Media Exploitation of Women

A philosophical look at the conflict between a woman's right to use her own body for profit and the legislative protection of women and regulation of moral standards; including a discussion of the rights of the media and how they conflict with the need for a positive attitude toward women.

### Politics of the Virginia Assembly

A discussion of the mechanics of instituting change in Virginia; effects of study commissions and the committee system; how the women in the Virginia legislature function as a body; the fate of recent proposals for legislative changes in areas such as names, divorce laws, inheritance and intestacy laws, sexual assault, banking laws.

### Legal Secretaries and Paralegals

Designed for those who have chosen these professions, this workshop will examine the problems faced by women in these careers; relationships with both male and female attorneys; pay and office status; promotions; training and education.

### Women and The Constitution — The Proposed 27th Amendment

The status of women under the present constitution; individual rights and the 14th amendment; what ERA will and will not do; state equal rights provisions; the legislative extension of the time for ratification; legal implications of the attempts to rescind ratification; the fate of ERA in Virginia.

### Alternatives Within and Without Marriage

Women's rights to their own names; all about naming children, litigating name changes; the pros and cons of the marriage or relationship contract; essential provisions and enforceability; courts' attitudes toward such contracts; amending the contract when a family is begun.

### The Woman Offender

A look at sentencing differentials, conditions in and equality of prison facilities and programs; conditions of parole and probation; custody rights during and after imprisonment; sociology and effects of imprisonment on women.

### Sex Discrimination in Education

How Title IX is being implemented at all educational levels to equalize opportunities for both women students and teachers; curriculum and admission policies; relationship between high school athletic programs and Title IX; tracking of females into particular careers and plans of study; sexual stereotypes in textbooks and role models.

## AMICUS CURIAE

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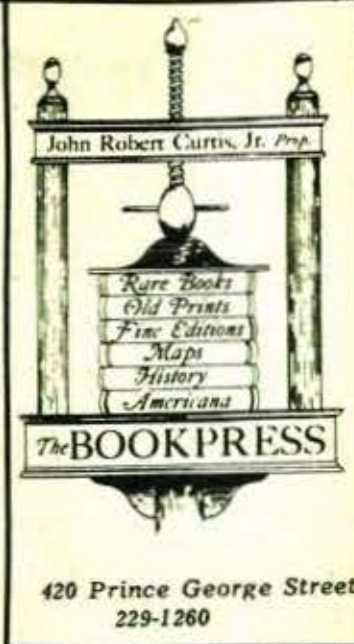
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## SBA Proposes Changes

By Dorry Martin McCorkle

There are several proposals that the Student Bar Association is working on in its waning days. All of them could use some student input as soon as possible after spring break.

First, the SBA wants to obtain representation (ex officio) at faculty meetings where some of the most critical decisions concerning the school are made. Students are now represented on faculty committees. Within the recent past however, one important faculty committee met over the summer without students in attendance. Representation at faculty meetings would assure student input into decision making.

Secondly, a committee headed by Shep Williams is formulating a proposal for open exams; i.e., exams which would be non-scheduled or self-scheduled. Such a proposal was made last year and rejected. The main objections to the idea from the faculty and administration are: 1) enhanced opportunity for cheating; 2) administrative difficulty; 3) no opportunity for faculty to answer student questions; and 4) the burden upon the faculty of getting exam questions prepared by the end of the classes and having to wait until the end of exam period to complete grading. Some students may feel that such a scheme would be too unstructured for them or may share the view that cheating would increase.

Lastly, both the SBA and the administration are interested in trying registration by mail instead of the classroom. Eventually, this would mean registration by computer. The main advantage of this procedure would be its tranquility. The primary disadvantage would be loss the opportunity to radically revise schedules as course close out. One or two alternate course cards could be filled out, but total rehabilitation would have to wait until the drop-add period. Another difference might be the abolition of the tri-partite division for priority within each class. Mike Holm, Lee Osborne, and the writer will be working on this topic.

All criticism and suggestions are welcome. Please try to remember to comment immediately after spring break.



# Conference Calls for Strict Control of Toxics

by Susan Watkins  
and Joseph McGraw

"More than 300 miles of Virginia's rivers have been closed to fishing," Maurice B. Rowe, Virginia's Secretary of Commerce and Resources, informed participants at the opening session of the Conference on Environmental Law — Toxic Substances held in Williamsburg on February 9 and 10. Pollution by mercury, kepone, and other toxic substances caused substantial portions of the James, South, Shenandoah, and Holston Rivers to be closed. The economic and personal damages and the long-term environmental and economic costs caused by this pollution have yet to be fully assessed.

The adequacy of federal and state laws to avert future hazardous and toxic substances calamities, such as those that have affected Virginia, was the focus of the Conference sponsored by the Marshall-Wythe School of Law and funded by the Virginia Environmental Endowment. Secretary Rowe opened the Conference with an overview of Virginia's environmental laws and regulations, highlighting the need to complement regulation enforcement with an interdisciplinary approach to environmental management. He pointed out that in Virginia, as in many other states, the approach to natural resources management has been shifting from piecemeal regulation of air, water, and toxic substances to a "quality of life" approach which balances costs and benefits of environmental regulation.

William F. Gilley, Director of the Division of Solid and Hazardous Wastes Management of the Virginia Department of Health, and James E. Douglas, Jr., Chairman of the Virginia Marine Resources Commission, followed Rowe with an assessment of specific Virginia statutes aimed at protecting the state's waters and marine environment from future environmental disasters such as the kepone contamination at Hopewell, Virginia.

Gilley pointed out that Virginia's Toxic Substances Control Act contains a procedure to help identify potential environmental problems, but that the state has no adequate facilities for toxic substance disposal if problems arise. Douglas argued that the adequacy of environmental laws was not as great an issue as the adequacy of their enforcement by federal, state, and local governments. The pressures to decrease government spending, he noted, are increasing at the same time that public concern over potential oil spills and toxic substance runoff into rivers has increased the need for more accurate and more costly water quality inventories and monitoring. Better enforcement of regulations controlling industrial and municipal waste discharges and agricultural runoffs also are sought. Douglas concluded that enforcing penalties for causing environmental damage is not as good for the environment as developing regulations for safer



handling of potential pollutants in order to avoid accidents. At present, studies of alternative methods for handling oil and toxic substances are underway. These studies should lead to preventive regulations.

While Rowe, Gilley, and Douglas basically affirmed the effectiveness of Virginia's hazardous and toxic substance control statutes, other Conference participants identified problems with the existing legislation.

Manning Gasch of the Richmond law firm of Hunton and Williams criticized environmental regulations for exceeding the practical limits of both science and the law. The regulations, he argued, imposed unreasonably high standards of liability in both scientific and legal terms. Virginia Deputy Attorney General James E. Ryan pointed out that once violations of environmental regulations have occurred, resulting in injuries, enforcement of the regulations may not provide for compensation to any injured parties. Virginia lacks an administrative claims program to aid these parties. Only judicial remedies are available. The help correct such shortcomings in the state's environmental laws without increasing governmental regulation, Ryan suggested holding polluting industries strictly accountable for reasonably foreseeable risks of environmental damage. This approach should encourage public assistance in enforcing environmentally protective statutes. Other critics called for reform in the areas of educating the general public and farmers about the effects of pesticides, herbicides, and other toxic substances; promoting greater public participation in regulatory standards; and informing citizens about the effectiveness of existing environmental laws.

Gus Speth of the President's Council on Environmental Quality, Steven Jellinek of the Environmental Protection Agency, Richard Voigt of the Occupational Safety and Health Division of the Department of Labor, and Dr. Susan King of the Consumer Product Safety Commission discussed the scope and effectiveness of federal statutes regulating hazardous and toxic substances.

Speth warned against allowing

claims of regulation-induced inflation to inhibit the momentum of environmental programs. He said a recent study predicted that from 1970 to 1986 the dollars spent on pollution control would add only .3 percent to the annual rate of increase in the Consumer Price Index (CPI), with the 1978 figure estimated at .1 percent. Even if the inflationary impact of pollution control were reduced by 25 percent, the CPI would be reduced by less than .05 percent. Speth went on to advocate economic incentives for industries to regulate themselves environmentally, and he also called for a program for compensating victims of pollution to deter future pollution. Responsibility for controlling industrial pollution should rest with the industries themselves rather than be imposed by external governmental controls, he added.

The Toxic Substances Control Act (TSCA) was the focus of Jellinek's remarks before the Conference, as he pointed out, the Act is the principal federal legislation for protecting the public from unreasonable risks of chemical pollution. One of the most distinctive characteristics of TSCA is that it gives the Environmental Protection Agency the authority to act to prevent environmental damage before harmful substances threaten human health or the environment. Past laws had placed the federal government in a reactive position with no authority to prevent environment damage. With TSCA, Jellinek remarked, tragedies such as the much publicized Love Canal disaster in Niagara Falls, New York, may be avoided in the future. The key to making the environmental regulatory process pay its own way in terms of avoiding risks and providing benefits, is flexibility. Outdated and ineffective regulations must be withdrawn and replaced by more effective laws, Jellinek concluded.

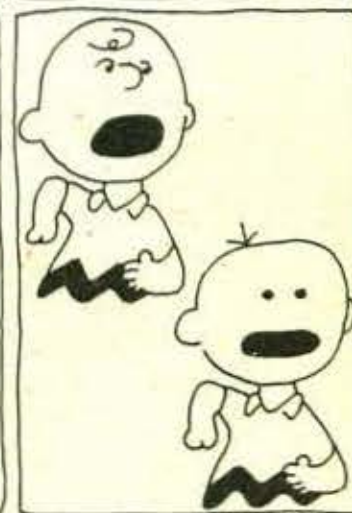
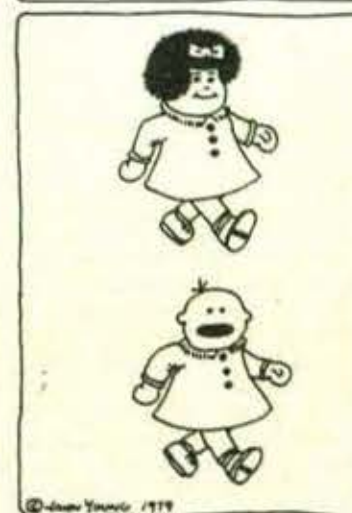
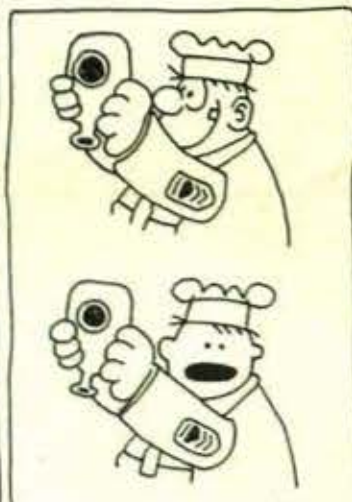
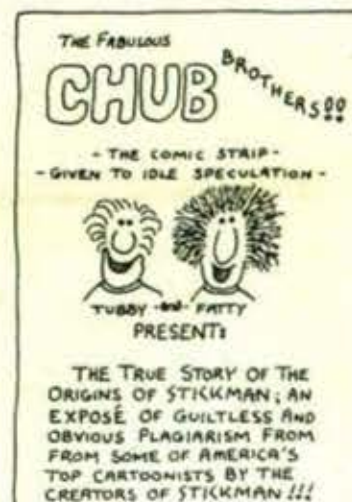
Another significant piece of federal legislation for controlling the adverse effects of toxic and hazardous substances is the Occupational Safety and Health Act of 1970. This Act was the subject of Richard Voigt's presentation to the Conference. Voigt focused on the three principal issues raised in recent courtroom challenges to new

toxic substance standards promulgated under the Act: the technological feasibility of the standards' requirements, the economic feasibility of the standards' requirements, and the scientific basis for the standards' limits on exposure time. While the courts have supported OSHA on the first two challenges, decisions have been divided on the third. Voigt cited the recent Fifth Circuit decision in *American Petroleum Institute v. OSHA* setting aside the standard regulating benzene. The court's holding that reducing the exposure time to benzene was not worth the costs imposed by the reduction could undermine OSHA's goal of preventing occupational illnesses.

The recurring theme of the speakers at the Conference, the need for greater cooperation among government environmental agencies at all levels, was the subject of Dr. King's address. King noted the successful efforts of the Inter-Agency Regulatory Liaison Group, the Regulatory Council, and the Toxic Substances Strategy Committee to promote data sharing and cooperation among environmental agencies.

She commented that the proposed Regulatory Reform Act should further this trend toward governmental cooperation as well as reduce the burdens of regulations on industry and promote the use of economic incentives to achieve regulatory goals. Dr. King concluded that in addition to reducing the numbers and levels of toxic substances entering the environment, government environmental agencies as a whole are rearing out the waste, duplication, and nitpicking in the field of environmental regulation.

The conference was funded by the Virginia Environmental Endowment, established with an \$8 million grant from Allied Chemical Corporation. The grant was the direct result of a \$13.2 million fine against Allied for polluting the James River with kepone. Judge Robert R. Merhige, Jr., who presided over the Allied kepone case, encouraged the corporation to develop a way for the fine to be used to benefit the people of Virginia instead of automatically requiring Allied to pay the fine in the usual manner.



## Just Hearsay

Third year students should fill in their home and business addresses on the list outside the SBA Office, whenever that information becomes available. This information will be used both by the administration and the SBA in the future.

On Tuesday, March 27, Marshall-Wythe will present its annual and ever popular Libel Night, starring your favorite teachers. This year, Libel Night is being brought to you by two illustrious third year students, Bob Rapaport and Jay Neal. The show needs skits, impersonators, make-up artists, stage crew, and anything else you can think of. There will be a meeting after break for anyone interested in helping. Let your frustrations out on paper or in a characterization and show the faculty that you care.

The PAD Bookstore in the basement of Old Rogers will not be open this Friday. It will resume business after the break, and will be open every Friday from 2-3 p.m. They are now taking orders for Gilberts, making paybacks and selling and accepting used books.



## M-W Boasts IM B-ball Talent

by Bear Blackstone

As usual, the clowns who call themselves the sports editors of this rag have completely ignored IM sports and insist on writing about subjects in which the students at Marshall-Wythe have absolutely no interest. In an attempt to fill this void, here is a rundown on how the law school teams playing IM basketball have done this winter.

**Lousewort** — This team, along with Lambi Chi, is the favorite to win the IM championship. They are currently in third place in the "A" league with a 6-2 record. Lousewort plays an intelligent game of basketball (several players are on law review) and has a record of playing their best ball when it's for all the marbles. Their starting lineup includes Mike Stewart and Bruce Gerrity at guards, and Wes Heppler, Stu Tenhoor, and Jay Basham on the front line. Look for them in the IM finals.

**Numps** — Typical first-year team. They've got a name nobody understands, and fewer people care about. For some strange reason, they are in the "A" league, where several teams could beat them using only three players. Their record at present is 2-6 and if I have to write anything more about this team, I'm going to throw up. They are a disgrace to the law school.

**Death Row** — With a 6-3 record in the tough "B" league, this third year team has played pretty good basketball. They are essentially made up of the rejects from the great Blackacre dynasty, and assorted pick-ups and gymrats. Their starting five

consists of Kevin Brunick, Rick Pickard, Mike Soberick, Bob Woolrich and Ken Geroe. Death Row's best player, Mike Soberick, however, is rumored to be a communist, and if Death Row manages to get into the playoffs, I suspect several teams are going to file a protest.

**Devo** — In contrast to Lousewort, this delightful group of punk rockers is probably the dumbest law school team in the IMs. There isn't a player on this team who is even in shouting distance of law review. Several players have confessed to never have even read a law review article. But, God can they play ball!! Led by Player-Coach "Lefty" Hopkins (a great recruiter, but can't coach a lick), and his brilliant assistant, Walter Williams, Devo is presently 5-3 in the "B" league. At forward, Devo features sharp-shooting Jeff "Dr. Slow" Flax and flashy Mark "Dr. Clap My Hands and Watch 'EM Go By" Warlick. At center is high scoring Brad "Dr. High Pockets" Evers (20.05 ave. — so he claims) and the team's enforcer, Jack "Dr. Fist" Kroesger. The guard position, however, is where Devo has been winning its games. The starters are Phil Schuler, who also happens to be the meanest man in the world, and scrappy Walter "Dr. Floorburns" Williams. Off the bench, Devo has Instant "O" and Instant "D", Dana "Dr. Trigger" Smith and "Lefty" Hopkins. If they can manage to stay out of jail for another week, they should finish 6-3.

**Supreme Court** — There's not much you can say about this

nondescript bunch. They play in "C" league. Their record is 2-5. I think Andy Thurman plays for this team, but I'm not sure. I think Brian Buckley and Larry Murray also play for Supreme Court, but I'm not sure about that either. One thing I do know for sure — they're not going anywhere after the season.

**Crisp Briefs** — The "Briefs" are a hard working second year bunch who lost two of last year's top players, Bob Ward and Brad Evers to free agency. Currently 1-7 in "C" league, this team is in dire need of help on the front line. As a matter of fact they could use some help at guard, too. Starters for Crisp Briefs are Andy Jilson, Kevin Connelly, Glenn Hayes, Mike "Easy Rider" Heavyside and Freddie "Downtown" Holland. If they win more than one game it will be a miracle.

**Snail Darters** — Very little is known about this nearly extinct species. I'm not even sure they are enrolled in the law school. John Rogers is the coach. Their record is 1-7 and I think they play in the "Q" league. If you want to know any more about this team, you'll have to ask John Rogers. Or is it Rodgers?

**Ambulance Chasers** — Another first year team. You can tell by the name. These guys are 4-3 in "E" league, which is the league for guys who throw a baseball like a girl and blow-dry their hair. This team consists of a bunch of no-names, about whom we'd just as soon say no more.

One final note — Dave Robbins is reported to also have a team, however, I was unable to obtain any information about it.

## The Second Committee Report: Root Court

by P. Jarndyce Twitterbottom

Whereas several members of the Committee have been or are now participants in Root Court, we feel that it is within the purview of our duties and responsibilities to address our thought processes to the aforesaid estimable court. To wit, one case in the aforesaid competition has come to our attention as being of particular concern to the Committee in our capacity as defenders of the American Way.

**SAVAK vs. Ann Landers**, 578 F.2d 1056 (7-11 Cir. 1979), is concerned with the validity of pre-nuptial secrecy agreement signed by Constance Clairol at the time of her marriage to an Iranian undercover agent, which agreement purports to waive certain of Ms. Clairol's First Amendment rights in exchange for unnamed consideration and the right to name her first two test tube babies after her uncle Bebe Rebozo. Ms. Clairol wrote letters to Ann Landers seeking advice about certain of her husband's undercover activities without first having the letters cleared by the SAVAK (the letters alleged failure of consideration, lack of mutuality, and statute of frauds problems). SAVAK was tipped off by an unnamed informant that their agent was soon to be exposed, and sought and received an injunction barring publication of the letters, **SAVAK v. Ann Landers**, 512 F.Supp 36 (D. Ill 1978).

Despite Ms. Clairol's objection to the suit on the grounds that her husband lacked standing, which thereby vitiated her consent on the grounds of fraud, Masters and Johnson, **Standing and Pre-Nuptial Agreements: A Hornbook for the Layman**, 126, the court upheld the lower court in a Per Curious opinion which stated simply that so long as the test tubes were viable and if the agent was attempting to perform his undercover duties diligently, that there was no failure of consideration. The contract therefore was binding, an acceptable limitation on free speech, and a fitting memorial to Mr. Rebozo. Ann Landers was therefore appropriately enjoined from answering Ms. Clairol's questions. The question for Root Courtiers then: What to do for Ann Landers?

As it is to be expected, there is a split of authority on this issue, but the Committee believes it can be approached along policy lines which find strong support in the case law. First it is necessary to develop the logical nexus between gas, oil, and the national security interest of a foreign government's agents. To do so, we must look to Mexican law, **Hernandez v. CIA**, 230 Tex-Mex 413 (1968), which is a case remarkably similar to the Landers case. There Hernandez attempted to enjoin the CIA's support to dependent children of certain Tiajuana operatives, but was denied access to appropriate files because he lacked standing. It came out upon review of the testimony that his wife had claimed that he did in fact have standing, but the court upon viewing the evidence declared it de minimis and dismissed the suit with prejudice.

Clearly, then, the SAVAK should not have had standing either. How then to bring in this case? Simply done. We know from the record of the first trial that Bebe Rebozo and the undercover agent were seen on many occasions dining together at Taco Bell. That simple fact gives us access to the vast body of law on gas and oil. Since Mexico is newly discovered to be a major repository of oil reserves, it is only natural that the United States should look to her southern sister for assistance on the delicate matter of gas and oil law. Since Ms. Clairol alleged certain misconduct with jalapenno peppers as one of the elements of failure of consideration, since said peppers are a major cause of gas discomfort, we have come full circle because, in an amazing coincidence, the Hernandez case revealed the heavy involvement of the CIA in the illicit jalapenno pepper traffic. Voila. The American Way in vindicated; Ann Landers publishes on.

When next the Committee reports, we hope to have solved the question of why a certain New Jersey resident, posing as a law student, has felt it necessary to acquire a dog to guard his premises. Could the 138 barrels of salad oil have anything to do with it? A wedding gift from his Uncle Tino? Only Joey the Barber knows for sure.

## Charter Day Highlighted With Award To Swindler

by George Lyon

William F. Swindler, John Marshall Professor of Law was awarded the Thomas Jefferson Award in the College's Charter Day ceremonies.

The award, given annually to a "Member of the College family" who through his significant service, "exemplifies the principals and ideals of Thomas Jefferson," was presented to Swindler by Edward E. Brickall, Rector of the College's Board of Visitors.

Brickall praised Swindler for his authorship of numerous articles, and of a "dozen major books," and for his service with the Virginia Constitution Revision Commission and the National Conference on the Judiciary.

The ceremonies commemorated both the 286 anniversary of the granting of the College's charter by King William III and Queen Mary II in 1693 and the 200 anniversary of the establishment of the chair of law created in 1779 and filled by George Wythe. The chair of law was the first established in the United States and one of the first in the English speaking world.

Associate Justice of the United States Supreme Court Lewis F. Powell, Jr. delivered the Charter Day address. Justice Powell said that in a real sense he felt as if coming back to Williamsburg was a coming home for him due to his associations with the Colonial Williamsburg Foundation for

over a quarter of a century and with the college.

He said that the College and Colonial Williamsburg have combined "to make the ancient town of Williamsburg, famous throughout the civilized world," and that the College has been a beacon of freedom to the world" by its influence on American history.

Characterizing George Wythe as a towering figure even though he never held high office, Justice Powell delivered a tribute to the College's first law professor.

Among the tributes to Wythe that Justice Powell shared with the audience was the story that Wythe would never accept a case unless he was convinced that his client's position was right, and that if he determined later that his client's position was wrong he would withdraw his representation. If many lawyer's followed that practice today, said the Justice, many individual's would be without legal representation, and many lawyers would be bankrupt.

Powell emphasized that Wythe's influence is felt most by the accomplishments of his students, among whom were Thomas Jefferson, John Marshall, Henry Clay, and John Breckinridge.

Powell spoke of the recent achievements of the Marshall-Wythe law school including "the nationally recognized graduate tax program," the Summer school program in England, and the Conference on

Environmental law, which was held also last weekend. He labeled Law School Dean William B. Spong, Jr. as one of the ablest law school deans in the country.

Virginia Governor John N. Dalton also spoke briefly at the ceremonies. He noted that in the last 25 years state spending on higher education has increased from approximately \$12 million to a total of more than \$416 million, with William and Mary's share of this total currently being more than \$13 million.

Addressing the issue of faculty salaries, he reported that he has recommended the General Assembly approve a seven percent increase in faculty salaries in addition to a 4.8 percent accross the board increase in salaries for all state employees.

Two recent visiting professors at Marshall-Wythe, William W. Van Alstyne of Duke and John Ritchie III of the University of Virginia, were awarded honorary Doctor of Law degrees. Asst. Economics Prof. Allen R. Sanderson was awarded the Thomas Jefferson Teaching Award.

Among the various dignitaries at the ceremonies were Virginia Chief Justice Lawrence A. I'Anson, Emerson G. Spies, dean of the law school of the University of Virginia, and Thomas A. Edmonds, dean of the T.C. Williams Law School of the University of Richmond.



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