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GOPHER TRAINING SESSIONS FOR STUDENTS

On March 13, 14, and 16, from 2:00 to 3:00 p.m., Mike Phillips will conduct one-hour classes in the computer lab on using WAMI (William And Mary Information) and gopher. Topics covered include: gopher concepts, logging in to gopher, navigating through gopher, and accessing resources online, including other law schools, libraries, etc. There are sign up sheets at the circulation desk. ... MSP

CYBERSPACE CRIMES RAISE LEGAL CHALLENGES

If you use the Internet to communicate and access information, you may be amazed by the speed, convenience, and other benefits associated with this wonderful world of computer networking. Yet, as you cruise through the information super highway, you may encounter a new variety of crimes lurking in cyberspace, which challenge the existing law and order. This article introduces some current cyberspace criminal cases, and looks at some of the legal issues raised by such cases.

Internet Pornography: Whose "Community" Standard Applies? In July 1994, Robert and Carleen Thomas, of California, were convicted by a federal court in Memphis on charges of selling sex images electronically.¹ The couple ran a computer bulletin board system (BBS) on the Internet which transmitted pornographic material to subscribers for a fee of \$99 a year. A postal inspector in Memphis subscribed to this BBS under an alias, received sexual images through the service, and complained to the government. The couple were tried and convicted on multiple counts of distributing obscene materials on the Internet via interstate phone lines, and were respectively sentenced to jail for 37 months (for Robert Thomas) and 30 months (for his wife). The case is now on appeal before the Sixth Circuit.²

A major issue raised by this case is what constitutes the "community" moral standard used to test obscenity as espoused by the Supreme Court in *Miller v. California*, 413 U.S. 15 (1973). Since the sexual material for sale was transmitted through the Internet, a network of millions of users, the image transcended state (even national) boundaries. Should the so-called "community" standard be based on that of the receiver of the material, that of the sender, or that of all users on the Internet? Some critics of this decision argue that the court, by convicting the defendants, allowed one community to set the obscenity standards for the whole country. How this issue is resolved on appeal will have an important impact on similar cases involving electronic distribution of pornography.

Electronic Stalking: Privacy v. Free Speech. In summer 1994, a Michigan man, Andrew C. Archambeau, was charged with stalking a woman electronically.³ The defendant met his

accuser once, and began courting her by phone calls, post cards, and E-mail messages. He sent her about 20 romantic E-mail messages in a three month period, and kept on mailing even after the woman protested and threatened to report him to the police. The charge against the defendant is based on a Michigan statute which prohibits stalking by means including electronic communications. While the case is still pending, the defendant faces a \$1,000 fine and one year imprisonment if convicted.

This case presents an interesting issue since the Michigan statute in question is believed to be the only one in the country that bans stalking by electronic means. Mr. Archambeau claims innocence on the ground that he never "physically" approached or threatened the woman, a conventional element of "stalking", and that his romantic E-mail messages and telephone calls to the accuser meant no harm to her, and should be treated as protected speech. In court, his attorney plans to challenge the constitutionality of the statute by arguing that the law could criminalize innocent communication.

Free Computer Software: Copyright v. First Amendment. In April 1994, David LaMacchia, an MIT student, was indicted by a federal jury on charges that he illegally distributed licensed computer software to Internet users. [*United States v. LaMacchia*, Docket no. 94-10092-RGS (D. Mass. 1994)].⁴ Before his arrest, LaMacchia had operated a campus-based bulletin board system (BBS) connected to the Internet and invited network users to upload and download copyrighted computer programs (e.g., WordPerfect) via his BBS. This operation was said to have cost the computer software developers a million dollars in losses, and allegedly violated a 1952 federal wire fraud statute which prohibits the use of telephone lines to commit interstate fraud [18 U.S.C 1343 (1994)]. On trial, the court dismissed the case, holding that the wire fraud statute did not apply to the conduct of the defendant who made no profit from distributing software on the BBS.⁵

In a similar case which arose in late August 1994, Richard D. Kenadek, operator of a Massachusetts-based BBS ("Davey Jones' Locker"), was charged with conspiracy, criminal copyright infringement and wire fraud in connection with distributing via the Internet copyrighted computer software to paying subscribers across 36 states and 11 foreign countries.⁶ The charges against Kenadek allege that the defendant allowed Internet users to copy licensed computer programs to and from his BBS instead of directly placing such programs on the BBS for copying. Kenadek is believed to be the first BBS operator to face federal criminal copyright infringement charges. If convicted, he could get a maximum of six years in prison and fines of up to \$275,000, plus forfeiture of his computer equipment. As of this writing, the case is pending.

The above cases both involve prosecution of unauthorized distribution of protected software. The most crucial distinction between them is that LaMacchia offered his BBS for the free use of Internet users, whereas Kenadek did so by charging users a subscription fee. While LaMacchia's indictment was dismissed, it remains to be seen how the Kenadek case will be decided.

This essay takes a peek at cyberspace crimes. For in-depth analysis of legal issues in the cyberspace, see Trotter Hardy, *The Proper Legal Regime for "Cyberspace"*, 55 *University of Pittsburgh Law Review*, 993-1055 (1994); Barbara Rabinovitz, *A Case from Cyberspace: Student's Operation of Computer Bulletin Board Brings Law Firm On-line*, *Massachusetts Lawyers Weekly*, August 22, 1994, at 29; and Richard Raysman & Peter Brown, *Liability on the Internet*, *New York Law Journal*, November 8, 1994, at 3. ...HU

¹ *Couple Convicted of Pornography Sold over Computer Network*. *N.Y. Times*, July 31, 1994.

² *Criminal Law and the Internet*, *Legal Times*, January 23, 1995, at S32.

³ Peter H. Lewis, *Persistent E-mail: Electronic Stalking or Innocent Courtship?* N.Y. Times, September 16, 1994, at B18.

⁴ Richard Raysman & Peter Brown, *Liability on the Internet*. N. Y. L. J., November 8, 1994, at 3.

⁵ See *United States v. LaMacchia*, 1994 U.S. Dist. Lexis 18602.

⁶ Barbara Carton, *Man Charged in Software Piracy*. Boston Globe, September 1, 1994, at 41.

FROM THE EDITOR'S DESK

CD-ROM products provide an efficient method of accessing legal information through keyword and boolean searching (often in full-text databases) without online access fees. Thus, if an initial search strategy provides no relevant "hits" you can reformulate and run your search without worrying about running up large online access charges. Some subscriptions even provide online access via modems in order to update CD-ROM research. Only the updating incurs online access charges. Many law firms view these sources as an efficient means of accessing information and are expanding their subscriptions.

Knowing that students will be expected to use CD-ROM products in legal practice to contain the cost of online legal services, the library subscribes to various CD-ROM products. These products are loaded on the library network accessible in the reference area.

Recently representatives from various CD-ROM vendors were at Marshall-Wythe to demonstrate effective methods of accessing information available on their product. If you missed a demonstration and wish to learn more about a particular CD-ROM product contact a reference librarian for a demonstration. ...MWR

BITS & BYTES

LEXIS & WESTLAW News. Many of you are preparing to spend the summer experiencing real life in the law. Your plans may be to clerk for a law firm or a judge. You may be planning to work for a public service agency or a government office. Whatever your summer plans include, arrive on your first day of work prepared to meet the challenge. Take a LEXIS and WESTLAW refresher course now.

MWLL Computer Services is offering LEXIS "Prepare to Practice" and WESTLAW Summer Associate Training classes during the months of March and April. The classes are not limited to those planning to clerk, however. If you will be researching for Independent Legal Writing, working as a research assistant for a faculty member, or would just like to learn some advanced search techniques you are also encouraged to attend these sessions.

The WESTLAW Summer Associate Training offers a refresher on basic searching as well as advanced searching and an introduction to WIN: WESTLAW is Natural search mode. Training sessions will take place the week of March 20 - 24. Sign up sheets will be placed in the CALR Training notebook at the circulation desk.

The LEXIS "Prepare to Practice" program begins on March 28 with "LEXIS Day." From 10:00 a.m. until 3:00 p.m. in the Moot Court Room, LEXIS representatives will showcase many of their research products in use in law offices around the country. These products include LegalViews, a text and litigation management software; CheckCite, automatic cite checking program; Full-Authority, a program that creates tables of authority; and other research and practice management services. Students will also have the opportunity to sign up for specialized LEXIS training sessions to be offered in April. A faculty and student reception sponsored by LEXIS/NEXIS will follow the demonstrations at 4:00 p.m. in the Student Lounge. Details of "LEXIS Day" will be dropped in student hanging files.

Faculty are also invited to attend and should receive a notice in the mail.

If you have questions about any of these programs please see Mary Grace Hune or one of the student LEXIS/WESTLAW representatives.

CALI. As the panic of exam time hits, students begin scrambling for study aids. A study aid many of you may not know of is the CALI program found in the MWLL Computer Lab. CALI (Computer Assisted Legal Instruction) contains numerous interactive exercises designed to assist students in understanding and applying the legal principles they learn in their classes. The CALI collection includes exercises on Civil Procedure, Commercial Transactions, Contracts, Criminal Law, Employment Discrimination, Evidence, Federal Courts, Insurance, Labor, Professional Responsibility, Property, Torts, Trial Advocacy, Administrative Law, and Wills and Trusts.

To access the CALI exercises, from the PC-Lab Main Menu choose **K - Courseware; A - Marshall-Wythe Specific Software; A - CALI.** Once you are in the program, you can see a description of any of the programs by first highlighting the name of the program and pressing **<F1>**. To access one of the exercises, highlight it on the menu bar and press **<Enter>**. At this point you can either run the program or copy it to a floppy disk. Yes, you can copy any of the exercises and run them on an IBM compatible computer at home.

Mary Grace Hune will be demonstrating several CALI exercises Wednesday, March 15 at 2:00 p.m. in the Computer Lab. If you would like to attend, please sign up in the Computer Services book at the Circulation Desk.

If you have any questions about CALI, please see one of the PC Lab consultants during their office hours or Mary Grace Hune in the Computer/AV Services Dept in Room 130.

...MGH

U.S. SUPREME COURT NOMINATIONS

The library subscribes to a series called The Supreme Court of the United States: Hearings and Reports on Successful and Unsuccessful Nominations of Supreme Court Justices by the Senate Judiciary Committee. It begins with the nomination of Justice Louis D. Brandeis in 1916, when the Judiciary Committee, for the first time, held public hearings and published a report on his nomination. The preface states that prior to 1916 public documents on Senate review of nominees are unavailable. It also notes that before 1925 deliberations by the Senate Committee on investigations of nominees often did not appear in the Congressional Record, and much of the information contained in the set is unavailable elsewhere.

The set includes hearings on nominations for Chief Justice and Senate roll call votes where such votes were recorded, as well as other items deemed by the editors of interest to researchers. The set is current through the nomination of Justice Ginsberg and is shelved under the call number **KF8744/J8.** ...MWR

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