The Advocate (Vol. 3, Issue 2)
Glitz and Glamour for a Good Cause:  
PSF Casino Night

by Mike Lockaby

Ever had dreams of winning like Mikey McDermott? Of being as sly as Isabel Lahiri or as smooth as Danny Ocean? Have you ever been known to say, “well, a woman who’s hard up could always make a living at craps, if she had to”? For a few hours Friday night, over a hundred ordinary law students indulged their dreams of gambling glory at the Public Service Fund’s Annual Casino Night Fundraiser.

The Casino, which turned the lobby of the Law School into a slice of Las Vegas for the evening, featured four tables of blackjack, a half-dozen tables of poker, a craps table, and various other games. Everyone who attended received $1000 in chips to play with as long as she could. If someone went broke, he could buy back in for $7. There was constant action at the blackjack tables, as Professors Moliterno, Hynes, Dwyer, and Devins, all decked out in tuxedoes, dealt cards and witticisms with surprising ferocity. Hynes was overheard to say, “this is great, this is so much fun every year,” and Moliterno seemed unable to wipe a broad grin off his face all night. The tables of poker featured nonstop action, as the games varied between low-stakes and no-limit Texas Hold ‘Em. Matt Gates, a law student and sometime professional craps player,1 showed everyone how it was done at the craps table, and may have begun a new law school fashion as there was never a crowd less than three deep at his homemade table. And of course it wouldn’t be a true casino without copious free beer, served with style and aplomb by Sara Outterson, Melissa Mott, and Courtney Bennett.

The event was organized by Andrea “Terry Benedict” Phelps and Raj “Teddy KGB” Jolly, and financed by the Public Service Fund. The Public Service Fund (“PSF”) exists to provide summer stipends to law students who take unpaid summer positions in the public interest. PSF finances and throws most of the largest parties the law school has through the course of the year, and has been running the Casino Night for a number of years. As PSF Co-Chair Maryann Nolan put it, “PSF mainly throws

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This is very probably a complete lie, but he certainly knows the rules, which puts him ahead of the rest of us!

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Project Relief: Marshall-Wythe Style

by Jennifer Rinker

The law school division of Project Relief had its first organizational meeting on September 9th to flesh out continued fundraising and other relief efforts for the victims of Hurricane Katrina.

According to the de facto chair of the group, Louisiana native Liz McElroy ('2L), the focus is to ensure that law school student, staff, and faculty participation in relief efforts does not falter. “So many are so willing to help within six weeks of a disaster, but we are working toward spreading our efforts out over the next year and eighteen months, when help is still desperately needed,” McElroy said.

“We need to focus on the time and talents, as well as the treasures, of the law school community,” said Maryann Nolan ('2L).

To that end, Project Relief Marshall-Wythe, in conjunction with efforts on the main campus, may request the Red Cross hold disaster relief training classes for people interested in donating their “time and talents.” The group is considering mobilizing students from Marshall-Wythe during Winter or Spring Break to either the New Orleans or the Houston areas to give hands on, on-site support to the people there.

“The group also hopes to work with Habitat for Humanity’s Operation Home Delivery to build a number of houses right here in Williamsburg that can be put on flatbeds and taken to New Orleans and Mississippi,” said Stephanie Spier ('3L), who also organizes the Volunteer Council.

Project Relief urges student organizations to include donation boxes at their respective events or meetings throughout the year, to earmark portions of their fundraising for Project Relief, and to coordinate any organization-specific relief activities with the Project to ensure no overlap.

Student organizations are also encouraged to staff a day at the Operation Lifesaver table for donation collections to the Red Cross. As of September 9th, Operation Lifesaver had collected approximately $2500, but, as McElroy reported, “this past week we upped the amount raised to over $4500 thanks to some very generous people.” In addition, Project Relief members will work with the alumni development office for challenge grants to firms and local attorneys.

The SBA is considering optional donation possibilities on ticket purchases for Fall from Grace, Barrister’s Ball, and other SBA-sponsored events throughout the year. “There can be a tendency for people to suffer from giving fatigue right after a disaster. We are trying to ensure that does not happen. A little extra here and there does not seem as burdensome” added Meg Bisk ('3L), SBA President.

The Marshall-Wythe community at-large should keep an eye out for possible Legal Skills drives, Christmas gift drives, and clothing drives throughout the academic year. The recent collection of soap, shampoo, water, and baby formula, among other necessities, resulted in approximately 20 bags of goods, said drive organizer Dawn Leemon ('3L). Other ideas floated at the organizational meeting included a 3 on 3 basketball tournament, NCAA pool, and assistance with tax preparation in the early months of 2006, among many others.

If you would like to become involved in one of Project Relief-Marshall-Wythe’s committees, please contact Liz McElroy at eymcel@wm.edu.
Therapeutic Jurisprudence Society Holds Inaugural Meeting

by Myriem Seabron

With an academic program well under way, those interested in the formation of a student run Therapeutic Jurisprudence Society met with Judge Baker and Dean Reveley on the afternoon of Monday, September 12.

The Marshall-Wythe curriculum describes Therapeutic Jurisprudence (more popularly known as “TJ”) to its adherents as the study of the law’s impact on emotional life and psychological well-being. Not traditionally the biggest concern of those in the legal field, TJ is a budding field of interest that combines the law with disciplines like psychology and social work. Judge Baker credited Dean Reveley’s vision for recognizing the value of a program one won’t find at just any law school.

The Dean, in attendance for the kick-off of the society, spoke briefly. He told gathered students that in his time in and around the law, he’d been struck by what he characterized as the “remarkably ineffective” way in which the American criminal justice system is run. It is a system that can be not only ineffective and inefficient, but also “often a cruel and counter-productive process.” According to Dean Reveley, this is something that Therapeutic Jurisprudence can begin to change. He confided that the times he got the greatest satisfaction as a lawyer was when he felt like he was doing some true good in the life of a client—“when you actually felt like you were touching that person’s life in the way that actually made it better.” An approach built around Therapeutic Jurisprudence is an opportunity for people involved in all levels of the legal system, be they prosecutors, defense counselors or judges. The potential to do good and make a difference, particularly to nonviolent offenders, is simply enormous, Dean Reveley told the group.

According to the Dean, the student-run society has come into being because “there is real interest on the part of students to explore TJ as an academic matter in class—and then go out and do something.” Therapeutic Jurisprudence, he emphasized, is an area not just for teaching and scholarship, but for acting as well.

Realizing perhaps that few young people have ever been convinced of the utility of a thing by having a professor lecture them about it, Judge Baker produced a sheet of paper which contained the answer written by a 3L student in response to a question on the previous year’s TJ seminar final exam. The student had written of the first day of class, and three words Judge Baker had put up on the board: “Will you care?”

Recounting some of his own experiences in law school and on internships, the student explained how in three years of law school, he had gotten away from his roots, and what had brought him to law school in the first place—a desire to help people. As law students, and later as lawyers, we find ourselves looking for the important facts, the bottom line. Recalling the fear and confusion he often encountered in defendants during his internship at a public defender’s office, “I realized,” the student wrote, “that I had been so extensively trained to look at the issues… I forgot that the cases in front of us involved real human beings.” The study of TJ reminded him, “the law can be practiced effectively as well as compassionately.”

Judge Baker closed out the meeting by reminding students that opportunities for public service are boundless, both inside the law school and out in the community. In fact, Williamsburg has a “restorative justice” project in the works, and the opportunity has been extended to members of the student TJ society to get involved with juvenile offenders. “I think you can do a lot of good both for yourself and for your fellow man… which is what it’s all about,” said Baker. “I think there are a lot of exciting things that can happen, and you can make them happen.”

Students interested in getting involved with the Therapeutic Jurisprudence Society are encouraged to attend the next meeting, currently scheduled for Monday, September 26th, at 12:50pm in Room 124. Society members will be presented with a proposed constitution and an executive board will be established. For more details, students can stop by Judge Baker’s office or email 3L Greg Rohrbough at gdrohr@wm.edu.

Law and Culture: the ’05-’06 Cutler Lecture

by David Byassee


Professor Post is currently writing the tenth volume of a history of the U.S. Supreme Court. The work, commissioned by the U.S. government, covers the years William Howard Taft served as Chief Justice—1921 through 1930. That project led him to select Prohibition as the topic of this lecture.

Prohibition, said Post, had profound consequences for American society. More profound than the obvious, that is. For the first time male and female drinkers shared this pastime together in “speak-easies,” ushering in sexual liberation and the jazz age. Shifting the discussion to jurisprudential implications of Prohibition, Post briefly painted the landscape in which Prohibition existed. The year was 1919, immediately following the First World War. America was united. It was a time of mobilization of the nation’s resources. Waste was unacceptable. Efficiency was key. Yet the federal government had no police force, and only a limited number of Federal courts and Federal district attorneys.

Prohibition was passed into law as the “anti-saloon bill,” largely supported by rural areas and churches located in the southern states, said Post. Its supporters were a strange amalgam of conservatives and liberals who saw drinking as problem to the new form of industrial revolution—assembly line production. The result of Prohibition was massive disobedience that undermined public confidence in the Federal government. Law was seen, and being applied, as a way of changing values. The morals of rural America, not those of the urban population, supported prohibition, said Post. Prohibition existed previously, and was relatively successful, in several states prior to the era of federal prohibition. But prohibition at the federal level provoked the sentiment that one state was asserting its religious customs upon another.

Obviously, Prohibition was repealed. Post provided a contemporary analogy to Prohibition, the United Nations issuing a regulation of prohibition over the United States. Perhaps the lesson to be learnt from Prohibition, Post hypothesized, is that legitimacy of law must have its base in local morals.
First Annual SBA-Organized Fishing Trip

The Rundown...

Total Fish Caught: 53
First Fish Caught: Trey Freeman
Biggest Trout: Matt White
Biggest Croaker: Chris Toepp
Biggest Spot: Jennifer Rinker
Smallest Fish: Kris Koletar
Most Fish Caught: Chris Toepp
Most Fish Caught By A Graduate: Marcus Bauman
Least Fish Caught (as in none): Tim Hoseth
Most Fish Caught At One Time: Kris Koletar
Strangest Catch: Tie
  Eric Pohlner for One Fish Head
  Marcus Bauman for a Barnacled Sock
DOCKET CALL

by Nicholas Heiderstadt

While learning the theory behind the law in a classroom is important, witnessing its practical application in a court of law is an essential part of any law student’s education. Accordingly, we present the docket for the General District Court for the City of Williamsburg and the County of James City.

The schedule for the General District Court over the next two weeks can be found below.

The docket for the Circuit Court is unavailable for publication. To find out when cases are being tried in the Circuit Court, contact the Clerk’s office at (757)-564-2242 on the day you plan to attend.

The Courthouse is located at 5201 Monticello Avenue, across from New Town (for those who navigate Williamsburg in a more alcohol-centric way, it’s across from the Corner Pocket). Take a left out of the law school parking lot, and take South Henry Street to 199. Make a right turn onto 199, and follow it until you reach the exit for Monticello Avenue. Take the right-hand fork of the exit ramp onto Monticello Avenue. The Courthouse is the large brick building on your right just before you reach the traffic light.

The Advocate has only just begun this year’s publication season. If you are interested in writing about a law school event, or wish to voice your opinion, don’t hesitate to notify Nicole Travers and the rest of The Advocate staff by writing to natrav@wm.edu about your story or column ideas. We’d love to hear from you.

-THE ADVOCATE STAFF

SEPTMBER 2005
General District Court Docket

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Student Volunteers at York Park

Thirteen representatives from Phi Delta Phi and the Environmental Law Society volunteered at York River State Park on September 17th. The two student organizations joined forces to disperse gravel on a portion of the trail system to help prevent erosion of sediment and to ensure proper drainage of rainwater. Photographs by Ranger Charlene Talcott. More photographs on pg. 16.

Who's that handsome, blue-eyed, mutton-chopped Devil slinging drinks at your favorite local joint? It’s none other than Chris Derhan, bartender/DJ extraordinaire.

Whether you love or hate the music at the Green Leafe Cafe, he’s the man behind it. AND he’s environmentally friendly, too. You may see him wheeling about town in his alternative energy vehicle.

Accepting females’ phone numbers every Friday, Saturday, and Wednesday.

Somethin' special's going on, every day at the Green Leafe Cafe!

Sunday: Brunch 11am-5pm
Monday: $8 Entrees 5-9pm
Tuesday: VA Draft Night 5-9pm
Thursday: An Evening With Tony 4-9pm
Friday: New Draft Night
Saturday: Shrimp Night 4-9pm

Check the website for daily lunch and dinner specials: www.greenleafe.com
On September 16, 2005, William and Mary celebrated the first annual Constitution Day, a new holiday brought into existence by Senator Robert C. Byrd, D-W. Va. Apparently alarmed by the decline of history and civic education programs in the U.S., Byrd tacked a resolution on last year’s appropriations bill requiring all schools that receive federal funding to set aside one day for programs commemorating the September 17, 1787 signing of the U.S. Constitution.

The irony of this mandate was not lost upon William and Mary’s Constitution Day speaker, Professor William Van Alstyne, Lee Professor at Marshall-Wythe School of Law. Van Alstyne teaches First Amendment law, and is considered one of the country’s foremost constitutional scholars. Nevertheless, he claimed that even he would be hard pressed to pinpoint the exact constitutionally granted power that allows Congress to compel such a program. He therefore presented his speech, entitled “Some Reflections of the World’s Oldest Constitution and How Congress Chose to Honor It,” with the caveat that the mandate does not necessarily require the glorification of the Constitution, only its commemoration in general.

Van Alstyne provided the audience with copies of the Constitution, one of which he used for a “theatrical” introduction to his topic. Because Constitution Day commemorates the Constitution as it was on September 17, 1787, said Van Alstyne, it would be necessary to pare the document down to its original form. With that, he cut his small copy down the middle, separating the original document from the Bill of Rights.

Over the course of his lecture, Van Alstyne explained that the U.S. constitution differs from the constitutions of many other nations, because it contains only negative prohibitions on governmental powers, rather than positive affirmations of citizens’ rights. It also differs in that it is not merely a tool of propaganda, but the supreme law of the land, and enforced as such by the U.S. Supreme Court. He contrasted this practice with that of the People’s Republic of China, where Van Alstyne taught law in 1988 (one year before the protests in Tiananmen Square). Rather than allowing review of legislative actions in court, Van Alstyne said, the legislators are presumed to follow their constitution by virtue of their actions.

Another difference described by Van Alstyne is that the U.S. constitution is difficult to change. He offered as an example the story of the ill-fated Equal Rights Amendment, a simple amendment intended to ensure federal protection of equal rights for women. The amendment was accepted by congress, but failed to become a part of the Constitution when it failed to attain the necessary number of state ratifications. In its place is the current twenty-seventh amendment, which entails only a delay in salary raises for Congressional representatives.

Despite the difficulty in changing the Constitution, Van Alstyne is of the opinion that it is the process of change which causes the U.S. Constitution to be a “living document.” This is not due to judicial interpretations which attempt to relate esoteric provisions to the modern age, which he claims likens the Constitution to the Dead Sea Scrolls. It is instead the amendments, which Van Alstyne describes as the “cambium rings” of the Constitution, which prove its vitality. (Cambium rings are the rings in a tree which show its age and growth.) But he warns that, like a redwood tree, when the process of adding cambium rings stops, the Constitution will die.

Though perhaps not the commemoration that Senator Byrd envisioned, Professor Van Alstyne has provided the William and Mary community with a thought provoking and entertaining way to celebrate America’s brand new holiday.

For those who missed Van Alstyne’s lecture, it was taped by Swem Library staff, and may be viewed in the Ford Classroom in Swem Library, or on the internet at www.wm.edu/constitutionday.
Eddie Nickel (2L) jumped off the 15-foot balcony of his home at the age of 2. While he may or may not have been wearing his Superman Underoos, he WAS convinced he was Superman. He didn’t even wear a cape, which I’m sure contributed to the final realization that he could not, in fact, fly.

The hard landing did not deter him, and little Eddie was on his way back up the stairs to give it another go before his parents stopped him. Needless to say, his folks soon thereafter had the whole balcony “child-(tumbling-to-death-from-great-heights)-proofed” with added stature to the balcony railing.

At the age of 5, Eddie started using the Signal mouthwash slogan to hit on the lady lifeguards at the local swimming pool. The only wrinkle, or perhaps it added to the cute-factor, was that Eddie had a lisp, so it the line came out “Kith me. Kith me. I’ve got the Thignal.” Aaah-awww.

If he had the same mammothly long eyelashes back then as he does now, those girls probably ate his long eyelashes back then as he was shouting, “Good morning! Good morning! Only in America!” No lie.

Butkus was sitting with his family, glaring at Don. It might have been Don’s hair that prompted Dick’s penetrating gaze, but Butkus is not one to talk because, according to Eddie, “Dick has to have the most amazingly large square-shaped head—at least two feet by two feet.”

That was back in 1988, so I was thinking he must have performed GN’R—if not Mr. Brownstone, at least Sweet Child O’Mine. But, alas, Eddie nose-hummed to Mary Had a Little Lamb. I’m guessing Eddie was not selected for the show, but I should probably have more faith that other fifth-graders performed equally lame talents.

Eddie is a zealous Dallas Cowboys fan, and his obnoxious heckling single-handedly cleared out at least 80% of the people from the end zone after the third quarter of a Redskins-Cowboys game at FedEx Field. But it was Monday at 11:30, and the Redskins were down two touchdowns, so people were probably just sleepy.

Eddie worked in sports marketing for four years, which explains how he has attended the following:

- 2002 U.S. Open
- Superbowl (Tampa Bay / Oakland)
- Final Four (Syracuse / Kansas)
- 2002 Pro Bowl
- World Series (Subway Series)
- 2004 MLB All-Star Game
- NBA Finals (Spurs / Knicks)
- 2003 NBA All-Star Game

In closing, Eddie ate breakfast at the Superbowl next to Don King and Dick Butkus. Don came in waving two American flags, escorted by three scantily clad women. Don was shouting “Good morning! Good morning! Only in America!” No lie.

Butkus was sitting with his family, glaring at Don. It might have been Don’s hair that prompted Dick’s penetrating gaze, but Butkus is not one to talk because, according to Eddie, “Dick has to have the most amazingly large square-shaped head—at least two feet by two feet.”

First: Sample wacky adventure—while in Greece this summer, Eric wanted to drink from the Castalian Spring at Delphi, which supposedly gives you the gift of eloquence. Ignoring a fence, warning signs, and ever-present site security, Eric made a dash for the spring. He was nearly caught because he took the time to take photos. He explained, “It’s always good to have evidence of a wacky adventure.” Asked to give another example of his life’s wackiness, he says that after one night of heavy drinking in college, he woke up to find a traffic cone and push broom in the middle of his room. “That doesn’t happen to most people,” Eric said.

Second: Sample life-threatening activities—Eric went skydiving, whitewater rafting, and skiing all for the first time 1L year. What made the skiing particularly life-threatening is that he hit the slopes with a complete lack of proper ski attire (including gloves) and skiing instructions which included not much more than having watched the South Park episode where they learn to ski and the James Bond film “For Your Eyes Only.” Eric claims the trip proved his Olympic-level abilities. “I was going 80 mph backwards down the mountain. Imagine what I could do if I knew what the hell I was doing.”

And, third: Sample indigenous animals he plans to wrestle—

Africa = Lion (naturally)
Antarctica = Emperor Penguin
North America = Alligator
Australia (a continent AND a country) = Kangaroo (even though he will seriously lose. No offense, but those buggers are TUFF).
Asia = Giant Panda
South America = Chupacabra (even though they don’t really exist)
Europe = A Frenchman
Marshall-Wythe Student B-LAW-GS

In closing, Eric would like to refute Nicole Travers’ prior article claiming law students are focused jerks. He says that statement was “irresponsible and plainly wrong. I study outside, in a lawn chair, with tiki torches, for god’s sake.” And he drives a Camaro.

Evelyn Protano (3L) competed in the World Finals of the Odyssey of the Mind Competition in Ames, Iowa. She and her teammates designed and constructed a hula hoop / chime / turn table / big stick musical instrument that played all by itself. The chimes were configured on the hula hoop in such a way that when the turn table rotated the stick, the stick hit the perfectly cut and spaced chimes to create, as if by magic, the lovely melody of “I Could Have Danced All Night” from My Fair Lady. Evelyn placed fifth in the whole world (!!!).

The only sad thing about competing in the World Finals of the Odyssey of the Mind Competition and coming in fifth place is that it was not held somewhere better than Ames, Iowa. The good thing is that she learned to use power tools at age 10.

Evelyn’s mom used to pass her off as being able to read at age 2, but Evelyn very honestly admits she just memorized the book since it was one of those Read-A-Longs that made a “booping” sound when you were supposed to turn the page.

Evelyn is a huge sports fan and has played softball “forever.” She was the reason Kelly’s Team won a crucial game during the Law School softball tournament this year. It was the bottom of the 7th after a huge 8–run rally. With two outs and a runner on third, Evelyn hit the ball over Ryan Browning’s head to bring home the winning run. It was a definite SportsCenter moment. “I felt like Robin Ventura,” Evelyn said.

Her sports obsession stems from annual family roadtrips during her formative days, when the criteria for choosing a place to go was whether there was a baseball stadium. Evelyn elaborated: “I’ve seen ballgames in St. Louis, Cincinnati, Pittsburgh, Toronto, Cleveland, Baltimore, Boston, L.A., Philly, and both New York stadiums, as well as a bunch of minor league stadiums in places from Salt Lake City, Utah, to Norfolk, Va. It’s like that MasterCard commercial, only my family started it first. I’d still like to complete the journey of hitting up a game in every stadium in the country (and Canada).”

In closing, Evelyn saw Hilary Duff this summer at a trendy New York City restaurant (Tao). Hilary was hanging out with her boyfriend, who is in the band Good Charlotte. Apparently there is some talk that Hilary’s music will improve through his influence. Nah, that’s mean.

Evelyn also saw Jessica Simpson in Times Square promoting “The Dukes of Hazzard.” Speaking of mean, it was downright sinister what they did to the most classic of TV shows in that movie.

Kelly Pereira (1L) taught high school Spanish, World History, and English for the past three years at a public school in suburban Massachusetts. She sent numerous kids to the principal’s office, most notably one whose fellow student tattled that he was snorting cocaine in class. It turned out the kid was actually snorting sugar from Sour Patch Kids candy, which is itself deserving of a trip to the principal for just being plain nasty. As an aside, some friends of mine once snorted Pixie Sticks and their snot changed colors. I have to admit, that was pretty cool.

Kelly had the opportunity, if you want to call it that, to bust up a few fights (but no girl fights, thank goodness). Once, a kid even got “jumped” outside of her classroom. Scary.

Even though she taught high school, she still had to often explain bad words to people, uncomfortable as that may be. For example, she had to tell a student why they couldn’t say “dingleberry” at school. I didn’t know that was a bad word, either, but I did not ask for an explanation. That would have been uncomfortable.

The best thing about teaching for Kelly was the free summers. She went for week-long trips to Europe, the Bahamas, and California. Highlights of those trips, respectively, were the open-bar and catered law school graduation party in Italy, dodging hurricanes at a friend’s barefooted wedding in the Bahamas, and feeding frozen peas to fish while snorkeling at La Jolla. No lie.

I’m not sure I had to clarify what happened where since you likely would not have an Italian law school in the Bahamas, La Jolla is not in Europe (but I guess it could be—I didn’t fact-check that), and there are no hurricanes in California (where they’re called typhoons—let no one say the Advocate is not educational).

Kelly’s 1L experience thus far has entailed battling plumbing issues at the Grad Plex. The dilemma has taught her a few things she would impart to other Grad Plexers: household disasters create solidarity among roommates, and there is 24-hour emergency wet-vac service in the Residence Halls.

In closing, Kelly noted: “Since I’m from Massachusetts, I still have bragging rights for football and baseball, which is a change.” She was even able to go to both the Red Sox and Patriots’ Boston parades. Nice! Kelly is also pleased to not only be the only 1L represented in this issue’s Blawgs, but she is also the only Blawgee whose first name doesn’t begin with “E.”

Brett quote

“I heard I reached my sexual peak seven years ago. If that’s true, I’d never even planted my flag.”
ADA and the New Eugenics

by Andrew J. Imparato and Anne C. Sommers

With the mapping of the human genome, potential for improving the quality of life for people with painful and degenerative conditions has brought new hope in many circles. To be sure, the prospect of cures and disease prevention has widespread appeal. Yet are we ready to use genetic engineering to prevent the birth of any baby with Down syndrome, dwarfism or genetic forms of deafness or mental health conditions? What about genetic predispositions for cancer or Alzheimer’s disease? Who decides?

Last month America marked the 15th anniversary of the signing of the Americans with Disabilities Act, a landmark civil rights law recognizing that disability is a natural part of human diversity that in no way should limit a person’s right to make choices, pursue meaningful careers and participate fully in all aspects of society.

The ADA stands in marked contrast to some deeply troubling U.S. history that some in today’s biotechnology industry and many bioethicists have not completely abandoned.

At the turn of the 20th century, the cousin of Charles Darwin, Francis Galton, launched a pseudo-scientific movement known as “eugenics” that would snowball into a societal obsession with creating the “perfect citizen” and a dangerous intolerance for anyone deemed a deviation from “normal.”

Eugenicists advocated eradicating “genetically unfit” individuals through segregation, sterilization and euthanasia. The net was cast wide—physically and mentally disabled, epileptics, blind and deaf, racial minorities, impoverished, Amish, immigrants, limited-English proficient—even those who were simply shy or who stuttered were considered genetically “unfit.”

Upholding Virginia’s sterilization laws in the 1927 decision Buck v. Bell, Supreme Court Justice Oliver Wendell Holmes wrote, “The purpose of the Legislature was not to punish but to protect the class of socially inadequate citizens named therein from themselves, and to promote the welfare of society by mitigating race degeneracy and raising the average standard of intelligence of the people of the state.”

Following the exposure of Hitler’s eugenic atrocities, American society re-evaluated domestic eugenic practices. Many sterilization laws were repealed (more than half the country originally passed such laws and of the states which did, about half retain them today) and governors began issuing apologies. Was this a true attitudinal change or simply a lesson learned to be more covert in our efforts to eliminate genetic “defects”?

Today’s eugenic practices are wrapped in a white lab coat away from public scrutiny. What began as an effort to improve fertility is morphing into a new way for the well-heeled to maximize their genetic legacy.

Modern technology allows a couple to test embryos for “defects” and then only implant those embryos without such “flaws.” When embryos are disposed of due to the presence or absence of certain chromosomal patterns or genes, a bold statement is being made to people living with disabilities: “We don’t want more of your kind.”

Consider some statements by leaders in bioethics and embryology. Professor Richard Lynn of the University of Ulster complained in 1994 that the least intelligent are having the most children. His recommendation? “What is called for here is not genocide, the killing off of the population of incompetent cultures. But we do need to think realistically in terms of the ‘phasing out’ of such peoples . . . Evolutionary progress means the extinction of the less competent.”

Esteemed embryologist Bob Edwards said in 1999, “Soon it will be a sin for parents to have a child that carries the heavy burden of genetic disease. We are entering a world where we have to consider the quality of our children.”

Civil rights laws share the central tenet that all people, regardless of race, creed, gender, age, religion or disability are created equal and deserve a fair shot at the American dream. Many of the new genetic technologies, however, send the message of yesterday’s eugenicists—that there are preferences and if you don’t fit neatly within them, you’re “genetically unfit.” This kind of ideology is dangerous for anyone who values human diversity.

As Virginia Gov. Mark Warner noted when apologizing for Virginia’s leading role in forced sterilizations, “we must remember [our] past mistakes in order to keep them from recurring.” New genetic technologies are creating an increasingly powerful weapon to tamper with the human gene pool.

As we mark the 15th anniversary of the ADA, let us hope that the ADA’s inclusive vision will provide a strong counterbalance to a resurgent eugenics movement that seems to be forgetting the mistakes that led to the forced sterilization of more than 60,000 Americans and a global effort to “cleanse” the gene pool.

A Very Short Essay on Babies

by Rajdeep Singh Jolly

“A kiss is the anatomical juxtaposition of two orbicularis oris muscles in a state of contraction.”

—Dr. Henry Gibbons

According to The Economist of August 20, 2005, population experts reckon that 10% of German women between the ages of 35 and 45 “should have an extra child in order to strengthen the number of wage-earners who will be needed to support their generation in retirement.” Two years ago, a British politician urged British women to “breed for Britain” in order to close a looming pension gap. One wonders: Do my retirement needs justify the creation of life? How can we regard life as gift-like if it is in the nature of a timesheet?

My retirement needs do not justify the creation of life. Existence is no picnic; in fact, if life were a picnic, there would be no need for technology, however, send the message of yesterday’s eugenics—that there are preferences and if you don’t fit neatly within them, you’re “genetically unfit.” This kind of ideology is dangerous for anyone who values human diversity.

Pension preservation does not strike me as being a good reason for procreation. It has nothing to do with love, prima facie, and its use as a justification for procreation seems to violate the dictum that we treat others not merely as means but as ends in themselves.
Hi, and welcome to another issue of Ask a Canadian, where I attempt to educate my southern friends on the vast dominion of Canada. As always please send any questions or comments to askacanadian@gmail.com. Now, on to this week’s questions:

I heard that Canada just appointed a new Governor-General. What is that?

—Julius Benedict, 1L.

The Governor-General (GG) is the Queen’s representative in Canada. He/she is our official head of state and performs all the duties of the Queen when Her Majesty is not in the country. Those duties are long and arduous; they include signing bills into law, greeting foreign diplomats and waving to the crowds of Canadians who have no clue who the GG is. The GG is appointed by the Prime Minister and serves a term of five years. I keep hoping they name Wayne Gretzky, but so far my dreams have gone unfulfilled. Now, since the only basic requirements for the job are (a) be Canadian and (b) not be a screw-up, you’d think it would be pretty hard to mess-up the appointment. But don’t worry, we do. Our incoming GG is Michaele Jean, a Haitian-born journalist who resides in Montreal, is married to a Frenchman, and might be a separatist (Quebecers who want a free and independent Quebec). Shockingly, the whole separatist thing has not played out well with the rest of Canada. It caused a big uproar across the country, but despite the media circus, Jean refused to say which way she voted in the 1995 referendum on Quebec Independence. Which essentially means, “While I used to be in favor of independence, now that I’ve been given this cushy new job, I’m rah-rah Canada.” In an American perspective, that’s like Michael Moore getting named the Ambassador to Barbados and afterwards proclaiming his undying love for George Bush. Somehow, I think their credibility is in doubt.

Why do Canadians use the word “eh” so much? What does it mean?

—Vincent Benedict, 1L.

Excellent question. “Eh” is a quintessential Canadian expression; much like hockey, maple syrup and Tim Horton’s, it is woven into the fabric of our nation. Most of the time we use it to turn statements into questions (e.g., “He’s a pretty good goalie, eh?”). Other times it is essentially useless, as in, “How are those burgers coming, eh?” Some of us throw it into almost every single sentence we say, like, “So I went to the store, eh, to buy some maple syrup, eh, but they were out so I had to settle for some of that Aunt Jemina crap, eh” (note: the typical response to this sentence would be “That’s a bummer, eh.”).

It’s really a great little word—it adds inflection and makes everything more personal. As some of you may have noticed, I use it approximately 100 times a day. It’s also a dead giveaway when talking to non-Canadians. Usually within five minutes of talking to someone, they spot the “eh” and ask about my nationality. I might as well wear a name tag.

In fact “eh” is so uniquely Canadian, that immigration officials actually use it to bust people attempting to sneak into the country. While some countries police their borders with advanced technology to catch counterfeit documents, we instead listen for people saying “eh.” Perhaps, not the best of ideas, but it’s still better then having half-drunk armed yahoos patrolling our southern border looking for illegal immigrants. Not that I’m judging you or anything. In terms of border-safety techniques, I think that, while perhaps not as intimidating as your tactics, our approach does have at least some semblance of sanity.

So, in conclusion, Canada has a head of state who, until recently supported Quebec Independence, and we use linguists to patrol our borders. What a great country, eh?
President Meg Bisk, bred for her near-magical powers in flipping cups on command, is comfortably settling into her role as Queen of SBA. Said Bisk, “While I’m used to working with guys all the time, I’m not used to having so many guys under me.” Although better known for her role last year as “that girl who ensured I got drunk, cheap,” Meg is also interested in offering her community a helping hand. For instance, this summer, despite her obligations as SBA President and Summer Associate, Meg accompanied Prof. Baker to Uzbekistan to show them how a real Bar Review is thrown. Meg also finds time for various hobbies, including rooting for the BoSox (and in particular Gabe “the Babe” Kapler), keeping up with the Food Network, and being easy to love.

Ryan Browning (2L) is the aptly named, “SBA Treasurer Not Appearing in this Issue.”

Jaqueline Jordan (2L) is the equally aptly named “SBA Secretary Not Appearing in this Issue.”

3L Rep. Matt White’s most favorite thing to do is go out in the grass and play with bugs. His favorite bugs are grasshoppers, but he also likes squirrels because they have fuzzy tails (though they aren’t technically bugs). When Matt was 17, he decided to snort an eraser up his nose on a dare, but it got lodged in his nasal cavity where it now permanently rests…he has since named the eraser Samuel. Although Matt does not spell very good, he still manages to find time to tutor young Malaysian boys in the art of tutoring young Malaysian boys. Matt has the heart of a lion and it often roars for his love of law school, but sometimes it’s not his heart, just gas. Viva la Toby!!!!!

3L Rep. Stephanie Spirer is a country-line dancing chocoholic with liberal political aspirations who fills her time with planning community service activities (insert shameless plug to join her in committing 35 hours to become a VBA Community Servant) and seeing how many episodes of “Buffy, the Vampire Slayer” she can watch in one night. She also has a strange obsession with places with lots of corn—she gets way too excited at the CLS corn maze and is considering moving near a beach with the slogan “there’s more than corn in Indiana.” Stephanie can’t wait to vacation back to Spain where she can eat Special K with chocolate, go out for chocolate con churros after dancing until 6am, and sit on terrazas sipping real sangria or eating chocolate gelato. Random quotes from Buffy: “Grrr. Arrgh.” “We need a fort. I’ll get the pillows.” “You made a bear. Undo it, undo it!”

2L Rep. Gabe, whose full name is Michael Chang, first decided to run for SBA while sitting under a tree thinking about eating butter. Once this thought came to him, he quickly ran to the nearest gas station where he encountered a group of street hooligans that wanted to take his favorite pencil that his grandmother gave to him just before she joined the army. Gabe, in a defiant tone, told the hooligans they were not being very nice and that they should consider his feelings too. Unable to resist his undeniable logic, the street hooligans agreed with Gabe, gave up their evil ways, joined a congregation of monks in southeast Asia, and subsequently lit themselves on fire to protest the newly released Dukes of Hazard movie….Gabe, a thinker, a doer, a changer of minds…a true American hero. Read more about Gabe’s life’s story in his biography “Selling Sin.”

2L Rep. Linda Quigley wants to thank everyone who has told her they think of her every time they use the new bathrooms. It is quite an honor. Linda says, “SBA members worked together to accomplish a lot of terrific things last Continued on the next page

by the SBA

Disclaimer: Humor feeds off exaggeration. Keep that in mind as you read, and believe what you dare.

All SBA photos courtesy Daron Janis.
SBA, continued from page 12
year, and we hope to do even more this year. Please feel free to come to me with any ideas or concerns you have, and I will do my best to address them. For those who don’t know me yet, I am the one who you often see trailed by a gaggle of children (I have three)."

And now presenting Marshall-Wythe’s newest SBA Representatives!

1L Rep. Tom Robertson graduated from Claremont McKenna College with a B.A. in Economics and Mathematics, whereafter he joined the investment banking empire of Goldman Sachs and learned what it’s like to be “old before your time.” After approximately 7,875 hours staring into the stale glow of Microsoft Excel, he grabbed a backpack and ran away to Chile where he taught high school math, traveled the coast looking for waves, and had his heart broken by a Chilean named Priscilla who was prone to wearing headbands. Once safely back in Los Angeles, Tom spent his days teaching creative writing to children and volunteering for a publishing arm of McSweeney’s; every Friday night to such classics as "This is How We Do It" and the “Thong Song.” Wes graduated this past May from W&M, with a double-major in Psychology and Sociology and hopes to pursue a career in child advocacy. Wes is excited about serving his fellow 1Ls and about hearing your concerns and ideas for improvements.

1L Rep. Sarah Fulton is, uniquely, from Virginia. She graduated in 2004 from Vanderbilt University. “You might be familiar with it, as we were recently declared the best college football school of all time,” brags Sarah. After graduating, Sarah went to D.C. to work as a clerk for the criminal judges in Fairfax, VA. “A year was definitely enough of that, so I am back in school,” said Sarah. “I love feeling cool with a full inbox, so please email me at safult@wm.edu with any questions, concerns, or whatever. Looking forward to meeting everyone!”

1L Rep. Wes Allen is from Charleston, SC, and, like all Southern gentlemen, values hospitality... well, the Hospitality House, that is. You can find him there dancing and singing karaoke pretty much every Friday night to such classics as "This is How We Do It" and the "Thong Song." Wes graduated this past May from W&M, with a double-major in Psychology and Sociology and hopes to pursue a career in child advocacy. Wes is excited about serving his fellow 1Ls and about hearing your concerns and ideas for improvements.

What is a law?

by Dan Hobgood

This article appeared in the last edition but contained editing errors affecting content.
—Features Editor

At the beginning of several courses I’ve taken here by this point, a professor has asked his/her students to define what it means for something to be a law. On almost every occasion, for whatever reason, the answer has not come easily—if at all. To me at least, it seems that members of a law school community, in particular, should be readily able to explain what constitutes a law and why; for anyone in our own ranks who isn’t confident he can, this brief synopsis about the concept of law will be beneficial.

Obviously enough, a law is a measure that people in a society employ to discourage and penalize certain behavior. Perhaps just as obviously, though, this description of what a law is is too broad to suffice as its definition—because measures that people in a society employ to discourage and penalize behavior can be fundamentally dissimilar from one another. Indeed, consider how the consequences for somebody who doesn’t satisfy his employer’s billable hour quotas or his professors’ class participation instructions will be rather different from the consequences he faces if he violates a Congressional statute or Supreme Court ruling (assuming, of course, that Congress and/or the Supreme Court has not criminalized a person’s failure to fulfill his employer’s billable hour quotas or his professors’ class participation instructions). If an individual disobeys Congress or the Supreme Court, unlike if he displeases his employer or professors in the above manner, his personal autonomy—his authority over his own body and possessions, that is—becomes subject to government-sanctioned encroachment. The concept of law was designed to reflect this difference; accordingly, to paraphrase esteemed faculty member Donald Tortorice, the concept specifically refers to public policies backed by government force.

Although this objective definition of what a law is could very well be elementary to most, it allows us, importantly, to resolve a long-standing (and frankly annoying) philosophic debate about the extent to which laws are shaped by morality. For those unfamiliar with this debate, some have claimed that a government policy can only be a law if it is morally good, while others have alleged in rebuttal that laws are altogether amoral. As it turns out, neither stance is correct.

The problem with the first viewpoint is that it ignores the aforementioned purpose of having a political concept of law to begin with—that being, again, to distinguish social measures employed with the force of government from those that aren’t. Based on the belief that a government policy can only be a law if it is good, a number of measures that deserve to be subsumed under one concept would instead be divided apart; detrimentally, this proposed, irrational schism would have the same kind of effect on a person’s thinking as an arbitrary decision that something can only be a chair if it is brown or a car if it has four doors. Meanwhile, the notion that laws are amoral is invalid because, inherently, people craft public policies to bolster their morally-oriented values; put another way, laws reflect what lawmakers believe—accurately or inaccurately—people ought to do in life. What this means, crucially, is that laws necessarily follow from moral judgments of some variety. So, taking everything we’ve established by this juncture into account, we can conclude that laws may be either moral or immoral, but never amoral.

To review, a law, stated once more, is a public policy backed by government force—with all that being such does and doesn’t entail. Hopefully, as of now, this is something each of us will be sufficiently prepared to explain if and when prompted in the future.
Sex and the Law: Love Hurts

by Nicole Travers

Welcome back, kids, to yet another edition of Sex and the Law. I hope that none of you were too nonplussed about last issue’s reprint—trust me, it was in all of your best interests to familiarize yourself again with the cardinal rule of law school: Never Date a Law Student.

With that out of the way, and with interview season starting up again, it is my sad task to warn you about another pitfall that everyone must guard themselves against, even if they have a wonderful significant other who is (1) not a law student, and (2) alive. I’m talking about unsafe sex. No, not the kind without “protection,” but the kind that leads to one of the most embarrassing situations in life: the sex injury.

Most, if not all, of us have had a sex injury in one form or another, be it visible or not, incapacitating, or simply irritating. Many may think they have “grown out” of the possibility of a sex injury, having left their awkward years of fumbling in the back seats of cars behind them long ago. But trust me on this one; the sex injury is a danger looming over all of us, despite our experience, sophistication, and acrobatic ability.

Let’s begin by examining the most common sex injury: the hickey. Yes, you may laugh, but while the probability of receiving a hickey is quite low, its embarrassment potential is extremely high. Trust me; you do not want to be going into an interview with what looks like a plague sore just visible under your crisp, freshly starched collar. How can you protect yourself? Well, the easiest way is, of course, to stop production before it starts by familiarizing yourself with both the force of your partner’s “bite” and the sensitivity of your skin, and by knowing when to say “stop chewing on me, I’m not a rubber newspaper!”

But once a hickey is inflicted—what then? The high school equivalent of an “old wives’ tale” tells us to put toothpaste on the back of a refrigerated spoon and press it to the injury. But does this actually work? Not really, in my experience. The toothpaste doesn’t do much besides giving you an enchanting, minty-fresh odor, though the spoon has the benefit of being cold and easy to hold to your body. But the visibility is unlikely to go away any time soon. A solution that has always worked for me is this: green foundation. You may scoff (especially you lads out there), but when you put green foundation on a red mark on your skin, it neutralizes the color, making it “blend in” with the rest of your skin, and giving you the ability to touch it up with the foundation (or cover-up) color of your choice without the makeup mark being obvious. Lads, once you get over your initial embarrassment, you can borrow this from your girlfriend. She owes you, right?

Alas, however, the hickey is likely the easiest sex injury to deal with. What about other embarrassing injuries, like pulled muscles? We law students are rather sedentary creatures, as we are forced to sit very still in front of our laptops for around eight to ten hours per day if we want to get through our exams with anything that remotely resembles a passing grade. Thus, we are all susceptible to strains, pulls, charley horses and the like. This may not seem very serious, but when you are faced with an early morning trek across the parking lot with ten minutes until class, strapped down with your laptop and four or five dictionary-sized books, it’s clear that any injury, no matter how slight, is going to make or break your chances of slipping into the back of Room 124 unnoticed and un-called on.

So what can be done about unwanted strains? Although this injury doesn’t have much of a cure besides a heating pad once it is sustained, the enterprising law student can stop (or at least mitigate) the damage before it...
This summer, I had the opportunity to travel to Jamaica to assist a client on behalf of the Virginia Farmworkers Legal Assistance Project, part of the Charlottesville office of the Central Virginia Legal Aid Society, where I had a ten-week internship this summer. The client, having been injured while in the United States on a work visa, returned to Jamaica to seek medical treatment. Unable to reenter the U.S. to pursue a worker’s compensation claim, he would be appearing at his hearing via telephone. What follows is a travelogue of my experience.

My first flight, from D.C. to Miami, follows the universal rule of travel, which is that if the seat next to you is empty when you get on the plane, and you begin to get comfortable, someone very large will sit down next to you just before the plane takes off, and you will spend the remainder of the flight bent approximately 15 degrees away from that person. When I get off the plane in Miami, I am that much more scoliotic.

Miami airport is a nightmare. Most of it seems to be under renovation, and most of it stands between me and my connection. I hike for what feels like miles through identical, perfectly square, white hallways. Tinny music plays, though no speakers are evident. Every few hundred feet there is a plain white door, and a sign telling passers-by that “Behind these walls is the future of Miami International Airport!” Nobody goes in or out of the doors. Nobody else is walking along the halls. I remind myself that the letters “MIA” are just the airport code.

After another hour-long flight, this time crammed against the window (the universal rule holds true once again), I step out onto the tarmac of Kingston’s Norman Manley Airport. The air off the sea is cool but extremely humid. I breathe it in, realizing that I have no way to compare it to the air of Miami; I never stepped outside the airport there. Jamaica’s air is deliciously tropical; even the harsh smells of the airport cannot disguise the richness of the ocean breeze and lush vegetation.

I ride to the hotel in an official, government-sanctioned JUTA cab (“take only cabs with red license plates,” says the guidebook). The ride is fascinating and a bit frightening, since a) drivers in Kingston tend to treat traffic signs and signals as suggestions at best, and b) I cannot fasten my seatbelt. My driver barges his way through traffic in neighborhoods where patchwork constructions of scavenged, rusty sheet metal serve as fences for those with houses, and dwellings for those without. The more permanent structures sport colorful, painted advertisements for Coke, Pepsi, and local restaurants.

I meet our client in the hotel lobby the next morning. He has brought his wife with him. I invite them to my room to get acquainted and put them at their ease. Our client has been awaiting his hearing for a very long time; he is justifiably nervous.

I find myself asking him to repeat himself much more than I would like. I almost feel deaf as he explains his situation. Despite his troubles and his nerves, he smiles easily and does not seem to mind. I, in turn, explain what will happen when we go down to the hotel’s business center, where there is a speakerphone over which the conference will take place.

I look into his face and the face of his wife who is holding back tears and I realize that, despite the best efforts of the Legal Skills program, not a single thing that I’ve learned in two years of law school has given me any idea how to tell anyone anything like that.

I try anyway. I end up buying them lunch, hating myself for briefly wondering whether I am violating some rule of ethics. As he and his wife leave to catch their bus home, the client smiles and thanks me for all my help. I shake his hand. I feel like hell.

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starts by stretching before and after sex. Does it look ridiculous? Yes. Will it get you some strange looks from your partner? Probably. But I have to emphasize that the utility of this exercise is worth all the embarrassment and more. And it could be a nice activity to do with your partner once he/she realizes the benefit too.\(^\text{10}\)

Once one is generally protected from the more common sex injury, it’s time to worry about the more egregious sort, which range from the merely embarrassing (think of Carrie at Charlotte’s second wedding) to ones which I hesitate to mention in this column.\(^\text{11}\) Unfortunately, there is no hard-and-fast rule to protect oneself against these injuries, but they can be avoided with a few simple precautions. In my experience,\(^\text{12}\) the chance of injury is inversely related to the amount of sex one has with the person in question, with the one night stand being the encounter with the greatest likelihood of injury. In short, the better you know and the more comfortable you are with your partner, the less likely you are to get injured. This is likely because the more comfortable you are, the more likely you are to tell the other person when he or she is doing something that hurts. And finally, when in doubt, just say “ow.” Anyone who is worth having sex with will back off.

\(^{10}\) To be honest, one could make an argument that if you’re not comfortable doing a few stretches in front of your partner, you might want to re-think letting him/her see you naked at all, but let’s not restrict ourselves too much.

\(^{11}\) Seriously though, I doubt that the extent to which I don’t want to talk about them can match the extent to which you won’t want to hear about them.

\(^{12}\) That is, mine and that of friends who went on to tell me about them in such great detail that they might as well be mine.