Big Names and Big Topics Presented at Sports and Entertainment Law Symposium

by William Y. Durbin

In the world of sports and entertainment law, it’s not about what you know—it’s about what you know about people that makes a difference.

The William & Mary School of Law Sports and Entertainment Law Society (SELS) hosted its seventh annual Sports and Entertainment Law Symposium on Saturday, February 11 in Room 124. The society welcomed more than 65 students, faculty, practitioners, and members of the community to hear distinguished speakers discuss current issues relevant to the fields of entertainment law and sports law.

The symposium opened with an intellectual property panel, consisting of Prof. Trotter Hardy, Associate Dean of Technology, and Prof. Laura Heymann. Prof. Hardy discussed the evolving technology and legal treatment of Internet file sharing, focusing on music and the recent Supreme Court decision in Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd. Prof. Heymann followed, talking about the past and potential future of the right of publicity. Fittingly, both professors utilized the room’s technology to add audio and visual aids to their presentations.

Prof. Hardy’s presentation concentrated on the use of new technologies for “small infringement,” whereby private individuals run afoul of copyright law on a relatively limited basis. The practice has historically taken various forms, from photocopying in the 1950s, to video-cassette recording of television programs in the 1980s, to downloading shared music files in the 2000s. Prof. Hardy illustrated the various technologies for this most recent “small infringement,” including the technology employed by Grokster, with an animated slideshow that drew oohs and aahs from the audience.

Prof. Hardy concluded his presentation by discussing the Grokster decision. Although he seemed to agree with the result, that such purveyors of technology that actually induce infringement may be held secondarily liable for the infringement of their users, Prof. Hardy questioned the Court’s reasoning. In particular, Prof. Hardy took issue with the Court’s assertion that copyright protections must be weighed against the promotion of new technologies. He worried that such a balancing test could lead to more lenient enforcement of copyright law in the future.

Shifting from controlling the use of technology to controlling the commercial exploitation of one’s persona, Prof. Heymann outlined the contours of the right of publicity, beginning with its roots in the laws of privacy and misappropriation. Prof. Heymann discussed several notable cases to illustrate the development of the right of publicity. The subject matter of these cases ranged from baseball players’ photographs on trading cards, to a Tom Waits-like gravelly voice in a potato chip advertisement, to a human cannonball act aired on the evening news.

Prof. Heymann’s presentation repeatedly discussed a Ninth Circuit decision that held Vanna White’s persona had been misappropriated by Samsung in an advertisement depicting a blonde robot turning letters in a 21st century game show. Seeming to agree with Judge Kosinski’s dissent in that case, Prof. Heymann worried about overbroad protections stunting creativity.

Prof. Heymann left the audience to consider what implications the right of privacy might have for authors of fan fiction Websites, who use characters from movies and television series to write their own stories, and the potential secondary liability for the Internet service providers who serve them.

The morning session concluded with a mock negotiation of a concert performance by a musical artist among the artist’s representative, the booking agent, and the concert venue promoter. Prof. Martin Silfen, who teaches Sports Law and Entertainment Law at William & Mary, took on the role of booking agent—the “gigmeister,” as he put it—and moderated the panel. Although never having been a

Continued on page 2
Congress enacted FISA to regulate electronic surveillance for gathering foreign intelligence. Generally, FISA requires the government to apply for a warrant authorizing foreign intelligence surveillance. FISA created the Foreign Intelligence Surveillance Court (FISC) to review surveillance applications.

A surveillance application must convince the FISC that there is probable cause to believe the target is an agent of a foreign power. A national security officer must also certify that the government seeks foreign intelligence information that cannot reasonably be obtained by normal investigative means. Moreover, the government must state how it will obtain information and the reason it believes that an agent of a foreign power is using the facilities it wants to place under surveillance.

Professor Meese pointed out that the requirement of showing someone was an agent of a foreign power was generally less onerous when applied to traditional enemies that were a concern in 1978 than it is when applied to an enemy like al Qaeda. Judge Posner has suggested further that one problem with FISA is that it authorizes surveillance that is not usable to discover who is a terrorist though discovering who is a terrorist is an urgent task.

Moreover, Meese noted that FISA provides an exception to its warrant requirement. Section 109 of FISA prohibits any person from intentionally “engag[ing] … in electronic surveillance under color of law except as authorized by statute.” Thus Congress may have anticipated that a subsequent statute could confer on the President the authority to order electronic surveillance outside of the FISA warrant requirement.

As it happens, Meese explained that on September 14, 2001, Congress passed the Authorization for Use of Military Force (AUMF). AUMF authorized the President “to use all necessary and appropriate force against those nations, organizations, or persons [he determines] planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001.” And so the AUMF would have authorized the President to order the NSA intercept program in question.

Indeed, the Supreme Court has interpreted the authorization to use all necessary and appropriate force very broadly. In Hamdi v. Rumsfeld, the Court concluded that detaining combatants who fought against the United States as part of an organization “known to have supported” al Qaeda “is so fundamental and accepted an incident to war as to be an exercise of the ‘necessary and appropriate force’ Congress has authorized the President to use.” Likewise, Meese suggested that intercepting enemy communications is a fundamental and accepted incident to war. Consequently, the President would have the authority to order the NSA intercept program under the AUMF, even if the President did not have that authority under the constitutional power inherent in the executive as commander in chief.

However, Professor Meese pointed to two problems with the FISA exception argument. First, FISA provides for exclusive procedures to conduct surveillance. Second, FISA provides that the President can order surveillance without submitting to the warrant requirement for 15 days in the event of war. As a result, an authorization for the use of military force would not be enough to authorize warrantless surveillance generally and the President could not rely on the AUMF for that.

But Meese indicated that one way to approach these problems would be to invoke the canon of construction known as constitutional avoidance. Indeed, if FISA applies to prevent the President from gathering intelligence during wartime, then FISA interferes with the President’s duties as commander in chief. So to avoid this constitutional problem of allocation of power between the executive and the legislative, FISA should be read narrowly.

Meese concluded in noting that Congress had authorized the President to pursue armed conflict against al Qaeda. As commander in chief, the President has the authority to direct the Armed Forces in a military campaign. Thus in 1874, the Supreme Court wrote in Hamilton v. Dillin that the “President alone” is “constitutionally invested with the entire charge of hostile operations. And in 1850, in Fleming v. Page, it wrote that “[a]s commander-in-chief, [the President] is authorized to direct the movements of the naval and military forces placed by law at his command, and to employ them in the manner he may deem most effectual to harass and conquer and subdue the enemy.” According to Professor Meese, the President was acting in this capacity when he ordered the NSA intercept program specifically to prevent another attack from al Qaeda.
Players’ Union in their challenge of suspensions handed out by the commissioner’s office as a result of that altercation.

Picking up a theme mentioned by the morning panel, Rugg also discussed some of the antitrust aspects of his work representing sports unions as well as the consortium of institutions that ran the National Invitational Tournament for college basketball.

David Feher, a partner at Dewey Ballantine and a recognized leader in the sports law field, was slated to speak with Rugg, but last-minute work on a collective bargaining agreement for a professional football league kept him away.

Providing a non-legal perspective of the role sports and entertainment play in today’s business world, Ety Rybak next spoke about his work in the fields of corporate hospitality and sports marketing.

Larry Woodward, who practices criminal trial defense and in various other areas in addition to sports law, spoke about counseling the athlete. He emphasized that there was no such thing as a traditional path to becoming a sports lawyer and recommended students and young attorneys concentrate on becoming good lawyers before trying to break into the sports law field.

“You can’t plan on meeting the MVP of the NBA when he’s making donuts in jail,” Woodward said, referring to how he first met Allen Iverson when taking the appeal of the future Sixers guard’s criminal conviction stemming from a bowling alley brawl in 1993.

Woodward talked about being a full-service legal advisor and representative for players like Iverson and Atlanta Falcons quarterback Michael Vick.

“It’s not like representing an individual,” he said. “It’s more like representing a company, with wills, contracts, criminal and civil suits. And you take on the individual and their whole family and posse, or whatever the term is today.”

But he warned young and soon-to-be attorneys that they are not hired by athletes to be their friends or “club buddies.” Rather, it is the lawyers job to tell the client the truth and represent him or her faithfully. Doing that, the lawyer will earn the client’s respect and his business for years to come.

The program concluded with remarks by Donald Dell, a pioneer in the field of sports agency. Building off of Woodward’s remarks, and sometimes engaging in a dialogue with the previous speaker, Dell emphasized the importance of understanding “human nature” and of possessing “people skills.” Such attributes, he said, would serve an attorney or agent well in representing any client, famous athlete or otherwise.

Dell further discussed what he saw as the most important developments in sports law in recent years—three major battles between Major League Baseball, the National Basketball Association, and the National Hockey League and their respective players unions.

The National Football League, on the other hand, had had 12 years of labor peace.

“They are really ahead of the other leagues on this,” he said.

Although the issue of the salary cap continues to rear its head, the parties have too much to lose should they not reach an agreement.

Finally, Dell offered advice gleaned from his years of experience representing remarkable individuals like Arthur Ashe, who told him that success was a journey and not a destination. Representing athletes and other successful and complex individuals—negotiating contracts or arranging other deals—takes having some perspective.

“It’s taken me 32 years to learn it, but I’ve learned that you don’t have to win every point,” Dell said.

Protano worked with Scott Hettermann (2L), Treasurer of the Sports and Entertainment Law Society, and Mike Spies (2L), Symposium Co-Chair, in organizing the event. They also had substantial support from Prof. Silfen, who serves as the group’s faculty advisor. In addition, the society’s board members and other volunteers helped make the day an engaging event.

“I’m very proud of the work that SELS has done this year, and I think the success of our symposium reflects the hard work we have put into it,” Protano said. “It’s been our best year yet, and I’m sure that the future years will build on this year’s success.”
Sarah Weddington: Past, Present, and Future of Abortion in America

by Tara St. Angelo

How old are you? The average age of a William and Mary Law student is 24. Sarah Weddington was 27 when she argued Roe vs. Wade in front of the United States Supreme Court. Imagine arguing one of the biggest cases in American history right out of law school. Would you be ready?

Weddington spoke in front of an auditorium full of William and Mary students on Tuesday, January 31. Bob Brashti, the President and CEO of Planned Parenthood of Southeastern Virginia, introduced Weddington as a woman whose career is “an incredible list of firsts.” Weddington was one of 5 women admitted to the University of Texas Law School in 1965 and then was the youngest person to win a case before the Supreme Court in 1973.

Weddington’s speech was a recollection of all her years fighting for abortion rights and the right of privacy in the courts with a few life lessons dispersed throughout. In the shadow of Alito’s confirmation hearing, Weddington described the occasion as a “melancholy night,” one comparable to the night before graduation because it is filled with recollection and nostalgia. As Weddington began her story, she noted, “We have spent so much time expanding our rights and now it is beginning to close in.”

At the time Weddington was approached to represent “Jane Roe,” she was struggling to find a job in Texas at a firm. Most places “just were not ready for a woman.” At this point Weddington paused to note, “Always be nice to everyone you meet. That’s what my mother told me.” Thirteen years after a partner in a Houston firm denied Weddington a job because she was a woman and it would be impossible for her to work AND cook dinner, that same partner was nominated to be a Texas Supreme Court judge. Weddington was a member of the legislature at the time and was one of the three people needed to sign off on the appointment. She thought to herself, “His mother should have taught him the same lessons mine taught me.”

She returned to her recollection of the beginnings of the case that became Roe v. Wade. “Jane Roe” was unmarried and pregnant with her third child. Although “Roe’s” first two children had been taken away because she was deemed an unfit mother, she could not terminate the pregnancy because in Texas at the time “all abortions are illegal except to save the life of the woman.” “Roe” and her doctors came to Weddington with the question as to whether or not they could inform women on where the safe places were to get abortions. At the time, women from Texas could go to Mexico for an abortion, but there were good places to go and there were bad places to go. Weddington obtained affidavits from 4 doctors in the Austin area chronicling their experiences in the ER with women who had been injured or died from poorly performed illegal abortions.

One of the doctors in particular remembered a woman who received an abortion and was told at the clinic that if she had any problems to simply lie in a bathtub of cold water. She bled to death in the tub. These doctors were determined to make a change in order to save the lives of women.

Henry Wade, the district attorney of Dallas, decided to continue to enforce Texas’s anti-abortion law. Weddington says that this was, in light of federal procedure, a favorable decision for her side because if a law is deemed unconstitutional and is still enforced, there is a direct appeal to the Supreme Court. Just three years out of law school and Weddington had to begin preparing her first Supreme Court case.

Briefs from medical professionals, women’s groups, and religious groups were compiled and filed with the court. Weddington described the night before her oral argument as being like the night before a big exam. She was continuously getting out of bed to check and recheck facts and arguments. When she arrived at the Supreme Court and entered the lawyers’ lounge, she noticed that there was no ladies room. She knew she was doing something revolutionary.

Weddington can not remember to this day the barrage of questions that came at her from the Justices as she was surrounded by upwards of 13 kinds of marble in the Supreme Court. After the oral arguments were given it was months of waiting. Weddington took a position in the Texas legislature. She thought if Roe v. Wade failed she could institute change through legislation.

Weddington remembers the day she received word that she had won the case. She received a call asking her to comment on the recent decision of the court. Her assistant replied to this, “Should she?” Weddington immediately requested a copy of the opinion. The court declared that there was a right to privacy and that the issue of pregnancy is so important to a woman that it should be called a right. Weddington noted that opposition to Roe v. Wade began the moment the case was decided, and the decision has been eroded ever since.

Briefs from medical professionals, women’s groups, and religious groups were compiled and filed with the court. Weddington described the night before her oral argument as being like the night before a big exam. She was continuously getting out of bed to check and recheck facts and arguments. When she arrived at the Supreme Court and entered the lawyers’ lounge, she noticed that there was no ladies room. She knew she was doing something revolutionary.

Weddington can not remember to this day the barrage of questions that came at her from the Justices as she was surrounded by upwards of 13 kinds of marble in the Supreme Court. After the oral arguments were given it was months of waiting. Weddington took a position in the Texas legislature. She thought if Roe v. Wade failed she could institute change through legislation.

Weddington remembers the day she received word that she had won the case. She received a call asking her to comment on the recent decision of the court. Her assistant replied to this, “Should she?” Weddington immediately requested a copy of the opinion. The court declared that there was a right to privacy and that the issue of pregnancy is so important to a woman that it should be called a right. Weddington noted that opposition to Roe v. Wade began the moment the case was decided, and the decision has been eroded ever since.

Weddington spoke with excitement as she recounted her experiences in the Supreme Court in the past, but her tone quickly turned to dismay as she spoke about the prospects of the future. The makeup of the court is changing and Weddington is counting the votes. Justices Thomas and Scalia have both voted against Roe v. Wade in some form. The newly confirmed Justice Alito was the single dissenting circuit court judge on the case of Casey vs. Planned Parenthood of Southeastern Pennsylvania. Chief Justice Roberts’ views are uncertain, but his wife is a lead- member of an anti-choice organization. Justice Kennedy’s views are also uncertain, but he tends to vote with Scalia. Justice Stevens and Ginsberg are the only sure supporters of the Roe v. Wade decision. Weddington recently attended a luncheon with the sole purpose of seeing if Stevens, at age 85, still had a strong handshake. To Weddington’s delight, it was strong.

Weddington is not hopeful as Alito moves into O’Connor’s recently vacated office. Weddington’s tone soon turned to one of hope as she took a look at the audience and proclaimed, “I see reinforcements on the hill.” Weddington noted that she knows the majority of Americans want to make their own decisions and that there are more people willing to fight for Roe v. Wade with her. She hopes that the opposition to Roe v. Wade can step back and see the woman behind the pregnancy. Weddington ended with her wishes for the future, “I hope you never know what life was like before Roe vs. Wade, and I hope you never know what life is like after it.”
"Slave Power" and the 14th Amendment

by Kelly Pereira

Not many people other than Garrett Epps can say they have had their newspaper article vomited on by the now first lady of the Commonwealth of Virginia. But Epps, a Richmond native, claims this is just what happened to the first edition of the weekly newspaper he founded. Maybe he researched his last book on peyote a little too thoroughly (To an Unknown God: Religious Freedom on Trial was one of three finalists for the ABA’s Silver Gavel Award in 2002).

Epps, of the University of Oregon, is currently a visiting professor at American University. He is a former staff writer for The Washington Post and served as articles editor of Law and Contemporary Problems. At a February 8 lecture sponsored by the Institute of Bill of Rights Law, Epps shared some of his research from his forthcoming book, Democracy Reborn (due next year).

Epps thinks that the Fourteenth Amendment has been undervalued. Although some think the Fourteenth Amendment was a conservative compromise, Epps argues that historians have not given it proper credit. According to Epps, it saved the Union by correcting a constitutional deficiency and liability: slave power.

In 1865, the South was at its knees, yet the North was still terrified of a future resurgence of power. The male population was devastated after the Civil War, but the 3/5 law gave southern states political power disproportionate to the number of franchised voters. In the antebellum period, “the slave power” was a catchphrase with two meanings: (1) conspiracy among top slaveholders, and/or (2) a design flaw of the Constitution that gave the South undue power.

Prior to the Civil War, the South acted as a block. The only aspiring presidents could be southerners or “doughfaces” (southern sympathizers). The strength of the slave power is somewhat disputed, but arguably Adams wouldn’t have been elected without it, precluding the republican revolution.

The Constitution was “not delivered from the brow of Zeus,” in light of the scrambling to restore the Union. “Massive civil war is a sign something is wrong with the constitution.” Epps says that the Fourteenth Amendment marked a new political charter on a number of levels. First, it ensured that the states themselves were democratic. Second, it acted as a shield to protect the federal government from capture by undemocratic states. Third, it empowered Congress.

True, the Fourteenth Amendment wasn’t a fix-all. For example, it betrayed the women’s movement. Yet, the framers of the Fourteenth Amendment have gained the undeserved reputation as the “blunderers” of the “Age of Hate.” Epps says that he is far from an originalist, but the goal of the book is to take the architects of the Fourteenth Amendment seriously as framers.

The Fourteenth Amendment was a radical change in the balance between the states and the federal government. John Bingham said the Fourteenth Amendment was the “culmination of God’s plan.” The framers of Constitution had neglected to empower the federal government to enforce the Bill of Rights.

Bingham’s goal was to not only enforce rights but to extend citizenship to immigrants and blacks. It would be one country under one constitution with one citizenship. Some of its content derived from no less than Robert Dale Owen, one of the most prominent and outspoken proponents of abolition during the 19th Century.

The democratic process was realized when the exclusion of blacks from the polls resulted in the invalidation of “slave seats.” It also marked the singular instance of the revocation of presidential pardon.

It is seldom noted that the Fourteenth Amendment marked a constitutional change. “All Constitutional Law is footnotes to the Fourteenth Amendment.” This is particularly true of civil rights, of course, but its power is far-reaching. How could U.S. Term Limits, Inc. v. Thornton have been decided based on analysis of the Federalist Papers and not the Fourteenth Amendment?
Traditional Charter Day Ceremony Witnesses Surprising Developments

by Daniel Ramish

Saturday, February 11 marked the 313th anniversary of the founding of the College of William and Mary, a day commemorated as "Charter Day." Each year administrators, faculty, willing students and guests, and members of the choir gather to read excerpts from the college’s royal charter, and to confer honorary degrees and awards in the Charter Day ceremony. Attendance at the ceremony varies, owing in a large part to fluctuations in interest in the speakers; UN Secretary General Kofi Annan spoke to a packed house, while Librarian of Congress James H. Billington somehow enjoyed a more lukewarm reception. Phi Beta Kappa hall was packed to the gills on Saturday for keynote speaker and newly elected Virginia Governor Tim Kaine, who was inaugurated in Williamsburg last month.

Perhaps no one was more excited than the new president of the College, Gene R. Nichol. A man of unassuming charm, Nichol had tread lightly while trying to fit his large feet into the small but distinguished shoes of his predecessor Tim Sullivan. Had tread lightly, that is, until Charter Day. Nichol chose to assert his hold upon the college by taking risks to entertain the audience, attempting to rip some good ones to elicit responses from even the most stony-faced old codgers at the ceremony, and to turn a stuffy event into one where members of the audience are attentive in part because they wonder what the president will say next.

In some of his preliminary remarks, President Nichol observed that on this particular charter day the college celebrated many things, one of which was the governor finally getting a real law degree. As part of the charter day ceremony, Kaine received an honorary juris doctor from the nation’s first law school, to replace his earlier crappy degree from the third-oldest, Harvard. Nichol said he really enjoyed the college’s many storied traditions, “especially ones that do not involve the President dressing up as Santa Claus,” referring to the popular Yule Log ceremony. When offering praise of this year’s Thomas Jefferson Prize in Natural Philosophy recipient, Paul Smith, Nichol noted that many of Mr. Smith’s professors only lamented that they could not give him A’s, and that perfect scores could not fully capture his talent, a problem that Nichol confessed he too encountered during his undergraduate. Speaking then of the College’s most distinguished alumnus, Nichol commented that Thomas Jefferson wore many hats, but “none as cool as the provost’s,” referring to the old-fashioned academic cap sported by his colleague.

However, Nichol’s most notable line came in response to another under-appreciated wit, Tim Kaine. In the wake of a delivery of the democratic response to President Bush’s State of the Union, that some humorous websites quipped was too dull to even parody, expectations were not sky-high for Virginia’s governor. No doubt some of the more vulnerable guests eased into semi-recumbent positions to make certain to get optimal benefits from the keynote address. However, his remarks were a pleasant surprise.

Kaine cautioned President Nichol at some length not to allow the same fate to befall him that ambushed his predecessor Thomas Dawson, who served during Jefferson’s time at the College. Dawson, evidently, had a problem dipping into the sauce. He was charged with habitual drunkenness, which is to say not urged to undertake it (an error that some past Presidents may have made) but rather arraigned for it, in Richmond. Dawson’s defense was handled ably by Lieutenant Governor Francis Fauquier, and Kaine observed with a knowing look that it was good to have friends in high places. He went on to say that Fauquier attempted a curious defense, saying Dawson “had been teased by contrariety of opinions between him and the faculty into the loss of his spirits, and it was no wonder that he should apply for consolation to spirituous liquors.”

In reply, Nichol thanked the governor for his professional—and personal—support. And then he said that he appreciated the cautionary tale, which made him momentarily “regret having had seven glasses of bourbon before breakfast!” Even for a man of Nichol’s formidable size, it would take quite a few contrary opinions from the faculty to need restoratives in those quantities on a Saturday morning. However, observers noted an encouraging wink from the governor, suggesting that President Nichol has an even better ally than Dawson did, so it would appear that he is going to be all right. Also, he is still using a glass.

Central European and Eurasian Law Initiative

by Jennifer Stanley

Last Friday an eager group of International Law Society members made the trek to Washington D.C. Their destination was the American Bar Association Building which houses the Central European and Eurasian Law Initiative, one of the most influential sources of legislation reform on the international scene. Since 1990 CEELI has sent over 5,000 judges, attorneys, law professors, and law school interns throughout Central and Eastern Europe and the former Soviet Union. The organization’s goal is to establish the “rule of law” in developing countries through education, assessment and recommendation.

With offices in twenty-eight countries, a state-of-the-art legal education facility in Prague and headquarters in Washington D.C., CEELI focuses on six areas of reform: Legal Profession Reform, Judicial Reform, Gender Issues, Anti-Corruption/Public Integrity, Conflict Mitigation/Human Rights and Legal Education Reform. By building personal relationships with local officials CEELI representatives have been able to put their reform recommendations to the top of the list—several new laws in Central European Countries have being taken verbatim from CEELI recommendations. The goal isn’t to impose the American legal system onto emerging governments, but to find a way to integrate the traditional legal culture with international standards to create a system of justice that will be responsive to the unique needs and history of the countries involved. They do this by conducting Judicial and Legal Profession Reform Index Assessments to evaluate the independence and competence of lawyers, assess bar association services and the role of bar associations in legal reform. In the area of gender issues, CEELI has used its unique assessment standards to measure compliance with the UN Convention on the Elimination of All Forms of Discrimination against Women to assess and recommend changes in this area in Armenia, Georgia, Serbia, and Kazakhstan. If you are interested in the most recent results and assessment methodologies used by CEELI, visit www.abaceeli.org.

By influencing change in international judicial reform CEELI has produced dramatic results. In 2002 their groundbreaking system for gathering and analyzing war crime evidence was presented at the International Criminal Tribunal against Slobodan Milosevic. By establishing law clinics (which before were unheard of in many laws schools in Central Europe) and comprehensive legal reform, CEELI has breathed new life into these legal education systems. In 2003 two of CEELI program students won the Jessup International Moot Court Competition for all of Uzbekistan and went onto final rounds in Washington D.C.—an amazing accomplishment for a school whose curriculum had not included moot court training before CEELI programs were introduced.

CEELI has a number of employment and internship opportunities, most of which do not require previous language skills but may actually include funding for language tutoring or tape instruction. Students serious about pursuing a study of international law would benefit greatly from using the opportunities available at this organization as a stepping stone into this exciting and important field. Resumes are still being accepted for CEELI summer internships and information will be posted on the International Law Society’s billboard.
How much do we really know about J.D. Goodman (1L)? It may surprise you to know his real name is not J.D., and that outside the walls of Marshall Wythe, he walks the Earth as Deva. Sometimes as Dave. Never as Jonathan (his legal name, recorded in the law school’s records).

Would it further surprise you to know that Deva (pronounced Dāva) grew up on a commune in Buckingham County, Virginia? Indeed, Dave’s less than traditional route to law school began in Yogaville, the community founded by Sri Swami Satchidananda circa 1980. Quick history lesson. The Swami—a world renowned yoga master—was airlifted in to bless the Woodstock Festival of 1969. J.D.’s father was in attendance. Years later, they met in New York, and Mr. Goodman joined the Swami at the center of the Integral Yoga movement in Connecticut, where he ultimately met the love of his life. When pop singer Carole King he ultimately met that he finds himself at the oldest law school in America. Paths need not be linear, nor logical. Pure living in Yogaville, followed by a stint in Charlottesville, punctuated by four years at James Madison University, plus one in the cubicle-driven work force—could there possibly be a more ordinary route?

As always, we turn to J.D. Goodman for the final word. “But we’ve all turned out pretty normal. Like my buddy, Ram, who travels around the United States in a van, playing music . . . Oh.”

The mention of law school evokes a multitude of images—coffee, laptops, casebooks, more coffee—but rarely does it suggest the pursuit of personal health and fitness. Joe Skinner is a law student. He is a 2L. And on February 9, Joe Skinner took part in the William & Mary Intramural Weightlifting Competition, determined to defeat the stereotype that we have all been put out to pasture.

Joe began lifting in the ninth grade. While at Truman State University, in Missouri, he won the intramural competition two years, his best lift being 390 pounds. At the time, he weighed no more than 200. This is the rough equivalent of Shaquille O’Neal benching a Toyota Corolla. For those not so acquainted with the free weights of 177-190. Next, he turned his attention to defeating the overall pool of approximately 30 students, including the heavyweights.

Regardless, Joe secured another place. The third lift was at 380 pounds. Though but a warm-up, the rep was enough to beat out all competitors in his weight class of 177-190. Next, he turned his attention to defeating the overall pool of approximately 30 students, including the heavyweights.

The sport of weightlifting, like many others, is riddled with advances in nutritional “chemistry,” blurring the lines between supplement and drugs. Joe uses neither. Nor has he been coached or formally trained. The sport is a hobby, and he has used it for the pure purpose of stress relief.

“I think it’s a great sport for putting emotion into,” he said. “Whether it be frustration, anger, embarrassment, or law-hate, the product is purely positive.”

Joe attempted 365 pounds on his second lift. The lift was successful, bringing him even with one of the heavyweights for first place. The third lift was at 380 pounds, but it was a narrow miss. Regardless, Joe secured another success and served further notice to the undergrads that the law school is not an old folks home. There is still life left out here on South Henry, and our hours outside the classroom can be as productive as we make them.
Off the Beaten Path: Aromatherapy

by Zach Terwilliger

I have been taking a little heat recently for the outdoorsy subject matter of my column. To prevent loss of readership and maintenance of my enormous following, the topic for this week is completely out of my food/drinking/hunting comfort zone.

Apparently, aromatherapy is the process by which pleasing smells raise endorphin levels in the brain and result in stress relief and a general feeling of happiness. Maybe we should talk to Dean Jackson about getting some Glade Plug-ins during exam time. The aromas may also trigger pleasant memories associated with a particular scent such as pain and taxi rides home from bars, smoke and ignition of a freshly lit bottle-rocket, and plastic when you unwrap a new Nintendo game. You get the idea.

So what does this have to do with us? Well, we as residents of the greatest, most historic, and culturally developed city in Virginia also happen to have one of only two stores within the store, including a coffee shop. In all seriousness, this store really is a sight to behold. I typically try to make my shopping consist of conservative ties, cuts of meat, and songs for my iPod, but even such an unseasoned shopper as I was glad to have ventured to Yankee Candle Co. to see it for myself.

The store is easily as large as our law school and almost as high-tech as Classroom 21. There a variety of stores within the store, including a winter area that includes a ceiling resembling a winter night sky complete with intermittent snow showers every hour. There is also a general store area where old-fashioned knick-knacks are available. No tourist, I mean resident, destination is complete without a built-in food court. But have no fear—Yankee Candle Co. has you covered with both a cafeteria and a coffee shop. In all seriousness, this store really is a sight to behold. I typically try to make my shopping consist of conservative ties, cuts of meat, and songs for my iPod, but even such an unseasoned shopper as I was glad to have ventured to Yankee Candle Co. to see it for myself.

The store is located on the left side of Richmond Road as you head away from campus just past the IHOP. It is humongous and looks like the three town houses from the opening of Full House on whatever Barry Bonds isn’t taking.

I hope I have been successful in reining in my readers that felt alienated by my call to arms last week.¹

¹ Yes, it was extremely difficult to write this article with a straight face, but fortunately, I had my ocean breeze candle, which reminded me of the time I was sucked out to sea on a Morey boogie-board in a hurricane.
What Originalism Is: A Reply to Mike Kourabas

by Will Sleeth

Two weeks ago, Mike Kourabas treated us (or maybe I should say “scared us”) with an article examining the shift on the Supreme Court following the confirmation of Justice Samuel Alito. Kourabas claimed that the vision of the Constitution expounded by Alito’s backers—that of original intent—represents a threat to Americans. The purpose of this article is to clear up the misconceptions regarding original intent created by Kourabas’ piece.

I want to start off by saying that Kourabas’ article contained many redeeming features. It intelligently examined the broken confirmation process and provided a solid analysis of Justice O’Connor’s legacy on the court. My point here is not to take issue with large parts of his factual analysis. Rather, the real purpose is to explain what originalism really is, free from the misconceptions portrayed in both Kourabas’ article and the popular media as a whole.

Originalism is the theory of interpreting the Constitution that holds that judges should look to how the Constitution was originally understood in order to rule on its provisions. Originalism is commonly but wrongly referred to as “original intent.” It is not original intent, since different founders of the country intended a lot of different things. Originalism, rather than looking to what the Founders “intended” (an inherently subjective standard), looks to what the founding generation understood (a practice that will usually yield a sound, identifiable historical verdict).

Originalism is not a “conservative” or a “liberal” theory; rather, it’s a neutral theory. If there’s one thing that we should all be able to agree on, whether we’re liberal, conservative, or moderate, it is that judges should interpret the law and not make it. Judges should act like referees, leaving Congress to make the law, and keeping for themselves the task to apply it. Originalism seeks to do just this. It prevents judges from imposing their own views by providing the standard to which they should look: the understanding of the appropriate constitutional clause at the time of ratification. Thus, a judge is more like a historian, rather than a philosopher. He researches and arrives at a truth that anyone else doing the same research could arrive at. He does not meditate-on-high, searching for the best metaphysical answer to the question, because he recognizes that his philosophical answer would not be superior to the average guy-on-the-street’s answer. Originalism therefore prevents the judge from imposing his own views and, instead, allows the democratic views of the legislature or of the ratifying generation to stand.

Today, many people think that originalism equals conservative judicial activism. This is incorrect. Let me give an example—let us consider the topic of abortion. What would an originalist say on this issue? He would look at how the Constitution was understood in 1789 at the time of its ratification and in 1868 at the time of its amendment, and conclude that it was understood at both these time periods to say nothing on the topic of abortion. Since the Constitution says nothing about abortion, the issue is left to the people for the people to democratically vote on. Some states will vote to legalize it; some will vote to ban it; some will impose restrictions somewhere between those two views. Originalism says that all of these choices should be left to the people to democratically decide, since at the time of the Constitution’s ratification and amendment, it was understood to say nothing on the topic of abortion.

What would a conservative judicial activist say about abortion? He would say that the Constitution bans it. Where would he find this view? Good question, since the Constitution says nothing about the topic. He would argue not from a natural law perspective but rather with a pseudo-natural rights emphasis on privacy and autonomy. He would say that the Constitution explicitly provides for a wide variety of privacies, and therefore, by implication, provides for a right to abortion.

Now what is wrong with this view from an originalist (neutral) perspective? When the Constitution was ratified, it was understood to say nothing about abortion! Therefore, it would be judicial activism for a judge to impose his own view regarding abortion on the people who are allowed by the Constitution to vote on the issue.

What would a liberal judicial activist say about abortion? He would say that the Constitution permits it. Where would he find this view? Good question, since the Constitution says nothing about the topic. He would argue not from a natural law perspective but rather with a pseudo-natural rights emphasis on privacy and autonomy. He would say that the Constitution explicitly provides for a wide variety of privacies, and therefore, by implication, provides for a right to abortion.

Now what is wrong with this view from an originalist (neutral) perspective? When the Constitution was ratified, it was understood to say nothing about abortion! Therefore, it would be judicial activism for a judge to impose his own view regarding abortion on the people who are allowed by the Constitution to vote on the issue.

The originalists on the Supreme Court therefore are not “conservatives” in the sense we have of the word when we think of a political conservative. Rather, they are neutrals, rejecting both conservative judicial activism (which would ban abortion) and liberal judicial activism (which would permit abortion). The originalists would leave the issue to the democratic choices of the people because the Constitution says nothing on the subject. Originalists are thus criticized from both the left and the right for their views—it so happens that Kourabas criticized them from the left. Yet originalism is not a partisan method of judging—rather, it is a philosophy that recognizes that, on vital issues of national importance, judges should play the role of the fair referee and let the people decide. Scary concept? Hardly.

—Will Sleeth is the Vice-President-elect of the W&M chapter of The Federalist Society

Forget Hope—Keep the Peregrine alive

Perry, continued from pg. 8

is clearly the coolest animal on earth but also because predators like the Peregrine help maintain environmental balance and, according to The Peregrine Fund, are “sensitive to all types of environmental change, including chemical pollution, and can provide early warning for humans.” The study of the Peregrine, and other birds of prey, can be incredibly useful “for understanding ecological processes and environmental health.”

Personally, I think the Peregrine kicks enormous amounts of ass, and deserves saving. If interested, checkout http://peregrinefund.org/how-help.asp for ways you can help keep the Peregrine alive and doing really cool stuff for us to watch on late-night nature specials. There don’t appear to be any DVDs devoted to the Perry on Amazon.com, but I’ll keep looking.
To the Editor: Kourabas article’s Partisan Stance Warrants Critique

With all respect to my colleague, I must respond to Mr. Kourabas’s Feb. 8 article, “The Shift is Complete.” While his recitation of partisan talking points was thorough and eloquent, it begs several points to be made.

Mr. Kourabas explicitly discounts the theory that justices should be politically neutral as beyond realistic expectation. He says that “a judge’s opinion is political, and his or her judicial philosophy is often just a tool.” Two observations: First, such a sweeping remark is beyond realistic expectation. He says that “a judge’s opinion is political, and his or her judicial philosophy is often just a tool.” Two observations: First, where is the Constitutional guidance requiring an equal number of polarized justices tempered by a floater? This argument is a political fiction with no foundation. Second, is it any wonder that O’Connor “swung” so often in favor of Justices Stevens, Souter, Ginsberg, and Breyer? Mr. Kourabas cites two issues, affirmative action and abortion, on which Justice O’Connor was a “swing-vote.” Oddly, she failed to “swing” on both. She is lauded by the political left because she has been such a reliable ally. Third, I can find no calls from liberals for a politically tempered court during the years when then-Justice Rehnquist served so often as a lonely dissenter we solidly “progressive” Supreme Court. The left has only recently discovered this need.

Finally, Mr. Kourabas assails Justice Alito for giving undue deference to executive power, which he purports would “wage a war on separation of powers such as this country has never seen before.” I am befuddled. Does not deference to the authority of the executive branch strengthen the separation of powers? Putting aside the merits of specific cases at hand or in the past, it was noted that a Supreme Court who refuses to meddle with another branch definitively ensures a clear and distinct separation of powers. When the Supreme Court refuses to give deference to another branch, it must explain why its actions are not a violation of the separation of powers doctrine. For better or worse, a justice with a predisposition for deference to the other branches will clearly strengthen the separation of powers.

—Christopher Lindsey (1L)
Something New: A New Spin on the Chick Flick

by Ashley Reynolds

So I suppose some of you are reading this and wondering why in the WORLD I, as an intelligent law student, was so excited to see this. It’s very simple, actually; I’m a girl who adores chick flicks. Really I do. And oddly enough, I was able to view this movie on the most romantic (and hated) of days in the calendar: St. Valentine’s Day.

The basic concept of Something New is, honestly, far from revolutionary. Two people, falling in love, against all odds and logic, and the ending is all about wondering if they make it. Sounds like your garden variety chick flick, non? However, the screenplay that Kriss Turner created adds, well... something new. This is an interracial love story, and the first of its kind. No, kids, I haven’t made it up; I’ve just noticed it in its horrid reversed remake, Guess Who’s Coming to Dinner. "That’s right, George; all in the family, the introduction of her IBM engineer and a sports buff-movie connoisseur are not appropriate choices—unless you want spontaneous moments of dancing, overanalysis of the script’s occasional foray into cliché, and outbursts of laughter at inappropriate moments to pepper your movie-going experience!"

Whatever your status may, in the eyes of some, not seem equal to hers (okay okay, he’s a landscaper! Geez, I didn’t want be that mean!). So as I settled down to watch this movie with two of my friends, I was excited for the twist on a traditional story line—and because I adore Sanaa Lathan (Kenya McQueen)—okay and because Simon Baker (Brian Kelley) is pretty damn hot.

Lathan’s character, Kenya, is a successful Senior Accountant who is up for partner. The daughter of an established doctor, her prerequisites are filled with cattilions, balls, and garden parties. She has the prerequiste family members for all chick flicks—the overbearing mother, Joyce (Alfre Woodard—one of the newest darlings on Desperate Housewives), and the annoying womanizing younger brother, Nelson (Donald Faison—remember him from Clueless? Though I hear he’s also made a name for himself on the hit sitcom Scrubs). On Valentine’s Day, she and her friends—Cheryl, Suzette, and Nedra (Wendy Raquel Robinson, Golden Brooks, Taraji P. Henson [Hustle and Flow]) decide to adopt a new mantra for the year (‘Let Go, Let Flow’). They will stop relying on their professional woman’s checklist of What Makes An Acceptable Man (Ladies, everyone reading this has one—and you can’t convince me otherwise!) and in doing so, hopefully find new romantic opportunities. Set up on a blind date with Brian Kelly, the quite attractive landscape architect, Kenya finds that new mantra or no, she’s not convinced about dating a White man. But she is in need of a landscaper for her new home…and as things develop, as they sometimes do. Though the advice of her friends, the scolding of her family, the introduction of her IBM (ideal black man) in the form of a lawyer named Mark (Blair Underwood—most recently remembered as Miranda’s doctor love interest on "Sex and the City"), and the pressures of society (a great moment that illustrates the difficult issues of race that this movie exposes, in my opinion, very accurately is when Brian and Kenya go to the grocery store) it is up to Kenya to decide what’s more important—her very real feelings of her heart or her abstract ‘ideal’.

I enjoyed this movie, so I’d give it a procrastinator’s thumbs up—it’s worth wasting precious hours that could be spent reading (or in my case working on a Note) to see it. However, may I suggest that you go see it with people who appreciate chick flicks for what they are—fluff. A hard nosed engineer and a sports buff-movie connoisseur are not appropriate choices—unless you want spontaneous moments of dancing, overanalysis of the script’s occasional foray into cliché, and outbursts of laughter at inappropriate moments to pepper your movie-going experience! M & A, you know I adore you two though ....

---

Green Leafe Café

You may have noticed a change in the way The Green Leafe looks lately. It looks a heck of a lot prettier. Nope, we didn’t paint the place. And Sterling hasn’t put up window treatments or anything. We just hired Kim Zicopula. She’s that gorgeous exotic creature with the black tresses greeting you at the Leafe’s front door.

And lucky for us, she’s got the brains to match the beauty. You’d think she had 20 years of restaurant experience if you didn’t know how young she is. If you ever got bored with the beer at the Leafe (hypothetically speaking of course) Kim can drop some serious wine knowledge on you, too. In fact, her knowledge of the finer things in life is pretty darn encyclopedic.

So the next time you see Kim at the Leafe, ask her what she can recommend with your Cracked Pepper Ahi or which of our desserts will go best with a nice glass of port. Or just appreciate how nicely Kim offsets the Leafe’s rougher edges.

---

Features

Sunday: Mug Night
Monday: $8 Entrees 5-9pm
Tuesday: VA Draft Night 5-9pm
Wednesday: Half-Priced Wine
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
Legal Mad Libs

by William Durbin and Rajdeep Singh Jolly

The Uniform Commercial Code

ARTICLE 3—NEGOTIABLE INSTRUMENTS

1. A COUNTRY:
2. ADJECTIVE:
3. NOUN:
4. NOUN:
5. VERB:
6. NOUN:
7. NOUN:
8. PLURAL NOUN:
9. NOUN:
10. NOUN:
11. PERSON IN THE ROOM:
12. ANOTHER PERSON IN THE ROOM:
13. VERB ENDING IN –ED:
14. ANIMAL:
15. ADJECTIVE:
16. ADJECTIVE:
17. A PLACE:
18. VERB:
19. NOUN:
20. NOUN:
21. ANIMAL:
22. VERB ENDING IN –ING:
23. VERB ENDING IN –ING:
24. ANIMAL:
25. NOUN:
26. NOUN:
27. NOUN:
28. NOUN:
29. VERB:
30. VERB:
31. A PERSON:
32. PLURAL ANIMAL:
33. NOUN:
34. NOUN:
35. NOUN:
36. NOUN:

ARTICLE 9—SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

1. NOUN:
2. VERB ENDING IN –ED:
3. ADJECTIVE:
4. NOUN:
5. NOUN:
6. ADJECTIVE:
7. ADJECTIVE:
8. NOUN:
9. VERB ENDING IN –ED:
10. ADJECTIVE:
11. PLURAL NOUN:
12. NAME:
13. VERB (PRESENT TENSE):
14. VERB ENDING IN –ING:
15. NOUN:
16. PLURAL NOUN:
17. ADJECTIVE:
18. ADJECTIVE:
19. VERB ENDING IN –ED:
20. ADJECTIVE:
21. PLURAL NOUN:
22. ADJECTIVE:
23. PLURAL NOUN:
24. PLACE:
25. ADVERB:
26. ADJECTIVE:
27. VERB (PRESENT TENSE):
28. NUMBER:
29. VERB (PRESENT TENSE):
30. ADJECTIVE:
31. VERB (PRESENT TENSE):

Continued on page 14

In Defense of Freedom

by Sushil Kumar

Last week the British press reported that, in a 2003 meeting between George Bush and Tony Blair, the President suggested planting a US spy plane in UN colours and flying it over Iraq in the hope that Saddam Hussein would shoot it at and thus provide a pretext for war. President Bush also raised the possibility of fabricating WMD evidence by producing an Iraqi defector who could give a presentation on Iraq’s capabilities, no doubt of equal veracity to Colin Powell’s speech to the UN. Lastly, Bush mooted the vague hope of being able to assassinate Saddam Hussein before the war began. Tony Blair’s response was that he was “solidly with the President, and ready to do whatever it took to disarm Saddam.”

Reading the leaked minutes, I would have laughed if the implications weren’t so serious. Two of Bush’s suggestions constitute international crimes, one of which is the crime of aggression (formerly known as crimes against the peace). The last prosecution of this crime was against Japanese and German leaders following World War II. And Tony Blair’s role in this is? It is termed in International Criminal Law as a “joint criminal enterprise”.

I am not so naive as to think that there is any possibility that either of the two will be held criminally responsible for their actions, but I do feel that we have a categorical imperative to do something about it, and the first step is through discourse. After all, regime change does begin at home.

I am not asking you to demand Bush be tried for war crimes, but rather to be more vociferous in questioning everything that he says concerning “national security,” much in the way that we in Britain have learnt to do so whenever Tony Blair opens his mouth. Since my arrival in the United States and exposure to American politics I have noticed that, by and large, Bush engages in a very effective form of Neitzschian associationism and even burnt. I am reminded of a truism that my university in America, where Communist books were removed from public circulation and even burnt. I am reminded of a truism that my university in Germany held close to its heart, not merely because Heinrich Heine was one of its students but also because of its role in the burning of Jewish books: “In einem Land, in dem Bücher brennen, brennen bald auch Menschen”.

This is not so ridiculous a statement as people would like to think it.

The erosion of rights begins slowly and innocuously before gathering such momentum that it is all but unstoppable. This is an experience that Northern Ireland and Israel have encountered, whereby government sanctioned abuses of minor civil liberties slowly progressed to the implicit acceptance of torture and state-sanctioned murder. Indeed, indefinite detention of terrorist suspects in the “Guantanamo Bay of Britain” (Her Majesty’s Prison Belmarsh) was ruled unlawful by the House of Lords, in part because of the dangers that Lord Hoffman expressed in his judgment in the case of A and others v Secretary of State for the Home Department.

“The real threat to the life of the nation, in the sense of a people living in accordance with its traditional laws and political values, comes not from terrorism but from laws such as these. That is the true measure of what terrorism may achieve. It is for Parliament to decide whether to give the terrorists such a victory.”

I for one do not want to live in a country that reminds me of 1984 on steroids, and I’m sure that neither do you. I’m doing the best I can to stop my own country from turning into a state run on the fear that if we don’t delegate our freedoms to the government, we will all be blown up by terrorists. What are you doing for yours?

1 “In a land where they burn books they will soon burn people.”
2 UKHL 71 [2005].
What does this mean for you?

We ranked FIRST in the country out of 156 major law firms in the 2005 AmLaw Summer Associates Survey. Year after year we are first in the overall rating as a place to work, getting high marks for training, mentoring, collegiality and family friendliness. And it doesn’t end there. We’ve also consistently ranked in the top 10 in the AmLaw Midlevel Associates Survey. Because we believe that a fulfilling legal career is a marathon, not a sprint, many summer associates spend their whole careers with us, developing strong bonds with clients we have served for decades and forging new client relationships through excellent client service.

Want to be part of a winning team?
Contact Randi S. Lewis at 410.385.3563.
UCC § 3-104(a)  
Except as provided in subsection (d)(1) becomes unperfected at the later of:
(1) when the of the filed financing statement lapses under Section 9-515 or is terminated under Section 9-513; or
(2) the 21st day after the security interest

SAMPLE:  
UCC § 3-104(a)  
Except as provided in Slovenia, "negotiable instrument" means a hairy dinosaur or post-it note to fondle, a fixed amount of ukelele, with or without bugs or other hockey pucks described in the humidity or rainbow, if it:

(1) is payable to Rajdeep Singh Jolly or to Heidi Klum at the time it is exploited or first comes into possession of a zeebu;
(2) is smelly on demand or at a(n) unrepentant top of the Empire State Building; and
(3) does not treasure-hunt any other testosterone or intellectual property by the ocotl spelunking or whistling payment to do any helper monkey in addition to the payment of money, but the ring or unmitigated disaster may contain:

(i) a(n) bottle or cheese to destroy, bestow, or protect Christopher Columbus to secure payment,
(ii) an authorization or power to the holder to confess emanations or realize on or dispose of property of the type involved,
(iii) a waiver of the benefit of any advantage or intended for the advantage of any(n) feather.

UCC § 9-315: SECURED PARTY’S RIGHTS ON DISPOSITION OF COLLATERAL AND IN PROCEEDS.

(a) Except as otherwise indicated in this article and in Section 2-403(2):
(1) a security interest or lien continues in

(b) Proceeds that are

c) A security interest in finger-nails is a perfected security interest if the security interest in the wet collateral was perfected.

(d) A(n) inserted security interest in proceeds becomes valid on the 21st day after the security interest attaches to the proceeds unless:

(1) if the proceeds are Scottish terriers, to the extent provided by Raideep Jolly; and
(2) if the proceeds are not goods, to the extent that the secured party salivate the proceeds by a method of squeezing, including application of equitable principles, that is permitted under hippopotamus other than this article with respect to digested property of the type involved.

(c) A security interest in

(e) If a filed financing statement covers the soporific collateral:

(2) if the proceeds are not goods, to the extent that the secured party may contain:

(i) a(n) bottle or cheese to destroy, bestow, or protect Christopher Columbus to secure payment,
(ii) an authorization or power to the holder to confess emanations or realize on or dispose of salsa con queso, or
(iii) a waiver of the benefit of any inflammation intended for the advantage of any feather.

UCC § 9-315: SECURED PARTY’S RIGHTS ON DISPOSITION OF ENEMA AND IN PROCEEDS.

(a) Except as otherwise indicated in this article and in Section 2-403(2):
(1) a security interest or sulfurous lien continues in spontaneous human combustion notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured koala bear authorized the disposition free of the security interest or infectious lien; and
(2) a security interest attaches to any hairless proceeds of a tomato.

(b) Proceeds that are

(c) A security interest in

(d) A(n) inserted security interest in proceeds becomes valid on the 21st day after the security interest attaches to the proceeds unless:

(1) the following strawberries are satisfied:

(A) a filed financing statement covers the collateral;
(B) the proceeds are in which the financing statement has been filed; and
(C) the proceeds are acquired with cash proceeds;

(2) the proceeds are

(3) the security interest in the proceeds is perfected other than under subsection (c) when the security interest

(e) If a filed financing statement swallows the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) becomes unperfected at the later of:

(1) when the circular of the filed financing statement lapses under Section 9-515 or is terminated under Section 9-513; or
(2) the 21st day after the security interest procreate to the proceeds.
Canadian Bacon: the Winter Olympics Strike Back

by Matt Dobbie

Last week was the initial offer of Canadian Bacon. With this, the much anticipated sophomore issue, once again I will be discussing the Olympics. This is simply because in the last two weeks, all I’ve done is go to class and watch the Games. As exciting as the world of labor and arbitration law is, it doesn’t make for good copy. So you’re stuck with the Olympics. Deal with it. I promise not to write about them a third time.¹

The deadline for submitting columns in The Advocate is Friday at 5 p.m. Much to the chagrin of my editor Will Durbin, I tend to take the deadline as a mere “suggestion” only. I usually end up turning it in sometime Saturday or Sunday.² Since you receive this fine periodical on Wednesdays, we’re looking at a four day gap in between my writing it and you receiving it. So normally, I’m unable to mention or write about events which occur between my suggested deadline and the paper’s publication because, well, I don’t know what happens. Except when it comes to men’s hockey. So if you’re wondering about that, Canada is entering the medal round 4-1, responding in a big way from the Swiss loss with big wins over the Czechs and the Finns.

This is the first Olympics where I’ve been forced to watch the NBC coverage. Normally back home I get both NBC and the CBC,³ which I think overall does a better job covering the “Olympics.” NBC mainly covers American athletes—a fair policy, but with the CBC we’d see more athletes from around the world. The NBC coverage does have two great bonuses however: the curling Johnson sisters from Bemidji, Minn., and John Davidson.

NBC clearly wants to build stars and human interest stories about athletes, as it should give them higher ratings. So they latched onto Bode Miller, Apolo Ohno,⁴ and the Johnson sisters, Cassie and Jamie. I’m not exactly sure why NBC chose the Johnsons, but it might be because they’re young and highly attractive. But the NBC coverage is getting to be a bit much; they’ve broadcast every one of the Johnsons’ curling matches, despite the fact that they are getting killed and essentially (as I write this) out of medal contention. Additionally, they’ve done numerous interviews with the young women, their friends, their parents, a family photo album online,⁵ and an exclusive interview with the guy who delivered their pizza last weekend.

The highlight so far of the Olympics is NBC’s use of John Davidson. Davidson is a hockey reporter/announcer who normally covers the New York Rangers. But like most sports reporters, he has like another 40 gigs. My favorite John Davidson gig is when he steps in on Hockey Night in Canada. During the second intermission, HNC does a segment called Satellite hot stove, in which four or five hockey reporters from across the league discuss trades, controversies, etc. They’re beamed in from whatever city they’re watching a game from—Montreal, Toronto, Detroit, you get the idea. Except Davidson, whose location is always a mystery. Sometimes it’s logical (New York); sometimes it’s not (Anchorage, Hoboken, Oklahoma City). But there’s never any explanation as to what the hell he is doing in cities completely unrelated to hockey, or how they have a satellite uplink there. Why is he in Oklahoma? It makes no sense, and, as you can tell, it really bothers me.

Anyway, Davidson is doing the color commentary, and since we’ve had a number of blowout hockey games, Davidson has been forced to fill time with, well, essentially nonsense.⁶ Davidson’s best story by far occurred during the Slovakia-Latvia game. Latvia is getting killed and Davidson starts discussing the upcoming World Championships in Latvia. Earlier in the day, Davidson was talking to the President of Latvia,⁷ and the President was very excited about the opening ceremonies, for which his countrymen are training bears to ice skate. Read that again: Latvia is training bears to ice skate. This is a borderline third-world nation which is directing precious national resources and expertise into training bears to skate. In a word, brilliant.

I don’t know about you, but I’ve already booked my ticket to Latvia.

¹ But this may change if/when Canada wins the gold medal in hockey.
² Last issue I was really late, to the point where I pictured poor Will pulling his hair out. Good times!
³ The Canadian Broadcasting Corporation, which is owned and operated by the Canadian government.
⁴ Apparently the key is to be an athlete with an inexplicable name.
⁵ Not a joke. NBC actually has pictures from their high school prom available on their website, a sign that the Internet has jumped the shark. Available at http://www.nbcolympics.com/curling/5072202/detail.html.
⁶ On a somewhat related note, in some of the early games like Canada-Italy, everyone, including the players, knows that the Italians have no chance of winning or really keeping the score close. This is tough for the players. Believe me, I know, as currently I play for the worst hockey team, in the worst conference, in the lowest level of college hockey.
⁷ In attendance at the Olympics because apparently he doesn’t have anything better to do, like, say, governing Latvia.
Sex and the Law: Happy Belated Safe Sex Week!

by Nicole Travers

As some of you know, and many of you don’t, last week was Safe Sex Week here at William and Mary, as well as universities the world over. Safe sex is a wonderful thing, and very important to healthy law students. Of course, as we’re far too busy to have sex while in law school, we’ll have to reap the benefits of Safe Sex Week long after we have graduated from our venerable educational institution.

So why Safe Sex Week? Good question. The week of Valentine’s Day tends to be rife with commercial pressure to have “the sex,” so when people give in, they might as well be safe. I think, however, the problem goes deeper. According to The Washington Post, the beginning of February marks the beginning of “cheating season.” In late November through January, would-be cheaters are saddled by family functions and don’t have the time and energy to devote themselves to illicit liaisons. Once V-Day rolls around, however, the bits on the side begin to get antsy, and begin to demand more attention.1 This is where safe sex comes in handy, because if you do cheat, all bets are off if anything unexpected gets transferred from one of your partners to the other.

Of course, there are all kinds of safe sex. The most obvious type is the kind of sex where one uses protection. There are many varieties of protection depending on what you want to protect from—for instance, birth control pills to protect from irritating babies, dental dams to protect from the oral herpes, and condoms which protect against just about everything, especially having an orgasm.2 One thing that always confused me about condoms is the fact that you can’t really store them anywhere. If you’re a lad and put one in your wallet, the heat from your pocket might cause the latex to deteriorate. Same thing with glove compartments in your car—they get too warm from the sun. So what are you supposed to do if you’re a lad looking for a quick fling? Carry a man purse a la Jerry Seinfeld? Or just cross your fingers and hope the girl has some in her bag?3 Additionally, I find it rather unfair that items such as diaphragms and birth control pills are extremely expensive, while condoms are relatively cheap. The Trojan company appears to be trying to help out with their “Elexa” line, but they just appear to be condoms with prettier packaging.

Despite their importance, these instruments of physical protection do little to protect one from the devastating emotional heartbreak that a cheating partner may wreak. In last year’s column “Miss(ing) Manners,” I discussed ways in which one can shield one’s heart from unexpected emotional trauma after sex gone awry. However, it is much easier to ward off would-be cheaters in the first place. The New York Times recently wrote on the subject of several web sites such as DontDateHimGirl.com and ManHaters.com (motto: Research & Rate B4 U Date). These web sites allow women who have been “burned” so to speak by cheating lads to post the names and photographs of the cheaters on websites so that other women can check up on potential paramours.4 In my opinion this service may be useful in some cases (because who wants to find out that the lad or lass who caught your eye is actually married with five kids after you have sex?), but unduly harmful in others. Jilted partners, whatever their sex, tend to exaggerate their partners’ faults as well as their own virtues, and websites that allow people to post about others by name while staying anonymous themselves do not do much to even the playing field. Additionally, if you do post about someone in detail, that person can probably figure out who you are based on what you posted about anyway. My advice is that lawyers should steer clear of such websites, unless they’re willing to take the postings with a grain of salt. Under no circumstances should we actually post on them, as it might be more dangerous than not.

Finally, we come to the safest kind of sex—sex with yourself. There are all kinds of exciting products designed to allow you to have safe sex without the problem of incurring diseases, children, or heartache. The problem is that, until now, if you wanted to purchase such products, you either had to travel or order them from illicit web sites, which create internet histories that you may not want your roommates to see. This trend is quickly dying with the advent of “passion parties.” A passion party is sort of a Tupperware party for sex toys.5 The sex toys in this case are brought to your house and demonstrated, offering you and your friends the opportunity to operate and ask questions about the toys. While it may seem odd to discuss such intimate behavior with friends, it can be a great way to learn more about how sex toys can be an important part of safe sex, whether alone or with a partner. After all, wouldn’t you rather learn about this stuff in a group of your pals than from the sex shop clerk who has the scary tattoos and piercings? I sure would. I’ve heard unconfirmed rumors that the undergraduate dorms hosted a few passion parties last week, and that the graduate housing department is considering having a few next year. If you’d like to host one, contact your housing representative, or go to www.passionparties.com to schedule one at your apartment. (I hear they are popular for wedding showers.)

Even though this column doesn’t exactly come to you in time for Safe Sex Week, I hope I’ve enlightened you all a little about your options when it comes to safe sex. I am, after all, eager and proud to help make this world a little more disease-and-baby-free.

1 This, of course, makes V-Day a double day of hell for the cheaters, as they have to please both their legitimate other, as well as another #2, without letting either of them know of their conflicting plans. They end up spending twice the time, twice the money, and incur enough stress for twice the ulcers. It amazes me that cheating is so prevalent.

2 Of course, they have yet to develop a condom that protects you from smelling like latex for five hours.

3 In my opinion, there’s not much chance of that. Most ladies I know refuse to buy, carry or store condoms, with the reasoning that “it’s not my (expletive).” This leads to many would-be couples finding themselves high and dry, so to speak, and forced to become “creative” with such items as sandwich bags, plastic wrap, and the ever-popular “coitus interruptus.” If you’re thinking of doing any of these things, don’t. It’s counterproductive, as well as extremely dangerous sex.

4 Don’t worry, guys, you have options too, such as www.hashmyex.com.

5 This trend was actually foreseen in the 1980s in the Lily Tomlin one-woman show The Search for Signs of Intelligent Life in the Universe, written by Tomlin’s long-time partner, Jane Wagner. This particular monologue contains such gems as “think of it as a sort of ‘Hamburger Helper’ for the boudoir.” If there’s one perception to sell me on sex toys for life, that would be it.
Law Students Show Their Skills at the PSF Talent Show
Love and the Law: The Do’s and Don’ts of Dating a Law Student

by Tara St. Angelo

Being a law student is hard. We all know this. What’s the one thing that’s almost as stressful as being a law student? Being in love with a law student. Yes, people, rumor has it that we can get quite unbearable when we’re stressed out. The significant other of a law student goes through all the stress that we do. Except they don’t get to complain about it. Every week Nicole Travers talks about sex in her column: Sex and the Law. But what about love and the law? Can the two exist together? William and Mary students prove time and again that it can. Numerous couples in the law school have found happiness, whether they are dating, engaged or married. How do couples handle it? How do they make it work?

Couples in the law school deal with a variety of circumstances. Some deal with distance and all deals with arranging their busy schedules around each other.

1L Margot Freedman met her boyfriend Justin 2 and a half years ago at the University of Binghamton and Justin moved to Williamsburg last year to be with Margot and to be closer to his family in Charlottesville. Known to their friends and family as “bunny and puppy” (save the gagging for later because they get even more sickeningly cute)

Margot and Justin try and find time for each other every day, which can be hard even living in the same apartment. Justin works as a journalist and is always in pursuit of the next big story. In short, the two of them are always busy, but they insist on finding time for each other. Margot says, “We try to rent/go to movies a lot, and we go out to dinner together all the time. Alone time is key. We don’t really go out with other people that much. Going on dates like that, without access to books or a computer across the room or other people from work/law school, allows you to focus on the other person and maintain the connection.” Margot wears a promise ring, which I have caught her on more than one occasion gazing at lovingly during class. I think another key portion of their relationship is thinking about each other when they are apart. Even if it is only for eight hours at a time.

Like Margot and Justin, Amanda Spruill and John “Cliff” Moorman are always close to each other and its easy to make time for each other. There is just one difference, Amanda and Cliff are both law students. People often describe the pair as “that couple” because they are almost always together. These 2L’s met in high school at the Norfolk Academy and before they started dating their senior year, they both decided to go to the University of Virginia. They both try to make time for the other one. They both say it’s a lot easier to spend time with each other because they have mutual friends and it’s “one less thing to divide their time.” Amanda and Cliff also find it easier to spend time with each other because they have classes together. Although they love spending time together, no feelings get hurt when one has a busy week because they both understand what it’s like being stressed.

Another law school couple, Amy Markopoulos and Darren Abernathy also use law school as an excuse to spend time together. Amy and Darren have two classes together this semester and often study together. Sometimes even doing flash cards on road trips. Amy and Darren also make sure they plan date nights with each other, where they can be found at various Williamsburg restaurants like The Cheese Shop and Cracker Barrel.

These couples are finding time for each other when they are only minutes apart. But what if you’re not just a car ride or short walk away? Julie Wenell and her boyfriend JD Greiner are the ones to ask. Julie is a 1L here in Williamsburg and JD is a senior more than 1,400 miles away at Iowa state. Julie and JD met when they were both members of the Greek Council during Julie’s junior year, but they did not start to date until Julie’s senior year. Their relationship involves a lot of phone calls and visits whenever possible. They spend the time together that matters. For example, Julie could not go home to Iowa for Thanksgiving, so JD came to her and the two shared a holiday dinner. Julie says, “The bottom line is that JD is worth it.”

1L Asim Modi and his girlfriend Leslie Buffen, have found that sending each other packages helps them through the times when they miss each other the most. Asim and Leslie met a little over a year ago at the University of Michigan, where Leslie is now a senior. Leslie walked into Asim’s life when she walked into his house in Michigan, looking for a place to rent for the next academic year. Asim and Leslie have been together ever since. Leslie often sends Asim cookies, which he frequently enjoys until they go bad. On one occasion Asim kept eating the cookies from Leslie, made from butter and eggs until he got sick. Leslie is now spending a semester in South Africa, bringing her even further from Asim. However, the two find that frequent phone calls and letters help them stay connected and happy.

1L Eric Topor and his girlfriend Mary Chisholm, a senior at University of Maryland, know that its important for them to talk often and make time to visit. Mary and Eric

Continued on page 19
Eric Torpor and Mary Chisholm are lucky because they are only two and a half hours apart and they make sure they get to visit each other at least once a month. Mary says, “It’s important to make time to visit each other and to make the best of those visits.” Eric says that the distance is beneficial in some ways because they are both so busy and are able to give each other the space they both need. Mary also says, “I think it’s important to keep in mind that it is only temporary, and as long as the couple works to keep the relationship going, everything will work out in the end. I know it won’t be like this forever.” No matter what the distance between the two, all of these couples show that making time for each other is the best way to keep the relationship going. The best advice is to schedule time together, no matter what and not to focus on just the fact that you are so busy.

In addition to making it hard for couples to spend time together, law school can put a strain on a relationship simply because of the stress. Couples find ways to deal with the stress together no matter if they are both in law school or not. Going into this article, I assumed that law student couples would be competitive and that they would try not to talk about their grades. Well, Cliff and Amanda and Amy and Darren proved me wrong. Both couples talk about grades and discuss everything related to law school. Cliff and Amanda say they’re just not competitive, it’s not in their nature. Cliff looked at Amanda’s grades before she even did. Amy and Darren say that it’s important to remember that they are both smart and talented people and to never underestimate each other. They just always assume the other one is the smarter one.

When it comes to stress both of these couples are experts. Amanda says, “stressed people tend to focus on themselves.” It has been important for her and Cliff to think about the other whenever they get stressed or frustrated with school. They say it’s all about spreading the burdens and working as a team to get through law school. Amy and Darren agree with Amanda and Cliff. “In a world where people are so secretive about grades, it’s nice to be honest and open with someone here.” Both couples have found that having someone who knows what its like to be in law school and sharing the frustrations is nice. Amanda says, “You have your friends to go to, but its nice to have someone like Cliff to call at 2 or 3 am if I have a question or am stressed out and I know he won’t get mad at me.” It’s always helpful to have someone that understands why you’re stressed and exactly what you’re going through. Amy and Darren say, “We feel very fortunate to both be going through the same thing at the same time. We understand the pressure of exams and finding summer jobs.”

Another part of these couples’ success is that Amy and Darren and Amanda and Cliff had strong relationships before coming to law school. Amy and Darren say, “We started dating at the end of college, and then lived and worked in DC for a year, so we know what it’s like to be in a school setting.”

What happens when the other person doesn’t know what you’re going through. How can they ever understand what law school is like? Many couples are still able to talk to their non-law student significant others about the pressures and still find a support system. Margot says that the one person that can calm her down when she gets frustrated about law school is Justin. She says, “He scratches my back and reminds me that I’ve been through tough things before and have come out on top. The best thing he does is believe in me.” Although Margot and Justin are different from Amy and Darren and Amanda and Cliff, they are very similar because Margot believes that law school can just not be left out of their relationship. She says, “I need to be able to vent to him. To us, work is a big part of who we are, and if we ruled out the things we cared most about it wouldn’t be the same. We need to be able to talk about everything.” Eric also agrees and says, “I don’t think I should keep it all from her, I mean if I’m really stressed out she’ll probably be able to tell anyway so I think it’s better that she knows what I’m stressing about rather than keeping her in the dark about it.” Although Eric and Mary admit that they do not talk about law school as much as the other couples, not talking about it at all would not help their relationship.

Another surprising thing to me was that the couples I spoke with did not fight when they got stressed out. Margot says, “I think that law school is like any other intense stress, and has the same effect on relationships: if the relationship is strong, the stress only makes it stronger. But if it’s weak, the stress will expose the weaknesses faster and accelerate the surfacing of problems. Justin and I are doing well because our relationship is a good one. Law school is just another thing we are capable of dealing with because of that underlying strength.” Eric an Mary have had similar experiences. They do not let the stress of school affect their relationship. Well here is the area where I completely differ.

My inspiration for writing this article is my boyfriend, Chris Panilla. I have had exactly the opposite experiences as the rest of the couples in this article, I regret to admit. Chris and I met shortly after I graduated in May of last year. We met through mutual friends and immediately hit it off. I then moved to Virginia and Chris stayed in New Jersey, where we are both from originally. Chris and I deal with the distance well. We talk on the phone a lot and he comes to visit every few weeks. Where we truly differ from the rest of the couples is dealing with my stress and frustrations of law school. I do feel completely open with Chris and I know that I can talk to him, but I am not sure he really understands what I am going through. Chris was an art major in college and he’s been out of school for almost five years. Chris has a natural talent for art and so he never struggled in school and pretty much never needed to study. I do not possess sheer legal brilliance, therefore, I have to study….A LOT. Chris and I fight when I get busy and we don’t get a chance to talk. This was especially true during the exam period last semester. However, we both have to remember, like Mary pointed out, that this is only temporary. Another thing I like to remember is that there is more to our relationship than just my attendance of law school. Basically, I want to tell all those couples out there that are not as perfect as the ones profiled in this article that there is hope. People fight, and you will fight when you get stressed. Something that helps Chris and I is that we can get past the fights that we have when I am stressed. I will admit now, I am usually to blame for the fights and I get irrationally angry. In fact I just yelled at Chris for calling me while I was writing this article because I am past my deadline. Since the foregoing statements are now in print, Chris will NOT be getting a copy of this article. Chris realizes that I am not mad at him, just that I am a little stressed and we forgive and move on. He tries not to focus on the 10% of the time when I am an absolute monster and focuses on the positive things. Law school does not define me and I do not want it to define my relationship.

This article was supposed to be chronicling how law students dealt with stress in their relationships, but really wound up being more of an article about how the stress of law school doesn’t really affect relationships.
The Barrister's Ball!

Marshall-Wythe Students take some time from their studies to dance the night away at the Williamsburg Winery.