Twenty-Ninth Year of Publication

Libel Show "A Coarse Line" Tonight, Tomorrow

VIRGINIA LAW WEEKLY

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Spencer photo

Recently-selected LAS chiefs Randy Tucker, Virginia Roddy and Wendell Large.

LAS Selects New Directors; Roddy And Large Are Named

by Virginia Dunmire

The Legal Assistance Society recently elected new officers for 1977-1978. Second-year students Jenny Roddy and Wendell Large were named Co-Directors, and first-year student Randy Tucker, Education and Training Director.

Roddy, a graduate of the University of Georgia, and Large, an alumnus of the University of North Carolina at Chapel Hill, are planning several new LAS activities for next year. Plans are now underway to hold a Mental Health Conference modeled after the Children's Rights Conference last fall.

Roddy and Large also hope to establish a legal aid office at the Goochland Correctional Center for Women, which is not currently serviced by any legal aid organization. Roddy said that there is also a possibility of developing legal aid offices in Harrisonburg and at the Lynchburg Training School.

Tucker, a Virginia native and Yale graduate, will draw on his recent experience as a VISTA paralegal in his position with LAS. Together with individual project directors, he plans to structure a training program for LAS members, which Tucker feels, will help LAS members gain from the experience of previous years and feel more competent.

Tucker said that LAS has a duty to those people being served to train its members. Since LAS is very "atomized", as he put it, he hopes to encourage an exchange of ideas between the various projects and to develop an LAS newsletter.

Tucker also has responsibility for LAS activities which seek to increase the community's awareness of legal issues. He felt that the speakers presented by the Legal Forum do not represent the full "spectrum of political discussion", and hopes LAS may sponsor speakers who are less conservative and less tied to conventional law practice. In addition to the Mental

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Optimism In Order?

Job Picture Bright For Law Grads

by Jerry Cox

The job market for the Law School's graduates appears to be holding steady despite stories of cutthroat competition across the nation, according to Placement Director Albert Turnbull.

"Although I have been increasingly anxious about the national media's stories of doom and gloom "for law students," Turnbull said, we haven't had that kind of experience at all." Nearly 70 per cent of the second- and third-year classes have reported to Placement that they have found summer and permanent law-related jobs, and Turnbull expects that figure to climb to 85 per cent before each class graduates.

"These figures," Turnbull stated, "are consistent with those from eight or nine years ago, when each class was smaller and when we knew it was a student's market." He added that it would be difficult to discover whether each of those students found the precise job he wanted at the salary he expected. Nonetheless, only about five percent of the graduating third-year students, according to Turnbull, find no suitable employment at all.

Job Offers Increase Overall

Turnbull described this summer's job market for seconds as "very, very good." He said he was amazed that nearly 20 second-year students came to him this year, asking his advice on whether they should take only one job for the summer or split their time between two different firms which had made offers.

Turnbull, who is also Assistant Dean and Director of Admissions, pointed to last year's dramatic increase in interviewing activity at the Law School as a good omen. The number of visiting employers increased from 416 to 478 last year alone. In addition, 467 employers sought applicants from the Law School without coming to do personal interviews. More than 700 of the potential employers were law firms.

The employers, Turnbull suggested, are not coming to the Law School to skim off only the members of the *Law Review*. "Although the *Law Review* experience is an enormous asset," he said, "our figures indicate that the employers' interest in our students runs deep into the class."

Placement's report to the Dean indicates that only 11 third-year students and 12 second-year students signed up for at least one interview but were granted none by visiting employers. More than 150 thirds were granted up to 10 different interviews. Ten thirds and 10 seconds attracted the interest of more than 40 different employers.

Firms Recognize Reputation

Turnbull attributed the relatively good job picture to the diversity of the student body and the reputation of the Law School.

"Our reputation in the employment community is very strong," he said. "The ability of our students in practice is quite well-known, since so many of them prove to be outstanding, effective lawyers."

Employers like to interview at Virginia, according to Turnbull, because "the Placement Office gives them more service than do those at other law schools." Because of the more than 80,000 resumes and transcripts mailed to firms by Placement, "the recruiter already has a sense of the person he is going to see before he gets here."

Turnbull is concerned that the "doom and gloom stories" about the job market pose a danger of first-year students becoming fearful of the future. Such fears, he warned, are "distracting and they are corrosive of the total Law School experience."

Students, particularly in their first year, Turnbull said should find appropriate outlets to help them escape occasionally from the "intensity of the first-year experience."

Turnbull was quick to point out, however, that optimism, not smugness, is in order. "Who knows what the future holds?", he asked.

Powell photo

Former Secretary of State Dean Rusk addresses Rotunda audience

Dean Rusk Speaks; Questions Carter's New Policy Method

by David Llewellyn

In an appearance sponsored by the Student Legal Forum, former Secretary of State Dean Rusk addressed a standing-room-only crowd in the Rotunda on the evening of April 6.

Beginning his speech with a light touch, Rusk told his audience about a Senator who attended a White House reception with his wife. Many members of Congress, the Supreme Court, and the labor and business communities were there. On the way home, he remarked to his wife, "You know, dear, there aren't very many great men in the world, are there?" She replied, "There's one less than you think, dear."

Decisionmaking Is Complex

Turning to his long experience in foreign affairs, Rusk noted that "foreign policy is that part of our business which we cannot control." For this reason, he felt, "The State Department will never be popular with the American people, Congress, or the President because they must be the bearers of bad news."

Because all foreign policy decisions are made with an eye to the future and because "Providence hasn't given us the power to pierce the fog of the future," public officials must often couch foreign

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VJIL Selects New Members; Further Tryouts Held In Fall

by Tom Farrell

After a busy weekend, the new managing board of the *Virginia Journal of International Law* announced the selection of twelve new members from the first-year class.

Thirty-eight began and twenty-six completed a two-part selection test, which consisted of a twenty-four hour citation and grammar test and a ten-page case comment to be completed within five days.

Six *Journal* members evaluated each applicant individually, on the basis of his or her performance on the case comment. The members rated the comments, which were submitted anonymously, on a scale from one to ten, with five being a "marginal accept" score. In cases of ties, the panel used the citation test as a tie-breaker.

The final selection meeting lasted seven hours, according to Tim Battle, head of the *Journal's* selection process, because of "the high quality of all the tryouts this spring. In this session we accepted twelve applicants where last year we took only six."

Editor-in-Chief Charles Kolb concurred, saying, "We had the largest number of first-year candidates in the *Journal's* history. This factor made our decision particularly difficult; however, I am very pleased with the selections we made as well as the selection process itself."

Originally a newsletter of the John Bassett Moore Society, the *Journal* is now in its seventeenth volume as a scholarly publication devoted solely to international law. The *Journal* selects new members in three tryouts during the school year: one in the spring and two in the fall. All students are eligible for the fall tryouts.

The new members selected this spring include Robert D. Arkin, B.A. University of Pennsylvania; Debra Bowen, B.A. Michigan State University; Edward Dean, B.A., M.B.A. Dartmouth College; Linda Fritts, B.A. Elmira College; and Mary Kearney, B.A. University of Virginia.

Also selected were Mary C. Lyons, A.B. Princeton University; Michael C. Powell, B.A. University of Virginia; S. David Schiller, B.A. University of Pittsburgh; Thomas G. Schnorr, Jr., A.B. Harvard, M.A.T. Wesleyan; Linda Anne Simpson, A.B. Princeton University; Victor Stewart, B.A. Yale University, M.B.A. Harvard; Charles A. Taylor, B.S. Washington and Lee University.

Spencer photo

New Officers for BALSA include James Hall (seated), (l. to r.) Eric Fontaine, Karen Williams, Lynn French, Marlene Brown and Dinitri McGhee.

The Burger Court

DICTA: Class Actions: Hostility Or Indifference?

by Beverly C. Moore, Jr.

Surely the rise of the class action lawsuit since the 1966 amendmnets to federal Rule 23 has been one of the most significant developments in the history of our private civil litigation system. Yet somehow the potential of this new legal remedy for compensating large numbers of individuals injured in amounts too small to justify the cost of nonclass litigation and for deterring or minimizing mass produced harms by rendering them unprofitable, seems far from being achieved.

In the federal courts private causes of action amenable to Rule 23 class damage remedies are largely limited to certain antitrust, securities, employment discrimination, consumer credit, and labor/pension offenses. Not only are these types of suits frequently denied class action status entirely, but class "victories" often recover as little as five or ten cents on each dollar of the aggregate damage actually inflicted upon the class.

Of the hundreds of antitrust class actions seeking the treble damages that the law allows, there has not been a class recovery even of full single damages, except very occasionally on behalf of a business entity subclass.

Clearly this phenomenon is not explainable by any general lack of substantive merit to these lawsuits, many of which follow on the heels of government prosecutions, but by a variety of "legalistic" restrictions and obstacles.

There seems to be a general perception within the legal community, particularly among "activists", that decisions of the Burger Court are in no small way responsible for this situation. That view should give us pause, since the Supreme Court has rendered only five "class action decisions" during the 1970s.

Nonetheless, when the class action subject is raised with a lawyer or law student, more likely than not the response will articulate the "problem" as flowing from two Burger Court decisions: *Eisen v. Carlisle & Jacquelin* (1974) and *Zahn v. International Paper Co.* (1973). This typical reaction, it turns out, is more "Knee jerk" than substance.

The *Eisen* Decision

In *Eisen* the language of Rule 23 (c) (2) was literally construed to require that the named plaintiff (s), at his own expense, give individual notice to all class members who are identifiable with reasonable effort—even if the cost of such notice (a quarter million dollars in *Eisen*) would force the plaintiff to drop the suit on behalf of those whom he cannot afford to notify.

Amidst the minor uproar in consumerist and public interest circles that has followed the *Eisen* decision, no more than a handful of class action cases have actually gone down to defeat because of the plaintiff's inability to bear notice costs.

Beverly C. Moore, Jr. received his law degree from Harvard in 1970. Formerly a staff attorney for the Corporate Accountability research group, he also served as a consultant at Ralph Nader's Center for Study of Responsive Law. Currently the editor and publisher of Class Action Reports, *he is the co-author of* The Closed Enterprise System *and* The Monopoly Makers. *Mr. Moore is also the director of Citizens for Class Action Lawsuits.*

Curiously, most of the litigation on this point has been precipitated not by *Eisen* itself but by DR 5-103 (B) of the lawyers' so-called canons of ethics. For in reality it is not the class action plaintiff but his attorneys who initially pay for the notice, and plaintiff attorneys tend somehow to find the money when they sense victory, and a fee, at the end of the road.

This is permitted under DR 5-103 (B), provided that the plaintiff, who may have a $100 individual claim, remains liable to reimburse his attorneys for perhaps $25,000 in notice and other expenses advanced if the defendants ultimately prevail.

Only a foolish millionnaire would be willing to become a class representative under those circumstances. Indeed, it is largely a myth that attorneys seek reimbursement from their clients when class actions are lost.

But whether the plaintiff's net worth and income are sufficient for him to afford reimbursement has become a standard, though only occasionally successful, defense application of *Eisen* to the large class, small claims class action.

Small Impact

Eisen has had so little impact because where the class is large enough for notice to its identifiable members to be prohibitively costly, the class action will probably be rejected by the court as "unmanageable" anyway.

Such cases are not, in fact, unmanageable. They meet that judicial fate because most courts have thus far resisted the idea that the class, not unlike a corporate entity, should be able to recover in a lump sum the *aggregate* damages incurred without regard to

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Virginia Court Upholds Press Censorship

Last week we discussed the current prosecutions of *The Richmond Times-Dispatch* and *Richmond News Leader* under what we termed an unconstitutional Virginia statute. Six of the seven justices of the Virginia Supreme Court disagree with our characterization of the Judicial Inquiry and Review Commission law.

Writing for the Court in *Landmark Communications, Inc. v. Commonwealth,* Justice Harry L. Carrico upheld the statute proscribing publication of material relating to judicial inquiries.

The Court acknowledged that the government must demonstrate that a "clear and present danger" is likely to result from publication before it may constitutionally restrain the press. But in a startling concession to legislative power, Carrico went on to write, "the sanction imposed springs from a clear and well-defined legislative declaration that breach of the confidentiality of [Judicial Inquiry and Review] Commission proceedings is so contrary to the public interest that it constitutes a substantive evil of immediate and serious peril to the orderly administration of justice and, therefore, should be punishable."

We are greatly alarmed by the Court's assertion that the legislature can broadly define a class of information, the publication of which shall constitute a criminal offense.

We agree with the dissent of Justice Poff, who said, in part: "If restriction upon publication of lawfully-acquired information concerning the proceedings of a commission reviewing charges against a judicial officer can be constitutionally justified by a simple conclusion that publication poses a clear and present danger to the administration of justice, a similar conclusion could justify a similar restriction with reference to the proceedings of a commission reviewing charges against an executive officer or a legislator."

The Virginia high court has failed to protect the press from those in government who would act as its censors. We must look to the United States Supreme Court to compel Virginia to adopt an interpretation of state power compatible with the fundamental freedoms guaranteed by the federal Constitution.

Honor Investigations

The Cavalier Daily this week published stories concerning an ongoing Honor investigation. Although we disagree with *The Cavalier Daily's* editorial decision in this case, we defend as a matter of strict principle the right of the press to publish all stories it may obtain.

The Blue Sheet, which explains the workings of the Honor System, requires that all matters pertaining to an Honor investigation or accusation be kept completely confidential. The task of maintaining confidentiality is that of all parties and witnesses involved in a case, the Law School counsel assisting the parties, and the members of the Honor Committee.

We call upon the Committee to maintain the confidentiality of Honor proceedings and look into the circumstances surrounding this and all breaches of confidence.

Spencer photo

Law Women Officers Garcia, Ehrenreich, Blyn, and Smock

Law Women Name Officers; Prepare For Fall Activities

by Virginia Dunmire

The Virginia Law Women this week announced the election of new officers. Second-year student Cathy García was elected President. Other officers chosen first-year students Diane Smock, Vice-President; Nancy Ehrenreich, Treasurer; and Jackie Blyn, Secretary.

García, a native of Falls Church, Virginia, graduated from the University in 1974. She then worked for the General Services Administration - Federal Supply Service in Washington, D.C., before entering the Law School. This year García was Secretary of the Law Women and a member of the Speakers and Placement Committees.

García hopes to increase the involvement of the Law Women in the Charlottesville community, particularly in making Law Women a stronger educational force which alerts women to their legal rights. She is especially interested in the area of the victimization of women, including the problems of rape and battered women, and would like to organize a panel on this subject next fall. García would also like to increase the Law Women's input to the faculty selection process.

Smock worked for the Atlanta law firm of Alston, Miller and Gaines, after graduating from the University of Georgia in 1974. She and Blyn have worked this year on a legal handbook for women in Virginia, which will be published this June. The handbook is financed by the Virginia Commission on the Status of Women.

Ehrenreich is a native of Kansas City and a 1974 graduate of Yale. She has worked in a Senate campaign, as a paralegal, and for the non-profit Fund for Peace in New York. Like García, Ehrenreich is interested in the problems of battered women, and hopes that the Law Women might aid the Charlottesville community in this respect by establishing a shelter for victims. Blyn worked for the National Endowment for the Arts in Washington, D.C., after her graduation from Florida State University in 1975.

Dillard Addresses VJIL Gathering; Smith Cops Prize

Judge Hardy Cross Dillard's address on the International Court of Justice highlighted the *Virginia Journal of International Law's* annual banquet held last Saturday at the Rotunda.

Judge Dillard sprinkled his discussion with personal reminiscences of teaching law and insights into the operation of the Court. The internatioanlly known jurist is a former dean and professor at the Law School.

The banquet also marked the first presentation of the Hardy C. Dillard prize, awarded annually to the best Student Note in the current volume. The prize, established by anonymous donors, honors Judge Dillard's contributions to international law and to the *Journal.*

Judge Dillard presented the first award to Brian D. Smith, an outgoing Notes Editor, for his piece, *Canadian and Soviet Arctic Policy: An Icy Reception for the Law of the Sea?* which appeared in the Spring 1976 issue.

Judge Dillard not only cited the excellence of the Smith piece but also praised another article in the same issue, *The Nuclear Test Cases and the South West Africa Cases: Some Realism About the International Judicial Decision* by John Dugard, for its discussion of the activities of the ICJ.

Several present add former faculty members and two members of the *Journal's* Board of Advisers, Wilbur L. Fugate and Ronald A. Capone of Washington, D.C., attended the banquet. A number of former members of the *Journal's* Managing Board were also present.

Outgoing Managing Editor Barbara Gardner was pleased with the event, saying, "It was the best attended function in recent *Journal* history. I was especially pleased with the number of faculty who supported us with their presence."

Letter To The Editor

Dear Sir,

I'd like to thank the LAW WEEKLY and David Evans for revealing the truth about me last Friday. The public response, outside of a few snide remarks by jealous male law students, was encouraging. A few hours after the WEEKLY hit the streets, an undergraduate girl called and invited herself to my house for a little "sociological research," and the following day a sorority invited me to a Tea in the Dome Room of the Rotunda. Keep those cards and letters coming, folks.

Sincerely,
Ralph Tener ('78)
Law School President

Law Women Meet In Madison, Hear Call For Political Action

by Virginia Dunmire

Ten Virginia Law Women attended the Eighth National Women and the Law Conference, March 24-27, at the University of Wisconsin Law School.

The conference, organized around the theme "Women Helping Women Through Law," addressed a variety of subjects. "The Victimization of Women" included workshops on rape and battered women, while "A Woman's Place is in the Home" included discussions of marriage contracts, no-fault divorce, custody cases, and the rights unmarried cohabitants.

Other workshop subjects included women in the military, labor unions and women, prostitution, and international legal issues affecting women. Elaine Noble, a Massachusetts state representative and former producer/moderator of Gay Way Radio, addressed the Lesbian Law section.

In the keynote address at the conference. Congresswoman Elizabeth Holtzman stressed the need for women to run for political office. Holtzman spoke primarily about Congressional legislation affecting women, particularly efforts to revise Title VII.

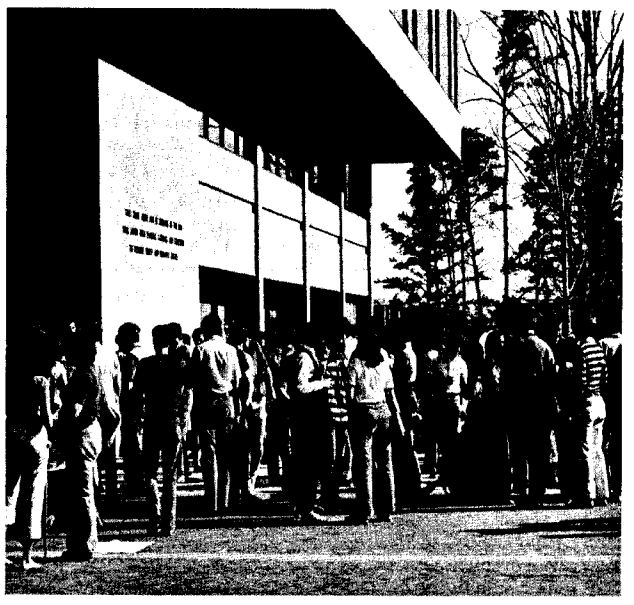
First-year student Nancy Ehrenreich described the prevailing mood of the conference as a desire not to lose the gains women made in the Sixties. Conference participants, she said, expressed considerable frustration with judicial remedies, and emphasized other means of advancement, such as entering politics, lobbying, counseling, and establishing halfway houses and shelters.

Ehrenreich commented that the conference was receptive to widely divergent points of view, and tended to confine its disagreements to the best means of achieving goals. Law Women Vice-President Jenny Roddy added that participants voiced dissatisfaction with the current drift of the Supreme Court, and stressed the Court's reluctance to handle sex as a suspect classification.

As a result of their participation at the conference, the Law Women obtained several contacts for speakers next year. Roddy noted that the Children's Rights Conference last fall was an outgrowth of a speech at last year's conference at Temple University. The conference workshop on teaching as a career also gave the Law Women an opportunity to encourage women applicants for the Law School faculty.

The National Women and the Law Conference has grown from ten participants in 1967 at New York University to the 2000 participants this year. The 1978 conference will take place at the University of Georgia in Atlanta.

Participants from the Law School were Jackie Blyn, Priscilla Dean, Nancy Ehrenreich, Law Women Secretary Cathy Garcia, Eileen Hirsch, Eliza Hoover, Joan Kuriansky, Steph Ridder, Law Women Vice-President Jenny Roddy, and Francie Taylor.



Powell photo

Libel Show cast conducts last dry run before tonight's Cabell Hall opener.

Law School Briefs

Lipshutz

Robert Lipshutz, Counsel to President Carter, will speak on "Ethics and Financial Disclosure for Presidential Appointees" in the Law School's Student Lounge 11 a.m., Saturday, April 16.

Lipshutz, who will also entertain questions on the operation of the White House, conducts the President's daily staff meetings. He wrote the Executive Code of Ethics, and supervises the background checks of all Carter appointees.

Library Talk

The Law Library Staff will discuss federal legislative histories with interested second- and third-year law students on the following days: Monday, April 25 at 1:00 in Room 104; and Wednesday, April 27 at 1:00 in Room 113.

Godspell II

Tickets for the musical *Godspell* are on sale daily at Newcomb Hall during lunch and evening meal hours. Tickets are also on sale all week at Mincer's, and at the door before each performance. Prices are $1 for students, $2 all others.

Performances are at St. Thomas Hall (Alderman and Kent Roads), Friday and Saturday, April 15 and 16, 8:00 p.m., and Sunday, April 17, 7:00 p.m. Third year student Herbie Di Fonzo is the production's musical director.

Give A Hoot

The Social Committee will not provide "janitorial services" at Friday Happy Hours, according to Social Committee Chairman Howard Chatzinoff. Receptacles for beer cups will be provided, Chatzinoff says, but "no beer is permitted in the building except when Happy Hour is held indoors."

Conference Report

A report of the conference, "The Emerging Legal Rights of Children: How Far Shall We Go?", held October 23, 1976, at the Law School, will soon be available. The report contains transcripts of the sessions and bibliographic material.

Copies may be reserved by placing a check for $5.00, made out to the Legal Assistance Society, in the LAS mailbox.

Biz Inn

Sponsors Hall, a new executive programs center, is now under construction behind the Grad Business School. The Business School will administer the new facility for the benefit of business executives who come to Colgate Darden for continuing education.

The complex will consist of dining facilities for 120, 36-bed housing, a 100-seat assembly room, and recreation and lounge facilities. It should be completed by the summer of 1978.

Cross To NRC

S. Lorraine Cross, a third-year student at the Law School, is one of twelve individuals recently selected to participate in the Nuclear Regulatory Commission's 1977 Honor Law Graduate Program.

The Commission, which regulates the use of nuclear power in the United States, received approximately 700 applications from students of 120 American law schools. Cross applied for the NRC position in November 1976, and was one of 83 students invited for an interview at the Commission's office in Bethesda, Md. The final selection of individuals was completed by February 1977.

Cross will be working with the NRC for two-years. Her objective is to develop technical expertise in the energy field, partially as a consequence of the in-depth contact she will have with the resident NRC physicists and geologists.

Cross says she hopes to "pursue a career in the private sector which will enable me to use the administrative skills and technical expertise I have derived from this experience."

DICTA...

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the extent to which the damage fund can be distributed to the individual members of the class in the precise amounts of their injuries.

Though under current Rule 23 all members are included in the class except those who affirmatively "opt out," normally each member must affirmatively "opt in" at some point to prove or claim his personal recovery. (Those who do not forfeit their recoveries to the defendant.) Especially where defendants threaten to raise liability defenses or otherwise to contest individual claims, courts are likely to find large classes unmanageable.

Yet it might well be feasible in such a case to assess both liability and damage on an aggregate class basis and to use the "fluid recovery" (i.e., reducing future prices) or some other "second best" device, including escheat to the public treasury, to dispose of any portion of the damage fund attributable to class members who cannot be identified or located.

The idea is that the overriding function of the class action device, and of private damage remedies in general, is not to compensate the usually small fraction of litigious individuals who will incur the effort and expense of coming forward to claim their recoveries. It is to consistently impose optimum civil penalties, measured in most situations by actual harm inflicted, functioning as a cost disincentive to harmful private conduct.

We are not so much concerned with the welfare of a particular class or its members as with preventing future classes of victims from coming into existence. That sort of effectiveness is what makes a legal system really worth having, and the unavailability of the aggregate class damage remedy is consequently the defect in the present class action device which overshadows all others.

The Supreme Court in *Eisen* did not reach this issue, though the Second Circuit panel below had conclusorily rejected the fluid recovery concept as both unwarranted and unconstitutional.

The *Zahn* Decision

In *Snyder v. Harris* (1969) the Supreme Court had ruled that a class action plaintiff could not meet the $10,000 federal diversity jurisdictional amount requirement by combining with his own claim the claims of the absent class members he sought to represent.

Zahn predictably extended that doctrine. Each and every member of the class must satisfy the $10,000 requirement. Where the named plaintiff and perhaps others do have $10,000 claims, only they, and not others similarly situated but with lesser claims, may invoke federal jurisdiction.

As a practical matter, this means that most consumers and other groups claiming violations of rights under state laws cannot maintain class actions in federal courts. And it often means that such classes have no remedy at all.

Many states have not adopted effective class action procedures. Of equal importance, where multistate harms are involved the courts of one state are unlikely to entertain class actions on behalf of citizens of other states.

Yet the impact of *Zahn*, like *Eisen*, has been exaggerated. One basic problem with federal class actions based on state law violations is that state laws differ. Where the alleged harm is multistate in character, as is likely if it is of substantial magnitude, variations in the applicable laws of the state involved may defeat the predominance of common questions required by Rule 23 (b) (3).

Indeed, that is usually what happens when plaintiffs bring class actions under federal question jurisdiction—e.g., for antitrust or securities violations—and seek to attach pendent state law class claims for common law fraud, and breach of fiduciary duty. New federal substantive causes of action would be preferable to diversity jurisdiction class actions.

But the broader point is that deciding *Zahn* and *Eisen* differently would not have dealt with the major obstacles to effective class remedies. Opening the federal courthouse doors would be a hollow gesture if classes could not consistently recover on just claims.

We have already discussed the unavailability of the aggregate class damage remedy. Otherwise, the single most frequent reason why class actions are denied or limited in scope falls under the heading "wrong plaintiffs".

This has to do with such concepts as adequacy of representation, typicality, class membership standing, privity, exhaustion of administrative remedies, and the like.

There may be a real class that has suffered real injury, but unless a "right plaintiff" emerges unsolicited who is in every way "qualified" to represent each segment of the class, the defendant escapes all or part of its deserved liability.

This game of chance is certainly no way to run an effective legal system, and in that regard the Supreme Court's forthcoming decision on lawyer advertising will have a most significant impact on the future of the class action.

Of the Burger Court's remaining class action decisions, *Sosna v. Iowa* and *Bd. of School Comm'rs of City of Indianapolis v. Jacobs* dealt with what happens to the class if the named plaintiff's claim is mooted.

In *Sosna*, where the mootness occurred after rather than before the district court had formally certified the class, the class action survived.

In *Jacobs*, though the district court had permitted the action to proceed as a class action prior to the mootness, it had never "formally" certified the class in the sense of defining its contours and describing its members. For that reason the class claim was held mooted.

The *Sosna-Jacobs* rationale applies mainly to class actions in the civil-political-inmate-social welfare rights areas where injunctive rather than damage relief is ordinarily sought. However, the doctrine undoubtedly tempts defendants in any class action to "buy off" the named plaintiff prior to class certification in order to moot class relief.

In the remaining decision, *American Pipe & Construction Co. v. Utah*, the Court held that the statute of limitations is tolled for all asserted class members between the filing of the class complaint and a denial of class action status. A different rule might encourage duplicative filings by absent class members seeking to preserve their rights in case class certification is subsequently denied.

American Pipe may be considered a "pro-class action" decision since it is protective of class members' rights. The protection, however, is largely theoretical. Where individual claims are relatively small, denial of class action status is curtains, whether the statute of limitations has expired or not.

(Please See Page 4, Col. 1)

Spencer photo
P-CAP Board members (rear) Reese, Tara, Sarahan, and Wolf; (front) Moran, Garcia, Solomon, and Brooks. Not pictured: Dodson, Edmunds, and Howes.

P-Cap Elects Board Members, Plans Increased Court Action

by David Llewellyn

The Post-Conviction Assistance Project (P-CAP) recently elected its new Board of Directors. Serving as Executive Directors for next year will be Connie Howes and Larry Reece. The other members of the board will be John Brooks, Chip Dodson, Bob Edmunds, Eddie Garcia, Ken Moran, Mike Sarahan, Eric Solomon, Christopher Tara, and Lesley Wolf.

P-CAP, which aims to assist indigent inmates of Virginia correctional institutions, will be "more litigation-oriented" next year, according to Howes, and will be "acting on strong claims from inmates of Virginia prisons." At present, P-CAP aids attorneys who have been appointed by a federal District Court (W.D.Va.) to represent inmates, by doing research involved in preparing the case.

Recently, Larry Reece and John Brooks assisted Charlottesville attorney Edward Hogshire in the successful prosecution of a suit brought under 42 U.S.C. 1983, in which a prisoner claimed he had been beaten after his arrest by police officers. As a result of the suit, the prisoner received a settlement of one thousand dollars.

Through its Hearings Program, headed by Christopher Tara, P-CAP also represents prisoners at prison disciplinary hearings. Students wishing to participate in the program next year should contact Tara for further information. Participants must attend a hearing this spring in order to familiarize themselves with hearing procedures.

LAS...

(Continued from Page 1)

Health Conference, Tucker hopes that LAS may sponsor another confence on Law for the Elderly, Food Law or Welfare Law.

LAS Projects Are Diverse

LAS provides legal services to low-income and other disadvantaged people in Charlottesville and surrounding counties. The organization, which has approximately 110 active members, is an umbrella for ten active service projects.

Several LAS projects provide legal services directly to clients. The Downtown Office Project, the organization's oldest project, provides about twelve law clerks each semester to the five attorneys of the Charlottesville-Albemarle Legal Aid Society. Under the supervision of Legal Aid attorneys, the students investigate and research cases, and occasionally represent clients before courts and administrative bodies.

The Circuit Riders Project works through the Charlottesville-Albemarle Legal Aid Office to provide legal services for poor persons in Green, Fluvanna, Louisa and Nelson counties. Students travel to the counties to interview clients, and do follow-up research under the supervision of Legal Aid attorneys.

Other projects to provide legal services include Mental Health, which provides legal services for indigent persons hospitalized at the Western State Hospital in Staunton. The project, incorporated as the Western State Legal Aid Society, uses twelve students in third-year practice to provide legal assistance in Waynesboro and Augusta County, under the supervision of attorneys in Waynesboro.

New Projects Encouraged

LAS is also involved in preventive law projects which provide legal education. The Children's Rights Project has developed a set of materials, and conducts classes, about the juvenile courts in area high schools and junior high schools.

LAS members also teach classes on post-release problems such as family law, landlord-tenant relations, and employment at the Goochland Correctional Center. "The Law and You" project produces radio programs on legal topics which are heard on WUVA and will soon be distributed to commercial stations. Lastly the LAS Research Group writes memoranda for LAS projects and legal aid societies in Virginia.

Outgoing Co-Directors Amy Ginensky and Chris Zawisza noted that LAS encourages new projects such as Children's Rights and Goochland, which were begun and developed by students. They pointed out that LAS has no project to the elderly or for housing, and is willing to sponsor projects developed by students with a particular interest.

Librarian Wenger Plans To Expand Reference Service

by George Garrow, Jr.

Larry Wenger, the Law School's newest addition to its administrative staff, views his first year as Head Librarian as a "transition period," and feels comfortable at the Law School even though the legend of Miss Frances Farmer is "a difficult act for anyone to follow."

A native of Seattle, Washington, and a 1967 graduate of the University of Washington Law School, Wenger decided to accept his new position as Librarian primarily because of the School's prestige within the legal community, and partly because of the excellent facilities that Miss Farmer, the retired Law Librarian, worked so diligently to create.

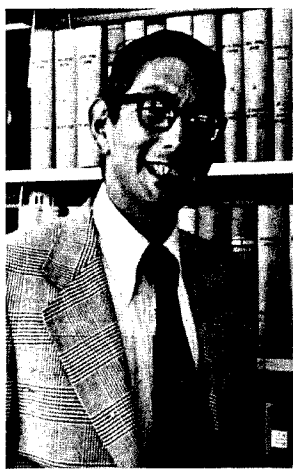
While Wenger had little contact with the Law School before accepting his new position, he felt that his move to Virginia was a "natural" step in his career.

Library Goals Outlined

After five years as Head Librarian at the State University of New York-Buffalo, Wenger is happy to be associated with the Law School, and has been satisfied merely to observe the operations of the Law Library for the present.

However, Wenger has significant changes in mind for next year and succeeding years. His future goals include the expansion of services within the library, particularly the establishment of a reference desk separate from the present Circulation Desk. This new reference desk would be used as a base for a variety of services that are not now available to all law students.

In addition, Wenger would like to make a more significant contribution to the Legal Writing Program, by adding audio-visual aids to familiarize first-year students with the law library more quickly. He also hopes to make LEXIS training standard for all law students during the first year.



Law Librarian Larry Wenger

Facilities, Staff Added

The new librarian welcomes the addition to the law library, and has contributed significantly to the preparation for the new space that Phase II will create. Wenger feels that the addition will make the library a more attractive place to study: more seating and stack space will become available, thereby alleviating the congestion that sometimes plagues the library during exams and peak brief-writing time.

Wenger credits Ms. Barbara Murphy, Associate Law Librarian, and Ms. Hazel Key, Librarian Assistant and Head of Circulation, for their help during his first few months on the job. Wenger's arrival at the Law School was contemporaneous with the addition of many new staff members to the law library, Notwithstanding all of

(Please See Page 4, Col. 5)

Pitt Abandons Texas Home, Adopts Law School & Virginia

by John Butcher

If Katherine Pitt is right that "lawyers are more fun," she has the best job in Charlottesville. Pitt is faculty receptionist at the Law School, and spends her working hours keeping track of some sixty lawyers, answering inquiries from law students, and directing visitors to the third floor of the Law School.

A Waco, Texas, native, Pitt graduated from Mary Baldwin with a major in English. "When I was at Mary Baldwin, I probably spent more time in Charlottesville than there," she said. "After graduating, I worked in Waco for a year, but I missed Charlottesville so much that I came back to this job."

Pitt acquired her high opinion of lawyers as a college student working for Legal Aid. When she applied for a job at the University, she was asked if she would "mind" working at the Law School. "I didn't mind at all," she said. "The law school is a fantastic place to work."

Because of her huge, semicircular desk and its central location in the third floor foyer, Pitt has been called the faculty desk sergeant." No one who has met the petite brunette, however, takes that appelation seriously.

Spencer photo
Katherine Pitt

At work, Pitt suffers the usual rigors of the No-Name climate: "It's like Greenland up here," she reports. When not at work, she enjoys sailing, skiing, and riding.

Briefs

Wilkinson

Associate Prof. J. Harvie Wilkinson III will begin a two-year leave of absence in the fall of 1978 to become editorial editor of the *Norfolk Virginian-Pilot.*

The 32-year-old Yale graduate will continue teaching at the Law School until 1978, and plans to complete a book on recent Supreme Court decisions concerning racial dicsrimination.

Wilkinson is a 1972 graduate of the Law School.

Another O'Rourke

Kathleen and Michael O'Rourke proclaim the birth of a daughter, Meighan Kathleen, on April 7.

DICTA . . .

Cite as "MOORE" VIRGINIA LAW WEEKLY, *DICTA*
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(Continued from Page 3)

As a group the Burger Court's class action decisions avoid any explicit involvement in the intense policy controversy that the class action device has generated. There is no mention of deterrence, private ordering, social cost internalization, efficient compensation of small claimants, or access to the courts.

Had the Court shared these concerns, different results could easily have been reached in *Eisen* and *Zahn*. Even *American Pipe's* "litigative efficiency" rationale embraces only the most rudimentary concerns of judicial housekeeping.

If there is a Burger Court "approach" to class actions it is one of legal formalism. *Eisen*, *American Pipe*, *Sosna*, and *Jacobs* all fix upon the importance of formal class certification as the event which defines those who will be bound by a subsequent judgment on the merits.

Both *Eisen* and *American Pipe* seem to prefer eliminating the largely theoretical evils of "one way intervention" under old Rule 23, rather than helping out the "little guy", as a principal motivation for the 1966 amendments.

This lack of concern with the class action as a device to improve the effectiveness of the legal system is hardly surprising for the Burger Court. For there is every reason to believe that the majority is decidedly hostile to an "effective" legal system in the sense that we use the term.

Some indication of this is found in their backgrounds—Burger's D.C. Circuit dissent in *Bebchick v. Public Utility Comm'n* (1963), Powell's famous Chamber of Commerce memorandum, Rehnquist's tenure in the Nixon Justice Department.

Indeed, given the views of their Presidential appointor, no one can be surprised that Burger, Powell, and Rehnquist hold views as retrograde relative to the times, as solicitous of vested interests, corporate or governmental, as any Supreme Court Justices in this century.

But the clearest indication is found in the tone and direction of their non class action decisions. While this is not the place for a discourse on the economic and jurisprudential philosophy of the Burger Court, the areas of decision referred to include standing (e.g., *Warth v. Selden, Simon v. Eastern Kentucky Welfare Rights Oragnization*), attorney fee awards (*Alyeska Pipeline Service Co. v. Wilderness Society*), exhaustion of administrative remedies (*Weinberger v. Salfi*), and sovereign immunity (*United States v. Testan*).

More substantively, there are a series of antitrust decisions permitting mergers previously deemed anticompetitive, decisions restricting the scope of the securities statutes (*Hochfelder v. Ernst & Ernst, Blue Chip Stamps v. Manor Drug Stores, Santa Fe Industries v. Green*), and even, apparently, a recent retreat in the employment discrimination area (*General Electric Co. v. Gilbert, Washington v. Davis*).

Justices Block Court Access

Far more concerned with congested dockets than with having a legal system that does more than make abstract pronouncements, the majority's approach has been to construe narrowly the business regulatory statutes it clearly dislikes, while at the same time manipulating quasi-procedural and jurisdictional doctrines to block court access for new causes, also disliked.

Basically, the growth of the federal common law has come to a halt insofar as economic law and order is concerned. In every step from standing to elements of liability to remedy, the Burger Court can be expected to maintain and intensify every obstacle to redress not explicitly forbidden by Congress. Class action proponents can be thankful that the current Justices have rendered so few class action decisions.

The best hope for the future, some cynics may argue, is the early retirement of some of those Justices. But perhaps the better hope is that the Court will soon grapple with the fundamental class action issues and reach the expected conclusions.

When the state attorneys general attempted to circumvent the manageability obstacles to class action remedies by resurrecting the ancient doctrine of *parens patriae*, they were rebuffed in *Hawaii v. Standard Oil Co.* But last year Congress rebuffed the Court by passing the Parens Patriae Antitrust Act.

A Supreme Court decision generally castigating class actions and explicitly holding that the aggregate class damage remedy must come, if at all, from Congress, might be the best medicine that can be prescribed. But the Burger Court, by resisting precisely such an impulse, may have demonstrated a political shrewdness that few in Congress can match.

Spencer photo

Den of Darden's Darlings, Dastardly Debunkers of Dickerson Downing's Dictates.

Final Game Upsets Set League For Playoffs; Pre-Season Picks Face Difficult Slate Ahead

As tears of defeat mingled with the cold October rain six months ago, Sliding Scale fireballer Charlie Cofer vowed in his best MacArthuresque manner, "We shall return." And return they have, despite the absence of plucky "Smoke" himself.

As Cofer listened to the broadcast of the game via special hookup from Jacksonville, Florida, the Scales overcame a 4-1 deficit and smote the Real A's with a seven-run sixth inning to capture an 8-6 upset victory.

Slow Page Moffett, a last-second starting pitcher, led the way with clutch hurling and a three-run double in the all-important sixth. Also chipping in were Chris "the Phoenix Phlash" Johnson, and Bill Crenshaw, playing with severe pain dogging every step.

Commissioner-Manager Dickerson Downing ("Sam" to his friends) turned a brilliant double play for the game's fielding gem, and then proclaimed with new vigor that he was grizzled veteran manager Gordon Hylton's better at second base.

Reflecting thoughtfully on the loss that threw *B Division* into a 3-way tie for first was Real A's star pitcher, Bruce Williamson, whose home-run heroics were not enough. "They stunk before the game, they stunk during it, and they still stink. And Moffett nevers hits that big double except that he cheated; he hypnotized me out there and that's against the law."

Gleefully noting that Williamson "got his," scholarly Dominic Pugliese quoted Will Shakespeare himself: "They that . . . pitch will be defiled."

Mud Hens Clinch; Face Men, Too

Despite some surprisingly close contests, the Mud Hens turned in a 7-0 slate to take the regular season in *C Division*. Always the cautious optimist, manager Chet "the Jewish Greyhound" Hurwitz refuses to make his Mud Hens anything more than one of the co-favorites in the playoffs. Nonetheless, the recent heroics of Mitch "the Yonkers Trotter" Segal, Steve "I'm not as dumb as I think" Williams, and Dave "the Jewish Secretariat" Markell cannot be ignored.

Hurwitz admits to one concern alone: the fielding of the Red Threat himself, Don "Man O' War" Switzer. The redoubtable redhead redneck could become the Arnie Albert of *C Division*, a veritable Christian Jewish Race Horse.

Steady Mike Curry, the Nature Boy, scoffed at Hurwitz's caution. "Hell, we gonna win it all, ain't no two ways about it and anyone who says it ain't so's gonna hafta answer to me. And Williams. We're going all the way. Whoo!"

Barring upsets, the much-maligned Face Men are in a pretty position to nail down the second playoff berth in *Division C*. Saturday action saw pitcher Mike Harman, the North Grounds' Thurman Munson, work wonders with a weary wing as he hurled 22-0 and 6-0 whitewashes. Bob Duchen, or perhaps Tom Duchen, went 8 for 8 to cop offensive honors, while Jack Harvey's magnetic mitt kept the Facers' third sack secure.

When the fence-busting Powerhouse A's showed up for their showdown against the Amazin' Cavs to decide *Division A*, they were stunned to find that a woodsman's axe had moved the boundaries back in left. Home Run Haven in left had been trimmed of its tricky trees, "for the sake of competition," according to stadium architect and A's manager Fred Vogel.

Enraged sluggers John "Jack-it-out" Guyer, Joltin' Jay Yano, Boomer Bob Barry and others promptly performed as the Princes of Popup.

It was Fred "the Power Behind The Throne" Vogel's two-out, 7th inning solo homer to right that provided the game-winning run.

Despite Vogel's circuit, the game went down to the wire. The Cavs had the winning run on base when Gary Goldberger, the Jewish Tris Speaker, made a diving, rolling, circus catch to end the game. Goldberger said, "I went for the ball knowing Jay (Yano) would back me up. I must have dove for it, I got it in my glove as I slid, and managed to regrab it after I hit my shoulder . . . or so they told me. Clearly I caught it; that's why I didn't throw it."

Bullets, Paisanos Battle For First

With each team sporting a perfect 6-0 record, the powerful Paisanos and mercurial Bullets prepared to go at it for all the *D Division* marbles. Mike "Proudfather" O'Rourke and Tobin "I run 'em all out" Harvey were prepared to face Dave 'Tobacco Road" Pettit and the rest of the Super Wops in the game of their lives. The Bullets prevailed 16-6, in a game highlighted by two tremendous home runs by Charlie "Pistol" Piot and the pin-point pitching of Larry Childs.

Business "Section A" Takes Pansy Prize

A squad whose name is surpassed in ennui only by its play, the Business Section A team edged the classy-chassis A Few Cold Beers for the regular season *S* championship. It is doubtful, however, that unimaginative cheers like "hubba-hubba" will carry Wilkerson's Wimps through the playoffs.

Look for the strong pitching of the Beers or the inside baseball savvy of Bergin's Hard Ballers to prevail. With a volpine umpiring corps from the class of '77, Trace "the Ace" Thompson could lead even her liberated Class Action to the title, perhaps enshrining Hondo Hughes in the Hall of Fame in the process.

Legal Research Group Picks New Managing Board Of Six

The Virginia Legal Research Group recently announced the selection of its new Managing Board.

New members of the Managing Board, who were selected by last year's Board, are President, Carl F. Ameringer (Franklin and Marshall College, A.B., 1975); Executive Director, Richard Oberschmidt (Miami, B.A., 1975); and Writing Directors Mindy R. Silverman (Stanford, A.B., 1975), Ann L. Schreiber (Duke, B.A., 1975), James C. Joyce, Jr. (Wofford College, B.A., 1975), and Katharine I. Crost (Michigan State, Bachelor of Music, 1974).

The VLRG is a non-profit student organization which researchers and prepares legal memoranda for attorneys practicing throughout the United States. Members gain practical experience by researching and analyzing problems submitted by attorney who wish to take advantage of the wide variety of resources available at the law school library.

Meetings and consultation with experienced writing directors are designed to enhance writing skills acquired in the first year of law school, and thereby better prepare new members for research assignments with law firms during the summer.

Thirty new members were selected earlier this year on the basis of a citation test and a closed memo. The new Board expects to select approximately the same number next yaer.

Wenger . . .

(Conitinued from Page 3)

the benefits of an experienced staff, Wenger likes the idea of hiring new people, in whom he can instill his own views on law school operations.

Wenger is also happy with the Charlottesville area, and feels that his family has made the move from Buffalo to Virginia with few problems.

Rusk . . .

(Continued from Page 1)

policy in subjunctive terms. Added to this basic difficulty. Rusk continued, is the fact that our government is one of the most complex in the world.

Rusk said that the Secretary of State runs on four engines: his relationship with the President, with the Congress, with the State Department, and with the press and public opinion. If any of these engines break down, it becomes difficult to talk with foreign countries. The U.S. can be very slow to agree, yet be very "muscle-bound" in negotiations, because of a basic reluctance to make another decision by going through the entire policy-making process a second time.

Endorses Human Rights Commitment

After these remarks, Rusk turned to the recent breakdown of the Vance mission to the Soviet Union. Noting that "it would be entirely appropriate for the United States to affirm its commitment to human rights," he expressed pleasure "that we are overcoming a double standard in this field." For too long, Rusk stated, we had complained about violation of human rights in such countries as Chile and Greece but had trod softly on the USSR and China.

Rusk acknowledged the possibility that the brusqueness of the Soviet reply to the SALT proposals might have ben influenced by the rights issue, because "these ideas of Thomas Jefferson could be the most lethal threat to their system." However, Rusk said, another answer might be that the Soviets may not feel pressed to negotiate on the arms race, believing that they can augment their arms supply for some time before we rejoin the race.

In conclusion, Rusk warned that the U.S. should not become too self-righteous or pious on the issue of human rights. He pointed out that only fifteen years ago, a black ambassador from a foreign country was denied service in an American airport because of his race.

Past, Future Policies Examined

After his speech, Rusk answered questions from the audience. Speaking of the State Department, he emphasized the dedication and effectiveness of its professional officials.

When asked about the Central Intelligence Agency (CIA), Rusk said that the CIA needs a watchdog, and went on to say that both the FBI and CIA Directors should have limited terms of office to avoid institutionalizing their offices.

On Africa, Rusk said, "I could say that the battle for Africa has opened; and the West is indifferent." At the same time, he believes that black leaders in Africa are "curiously impervious" to penetration by foreign ideologies.

Reflecting upon the Vietnam war, the former Secretary refused to blame either President Kennedy or President Johnson. Having been offered to write a "mea culpa" on the war, he has declined to do so. Rusk said, however, that he felt the Gulf of Tonkin Resolution should have been presented to Congress each year for renewal.

Rusk also commented that, in situations such as the Mideast, Northern Ireland, and India-Pakistan, there are never any easy solutions. "Where you get two sides coming to the negotiating table believing that they speak for God", he said, "you have a very difficult situation."

At the conclusion of his appearance, Rusk was the guest of honor at a reception held by the Student Legal Forum in the Colonnade Hotel.