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Employer's Liability for Unauthorized Administration of an AIDs Test and Disclosure of the Results, 21 J. Marshall L. Rev. 937 (1988)

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SIXTH ANNUAL JOHN MARSHALL NATIONAL MOOT COURT COMPETITION*

EMPLOYER'S LIABILITY FOR UNAUTHORIZED ADMINISTRATION OF AN AIDS TEST AND DISCLOSURE OF THE RESULTS

The John Marshall Law School was once again proud of the participants in this year's John Marshall (formerly Benton) National Moot Court Competition. The Law School gratefully acknowledges the generous contribution of the Belle R. and Joseph H. Braun Fund in support of this year's Competition. The Law School also gratefully acknowledges the contributions by the Benton Foundation over the past five years. That long-term support, an exception to the Foundation's general policy, made it possible to establish this high quality competition.

The prize-winning briefs published here exemplify the hard work and commitment of the teams from 34 law schools throughout the country. The Marshall-Wythe School of Law of the College of William and Mary received the best brief award for the petitioner, and Cleveland-Marshall College of Law of Cleveland State University wrote the best brief for respondent. Marshall-Wythe was represented by L. Lee Byrd, Yvonne T. Griffin, and G. Rodney Young, II. Cleveland-Marshall, which also won first place in the overall Competition, was represented by Matthew W. Nakon, Laura J. Steffe, and Steven R. Yoo. Mr. Young of Marshall-Wythe won the award as best oralist.

The problem posed whether an employer may be held liable for invasion of privacy for testing an employee's blood, obtained during a work-related physical examination, for the presence of AIDS an-

* The John Marshall (formerly Benton) National Moot Court Competition briefs which follow are printed here as they were submitted. Except for a few, obvious typographical errors, no changes have been made and no editing has been done.

tibodies without notifying the employee that this test would be performed. Also, is an employer liable for invading an employee's privacy by disclosing to other businesspersons the fact that the employee tested positive for the AIDS virus? Neither of these issues has yet been resolved by the courts, and both present viable tort liability exposure to employers today.

As in prior competitions, each participating school submitted a brief on behalf of either the petitioner or respondent. Three reviewers, each of whom was either a faculty member or an experienced practitioner, independently graded each brief. A brief's total score was the average of the grades given by the three reviewers. Because our competition emphasizes research and writing, the brief represented 50% of the score awarded to teams in each round; the remaining 50% was awarded for performance in the oral argument. The oral argument score was the average of the total points awarded by each of the judges of the argument.

The oral competition, in which representatives of 34 schools participated, consisted of two preliminary rounds, an octo-final, quarter, semi-final, and final round. Participants argued both sides of the case and competed against different schools in each preliminary round of the argument. Sixteen teams with the highest aggregate oral and brief scores argued in the octo-final rounds; eight teams with the highest aggregate scores advanced to the quarter final rounds; four teams with the highest aggregate scores went to the semi-final rounds; and the two top teams competed in the final argument.

Once again, our outstanding judges enhanced the quality of the Competition. Judges for the 1987 Competition were:

FINAL ROUND

- Honorable Shirley S. Abrahamson
Justice of the Wisconsin Supreme Court, presiding
- Honorable James H. Brickley
Justice of the Michigan Supreme Court
- Honorable Walter J. Cummings
Judge of the United States Court of Appeals
Seventh Circuit
- Honorable Charles R. Norgle
Judge of the United States District Court
- Honorable Alfred J. Pivarnik
Justice of the Indiana Supreme Court

SEMI-FINAL ROUND

- Honorable W. W. Renoldson

Chief Justice of the Iowa Supreme Court (Retired), presiding
Honorable M. Jeanne Coyne
Justice of the Minnesota Supreme Court
Honorable Michael A. Bilandic
Justice of the Appellate Court of Illinois

QUARTER-FINAL ROUND

Honorable James Craven
Justice of the Appellate Court of Illinois (Retired), presiding
Honorable Lawrence D. Inglis
Justice of the Appellate Court of Illinois
Honorable Daniel J. McNamara
Justice of the Appellate Court of Illinois, presiding
Honorable Stephen A. Schiller
Judge of the Circuit Court of Cook County
Dean Leonard Mandell
Northern Illinois University School of Law
Professor Michael L. Closen
The John Marshall Law School

To all of our judges, we give our heartfelt thanks.

The enormous success of the John Marshall National Moot Court Competition could not be realized without the National Moot Court Committee's able administration: Professor Ardath A. Hamann, Competition Coordinator; Associate Dean Helen M. Thatcher; Professor Ralph Ruebner; Professor Michael P. Seng; Mr. David J. Kupets, Chief Justice, Moot Court Executive Board; and, Mr. Edwin R. Cummings, Executive Justice, Moot Court Executive Board. As the Committee Chairperson, I thank each of them for their unrewarded sacrifices. Also, special thanks to the Moot Court Executive Board associate justices and a host of John Marshall Law School students who contributed to the Competition's success.

George B. Trubow**

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