**No. 25956** ***Jody M. Stevens v. West Virginia Institute of Technology and/or West Virginia Institute of Technology and Montgomery General Hospital, Inc.***

**FILED**
**July 13, 2000**
DEBORAH L. McHENRY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**RELEASED**
**July 14, 2000**
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

McGraw, J., concurring in part, and dissenting in part:

While I concur with the majority decision to reverse the grant of summary judgment with respect to the hospital, I would have also overturned the grant of summary judgment in favor of West Virginia Institute of Technology.

As the majority states correctly, "[a] motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." Syl. pt. 3, *Aetna Casualty & Sur. Co. v. Federal Ins. Co. of New York*, 148 W. Va. 160, 133 S.E.2d 770 (1963).

In this case, I believe that further inquiry concerning the facts would have been desirable with regard to WVIT's conduct. Though it might eventually be discovered that the equipment was in satisfactory repair and that the plaintiff brought this accident upon herself, we do not know enough, in my view, to make such a finding.

The equipment might have been in extreme disrepair such that it constituted negligence on the part of WVIT to make it available to students. A piece of sporting equipment, made available to

students to take down and set up on their own, which produced a laceration to the bone in the normal course of its operation, suggests that WVIT may well have been negligent in this case. We simply do not have enough information to allow the grant of summary judgment to stand. Therefore, I must respectfully dissent.

I am authorized to state that Judge Risovich joins in this separate opinion.