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1989-90: Institute of Bill of Rights Law (Schedule of Activities)

Institute of Bill of Rights Law at the William & Mary Law School

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1989-90

INSTITUTE OF BILL OF RIGHTS LAW

EVENTS

Student Division of Institute of Bill of Rights Law
"Ribbon Cutting"
September 21, Thursday

George Wythe Lecture -- "Spies, Subversives, Terrorists and the British Government: Free Speech and Other Casualties" presented by Professor Graham Zellick, Faculty of Law, Queen Mary College, University of London
September 21, Thursday

The Institute Hosts the Anglo-American Exchange:
A Moot Court on National Security and Free Speech
September 23, Saturday

Supreme Court Preview: What to Expect from the 1989-90 Term
October 20 and 21, Friday and Saturday

Judges Seminar on the Individual Freedom and the State: A Program of the National Judicial College, National Center for State Courts, and Institute of Bill of Rights Law (for judges only)
December 7 - 9

Constitutional Issues Posed by the War on Drugs: First Annual Institute of Bill of Rights Law Student Division Symposium
February 16 and 17, Friday and Saturday

Winds of Change: International Perspectives on the Evolution of Democracy, Human Rights, and the Rule of Law
March 19 - 23

Seventh Annual Bill of Rights Symposium: Freedom of Speech and the Problem of Racial, Sexual, and Religious Harassment
April 5, Thursday

TASK FORCE SERIES INITIATIVES BEGINNING IN 1989-90

Task Force on the Drug-Free Workplace.

Winds of Change: Task Force on International Perspectives on the Evolution of Democracy, Human Rights, and the Rule of Law.

Task Force on Elected Branch Influences in Constitutional Decisionmaking.

FUTURE ACTIVITIES & EVENTS 1990-91

Black Journalism: A Conference Marking the Publication of Wallace Terry's History of Black Journalists in America. (Planned for fall 1990.)

Task Force on the Improvement of Elementary and Secondary Instruction on Constitutional Issues. (Planned for 1990 pending funding.)

The Institute encourages suggestions from students, scholars, alumni, and members of the public on topics for future programs, publications, and task forces, as well as suggestions on joint sponsorship of activities with other organizations, and on funding sources for the pursuit of its projects.

1989-90
INSTITUTE OF BILL OF RIGHTS LAW
DETAILED SCHEDULE OF ACTIVITIES

Institute of Bill of Rights Law Student Division "Ribbon Cutting." Thursday, September 21, 5:00 p.m.

This is the inaugural of the new Student Division of the Institute. The Student Division will sponsor speakers, panel discussions, field trips, and other events throughout the school year on constitutional law and public policy topics. The work of the Student Division will culminate each year in an annual student symposium, which will include publication of student articles focusing on the annual student symposium topic.

George Wythe Lecture. Thursday, September 21, 7:00 p.m.

Professor Graham Zellick of the Faculty of Law, Queen Mary College, University of London, will deliver this year's Wythe Lecture, which will be published in the William and Mary Law Review. The title of his address is: "Spies, Subversives, Terrorists and the British Government: Free Speech and Other Casualties."

The Institute Hosts the Anglo-American Exchange: A Moot Court on National Security and Free Speech. Saturday, September 23, 10:00 a.m. to Noon.

On this Saturday Morning the Institute will serve as host to the "Anglo-American Exchange," a distinguished group of British and American jurists and lawyers. The members of the Exchange on the American side will be United States Supreme Court Justices Sandra Day O'Connor and Anthony Kennedy, Judge Clifford Wallace of the U.S. Court of Appeals for the 9th Circuit, Chief Justice Ellen Peters of the Connecticut Supreme Court, Paul Verkuil, President of the College of William and Mary, M. Bernard Aidinoff of Sullivan and Cromwell in New York, Morris Harrell of Locke, Purnell, Rain, & Harrell of Dallas, and Phillip Tone of Jenner and Block in Chicago (and former Judge on the U.S. Court of Appeals for the Seventh Circuit). The members on the British side will include two members of the House of Lords, The Right Honorable Lord (Nigel) Bridge of Harwich and The Right Honorable Lord (Hugh) Griffiths, The Honorable Mr. Justice Peter Webster of the Queen's Bench Division of the High Court, Sir Gordon Slynn, the British Judge at the Court of Justice of the European Communities in Luxembourg, Michael Hawthorne, a District and County Court Registrar, George Staple, solicitor and partner in Messrs. Clifford, Chance, Nigel Wilkinson, a practicing barrister, and Thomas Legg, Permanent Secretary and Clerk to the Crown in Chancery, Lord Chancellor's Department. The live audience will consist of William and Mary law students, faculty, and guests.

The Institute will stage a "Moot Court" presentation, in which a hypothetical case involving national security and free speech will be argued twice, once under American law, with all members of the Exchange sitting as the U.S. Supreme Court, and then a second time under British law, with all members sitting as the House of Lords. The case will involve efforts by the American and British governments to suppress publication of a book written by two former American and British spies, on the grounds that publication would threaten national security. Four oral advocates will make 25-minute presentations: (1) Floyd Abrams. Mr. Abrams is, in the eyes of many, the premier First Amendment lawyer in the United States; he has argued more freedom of press cases before the Supreme Court than any other attorney in history, including The Pentagon Papers Case, which involved an attempt to enjoin publication of documents about American involvement in Vietnam. (2) Professor Graham Zellick, of

the Faculty of Law of Queen Mary College, University of London. Professor Zellick, who will also be delivering the Wythe Lecture during his visit to William and Mary, is an expert on British law involving free speech and national security, including the highly publicized Spycatcher controversy. (3) Anthony Davis. Mr. Davis is a member of the London firm Berwin Leighton, and currently works in the firm's New York office. He is an expert on both American and English media law. (4) Professor Rodney Smolla. Professor Smolla is Cutler Professor of Constitutional Law and Director of the Institute; he writes and speaks extensively on the First Amendment. The presentations, which will include questions by the judges, will be followed by a brief announcement of the "results" by both "Courts."

Supreme Court Preview: What to Expect from the 1989-90 Term. Friday, October 20, 9:00 a.m. to 5:00 p.m., and Saturday, October 21, 9:30 a.m. to Noon.

Decisions of the Supreme Court on abortion, flag-burning, drug-testing, affirmative action, sex discrimination, and governmental use of religious symbols were headline news this year. The upcoming Supreme Court term promises to be equally controversial. This second annual Supreme Court Preview will analyze the most significant cases on the Court's upcoming docket, in a lively and spontaneous "press conference" format involving the top journalists in the country who regularly cover the Court, and a group of prominent legal scholars from around the nation.

Among the participating journalists will be Linda Greenhouse of The New York Times, Nat Hentoff of The Village Voice, David Savage of The Los Angeles Times, Steve Wermeil of The Wall Street Journal, Fred Graham, formerly of The New York Times and CBS News, Stuart Taylor, Jr., of The American Lawyer, Karen Horwatt a third-year William and Mary law student from The Advocate, the student newspaper, Al Kamen of The Washington Post, and Lyle Denniston of The Baltimore Sun. Legal scholars will include Bruce Fein, Walter Dellinger (Duke), Lea Brillmayer (Yale), Steven Shiffrin (Cornell), Suzanna Sherry (Minnesota), Linda Fitzpatrick (Washington), and Neal Devins (William and Mary). Rod Smolla, Director of the Institute, will moderate.

This program is specifically designed to make the Court's decisions more accessible to journalists and editors around the nation, in the hope of encouraging thoughtful reporting and editorial perspectives on cases as they are argued and decided. Because most Americans get their knowledge of Supreme Court opinions from press coverage, this program also serves to vindicate the Institute's efforts to serve public education on constitutional issues, by encouraging journalism of greater depth and understanding. While targeted toward journalists and editors, the Supreme Court Preview Program is also intended as an educational experience for William and Mary law students, and the general public.

Judges Seminar on the Individual Freedom and the State: A Program of the National Judicial College, National Center for State Courts, and Institute of Bill of Rights Law. Thursday through Saturday, December 7-9.

This program, exclusively for judges, is a joint venture conducted by the National Judicial College, the National Center for State Courts, and the Institute. It is a legal philosophy and constitutional law seminar exploring the ongoing conflict between the values of individual autonomy and communitarian social control. The seminar will explore this conflict in the context of modern cases involving freedom of speech and religion, the right to privacy, and equality. The faculty will consist of Professor Rod Smolla, Director of the Institute, Justice Rosemary Barkett of the Supreme Court of

Florida, Judge Lawrence Waddington of the Superior Court, Santa Monica, California, and Thomas Russell, Associate Dean of the National Judicial College.

First Annual Institute of Bill of Rights Law Student Division Symposium: Constitutional Issues Posed by the War on Drugs. Friday and Saturday, February 16 and 17.

This symposium will be planned and administered by the Student Division of the Institute. It will include student participants from law schools throughout the region. The symposium will feature speakers, panel discussions, role-play exercises, debates, and other presentations focusing on a wide variety of constitutional issues posed by the war on drugs, including privacy, search and seizure, impoundment statutes, the death penalty, and the use of military forces to perform civilian police functions. Student articles and other student papers generated by the symposium will be edited and collected by the Student Division Editorial Board for a book-length publication on the constitutional and public policy issues posed by the assault on drug use in America.

Winds of Change: International Perspectives on the Evolution of Democracy, Human Rights, and the Rule of Law. Monday through Friday, March 19-23.

This week of events focusing on international perspectives on the evolution of democracy, human rights, and the rule of law will be conducted in cooperation with the International Law Society at the William and Mary School of Law. The Institute-sponsored events during this week will be part of the larger "Winds of Change" task force being sponsored by the Institute. During this week, the first two major scholarly papers being commissioned by the Institute as part of this task force will be presented. A paper will be presented by Professor Jorge Rodriguez-Zapata, Universidad Nacional de Educación a Distancia, Madrid. Professor Zapata was instrumental in the drafting of the Spanish Constitution, and is Spain's leading constitutional scholar. A paper will also be presented by Professor Alemene Selassie, of the William and Mary School of Law. Professor Selassie, a native of Ethiopia, will explore, from the perspective of the Ethiopian experience, the questions of the evolution of democracy, human rights, and rule of law.

Seventh Annual Bill of Rights Symposium: Freedom of Speech and the Problem of Racial, Sexual, and Religious Harassment. Thursday, April 5.

In all of modern constitutional law, there are few conflicts as wrenching as the inherent tension between the free speech values of the First Amendment and the values of human dignity, tolerance, and equality embodied in many other provisions of the Constitution. Most Americans of good will are committed to racial and sexual equality, and to tolerance and respect for members of other religious, ethnic, and racial groups. Yet those ideals of tolerance and equality often come into collision with one of the central edicts of the First Amendment: that government should not censor speech on the basis of its message, even if it is repugnant to prevailing sensibilities. The Seventh Annual Symposium will explore this conflict from a variety of perspectives, commissioning the preparation of four major articles on the subject for the William and Mary Law Review. The four authors will come together, with others, for an evening of discussion and debate on the topic on Thursday evening, April 5, at 7:00 p.m.

TASK FORCE SERIES

INSTITUTE OF BILL OF RIGHTS LAW

To encourage thoughtful and creative solutions to contemporary constitutional and public policy issues, the Institute of Bill of Rights Law is undertaking the sponsorship of a series of task forces over the next three years, to bring together persons from a variety of disciplines and professions to study issues of current significance and to issue reports and other appropriate publications recommending policy options and solutions to these problems. The first three of these task forces listed below will begin actual operation in 1989-90 academic year.

Task Force on the Drug-Free Workplace.

This task force will be chaired by Professor Paul Marcus of the University of Arizona College of Law. Professor Marcus is former Dean of the University of Arizona College of Law, and a prominent national expert on criminal law and procedure. The task force will examine legal and policy issues surrounding the national effort to achieve a "Drug-Free Workplace" in the public and private sectors. Bringing together members of various constituencies, including corporate management, organized labor, public health experts, law enforcement officials, and others, this Task Force will study the legal and policy conflicts posed by efforts to eliminate drug use in the workplace, including possible model legislation setting forth fair procedures governing the rights of employers and employees.

Winds of Change: Task Force on International Perspectives on the Evolution of Democracy, Human Rights, and the Rule of Law

This task force will study, from an international perspective, the evolution of basic notions of democratic participation in government, respect for human rights, and acceptance of the rule of law. The task force will bring together scholars from around the world to reflect upon recent changes in their own nations and across the globe, for the purpose of generating greater international understanding and creative thought concerning the processes that lead to stable and open democracies. The project will produce public presentations and scholarly publications on these issues, culminating in a book collecting the efforts of scholars from around the world.

This is a propitious time for encouraging an international, multi-disciplinary effort by serious scholars to reflect upon the global struggle for stable but free societies. The questions that the Institute of Bill of Rights Law wishes to challenge scholars to contemplate are the oldest and most profound questions of law, social organization, and politics. The questions are not new. But they are not irrelevant--they remain, indeed the most relevant of all--and this is a crucial time in world history to encourage deliberate international contemplation of them. Winds of change have been swirling across the globe in recent years, restless winds of democracy, self-determination, and openness, stirrings that cross international borders and cultural traditions, as the peoples of the world begin to assert entitlements to the enjoyment of fundamental human rights. The Soviet Union is in the midst of an extraordinary experiment with Glasnost and Perestroika. The Western European community is undergoing a renaissance of economic open markets, cultural tolerance and pluralism, and

enforcement of International Law norms of human dignity, such as the guarantees set forth in the International Declaration of Human Rights. Eastern European nations are experiencing movements toward greater democracy and openness parallel to those of the Soviet Union and Western Europe. Poland, for example, witnessed the remarkable process of elections in which the once-banned Solidarity Trade Union was an open, vigorous, and successful participant. One of the earliest success stories in this global movement came in the Philippines, in which the corrupt and tyrannical Marcos regime was forced to give way to the reform government of Corizon Aquino, the widow of an exiled dissident murdered upon his return to the Philippines by the very regime she replaced.

These incipient stirrings of change have not always been successful. In Panama, the process of open elections was sabotaged by a brazen exercise of force by Manuel Noriega. In Ethiopia, years of civil war and a recent coup attempt have not managed to displace the cruel reign of terror of President Mengistu. And in events that have held center-stage for the world, the Chinese government, after weeks of gentle tolerance for student demonstrations calling for democratic reforms, brutally crushed the protests, and began a program of countermeasures dominated by violent purges and censorship.

Why are democratic movements successful in some nations and not in others? Why are elemental notions of human rights--free expression, security from political persecution, observance of religious tolerance, and racial and ethnic equality, freedom from torture, safety against arbitrary criminal search, seizure, and arrest--able to take root and flourish in some nations, but not in others? Is the experience of every culture unique, or are there lessons that the peoples of the world can learn from one another? Do nations with long traditions of respect for human rights have something to contribute to the evolution of those values world-wide, or are those established traditions viewed with contempt by nations in flux, as paternalistic or condescending efforts to impose legal and social norms irrelevant to the indigenous patterns of life of other nations? Are there any necessary cultural or economic preconditions to democracy and respect for civil liberties? Or are the successes of those values in any given nation largely random and accidental, so much wrapped-up in the unique history of that nation as to not be "suitable for export?" The "Winds of Change" task force will explore these questions and compile a book representing the views of scholars from around the globe upon them.

Task Force on Elected Branch Influences in Constitutional Decisionmaking

This task force will be jointly directed by Professor Neal Devins of the William and Mary School of Law, and Louis Fisher, Senior Specialist at the Congressional Research Service, and Acting Director of the Center for Interbranch Relations at the College of William and Mary. Neal Devins is a prolific and highly regarded constitutional scholar, who has written widely on interbranch decisionmaking. Louis Fisher, one of the premier authorities in the United States on separation of powers, has written many influential books and articles on the subject, and has been a frequent consultant to congressional committees, including the Iran-Contra Committee, for which, as Research Director he drafted major portions of the Committee's Final Report.

The task force will explore the nature and propriety of non-judicial influences on constitutional decisionmaking. It will include current and former members of Congress,

the executive branch, and the judiciary, as well as leading academics. Professors Devins and Fisher intend to produce a book encompassing the results of the task force and their own research.

Task Force on the Improvement of Elementary and Secondary Instruction on Constitutional Issues

American students must have meaningful and vibrant educational experiences concerning the nature of our constitutional government if they are to be engaged as thoughtful contributing citizens in the ongoing American process of democratic self-governance. The coming century poses challenges to the next generation of Americans as acute as any in our history. Our students must have more than scientific, technical competence in grappling with the public policy issues of the future. They must have a sense of the civic public values that have evolved under our constitutional tradition, values concerning citizen involvement and participation, elemental notions of fairness and due process, the ideals of racial and sexual equality, religious tolerance, individual privacy, freedom of speech and conscience, and the healthy tension in the contrasting roles of legislators, executives, judges, and the electorate in the formulation of public policy.

If our students are to creatively and humanely resolve conflicts posed by developing new technologies, changes in demographics and population shifts, threats posed by drugs, crime, and urban decay, dislocations in the economy, and the constantly evolving economic and foreign policy position of the United States, then they must understand that our constitutional heritage is much deeper than memorizing passages from the Declaration of Independence, the Preamble to the Constitution, the Bill of Rights, or the Gettysburg Address. They must rather understand the constant tug and pull of democracy, the never-ending conflict between the basic concept that "the majority rules" and the concept that certain basic constitutional rights are protected even against the will of the majority, and that consensus and resolution of fundamental issues in our national life often come only after years of wrenching struggle. In all of this, they must come to appreciate the Constitution not out of superficial rote patriotism, but out of a genuine sense of the remarkable resiliency of the Constitution as a system for peacefully working through the difficult balances that must constantly be struck in a complicated, pluralistic, robust and ever changing nation.

This task force will explore means of accomplishing these objectives, means of seeking to insure that students will be excited by the materials and methods of instruction. The great questions posed by the Constitution must become more than formulas and platitudes; they must come alive. The constitutional past and future must be mediated: through role-play simulations, discussions, debates, essays, research papers, readings, films, computer-assisted instruction, and other techniques, students must have a sense of participation in the resolution of constitutional conflicts--for earnest, energetic, thoughtful participation is the ultimate ingredient to a successful democracy.

As an event related to this education task force effort, the Institute will be presenting its first Distinguished Public Service Award to Ms. Mary Bicouvaris, a social studies teacher from Bethel High School, in Hampton, Virginia, who received the National Teacher of the Year Award in 1989 for her teaching in the area of the American Constitution and Bill of Rights.