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## Law School Passed Trials of War, Funds, Public Apathy

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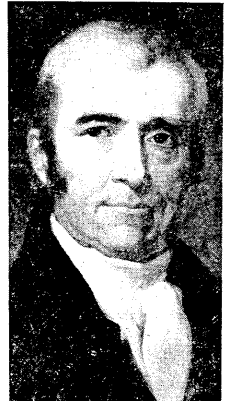
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George Wythe: Traditional View



Marshall-Wythe Law School Moved Into Former Library Building in 1967



John Marshall: Student of Wythe

# Law School Passed Trials Of War, Funds, Public Apathy

By Willford Kale

*Times-Dispatch Staff Writer*  
**WILLIAMSBURG**—The law is still being taught at the College of William and Mary 200 years after it was initiated in 1776, but the intervening two centuries have not been without problems, crisis and even threats of dissolution.

What began as a bright concept of Thomas Jefferson, then governor of Virginia, was nurtured by the legendary George Wythe, Jefferson's law teacher and one of the most able lawyers of Colonial times; St. George Tucker, his successor, and a host of other lawyer-educators including Dr. Dudley Warner Woodbridge.

Like William and Mary itself, the study of law has suffered the trials and tribulations of war, a lack of finances and public apathy.

**YESTERDAY, HOWEVER,** state officials, national legal authorities and prominent jurists, including U.S. Supreme Court Chief Justice Warren E. Burger and Virginia Supreme Court Chief Justice Lawrence W. Addison, an alumnus of William and Mary, gathered on campus to honor the college's Marshall-Wythe School of Law. The ceremony commemorated Law Day 1979 with a cornerstone-laying for the \$5 million-plus new building and the observance of the 200th anniversary of the founding of the nation's first chair of law.

In no way was there an attempt by college officials to lay claim that William and Mary's law school was celebrating the 200th birthday, but rather that the biennial occasion was an observance for the antecedent chair and the fact that law was taught on the William and Mary campus, beginning in 1776, a first for any American college.

During Colonial days, the only preparation for the bar in America was to study with some practicing attorney, or, for those extremely fortunate young men with unlimited finances, a trip to England and training at London in the Inns of Court. For people like Jefferson, study was with a practitioner. In his case, it was Wythe, who lived in Williamsburg. After

attending William and Mary from 1769-62, Jefferson began a five-year study of the law with Wythe.

**JEFFERSON'S ASSOCIATION** and friendship with Wythe lasted a lifetime, and it was that admiration that Jefferson had for his mentor that materialized 17 years later. In his autobiography, Jefferson wrote:

"On the 1st of June, 1778, I was elected Governor of the Commonwealth and retired from the Legislature. Being elected also one of the visitors of William and Mary College, a self-selecting body, I effected, during my residence in Williamsburg that year, a change in the organization of that institution, by abolishing the grammar school and the two professorships of divinity and the Oriental languages and substituting a professorship of law and police, one of anatomy, medicine and chemistry and one of modern languages; and the charter confining us to six professorships, we added the law of nature and nations and the fine arts, to the duties of the moral professor and natural history to those of the professor of mathematics and natural philosophy."

The Board of Visitors approved the changes—now known as the Jeffersonian reorganization—on Dec. 4, 1778.

A careful view of the college after that time shows that Jefferson had introduced the first distinctively modern currents into the curriculum, making William and Mary the nation's first college to gain university status, the first with an honor system, the first with an elective system of study, the first with a professorship that included the teaching of fine arts, and, of course, the nation's first professorship of law.

Less than a month later, on Dec. 28, the same Board of Visitors approved Wythe, Jefferson's friend and teacher whom he styled as the "American Aristides," as law professor. Wythe was among those Virginians who, with Jefferson three years earlier, had signed the Declaration of Independence.

## IN ACCEPTING THE POSITION,

Wythe charted a new course for American legal education, away from the tutorial law office and into the college classroom. Historical records show that Wythe's course was both thorough and practical and based on Blackstone's "Commentaries" as a textbook, with lectures that explained the differences between English and Virginia law.

A student, R.H. Lee, in 1780 in a letter to his brother Arthur Lee, said that Wythe was a professor who discharged his duties "with wonderful ability, both as to theory and practice."

During his 10 years as professor, until 1789, when he was named sole chancellor of the High Court of Chancery in Richmond, he trained at William and Mary a future president, James Monroe, a future chief justice, John Marshall, and his own successor as professor of law and police, St. George Tucker. These students had a significant impact on law and government in their state and in the nation.

Wythe's chair of law was second in the English-speaking world only to Oxford's, which was founded in 1753 with Blackstone as professor.

Tucker was to continue Wythe's significant contributions with one of his own—an American edition of Blackstone's "Commentaries," which would become an invaluable reference for students and lawyers alike.

In 1792, under Tucker, William and Mary became the first college to require a bachelor of arts degree as a condition for a law degree.

Tucker held the professorship until 1804 and was followed by William Nelson, Robert Nelson, James Semple and in 1833 by Beverly Tucker. Historians say that Beverly Tucker was an "extreme advocate of states' rights and a disciple of the old order. His published letters on pleading are as entertaining as a novel."

**OTHER EARLY PROFESSORS** of law at William and Mary were Judge Scarborough, Lucian Minor and Charles Morris, who acted in the capacity until 1861-62, when Virginia and the college became embroiled in the Civil War.

Theodore S. Cox, dean of the Department of Jurisprudence in 1942, wrote then a bright account of the traditions of law at the college. He noted that the study of law flourished from the beginning at William and Mary "and those alumni who gained their legal education here are numbered among the greatest names associated with the college."

During difficult times at William and Mary, such as 1847-48, Cox said the law school was the only department to function and from 1779 to 1861 its continuity was unbroken, which cannot be said for other professorships. During the years 1848-49, 1850-51 and 1855-56, the law degree was the only one conferred. In 1866 three degrees in law were conferred, the last until 1924.

Col. Benjamin S. Fwell, college president, who reopened William and Mary after the war, found it impossible to

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Naming of William B. Spong as Dean Boosted Prestige

# Law School Passed Trials of War, Finances, Apathy

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retain a complete faculty. At that time, Ewell granted law professor Morris a leave of absence.

Cox, in his review of the school 37 years ago, contended that the re-establishment of the teaching of law at William and Mary in 1821-22 "appears merely to have been the revival of a subject, the teaching of which had been in abeyance as a result of its leave of absence, which had continued with the years."

Judge Oscar Lane Shewmake was the person primarily responsible for the revival of the study of law here. Then-president J. A. C. Chandler encouraged Shewmake, who was known for his encyclopedic knowledge and interests beyond the rudiments of law. Like Wythe, Shewmake's personality touched responses in his young students.

There were eight students in Shewmake's first class — including retired Federal District Judge Ted Dalton, father of Gov. John N. Dalton — and later all eight passed the state bar examination, a testimony to Shewmake's teaching skills.

According to those students, Shewmake taught four interrelated courses: English constitutional history and English constitutional law, in one semester, and American constitutional history and American constitutional law in the second semester.

**THE REVIVAL** of the law program was not without significant problems.

Almost from the outset of the Chandler-Shewmake efforts, there was opposition from some alumni who feared the law program would be an inferior one, "thus failing to perform a law school's duty to society and tend, thereby, to bring the college into disrepute," Cox wrote.

The opposition culminated in the mid-1820s with the introduction of a bill in the House of Delegates to abolish the law school. The bill was defeated, largely for economic reasons, after it was pointed out that the state would lose more than \$100,000 in endowments to William and Mary if the law school were abandoned.

"While the bill died, a report on the law school was authorized by the governor. The report, according to Cox, finally questioned "the maintenance of a law school among the state-supported institutions when the facilities at the University of Virginia produced instructional costs on a remarkably smaller scale."

Cox said he filed a report in January, 1838 with college officials that disputed the governor's study. In 1838, the Board of Visitors appointed its own special committee. Cox, who said he appeared before the committee in September, 1838, said he learned nothing from the committee's testimony of May 27th, when I was notified by the (college) president that the board had abolished the law degree.

A Richmond Times-Dispatch headline on Sunday, May 28, 1838, read: "Law Degree Discontinued at W. & M." and another paper's headline read: "No More Degrees in Law at W. & M., Board Determined." The Board of Visitors had decreed that after the 1838-39 session there would be no more degrees.

**THE VISITORS HAD DECIDED** to discontinue the law degree in the most mechanical fields of law and to merge the School of Jurisprudence with the Marshall-Wythe School of Government and Citizenship.



Prof. St. George Tucker

The end of degrees was determined, newspaper accounts said, because of the duplication of efforts between William and Mary and the University of Virginia.

**SHOUTS OF DISMAY** and even contempt for the Board of Visitors rose from alumni across the state. Newspapers were bombarded with letters to the editor, and the board was urged to rescind its action.

Under what was called "intense pressure," the visitors returned to Williamsburg on June 2 and decided to keep the law school and to develop it "in keeping with the traditions and prestige" of the college.

About 10 years later, the board authorized the law school to take the name Marshall-Wythe, after the first professor of law, and John Marshall, the famous U.S. chief justice and Wythe's most illustrious student.

In 1854, the law school had big plans. Not only was the school planning to move into more spacious quarters in Bryan Hall, a men's dormitory complex, but on Sept. 25, 1854, the law school planned day-long festivities honoring Marshall, Wythe and Blackstone and invited U.S. Chief Justice Roger Taney and Lord Goddard, the Lord Chief Justice of England, to attend.

**INVENTIONS WERE ALSO** extended to a host of state officials to join the national and international legal dignitaries. Earlier in the year, however, the U.S. Supreme Court, headed by Warren, had handed down its famous *Brown vs. Board of Education* decision to end classroom segregation, and Virginia leaders used the occasion to show their displeasure at the Warren Court action.

Gov. Thomas Stanley declined the invitation, joined by many other state leaders and officials. Lt. Gov. A. E. S. Stephens, a William and Mary alumnus and graduate of that first Shewmake law class, agreed to attend and represent Stanley. The ceremonies went on as planned.

In 1862 Dean Woodbridge, who had come to the college in 1827 as a professor of law and who had served the law school as dean since 1849, announced he would step down. Woodbridge had brought the law school from relative obscurity in the early 1840s into an era of competition with other small law schools across the country.

Known as a teacher more than as a dean, Woodbridge was cited in 1859 by *Life Magazine* as one of the eight best teachers in American colleges and universities. Woodbridge's law notes on the state bar examination were legendary, and it is said that scores of students were able to pass the requirements because of his cram course and notes.

The school continued to grow and in 1867 moved into larger quarters in the vacant library building and it was renamed the Marshall-Wythe building. Enrollment and, more important, the law library, began to increase again.

**ABOUT THE SAME TIME** William and Mary officials were first thinking (in the early 1970s) about a larger facility, state officials were working hard to bring the headquarters of the National Center for State Courts to Virginia, specifically Williamsburg.

In 1973, when new building first began in earnest, William and Mary had 480 full-time law students, the current number. A new building would allow the enrollment to move to 800 students, or 200 full-time students per year and would allow the consolidation of all the law library books in one building.

The saga of the law school expansion was tabled briefly in May and June, 1974 when the Jeroyd X. Greene controversy grabbed state media attention.

Greene, who now is called Sa'ad el-Amin, is a black Richmond lawyer who was proposed for a visiting associate professorship of law. Richmond State Sen. Edward E. Willey indicated that state financial aid might be in jeopardy if the school hired el-Amin.

El-Amin, an activist attorney, was considered by some as not appropriate to teach such legal techniques when, at the time, he was involved in several contempt of court proceedings. In the end, Dr. Thomas A. Graves Jr., college president, recommended to the Board of Visitors that he not be appointed. The board agreed.

In the meantime, the law school was to face another crisis — this one of major importance — the subject of accreditation.

The American Bar Association told the college that if major changes were not made in the law school — primarily better facilities and a larger library — accreditation could be withdrawn. Marshall-Wythe was cited for "continued inadequacy" of faculty salaries, "which are below the national median and below those schools in the geographical area in which the school is located." The law school was termed "the most inadequate physical plant of any ABA-approved law school in the country."

**ALL THE WHILE**, college officials were working with the state to get funding for a new building. Marshall-Wythe got a substantial boost in prestige in November, 1975, when former U.S. Sen. William B. Spong Jr. was named dean.

Even before Spong joined the faculty in July, 1976, he was working on support for the new building and trying to avoid sanctions from the ABA. Both goals were accomplished within a year.

On July 7, 1976, the ABA told the college it had retained its law school accreditation, but that a new building for the school was needed to completely satisfy ABA requirements. The other problems of salaries, staffing and library had been ironed out by college officials.

The 1977 session of the General Assembly approved funds for the new building, but not through general appropriations. It was determined that the building would be part of a statewide \$125-million bond issue. Earlier in 1976, the state had allocated funds for site preparation for the building, and the nation that the law school is beginning to enjoy.