

College of William & Mary Law School
William & Mary Law School Scholarship Repository

Newspapers

Student Publications

2006

The Advocate (Vol. 4, Issue 4)

Repository Citation

"The Advocate (Vol. 4, Issue 4)" (2006). *Newspapers*. Paper 30.
<http://scholarship.law.wm.edu/newspapers/30>

Copyright c 2006 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
<http://scholarship.law.wm.edu/newspapers>

The Advocate

VOLUME IV, ISSUE FOUR

WEDNESDAY, OCTOBER 25, 2006

WILLIAM & MARY SCHOOL OF LAW



From right to left, Joan Biskupic, Justice O'Connor, Marci Hamilton, and David Holmes. Image courtesy Alan Kennedy-Shaffer.

Sandra Day O'Connor Stresses Importance of Religion Clause

by **Lawrence J. Perrone**
Staff Writer

As students, faculty, and others scurried toward the front door of the Kimball Theatre in order to find safe haven from God's torrential tears, a new storm was preparing to sweep Williamsburg: Sandra Day O'Connor.

Justice O'Connor recently became the College of William & Mary's 23rd Chancellor and has been very active in our school's culture. On this particular visit, Justice O'Connor gladly accepted the role of addressing the Supreme Court's Religion Clause jurisprudence, a topic selected by the Institute of Bill of Rights Law. Accompanying Justice O'Connor were William & Mary's Walter G. Mason Professor of Religious Studies, David Holmes; *USA Today* writer and author of *Sandra Day O'Connor: How the First Woman on the Supreme*

Court Became its Most Influential Member, Joan Biskupic; and former clerk to Justice O'Connor, Marci Hamilton, who is now a Professor at Benjamin N. Cardozo School of Law.

In O'Connor's icebreaking opening remarks, or in our specific context, to slice through the diagonal sheets of rain pulverizing the tourists and shoppers, Justice O'Connor mentioned her early years at the Lazy B. Ranch. Referring to its arid climate, Justice O'Connor lightheartedly reminisced that the rain we were getting was enough to last them a year out in the Southwest. Hopefully, Justice O'Connor will return soon for another speech, and this forum will not have to last us another year.

With the weather talk out of the way, Justice O'Connor began by stressing the importance of the Religion Clause. In drafting the Bill of Rights, there was a reason

why James Madison placed the Free Exercise Clause and the Establishment Clause first, said Justice O'Connor. These two clauses have the daunting purpose to "carry out the Founders' plan to guarantee their religious freedom." The First Amendment was chosen to be first and encompasses our most dearly held rights.

Following the Supreme Court's Religion Clause rulings has also been a difficult task. Justice O'Connor on several occasions referred to the Court's Religion Clause jurisprudence as a "serpentine wall," illustrating how there is "no grand uniform theory" of Religion Clause rulings. One example is when the Court struck down the posting of the Ten Commandments in a Kentucky courtroom but subsequently upheld the posting of the Ten Commandments in a public park in Texas. As we all know by reading many Supreme Court

opinions, it is sometimes very difficult to predict where the Court is going even when the precedent seems settled.

What is settled is that Sandra Day O'Connor has been one of the most influential members of the Court in our nation's history. Specifically, she is the Justice who devised the modern test for deter-

Continued on pg 2.

INSIDE

Living and Working in Kosovo.....	3
1L and Murtha Scandal	5
B-Law-gs.....	14
Election Preview.....	17
Canadian Bacon.....	19

Authors on O'Connor

by Meghan Horn
Staff Writer

On Oct. 7, Joan Biskupic, author of *Sandra Day O'Connor: How the First Woman on the Supreme Court Became Its Most Influential Justice*, and Marci A. Hamilton, co-author of *God vs. the Gavel: Religion and the Rule of Law*, held a discussion and book signing. The discussion focused on the authors' knowledge of Justice O'Connor based on Ms. Biskupic's research and Ms. Hamilton's time as Justice O'Connor's clerk.

The authors emphasized Justice O'Connor's background as a Westerner, rancher, and legislator as informing her attitude on the Supreme Court. They discussed her pragmatic rather than theoretical approach as well as her lesser-known role as a political and strategic Justice who worked behind the scenes to influence the outcome of cases.

When asked about what to expect from the two new Justices, the authors wondered whether Chief Justice Roberts will impose any agenda, as former Chief Justice Rehnquist did. Ms. Hamilton also posited that Justice Alito is likely

to be less protective of the Establishment Clause than was Justice O'Connor, and that Establishment Clause jurisprudence will be a likely area of change.

Ms. Biskupic's biography of Justice O'Connor was researched without the Justice's input and is based largely on the papers of Justice O'Connor and her colleagues. The biography challenges the typical view of Justice O'Connor as an indecisive swing Justice by presenting her instead as a savvy and strategic player on the Court who worked behind the scenes to bring the Court toward moderate positions on such divisive issues as abortion, religion, and state sovereignty.

Ms. Hamilton's book has a larger scope, exploring the freedom of religion and its potential excesses when it comes to exempting religious groups from secular laws. In the discussion, she particularly discussed *Employment Division v. Smith*, a case decided while Ms. Hamilton was a clerk for Justice O'Connor. *Smith* was the landmark case determining that the state was justified in firing two drug counselors for their use of peyote although the drug use was in the course of a Native American religious ritual.



Justice O'Connor spoke to the crowd briefly, before joining the panel. Image courtesy Alan Kennedy-Shaffer.

O'Connor, continued from cover. mining when the Religion Clause has been violated. Previously, there was a three factor test which O'Connor described as "difficult to apply." The new test, the "endorsement test," requires the government to show that no "reasonable observer" would believe that the government is endorsing a specific religion. The endorsement test is one of O'Connor's most prized accomplishments. She was asked, "How did you fashion that test?" Perhaps the tone in the voice elicited her response. "If you can come up with a better test, let me know," responded O'Connor. There was a slight chuckle from the mostly law student audience. Marci Hamilton, O'Connor's former clerk, stated, "I endorse the endorsement test."

The panel began throwing around questions and providing their own perspectives. As time moved forward the questions became more specific and more complex. Constitutional questions overwhelmed the day, and the panel's intellect was apparent. The panelists made good points and gave good arguments, and one question was so constructed as to stop O'Connor in her tracks. Joan Biskupic of *USA Today* asked, "Have you ever been hunting with Dick Cheney?" A reasonable observer could see O'Connor's desire to respond wittingly, and her restraint was obvious.

O'Connor did not restrain herself in commenting on Justice Scalia's approach to the Religion Clause. Justice Scalia attempts to "draw straight lines in every case," says O'Connor. "No matter how smart you are or how hard you try,"

that approach just does not work, finished O'Connor.

After discussing Scalia, the questioning related to the new make-up of the Court, with the addition of Justice Samuel Alito and Chief Justice John Roberts. Prof. David Holmes pointedly mentioned that this is the first time in our nation's history that there have been a majority of Catholics on the bench. Currently, there are five. Marci Hamilton is worried about the Court's possible new direction. "Justice O'Connor has held on to the line" and has ensured that it is not crossed, said Hamilton. You could sense a feeling of uneasiness in O'Connor when questions came about the new make-up of the Court. She normally responded by saying that there is "no grand uniform theory" of the Religion Clause.

What it all boils down to is that our Constitution has allowed our society to flourish, in using the words of O'Connor, by "removing free exercise of religion from the political process." The panel and O'Connor entered a discussion concerning other societies around the world. Summarily, the panel addressed how we see on a daily basis other societies that attempt to intertwine religion and government, and how these societies are in constant struggles. In many of these societies, there is intolerance, civil war, and stagnant economies. Why would we want to alter or blur the line on how the Religion Clause should be applied? We have seen our society flourish and we have seen others fail. Marci Hamilton said it best: "If we want peace, O'Connor wins the debate."

The Advocate

"Complete and objective reporting of student news and opinion"

Editor-in-Chief: William Y. Durbin

News Editors: Kelly J. Pereira
Jennifer Stanley

Copy Editor: Kate Yashinski

Features Editors: Alan Kennedy-Shaffer
Mike Kourabas
Asim Modi

Business Manager: Tara St. Angelo

Layout Editor: Myriem Seabron

Staff Writers: Alan Kennedy-Shaffer
Sarah Abshear
David Bules
David Benatar
Matt Dobbie
Kaila Gregory
Meghan Horn

Contributors:

Cliff Allen
J. Alex Chasick Richard Neely

Address Correspondence To:
The Advocate
William & Mary School of Law
P. O. Box 8795
Williamsburg, Virginia 23187
(757) 221-3582

Editorial Policy

The letters and opinion pages of *The Advocate* are dedicated to all student opinion regardless of form or content. *The Advocate* reserves the right to edit for spelling and grammar, but not content.

Letters to the Editor and opinion articles may not necessarily reflect the opinion of the newspaper or its staff. All letters to the Editor should be submitted by 5 p.m. on the Thursday prior to publication.

The Advocate will not print a letter without confirmation of the author's name. We may, however, withhold the name on request. Letters over 500 words may be returned to the writer with a request that the letter be edited for the sake of space.

Law School Hosts Brigham-Kanner Property Rights Conference

by **Kate Yashinski**
Copy Editor

On Oct. 7, lawyers, professors, and students gathered at the law school for the Third Annual Brigham-Kanner Property Rights Conference.

The first half of the conference focused on the academic works of Professor James Ely, Jr., of Vanderbilt University, who had been presented with the Brigham-Kanner Prize the evening before. Professors Stuart Banner, of UCLA Law, and John Orth, of UNC Law, discussed Professor Ely's contributions to the study of legal history, including in the area of property rights.

During the second half of the conference, a panel of legal scholars discussed the current treatment of property rights as compared to the treatment of other constitutional rights. The panelists talked about the rights of property owners recognized by the Takings Clause of the Fifth Amendment and the scope of the government's power to take property, with compensation,

through eminent domain. Most of them seemed to agree with Professor Ely's statement that "property rights receive pretty secondary and pretty shabby treatment today" when compared with other rights listed in the Bill of Rights.

Professor Gideon Kanner, of Loyola Law School in Los Angeles, criticized the way in which courts have deferred almost absolutely to state and local governments in eminent domain cases, requiring only a rational relation to a "conceivable" purpose. He pointed out that, not only do alleged violations of other constitutional rights receive strict scrutiny, but there are also other ways in which legislatures and courts treat property rights as less significant. He gave several examples by which he argued that owners of condemned property did not receive due process.

Professor Eric Kades, of William & Mary School of Law, observed that property rights are different from other constitutional rights because the law of takings makes the right to property "not only alienable, but alienable by force." Still, he pointed out that

the United States protects private property rights much more than most other countries. Arguing that there is a strong correlation between property rights and freedom of the press, he presented a graph showing that Iceland and the United States are the countries with the most protections for both rights, whereas North Korea and Cuba are the countries with the least for both.

Taking a very different approach, Professor Stephanie Stern, of Loyola University Chicago Law, focused less on protecting the rights of individual property owners and instead on protecting social interactions among people in the context of property. She argued that the focus of an eminent domain inquiry should be on the net social gains to the community, taking into account both the uniqueness of condemned neighborhoods and the new opportunities presented by redevelopment plans.

Attorney John Little, of Brigham Moore, LLP, gave the layman's perspective, discussing how everyday Americans perceive their property rights. A trial lawyer

who represents property owners in eminent domain cases, Little described the peculiar problems with jury selection in the cases he has litigated since the 2005 *Kelo* decision. In that controversial case, the Supreme Court upheld the condemnation of a non-blighted Connecticut neighborhood in order to carry out a redevelopment plan that would ultimately transfer the properties to private entities in the hope of economically benefiting the community. Little explained that, since *Kelo*, a very large number of potential jurors have had to be excused because they declared that they could not possibly find for the government.

Little drew a big laugh from the crowd when he told the story of one potential juror who said that he could not possibly justify tearing down buildings in order to build a parking lot for a public convention center. Calling the convention center "an adult playground," the juror pointed at the condemned property owners' lawyers and announced, "I'm on your team!" Needless to say, this gentleman was not allowed to serve on the jury.

Living and Working in Kosovo

by **Tiffany Walden**
Staff Writer

While many of his law school colleagues spent their 2L summers working in big corporate firms in New York, D.C., and Richmond, Ryan Igbanol spent his summer working with the National Center for State Courts in Kosovo. Last year the law school started a program for students to spend their summer working in Kosovo. Ryan, who is interested in studying the rule of law in post-conflict developing countries, was able to secure the internship with the help of Prof. Christie Warren, who taught a course on post-conflict countries.

Kosovo is a province in the south of Serbia; it has been controlled by foreigners since the 1300s, although the people of

Kosovo are optimistic that one day they will gain their independence. The country has been under control of the United Nations since 1999 when fighting ended in the area. Kosovo is unique because it is one of the only countries in the world where the entire judicial system is controlled by the United Nations.

A job in Kosovo is unlike anywhere else in the world. Ryan said that, as an intern, "there was no typical day, and that's one of the very attractive aspects. One day you can be at a municipal court in a region 60 miles from Prishtina, and the next you might be writing a policy paper about the legislative drafting process. I did attend a lot of meetings, though."

Meetings, it seems, are a necessary part of any law job, regardless of what country you work in. The work was interesting, and Ryan



Ryan, center, spent his 2L summer in Kosovo. Image courtesy Ryan Igbanol.

now has an in-depth understanding of Kosovo and the Balkan region that surpasses that of most Americans.

Work, although fascinating and challenging, is not all that one hopes to do in a summer. The out-of-office life is particularly important, and

working in a post-conflict country the quality of life for foreigners is very good. And all the American foods we have become accustomed to? They are all available at the grocery stores and corner markets.

Continued on pg. 4.

Kosovo, continued from pg 3.

But Ryan is hesitant to describe his experience as the norm. Kosovo is relatively unique compared to other post-conflict areas, and the standard of living is much higher than in other countries that have recently ended war.

The people living in Kosovo are a very diverse group. Many Albanians, Serbs, Americans, and other foreigners are living in Kosovo. The people are fluent in multiple languages; many speak a variety of Turkish, Albanian, Serbian, English, French, and

German. Unlike those in many post-conflict areas, the people of Kosovo are inviting of foreigners. "I have never felt so welcomed in a foreign country as I was in Kosovo," Ryan says. The people were friendly, and Ryan was able to make friends with Albanians, Frenchman, and Germans, as well as Americans, of course.

It was not all fabulous though. Ryan's biggest problem in Kosovo had nothing to do with the conflict in the region, or anything to do with the law. "My allergies went haywire almost from the moment I stepped off the plane. I'd sneeze all day and night and was only



"There was no typical day, and that's one of the very attractive aspects. ...I did attend a lot of meetings, though."

able to get it under control by taking a powerful cortical steroid. I wouldn't recommend it." And if

that was his biggest problem, Ryan Igbanol's summer seems pretty good to me.

Terrorism in Rwanda and East Timor

by **Tiffany Walden**
Staff Writer

The Academy Award-nominated film "Hotel Rwanda" brought to the attention of many the mass genocide that took place in Rwanda in 1991. In a matter of three months 1.2 million people were hacked to death. Entire villages were killed. Brenda Sue Thornton saw all of this first-hand during the four years she lived in Kigali, Rwanda.

Thornton was a prosecutor with the United Nations and was instrumental in the formation of the International Criminal Tribunal for Rwanda. She was a prosecutor for the first ever indictment at the Tribunal for genocide.

On Oct. 2, she lectured at the law school about working with the United Nations and about her work in Rwanda and East Timor compared to the genocide in Darfur, and she answered questions about international human rights law.

When Thornton was working for the United Nations in Rwanda, at one point she was the only white woman in the entire country. When she arrived in Kigali no one was there to help. Signals were crossed within the different departments of the United Nations, and when Thornton and her colleagues arrived, they were pretty much on their own. Yet six months later they had their first indictment for genocide in the International Criminal Tribunal. Because this was the first genocide prosecution ever, the

lawyers had to start from scratch. There was no format to follow, and they had to set the international precedent. The lawyers personally visited villages, interviewed witnesses, gathered evidence, and listened to the stories of the few survivors.

Working with the people gave Thornton the information she needed to prosecute the first man, a man who had served in a position similar to the governor and hacked 25,000 people to death in the span of one month. One of the best witnesses in the prosecution in the case was an American nun who was doing missionary work in Rwanda. She spoke of her conversations with the governor and how she negotiated the safe passage of some villagers out of the area.

Most of the witnesses, however, were from very rural villages in Rwanda. Electricity was a foreign concept, and trying to explain flying in an airplane was a little more complicated. The villagers were taken from Rwanda and flown to the Criminal Court in neighboring Tanzania. None of the local people spoke English, and none of the prosecutors spoke Kinyarwanda. Even with all of the cultural differences, though, the witnesses were incredible and really helped make the case.

After Rwanda, Thornton accepted a job at the Department of Justice in Washington. This turned out to be another culture shock, adjusting from life in Rwanda to life in metropolitan D.C. Then

the United Nations called. They needed Thornton's help again. The UN asked her to go to East Timor, where thousands of people had just died, in order to help create a new justice system. East Timor is one of the few places in the world where the entire justice department is controlled by the United Nations. East Timor was different from Rwanda. In Rwanda the killings were so great; in East Timor they were equally horrible but on a much smaller scale. In 1999, 2,500 people died in a three month period. Thornton was responsible for prosecuting any murder that occurred in 1999, which was not an easy task by any means. She created two sections for murders committed: one for serious crimes (those people who murdered many) and one for all other murderers (those who murdered fewer than five people).

Murder was not the only problem in East Timor; entire villages were being raped repeatedly and violently. The first rape case in East Timor caused a bit of controversy. A militiaman who had raped a woman in a rural village came back to take responsibility for what he did. The woman had a child by her rapist. The village decided on appropriate retribution for his action, and then brought it to the United Nations. The village decided that the punishment for rape was to give the victim four cows and help rebuild her house. The UN did not believe that this was appropriate punishment, and

years have been spent trying this case and the appeals that go along with it. That is a problem with the UN judicial system. It brings the idea of western justice on countries that do not live western lives, and, in the end, the woman would have been more happy with her house rebuilt and a couple of cows than the tens of thousands of dollars it cost to send her rapist to jail.

The genocide and mass killings in Rwanda and East Timor are not just things of the past. Today in Darfur an estimated 400,000 people have died as a result of the genocide, and millions have had to be moved into refugee camps. Thornton also traveled to Chad where she met with Sudanese refugees who had escaped the horrors of Darfur. She stressed the difference between Rwanda and Darfur, both horrible situations, saying, "In Darfur, they're being chased out. In Rwanda there were no survivors." The genocide in Darfur, which has been going on since 2003, if not stopped could be worse than Rwanda. The United Nations needs to move in soon to prevent the murders now, instead of prosecuting their killers later.

Thornton spent more than six years prosecuting war crimes in both Rwanda and East Timor. Her work was ground-breaking, and she was instrumental in setting up the ICC in Rwanda and in creating a judiciary in East Timor. Now she works for the Department of Justice in the counter-terrorism unit trying to make our country safer.

1L Uncovers Murtha Scandal, Appears on Fox News

by **Kaila Gregory**
Staff Writer

Like most of his fellow 1Ls, Dave Holman spent part of the weekend of Sept. 23 working on his state bar memo for Legal Skills. But in addition to this task, Holman was also writing an article for *The American Spectator* regarding Pennsylvania Congressman John Murtha's involvement in Abscam.

Holman obtained an FBI tape that revealed Murtha's role in this Congressional scandal in which undercover FBI agents posed as Middle Eastern businessmen and attempted to bribe Congressmen in return for political favors for a fictional Arab sheik.

After writing the article for the *Spectator*, Holman appeared on Fox News's "Hannity & Colmes" program on Oct. 2 to discuss his findings.

While Holman says the television appearance was not as time-consuming as the rest of the work that went into the article, he did have to balance the article with the demands of being a first-year law student.

"A lot of the work was just logistics," said Holman. "I had my little brother retrieve the tape for me, so I was on the phone with him and the source that had it."

Holman decided to investigate Murtha's role in Abscam after he

"got a call from a friend who met with a military chaplain and told [him that he] should look into it. *The LA Times* had done a huge exposé on [the scandal] in June of '05, but no one had ever really followed up on it," he said.

"I'd written two articles on Murtha while I was on staff [at *The American Spectator*]," said Holman, who wrote for the magazine from January 2005 until he began law school at William & Mary. "When I got down here, the night of the hurricane, I got a call from a guy saying he found the tape. Those first few weeks [of law school] seemed kind of slow, and plus I couldn't resist," Holman said of his decision to pursue the story.

Uncovering the story was an accomplishment for Holman, but he notes that his TV debut was exciting as well.

"It was wild," he said. "[Fox] contacted *The Spectator* a few days beforehand and the producer just said to email him my talking points, so I was going in cold."

Holman said a car picked him up at the law school and drove him to a public TV station in Richmond, where he was taken into a room with a chair and a green screen. After being wired with a microphone and having his face powdered so it did not reflect on TV, Holman waited to go on air, watching the program on a TV tuned into Fox News.

"All I heard beforehand was producers in New York checking

sound, and then, 'You're on in 5,'" he said. Holman said that he had to focus on the camera because the TV he had been watching showed the interview on a time delay. "It was pretty nerve racking," he said.

When the interview began, Holman said he was surprised that Hannity was so easy on him that he did not really even ask Holman any questions.

"I wasn't sure what to expect from Colmes," Holman said, noting that he asked a friend to send him some sample questions to help Holman prepare his response. As Holman's friend anticipated, Colmes accused Holman of releasing the article as part of a smear campaign in response to Murtha's speaking out against the war in Iraq, so Holman responded by using many of the same arguments he developed in response to the questions his friend created.

After being on television, Holman returned to life as a law student. "It's a feather in the cap, I guess," he said of the experience. "It's my 15 minutes of fame condensed into three. It shows what's possible with some good research, but it's also kind of a once in a lifetime experience."

Word of Holman's article and Fox News appearance spread around the law school, but Holman said his classmates' responses were "wonderfully positive and supportive, no matter what folks thought of the issue. Folks have

been great," he said.

Holman said that while a conservative publication like the *Spectator* is a natural home for the Murtha article he wrote, he felt that other publications did not attempt to pursue the story.

"This information had to find an outlet at a place like the *Spectator* because it hasn't been pursued by other outlets," said Holman. "This information has been accessible if people really wanted to look for it. It just seems like folks didn't want to put in the work to uncover it."

Holman recognizes that his timing with the release of this article was "phenomenally poor," as other issues and Congressional scandals have kept the public's attention elsewhere, but he would like his work to have an impact.

"I'd just like to see it get the proper attention... that it's due," he said of the information he revealed about Murtha. "Mostly, I'd like for Congressman Murtha to just have to field tough questions about [the tape], which I don't think he's had to, even still, after the article has been published."

A transcript of Holman's appearance on "Hannity & Colmes" is available online at <http://www.foxnews.com/story/0,2933,217305,00.html>, and a video clip can be found on YouTube. Holman's Sept. 29 article from *The American Spectator* is online at http://www.spectator.org/dsp_article.asp?art_id=10427.

Campaign Finance 101

by **David Benatar**
Staff Writer

Margaret Mead, a famous twentieth century cultural anthropologist, once said, "Never doubt that a small group of thoughtful committed citizens can change the world; indeed, it is the only thing that ever has." A group of dedicated students here at the law school are taking her words to heart and doing their bit to bring change here to the law school.

The newly-founded Election Law Society (ELS) held an event

on Tuesday, Oct. 10, called "Campaign Finance 101" before a packed house of law students interested in finding out more about campaign finance reform and the impact it has on their lives. Liz Howard, former CFO for the Tennessee Democratic Party, and Brandi Zehr (1L), a former campaign finance analyst for the FEC, discussed the basics of campaign finance and how law students can support the candidates and causes that matter most to them.

"Campaign finance is an up-and-coming area of election law,

and there are not enough attorneys who are knowledgeable in this area," said Zehr. "The majority of students will be future contributors to campaigns and will be involved in the political process in some way."

Zehr and Howard discussed various ways to support candidates, what rules control federal election activities, how fundraising and making contributions works on both a national and state-wide scale, and upcoming federal campaign finance issues. Much of the focus, however, was on the Bipartisan

Campaign Reform Act (BCRA), also known as McCain-Feingold, which governs many of the rules and regulations of campaign finance. Zehr and Howard discussed the rules candidates now have to play by, the effects of BCRA on political parties, the content that is allowed in communications, and the loopholes that are present in BCRA. By the end of the talk, those in attendance had become well informed about the process.

"The lecture was very well done and it's great that our peers
Continued on pg 6.

Student Involvement in Immigrants' Rights

by Sarah Abshear
Staff Writer

On Oct. 3, 2006, Liz McGrail spoke with students about immigrants' rights and volunteering opportunities for law students. McGrail is the Detention Project Director for the Capital Area Immigrants' Rights Coalition (CAIR Coalition) in Washington, D.C. According to its website, CAIR Coalition's mission is "to advance the human and civil rights of immigrants and refugees, to foster an environment of positive human and community relations in our society and to work for a fair and humane immigration policy."

McGrail began by informing students about her own background. After graduating from William & Mary School of Law in 1989, she worked first for the Wall Street firm Brown & Wood, where she felt like a "fish out of water." McGrail then took on some pro bono work for the Lawyers Committee for Human Rights (now known as Human Rights First) and found that work much more fulfilling. She then worked as an associate with an immigration boutique, Wasserman, Mancini & Chang, for three years. She moved on to a solo practice for approximately ten years before joining the CAIR Coalition.

CAIR Coalition focuses on detained immigrants in the Washington, D.C. area, including much of Virginia. McGrail explained that if someone comes to the United States to seek asylum, he or she will have to go through court proceedings to determine whether asylum will be

granted. During this time, he or she will be detained in prison. The Department of Homeland Security contracted with five Virginia regional jails for this purpose. There are between six and seven hundred immigrants currently spread out in these five jails. CAIR visits the jails in order to give "Know Your Rights" presentations. Many of the immigrants do not understand what is going on at all and just want to ask the volunteers questions. CAIR volunteers do intake forms for people fighting their cases. These forms are then sent back to the CAIR office where they are reviewed. The immigrants' eligibility for release is assessed, and CAIR follows-up with any family members.

McGrail clarified that not all immigrants are fighting their deportation. Many are just waiting to go home to their own country. For those immigrants, CAIR makes sure that they do get home instead of languishing in jail, and CAIR sometimes works with their embassies. Most who do not fight their cases are illegal immigrants from Mexico and Central America who are caught by authorities. Besides this group of immigrants, there are two others: those seeking asylum, and those who were here legally but were convicted of a crime and are therefore being deported.

Asylum seekers and refugees are immediately put in jail upon arriving in the United States. Within 48 hours they receive a two or three hour interview about their asylum claim. They are then eligible for parole, but in this area there is usually no parole for asylum-seekers,

said McGrail. She commented that these people often have no records and have often been harmed. For example, one woman from Somalia came to the United States with a bullet lodged in her back but with no identification. She did not speak any English. She was kept in detention but finally won her asylum; she was released the next day.

It can be especially distressing to see long-term residents of the United States who are being deported because of committing a crime. One example is a man who came to the United States with his parents at the age of four. He was born in a refugee camp in Thailand. His parents were Cambodian. Because he was convicted of possession and given a three year sentence, it is possible that he may be deported to Cambodia, where he has never been. His case is one CAIR is currently working on. McGrail noted that any immigrant who is convicted of an aggravated felony will probably be deported unless he or she can claim it is more likely than not that he or she will be tortured, which is a very difficult claim to make. This is one important consideration that criminal lawyers representing immigrants should always keep in mind. A guilty plea to certain crimes can result in the immigrant being deported, even if the jail time is minimal.

Occasionally CAIR will even come across a United States citizen being detained as an immigrant. This past summer, one man was detained until CAIR helped determine that his parents became citizens before he was 18. After finding their

birth certificates and naturalization certificates, there was a motion to terminate the proceedings, and he was released in one week.

McGrail told an even more harrowing tale about a severely mentally ill U.S. citizen who was detained for nine months and then almost deported to Russia. The woman convinced herself that she was Russian and went to the Russian embassy to request that she be sent back to her supposed homeland. The Russian embassy realized that she was not Russian, but they did not know what to do with her. They decided to call Immigration, who put her in custody, where proceedings began against her. She was so mentally ill that she was not coherent enough for anyone to get her story. A judge ordered for her to be removed to Russia. Before this occurred, a volunteer fluent in Russian attempted to speak with her, only to find out that she did not even speak Russian. The woman then claimed she was German, but was unable to speak that language either. Finally, when she muttered the name of her hometown, a psychiatrist who had treated her was tracked down and then verified that she was an American.

Perhaps the worse part of this story was that the prisons have sub-par medical treatment and completely inadequate mental health facilities. As a result of her detainment, the woman became worse and worse. Once it was determined that she was not an

Continued on pg 7.

Campaign, continued from pg 5. are so well informed and make the information so accessible to us," said David Sella-Villa (1L). "It [the lecture] was both informative and interesting."

The Election Law Society decided to hold the event because of the interest expressed by its members. "At our initial interest meeting [of the Election Law Society], many students indicated an interest in learning about campaign finance," Howard said. "They

wanted to learn more about how to get involved." Additionally, two speakers will be coming to campus to talk about campaign finance, so it was important to give students "basic knowledge before the events."

ELS was formed by a group of 1Ls who picked up on the interest that many students here at the law school have in the political process. The organization has a number of goals that they would like to see completed. These include edu-

cating the law school on various election law topics and networking with election law attorneys. ELS has several events coming up that address these goals. ELS and the Institute of Bill of Rights Law co-sponsored a lunch with FEC Chairman Michael Toner on Friday, Oct. 20. Additionally, ELS will host an election night party Nov. 7 at Paul's Deli and will co-sponsor a lecture by Bob Bauer, a prominent election law attorney, in mid-November with the American Constitution

Society. On Nov. 12, ELS will hold the first of its "dinner club" discussions, in which members will discuss articles dealing with current political topics.

"The work that ELS is doing is very exciting, but we still have a lot of work to do," said Zehr. "We have great momentum going, and the more people we get involved, the better."

For those interested in learning more about ELS, please e-mail electls@wm.edu.

Pro Bono Project Interns Help New Orleans Rebuild

by J. Alex Chasick
Contributor

It's Thursday, so it's intake day for the Pro Bono Project interns. We walk a few blocks down O'Keefe to the New Orleans Legal Assistance office on Common and get ready to interview potential clients. I learned how to do intake by observing Jen, another intern, interview our clients; I would later train other interns. Today's clients have problems I've heard before, but each story is uniquely heartbreaking.

Usually, the client lived in her home for years with her spouse or family, often an elderly parent, who had the title to the house. The spouse or family member died, and the client, overwhelmed by grief and poverty, never sought any legal assistance with the deceased's estate. She continued living in the house, making rent or mortgage payments, and never thought about succession. Then Katrina and Rita destroyed her home. She went to the Superdome or the Convention Center, or she was lucky enough to have family outside of New Orleans who would give her shelter. The client filed her FEMA claim and received a check to cover the damage to her home. Except the check is in her long-deceased spouse or family member's name, and the bank won't cash it. So here she is.

That's a pretty typical situation I encountered as an intern at the Pro Bono Project. There were tragic variations: a client would produce a death certificate listing the cause of death as asphyxiation by drowning on August 29, 2005, or tell me about a gruesome murder or series of protracted illnesses. What depressed me the most was hearing about (relatively) well-off siblings in other parts of the country who had their own homes but wanted a share of the funds from the FEMA check issued to repair the destroyed house previously inhabited by their sibling (our client) and deceased parent.

Because the Pro Bono Project was a small office, the interns were given a great deal of responsibility. Ellen, my supervisor, gave me a quick course in successions my first day and sent me home with the Louisiana Pro Bono Lawyer's Desk Manual. A few days later, I was interviewing clients on the phone and

in person, drafting pleadings, and filing succession papers at the Civil District Court. Ellen was always available to answer the questions that inevitably arose, but the other interns and I were working largely on our own.

Although the number of cases sometimes felt overwhelming, it was probably the right balance. On the one hand, the ten minute drive to and from work showed hundreds, if not thousands, of distraught people and damaged homes that could use legal assistance. Focusing on each individual was truly overwhelming; who would know where to begin? On the other hand, trying to make broad improvements to the situation was too much for one person and would probably create little, if any, change. By dealing with a narrow set of issues and taking on only those in the most dire need of help (we only took clients who made under twice the poverty level), the Pro Bono Project was efficient enough to take on scores of cases and still effect major change in our clients' lives.

But New Orleans needs more volunteers, and it needs money. A friend of mine came down to visit during the summer. The first night, sometime between drinking daiquiris on the levee and dancing in a packed bar at 4 a.m. to brass bands covering Phil Collins and Jay-Z, she fell in love with the city. Just like everyone else. The next day, we went a few miles east, on a devastation tour to the Lower Ninth Ward, and she was shocked. Here we were in July 2006, nearly a year after Katrina, and houses were still in the middle of streets. Entire blocks had collapsed. Then, in the same block, one of the destroyed houses had a for sale sign. The corner bars were still open, albeit with limited hours (which still surpassed Williamsburg's). That is New Orleans. New Orleans will never give up, but it needs help. You have five weeks off for winter break; go to New Orleans for a week or two and gut houses. The number of restaurants and bars in the city is ridiculous; go stimulate the economy. New Orleans loves a holiday; go for New Year's, or, better yet, take a week off and go to Mardi Gras. It's worth it. And call me; I'll show you why New Orleans is, still, the greatest city in America.

CAIR, continued from pg 6.

immigrant, the woman was summarily released with only 32 cents and a bag of clothes she came in with. It was left to CAIR to find a hospital for her; otherwise, she would have simply been left to roam the streets.

Immigrants being detained do not have the same rights as American citizens in prison. For example, they do not have the right to an attorney. The American Bar Association has developed a list of standards, but they are not a requirement and are not enforceable. McGrail explained that the government is simply overwhelmed with the number of immigrants. In recent years, the number of immigrants in prisons has increased dramatically, but there has been no similar increase in staff or funding. CAIR tries to communicate with and work with the government for the benefit of the detainees.

One of CAIR's most important activities is to monitor for detainees who have been held too long. After their final order of deportation, immigrants are required by law to be sent back to their country within ninety days. If this does not occur,

they are entitled to a post-order custody review, in which the likelihood of their repatriation and their harmfulness to society if released are to be reviewed. According to the Supreme Court, immigrants can only be held for six months after that time. This is because some immigrants simply cannot be sent back because of the United States's relationship with their native country. Examples given by McGrail included Cuba and Vietnam. After six months, CAIR will file a *pro se habeas* petition on behalf of an immigrant to obtain his or her release.

McGrail passed around a sign-up sheet for students to volunteer to visit the prisons and do intake. Students who speak foreign languages, especially Spanish, are in high demand. However, it is not necessary to speak a foreign language to volunteer; many of the immigrants speak English. Students can volunteer for just one jail visit if they want. CAIR also offers student internships. For more information about CAIR Coalition, visit www.CAIRcoalition.org. If you missed the meeting but still want to volunteer, it is not too late. Just e-mail Liz McGrail at liz@caircoalition.org.

Recycle Your Printer and Toner Cartridges

and help raise money for
the Environmental Law Society!

For every printer cartridge you place in the designated bins, ELS will receive between \$1 and \$5. All proceeds will benefit ELS and enable us to bring you more great programs!

Bins located in the student lounge
and in the faculty lounge on
the 2nd floor of the law school



Open World Program Brings Russian Delegates to Campus

by Kelly Pereira
News Editor

Compiled from submissions
by International Law Society
members

The International Law Society (ILS) played host to four Russian lawyers, their facilitator, and their translator Sept. 22 through Sept. 30. The Open World Program, sponsored by the Williamsburg Rotary Club, brings Russian lawyers to the United States to educate them about the rule of law. A particular focus in past years has been the role of women in the law. This year, three of the four delegates were women.

The Rotary Club (headed by Tiger Woods's contract attorney, Fritz Ober) footed the bill, and club members hosted the delegates in their homes. ILS members (headed by 3L Nathalie Fassié) organized and implemented daily activities for the delegates. The week or so was full of examples of culture shock and cultural exchange. One unexpected factor was the difference among the delegates. They were from very different parts of Russia and had very different points of view even among themselves.

Friday, Sept. 22 (contributed by Nathalie Fassié):

Welcome reception/law school tour. The delegates arrived at the law school and were treated to a lasagna lunch. Immediately a cultural difference emerged, as the delegates thought it was very rude to eat while listening to a speaker, Vice Dean Linda Butler. They nevertheless spoke with Dean Butler about the American legal education system and were surprised to learn how much it costs to attend law school in the United States. While Russian students do have to pay to attend law school now, several of the delegates were students during the Communist regime and attended law school for free.

The delegates toured the law school and the law library. They were intrigued by the extent of the electronic databases and the vari-

ous journals published by the law school. They were probably most impressed with the tour guide, Ryan Browning (2L), whom they described as being a typical American: blonde-haired, blue-eyed, very sportive, assertive, and, of course, dressed in a t-shirt and sneakers.

Saturday, Sept. 23 (contributed by Nathalie Fassié):

The delegates visited historic Jamestown. They were most interested in learning where exactly John Smith landed in Jamestown and enjoyed speaking to the various interpreters. They also enjoyed witnessing the glass blowers at work and seeing the collection of artifacts that chronicled early colonial life in Jamestown.

Saturday, Sept. 23 (contributed by Ryan Igbanol):

The Russian delegates toured the Williamsburg Winery grounds. After a tour through the winery's cellars, the delegates enjoyed a tasting where they sampled a variety of local wines. The looks on their faces easily revealed their likes and dislikes.

Sunday, Sept. 24 (contributed by Brian McNamara):

Colonial Williamsburg. All four attorneys, the interpreter, and the facilitator visited Colonial Williamsburg. They were accompanied by three William & Mary law students, two of whom spoke Russian, Stan Kostov and Nelli Baltabayeva. The visit began with a trip to the restored church, where the Russian lawyers observed a place of worship and observed the plaques on the pews with the names of famous Virginians. The visit continued to the Governor's Palace, where the guests learned about the history of the English colonial government prior to the Revolution. After that, the Open World participants toured the Colonial Capitol building. Through their interpreter, they learned about the transition period in the Revolution in which the royal governor lost power and Virginians governed themselves. After the

tour of the Capitol, they toured the jail. Throughout the afternoon, the visitors stopped at local craft shops and observed the colonial actors (through their translator).

Monday, Sept. 25 (contributed by Amy Wallas):

The delegates spent the morning on a tour of the William & Mary campus. A Russian professor and several students who are studying Russian served as guides for the walking tour, which included the Wren Building, the Russian language house, and the new technology center at Swem Library. The delegates also visited the on-campus coffee shop and had time to speak with a Russian assistant professor who is here for one year. Following the tour, students studying the Russian language and political science had a chance to ask the delegates questions about their legal system. Several of them even asked questions in Russian, which was pretty impressive. The delegates were thrilled to have such enthusiastic students interested in their culture. The delegates then visited Courtroom 21.

Tuesday, Sept. 26 (contributed by Nathalie Fassié):

Tuesday morning, the delegates went to the Commonwealth Attorney's office and the James City County Courthouse. They met with the Commonwealth's Attorney, Mike McGinty, who gave a presentation on the basic structure of a criminal trial. As all of the delegates are defense attorneys, it was interesting for them to hear from a prosecutor about his courtroom tactics. The jury system has just been introduced in Russia, so the delegates were also interested in learning how Mr. McGinty selected a jury. He noted that he usually avoids selecting college students, as they tend to be liberal, and scientists, as they tend to insist upon a higher standard of proof to determine guilt. Key differences between the Russian and American legal systems that the delegates noted included treatment of the defendant during a trial (in

the U.S. the defendant cannot wear handcuffs or prison outfit in front of jury members to avoid prejudice, while in Russia the defendant is often put in a cage-type apparatus to prevent violent outbreaks) and prosecutorial tactics (in Russia the prosecutor must charge the defendant with all possible crimes and does not have the option to plea bargain).

After meeting with Mr. McGinty, the delegates toured the courthouse, the surveillance room, and the holding facilities. They took pictures in the judge's chair as well as in the holding facilities and with the security guards. Andre even put on a security guard's jacket to get a picture. Inna was very fond of one guard's sheriff's badge.

Tuesday, Sept. 26 (contributed by Michael Sweikar):

The Russian delegates also met with Kayla Finn, the Director of the International Visitors Education Program at the National Center for State Courts, who presented on the function that the NCSC plays in the American justice system. The delegates enjoyed some convivial conversation and a few jokes throughout Kayla's presentation—Kayla had previously worked in the Russian justice system and was able to really connect with the group. The delegates had a number of questions for Kayla, asking her to compare Russian culture to American justice and the ability of NCSC to fit within that spectrum of the U.S. system. After a long afternoon at NCSC, four cups of coffee (each), and a few chocolate bars (provided by NCSC), the delegates moved on to their next scheduled event on a day that began at 6:30 a.m.

Wednesday, Sept. 27 (contributed by Amy Wallas and Nathalie Fassié):

One full day was spent on a trip to Norfolk and Virginia Beach. First, the delegates met with Judge

Continued on pg. 9.

Open World Program hosts Russian Delegates

Delegates, continued from pg 8.

Tommy Miller at the U.S. District Court for the Eastern District of Virginia. Judge Miller reviewed the state and federal court systems in the U.S. and explained to the delegates how federal and magistrate judges are appointed and how their ethical conduct is self-regulated. The delegates visited a courtroom and again sat in the judge's chair and also visited the law library. The delegates were surprised to learn that each judge did not have his or her own courtroom.

The delegates also had an opportunity to speak with an assistant U.S. Attorney and a federal public defender.

After a stopover at MacArthur Mall, the delegates enjoyed American Chinese food, which they thought was "fancy," and shopped at Dillard's.

Next, they visited the Norfolk Circuit Court and watched an attorney assign public defenders to incarcerated individuals via satellite. They also asked many questions concerning the death penalty and the public defender's office. The delegates noted that there seemed to be a lack of women attorneys and judges in the U.S. In Russia, the majority of the judges in lower courts are female. The public defenders noted that about half of their office consisted of female attorneys and that often women attorneys are more likely to go into government positions because the hours are more accommodating to having a family life.

Because two of the delegates were very interested in animal rights, they took a side trip to the national People for the Ethical Treatment of Animals (PETA) office and met with attorneys there.

The delegates next visited Virginia Beach. Luckily, it was a gorgeous day, so they all enthusiastically went swimming. They finished the day by eating dinner at a seafood diner.

Thursday, Sept. 28 (contributed by Kelly Pereira):

The visit to Kaufman and Canoles was very well-received by the Russian delegates. They

seemed very impressed by the boardroom where the lawyers from Kaufman and Canoles made their presentation. The firm provided an overview of their practice areas and then three lawyers spoke individually. David Graham spoke about the administration of the firm. Alison Lennarz spoke about legal training. Greg Davis spoke about specific construction projects that the firm had been involved in.

The Russian delegates asked very specific questions about fees and income. They were interested to know how a large contingency fee would be divided among lawyers. They wanted to know the actual fees per hour and the way time was managed. They also wanted to know if clients had any kind of oversight over fees. One inquired what kind of car a partner drove.

Other questions concerned malpractice insurance and corruption. One wanted to know if malpractice insurance was mandatory; apparently malpractice insurance is not required in Russia but may be in the near future. Another inquired about how the firm handled local government and whether or not bribery was involved. The lawyers did a good job of explaining the illegality of bribery and the legality of lobbying through longstanding, professional relationships.

Bribery is still commonplace in Russia. At the outlet mall, one of the delegates explained to me that in Russia, attending law school is supposedly free but one must bribe for admittance.

Additionally, the delegates were very excited to speak with a female attorney. Three of the four delegates were women, so this was of particular interest to them. The delegates explained that women were still a minority in the practice of law. The three female delegates were good representatives of attorneys with strong personality and drive.

After the presentation, we toured the offices of the firm. The delegates enjoyed the offices, particularly those of the partners. One office that definitely made an impression was that of Senator

Tommy Norment. His office had a stuffed moose head (much to the disgust of the animal rights activist, Inna) and a George W. Bush jack-in-the-box.

For lunch, we went to Panera. The delegates complained about eating sandwiches again, although many of them ordered soup or salad. One delegate thought it was strange that American salads did not have more greens other than lettuce. Another wanted to know if there was anything available with potatoes in it. The service was slow with such a large group, and the food was inadvertently packed to go. By the time the food was prepared for the table, the delegates were a bit frustrated. Masha, the delegates' facilitator and a teacher of English for lawyers, explained that as part of her facilitator training she learned that part of culture shock is annoyance with minor inconveniences. Whatever the case, the Russian delegates disliked busing their own table as well. One remarked to me, "So this is where poor students have lunch."

The delegates had three hours to shop at the outlets. That amount of time seemed good, but the delegates were tired by the time we arrived at the Muscarelle Art Museum on the main campus. They were excited to see the poster outside advertising the Russian Icons exhibit, but they were not pleased at the idea of listening to a lecture (even though the lecture was in Russian with an English translator). The Russian delegates rested and snacked at the reception during the lecture. I attended the lecture by a Russian art professor who had studied under the artist on display. It was a very untraditional lecture, less about biography and more about the influences of the Russian impressionist Vyacheslav Zabalín.

Dinner at the King's Arms was a hit. The Russian delegates were very taken with our burly waiter and enjoyed the food. One told me that the simply prepared, fresh food with large servings of meat reminded them of Russian food. Andre, a criminal defense lawyer who specializes in drug charges, made several toasts to compliment the facilitator and the host

families.

Friday, Sept. 29 (contributed by Kelly Pereira):

Friday morning the delegates had time to pack and did a little last minute shopping in Merchant's Square. Rotary Club members hosted a farewell potluck at a home in Ford's Colony. There were no leftovers of barbecued chicken and coleslaw (which Inna called Russian salad). The delegates invited all of us to visit them someday, and Katya took a very extensive video-diary.

I had an interesting conversation with the group's translator, Tatyana. Tatyana is an American citizen from California. She does freelance translating work. Tatyana said that she has felt mistreated by attorneys when she has done translations for depositions or trial. She said that attorneys should remember to be cordial to translators and court reporters. In her experience, lawyers often call for lunch breaks and do not invite them along. She had stronger words about how attorneys frame question. If an attorney asks "Do you remember what happened on a particular date?" and the witness answers only "yes," it is the fault of the questioner and not the translator that the witness answers with only one word and does not immediately elaborate.

L.L.M. student Nelli Baltabayeva shared some of the funny experiences that she remembered from the week as a whole:

It was funny when at the dinner in Steven's house (a Rotary member), he asked the ladies who were staying in his house (Anna, Inna and Katya) what they thought about President Bush. And the Russian lawyers gave a very diplomatic answer, starting with comments like they do believe in friendship between American and Russian Presidents, and in a good relationship between two nations. To me, it sounded as if they were trying to be polite to Steven by not saying bad things about the President and that they were surprised when Ste-

Continued on pg. 13.

Scholar Discusses Quasi-Legal Constraints on Discretion of Prosecutors

by Kelly Pereira
News Editor

How discretionary are prosecutors? There is little hard data in this area, but Professor Ron Wright of Wake Forest found a wealth of records in the New Orleans District Attorney's office. In 1995, Wright and his collaborator, Mark Miller, visited the office of then District Attorney, Harry Connick, Sr. Wright discovered that the office had the unusual practice of devoting the bulk of its resources to the screening of cases and had kept fairly extensive computer records dating back to the early 1970s. The records were kept for intraoffice purposes, but over the course of several years Wright convinced Connick that they were of scholarly and public interest.

On Oct. 4, Wright shared his findings at William and Mary as guest of Professor Marcus. A W&M alumnus, Wright is currently a visiting professor at Washington & Lee. Wright's scholarly area of expertise is criminal justice. In his most recent paper, Wright explored how lawyers respond to the "enormous power" of the prosecutorial role.

Wright argued that there are both external and internal constraints on prosecutors. Most of the oversight is through external restraints, but Wright argued that this is not particularly viable because of bad legislation, judges' disinterest in oversight, and the separation of powers issue. According to the MPC creator, Herbert Wexler, "To a large extent we have abandoned law."

How do we reconcile discretion and the law? Wright argued that there are a host of internal constraints on prosecutors, which he referred to in his paper as "the black box." Prosecutors make fairly predictable and consistent choices. Wright argued that these choices can be attributed to four different versions of "legal-looking," internal constraints. Wright focused his lecture on two such constraints: substantive law reasons for declination decisions and

priority crimes set by particular jurisdictions.

In the New Orleans District Attorney's office, prosecutors were told to record what charge the police department recommended as well as their action and reason for taking that action. The records of the office were unusual because, as part of internal management policy, the prosecutors were told to record their reasons for declination from a closed list of indicators. Some examples of the standardized reasons included dropped charges, the state of the evidence, and "good defense."

When Wright analyzed the charges filed based on the substantive crimes, he found that contrary to the arguments in most legal scholarship, the prosecutors' decision-making was not based mostly on sentencing or other such factors. According to the Coase theorem, parties will bargain around the law, but the New Orleans data indicates that prosecutors were bound by substantive law. For example, the number one reason for declination of a murder charge was the filing of other charges. In other areas, the most common reason for declination was "not suitable for prosecution." In terms of homicide, manslaughter charges dropped for "good defense" was short-hand for strong self-defense claims. According to Wright, "You can see at work in the numbers substantive law ... You can trace the effect of the Louisiana Code on charges."

Other constraints on prosecutors include priority crimes of the locality, often a "no drop policy." A "shallow arrest" gives the police a lot of discretion in assessing probable cause. With a "no drop policy," if there is probable cause, the prosecutor must file charges. In New Orleans, domestic violence was a priority in the mid-1990s. During that period of time, the reasons for victim reluctance did not disappear, but the prosecutor's declination reasons of "not suitable for prosecution" dropped.

Contrary to a dominant view, prosecutors do not act on individualized, gut instincts. Internal constraints function as quasi-legal



Professor Wright (right). Image courtesy Alan Kennedy-Shaffer

rules. This can be attributed to natural law or, more accurately, consistency. Even despite publicity for priority crimes, prosecutors' offices respond in predictable ways. There is continuity among changes in staff, subject only to deliberate change. Overlapping responsibilities are good constraints. In the prosecution context, organization is based on intra-office competition. "If this is not exactly law, maybe we can think of it as social norms," said Wright.

Wright explained that what is going on inside prosecutors' offices is not the same as the Coase theorem at work when a driver in California bargains with a farmer over a wandering cow hit on the road. Prosecutors are not private individuals but rather public actors. There are some legal forms of input (although it is not exclusively application of law—it evolves from group norms developed over coffee breaks or at the water cooler). Wright explained this phenomenon, saying, "Remember they went to law school ... they crave consistency."

One follow-up question to the lecture involved the nature of the relationship between the prosecutors and the police. Unlike in civil law countries, prosecutors are not bound by probable cause. Prosecutorial case selection results in higher conviction rates in the U.S. than in Australia. Wright explained that there is some tension between police officers and prosecutors, but the real problem is police turnover. Connick was in office for 29 years, but police commissioners changed every few years.

Although sometimes there would be a police observer at the prosecutor's office in New Orleans, the law and order relationship could be strengthened. In-house coun-

sel is becoming more common. A police attorney may train new recruits in an area such as search and seizure. Giving legal feedback to police officers is an incentive for more training. There are even some specialized police department areas that require (by state statute or police department policy) tracking of reasons for police involvement. In Winston-Salem, North Carolina, any search at a traffic stop theoretically requires completion of a form by the officer. This is rarely done in practice, and Wright noted that the future of this is partially based on feasibility and technology (for example, laptops).

Another inquiry concerned how prosecutorial offices function. Wright explained that there is a spectrum of vertical and horizontal organization. In a purely vertical system, one prosecutor carries the case the whole way. In a horizontal system, units of prosecutors handle different stages of litigation. Connick's office was closest to the horizontal system. One indication of this was that attorneys at the prime of their career were engaged in case screening, not trial practice.

In closing, Wright addressed questions related to specific reasons for declination. Wright reasoned that cases declined because of lack of resources would probably be denoted as "not suitable for prosecution." If the reasons were recorded for public consumption rather than internal management, Wright stated that resources would be cited more often as a political statement. Wright also said that generally it would be a good idea for legislatures to fund and mandate screening by prosecutors, despite their accountability to the electorate and their tendency to make consistent decisions.

Oh Deer: Groups Help Clean Area Park

by Tara St. Angelo
Business Editor

On Sept. 30, the Environmental Law Society (ELS) and Phi Delta Phi (PDP) volunteered at York River State Park. The groups arrived that morning expecting to clean bike trails but were assigned to clear deer stands instead. The group was upset to learn that deer stands are areas in which the park allows controlled hunting. Before you begin to freak out and think that ELS and PDP are killing innocent creatures, let me lay down the facts about deer for you.

In short, deer are destroying the environment. I bet most of you thought it was SUVs (although they do have a large hand in it). Deer are pretty much eating their way through pristine wilderness at an alarming rate. They eat approximately 3-5% of their body weight per day (according to the Virginia Department of Game and Inland Fishing). That is like an average person eating 140 hamburgers a day. This intense appetite can drastically change the composition of the forest.

Deer can have a strong negative influence on populations of native plant species, thus allowing non-native plant species to flourish. The abundance of these non-native species can lead to changes in soil composition as well as limiting the food source of other animals (Coomes DA, Allen RB, Forsyth DM, Lee WG. *Factors Prevent-*

ing the Recovery of New Zealand Forests Following the Control of Invasive Deer. Conservation Biology 2003, 17(2): 450-459).

Deer can inhibit the establishment of new plants and cause a loss of biodiversity (Townsend DS, Meyer AD. *Rapid Recovery of Witch Hazel (Hamamelis virginiana) by Sprouting Following Release from White Tailed Deer.* Natural Areas Journal 2002, 22(4): 290-295). Studies have shown that forests cannot return to a healthy state even thirty years after the exclusion of deer! (Ruhren S, Handel SN. *Herbivory Constrains Survival, Reproduction and Mutualisms When Restoring Nine Temperate Forest Herbs.* Journal of the Torrey Botanical Society 2003, 130(1): 34-42). The effects of deer's intense appetite are more pronounced because their population densities exceed the carrying capacity of eastern forests. According to the National Park Service, deer densities are around 77 per square kilometer (this number is based on spotlight counts done in Shenandoah State Park). According to Dr. David Drake of the Rutgers University Center for Wildlife Damage Control, the maximum density which the ecosystem can support is about 25 deer per square kilometer, and the ideal density is 13 per square kilometer. More depressing numbers come out of New Jersey, where deer have reached population densities of 134 per



Members of ELS and PDP volunteer at York River State Park.

square kilometer.

Although numbers may exceed the carrying capacity in many areas, most counties in Virginia are only slated to stabilize the deer population rather than reduce it. This may be due to the use of biological carrying capacity rather than cultural carrying capacity. Biological carrying capacity assumes that the ecosystem is in full function and does not take into account outside factors (i.e., people) like economics and sprawl.

There are many reasons that deer populations are prone to explosion, most of which are our fault. Deer breed early (1 year old) and into old age (8-10 years old), which is something that we really cannot help. People have drastically reduced or eliminated populations of deer's natural predators: cougars, wolves, and bears. Also, deer are what is known as an "edge species": they like the edges of forests. Thus, when contiguous

forest is fragmented and more edge is created, deer flourish.

As a result of all this evidence, ELS and PDP should not be lauded as anti-animal rights groups but rather as groups protecting the whole ecosystem, which protects more animals in the long run. Also, controlled deer hunting, which stabilizes the population of deer, prevents overpopulation and reduces deer fatalities as a result of car accidents or starvation.

Although it was sad to see so much mountain laurel and holly bushes cut, these plants had to be cleared in order to allow ambulances into the areas where the deer stands are located in case of accidents. It should be reassuring to know that everyone was careful to see that the plants remained healthy despite the cutting. In addition, the officials in the park assured everyone that the deer hunt is regulated to provide for the maintenance of a healthy deer population.

Casino Night a Success, as PSF Doubles Last Year's Earnings

by Kaila Gregory
Staff Writer

Public Service Fund transformed the law school lobby, decorating it to look like a Las Vegas casino for the organization's annual Casino Night on Sept. 29. Students played black jack, poker, roulette and craps at the event to raise money for PSF in order to provide stipends for law students who work in non-paid summer jobs.

"This year we doubled our profits from Casino Night and had a blast doing it," said PSF Co-chair Maryann Nolan. "PSF tries

to balance having fun and raising money, and the support we've received from students, faculty and the administration has been overwhelming."

Last year, PSF awarded a record amount of \$55,000 in funding to 42 students, and Nolan said the organization hopes this year will be just as successful.

3L Svetlana Khvalina said that Casino Night's atmosphere is very different from other PSF events. "A lot of people dress up, all the tables are covered, and the windows have decorations," she said. "Every year,

there are a few professors who volunteer to come, dress up, and deal cards, which makes things a little more interesting for everyone."

Professor Jim Moliterno dealt cards at this year's fundraiser. "I enjoy Casino Night first because it benefits PSF, and second because it gives everyone a chance to step out of the classroom role for one evening and take a night off and just enjoy good company and some fun," he said. "Everyone seems to have such a great time."

The money raised at Casino Night will be given away in the

spring as stipends for students who have summer internships in non-paying, public interest positions. "PSF is a student-run organization committed to public interest law," said Nolan. "PSF funding supports much-needed legal services to the underprivileged, as well as state and local government agencies."

In addition to raising money for summer stipends, PSF also gave gamblers a chance to win one of four prizes: a \$75 Green Leaf Gift Certificate, a \$50 Season's Gift Certificate, 2000 Lexis points,

Continued on pg. 14.

Upcoming Events

Look to this space for news about speakers and other major events at the law school. If your organization has an event in the next month you would like advertised, please e-mail TheAdvocateWM@gmail.com.

October 25

1L Exam Discussion/ Pizza Lunch, sponsored by the Honor Council: The Honor Council invites all 1Ls to an informal meeting to discuss examination policies. Issues such as cheating, timing, and permitted materials will be addressed. Bring your questions about exams or the Honor Code in general. Come hungry for pizza! Event will be held at 1 p.m. in Room 119.

Innocence Project Awareness Week: All day long, please stop by the lobby and visit Students for the Innocence Project bake sale! At 7:15 p.m. in Room 124, the group will be showing *After Innocence*, an award-winning documentary that profiles the struggles of seven

exonerees after exoneration. Popcorn and soda will be served.

October 26

Professor Nancy Combs, guest of The Jewish Law Students Association: Prof. Combs will discuss whether Israel's recent military operations in Lebanon were legal according to international law. The talk will be at 12:50 p.m. in Room 127. Kosher cookies will be served.

Voting Rights presentation by the American Constitution Society: Event will be held in Room 124 from 3:30 p.m. to 6:00 p.m.

October 27

Avalon Fundraising Event: Frieda Michael Salon, located at 4438 John Tyler Highway, is having a Grand Re-Opening from 10:00-6:00pm. Half of the proceeds from the event will benefit Avalon, a shelter for women and children. Questions? Call 757.220.5722.

PSF Halloween Party: Dress up

in costume and dance for a good cause. The annual fundraiser will be held in the law school lobby from 9 p.m. to 1 a.m. Tickets will be available for purchase in the lobby in the days preceding the party.

Lunch with Lawyers: Sports and Entertainment Law: Event will be held in Room 133 at 1:00 p.m. RSVP to Dean Ramona Sein.

October 30

Lesbian & Gay Law Association Speaker Event: Event will be held in Room 119 at 5:00 p.m.

October 31

Jay Sekulow Presentation: Event will be held in Room 120 from 1:00 p.m. to 1:50 p.m.

November 2

Book Signing of *Denial and Deception: A Study of the Bush Administration's Rhetorical Case for Invading Iraq* by Alan Kennedy-Shaffer: 1L Alan Kennedy-Shaffer will be signing copies of his new book at the William &

Mary bookstore from 5 p.m. to 7 p.m. *Denial and Deception: A Study of the Bush Administration's Rhetorical Case for Invading Iraq* is the first academic study of the relationship between President George W. Bush's misleading statements, public opinion, and the war in Iraq.

November 10

Annual JCCPD/LKMPD Charity Golf Tournament: Kingsmill Resort will host this fundraiser for the Avalon shelter. Starting at 9:00am, the tournament will be a four-man best ball format. There is an entrance fee of \$280.00 per 4-man team (covers the cost of golf, cart, refreshments and dinner). Prizes will be awarded. If you have any questions, please call Maj. Brad Rinehimer (JC-CPD) at 253-2018. To enter send a check payable to KMPD to JC-CPD/KMPD Charity Golf Tournament, 300 McClaws Circle, Suite #105, Williamsburg, VA 23185. Include names of team members and a contact phone.

THE CORNER POCKET



FUN, FOOD, MUSIC, AND POOL!

Located just minutes from the law school in New Town, *The Corner Pocket* offers outstanding food and entertainment in a casual, upscale environment. An alternative to the traditional bar scene in Williamsburg, *The Corner Pocket* offers pool and live entertainment.

W&M Night
Every Monday 9-close
1/2 price pool and other specials

4805 Courthouse St (757) 220-0808

Braving Class-Five Rapids and Cornholes, Law Students Survive SBA Rafting Trip

by Richard Neely
Contributor

The Upper Gully is a 10-mile stretch of world-class whitewater that boasts five class-five rapids as well as an 11-foot waterfall. Under regular conditions, this river would be a formidable challenge for even the experienced rafter. On Saturday, Oct. 7, however, the river was 600 cubic feet per second higher than normal, which meant more water was moving at a faster rate down the river. We were in for quite a ride.

Many people think that before taking on such a challenge, it is important to get a good night's sleep. Those people were quickly shamed into abandoning their beds for a campfire, guitar, and lots of booze. At 6 a.m., we stumbled down the trail to a hearty breakfast of biscuits, eggs, and coffee.

The morning grumpiness was alleviated by the sight of SBA

President Trey Freeman in a bright red wetsuit, yellow parka, and aqua helmet. Like a giant traffic light, he ushered us forward to the bus. The drive to the river took us over the New River Gorge Bridge, an 800-foot drop and a Mecca for BASE jumpers.

Our five-hour whitewater trip included lunch on the side of the river, a swimmer's rapid, and rock jumping. Back at the campsite, showered and changed, we watched the video of each raft plummeting through the five class-five rapids. Highlights included several unintentional swimmers and our guide's performance of a standing-paddle-in-the-air-crotch-grab while going down a waterfall.

After the video concluded and all had laughed at the misfortune of others, we were treated to another incredible meal: roast pig and peach cobbler. The rest of the evening progressed casually with some drinks around the fire, an incred-

ible bluegrass band, and countless games of Cornhole. I mean, who doesn't enjoy Cornhole? I know I do.

The trip was, needless to say, incredible. Two of our very own enjoyed it well enough to stay and complete a double-Upper the next

day (a double-Upper is a full day of rafting that includes two back-to-back trips down the Upper Gully). I won't lie: they are more hardcore than I am. I was perfectly content to wake up the next day, sore from the river and a nasty Cornhole accident, and call it a weekend.

Delegates, continued from pg. 9.

ven said that he is not very happy with Bush's foreign policy. I felt a little bit like the Russians withheld themselves, like in old Soviet days when you could not say in public what you really thought, especially in light of the Russian media where Bush's policies are often criticized pretty badly.

Another funny thing was that Inna liked a star on the Deputy Sheriff's uniform so much that she actually asked what was going to happen if he would "lose" his star and whether it cost a lot of money. She wanted it as a souvenir. But it

was kind of funny that the Sheriff kind of misunderstood her question and said that sheriffs in the USA make a pretty good living. It reminded me of the movie *Lost in Translation*.

Another thing that was kind of funny was that, when Dean Butler was explaining to them about the American law school system, she made an example of a Colombian judge who was involved in prosecution of the drug dealers in Colombia and eventually had to leave the country and ask for asylum in the

Continued on pg. 16.

Annual JCCPD/KMPD Charity Golf Tournament



Proceeds to benefit Avalon- Avalon is a Center for Women and Children that provides shelter and supportive services to women and children victimized by domestic violence, sexual assault, stalking and homelessness in the Greater Williamsburg Area.

When: Friday, November 10th, 2006 (shotgun start at 9:00 a.m.)
four-man best ball format

Where: Kingsmill Resort - Woods Golf Course

Fee: \$280.00 per 4-man team
(cost covers golf, cart, refreshments and dinner)

Prizes will be awarded

Questions??? Call Major Brad Rinehimer (JCCPD) at 253-2018

Complete entry form and send with your check made payable to KMPD to:

JCCPD/KMPD Charity Golf Tournament
300 McClaws Circle, Suite #105
Williamsburg, VA 23185

Team Captain: _____

Other team members: _____

Contact phone #: _____



To celebrate recent upgrades and improvements, Frieda Michael Salon at 4438 John Tyler Highway, is having a Grand Re-Opening on Friday, October 27th from 10:00-6:00.

And in honor of Domestic & Sexual Violence Awareness month, 1/2 of the proceeds from the event will benefit

Avalon: A Center for Women and Children
There will be raffles, prizes, and refreshments! In-kind donations for Avalon will also be accepted on the day of the event.

As a full-service salon, Frieda Michael Salon offers not only hairstyling and coloring but manicures, pedicures, and waxing, too.

Come make over yourself while "Giving Hope! Changing Lives!" for the ladies at Avalon.

Marshall-Wythe Student B-LAW-GS

by Tara St. Angelo
Business Editor

Every Monday night the lounge in the Grad Plex turns into a scene from *Swing Kids* as dozens of people show up to swing dance or learn to swing dance. Since this reference is lost on most of you, I will explain. *Swing Kids* told the story of an underground swing dance club in WWII Germany. So, maybe this isn't a whole lot like what goes on in the Grad Plex, but it was the only swing dancing movie reference I could make. I guess it's more like *Dancing with the Stars* minus the washed-up B-list actors. Quite a few law students show up to this event each week to make up for the absence of "celebrities."



Alex Cloud and Anne Louise Mason

Anne Louise Mason is the veteran dancer of the group. Anne has been dancing tap, jazz, and ballet since she was a kid and has taken formal training in Middle Eastern dance since 1997. She recently added swing and ballroom dancing to her arsenal last spring.

Anne has been featured in Virginia Middle Eastern Dancers and Virginia Middle Eastern Dance Teachers performances. The most prestigious award Anne has won was third place last year at the Phi Delta Phi Talent Show. She tied with former *Advocate* staffer Nick Heiderstadt, whose talent was talking like a pirate. It is truly an honor to be on the same level as Nick's pirate banter.

Like Veronica Corningstone of *Anchorman*, Anne is good at three things: fighting, dancing, and practicing law. (Note: Veronica was good at fighting, screwing,

and reading the news. Some of Veronica's talents were inappropriate subject matter for the Blawgs.) I included fighting in Anne's list because she is an award-winning fencer and made the top 100 women's foil fencers at summer nationals before coming to law school. When Anne isn't dancing or fighting, she is watching people dance (and maybe fight) with her season opera tickets in Richmond and numerous attendances of ballets and musicals.

When she isn't dancing, fighting, or learning about the law, Anne works as the Grad Plex Director, Executive Editor for the *Journal of Women and the Law*, treasurer for the International Law Society, and VP of the Phi Delta Phi Legal Fraternity. OK, so maybe she's good at more than three things.



Carrie Boyd.

One of the dancing residents is 2L **Carrie Boyd**. Carrie started dancing about a year ago when fellow 2L **Alex Cloud** convinced her to get involved with the Ballroom Dance Club. While working for Defenders of Wildlife this summer in Washington, D.C., Carrie became more involved and attended dances in D.C. and Chevy Chase, Maryland. Carrie has an extensive repertoire of dances including the tango, waltz, foxtrot, rumba, cha-cha, swing, and salsa. The long list of dances which Carrie can perform is matched only by the long list of activities in which she is involved in at the law school. She is the President of the Environmental Law Society, Assistant Symposium Editor for ELPR, a board member for PSF, and a member of the VBA, and she finds time to tutor children for the America Reads program. It seems as though Carrie got a little

selfish when she started dancing. Ballroom dancing does not help protect the environment, raise money for public service, or teach kids how to read. Actually, I am amazed Carrie found time to learn to dance. Carrie will be taking time out of her busy schedule of saving the world and will be competing in her first competition at the end of this month in Maryland.

Orlando native and Wake Forest graduate Alex Cloud is probably one of the few people who can keep up with Carrie. Alex, like Carrie, succumbed to peer pressure and became addicted to ballroom dancing. It seems as though Alex is perpetuating this vicious cycle. Alex was a casual dancer at Wake Forest until he found out that he could use dancing to get some free vacations. Alex has gone to numer-

ous competitions and will be competing with Carrie in a few weeks. Alex dances all the standard dances (waltzes, tangos, foxtrots, etc.) and gives Mario Lopez a run for his money dancing the "latin" dances (rumbas, cha-chas, sambas, etc.). I hope this *Dancing with the Stars* reference was not lost on all.

Alex has also started taking a "swing" at swing dancing (canned laughter). He placed second at a "Jack and Jill" swing dance competition (the judges pair people up randomly). It appears as though this event was for "swingers" in more than one respect (more canned laughter). Alex also placed first in a tango competition as an undergrad. Alex finds time during his promising dancing career to be a member of the *Journal of Women and the Law* and a member of SIPS.

Casino, continued from pg. 11.

or 1000 Westlaw points. The official winners at Casino Night were Barbara Rosenblatt, who earned \$34,000 in chips, Johnny O' Kane with \$28,850, Alex Brodsky, who finished the night with \$27,825, and Jonathan Hyslop, with \$19,650.

Rosenblatt, a 2L, said she had a great time at the event, combining her chips with Mark Pike's and Alex Chasick's for their team victory. "Everyone got a chance to socialize with professors that were dealing at the card tables and learn some new gambling games. I had always wanted to roll the dice for craps and I finally got to do that," said Rosenblatt, who admits that she did not roll them very well.

However, Rosenblatt said that lack of gambling expertise was not a problem for Casino Night goers. "It was fun playing with fake money because it didn't matter when I lost \$2,000 on one hand of blackjack," she said. "It was all about going big."

Rosenblatt and her teammates said going to Casino Night was an easy way to support PSF.

"A man much wiser than me once said that gambling is the stupid man's tax," said 1L Mark Pike, noting that he was glad to be a part of the winning squad, even though he lost most of his chips early on in the night. "Luckily, we're all winners when it comes to supporting the Public Service Fund."

Alex Chasick said he wanted to help enable PSF to continue

giving stipends to William & Mary law students. "PSF ... generously donates its funds to deserving and worthy recipients, like me," he said. "I know that \$3600 stipends don't materialize out of nowhere, and I was hoping my \$10, plus \$3 for pizza, would help replenish the PSF coffers."

While students come to Casino Night to support PSF and have fun, seeing their law school professors volunteering at the event also makes the evening memorable.

"Any time you get to see Professor Meese wearing a tuxedo, I think it's a successful event," said Pike.

Chasick even credits his team's victory to Professor Meese's blackjack dealing. "I don't know if it was Meese's inability to keep his hole card secret, or the perturbed unease I created when I arranged my chips in red, white, and blue stacks and informed him that they were little French flags, but I would definitely recommend that next year's would-be high rollers get an early seat at Meese's table," he said.

Although Casino Night successfully doubled last year's profits, Khvalina said PSF keeps other goals in mind during the event as well. Casino Night "is usually the first PSF event of the year, so it gives 1Ls a chance to get involved in PSF," she said. "The primary goal of PSF is, of course, to raise money for summer stipends, but the Board tries very hard to sponsor different events that make law school life more fun for everyone."



The *leader* in legal digital audio content

AudioCaseFiles (ACF) is a well-funded start-up company, targeting the legal market. We are seeking motivated law students who are looking for an interesting and relevant part-time job. Individuals earn \$15 - \$30 / hour, depending on the position.

Although we are in the process of opening a new office off Rte. 199 in Williamsburg, we will still be conveniently located near the law school. We are currently seeking individuals that want to participate in the following areas:

Media Production and Post-Production. We are looking for detailed oriented individuals who would like to be directly involved in publishing audio content.

- Post-production editing. Consists of working with audio editing software and preparing recorded audio to be packaged and distributed via the company's web site.
- Quality assurance. Looking for detail oriented individuals to assist in assuring that the company's products are consistent with client and company standards.
- Research. Individuals are needed to procure material and to research standards and client requirements.
- Third-party project manager assistant. We are currently working with a few companies that are providing content to be distributed via the ACF web site, including case briefs and Supreme Court oral argument previews and summaries. Individuals are needed to help manage and track the production process and prepare correspondence for partners.

Marketing and Advertising. We are looking for creative individuals with strong writing skills to help publicize company offerings and to provide content for our web site.

- Public relations. Individuals are needed to help publicize news and information about the company's offerings.
- Marketing assistant. Looking for individuals with strong writing skills to provide descriptions of company promotions, descriptions of content programs, and to assist in the further development of a company media kit.



If you are interested in any of the positions described above and you would like to join the ACF team, please contact Lisa Hoffert: lhoffert@audiocasefiles.com.

Reader Response: Truth in Advertising

by Cliff Allen
Contributor

Election season! A time to view the ugly insides of our current and would-be political “leaders” and accept that they are merely doing what is required of political campaigning. We excuse negative campaigning because “it works” and even justify twisted truths and “misstatements” of fact as political “spin.” In a Bush-bashing article, titled “Broken Promises” (in the Sept. 6 issue of *The Advocate*), Alan Kennedy-Shaffer (AKS) summed up the five years since 9-11-01 in a neat anti-Bush nutshell, blaming the President for social ills ranging from terrorism to Hurricane Katrina. Although I never voted for this President, this “Blame-Game” of AKS is a tired political concept.

As a father concerned with the future of my sons, I worry that the political realm is becoming increasingly attractive to those who would do exactly what is necessary to keep their jobs. Namely, nothing. President Bush, for better or worse, took decisive action to counter existing and future threats to American security. While I disagree with many of the decisions, I appreciate political leaders willing to act, rather than doing only what is necessary to protect their jobs.

Rewind the clock past 9-11, to the Bush predecessor. In 1993, the World Trade Center was bombed (by sheer luck it did not suffer the fate it would seven years later). Twenty-three Americans died in the 1996 Khobar Towers bombing in Saudi Arabia. In 1998, embassies

were bombed in Kenya and Tanzania, killing 80 people and putting the U.S. on further alert that its sovereign ground was vulnerable for future attacks. In 2000, after a barely-foiled attempt to smuggle explosives through Canada and destroy Seattle’s Space Needle, terrorists bombed an American warship, killing seventeen U.S.S. Cole sailors. In light of the former President’s public defenses concerning the anti-terrorism plan he passed on to the current administration, I have to wonder: when was President Clinton going to execute his “plan”?

With the most powerful military and intelligence assets ever known to man, our former President responded with ... nothing. But hey, it worked. Nobody criticized him for the nothing he did, and terrorism continued to grow. Of course, Democratic political leaders now blame the increase in terrorism on the 2003 invasion of Iraq, even to the point of leaking excerpts of classified intelligence reports. There are plenty of issues for which I agreed, or disagreed, with both Presidents, but terrorist attacks against American targets became a reality long before this President.

As for the intelligence report, the true content of which we have no way of knowing, the real news story is that during election season, our elected Congressmen cannot be trusted with the classified information necessary to make informed decisions. A military officer would be criminally charged and imprisoned for such acts.

The AKS article blamed the President for the catastrophe of Hurricane Katrina. He stated, “Instead of demanding accountability from [FEMA] or apologizing to the victims of Hurricane Katrina for ignoring early warnings, Bush toasted [the FEMA Director]. Unfortunately, poor urban areas are more easily lured by do-nothing politicians with empty promises. In case you missed them, these were the same incompetents who, the day after Katrina, quickly found the news cameras in order to start pointing fingers at the federal government for their own failings.”

A year before Katrina, Hurricane Ivan was touted as the worst hurricane to hit the U.S. in a century. I served at the Emergency Operations Center in Pensacola, Florida, while Ivan wreaked its destruction. In the days before and weeks after Ivan, I experienced the benefits of pre-hurricane planning. Thousands of homes, including my own, were destroyed, but the community came together because at least a few local and regional politicians (both Democrat and Republican) had done their job. Unlike the do-nothing politicians of New Orleans, they understood that “states’ rights” also means state accountability.

FEMA was present for Hurricane Ivan, but nobody expected them to run the show. The sheriff, city council members, and countless others took hold of their pre-hurricane planning and executed brilliantly in the face of overwhelming odds. Bridges were closed for justified reasons (the AKS article naively held Bush responsible for

closing bridges between black and white neighborhoods). FEMA does not evacuate—the political leaders charged with the safety of their citizens do, and in Pensacola they did.

Although Pensacola did not have levies, I am convinced that if it had, those political leaders would not have continuously ignored reports that the levies could not sustain the inevitable hurricane that would strike. New Orleans’s politicians ignored them for decades. Perhaps I lack AKS’s political wisdom, but I fail to see how the President is responsible for non-existent local hurricane planning, the real Katrina catastrophe.

Personally, I would love to elect a President, from either party, who is so admired that we can ignore the hanging chads. Unfortunately, politicians on both sides have learned to check the polls and do just enough to win elections. Decisive action for the good of the nation is discouraged, because it quickly becomes spun in order to put the opposite party into office.

This election season, whether you vote Democrat, Republican, or Libertarian, ignore the blame, the spin, and the empty promises. Elect political leaders who are unafraid to make tough and unpopular decisions. We need our leaders to focus on the future of our nation, and not just the future of their jobs. Shortsightedness will only keep us afloat for so long. So vote, and do so with a foresight that goes beyond the next two or six years, and out to generations. Isn’t that how we got this far?

Delegates, continued from pg. 13.

U.S., where she enrolled in William & Mary, graduated, and became a law professor in Florida. So Masha, their facilitator, initially interpreted as if a judge was actually involved in drug dealing herself and then decided to move to the U.S. to become a law professor. The lawyers were confused and I had to correct Masha that the judge was not a drug dealer at all.

Another thing that I was sur-

prised about was how little they knew about the U.S., like when we were at Merchant’s Square, I suggested that they take some pictures with the statue of Thomas Jefferson. One girl looked at me kind of puzzled. It turned out that she did not know who Thomas Jefferson was. That puzzled me.

Another thing was kind of funny too—when we took them to Colonial Williamsburg, Brian McNamara started to offer them different things, asking them what they would like to do, and they

could not make up their own minds, like it was too many choices and too much democracy. So then we had to change our tactic and just take them around without asking too many questions.

The final word from Masha Sveshnikova, the group’s facilitator from Moscow:

The program met my delegates’ expectations since it was very efficiently scheduled: there was enough time for professional development as well as for cultural

activities. This program enabled the delegates to gain substantial knowledge of the U.S. legal system, share ideas and expertise with their American colleagues, and make contacts with them [such as James E. Moliterno, law professor, Director of Legal Skills Program, and Kayla Finn, Director of NCSC’s International Visitors Education Program].

The group stressed that they found American and Russian people very much alike: open-hearted and hospitable.

A Fox in the Henhouse: Alan Kennedy-Shaffer's 2006 Election Preview

by Alan Kennedy-Shaffer
Features Editor

Talk about a fox in the henhouse.

Former Rep. Mark Foley (R-Fla.) wanted to be known in the House of Representatives as a protector of children. As the co-chairman of the Congressional Missing and Exploited Children's Caucus and deputy whip in the Republican leadership, Foley stroked the conservative base with messages of morality and family values. President George W. Bush commended Foley for being part of a "SWAT team for kids" in July.

On Sept. 29, Foley resigned in disgrace, the fourth Republican to fall from grace this year. Most shocking about the fact that Foley solicited teenagers in the House page program is not that Foley represented the GOP's commitment to children but the fact that those in charge turned a blind eye. According to Rep. Thomas M. Reynolds (R-NY), chairman of the National Republican Congressional Committee, Speaker J. Dennis Hastert (R-Ill.) and other top Republicans have known for a year or more that Foley had sent sexually suggestive e-mails to 16-year-old pages.

This is what happens when one member tries to throw another member under a bus," an aide to Reynolds told the Washington Post, understandably angry at Hastert for covering up Foley's predatory behavior and passing the buck during an election year.

Kirk Fordham, Foley's former chief of staff, described heavy-handed GOP efforts to cover up the sex scandal dating back to 2003, when Scott Palmer, Hastert's chief of staff, met with Foley to discuss the gay Republican's illicit contacts with former pages. Although several high-ranking Republican aides confirmed Fordham's account, Hastert continues to lie to the nation, saying that the meeting "did not happen."

Placing party over principle, Bush also got into the act. In a

clumsy attempt to push the scandal back into the closet, the White House labeled Foley's salacious messages "simply naughty e-mails." As usual, the White House backtracked to higher moral ground after Democratic accusations created the image that Bush is in bed with sexual predators, upgrading its description of the e-mails from "naughty" to "disturbing."

The Foley scandal erupted at a time when Republicans were already facing an uphill battle to retain control of Congress. Now the Republicans are in full retreat, with members telling Hastert, Reynolds, and even Bush not to show up at previously scheduled campaign events.

The cover-up has revealed the true nature of the Republican Party out of the closet, and the American people do not like what they see. One poll states that two in three Americans believe that Republican leaders in Congress tried to cover up the fact that they knew about Foley's unethical attempts to solicit dinner and possibly sex from underage House pages and deliberately failed to inform the authorities.

Hastert, Majority Leader John A. Boehner (R-Ohio), and Rep. John M. Shimkus (R-Ill.), the chair of the House Page Board, also deliberately left the other members of the bipartisan House Page Board in the dark about potentially illegal solicitations.

Under fire from both sides of the aisle, Hastert and his co-conspirators should salvage any remaining shred of dignity that they may have left by confessing their sins and resigning their posts. From Hastert to Bush, the leaders of the Republican Party have betrayed the trust of the American people and should be forced to contemplate their crimes against democracy.

"We deserve to lose this election," cry the Republican activists and the Party faithful. Betrayed by their leaders, the conservative faithful are turning against a leadership that has led them astray time and again.

Like rats fleeing a sinking



'A Fox in the Henhouse' art by Carolyn Fiddler.

ship, many GOP aides are starting to embrace the notion of a Democratic victory on November 7. Joe Gaylord, aide to former Rep. Newt Gingrich (R-Ga.), described the Foley scandal as "one more nail in [the] coffin."

Presenting a stark contrast between the Republican Party's gay-bashing rhetoric and morally bankrupt reality, the Foley scandal has invited to dinner the hypocrisies that pervade the GOP's alternative lifestyle.

Ironically, the king of gay-bashing's "own (and beloved) father, Louis Rove, was openly gay in the years before his death in 2004." Not even Karl Rove, who orchestrated Bush's reelection in 2004 by playing off the bigotry of millions of Americans, can save the Republican Party now.

Numerous House and Senate races that seemed insulated from the callous disregard for human dignity exhibited by the Bush Administration over the past six years are now in play. Along with the seats left open by Foley and retiring Rep. Jim Kolbe (R-Ariz.), another gay Republican member of Congress who knew about Foley's reprehensible behavior, seats in Ohio, Florida, Pennsylvania, Texas, California and New York are up for grabs.

Polls show that Reynolds is losing his race in New York, former Rep. Tom DeLay's seat in Texas is almost certain to change hands, and the seat occupied by indicted Rep.

Bob Ney (R-Ohio) will probably turn Democratic as a result of his decision to plead guilty to corruption charges related to the infamous Jack Abramoff.

In Ohio, Democratic Rep. Ted Strickland leads by nearly 20 percent in the governor's race against Secretary of State J. Kenneth Blackwell. Democratic challenger Jim Webb is poised to take down Sen. George Allen (R-Va.), once considered a Republican presidential contender, in a Virginia race clouded by Allen's use of the term "macaca," a racist slur, as well as Allen's obsession with the Confederate flag and hangman's nooses.

When our nation goes to the polls on Nov. 7, we owe it to ourselves and to our children to send a message that we will not tolerate politicians who betray the public trust. Hastert and Bush have proven beyond a shadow of a doubt that they are unwilling and unable to prevent hypocrites like Foley, DeLay, Ney, and Abramoff from exploiting our fears, abusing our children, and stealing our future.

With a fox in the henhouse and Republican leaders standing guard, the only solution is to shoot the fox and replace the guard.

Vote for democracy—vote Democratic!

Alan Kennedy-Shaffer is the author of Denial and Deception: A Study of the Bush Administration's Rhetorical Case for Invading Iraq.

Back into the Swing: Still Readjusting to Life as a 2L

by Michael Kourabas
Features Editor

It's the seventh week of class, yet I am still adjusting to being back in law school for the second year. Sad, yes, but very, very true. I believe a typical Wednesday illustrates the difficulties of readjusting to life in law school rather well, and so, without further ado....

8:15 a.m. – Wake up at what I consider to be an obscenely early hour. Roll over, hit snooze a minimum of two times.

8:35 – Wake up again to what is supposed to be “ocean sounds” but sounds more like TV static.

8:36 – Stroll into my enormous master bathroom. Any qualms about being out of bed immediately dissolve as I become cognizant of the fact that my bathroom is about twice the size of my studio apartment in New York on 106th and Amsterdam, and a third of the price.

9ish – Try and make an espresso on my \$20 espresso maker, cour-

tesy of Target. Fail miserably, end up with what amounts to strong coffee. Try to pour said disaster into an espresso cup, but spill everywhere because (1) I can barely see because 9 a.m. feels like 5 a.m. to me; and (2) I left the pouring mechanism in New York because it was glass and inevitably I would have broken it.

9:15 – Stumble into the Breeze, make my way to the law school. Choose the circuitous route because I am tired of the Colonial Parkway and that stupid tunnel with the sign that reads “Check Lights” whose meaning/relevance I have yet to fully comprehend. Inevitably, get stuck behind old person driving roughly 3 m.p.h. who stops at the mere sight of a pedestrian and allows said pedestrian to take his/her merry time crossing the street.

9:20 – Honk numerous times and scream at the old person, potentially sticking my head out the window and cursing.

9:25 – Finally pull up to Newport Ave. Notice the lack of spots and think to self that spending the money on a new parking pass just

might be worth it. Park illegally in the student lot anyway, figuring I might get away with an “expired pass” warning.

9:40 – Purchase medium black coffee at Java City. Am comforted by how genuinely nice the women working at Java City are and the fact that our coffee is allegedly fair-trade and possibly organic.

10:00 – Sit down in Room 134. Marvel at Professor Selassie's evidently rhinestone-studded glasses. Appreciate Professor Selassie's genuine apology for not knowing more about American history. Post feeling about same on Facebook group dedicated to Professor Selassie's musings.

11:15 – Finally somewhat awake. Begin walking to the furthest possible parking spot, where I parked the Breeze thinking that the parking police probably do not check The Tundra for violators.

11:20 – Realize the parking police do in fact check the entire lot, and did not let me off with aforementioned warning. Get angry—irrationally so. Contemplate throwing away \$20 ticket out of

spite. Think better of it and shove ticket in pocket, knowing full well I will lose it anyway and will never suffer the consequences because I will never buy a new parking pass.

11:30 – Arrive at the new gym.

11:35 – Walk through new automatic doors at gym entrance. Smile at existence of automatic doors, generally, and the fact that our new gym has them.

11:35:30 – Fumble around for ID card. Swipe ID card. Try to walk through the turnstile, forgetting to use the asinine fingerprint scanning device in addition to swiping my card. Hurt legs from impact of unforgiving turnstile. Wonder aloud in angry, bitter tone why this stupid fingerprint scanner is even necessary and question the general intelligence of whoever decided it was worth the money in the first place. Gain confidence that this measure is incontrovertibly a waste of money as I notice two students sitting at the “Problems with your

Continued on pg. 20.

Roller Bags and Scotch: "Don't Take This Seriously, But..."

by Nathan Pollard
Staff Columnist

I have had much joy in making fun of many things in my time here at Marshall-Wythe. The cliques, high school antics, toolbag moments, and, of course, basically everything Asim Modi does. People at our school are, for lack of a better phrase, a little too “tightly wound” when it comes to the things that normal people (or as Peter Griffin likes to call them, “normies”) just don't fret over. This has created much of the joy and frustration I have had at school. Although I am sometimes (more than I would like) involved in the social drama that takes place here, there have been two recent phenomena, separate of

my annoying chatter, which have grabbed my attention: the recent election scandal and the roller bag epidemic. When the folks at The Advocate asked me to write a little editorial on these two issues, I reminded them of my fourth grade writing skills, sarcastic self-deprecating “humor,” and the fact that I will probably take myself too seriously in thinking that my article is really good and, thus, I am funny. Clearly they didn't mind too much, seeing as how their standards are high enough to have people like Mike Kourabas and Tara St. Angelo as editors.

In a classic example of people getting way too worked up about something meaningless, the SBA held elections a few weeks ago with a huge uproar over one person

having his rights violated and not getting his fair shake. Obviously, that person was F. Scott Scotch. Normally I would not get myself involved in the politics of our school, especially when there was a twenty page spread in the last issue of The Advocate discussing another 1L's “incident” with the elections. But Mr. Scotch was denied his rights and was not even mentioned on the ballot for 1L elections! Talk about equal protection violations. He had a solid campaign, there was quite a buzz about him around the school, all the 2L's knew him, and his platform had something to which everyone could relate (including free rectal scans!). To further the injustice, *The Advocate*, although willing to let Mr. Alan Kennedy-Shaffer state his case for pages on

end in the last issue, wouldn't even let Mr. Scotch PAY to run an ad! Finally, the campaigns against F. Scott by some in the school who stated they were “offended” by his posters in the student lounge were obviously trying to smear and tarnish Scotch's image and keep him off the ballot. I submit to you, the reader, that if you are as outraged as I am, please e-mail Dave Bules and Ryan Brady as much as possible in the upcoming weeks and ask for re-elections.^{1, 2} F. Scott Scotch—although you didn't get your fair chance in this election, I look forward to your campaign this spring and every semester after this until you are finally elected 1L representative.

Continued on pg. 19.

¹ Disclaimer—don't actually do this or I will get in trouble somehow because people will get pissed off because I am not taking things too seriously.

² Also, I hate when people footnote a newspaper article.

CANADIAN BACON: Even Canadians Love Their New TV Shows

by Matt Dobbie
Staff Columnist

Right now it is the middle of October—which, in my humble opinion, might just be the best month of the year. The weather has cooled down, the baseball playoffs are on, the NHL season has started, crazy stories about NBA players begin swirling, and the new season of television shows has come on the air. I always get excited about the new television season: the return of my old favorite shows, the debut of new shows, and discovering what shows have jumped the shark—it is a very exciting time.

Currently, I watch about five or six shows on a regular basis: *The Simpsons*, *It's Always Sunny in Philadelphia*, *How I Met Your Mother*, *Hockey Night in Canada*, *Boston Legal*, *TLC's A Wedding Story*, and the newly debuted *Studio 60*. I highly recommend all of them. Despite really watching only these shows—thanks to the magic of the TV promo spot, I'm pretty much aware of the plot on every network

television show.

Those of you who watch sports know exactly what I'm talking about. Every commercial break during a football game features at least one promo ad for that network's shows. Even better is when they come back from commercial and the announcers talk to you about CBS's Monday Night line-up. For some reason, it always kills me when announcers do that run through—especially when it's some really old announcer like Keith Jackson describing the sexy antics that will occur this week on *Desperate Housewives*. I'm pretty sure that that is the only time in his life Keith Jackson uses words like seductive, risqué, or housewives.

While CBS, ABC, and NBC do a pretty good job of hyping their shows, they cannot even begin to compare to FOX. FOX is like the Wayne Gretzky of television promotions—just head and shoulders above the competition. It starts with their football coverage, but their baseball coverage just takes it to another level. Every commercial

break we are exposed to a multitude of promos for their shows. What is great is that it does not matter what the show is; it is the same commercial—fast paced rock music, some great action shots of the characters, a well-timed quote or two (usually shouted), and then finishing with the main characters standing in front of a black screen staring pensively towards the camera. It's awesome. Even better is that FOX refuses to promote any more than like four shows a year, so it is the same four promo ads over and over and over again. This year my favorite promo is the one for *Standoff*. It has all of the above components but also features a half second shot of a highly attractive woman in a shower stall wearing a bikini made of \$100 bills. Apparently situations like this occur in the lives of police hostage negotiators. I am extremely tempted to start watching this show, not so much because she's hot, but because I want to find out how this scene can be inserted into anyone's life and have it seem even remotely probable.

FOX's other great promotional tactic is to show the stars of their shows who just happen to be in the stands of whichever game they are broadcasting. I have caught them doing it once or twice already this year, but it really gets ramped up during the World Series. Granted, all networks show celebs in the crowd, but with FOX they have actually been planted in the crowd. It is one thing to show OC star Peter Gallagher taking in the game; it is a whole other thing to show the entire cast of *Prison Break* sitting in the same row. The former might just be dumb luck (of course he's a Tigers fan; he's from upstate New York), but with the latter it becomes pretty obvious that they are there just so that FOX can pimp the show. It is especially transparent when they show the stars of shows that do not actually have the series premiere until November.

So that is why I love October—it's the baseball, it's the hockey, it's the big networks trying to trick me into watching their shows. Good times. See y'all in two weeks.

Scotch, continued from pg. 18.

Switching gears now—I have noticed that there has been a rampant use of a form of transportation new to the school starting around the beginning of the year: roller bags. Usually these bags are segregated to airports, bus/train stations, ferry rides, or possibly punting on the Thames. The 1L class has said “No more!” to this barbaric treatment of an obviously incredibly necessary device. Whether it is one small Legal Skills book or two small Legal Skills books, people no longer are forced to carry these leviathans on their “backs” or “shoulders.” Instead they are using what has been around since Greek and Roman times: the floor. Using state-of-the-art technology, “wheels” have been attached to (this is extremely important) small “bags” with “handles” that then extend up to your “hands”! The handles then act as a way to “move”

the bag around on the “floor” behind you—the wheels of course providing less friction and quicker movement. These bags, although normally not big enough to actually carry your laptop, class books, folders, or Diet Coke cans, serve an extremely important function within our law school of providing those with slight fatigue or hunger pangs the freedom to walk around without embarrassing and cumbersome “book bags.” We upper-classman are beginning to feel like chumps for having had to build up strong back and shoulder muscles in order to carry the weight. In a fake interview with Greg Demo, I learned the true draw to the bags and why so many have recently decided to use them in (what I consider) completely unnecessary situations:

Me: Hey, Greg, I see that you have a roller bag. Tell me, what led you to buy a roller bag and use it around school?

Greg: I don't actually use it around school; I am just going to another job interview in a few hours.

Me: Oh, well, I mean you have it here at school, so maybe you can shed light as to why so many people are now using them?

Greg: Um, other than having like scoliosis or some physical problem that would necessitate using one of those bags, also I find it completely necessary to use something that doesn't allow you to use your hands while you walk ... other than that I have no idea ... Listen, I would love to talk more but I have to get going; my plane leaves in an hour.

Me: Oh, OK, let me know if you want to go to the gym later or something when you get back

Greg: OK, well, I get back tomorrow evening. Can you go at like 8?

Me: No, I have a meeting till like 8:30—can we do it after then?

Greg: Sure, but can we work on something other than chest, I did that yesterday.

Me: Sure, sounds good.

With its rapid rate of reproduction and smugness, the roller bag syndrome will soon affect the whole school, making it impossible to walk down the hall and not get hit by one. And then after you get hit ... the bag will totally flip over onto like one wheel ... and it will be hard for the other person to balance the bag which will lead to an awkward motion to keep it from tipping over ... and then the person will get upset that you kicked their bag. You, of course, will have to apologize.

I have brought this issue to F. Scott Scotch, and he states that if elected as 1L representative, he will make sure that every man, woman, and child at our school has access to this new technology. He is working with parishioners of Audio Case Files to obtain funding.

Readjusting, continued from pg. 18.

fingerprint scanning?” table to the left of the turnstiles.

11:40 – Begin workout that I have not changed in five years, despite never getting noticeably bigger and only marginally stronger.

11:40–12:40 – Become frustrated because of the following: (1) there are no 10 lb. plates; (2) the dumbbells keep rolling away because they are geometrically perfect circles; (3) I realize that taking two months off from lifting

makes one significantly weaker; and (4) iPod keeps falling out of my pocket.

12:50 – Head out of the gym. Notice smoothie shop to the right of the turnstiles as I scowl at the fingerprint-scanner-question-people as though this entire mess is their fault. Decide that I want a smoothie, but that I will call it a “shake” when I ask for it, as that sounds decidedly more masculine.

12:51 – Order shake, ask what my choices are for the “free boost.”

12:52 – Listen to a detailed explanation of boost-options, which is quickly interrupted by off-duty saleswoman who overheard our boost-conversation. Other saleswoman insists that the free-boost is actually not free, but is 69 extra cents.

12:53 – Stare at woman in bewilderment. Try and explain that free implies not 69 cents, or even 1 cent. Free means no cents, which is what this conversation is making.

12:55 – Continue listening to

inane arguments about why free means costs extra. Make succinct argument to woman explaining why she must be wrong. Convince woman making the shake to give me the free boost for free anyway and to either change the sign or force other salespeople to shut the f*ck up while customers are ordering.

1:00 – Walk to car, sipping delicious shake with free protein boost. Sigh as I contemplate the fact that the new gym is now extremely frustrating and stressful, when meant to be entirely the opposite.

SWEETER THAN SHUG: DATING ACCORDING TO DAVID BULES

by David Bules
Staff Columnist

I don’t normally go back to subjects I’ve already covered, but this one deserves some more coverage. I have alluded to various dating terms before, but I have never really gone in depth. The following events took place at Paul’s on Corona Night; the names have been changed to protect the innocent. Four W&M law students were kicking back and enjoying their south-of-the-border delights, talking about dating. Wait—first, can I please tell you that this conversation was perfect? Two of the four were notorious serial daters who can’t commit. The other two were your run-of-the-mill, Dane Cook, “Two weeks in you’re already like, no way, I can’t stand this person. I’ll hang around for five or six years and then we can end this thing violently. I got time,”¹ type daters, who over-commit. So this was the “Perfect Storm” of dating conversations.

Sidney brought up the subject of dating terms. Now, we have previously mentioned “exclusively non-dating” and “faux-dating,” but she wanted to clarify what exactly these terms entail. So Sidney and Landon (serial daters) started sparring with Jamal and Meredith (over-committers). The first term that came up was “exclusively non-

dating.” This one was easy. Jamal explained it like this: It means you are hanging out with only each other, but you won’t admit to dating. You are NOT actively looking elsewhere, but you know full well the grass is always greener. If something falls into your lap, you are not opposed to giving it a shot and abandoning the original.

Sidney flew back in and attacked this as having the exact same meaning as her term, “less than dating.” “Less than dating” is a new one. This entails dating in every sense of the word (dinner, hanging out, hooking up), but there is one major caveat: you are still actively looking elsewhere. Think of it like this: exclusively non-dating is the passive voice, and less than dating is the active.² Sidney still claimed the terms were synonyms. Jamal and Landon snapped back and said in a very Dane Cook-like fashion, “Nay, our future Cougar, let us show you the way.” The dispositive issue is whether you are actively looking or only passively looking. That’s a HUGE difference.

“Faux-dating” was up next. It literally means not dating at all. This is the all-too-common occurrence where one person is way more into it than the other. This concept was kind of foreign to Meredith, because she was used to being in a relationship. Landon, being a for-

mer faux-dater himself, explained that this situation usually occurs when the guy wants the physical part of the relationship and the girl wants the emotional. So the guy will not confine his interests to just one girl. One girl may be the “hook-up girl,” and another might be the “hang-out girl.” A wise man once said, “Put them together and you have one whole girlfriend.”³

This brings us to the phrase “seeing someone.” I do not condone the use of this term whatsoever. It’s a cop-out. Seeing someone means absolutely nothing. You are less on the hook when you are “seeing someone” than when you are “less than dating” someone. The common defense is that when you are seeing someone, you literally are seeing him or her in person, but what you do when you see each other is nobody’s business. Well, I don’t buy it. What seeing someone really means is that you are literally seeing the person, but when you are not seeing the person in front of your face, the person is probably seeing just about everyone.⁴

Two more terms are left (well, three, but one is too stupid to analyze). We’ll hit “talking” first. Talking is generally a default term for what happens before dating or in the very early stages of dating. This term does not imply hooking up or things more associated with

dating. It just means you are thinking about, maybe, sometime, in the near future, possibly, if you’re not busy, going out sometime.

The next term, suggested by an avid reader, is “an arrangement.” This is a dangerously close relative to “friends with benefits,” but that term is worth a whole column in the future. An arrangement suggests that there is some sort of quid-pro-quo involved. No, I’m not talking money exchanging hands. I’m talking more like “we’ll hang out and hook up, with the understanding that it will never go further.”⁵ The key difference between this term and friends with benefits is that friends with benefits always leads to either heartbreak or being more than friends. An arrangement is more like an unwritten contract that goes something like, “we’ll hook up, but if you even attempt to make this more than friends, I will walk away and tell everyone how bad you are in bed.”

The last term is “hookin’.” I heard this one at a party a few weeks ago, and I think I either spit out my drink or threw up in my mouth. If you ever hear someone use this one, you can assume two things: 1) they have never “hooked” with anyone at all, and 2) they never will. This term deserves no more analysis.

Until next time keep livin’ strong and lastin’ long.

¹ Cook, Dane. “The Nothing Fight.” Retaliation: Need. WMG/Comedy Central Records, 2005.

² Stop thinking like a lawyer. This is an exception to the normal rule of always using the active voice. Passive is better here. If everyone knows you are still actively looking, then whoever you are “less than dating” is not going to be thrilled.

³ Had this wise person spoken up earlier, a lot of hearts would be left unbroken.

⁴ Is this confusing? Need more clarification? In elementary terms it’s like this: See Spot. See Spot run. See Spot make out with everyone on the planet.

⁵ An arrangement is also appropriate for the “I’ve heard you’re good. Show me what all the hype is about” situation.