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Institute of Bill of Rights Law, William & Mary Law School, "1991-92 Supreme Court Preview (Program)" (1991). *Supreme Court Preview*. 154.

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SUPREME COURT PREVIEW

WHAT TO EXPECT FROM THE 1991-92 TERM

September 27-28, 1991

presented by
**The Institute of Bill of Rights Law
The College of William and Mary
Marshall-Wythe School of Law**

SUPREME COURT PREVIEW

Friday, September 27

6:00-6:30 p.m. Registration
Law School Lobby

6:30-6:40 p.m. **Welcome**, Rodney A. Smolla
McGlothin Moot Court Room Arthur B. Hanson Professor of Law, and Director of the
Institute of Bill of Rights Law

6:40-7:45 p.m. **PRAYER IN SCHOOLS: A MOOT COURT PRESENTATION**
McGlothin Moot Court Room In the case of *Lee v. Weisman*, the Court will be asked to decide
whether public school authorities violate the Establishment
Clause by allowing a speaker at a graduation ceremony to offer
an invocation and benediction invoking a deity. The moot
court argument will be followed by a "town meeting" audi-
ence discussion.

The Advocates: Judith Ledbetter, Esq. and John Tucker, Esq.
The Court: Suzanna Sherry, Chief Justice; Richard Carelli,
Walter Dellinger, Neal Devins, Lyle Denniston, Aaron Epstein,
Bruce Fein, Ruth Marcus, and Paul Marcus, Associate Justices
"Town Meeting" Moderator: Stephen Wermiel

7:45-8:00 p.m. Break

8:00-9:00 p.m. **THE JUDGE CLARENCE THOMAS CONFIRMATION**
Marshall-Wythe 119 **HEARINGS: A PANEL DISCUSSION**
Moderator: Linda Greenhouse
Panelists: Walter Dellinger, Lyle Denniston, Bruce Fein, Ruth
Marcus, Tracey Maclin, and David Savage

Saturday, September 28

9:00-9:30 a.m. Coffee

9:30-10:30 a.m. **PREVIEW OF THE COURT'S DOCKET**
Marshall-Wythe 119 **Moderator:** Rod Smolla
Panelists: Michael Gerhardt, Linda Greenhouse, Walter
Dellinger, Lyle Denniston, Suzanna Sherry, and Aaron Epstein
The Cases: *Simon & Schuster, Inc., v. Members of New York State
Crime Victims Board* (Under the First Amendment, may New
York, through its "Son of Sam" law, prohibit publishers from
paying advances and royalties for authorship of books and
other expressive works about crimes to persons accused or
convicted of those crimes, instead requiring that the pay-
ments go to compensate crime victims?)
Burson v. Freeman (Does the First Amendment permit a state to
prohibit distribution of campaign literature, display of cam-
paign material, or solicitation of votes within 100 feet of a
polling place entrance on election day?)

PANELISTS:

RICHARD CARELLI has worked for The Associated Press since 1969 and has covered the Supreme Court since 1976. He has worked as a journalist in New York, West Virginia, Ohio, and Florida as well as in Washington, D.C. He received his B.S. from Ohio University and J.D. from George Washington University.

WALTER DELLINGER is a law professor at Duke University. He received his A.B. from the University of North Carolina-Chapel Hill and LL.B. from Yale. He clerked for Supreme Court Justice Hugo Black. Professor Dellinger is an active scholar and commentator on constitutional law issues. He has testified before congressional committees, and presented cases before the United States Supreme Court. He has been on the Duke faculty since 1969.

LYLE DENNISTON, a reporter for *The Baltimore Sun*, Washington Bureau, is the dean of American journalists who cover the United States Supreme Court. He is a regular columnist for the *Washington Journalism Review* and contributor to the MacNeil-Lehrer News Hour. Mr. Denniston is also an adjunct professor of law, and journalism lecturer at Georgetown. He received his B.A. from the University of Nebraska and M.A. in American history and political science from Georgetown. Mr. Denniston is the author of *The Reporter & the Law: Techniques of Covering the Courts* (1980).

NEAL DEVINS is a law professor and lecturer in government at the College of William and Mary. He received his A.B. from Georgetown and J.D. from Vanderbilt. He was Assistant General Counsel to the United States Commission on Civil Rights, and Project Director at the Vanderbilt Institute for Public Policy Studies. Professor Devins is co-author of *Constitutional Law: Readings in Institutional Dynamics* (forthcoming, 1992), and editor and contributor for *Public Values, Private Schools* in the Stanford Series on Education and Public Policy (1989).

AARON EPSTEIN is a national correspondent for Knight-Ridder Newspapers covering the Supreme Court, the Justice Department, and law-related matters. He received his B.A. from Dartmouth and J.D. from McGeorge College of Law, University of the Pacific, and attended the University of Missouri School of Journalism. He was a member of the *Philadelphia Inquirer* staff that won the 1980 Pulitzer Prize for Local Reporting for coverage of the Three Mile Island nuclear accident, and of the Knight-Ridder team that won a 1988 Polk Award for coverage of the Iran-Contra affair.

BRUCE FEIN, a well-known commentator on constitutional law and public policy matters, writes a weekly newspaper column for *The Washington Times* and is President of Bruce Fein & Associates. He received his B.A. from the University of California-Berkeley, and a J.D. from Harvard. After clerking for United States District Judge Frank Kaufman, Mr. Fein served for ten years in a variety of posts in the United States Department of Justice, including Associate Deputy Attorney General. He served in 1983-84 as General Counsel to the Federal Communications Commission. He was also a Senior Vice President in the Telecommunications and Information Group of Gray and Company, and the Supreme Court Editor of *Benchmark* magazine.

MICHAEL GERHARDT is a law professor at the College of William and Mary. He received his B.A. from Yale, M.Sc. in Political Philosophy from the London School of Economics, and J.D. from Chicago. He is the author of numerous law review articles.

LINDA GREENHOUSE has been on the staff of *The New York Times* since 1968. She has covered politics, the New York State Legislature, the United States Congress and, since 1978, the Supreme Court. She received her B.A. from Radcliffe and earned a Master of Studies in Law from Yale while a Ford Foundation Fellow. In 1991 she was awarded an honorary degree by Brown University for her distinguished contributions as a journalist.

JUDITH LEDBETTER is an adjunct professor of law at the College of William and Mary. She received her B.A. from the University of Colorado and a J.D. from the University of California, Hastings College of the Law, where she served as a teaching assistant for retired Supreme Court

Justice Arthur Goldberg. After clerking for United States District Judge Spencer Williams she was employed as a trial attorney and assistant branch director in the Civil Division of the United States Department of Justice. She is the advisor to the William and Mary moot court team, which has won the National Moot Court Competition in two of the last three years.

TRACEY MACLIN is a law professor at Boston University. He received his B.A. from Tufts University and J.D. from Columbia. Prior to joining the faculty at Boston University in 1987, Mr. Maclin clerked for Judge Boyce F. Martin, Jr. of the United States Circuit Court, and practiced law with the firm of Cahill, Gordon & Reindel in New York, and served on the law faculty at the University of Kentucky.

PAUL MARCUS is a professor of law and Dean Emeritis of the University of Arizona College of Law. He is visiting as the Haynes Professor at William and Mary for 1991-92, and since 1990 has chaired the Institute's Task Force on the Drug-Free Workplace. Professor Marcus received his A.B. and J.D. from U.C.L.A. His publications include, among others: *Copyright and Other Aspects of Law Pertaining to Literary, Musical and Artistic Works* (with D. Myers and D. Nimmer, 1990), *The Law of Entrapment* (1989), *The Prosecution and Defense of Criminal Conspiracy Cases* (1978), *Criminal Procedure: Cases and Materials* (1986), and *Criminal Law: Cases and Materials* (1988).

RUTH MARCUS covers the Supreme Court for the *Washington Post*. Her other assignments have included legal affairs and the Justice Department. Ms. Marcus has also reported for the *National Law Journal*. She received her B.A. from Yale and J.D. from Harvard.

TONY MAURO is the Supreme Court correspondent for Gannett News Service and *USA Today* and the Supreme Court columnist for *Legal Times*. He received his B.S. from Rutgers and M.S. in Journalism from Columbia. He has edited the annual *Freedom of Information Report* of the Society of Professional Journalists since 1982.

DAVID SAVAGE has covered the Supreme Court for the *Los Angeles Times* since 1986. From 1981 to 1986 he covered Los Angeles schools and universities for the *Times*. He has been a reporter for the weekly *Education USA* newsletter and covered Congress and the Supreme Court. Mr. Savage received his M.A. in journalism from Northwestern University and A.B. from the University of North Carolina.

SUZANNA SHERRY is a law professor at the University of Minnesota. She received her A.B. from Middlebury College and J.D. from the University of Chicago. She clerked for Judge John C. Godbold, of the United States Court of Appeals for the Fifth Circuit, and practiced in Washington, D.C. Professor Sherry has written numerous articles on constitutional law and constitutional history. Her book, *A History of the American Constitution* (with Dan Farber), was published in 1989.

RODNEY SMOLLA is the Arthur B. Hanson Professor of Law, and the Director of the Institute of Bill of Rights Law at the College of William and Mary. He received his B.A. from Yale and J.D. from Duke. He clerked for Judge Charles Clark, of the United States Court of Appeals for the Fifth Circuit, and practiced in Chicago. His first book, *Suing the Press: Libel, the Media & Power* (1986) received the ABA Gavel Award Certificate of Merit in 1987. He is the author of a legal treatise, *Law of Defamation* (1986), of *Jerry Falwell v. Larry Flynt: The First Amendment on Trial* (1988), of *Constitutional Law: Structure and Rights in Our Federal System* (with Daan Braveman and William C. Banks, 1991). His latest book, *Free Speech in an Open Society* will be published in 1992 by Alfred A. Knopf.

JOHN TUCKER is a lawyer and free lance writer. He received his A.B. from Princeton University and J.D. from the University of Michigan. Before moving to Virginia, he was a distinguished trial and appellate lawyer with Jenner & Block in Chicago. Among his many cases were two arguments before the United States Supreme Court.

STEPHEN WERMIEL is the Supreme Court correspondent for the *Wall Street Journal* covering the Supreme Court and other legal issues. He received his B.A. from Tufts University and J.D. from American University. Mr. Wermiel is currently at work on the authorized biography of Justice William Brennan. For 1991-92, he is the Distinguished Lee Visiting Professor of Law at William and Mary.

Bray v. Alexandria Women's Health Clinic (Under federal civil rights laws, do the actions of abortion opponents in blocking access to abortion facilities violate the civil rights of women seeking access to such facilities?)

Cipollone v. Liggett Group, Inc. (Do federal laws governing cigarette labeling and advertising preempt state tort law damages actions premised on allegations that cigarette manufacturers intentionally deceived consumers about the health risks of smoking?)

10:30-10:45 a.m. Break

10:45-11:45 a.m.
Marshall-Wythe 119

PREVIEW OF THE COURT'S DOCKET

Moderator: Stephen Wermiel

Panelists: Tracey Maclin, Ruth Marcus, Richard Carelli, Neal Devins, Paul Marcus, David Savage

The Cases:

Dawson v. Delaware (May a defendant's membership in a Nazi-oriented white supremacist gang be used against him as an aggravating circumstance in a capital punishment sentencing hearing for murder?)

Jacobson v. United States (May the government engage in a child-pornography "sting" operation, in which it obtains a person's name from a pornography bookstore's list, targets the individual with mailings of sexual-attitude surveys, letters, and catalogues, and then processes the person's order for child pornography, when there was no prior reasonable suspicion that the person was predisposed toward purchase of child pornography?)

United States v. Mabus and *Ayers v. Mabus* (Has the State of Mississippi satisfied its obligation to dismantle its racially dual system of higher education?)

Freeman v. Pitts (When should a school district, which was previously found to be segregated and began the process of desegregation in 1969 pursuant to a court-ordered desegregation plan, be judged "unitary?")

11:45-1:00 p.m. Break for Lunch (on your own)

1:00-2:15 p.m.
McGlothlin Moot Court Room

RACIST SPEECH: DOES THE FIRST AMENDMENT PROTECT CROSS-BURNING? A MOOT COURT PRESENTATION

In the case *R.A.V. v. St. Paul*, the Supreme Court will consider the issue of "hate crimes." An ordinance in St. Paul, Minnesota makes it a misdemeanor to place, "on public or private property, a symbol, object, appellation, characterization or graffiti, including but not limited to, a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm, or resentment in others on the basis of race, color, creed, religion, or gender." A minor was charged under the ordinance for burning a cross inside a black family's yard. He did not challenge the right of the city to prosecute him for cross-burning, but argued that the ordinance was overbroad, because it potentially censors constitutionally protected speech. The moot court argument will be followed by a "town meeting" audience discussion.

The Advocates: Bruce Fein, Esq. and Rodney A. Smolla, Esq.

The Court: Ruth Marcus, Chief Justice; Walter Dellinger, Lyle Denniston, Michael Gerhardt, Linda Greenhouse, Tracey Maclin, Tony Mauro, David Savage, and Stephen Wermiel, Associate Justices

"Town Meeting" Moderator: Richard Carelli

2:15-2:30 p.m. Break

2:30-3:25 p.m. **SMALL-GROUP SEMINAR DISCUSSIONS**

A series of small-group seminar discussions will be led by the conference panelists. These sessions will have a relatively open agenda, permitting participants to explore any of the themes raised in the plenary conference sessions. Assignments to individual seminar sessions will be announced at the conference.

Seminar Section A — Moderator: Neal Devins

Seminar Section B — Moderator: Aaron Epstein

Seminar Section C — Moderator: Suzanna Sherry

Seminar Section D — Moderator: Michael Gerhardt

Seminar Section E — Moderator: Tony Mauro

Seminar Section F — Moderator: Paul Marcus

3:30-4:30 p.m.

Room 119

REFLECTIONS ON THE PAST AND FUTURE OF THE COURT: FINAL PLENARY SESSION

Moderator: Lyle Denniston

Panelists: Walter Dellinger, Bruce Fein, Linda Greenhouse, Michael Gerhardt, Tony Mauro, Stephen Wermiel, David Savage, and Suzanna Sherry

The **Institute of Bill of Rights Law** was established at William and Mary in 1982 to support research and education on the Constitution and Bill of Rights. One of the principal missions of the Institute is to facilitate interaction between the professions of law and journalism. Through a discussion of key cases on the Supreme Court's Docket at the start of each term, the annual Supreme Court Preview provides in-depth education for journalists on the underlying constitutional issues in order to enhance press coverage of the decisions. The Institute wishes to thank the National Conference of Editorial Writers for its assistance with publicity.

STAFF

Timothy J. Sullivan, Executive Director, Dean of the School of Law and John Stewart Bryan Professor of Jurisprudence.

Rodney A. Smolla, Director and Arthur B. Hanson Professor of Law.

Kay P. Kindred, Deputy Director and Lecturer.

Mildred A. Arthur, Administrative Assistant.

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