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The Advocate

Marshall-Wythe School of Law



Volume XVIII, Number 4

Thursday, October 16, 1986

Eight Pages

Advocates Court Research

Davis Delivers Wythe Lectures

BY MICHAEL MACAULIFFE

Kenneth Culp Davis, renowned legal scholar and teacher, delivered the 1986 George Wythe Lecture last Thursday October 8. Davis, presently a Distinguished Professor of Law at The University of San Diego School of Law, delivered a forceful message of Supreme Court factfinding reform to an audience of interested students and faculty.

Davis is the 1986-87 Distinguished Lee Fellow and spent three days interacting with students and faculty both in classes and in several meetings. The Distinguished Lee Fellow is administered by The Institute of Bill of Rights Law and partially funded by Lee Memorial Trust Fund.

Professor Davis is well known to many in the legal field as the leading authority on administrative law. In recent years, Davis has turned his attention and energies to numerous other areas including constitutional and criminal law.

In his introduction, Dean Sullivan credited Davis as one of the few legal scholars of our time who has "made a difference" for the profession. Professor Davis' professional history reveals a consistent record of excellence in both legal research and teaching. For

many years, Professor Davis taught at The University of Chicago and also practiced law privately.

In his address, Davis confidently asserted that the limitations imposed on the Supreme Court by the lack of factfinding resources inhibit the effectiveness of the Court in regard to lawmaking. In particular, the Court's effectiveness is hindered because the precedent system lacks the cohesive quality that lawmaking requires.

Davis argued that the Congress and regulatory agencies have a much better track record of lawmaking. This, Davis says, is a result of the availability of information and information resources. Davis concluded that the Supreme Court needs access to organizations such as the Congressional Research Service (CRS) and other, private, information resource institutions.

The resulting factual base of relevant information would, according to Davis, enable the judiciary (the Supreme Court in particular) to perform better in its lawmaking functioning.

In addition to the Wythe Lecture, Davis visited various classes, answered questions and, quite typically, asked questions. A Faculty Colloquium was also held that dealt with the lawmaking role of the Supreme Court.



Mark Raby

Kenneth Culp Davis, the Distinguished Lee Fellow, delivered the 1986 George Wythe Lecture during his three-day term in residence last week.

Constitutional Meeting Coming To M-W

BY CHERI LEWIS

On Friday and Saturday, October 17 and 18, William and Mary will be host to the first collegiate "Jefferson Meeting on the Constitution," a convention of approximately fifty delegates from the College and the Williamsburg community to discuss a number of current constitutional issues. The weekend's events are sponsored at the national level by the National Jefferson Foundation, a private organization in Washington, D.C. The meeting is the twelfth of its kind since late 1983 when the concept of a series of local, non-partisan meetings with an eye to the upcoming bicentennial of the Constitution was instituted.

According to Bill Bryant, Vice President of the Virginia Jefferson Association, the first meeting was

held in March of 1984 here in Williamsburg, which was said to be the first time in two centuries that Virginians had met to discuss the Constitution. 175 delegates participated in the three-day event, which attracted individuals from each end of Virginia's political spectrum, including former Senator Harry Byrd, former ambassador William Battle, current Newport News mayor Jessie Rattley, and Gerald Baliles, and yet managed to maintain a non-partisan, non-advocacy atmosphere. Since that time, three statewide meetings outside of Virginia and twelve such meetings throughout the state have been sponsored. Currently, 37 more Jefferson Meetings are planned nationwide in anticipation of the bicentennial next year which will, according to Bryant, "provide a

new kind of citizens' forum."

The delegates at next weekend's Jefferson Meeting will participate in a discussion of two primary issues, the Constitutional amending process and the proposed single, six-year Presidential term. Friday evening's events will include two small group discussions and a dinner with keynote speaker A. E. Dick Howard, Professor of Law at the University of Virginia, whose address will be on "The Constitution As a Living Document." The format for Saturday's events, to be held in Millington Hall, are described by Bryant as a "plenary session."

Delegate positions are still available and Marshall-Wythe faculty and students are encouraged to participate. Please contact Bill Bryant at 565-3141 if interested.

Student Beats Noisy Party Rap

BY STEVE MULROY

The Advocate's last issue reported that two Marshall-Wythe students faced Williamsburg city court appearances for hosting noisy parties. One of them, Tom Connolly, recently won his case. At a bench trial held Thursday, October 2, Connolly countered the arresting officer's testimony by using Lee Stephens, who attended the party, as a witness. Stephens testified that his 4-month-old child slept without interruption in an upstairs room throughout the August 26 party at Connolly's house, located at 25 Spring West. He also served as a character witness for Connolly, who described Stephens' performance in court as "so respectable he could have gotten Charles Manson off." The details of "the case of the sleeping child" drew

laughter from many of the court spectators, including a supportive Marshall-Wythe contingent. At one point Stephens, asked if he would have objected to the party if he had been living close by, responded, "Only if I weren't invited." Connolly said that after the judge dismissed the case, he shook hands with the arresting officer, whom he described as friendly and low-key throughout the short trial. "They weren't out to get me or anything," remarked Connolly.

Connolly supporters planned a fundraising party for Saturday, Oct. 11, to help him with his fine. The event, called "Summons Aid," was rendered moot by Connolly's victory, but was held just the same.

The Advocate Letters To The

Marshall-Wythe School of Law

A student-edited newspaper, founded in 1969 as successor to the *Amicus Curiae*, serving the students, faculty and staff of the Marshall-Wythe School of Law.

Honor

Fact pattern: A Marshall-Wythe student walks into the Wendy's in Butte, Montana and orders a side salad. The student, upon finishing his order, makes a second, illegal trip to the salad bar. Has this student violated Marshall-Wythe's Honor Code? You make the call.

Fact pattern: A law school final. The professor is several minutes late in returning to the classroom to pick up the exam booklets. Most of the class continue to write during this period. One student stands up and announces to the class that he is turning in those still working for violation of the Honor Code in working past the allotted time. Have those students violated the Honor Code?

If you answered "yes" to the foregoing questions, you were technically correct. Marshall-Wythe's Honor Code involves lying, cheating, or stealing of any sort, whether committed at the coffee machine in the lounge or in North Borneo. The Code encompasses such a vast scope that violations are oftentimes treated with cavalier disrespect. Of course, some violations are so trivial that they deserve such treatment.

In order to deal with this and other problems, the Judicial Council has decided to revamp the Honor Code. During this semester, Council members will be taking suggestions on how to make the Code more effective.

Some might question the need for an honor code. We are supposedly mature individuals. If we have yet to learn that it is best not to cheat, then the efficacy of a code of conduct or, for that matter, of a legal education is fruitless. After all, the entire legal system is based on an organized form of plagiarism conveniently referred to as precedent. Anyone who has ever written a legal document knows that originality is not a virtue. Further, many lawyers never work completely on their own. Law firms were formed so that projects could be shared by several minds. Lastly, the application of any sanction for cheating in law school means more than writing fifty times "I will not cheat." It could mean one's legal career.

On the other hand, some of us do not act as maturely as we should. Apparently, seven law reviews and several Supreme Court Reporters needed for Appellate Advocacy are missing from the shelves. Whether one agrees with the idea of an honor council or not and whether an illicit second helping of salad should be included in such a code or not, stealing vital books from the library should not be allowed to go on without punishment. We do not live in the best of all possible worlds, so we need institutions like the Honor Code. That the Code should be rational and enforceable goes without saying.

Most people do not come into direct contact with the Honor Code, but we all benefit from its presence. Books, raincoats, and lunch bags can be left unattended. Finals can be taken outside of the classroom. On the other hand, we can all be oppressed by the Code's presence. Just how much can classmates talk to each other about their papers and exams? The Code needs to be overhauled.

Hopefully, the new code will be more realistic and, hence, more respected.

- J.D.K.

The participants in the 1986 Southeast Law Placement Consortium wish to thank Dean Kaplan for the great job he did before and during the conference. His thoughtfulness and sense of humor helped us all survive a marathon weekend of interviewing. What could have been a miserable experience was made more fun, and we hope more successful, by his hard work. We feel that he is doing an excellent job in his first year at Marshall-Wythe and appreciate all the energy he put into helping us in Atlanta.

Sincerely
1986 SELPC Participants

Dear Editors:

Upon reading the last edition of the *Advocate*, I became concerned about two separate letters which criticized the character and abilities of my fellow classmates.

First, I was extremely surprised to discover that a first-year law student took time out of his busy day to criticize Mr. Klein's editorial abilities regarding the use of an "offensive neologism" such as "alright". While this student should be commended for his uncanny command of the English language, this author suggests that he direct his talents away from criticizing fellow students and toward an activity which is more constructive. It is true, the *Advocate* is not a flawless literary publication. But, after all, are we not "blessed" with the *William and Mary Law Review*, which intelligently discusses relevant legal issues, rides the cutting edge of the law, and represents the pinnacle of accurate punctuation?

Second, I was even more surprised to discover that various members of our faculty took offense to Damian Horne's spoof of the Hispanic American Law Society. With the risk of causing this letter to resemble a eulogy for Mr. Horne, I would like to present some qualities about Damian which shed light on his column *Cojones*.

Damian Horne has a unique ability to laugh at himself, his heritage, and our society in a kind and unobtrusive manner. In addition, he has not "lost himself" while attending Marshall-Wythe. Rather, he has retained his humility and sense of humor, mastering the ability to laugh with people instead of at people. In short, Damian has a perspective on life which should be commended, and one which I admire.

Cojones provides an otherwise serious Marshall-Wythe community with welcome comic relief. With all due respect to the faculty members who expressed concern over Mr. Horne's column, it is difficult to see how anyone could feel that his humor does not contribute to the "hospitable atmosphere" which students and faculty strive for. Therefore, I don't believe Damian Horne's column

demonstrated a "juvenile attempt at satire" or "appalling insensitivity. On the contrary, Damian's ability to enjoy his heritage and to be capable of realistically assessing the difference between humor and abuse demonstrates his maturity. In addition, Damian did his homework before submitting his column for publication. He personally asked each student of Hispanic origin at Marshall-Wythe whether offense would be taken to the column. All replied negatively, and encouraged publication. Therefore, the harm spoken of in the last edition of the *Advocate* never occurred. I only hope that Damian Horne has the *cojones* to continue authoring his humorous columns. Otherwise, life would be a little bit too serious for me at Marshall-Wythe.

Bob Hicks

To the Editors:

The undersigned member of the student body found the letter to the editor by Professors Lebel, Coven, Barnard, Levy, George, Nichol, Collins, Rosenberg and Williamson (hereinafter "the gang") grossly overwritten, selfimportant, hypocritical and just a little bit silly.

Perhaps the *Advocate* should better have identified Damian as an Hispanic. The "gang" might fairly have pointed out that omission. Unfortunately the letter is professorial neither in tone nor in substance. It serves only to reiterate the impression of pettiness and demagoguery left over from last year's botched hatchet job.

Although notable for its breathtaking run-on sentence, the letter contributes nothing to the hospitable atmosphere its author allegedly strives to support. In fact, the letter is further evidence of a growing rift between an arrogant and factionalized faculty and an ostracized student body. The faculty is so clearly split by adolescent cliques and power plays that one wonders whether the "undersigned" actually agreed with the stated sentiments or merely acquiesced to avoid falling into disfavor with the powers that be. It is unfortunate that we can not poll the faculty to discover who really agreed with the letter and who was cornered in the faculty lounge. Can we assume the balance of the faculty refused to sign?

It is very sad that among a group of such distinguished legal thinkers, in a school with such a fine reputation, the only *cojones* to be found are in the title of a newspaper column.

Greer McCreedy

The Advocate

Marshall-Wythe School of Law

Williamsburg, VA 23185

EDITORS IN CHIEFMelanie Morgan & J.D. Klein
News EditorLiz Kauffman
Business ManagerSusan Hubona
Sports EditorBill Power
Copy EditorAnn Finan
ColumnistsDoug Klein, Damian Horne, Layne Russell
ReportersDavid Coffman, Jeff Porter, H. Kimberlie Young, Rob Morris, Gerry Gray, Rob Laney, Mike McAuliffe, Steve Mulroy
PhotographersLee Bender, Mark Raby
CartoonistWayne Melnick
Production StaffGreg Paw, Robert Sheldon, Ray Gallagher, Amy Birkimer, Cheri Lewis

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Editor

If the nine members of the law school faculty who penned their names (LeBell, Coven, Barnard, Levy, George, Nichols, Collins, Rosenberg, and Williamson) to the destructive "group letter" vilifying the content (and, even more contemptibly, the intent) of an editorial written by my son, Damian Horne, will kindly overlook my presumption in sending coals to Newcastle, for their instruction, I would like to refer them to *Calore v. Powell Savory Corp.*, 21 App. Div. 20, 877, 251 NYS 2d 732, inasmuch as they have inextricably published malicious "disinformation" imputing "overtly racist" abuses to my son.

Such a venomous group missile, when fired primarily at a single, unwary individual by nine conspirators, cowering together, who were bound to their victim in obligatory trust, guidance and friendship through the sacred and inviolable teacher/student relationship, is shocking, dishonorable, and deliberately cruel, inasmuch as it was certainly designed to silence once and for all a somewhat inscrutable personality who (and which) is anathema from their own parochial point of view, to humiliate him, and to bring him into contempt among his peers. Whatever ostensibly worthwhile motivation they may profess to have had was rendered unconvincing by the excessiveness of their passion and was further diminished by their transparent employment of pseudo-lofty objectives and sensationalism to peremptorily further an end which men of good motivations would have effected in private.

In closing I will say that I sincerely hope that there is a place at William and Mary College for those students - however few they may be - who instinctively fear that "a people lulled is more easily managed than a people coerced" and who therefore reject emphatically the indolent, pleasing dream of personal and cultural manipulation to effect a commonality of thought - an "atmosphere of hospitality" where blandness and uniformity is all, and where the melancholy words of the aging Severus become chilling fact: "I have been all things to all, and all was of little value."

With sincere best wishes to the Class of '87 and their professors.

Gwen Battle Horne

sibly believe in the First Amendment, would climb all over each other to advocate prior restraint because a smart-mouthed Hispanic guy tweaked your brand of family-oriented sensitivity. Let's face it, enlightened faculty, anyone who witnessed the hatchet job done on Bernie Corr last year will never think of Marshall-Wythe as a hospitable atmosphere.

I am gravely offended by the moralistic tone of your condemnation. Who are you to tell the student body what it should print and what it should read?

Chris Shema

Dear Editors:

As a member of the New Mexico state bar and thus having also suffered the sterile, pusillanimous dogmas and platitudes of unimaginative law professors, I was not at all surprised by the nine tin soldiers' criticism of Damian Horne's column. It seems law schools and law professors derive their sense of worth from mass producing cookie-cutter attorneys: attorneys who will slide in and out with conforming ease into the corporate/legal machine. Consequently, what truly bothers the nine tin soldiers is not, as they protest, propriety, good taste, and "hospitality." What bothers them is after two years of law school, Damian Horne marches to the tune of his own self, and not the uniform bluebook musak of pasteurized legal training.

Moreover, as a man who is proud of his Hispanic heritage and even prouder to have a brother as loyal and loving as Damian, I must say that the "appalling insensitivity" lies with the nine tin soldiers. Not only am I, as a guest, offended by their lack of "hospitality," but as anyone familiar with Hispanic values knows, one never criticizes a member of a Spaniard's family - particularly when a family member is present.

Cosme Ripol Churrua de Horne

Dear Editors:

Last issue nine of our most "distinguished" professors attacked the editors for printing Damian Horne's satirization of a Hispanic gang in his "Cojones" column. I personally applaud the editors' decision to publish the column and feel compelled to come to the aid of Damian for reasons I will state later. I could sum up my point by telling the profs to "GET A GRIP!" but feel some explanation is necessary.

The profs' letter was replete with such classifications of Damian's column as "grossly offen-

sive," "juvenile," "overtly racist," and yes, even "wrong." Such strong words for such a weak argument!

C'mon profs! Clearly you didn't do your lawyerlike homework. Whatever happened to an attorney's duty to research the facts before drawing a conclusion? Had you done so, you would've undoubtedly discovered that Damian is not only Hispanic himself, but he is also the president of the M-W Hispanic Club. Yes, he was popularly elected by the majority of Hispanic students for which your misguided fears may be directed. If these facts alone don't evoke thoughts of nine sets of hands trying awkwardly to extract nine pairs of feet from nine mouths, read on.

These same profs are the ones who hammer into our heads the vital, almost pervasive importance of the First Amendment. But maybe they think that amendment only applies outside law school. Although I hate to resort to such an obvious concept, had the profs done further homework, they would've discovered that comments like Damian's are protected by that amendment they implicitly find insignificant.

Of course they'll say "Yeah, but 'grossly offensive' and 'racist' statements aren't protected." Well then, who was grossly offended? You? Do any of you have more than a trace of Hispanic ancestry? I doubt it. Had the profs alleged that Damian's column offended at least one Hispanic within the reasonable reach of the Advocate, then the attempted point of their letter wouldn't have been so weak. Besides, if there are "grossly offended" Hispanics at M-W, they can certainly speak for themselves and don't need the misguided championing of nine of our faculty members. Picture again nine saliva-covered sets of feet.

Oh yes. The reason I'm responding in Damian's place is because he's currently on Army field exercises arguably protecting those First Amendment freedoms the profs plainly overlooked. By the way, "Cojones" is Spanish for "Balls" implying he has the fortitude to poke fun at himself, and as the editors aptly put it, drop his "self-important sensitivity." Too bad the profs don't, figuratively speaking, have an equivalent amount of Cojones.

Finally, however, at least one positive aspect came out of the prof's letter. I haven't seen that many faculty members unite "to create a hospitable atmosphere" since last spring when several lemmings played follow the "leader" (I use the term as a means of identification and not character appraisal) in helping pack the bags of probably the best professor this school will ever see. And for that, I'm grossly offended.

Joe Dent

Cojones

By Damian Horne

Note: Cojones, by Damian Horne, has been temporarily replaced by a new column that appeals to professors.

terest of numerous Kappa Kappa Gammas.

"Hey First Sergeant, Good Morning!"

He wasn't amused, signaling and his displeasure by burping loudly--sort of the same way an evidence professor gasses up for some arrogant flatulence he fancies as an answer to a perfectly sensible question.

"Sit down," he directed "Next to that guy over there."

That guy over there was, like me, another famous Green Beret. He had done alot of pushups, but had the IQ of an anvil and drooled profusely. Probaby had Coven from Tax. "Yo" he said.

"You two guys gotta fill out the questionnaire before we can send you to the 'Big Enchilada' [The 'Big Enchilada' is army code for Norway]. Get moving. The first guy who finishes gets a Moonpie."

It was a race. I too, had had tax, so I was equally impaired, but I finally won because I never get a Moon Pie unless I beat tort professors to the vending machines.

The First Sergeant grabbed the sheets and read aloud:

table
NAME: Rambo, John J.	Horne, Damian T.
RANK: Yes	139 out of 158
MOST DIFFICULT MISSION TO DATE: Release of POWs in Vietnam, Laos, and Cambodia	Not offending people named after cocktails
MOST RECENT RECON: KGB Headquarters, Moscow	Tried to look down a labor law professor's shirt.
FAVORITE WEAPON: Arrows, Nuclear Tipped	Amendment, First
MOST PROMINENT ENEMIES: The Warsaw Pact, Mr. T	The Gang of Nine.
PREFERRED UNIFORM: Loincloth and 8 foot knife.	Never wash, never change blue tie, blue shirt, blue pants.
LAST CONTACT WITH FOREIGN NATIONAL: Assault of Danish personnel with hip fired howitzer	Drank a cup of coffee made from beans hand picked by Juan Valdez, his son, Paco, and their stubborn but sturdy ass, "Paulo."

Rambo got latrine duty somewhere. I was whisked away for an intense debriefing. It was well worth it. Now I am more convinced than ever that there should be an open season on Yuppies, Young Democrats, Jane Fonda, and Professors who think all Hispanics look like the Frito Bandito.

An open letter to the "Offended Ones:"

I find it incongruous that nine law school professors, who osten-

Toxic Torts

By Doug Klein

Many of you out there in newspaper land may own television machines. If you do, you may have seen the new show "L.A. Law." NBC decided some time ago to put a show about lawyers on television in the mid- to late eighties. NBC's programming research staff estimated that by 1989 clearly 25% of the human population of the planet Earth will be either a partner in Hyatt Legal Services, an associate in a branch office of Baker & MacKenzie, or on the waiting list of some large eastern law school. They solicited ideas for series about lawyers.

"L.A. Law" won the competition. Here are some of the honorable mentions: "He's So Litigious": A situation comedy starring Jack Klugman as a young, green-behind-the-ears lawyer who accidentally shares an apartment with Valerie Bertinelli, who plays a hard-bitten ex-tax accountant. They do not make much money, but their apartment is unbelievably spacious and well-furnished. Charles Nelson Reilly co-stars as their Korean cook. The laughs in the pilot really start rolling when Jack mistakes a bowl of kim-chee for a 1040A short form.

"Beat Lawyers": From the producers of "Miami Vice." This hour-long drama concerns two renegade lawyers (played by Tony Danza and Bryant Gumbel) who travel around the country making deals, picking up chicks, and doing itinerant legal research. They drive a '73 Monte Carlo with real dice hanging from the rear view mirror. None of the episodes has much of a plot, but the sound will be broadcast in stereo, and the characters will mumble Latin maxims before the commercial breaks.

"Law Wars": From the producers of The Bay of Pigs. This spy-tort oriented show stars Stacy Keach as an Air Force General/Physicist/Alpine Ski Champ/Law Professor who plans to deploy lawyers in outer space as a defense against incoming ballistic missiles. The lawyers, led

by the always macho Pat Morita, stop the missiles in their tracks with extensive motions practice and grossly excessive discovery. Melissa Sue Anderson plays Keach's arch-enemy, both in the skies and on the slopes, in the role of the evil Doktor Professor Ugarov. Charlton Heston plays the strong-willed American President who backs Keach up all the way, 100%. Heston refuses to sacrifice the Law Wars program even though the producer tries repeatedly to convince him that he is only starring in a stupid television show and is not, in actuality, the President of these United States. Joan Collins plays Keach's research assistant, a second year known only as Ilsa.

"Leather Goes To Law School": In this series, Leather Tuscadero, newly-resurrected from her old role in "Happy Days," has grown

up, ditched Fonzie, and been accepted into a large eastern law school (fully accredited). Leather, played by Jamie Lee Curtis—in her first role since "Slasher Prom," shows everyone who's the boss when she crashes into the student lounge on her motorcycle for the first day of classes. She later learns the value of legal research from Mickey Rooney, a lovable old favorite who plays Jamie's Korean cook, Kim. The Honorable Sandra Day O'Connor plays herself in a guest slot of Leather's visiting con law professor. The laughs just never stop when somebody in the class asks her a question.

Next Week: No New Bridge-Tunnel For Tidewater: Pat Robertson Parts The James

Wayneburg

By Wayne Melnick

Hello, this is Doug Klein.
Listen, you can draw a
cartoon for this week's paper,
but you have to promise
not to be controversial.
No political controversy...
No making fun of the
Dean or the Honor Council...

Advocate
Cartoonist
before Honor
Council



Yeah, I
can do
that.

Nothing
that could
be construed
as Racist...



Yeah,
I can
do that.

And absolutely
nothing that
would offend
Steve Frazier.

Yeah,
I can
do that.



Forecast

Continued from Page Five

cess. Pashjian v. Republican Party of Connecticut will focus on Article I, Section 2 and the Seventeenth Amendment.

The issue of campaign financing is up for review in Federal Election Commission v. Massachusetts Citizens for Life, Inc. A nonprofit organization contends it did not violate a federal law prohibiting corporations from contributing or expending funds in a federal election campaigns. The MCFL spent almost \$10,000.00 printing and distributing publications stating the candidate's voting records. The actual existence of "expenditures" and a "corporation" within the meaning of the federal law is questioned by the MCFL.

A Connecticut schoolteacher brought his claim of religious discrimination to the high court, hoping that his religious observances will be honored over a school collective bargaining agreement, limiting the days off for religious worship. In Ansonia v. Phibbrook, the new bench arrangement may follow or stray from last term's 5-4 decision upholding military dress regulations over a Jewish officer's request to wear his yarmulke.

In the AIDS arena, a case involving a school teacher with tuberculosis, who was dismissed due to the contagiousness of her illness, will be settled, with AIDS advocates looking on in hopes of a supportive outcome. An alleged violation of the Rehabilitation Act surfaces in School Board of Nassau County v. Arline because the teacher claims a handicap due to the tuberculosis and blames her dismissal solely on this basis, as she is otherwise qualified.

The age-old creationism conflict emerges again in this new era of the Supreme Court. A Louisiana statute which requires the teaching of creation-science when the theory of evolution is taught in public schools faces opposition from supporters of the First Amendment Establishment Clause. The Fifth Circuit determined that the statute did conflict with the First Amendment and was not a legitimate effort to promote academic freedom.

By all means, the cases docketed for review do not end here, but these are representative samples of issues the 86-87 term will face. Only the coming of June will determine if today's issues will be altered by views of the newer conservative court or will remain constant as they evolved from the Warren Court and its predecessors.

Marshall-Wythe Young Democrats

Election Update

By Steve Collins

Three weeks from today, on the 4th of November, Virginia goes to the polls for a very important election. Across the commonwealth there are a number of tightly contested congressional races; the opportunity for the Democratic Party to take a majority of our state's seats in the House of Representatives is very great. We strongly urge everyone to vote in the upcoming election. Those who are registered to vote outside the confines of the Williamsburg area may obtain applications for absentee ballots from our club by dropping a note in Neal O'Hara's hanging file (3rd Year). Once you have filled it in, you can return it to his hanging file and we will be happy to mail it in to the proper registrar. All the absentee ballot requests we receive will be mailed out this Friday afternoon, to ensure that there will be ample time

for you to receive an absentee ballot and return it prior to the election.

Democrats are on the ballot in nine of Virginia's ten congressional districts. Three Democrats have no opposition. A brief review of each race follows:

FIRST DISTRICT: State Senator Bobby Scott stands a good chance of knocking out incumbent Republican Herb Bateman. This is the local race, and it is a particularly exciting one. Bateman has run a low-key campaign claiming to have served the district while adhering to an extremely conservative voting record. Scott has refused to run a negative campaign, emphasizing instead the importance of improving health care, education, and employment opportunities. Scott's record in the General Assembly has been extremely impressive,

and voters are responding favorably to his campaign. Our club is working hard for his victory.

SECOND DISTRICT: Down in Norfolk and Virginia Beach, Delegate Owen Pickett is running against Republican State Senator Joe Canada for the seat of retiring Representative William Whitehurst. Pickett vows to "carry on the tradition of integrity and trust" established by Whitehurst. There are serious questions regarding some of Canada's financial dealings. Pickett should win.

THIRD DISTRICT: Democrat Ken Powell is seeking to unseat incumbent Republican Thomas Bliley. Though Powell started far behind, the race has tightened and he may emerge victorious on Election Day.

FOURTH DISTRICT: Democratic Representative Norman Sisisky is unopposed.

FIFTH DISTRICT: Democratic Congressman Dan Daniel is unopposed.

SIXTH DISTRICT: Jim Olin, the incumbent Democratic Congressman, should have little trouble defeating Flo Traywick.

SEVENTH DISTRICT: No Democrats felt like battling Virginia's most conservative district to defeat Representative French Slaughter.

EIGHTH DISTRICT: Jim Boren, noted author and lecturer, is running a consistently funny and surprisingly effective race against Stan Parris, the incumbent Republican.

NINTH DISTRICT: For the first time in 133 years, the Fighting Ninth is seeing an unopposed congressional contest. Congressman Rick Boucher, elected just four years, has been an outstanding Member of Congress. Democrats down that way are gleeful about this.

TENTH DISTRICT: Democrat John Milliken, a member of the Arlington County Board of Supervisors, is running a very strong campaign against three-term Republican Representative Frank Wolf. Milliken's leadership in

transportation, education, and budget matters provided him with a strong base of support which is growing rapidly. Milliken points to the inconsistencies and ineffectiveness of Wolf's record on Capitol Hill. Given the shallow support for Wolf, and the popularity of Milliken, Democrats are convinced that this is one Republican seat we will take.

Four proposed amendments to Virginia's Constitution are on the ballot November 4th. The first two are of immense importance in allowing for increased voter registration. Our commonwealth is far below the already pitiful U.S. average in both registration and voter turnout. The first amendment would allow any voter who makes a written request to the registrar to remain on the voting rolls rather than be automatically purged after four years of failing to vote. The second amendment would permit government employees to be appointed assistant voter registrars. This would allow for voter registration at any DMV office. These amendments offer moderate, reasonable, non-partisan remedies to the serious problem of political non-participation in Virginia. They should be passed.

Supreme Court Forecast

BY H. KIMBERLIE YOUNG

Will the new Chief Justice William Rehnquist persuade the Court to change its views on past issues such as school prayer, abortion and equal rights for a more Reagan-oriented stance? With the addition of Justice Antonin Scalia, does the Court's outlook on substantive issues show signs of moderate or minimal change? Will Justice Sandra Day O'Connor develop her own independent views, abandoning her tendency to side with Rehnquist? These are among the questions to be answered by the 1986-87 term of the United States Supreme Court. Other inquiries will be settled this session as well, relating to issues of religious discrimination, the election process, pocket vetoes, AIDS, and the death penalty.

Two Marshall-Wythe professors expressed their views on the new bench configuration. Judy Ledbetter expects Scalia to make a significant contribution to the intellectual vigor of the Supreme Court. Gene Nichol follows this view as well, stressing Scalia's impressive, articulate and extremely persuasive manner in court. Unlike former Chief Justice Warren Burger, "who doesn't fall within that category," Nichol called the new Justice "a thoughtful conservative."

The combined efforts of Scalia and Rehnquist may persuade the Court to adopt an even more conservative point of view. At least, this is what Ledbetter hopes for. The professor would like to see the two urge judicial restraint in the area of standing and lessen the

Court's activist influence in this constitutional area. Noting the previous tensions of past terms, Ledbetter said Scalia's demeanor may add to a more pleasant atmosphere in the country's highest court. He is an amiable consensus builder, less likely to alienate other justices.

While a significant impression regarding the new appointments will not surface immediately, Nichol stated that a gradual substantive change will develop. Cases in which the liberal and conservative members of the Court are sharply divided may show significant changes in terms of votes, but Nichol thought this unlikely due to the scarcity of such cases. An example of such a case is a 5-4 decision with the conservative justices in dissent. If

Burger voted in the majority of such a fine-line case, due to a more liberal interpretation of the issue, it is likely that Scalia would vote with the minority, as he is even more conservative than Burger or Rehnquist. Thus a 5-4 on the liberal side would switch to a 5-4 on the conservative side. But, as Nichol explained, a case where this situation would arise is unlikely. He agreed that O'Connor is becoming more independent—"She's too impressive to be a Rehnquist clone."

A camaraderie of sorts exists between Rehnquist and Scalia. A recent article in *The National Law Journal* suggests that the impact on the Court may be greater than anticipated, attributing the change to Scalia and Rehnquist's tendency to build on each other. The article said both justices use each other's previous dissents and majority opinions in forming new opinions and in convincing other members of the court to join their opinion on a particular issue.

The Court's first argument session began last week and ends today. A variety of cases were scheduled to be heard, including three election process cases, criminal issues involving confessions and the death penalty, and discrimination questions of pregnancy leave and time off for religious observation.

Perhaps the case with the greatest potential to attract public attention is *McCleskey v. Kemp*. In this death penalty appeal, a Georgia statute is subject to a constitutional challenge. Petitioners claim the sentencing system is invalid based on statistical evidence

showing that those connected of killing whites are eleven times more likely to receive the death penalty than those killing blacks. Other studies show that blacks are more often subjected to the death penalty than whites.

Other criminal law issues delve into confessions and automobile inventory searches. In *Colorado v. Connelly*, the Court will decide if the confession of a person who suffers from a mental disease is "involuntary" for due process purposes. A derivative issue centers on the validity of a mentally ill defendant's waiver of Miranda rights.

How far does the right to search a car for inventory purposes go? In deciding whether to extend the broad scope of searches allowed in *Illinois v. Lafayette*, the Rehnquist Court will decide if police officers went too far by examining the insides of covered cans found in a backpack within a car searched for inventory purposes.

Election process issues invade the Court in significant numbers this term. In *Munro v. Socialist Workers Party*, the Court will scrutinize a Washington statute that requires minority candidates to poll one percent of the vote in the primary election before they can be placed on the general election ballot.

A Connecticut conflict involves a state statute which prohibits voters from participating in a party's primary election unless they appear on the party's enrollment list, which conflicts with a political party's desire to have unaffiliated voters take part in the election process.

Continued on Page Four

Booze Cruise



Lee Bender

PDP's celebrate good times on the First Annual Booze Cruise held recently. Above, from left—oh, forget it.

Ask The Advocate

The editorial staff of The Advocate is proud to present a new feature, "Ask the Advocate." Each issue, "Ask the Advocate" will answer probing questions on important issues that affect our lives as students here at Marshall-Wythe. Questions on any subject are welcomed; however, those considered unsuitable for publication will be answered in sign language.

Q: This week's question comes from Beebo Cupcake, '87, who asks, "Why does the upstairs women's bathroom smell like an outhouse?"

A: The Advocate spoke with Floyd Turbo, head of Plumbing Systems and Sanitary Management here at Marshall-Wythe. He said that the reason the upstairs ladies' room smells like an outhouse is that it is, in effect, an outhouse. It seems that when the new building was constructed, they neglected to provide for plumbing to the upper floor. To remedy the problem, a large holding tank was installed in the floor, which serves the same purpose as the pit beneath a conventional outhouse. "We clean it out once or twice a year," Turbo stated, "but it still seems to smell." He added that the men's bathroom on the second floor smells the same way, but no one seems to care.



Mark Raby

Marshall-Wythe's crack, killer sentry dogs, Muffie and Bruno, keep a sharp eye out for impure food in the vending machines.

Fair Notice

Coffeehouse

Coffeehouse, an informal talent show featuring Marshall-Wythe students, will be held October 25 at 8 p.m. in the Campus Center Little Theatre. This annual event has become a favorite among both performers and audiences. Participants should prepare three or four songs or a short comedy act. A piano and limited P.A. equipment will be available. Anyone interested in performing should contact Melanie Morgan or Amy Birkimer by Thursday, October 23 to be scheduled to appear. We still don't have an emcee, by the way—we're looking for volunteers. No coffee, no house, just lots of wine, food, good music and good times—please come!

Nazi Prosecutor

Professor Telford Taylor of Columbia University will address the general question of the laws of war, including modern proposals for their development, and whether they will have a value in today's world. The lecture will begin at 12:15, 30 October 1986, at the National Center for State Courts. A reception will follow.

Best known as America's chief prosecutor at the 1946 Nazi War Crimes trials at Nuremberg, Professor Taylor also served in various official capacities during the Roosevelt and Truman administrations and holds the rank of brigadier general (retired).

The lecture is sponsored by the International Law Society, Marshall-Wythe School of Law, and Professor Walter William's International Law class. All are welcome to attend.

Speakers Committee

SPEAKERS COMMITTEE. The Committee has been formed, and the current members are: Graham Shirley, Al Albitson, Mike Davidson, Kim Young, Wayne Melnick and Rich Slaney. The function of the Committee is to approve or disapprove funding requests made by Marshall-Wythe organizations who plan to sponsor programs featuring guest speakers. The law school has been allocated \$3,000, of which \$414 has already been requested and approved. Some additional money may become available through the college.

A request for funding should include: the name of the organization, the name of the speaker, the type of program, the date of the program, and the amount of funding requested. The amount should be broken down into specific categories (i.e. the more specific the request, the more likely approval will be). Requests should be directed in writing to a member of the Committee.

Absentee Ballots

The Marshall-Wythe Young Democrats have Virginia absentee ballot applications available. The forms will be in Neal O'Hara's hanging file Thursday and Friday, the 16th and 17th. The club will mail in completed applications to the appropriate registrars late Friday afternoon, so that you will have time to receive the absentee ballot and return it prior to the election on November 4. Please put completed applications in Neal O'Hara's hanging file also.

Faculty Profile:

Trotter Hardy

BY GERRY GRAY

"My wife paints every morning", says Trotter Hardy as he reveals a detailed image of a telephone. Less professional works by his two children dominate the display areas. A personal computer commands the only clearing in the small, cluttered office.

"If I'm not working, I'm usually spending time with my family doing something. Kicking the soccer ball, going on a bike ride, taking them somewhere, picking them up from somewhere . . . stuff like that."

In 1969 Hardy took his Bachelor's Degree in Sociology to the backwaters of Virginia and taught mentally handicapped children. Before the next decade was over, he was employed by the White House as a computer processing consultant.

In the past six years he has gained his J.D. from Duke, where he worked as articles editor of the law review, moved into an appellate level clerkship, and is now settled in at Marshall-Wythe *Teaching Torts and Intellectual Property*. His short, rapid speech seems quite consistent with the lifestyle.

Hardy originally intended to further his sociology education in graduate school, but circumstances dictated otherwise.

"I found out that if I went I would be drafted for sure. At that point they stopped giving deferment for grad school. That's partly why I went into teaching. I was interested in teaching anyway. I couldn't go to graduate school so I had to do something."

He found teaching the mentally handicapped "terribly hard. Partly because it was my first job, and I think any first job is hard, but also because I wasn't trained or prepared to do it."

The job lasted a year, his interest in sociology lingered briefly. "At that point I was pretty liberal and anti-war, but my views changed as I got older."

"Sociology was fun at the time, and in the 60s seemed like a nice thing to do, but after a couple of years out of college I really wasn't interested in it anymore."

A few years later he was established at the National Bureau of Standards, Computer Science Group. "I thought that was a whole lot of fun, and I never cared about going back into graduate work for sociology, although the idea had occurred to me of going to graduate school at some point and going into teaching."

The Carter administration came looking for some "free advice," as he puts it, for their computers program. Hardy wound up designing a database for Vice-President Mondale's office. The program kept track of all of Mondale's appointments, and contained a history of every person the Vice-President had ever held a meeting with.

"I don't know if they used that system or not, but I know I spent an awful lot of time on it."

"So," he notes, "I had a life before law school." After graduating Hardy clerked for one year, an experience he looks back on fondly.

"It was a real opportunity and probably the only opportunity you'd have to come to understand how judges decide cases. You get a year of watching judges decide cases and talking about it with them."

"In the appellate system, after they've heard oral arguments, the three judges get together for about five minutes and decide it. Then someone's got to go off and write

the opinion to support the decision. But it's much more oriented toward a felt system of justice and fair play with an opinion supporting that instinct than it is a process of mutually applying a bunch of rules and seeing what comes out the other end."

"I was interested in teaching at that point. If I hadn't gotten an offer to teach I probably would have gone with a large Washington firm." His first assignment at Marshall-Wythe was teaching Legal Writing.

"It's the only course in which you are issuing a flood of details about margins, spacing or whatever. In no other course do you have to do that, so students tend to view it as a lot of Mickey Mouse attention to details that are unimportant and stupid."

"Because they are always comparing it unconsciously, I think, to every other course where you don't have to do anything except talk and take an exam, students don't like it, and they don't like whoever is teaching it."

"It's also the first course in which they get any type of feedback and, generally speaking, it's lower than they think it should be, and that doesn't please them."

"It's best taught one-on-one in a small conference where you go over someone's writing in detail. Instead you've got to teach 185 people. Writing is very hard to teach in that setting."

"Given the constraints of money and resources I think we have a pretty good program . . . even though the students don't know that."

"It's easier to have a rapport when you're not teaching Legal Writing. I'm happy with it. I don't know how students feel about it, but I like teaching and I like students."

Hardy says he enjoys teaching Torts and Intellectual Property. "Torts is fun, because it's lively and the cases are weird and funny. Students tend to like torts cases . . . I have a lot of fun with Garret v. Dailey. It's the first case and everyone can understand a kid pulling a chair out from under somebody. Then there're all these goofy cases . . . We have an outhouse case coming up—Prosser used to have half a dozen outhouse cases, most of them have been edited out since his death. Silly cases like that are fun to talk about."

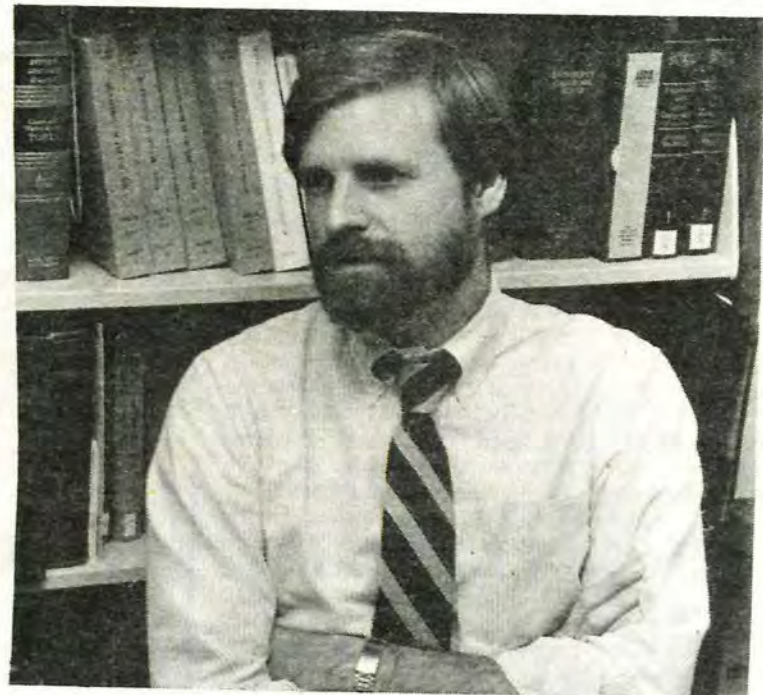
"Copyright and Intellectual Pro-

perty are fun because there's more intellectual depth to it than there is to Computers and Law [a course he has taught in the past].

"Computers and Law, like computers and anything, is a smattering of things. You don't really have time to go into depth on the contract question or the copyright question. You have to touch across all these bases. Some people like that. For me I'd rather pick an area and go into a little more detail."

Not surprisingly, Hardy is among the advocates of a two-year law degree program. "By the second year, I think, people feel like they sort of know what they're doing . . . Third year is probably one of the hardest because there's no novelty left. The courses stop being interesting. That's why a lot of people, me included, think that law school should be two years with some sort of apprenticeship and possibly a return for a third year. But the three years in a row is awfully hard. It gets to be tedious by your third year."

Hardy currently has an article on Copyright in the works. Over the long term—2 to 3 years—he hopes to write a book on intellectual property.



Mark Raby

Professor Trotter Hardy, M-W's resident computer expert.

"Living Wills" Preserve Right to Die

BY JEFF PORTER

Imagine that you're lying terminally ill in a hospital room. The only question is the number of days or weeks of life remaining. The physical pain now is nothing compared to the pain ahead. Doctors are preparing the array of drugs and treatments that will prolong your life. You wonder, though, whether you'd rather live out your remaining days without the interference of medicine.

Prior to 1983, the terminally ill patient in Virginia had to accept the treatments. A patient could not refuse medical attention. In March of 1983, however, the Virginia legislature passed the Natural Death Act, which recognized the right of a competent adult to execute a "Living Will." Thirty-seven states have enacted similar enabling legislation.

A Living Will directs that life-sustaining procedures be withheld

or withdrawn in the event of a terminal condition. The Will can also designate another person to make treatment decisions if the declarant is diagnosed as suffering from a terminal condition.

Last summer, 3rd Year Julie Currin attended a 3-day collaboration on the subject of Living Wills. The meeting was sponsored by "Concern for Dying," a national, non-profit organization which works to increase public

awareness of Living Wills and to support legislation. The collaboration included professionals and students from law, medicine, social work, nursing, and chaplaincy. The weekend's discussions and films considered the problems and issues involved in Living Wills. With the knowledge gained from the collaboration, the participants returned to their respective fields to act as educators and promoters.

Currin plans a Film Seminar at Marshall-Wythe next semester, featuring speakers, discussions, and the movie "Dax's Case." Currin is also available to answer questions, provide information, and speak to interested groups. For students especially interested in the subject, Currin has information on scholarships available for participation in future collaborations sponsored by Concern for Dying.

Playoffs Begin

And Yet Another Softball Article

BY BILL POWER AND
ROB LANEY

The Love Cows wrapped up the Steve Garvey league pennant by sweeping a double-header last week, disposing of the Lushwell Exterminators (24-0) and Pepe's Pirates Revenge (16-11). Pat Miller ("the Nurse") finished the season with a stunning 5-0 record as the Cows led the College in total offense by scoring 105 runs in only 26 innings this year. The defense, anchored by all-world first baseman Rodney Young, gave up only 24 runs all season and posted two shutouts. The Love Cows thus go into the intramural playoffs ranked third in the College, behind defending champion Apple Pie and fraternity champion Lambda Chi.

Averaging 21 runs per game, the Cows have been led by Trey Resolute, who has gone seven for seven since his detox program; Tom Cook, who found new life as a lead-off hitter; and Jeff Mazanec, who has continually hit line-drives. The outfield of Butch Atkinson, Peter Burr, R. J. Skaggs, and Phil Lingafelt continues to gun down any runners who dare threaten Nurse K's ERA. Rob "Hippo Hips" Laney also does his part to minimize the Nurse's ERA with his swinging gate policy in the outfield. With the platooning library God of Ed Edmunds and law review athlete Ed Isler, the Love Cows appear to be running at full steam for the play-offs.

Prurient Interests continued their successful season with a decisive 15-4 win over the undergrad New Riders. Power batting by first years Bobby Jones, Lief Nissen, and Louis Lazaron

teamed with Kenny Harrell's home-run in the fourth inning, turning what may have been a close game into another weekly washing. The Interests go into the playoffs unseeded but with a strong 4-1 record and high hopes.

Mental Distress also ended up 4-1, leaving them in second place in the Vida Blue League and in the Division One playoffs. They won their last game 19-15 after being 9-0 in the first inning of play. The Distress think such character will carry them to the pennant.

In the midst of the playoff scenario, C Ayr is seeded fifth in the College and will rely on strength to carry them to the series final. This means that four law school clubs, sporting a combined record of 18-2, made the sixteen-team field comprising the Division One playoffs and gained the right to compete for the honor of College softball champions. Whether one of these clubs will be able to bring the pennant back to Marshall-Wythe remains to be seen.

In other softball action, the Rippers lost their shirts by winning their first game of the season. Faith healer "Cuddles" was miraculous as he ripped the game winning hit, but the Holly Farms chicken went to Neil Keesee who went to Chicago. With guidance from veteran ace Lefty Lucchesi and the help of his rubber arm Fireman Falat was credited with the W. Meanwhile, the Rippers remain under league investigation because of an unknown ringer from Ohio.

With the tying run on first and the game on the line, That Darn Moody's Steve Buck turned into a

work of art at the plate. More precisely, Buck resembled a statue as he meekly watched two called strikes for the final out in a heartbreaking 20-18 loss to the undefeated Monks.

Tom Kohler provided most of the offensive fireworks for "Moody" as he went three for four with two towering home runs. Second year Jack Daugherty, with

only a month of organized ball under his belt, came into his own as he hit for the cycle: a single, a double, a triple, and a home run.

Lacy Briefs Intimidate Entire Field

The Lacy Briefs, Marshall-Wythe's standout women's softball team, had a terrific season, finishing with a record of 5-0. However, the Briefs never took the field as all of their opponents forfeited their games. It is obvious

that the Briefs' reputation for being extremely skilled and equally as tough must have preceded them.

It should be mentioned, however, that Cathi Wirth did a fine job as the team's captain. Unfortunately for her, but not for some unnamed members of the team, her shirt masterpieces were

never properly unveiled. But wait, the playoffs!

Despite the forfeiture of all other teams in the league, the Lacy Briefs must face Jeffrey's Angels in a three-out-of-five playoff series. Good luck to the Briefs as they battle for those t-shirts (the ones without your neighbor's vital statistics.)



Mark Raby

The Lacy Briefs, undefeated and untested, check the time as yet another team forfeits out of the League.

Stories From The Deep

When I found out that the editors were going to give me my own column covering surf adventures along the East Coast and beyond, I was stoked. Like, here was my chance, man. I'd been dropping in on big, gnarley grinders from Cape Perfect to Point Perfection for the past 22 years and now I was gonna get to write something and not just anything but something about the waves--like killer, man. Ya see, the way I figure it, I can't surf forever ya know. I mean what am I gonna do when I'm 55 and Pipeline is closing out and I gotta bail into a big inside tube and the white water drives me down onto the coral reef until my lungs feel like they're gonna give. That's pretty heavy and at 55 I might end up as shark food, brah, even though I've always said if you have to go down, you should go in the ocean where you can spend the life-after riding that perfect wave. Anyway, I ain't greying or

anything. I got at least twenty more years of shreddin' before I'll switch to a long board and then ten years on the long before I'm totally baked and burned out, so I'm just planning my future as a writer, right? So let's get back to the point of this column man, like what it's all about -- surfing. From paddling out into five-foot glassy green walls of wisdom to dropping in on hurricane monsters, all the wipeouts, the hooters both on and off the beach, the trophies, and of course the ever-present bikini-clad blondes. I got lots of tales to tell and even if you're not a surfer ya can listen in and pick up on the surf lingo so as you don't go talkin' like some damn hodad inlander when ya visit the beach. I'll begin next week with a porpoise, that's right, Porpoise Island. Until then, later brah. And, oh yeah, remember don't pee in the sea.

--Rip Curl