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Faculty Offers Go to First Choices

by Karin Herwatt

The faculty has chosen replacements for those members leaving this year. The hiring committee chose people for five permanent, tenure-track positions, as well as for four one-semester or one-year visiting professorships. Those recommended to the Board of Visitors for the permanent positions are a husband and wife team, Rodney Smolla and Linda Malone, both currently professors of law at the University of Arkansas and visiting professors at the University of Denver School of Law; James E. Moliterno, professor of law at Texas Tech College of Law; Margaret Spenser, a litigator who has worked for the Justice Department and in the Virginia Attorney General's office; and Susan Grover, a litigator from Dunnell, Duvall, Bennett, and Porter, in Washington, D.C. The visiting professors the faculty chose are Alan Gunn, Pratt White Professor of Law at Cornell, Calvin Woodard, Henry L. Dobert Professor of Law at UVA; Howard Hunter, Professor of Law at Emory; and Robert Nagel, Professor of Law at the University of Colorado.

Dean Williamson cautioned that the Board will confirm the faculty's choices some time next month, and all discussion of the faculty's choices relating to the positions are hypothetical pending the final approval of the Board of Visitors. Confirmation of the faculty's choices by the Board of Visitors is the last step in the hiring process, so these people cannot be considered officially hired, but "we think they'll be approved," Dean Williamson said.

Rodney Smolla will be Callor Professor of Law and Director of the Bill of Rights Institute, replacing Gene Nichols. "He is a person of considerable accomplishment," Dean Williamson said. He is also his most recent book, Swig the Press, Libel, the Media, and Power, which was very favorably reviewed and is a book of general circulation as well as of academic quality. He also has another book pending, on the Palavel-Fawley libel case: the last chapter of that book will discuss what happened in the Supreme Court. He will teach Constitutional Law and Federal Courts. "He is a star," Williamson said. He received his B.A. from Yale in American Studies in 1975 and a J.D. from Duke in 1978.

Linda Malone specializes in both International Law and Federal teaching International Law. Her most interesting publication, according to Dean William- son, was "The Kahan Report, Ariel Sharon, and the Sabra­ Shattila Massacre: Responsibilities under International Law for Massacre of Civilian Populations," in the Utah Law Review. Malone also specializes in the area of international law. "We will be teaching International Law, Environmental Law, Labor Law, and Agricultural Law—a field involving the environmental regulation of farming, pesticides, etc."

As for James Moliterno, "the best way to describe Moliterno," Dean Williamson said, "is that over the years, the last ten years, we have looked for people who are committed, dedicated to legal research and writing. Those people are very hard to find. We first met Moliterno a number of years ago, when there was no opportunity to hire him. When we had the opportunity presented itself, because of Michael Hillinger's departure, he was the top candidate among those who could have come here with a vengeance. He understands how to teach skills—lawyering skills—probably better than anyone we've ever met." Williamson said he expects that students will benefit from and even enjoy his classes. "His hiring goes hand-in-hand with the prospective change in the legal research and writing program," Williamson said.

Margaret Spenser is "an experienced lawyer." She has a vast experience with both trial and appellate litigation, having litigated, Dean Williamson said, "literally hundreds of cases." She is the wife of Justice Spencer, a Richmond federal judge, and "the most experienced litigator that we've ever had on this faculty." She will be teaching Appellate Advocacy and assist in teaching Trial Advocacy, she will also teach Civil Procedure.

Susan Grover is a litigator who will teach Civil Procedure and Employment Discrimination. She is a 1980 graduate of Hollins College, and received her J.D. from Georgetown University in 1983, where she was the Executive Editor of the Georgetown Law Journal. She clerked for justices Gisach and Robinon of the D.C. Circuit. Alan Gunn will be a visiting professor at Marshall-Wythe for a year. He is, Williamson said, "one of the nation's leading tax scholars. He will teach Basic Federal Income Tax and be very knowledgeable of advanced tax courses.

Calvin Woodard will be here in the spring. He will be the visiting Lee Professor at the Institute of Bill of Rights, and will be teaching a Constitutional Law seminar. "Ironically," Williamson said, "Nagel comes here. He's the best they have on their faculty. Nagel also will be a part of the Bill of Rights Symposium this weekend.

The additional hires "allow the existing faculty members to do other things." For example, Professor Bardawill will teach Bankruptcy and Agency and Partnerships instead of Civil Procedure, and Schaefer will teach Corporations. Two faculty members, Professors Roseneg and Koch, will be on sabbatical for a semester—although they will be remaining in Williamsburg.

Williamson said the Student Hiring Committee was aware of the issue about the four faculty members they interviewed. Susan Grover turned down an offer to take an early right, and the Committee was unable to meet with her. Williamson said he is very eager to say that we would never hire someone the Student Hiring Committee wouldn't want, but this was not a problem this time, so it's an essentially academic question.

Dean Sullivan ponders the problems of passage through the Pearly Gates. Libel sight played to a packed house Monday, March 27.

2L Seeks Cert in High Court

by Steven Mister

While most of Virginia Cook's second-year colleagues were laboring over their most court arguments, she was tackling a more difficult project. The stakes were higher; her case involved the life of a real person. And Gini, as she's known at Marshall-Wythe, just might be responsible for changing the law.

On February 2nd, Gini Cook filed a petition with the United States Supreme Court for a writ of cor­ torari on behalf of a prisoner at the Petersburg federal peniten­ tiary. A member of the Post­ Conviction Assistance Project (P­ CAP) since her first semester, and now one of the student directors of the program, Gini says the ex­ perience was unlike anything she's ever done.

"I skipped all my classes for a week to get it finished before the deadline," Gini says. If the court grants the petition for a hearing, it will have been worth it, she adds. "I would be incredibly proud and happy that something I did had an impact," Gini explained.

Case No. 87-6450, as the petition has been tagged by the court, involves the interpretation of Federal Rule of Criminal Procedure 33, "the new trial motion." Normally, a new trial will be granted in a criminal case upon the discovery of new evidence only if the new evidence would probably have produced a different result. When the evidence indicates that a witness for the prosecution has perjured himself, however, the majority of the circuits invoke a lesser standard of review.

The standard for perjured testimony is 'might have produc­ ed a different result,'" Gini explains. Even as she rehearses the analysis of the law two months after filing the petition, she still talks quickly and enthusiastically about its content, as if sharing it for the first time.

Leonard Marra, the pro se defendant who Gini is assisting, was convicted of conspiracy to commit arson almost four years ago. The basis of the state's case was a "missing" drum of methanol from Marra's testing facility. After trial, new evidence revealed that the methanol was never delivered to Marra, the government's main witness had been paid.

"The appellate judge [for the Third Circuit] made a distinction between perjury and merely false testimony is 'might have produc­ ed a different result,'" Gini explains. As she rehearse the analysis of the law two months after filing the petition, she still talks quickly and enthusiastically about its content, as if sharing it for the first time.

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"The appellate judge [for the Third Circuit] made a distinction between perjury and merely false testimony possible."

Continued on Page Six
by Steven Malloy

The Public Service Fund is at a critical stage in its development, according to co-chair Amy Cook. If the upcoming pledge drive does not demonstrate strong student support, the continued existence of the Fund will be in jeopardy.

The pledge drive is the latest moneymaking scheme of the Fund, a student-founded non-profit corporation which gives stipends to Marshall-Wythe students working at low-paying public service jobs. Under the scheme, students will pledge a portion of their summer income to the Fund. Suggested donations are one percent, one dollar, or discrete amounts ranging from $25 to $150. "We're not expecting anyone to go beyond their means," said Cook, who chairs the Fund along with fellow second-year Peter Poutier. "We just want them [students] to be fair." Cook said that similar programs have been successful at over 40 law schools around the country, including UVA, Harvard, and Michigan.

"Track Record" Needed

The Fund, with the help of the Law Students Involved in the Community membership, has raised $6000 this year, enough for three stipends. The recipients of this year's awards, which will deplete the Fund's treasury, will be announced by the Fund's Board this year, enough for three stipends. The Fund already plans an alumni phone-a-thon in the fall. Also being considered for future years are solicitations of employers, perhaps in the form of a request to "match" the contribution pledged by their Marshall-Wythe employees. Some Fund personnel have expressed reservations about this idea, fearing that it would deter potential employers from seeking out Marshall-Wythe students.

Students may pledge to the Fund by filling out the blue Public Service Fund brochures placed in the hanging files last week. They should be returned to Amy Cook's office by April 11. The Fund's Board, informally formed by interested students last semester, may use this year's $6000 to help more than three students, if one or more of the seven applicants has an alternate income source. Such recipients will be given the balance of the $2000 stipend goal after their alternate source is deducted.

This year's Board consists of three students from each class and three non-voting faculty advisers. The faculty advisers are Placement Dean Robert Kaplan, who has made the fund aware of public service job opportunities, Prof. John Levy, who will familiarize the Board with the various public service organizations, and Prof. Jayne Barnard, who helped the Fund achieve its non-profit corporation status. New Board members will be elected this January.

Cook feels that programs like this are essential at law schools. "In the law school realm," she said, "you don't get much of an opportunity—except through the clinical programs—to give something back." For students who will not join a clinical program, according to Cook, the Fund is that opportunity.

Panic and Fear

At one time or another, we have all sought the assistance of Brenda Frank, head of circulation at the Marshall-Wythe Library. Frank joined the Marshall-Wythe family in June of last year. Despite the sometimes hectic pace, she finds her current job less stressful than her previous one.

She has worked with the state in the field of public education for 12 years. Ms. Frank spent the five years prior to her employment here in charge of the circulation department in the library of a local prison. That library is designed to supplement educational programs at the facility and provide inmates with enough information to gain access to the courts. However, the number and variety of law books is limited. The inmates are ap­peased by the materials provided to them, but according to Frank, it is never enough to give them the information they need.

It takes a special kind of person to work in the circulation department here. It is less intimidating here than in her last position. She does not have the "fear that someone will physically assault her for a decision or because a book is unavailable. But Brenda Fran­k is always on the move. There is little quiet time for her to complete her own paperwork. Brenda believes that a law school librarian must be people-orient­ed and flexible. She is responsible to the faculty as well as to the students and must learn to answer the needs of both and balance her time accordingly.

"Panic and fear "The atmosphere in the library can be very intense and stressful." The summer is quiet and calm. Most of the students are here for bar review and are intent on passing the exams. Brenda has been justifiably concerned. They have invested a tremendous amount of time and money in law school and the exams are very important.

"I think the students are terrified. They have invested a tremendous amount of time and money in law school and the exams are very important."

She believes that the finals will be easier this spring, since all students are now familiar with the process and realize that they will live through it.

When necessary books are missing, it makes Brenda's job more difficult. She must try to fill the gap by placing books on reserve and by borrowing books and materials from other libraries. Fortunately, the missing books always seem to return after the papers are due; but this does not help the students who are denied access to the material. "It is very competitive here. I see the need for that, but I also see the need for ethical behavior."
The Advocate Thursday, April 7, 1988

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Law Review Review

by Steven Mister

"It's an exciting time to be Editor-in-Chief," says Larry Gennari, the newly-named editor of the William and Mary Law Review.

"The Review is not only a scholarly journal, it's a promotion piece for Marshall-Wythe as well." Gennari continues. "I think it represents the scholarship and diligence of the entire school."

Non-Members Need Apply

With that philosophy, it's not surprising that Gennari and Managing Editor Anna Engh have announced that the Review will actively consider submissions from any student in the law school.

"We're interested in whatever students are writing about," Engh added.

The William & Mary Law Review publishes eight student notes each year. "Some people think you have to be on the Review to be published, but that's just not true," Gennari says.

All students are encouraged to submit seminar papers or independent research projects to the Review. Articles should be submitted to Neal McBrayer, the Student Articles Editor, for consideration and critiques.

This year, the Review is publishing a seminar paper by Susan Winchell, who is not a Law Review member.

Head Honchos Armed & Ready

The job of selecting those submissions goes to Professional Articles Editor Mike Gaertner. "Mine, by far, is the most exciting job," he claims. But then all of this year's executives are enthusiastic about the coming year.

Larry and Anna both noted the quality of the staff. Larry, who calls himself a "people person," said he also hopes to improve the organizational structure and the school's perception of the Review.

"We need more input from the faculty. We have a lot of fun at the softball game, but we need them to give us critical evaluations too," Gennari commented. He said he hopes to improve feedback, "so they can tell us what they like and don't like about the publication."

Write-on requirements will be changing this fall too. Candidates' Program Director Kathy Hall will be masterminding the process, but Larry and Anna agreed that this year will be more emphasis on writing style and analysis.

A meeting for all first-years is planned for mid-April.

Lonely at the Top

Nevertheless, Engh and Gennari both have reservations about their positions. "Time budgeting is going to be rough. As for the authority, that's a lot of bull!" Gennari admitted.

For Anna, a major concern is not making the same mistakes as previous years. "We don't have any institutional history. That's why I'm trying to learn so much from Bob (outgoing Managing Editor Bob Korroch) before he graduates," she said.

Selections for volume 30 issue 2 have already begun. "We're excited," she added. "People person," admits Larry. "We're going to institute mandatory AIDS and drug testing as well as periodic inspections of knees and backs for carpet burns."
INTERALIA

The Last Word

Every year the outgoing editor of the Advocate coins the motto for their tenure. I put forth the following:

All the news we get we print.

Somebody’s thinking around here.

Why not?

The Advocate still has three mottos but two of them have changed. The first slogan is the traditional motto. It.

Somebody’s thinking around here” sort of surfaced from nowhere, literally. The staff does not know who penned this fitting line but there it was, scribbled on an envelope on the door of The Advocate office. We just sort of The Advocate and we leave it untouched. The second motto is mine. Almost every issue this year contained something never before attempted by a newspaper of our caliber. When They said it could not be done or should not be done, we said “Why not?” And we did it anyway. Twelve page issues? No problem. Commercial advertising? Sure. Wrap around copy? Let’s do it. Cartoons? Go for it. Shocking copy and bold statements? Why not? Paid subscriptions? Well, almost.

Our efforts to gain alumni subscribers were thwarted to some degree but not for long. While our Corr coverage seemed to be on the top of many of the faculty and administration’s minds, the Advocate has many other stories up its sleeve to entice readers to sign up for more. Basically, we’ll try anything once and this past year is evidence of that.

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—H.K.Y.

The Four Basic Food Groups

... For Law Students

1. The Caffeine Group
2. The Fruit Group
3. The Grease Group
4. The Alcohoil Group

Helps build nerves and promotes alertness. At least five servings a day are necessary to meet the demands of law school. Especially important are the two breakfast servings.

Available for 3¢ a pound at Farm Fresh.

One serving a day preserves the illusion of nutrition, particularly when consumed in front of other students in the lounge.

Provides energy and raw bulk to law students. The following effects occur: groups 1 and 2. Robs’ servings a day.

Provides needed sleep by soothing exam/career anxiety. Also builds up muscles via 12-oz. cans. Approximately 100 calories per serving.
Gnosiology
by Jeff Yeats

Can anyone as gracefully display as much of God's own generosity as our Laurie Williams? Is there another human being out there with the incredible mental and physical metabolism of Dave Cozad? It may prove impossible to replace America's perpetually glowing presence, Pete Lacchetti's gift for spotting the non sequitur and Dave Lester's contribution to the ideological balance around here.

Mike Davidson

Drug WARS: A column in the last edition of The Advocate cited recent statistics on the incredible quantity of illegal drugs in this country and their pervasiveness in our society, inviting the reader to consider these as evidence in support of greater investment in enforcement of drug laws. I think it points to the futility of continuing this sort of attack. The only way that we can keep drugs out of this country is to curtail the demand for them. We shouldn't be alarmed that people are able to get the substances they want. The real concern should be "Why do people want to get the substances they want in their own bodies?"

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By Mike Davidson

Library Cong

"Late at night while you're sleeping, Library Cong come a creeping all around..."

I recently ran into a greatly perturbed Tom Kohler returning from the library. He said, "I discovered a new book, by a professor in University of Tennessee, Greece, with a good and a yellowed French wool cover from Copenhagen, an eighth-carat diamond on a gold chain, and two bonnet pins, one silver, the other bronze. In an interview with this woman, who is a former student, she said she was a former student who was being denied a graduation gift from the President of the University. The book was a record of her life, including her experiences in the University and her relationship with the President. She said she had been denied a graduation gift because she was not a former student. She said the University had not been fair to her, and that she deserved a graduation gift. She said she was going to sue the University for the book."

By Will Murphy

HONOR CODE. 1) The Honor Code's introduction claims that one of its purposes is to allow a student to be trusted. Does it really? I have found that presumption missing on several occasions. I imagine that most other students have had similar experiences. The flip side is that most other students have had an honorable time. But does it really? I have actually had more than one, a relatively safe assumption in regard to a Marshall-Wythe student. The dual standards — the presumption of one's own honor and the inability to rely on the honor of the people you are dealing with — do not reach so far. Without question, a truly honorable person remains honorable while he or she is away from school. This leads to my final point.

CARREL POLICY: Supposedly the library is for the use of the students and policies regulating its use are for our convenience. I have yet to talk to a single student who likes the restrictive policies governing the use of the carrels. Those of us who have spoken to that being able to store some of their things in their cars is worth whatever convenience they might suffer as a result of others doing so. It seems that a compromise could be arrived at without great difficulty.

2) Are there any limits to the reach of the Code? According to its text, a student who told a cop during Spring Break in Florida "I haven't had more than one beer," could be prosecuted for an honor offense, assuming that he or she had actually had more than one, a relatively safe assumption in regard to a Marshall-Wythe student. The dual standards — the presumption of one's own honor and the inability to rely on the honor of the people you are dealing with — do not reach so far. Without question, a truly honorable person remains honorable while he or she is away from school. This leads to my final point.

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3) A truly honorable person will act with honor without having signed the Honor Code. Anyone else would not feel bound by the Code anyway.

Availability is a symptom. Let's lighten up on the carrel policy and let these students have the right to take our books off the shelves and read them. We need more, not fewer carrels.

By Global Barristers

BABY BARRISTERS

Student reaction to the increase in Cong activity has been varied. Some students love the merriment of the nightly gathering, and love the idea of being title runner-ups. Others, on the other hand, feel that all is lost. After all they drink a lot and are not sure if they can emulate Leigh Ann Holt's ability to call forth order from chaos.

Some information to warn your heart and broaden your cultural awareness:

"In Estonia is possible to study a law in my University only. I think that our law students (men) are just same... A lot of students from another faculties hate them. Because they are conceived, insolent, slick and sneaky. After all they drink a lot and think that all girls desire only them..."

— Ingrid Pillet Ph.D. candidate in Psychology University of Tallinn, Estonia

U.S.S.R.

—submitted by Karin Herwati
Caffeine Connection

by John Field

For thousands of years the human race—of muddled along, experiencing change so gradually that the very notion of progress referred only to individual rather than social growth. Then, quite recently in historical terms, change exploded on the world. The rate of change increased so dramatically that it altered man's most basic perceptions of himself and his place in the natural order. Change continues to increase at this explosive rate, and the rate of increase itself increases exponentially.

What happened? Historians have offered many accounts: the European renaissance, the scientific and industrial revolution, the expansion of geographic frontiers, and so on. But these and similar reasons tend to sound suspiciously more like excuses than causes.

My proposition is that what happened is coffee.

When coffee first appeared in Europe during the 16th and 17th centuries it brought with it an era of caffeine addiction. Ever since, then, most adults in what are now the world's most popular dink.

Moreover, coffee prepared the ground for four years. He's been let go. It's a ridiculous! It's my proposition that what happened is coffee.

Continued From Page One

testimony [and invoked the tougher standard of review,] Gini continued. “It's ridiculous! It makes no sense that a witness' testimony should have any effect on whether Mr. Marra gets a new trial.”

What's noticeable during the interview is that Gini keeps referring to Marra; she appears so unassuming about the petition or her involvement. “He's been in there for four years. He's been let down so much before,” she comments.

“His optimistic—he believes in everyone tells you they're in-” Gini adds. “I know the problem—and I presented it to the court.” When asked about his innocence, she paused. “You know, Perry Mason, or something. That feeling still hasn't gone away. Everyday the Court calls for a response or with information I feel it.”

Gini arrived at the Court at 12:10 p.m. with a half an hour to spare. The day guard joked that she was still not there. She wanted to drive around Washington a little first. She went to her parents' house in northern Virginia that night, had a beer and slept until 2:00 the next afternoon.

“It was the same belief.” Gini admits now. “Jeez, I just couldn't have blown it for him.”

For now, the hardest part is waiting, but indications from the Court have made Gini and Marra optimistic. The government originally waived its right to file a response brief, a sign they might not oppose it. Then the Court requested a government response, a signal that it has an interest in the case. Gini also thinks her petition has been “hooked up” with another case making a similar argument.

“There has never been a case where the issue was so carefully and clearly presented,” Gini comments. “If the Court wants to address this issue, the case is ready to do it.”

If the case is accepted for argument, it will be placed on the docket for the '80 term starting this fall. As for who would argue it, Gini has a few suggestions. “If we couldn't do it, I'm not even a real lawyer yet,” she laughs. Professor Michael Hillinger who offered her some guidance in writing the petition has expressed an interest.

“Then there's always my former law in Arizona.” Gini suggests. “Can you imagine what they'd say if I ask them if they want to argue my case before the Supreme Court?” Gini laughs again, thoroughly enjoying this possibility.

Except for the occasional calls from a clerk or getting copies for the briefs, Gini's life is no different; but some of her friends have already called her at home imitating Sandra Day O'Connor. If the petition for certiorari is granted, she hopes to be able to work on the brief, whichever Marra decides to have argue his case.

And so those days Gini is waiting for a copy of the government's response brief in the mail and watches the Supreme Court log in the newspaper for word on 67-6450. If the petition is granted, "I would just so happy; it means so much."
D.C. Insider Speaks in High Court Confirmations

by Phillip Steel

The recent confirmation hearings of Robert Bork and William Kennedy illustrated a new stage of public discourse about the role of Supreme Court justices in Constitutional adjudication, according to Visiting Professor G. Edward White.

Traditionally, two judges - Chief Justice Earl Warren (1908-1969) and Justice Oliver Wendell Holmes (1902-1932) - embodied polar opposites of views on interpreting the Constitution, according to White. The academic ramifications of these two philosophies was the subject of the 1987-88 George Wythe Lecture delivered last Thursday.

In the Marshallian universe, rights exist prior to government and government exists to protect and preserve these pre-existing rights. The Constitution, therefore, defines the relationship between the individual and government. Enactments or legislation which restrict individual rights should be suspect in the eyes of the judiciary.

Holmes took the opposite tack in these areas. White said. According to Holmes, individual rights are the product of government and that nature does not exist; these created rights are subordinate to the majoritarian processes of the legislature. The Constitution is a positive source of law, but it is by nature a counter-majoritarian document; therefore the enactment of the legislature even if restricting individual rights, should be struck down by the judiciary only if in clear violation of the Constitution.

While said Marshall's view is pre-modernist. "Jurisprudence is based on a deeply assumed consensus of substantive values," Holmes' modernist posture "starts from a rejection of the possibility of deep consensus, substantive values in our society. The process of majoritarianism is the only way to affirm substantive values."

The Marshallian view predominated in the "vested rights" cases, White said. "There was no freedom of contract in the due process clause," the Marshall court read this freedom into the due process clause on the theory that it is substantive right existing prior to the Constitution.

Holmes' dissent in Lochner started the turn against inferring substantive rights. According to White, Holmes said, "there is no room for value orientation in Supreme Court decisions. The Constitution is for 'poor' or fundamentally different views. It is a pluralistic document."

But as soon as Holmes' view became dominant in the 1930s, White said a split developed in modernist judicial thought. One strain held that there could be no substantive agreement, "pluralism and process were all that counted." Insuring fair procedures was the role of the court. Others, called Neo-Marshallians, said that without substantive values, there would be no defending against encroachment by the state on individual rights. Basic substantive values must be recognized, such as civil and human rights, but not property and contract rights. The Neo-Marshallian view seemed to prevail in Brown v. Board of Education, White said. A good Holmesian would have found that Congress has not acted in the area of discrimination, so the court must wait for the legislature.

Instead, he said the court found that certain, basic rights trump the value of plurality and practical processes.

The same Griswold, a case White called "Lockner revised as a ghost. It involved liberty or privacy instead of liberty of contract. Griswold was an open use of extra-textual rights. "The right of privacy is not found in the Constitution, it's found in the culture at large. We are back in a sense to the Marshallian framework," he said.

This return to a focus on substantive rights took a toll on Bork. "Bork said he was a Holmesian pluralist. The fact that he had substantive views would be irrelevant in his decisions. But this was not accepted," according to White. He was defeated because he was on the losing side of Neo-Marshallian substantive rights a la Griswold and Brown.

Kennedy's judicial outlook was the same as Bork's, but he did not take the same substantive stands. Instead he was pictured as a moderate, White said.

"This focus on substantive positions tells White that "the liberalistic position is cracking as part of the official orthodoxy of the judicial debate." The language of judicial engagement is a person's concern of self-restraint, but not in true Holmes "deference to legislature" fashion. The prevalent view now is that justices should not be political partisans - a different brand of restraint.

But White still looked for a check on the substantive views of justices and seemed to find it in substantive values themselves. Chief Justice Rehnquist's confirmation process, "our obligation is to ask if we know what they are for and against and if we know what we care about. That's what keeps us from getting 'bad' judges," he said.

White is John B. Miner Professor of Law at the University of Virginia, and has authored six books, three of which won Gavel Awards from the American Bar Association.

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Court Debate Doomed Bork

by Steven Mister

Mark Gittenstein, Chief Counsel to the Senate Judiciary Committee, aggressively defended the nomination of Robert Bork and Anthony Kennedy.

Confirmation Criteria

"Originally, I believed the only question for the Senate was the objective criteria of a person's competence to sit on the Court. Much of the Senate felt that way too. But I was written out of the Founding Fathers, the historical precedents and the policy implications all advocate an aggressive position for the Senate in judicial appointments," Gittenstein said.

Gittenstein admitted that the perceptions create an increased need for legislative activism in the courts. "We need for legislative activism in the nomination process: when a President seeks to remake the court in his image, the Senate and President are deeply divided conservative agenda in the courts.

Some senators later commented that when they sought to test the validity of his theoretical framework, Gittenstein changed roles from disinterested scholar to impassioned politician rather than defending his thesis from an academic standpoint.

Reagan-bashing

Gittenstein criticized the Reagan Administration for attempting to remake the judicial branch after early defeats of his conservative agenda in the courts. Calling it "the most ideological administration in forty years," Gittenstein said that a president must have a specific mandate from the people.

When students questioned whether his theory provided normative criteria for judicial appointments or merely a description of historical confirmation battles, however, Gittenstein refused to justify his analysis as a prescriptive one for analyzing future confirmations.

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ROOMMATES WANTED for next school year, 3 Br, 2 Bath apt. in Village of Woodshire. Rent will be about $175. Contact Will Murphy, IL 229-8429

WANTED-WANTED—LA in need of employment. Have you ever considered an academic career, now is your chance. Call 555-4001

PERSONALS

LAW VAMP: I want to see you when the sun comes up. The Nighthawk. BING Green jackets await at the 19th hole. Remember, hot club shoots the ace. — Arby P.

EMPLOYMENT OPPORTUNITY

The Williamsburg Area Society for the Prevention of Cruelty to Animals

Shelter Caretaker

40 hours/week $4.00/hour beginning with training period $4.50/hour with acceptable prior SPCA or veterinary clinic work experience (must be paid experience)

Employment period is from May 15th through September 15th
Faculty Profile: Duke Lends Trusted Professor

by John Fagan

This spring Marshall-Wythe is fortunate to have Clark Havighurst as a visiting professor. Professor Havighurst comes to William & Mary, a school with no basketball team to speak of, from a school with a Final Four team, Duke. Professor Havighurst is teaching antitrust, this semester.

Professor Havighurst began his legal career at Northwestern University where his father was dean of the law school. After graduation he went to the New York firm of Debevoise & Plimpton where he practiced for six months until he was drafted. Havighurst then spent a year as a researcher at Duke before returning to New York for three more years. Havighurst then returned to Duke where he has been ever since.

Professor Havighurst specializes in health care law. In a way this specialization was by accident. While working as editor of "Law and Contemporary Problems" in 1964 Havighurst wrote an article dealing with health care. "Because it had my name on it I thought I knew something," says Havighurst. From that beginning Professor Havighurst has gone on to publish a number of books on the topic of health care. One book published this June by Foundation Press entitled Health Care Law and Policy. According to Havighurst 1979 was a decisive year in health care. The Federal Trade Commission was conducting policy debates, in which Havighurst participated, the result of which was to allow the private sector and market forces to play a more active role in health care. For the future Professor Havighurst does not foresee any significant changes in the present situation. Although a Democratic President would probably be more inclined to increase regulation and put more money into health care, it is doubtful that significant changes would occur. The reason is simple: no one knows where the money is to come from.

It is obvious when talking to Professor Havighurst that he enjoys what he is doing. Teaching is totally different from practice and that seems to appeal to Havighurst. According to Havighurst, teaching provides the "freedom to pursue subjects that interest you and reflect at length on matters of principle."

Discussion

Continued From page Seven

people before setting out to remake the court.

"Reagan ran on the economy and then tried to transfer that support into a mandate for social change," he commented.

Gittenstein also argued that the most important qualities for a nominee to the Court are detachment, that is, someone who is not inclined to pursue a political career.尚or (no particular issues is secondary," he said.

Kennedy, Bork & Biden

This comment drew fire from some students who questioned the wisdom and the likelihood that a divided Senate and President would choose a "wildcard" candidate, without a paper trail of writings shedding light on his views, as a compromise between political extremes.

Anthony Kennedy had no political agenda upon joining the Court, which made him the perfect compromise between Reagan and the Senate, Gittenstein said. "Senator Biden went to Howard Baker in the beginning and asked for a nominee like Kennedy, but the administration wouldn’t give in. Their biggest mistake was trying to portray Bork as a moderate," he added.

Despite his unwillingness to defend his conceptual analysis from a pedagogical vantage point, Gittenstein’s presentation did offer insights into the confirmation process. His theory sparked heated discussion and the firsthand details of his confirmation hearing strategy provoked a lively exchange.

But possibly students are no closer to a definitive model of the confirmation process. Conceptual models of Congressional action are not easily constructed and even harder to defend.

Not surprisingly, pragmatism wins out over theoretical models. Pure compromise among ideologues is the only solution. As Gittenstein commented, "Otherwise, the separation of powers and the advice and consent clause could lead to all out war among the branches."

Bloodmobile: The Colonial Virginia Chapter of the American Red Cross will conduct a bloodmobile on Thursday, April 14 at the National Center for State Courts, 300 Newport Avenue. The bloodmobile is being sponsored by the BLSA Club, Marshall-Wythe School of Law, and National Center for State Courts.

Donor hours are from 10:00 a.m. - 2:00 p.m.

The William and Mary Public Service Fund is pleased to announce the recipients of the program’s inaugural grants for summer 1988:

Robert S. Stevens — The Virginia Farmworker Assistance Project, Peninsula Legal Aid, Hampton and Belle Haven, Virginia

J. Martin Wagner — The Lawyers’ Committee for Civil Rights Under Law, Washington, D.C.

Wendy L. Wiebalk — Williamsburg Task Force for Battered Women, Williamsburg, Virginia.

The last word

The first issue started out at a fast pace. Murphy disqualified in the free speech case. The Bork nomination and Constitutional Convention, interview tactics to relieve the tension.

But editorials don’t always just cover the law. Election campaign rules sparked some debate, as well as Mike’s Haig-North in ’88. Copy machine criticisms and grad speaker choices.

Yes, Murphy and Burns become regular voices. Our fav professor Spanogle interviewed.

Reasons for departures of faculty reviewed.

Clairett’s SBA nitpicking produced “Das Holt.” Little Willy’s superbowl pics caused some revolts.


Legal writing objections, Frazier-Kohler infections,

The results of recent SBA elections.

Raby’s late pics and James’ cartoons were missed.

But not as much as Coven was piaed. The issues stop coming, The press has stopped running.

But next year’s staff is even more stunning. Gerry and Cheri run the show now I say with a sob.

Because next year this editor will have a real job.

—H.K.Y.
Summer Success: Do's and Don'ts

by John Field

A panel discussion on how to succeed in your summer job attracted fifty-first-and-second-year students on March 30. The panelists, all M-W alumni, offered tips on handling the insecurities and opportunities that go along with that first legal position. Panelist Ray C. Stoner of Eckert, Seaman, Chrin, & Mellott in Pittsburgh, described the large-firm (180 lawyers) experience, Chris Hoenerberger of Shackleford, Heonenberger, Thomas & Willis in Orange, Va., that of the small firm (eight lawyers), and Marged Harris, with the Environmental Protection Agency, Washington D.C., that of service in a government agency. Dean Kaplan welcomed the presentation by Stephan J. Boardman, with the University of William and Mary.

Large Firm Do’s and Don’ts

The associate and a project coordinator of Arent Fox, Kintner, Plotkin & Seibert, Pittsburgh, described the large-firm experience. Dean Kaplan welcomed the presentation by Stephan J. Boardman, with the University of William and Mary.

Large Firm Do's and Don'ts

Ray Stoner described his large firm experience. He told his fellow panelists that his firm tends to assume the personality of its principals. A summer associate may find himself with a supervisor who is, and what all those government acronyms mean. Most government agencies rely heavily on LEXIS, and because a government law library is often minimal, associates ought to bring in their own reference works and Bluebook.

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Separation Powers Symposium

Calendar of Events

FRIDAY, APRIL 8

SESSION I—SEPARATION OF POWERS: EARLY VERSIONS AND PRACTICE


PHI BETA KAPPA HALL, DODGE ROOM 12:15 p.m.—LUNCH ON CAMPUS

SESSION II—SEPARATION OF POWERS, THE RULE OF LAW AND THE IDEA OF INDEPENDENCE

Marshall-Wythe Room 120, 1:45 p.m.-4:45 p.m.—Principal Remarks: Paul R. Verkuil, President and Professor of Law, College of William and Mary.

Panel: Paul D. Gewirtz, Professor of Law, University of Yale; Robert F. Nagel, Moses Larry. Harris described government work as even more pragmatic and less scholarly than at law firms. An associate may have only a narrow area of the law. As a corri
dative, Harris recommended that associates invite themselves along to meetings and conferences to learn how different government agencies mesh. In all, she regarded government services as fascinating. "I've never had one day when I've been bored."

All three panelists thought M-W alumni had increased recognition in the legal community.

SBA Elections

Vice-President

Austin

Bramble

Finkelstein

Yeats

Warner

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Cathy Stanton

Asst. Write-ins

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2nd Year Rep

Brodnax

Fincher

Murphy

Perry

Write-ins

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Veni,
Vidi,
Vinci.
An Adieu
**SpeaKing Of Sports**  
By Larry Schimmels

Once again, history repeats. The Kansas Jayhawks have taken a line from the historical philosophies of Hegel and a page from Villanova's playbook to pull an impressive upset over conference rival Oklahoma. Like the previous two conference rematches in the final game, this one ended with Manning being a clear underdog, making all expectations against a team which should not have lost. Yes, Kansas has done what is most admirable in any athletic contest. They played the best they could against an apparently superior opponent and achieved success. Or have they?

Kansas, we must remember, was the only team in the Final Four to be ranked in the Top Ten in preseason polls. This was largely on the line from the historical philosophies of Hegel and a page from Villanova's playbook to pull an impressive upset over conference rival Kansas. Manning, who remained a dominant figure all season long. The gist of this long tirade is that if a team has Manning, that team should not be counted out of any game.

If Kansas did not overcome huge odds in a Cinderella-like fashion; a true Cinderella would be someone like the University of Richmond. Kansas merely combined excellent play with good coaching against a team they play at least twice a year, every year. I'm not trying to take anything away from Kansas' win. I think they have an excellent team, deserved to be in the tournament, and played a great game to win the championship. I am not saying that Manning's reflection against Mussburger-type historical comparisons. Manning and company were not the leaderless, ragtag nobodies some people made them out to be, and for that matter neither was Villanova in 1985. Kansas was a force in college basketball all season long, and I think this game merely proved that.

Kansas controlled the tempo of the game throughout, running somewhat in the first half but then slowing down in the second half. This really took the Sooners out of their offense. Oklahoma could not make their shots in the second half, and in fact really chose poor shots. Kansas then effectively used the clock on their possessions, usually getting the ball in Danny Manning's hands for the score. How appropriate it was that Manning sunk the final free throws that clinched the victory.

For their part, Oklahoma deserves a little recognition. Oklahoma has done something that no one else has ever done: they have lost both the football and basketball title game in one year. One could say that just to make it to the championship game reflects well on the athletic program. One could say that, unless you live in Oklahoma where success is measured only by how many trophies are in the trophy case. Manning and company were not the leaderless, ragtag nobodies some people made them out to be, and for that matter neither was Villanova in 1985. Kansas was a force in college basketball all season long, and I think this game merely proved that.

Incidentally, have you ever noticed that all the Oklahoma coaches bear a striking resemblance not only to each other but to tent preachers? I wonder if that's for the spiritual well being of the athletes or rather to ensure that the University of Oklahoma Athletic Department will always be able to raise money.

So, what does it mean for college basketball to have two Big Eight teams play for the National Championships? Probably nothing. No conference can truly say that they dominate college basketball, especially the Big Eight. Both Oklahoma and Kansas got good seeds in the tournament won the big games at the right time, and played well. No other team did that. I seriously thought that no less than twelve teams this year had a legitimate chance at winning the championship. Frankly, I like that sort of parity.

As a final note, just so you know where my heart is, let me leave you with a phrase loved by every Penn State fan I know: I'm Sooner born and Sooner bred, and when I die I'll be Sooner dead.

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**Prurient Interest**  
**Competes in Tourney**

On March 25, Prurient Interest traveled to Charlottesville, Virginia to compete in the 8th Annual University of Virginia Softball Tournament, sponsored by the UVa law school. Teams from 36 different law schools participated this year, including teams from such schools as Ohio State, Michigan, Cornell, Yale, Columbia, and Florida. The Interest made a strong showing, losing in the quarterfinals to the eventual winners.

Because of rain, there were several delays and cancellations throughout the weekend. Finally, on Sunday the 29th, the tournament organizers decided to let everyone play in a single elimination style. The Interest won five straight games that day before losing the quarterfinal match Sunday night. The Interest finished with a 5-1 mark. UVa Team 3 (of four) eventually won the tournament. UVs by how the Interest finished the year.

The Interest suffered a heavy casualty in the quarterfinal game, however, when Ed Shaughnessy broke his left ankle in three places while attempting to slide into second base. Shaughnessy will probably be out for the remainder of the season.

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**THE ADVOCATE**  
**Wishes Good Luck**  
**To Its Graduating Third Years**

Kimberlie Young

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<table>
<thead>
<tr>
<th>Greg Paw</th>
<th>Susan Hubona</th>
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<td>Amy Birkimer</td>
<td>Mark Raby</td>
</tr>
<tr>
<td>Mike Davidson</td>
<td>Lee Bender</td>
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**Attention 3L's**

Will Tim and Bernie make up?  
Will Glenn sue them anyway?  
Will Will ever grow up?  
Will Jeff move to the right?  
Will Damian appear again?  
Will Paul learn not to touch the copiers?  
Will Will ever grow up?

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