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## The Advocate (Vol. 19, Issue 11)

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# The Advocate



Marshall-Wythe School of Law

Volume XIX, Number 11

Thursday, April 7, 1988

Twelve Pages

## Faculty Offers Go to First Choices

by Karin Horwatt

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 professorship. 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, du Pratt White Professor of Law at Cornell; Calvin Woodard, Henry L. Doherty 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 Cutler Professor of Law and Director of the Bill of Rights Institute, replacing Gene Nichol. "He is a person of considerable accomplishment," Dean Williamson said, citing his most recent book, *Suing 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 Falwell-Flynt 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. He

was first in his law school class and Comment Editor of the *Duke Law Journal*. Smolla will participate in the Bill of Rights Institute's symposium April 8-9.

Linda Malone specializes in both International and Environmental law. Her most interesting publication, according to Dean Williamson, was "The Kahan Report, Ariel Sharon, and the Sabra-Shatila Massacre; Responsibilities under International Law for Massacre of Civilian Populations," in the *Utah Law Review*; Malone also specializes in the area of coastal legislation and coastal zone management. She 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 an opportunity presented itself, because of Michael Hillinger's departure, he was the top choice. We went after him 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 changes 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 Spenser, 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 Gasch and Robinson 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 a handful of advanced tax courses.

Calvin Woodard will be here in the spring. "He is a very experienced and prominent legal historian," Williamson said. He

will be teaching Legal History and Jurisprudence.

Howard Hunter has written a multi-volume treatise on contracts, and will be teaching Remedies and Sales.

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

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

Williamson said the Student Hiring committee was enthusiastic about the four faculty members they interviewed; Susan Grover had to take an early flight, and the Committee was unable to meet with her, Williamson said. "I hesitate 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."

He added that hiring considerations "are driven by the pool of expertise that you are looking for." For example, "there were probably about five people in the United States to consider for the Bill of Rights job [that Smolla will take]." In general, Williamson said that "we are very conscious of Affirmative Action obligations. Three out of five of the permanent hires are women, one of whom [Spenser] is black. That's not the reason they were hired, but we looked seriously and diligently" for female and black candidates.

Other faculty members are "as pleased and enthusiastic as they've ever been" about the choices. Ingrid Hillinger, for example, was quoted by Williamson as having said, "The people com-



RODNEY WILLET

Dean Sullivan ponders the problems of passage through the Pearly Gates. Libel night 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 moot 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 certiorari on behalf of a prisoner at the Petersburg federal penitentiary. A member of the Post-Coviction Assistance Project (P-CAP) since her first semester, and now one of the student directors of the program, Gini says the experience 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 # 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 retells 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 mistaken.

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

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# Pledge Drive: Make or Break the Fund?

by Steven Mulroy

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 moneyraising 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 day's pay, 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 Pontzer. "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 week.

\$2000, the amount of one summer stipend, came from a school donation authorized by Dean Sullivan, whom Cook described as "very supportive" throughout. Another \$1300 came from the re-

cent Dinner Date Auction, and the balance came from the power lounge competition and sales of donuts, mugs, T-shirts, and sweat-shirts. Sales of the latter were particularly lucrative.

However, cautions the Fund, it cannot depend on similar good fortune next year and beyond. The Dean's contribution, especially, is unlikely to be a perennial event. "We need a dependable annual source of money," explained Cook. That's where the pledge drive comes in.

More important, Cook said, the pledge drive can serve as a demonstration of "strong student support." Before the Fund can go to alumni and outside sources, it must prove it can make the idea work. Fund representations have already been rebuffed by private foundations because of the organization's lack of a "track record."

## Future Expansion

Once such a track record is made, the charity can expand the scope of its operations. 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



Public Service Board member mull over this year's crop of applicants.

hanging file or a specially marked box in the Placement 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.

# Frank Discussion



The amicable Brenda Frank keeps our circulation going.

by Catherine Lee

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 since 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 reading and studying. The write-on period and the first few weeks of the semester are the most hectic.

But the real panic begins right before fall exams. Brenda has noticed that the general feeling among first-years is panic and fear. "I think the students are justifiably concerned. 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."



# 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. "I think we're at the crossroads between being a regional law school and a national one."

"the Review is not only a scholarly journal, it's a promo 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 the case," Gennari explained.

All students are encouraged to submit seminar papers or independent writing 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.

The newly named editors are planning other changes in the Law Review as well. While Gennari stresses the commitment to continue to publish timely, quality articles, he hopes to include occasional book reviews too.

"I hope we can attract even more widely-known authors," Engh commented. "The real challenge is getting the good stuff before someone else does." According to Engh, the Review lost several articles recently to other prominent journals.

"The good side is that people are at least sending us their work. We're getting the same submissions as the more prominent reviews," she added.

### Head Honchos Armed & Ready

The job of selecting those submissions goes to Professional Ar-



During a spare moment in the Law Review office, Professional Articles Editor Michael Gaertner and Editor-in-Chief Larry "Lawrence" Gennari discuss the upcoming Spring issue.

ticles 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 had 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 there 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 #1 have already begun and the first round of sub-checks have already been distributed. Still other changes may be forthcoming.

Slipping into his alter-ego of Lawrence, the fashion critic, Larry quipped, "We going to institute mandatory AIDS and drug testing as well as periodic inspections of knees and backs for carpet burns."

## Water Tested for Lead

Our water fountains were taped over last week (as I'm sure you've noticed) and had sinister-looking signs on them. For those of you who were concerned about what you had been drinking before the Office of Safety and Environment sealed off the water, Priscilla Shea, from that office, said the office had sealed off the water fountains and initiated testing for lead. A group on campus, whose identity or even composition, Shea declined to reveal, expressed concern to her office about the possibility of lead leaking into the water from the lead solder used to hold the copper pipes together. Shea said that the likelihood of lead contamination was low—especially since she is convinced that the pipes are connected sleeve fashion and then soldered on the outside—but the funds were there to conduct the tests, so she decid-

ed to go ahead and have them done. The Office closed down the water fountains for 24 hours to ensure the validity of the sampling, and then took two hundred samples of 125ml each, and sent them to a lab to test for lead. Additionally, she said, they are going to test for other contaminants, and general purity and quality.

Shea estimates that the cost will run to between two and three thousand dollars. She emphasized that she was not concerned that there was actually lead in the water, and pointed out that there was no funny taste to the water, and that no one had demonstrated symptoms of lead poisoning. Her office was simply concerned for the well-being of the students, faculty, and staff, as well as the surrounding community. We will know the results of the tests next week.



### Coronation results from the Annual Llama Excursion to the Opening Day of the Major Leagues:

- KING LLAMA Robert Wayne Jones
- QUEEN LLAMA Elizabeth Alice Deininger
- CROWN PRINCE Mary Elizabeth Warner
- CROWN PRINCESS Mary-Lynn Nawrocki



Mark Bramble and Jim Lady test the elasticity of their respective eye sockets on the return trip back from Baltimore for the opening day of the major leagues. (The Orioles lost 12-0.)



# 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?

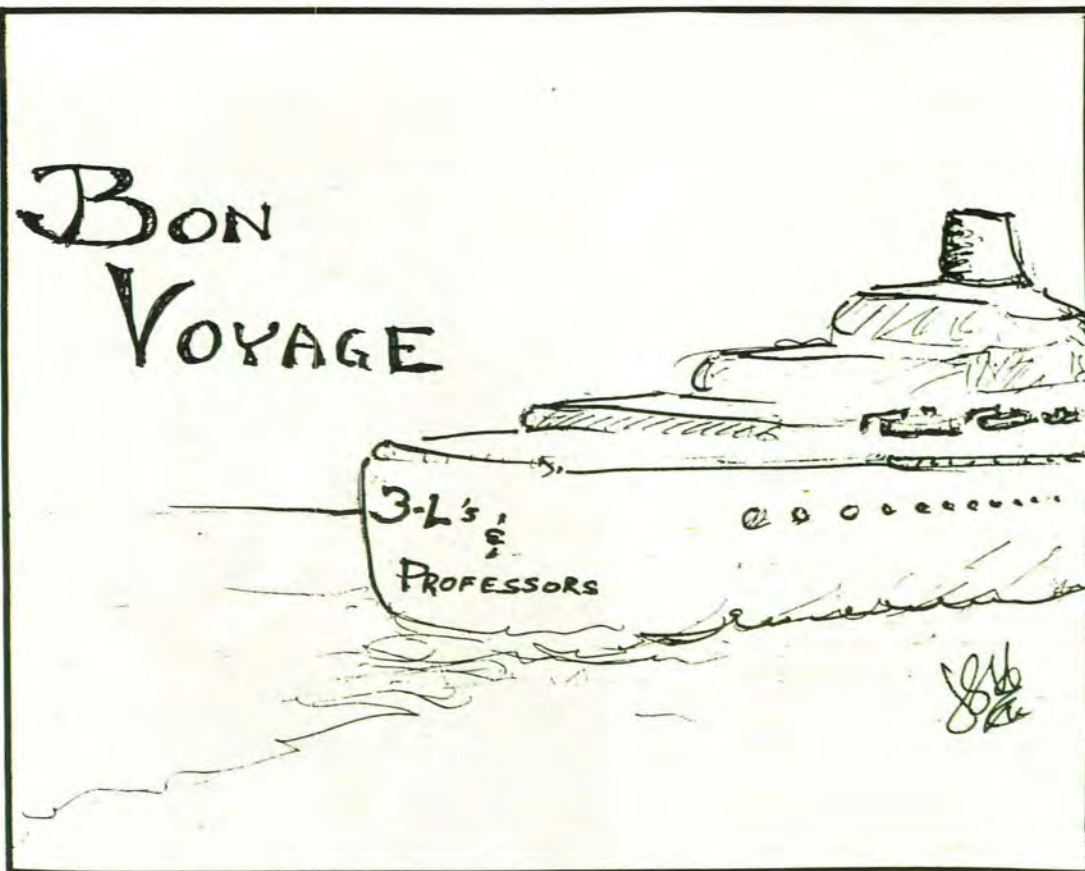
The Advocate still has three mottos but two of them have changed. The first slogan is the traditional motto of The Advocate and we leave it untouched. The second and third slogan's replace "Every Issue A Joke Issue" and "Nobody Reads It Anyway." After nine bold and innovative issues, (innovative by The Advocate's standards), we deserve to trash those mottos for some a little more deserving.

"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 adopted it based on the performance and creativity of our dedicated staff.

The third 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.

-H.K.Y.



### The Four Basic Food Groups ... For Law Students

by Slim

#### 1. The Caffeine 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.

#### 2. The Fruit Group

Available for 33¢ 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.

#### 3. The Grease Group

Provides empty calories and raw bulk to counteract the irritating effects of groups 1 and 4. Four servings a day.

#### 4. the aLCOHOL GroUp

Provides needed sleep by soothing exam/career anxiety. Also builds arm muscles via 12-oz. curl exercises. No more than six servings on weekdays.

# The Advocate

Marshall-Wythe School of Law

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# Gnosiology

by Jeff Yeats

Count Basie and a rockin' Saturday night at home, tied to the typewriter, trying desperately to beat the Monday deadline with some semblance of coherent copy.

Ordinarily, I start on Sunday night, abuse whatever grace I have among the various editors and turn this thing in around lunchtime Wednesday. But because I am a Llama this week I cannot do my usual Monday re-write and Tuesday fine-tuning. This could be sort of a graduation gift to the third-year staffers, receiving something before deadline.

In fact, maybe this should be one for the Class of '88 in general. They've been a pretty good bunch of folks and I'll miss 'em. Well, most of 'em.

Who am I gonna call a preppie law dog when Ed Shaughnessy graduates? Despite the abundance of "wannabe's" in the second-year class, no one has his credentials. This man is destined for serious yuppiedom.

Tim Leary is a man who cannot be cloned and, if you are his good friend, he will show you the scientific papers to prove it.

Facing two semesters sans Steve Frazier's ever-flowing monologue is an unlivening thought. This could be a lean year, kids.

Who will be willing to follow Tom Kohler's example of creative facial hair and formal attire?

Can anyone as gracefully display as much of God's own generosity as our Laurie Wilkerson?

Is there another human being out there with the incredible mental and physical metabolism of Dave Cozad?

It may prove impossible to replace Amy Larson's perpetually glowing presence, Pete Lucchesi's gift for spotting the non-sequitur and Dave Lozier's contribution to the ideological balance around here.

Wayne Melnick acts like he already passed the bar, conspicuous among a great number of his peers who seem to believe they have graduated without the benefit of a third year in attendance.

Cathi Wirth is still seen often and is always vivacious. Billy Henderson's enthusiasm for life itself has not waned, nor has Barb Pawlak's talent for instigating some really good fun. These are difficult qualities to maintain. Do we have replacements available in the rising third-year ranks?

For sheer dementia, Mark Bramble and Bo Sweeney may one day approach the uncertain depths plumbied by the Scott Regan/Greg Paw team.

On a more academic plane, Drew Dolson's devotion to the subject matter could only be equalled by Steve Mulroy's insatiable appetite for raw law.

Socially, it's good to see that many of those who came here looking for a spouse found one. A short list of congratulations includes Kenny Harrell, Billy Furr and Billy Power. Recognition should also be extended to Mark Kallenbach for his continuing efforts.

Mr. Jon Jester has provided the Class of '89 with a head start on this tradition by virtue of his impending loss of bachelorhood to the engaging Ms. Ruth Reynolds of Richmond.

Unfortunately, Chris James couldn't manage to find a taker for the ring he bought prior to enrolling. I hope my man Varela has better luck next year.

And who can offer the outrageous insights of Doug Anderson, the independent attitude of Ann Aptaker or the poignant classroom assertions of Mark Newcomb? I don't have the answer to that question.

My biggest personal regret is that I could never teach Sarah McWilliams to relax. I know it's a lot like teaching Lee Bender a modicum of humility, but I wanted to try.

Speaking of impossible tasks, can Jeff Lowe successfully emulate Leigh Ann Holt's ability to call forth order from chaos? Probably so. But I wonder, isn't the larger question whether he can maintain his sanity in the process.

The saga continues...

**Editor's Lament:** Mr. Yeats did not embark on the Llama trip after all, but we were pleased to have his copy in on Monday.

## BABY BARRISTERS

By  
Will Murphy

So many things to complain about, so few columns in which to cover them all. I've bitched about legal writing, wailed about the state of American presidential politics and even sent warnings about remorseless, unsleeping law vampires. And still there are gripes unprinted.

**HONOR CODE:** 1) The Honor Code's introduction claims that one of its purposes is to allow a presumption that a student is honorable. But does it really? I have found that presumption missing on several occasions. I imagine that most other students have had better experiences — I am seedier-looking than most of us. But the Code is supposed to apply to me anyway. The flip side is that there are people here who shouldn't be trusted. Do we want these people to be taking their exams in the library or at home?

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 reciprocal benefits — the presumption of one's own honor and the ability to safely 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 I have spoken to feel that being able to store some of their things in their carrel is worth whatever inconvenience they might suffer as a result of others doing so. It seems that a compromise could be arrived at without great difficulty.

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.

**DRUG WARS:** A column in the last edition of *The Advocate* cited reams of statistics on the incredible quantity of illegal drugs in this country and their pervasiveness in our society. Rather than citing 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 put these toxic, addictive substances in their own bodies?"

We can double the Coast Guard, increase the DEA, crack down at the borders. We will never keep drugs out. ("Ask any DEA man, he'll say 'There's nothin' we can do.'" *Smugglers Blues*). If we manage to restrict the supply enough the price will go up, there is more incentive to get the product to market and the successful smuggler has more money with which to fund his operations. In addition, we breed violence that would be largely absent if the substances were legal. History bears me out.

Availability is a symptom. Let's address the disease.

## FROM THE RIGHT

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 rescue of his prized patent law quaterlies. Tom, incidentally, was donning a verdurous, boiled-wool, Volksmarch coat from Innsbruck, Australia. Replete with dainty, forest green lace bordering pockets and sleeves, this charming garment also boasted several metallic, copper-colored Franz Joseph I buttons. A green and white layored French-wool cap from Copenhagen, an eighth carat diamond earring, and mono-colored, but slightly patchy two day stubble complemented Tom's Teutonic garb. Talking to Tom, one could not help but have fleeting visions of Julie Andrews emerging from the stacks with her skirt twirling about her, singing "the world is alive with the sound of music." Kohler, like many other students serving a tour of duty at Marshall-Wythe, had been the object of a Library Cong attack.

Commencing at the future site of the faculty revolving door, the Library Cong's Ho Chi Minh trail runs through the lobby, past the inoperative copy machines and into the main library where Cambodian-like sanctuaries are found in the circulation area and adjoining administrative offices. Wheeling there little metallic carts through the tunnel-like elevator shafts, the Cong emerge undetected in the vulnerable second floor areas. Relying on stealth, deception and positions of authority, "Charlie" attacks late at night, hits unsuspecting undated carrel collections and wisks away hostage treatises, law reviews and case reporters to his cache sites. Occasionally innocent "dated" and checked-out books fall prey to Charlie's nocturnal forays. The latest in Charlie's unprecedented rash of ultimate is the demand for removal of all personal items from the carrels. Once removed, the books are taken to two main cache sites, one on each floor, where they remain until either the individual student retrieves and dates them or until hell freezes over, whichever occurs first.

Student reaction to the increase in Cong activity has been varied. Conceding that "Charlie owns the night," the democratically-minded students of Marshall-Wythe have reacted by seeking to accommodate the Cong in order to "give peace a chance." As with Nicaragua and Vietnam, these modern day Chamberlains are willing to sacrifice anyone or anything to gain the luxury of a temporary peace. For them, there is no price too great to pay in order to give "defeat" a chance.

Less incertebrate members of the student body have responded in a tougher manner. Heir apparent to this column, Hagen Frank, was recently seen holding a zippo lighter in front of a smouldering carrel muttering "we had to destroy the carrel in order to save it" and "Charlie don't surf." Hagen, incidentally, was sporting blue cotton shorts, a sleeveless sweater and an issue tee shirt, cotton, white, mens, crew neck, one each. A regulation haircut, fresh shave and white high tops sans socks completed his Clint Eastwood sensitive-man attire.

With Randy Bowen and Fern Lavalley graduating, Hagen has the unique distinction of being the only student remaining who could attack me from the right. Next year Hagen is projected to write the "From the Cave" column, with "Beyond the Far Right" and "From the Left Only By Global Circumvention" being title runner-ups.

The current library policy towards date slipping books and personal items in carrels appears a bit draconian. Although I admit that with only 41 days and a wake up left until graduation (at the time of this writing), my give a doo doo factor is pretty low, the current policy is still a concern. Let's lighten up on the carrel policy and let everyone enjoy their time at Marshall-Wythe.

Some information to warm 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 conceited, insolent, slick and toady. After all they drink a lot and think that all girls desire only them."

—Inga Pillet  
Ph.D. candidate in psychology  
University of Tallinn, Estonia  
U.S.S.R.

—submitted by Karin Horwatt



# Caffeine Connection

by John Field

For thousands of years the human race sort 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 conceptions 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 effects 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 industrialized nations have taken for granted the routine stimulant that coffee provides. One third of the world's population regularly drinks coffee. It's the world's most popular drink. Moreover, coffee prepared the way for tea addiction and cola-drink addiction. Both tea and colas, of course, contain significant amounts of caffeine. Almost every adult has an addiction to one of these. I won't even mention chocolate, another source of caffeine. In all, caffeine is more widely used than any other drug on earth.

If anyone denies that caffeine is addictive, ask him to drink milk for a month. Then avoid his company, especially in the morning.

The Encyclopedia Britannica notes that "in addition to allowing sustained intellectual effort and association of ideas, caffeine enhances discrimination of sensory stimuli, quickens reaction time, and decreases drowsiness and fatigue." In other words, caffeine gave the human race a quick

kick in the kiester. The rest, as they say, is history.

If caffeine stimulation triggered the explosive change in our world, why didn't that change happen earlier—in China, for instance, where tea was grown as long ago as 2700 BC? The answer may be that tea and coffee had to fall on fertile ground, in this case socially fertile ground. China's rigidly stratified society resisted all efforts at change, regardless of how stimulated a peasant farmer or a court bureaucrat might find himself after his morning tea.

What, you may wonder, does all this have to do with the practice of law?

How do you think you're going to get through those seventy-hour weeks, anyway? Praise your personal deity for caffeine, else you might have to manage on lemonade.

And for some of the free-floating self-righteousness in our society, from Nancy Reagan's "Just Say No" to the Ban-the-Smokers, it's a worthwhile corrective to bear in mind: we are all drug addicts.

## 2L Seeks Cert

Continued From Page One

testimony [and invoked the tougher standard of review,] Gini continued. "It's ridiculous! It makes no sense that a witness' intent 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.

"He's optimistic — he believes in me," Gini adds. "I know the problem and I presented it to the Court." When asked about his innocence, she paused. "You know,

everyone tells you they're innocent, but this man, . . . I . . . well, I think I believe him, . . . but in any case, he didn't get a fair trial, and that's just not right." This response not only hints of the aspirations of a future criminal defense attorney, it reveals a sincerity and conviction for the PCAP project and this case.

Perhaps the most exciting part of the experience for Gini was hand-delivering the petition to the Supreme Court. "It was due at midnight so I got in my car and drove to Washington. It was pouring rain," she noted.

"And all the way up I kept thinking, 'so this is what lawyering is really going to be like, just like

Perry Mason, or something'. That feeling still hasn't gone away. Everytime the Court calls for a response or with information I feel it."

Gini arrived at the Court at 11:30 p.m. with a half an hour to spare. The night guard joked that she was still early so didn't she want 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 hugest relief," 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

## Lauding Raby

Law school is not a particularly unselfish setting. Most of our efforts are result-oriented, with a view to a grade or a certain distinction or a job. This is not a junction in our lives where we linger; we have an assignment here and when it is done, we will leave. Some leave sooner.

The rewards of assisting others or improving things we will leave after three years here are few. But third-year Mark Raby has made contributions of this kind from which we all will continue to benefit.

Many of us know Mark as the one to call for when we have difficulty with the school's computers in the library. His presence is felt by the frequent notices he posts on the status of the printers, by the patience with which he answers questions and solves problems from annoyed students working under a deadline, and by the appearance this semester of the new terminals, replete with color screens.

Mark is also the one wholly responsible for persuading Professor Frederic Lederer to adopt the WordPerfect program we now have on hard disk. All those who enjoy the user-friendly WordPerfect program, and especially those who were victims of computer cataclysms while using the Samna program, have Mark to thank.

Additionally, the major improvements to the audiovisual system in our Moot Court Room, the most advanced in the country at the time it was built, can be attributed to Mark. In sum, we have all benefited from Mark's expertise and dedicated contribution to the more technological aspects of our school.

Mark has also been part of the renovation of this newspaper. If the Advocate looks better these days, Mark deserves some of the credit for his creative, solid work as Photography Editor (even if that work does sometimes come in at 2:00 a.m.).

Mark Raby will indeed leave this school a better place. He deserves our gratitude and our commendations.

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 it has taken 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 issues were so squarely and clearly presented," Gini comments. "If the Court wants to address this issue, this is the case to do it."

If the case is accepted for argument, it will be placed on the docket for the '88 term starting this fall. As for who would argue it, Gini has a few suggestions. "I couldn't do it, I'm not even a real lawyer yet," she laughs. Professor Michael Hillinger who offered her guidance in writing the petition has expressed an interest.

"Then there's always my summer firm in Arizona," Gini suggests. "Can you imagine what they'll say when 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 allegedly 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, whomever Marra decides to have argue his case.

So these 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 # 87-6450. She ponders the possibilities. "If the petition is granted, I would just be so happy; it means so much."

## First Choices

Continued From Page One

ing in are better than the people going out." Williamson doesn't agree, "maybe they'll be as good," he said. He emphasized that many faculty members who are leaving now are doing so for personal reasons. "Nichol wants to be Dean. I think he's crazy, but how can you argue with him? And who could argue with George's wanting to go with him? And Professor Hillinger wants to go to Boston and take care of her father, who's alone. Who could argue with that? Certainly, no one could argue with

Michael Hillinger's decision to go with her."

Of the hires, Williamson said, "You judge the success of the hiring process by your ability to hire your first choices. Everyone we accepted was a first choice. We made five offers and hired five people. Same thing with the visitors." All the visitors have classroom experience, as do three out of five of those to be offered permanent positions. "By reputation, they are excellent classroom teachers. We are extremely pleased," he said.



MARK RABY

Gini Cook waits for the Supreme Court to act on the cert. petition she wrote as part of her PCAP project. If the Court accepts the case, it will be placed on the '88 docket starting this fall.



# D.C. Insider Speaks in High Court Confirmations

by Phillip Steele

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 John Marshall (1801-1836) 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 of the legislature 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 — natural rights do 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 enactments of the legislature, even if restricting individual rights, are to be struck down by the judiciary only if in clear violation of the Constitution.

White 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 consensual, 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 a substantive right existing prior to the Constitution.

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

But as soon as Holmes' view became orthodoxy in the 1930s, White said a split developed in modernist judicial thought. One strain held that since 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 encroachments 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 triumph 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 democratic processes.

The case *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 posture," he said.

This return to a focus on substantive views took a toll on Bork. "Bork said he was a Holmesian pluralist. The fact that he had substantive views would be irrele-

vant in his decisions. But this was not accepted," according to White.

He was defeated because he was on the wrong side of Neo-Marshallian substantive rights as *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 pluralistic position is cracking as part of the official orthodoxy of the judicial debate." The language of judicial orthodoxy retains the idea 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. Apparently in the 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. Minor Professor of Law at the University of Virginia in Charlottesville. He has authored six books, three of which won Gavel Awards from the American Bar Association.

## Court Debate Doomed Bork

### News Analysis

by Steven Mister

Mark Gittenstein, Chief Counsel to the Senate Judiciary Committee, aggressively defended the "advice and consent" role of the United States Senate in his speech to students last week. As a guest lecturer to President Verkuil's Separation of Powers course, he maintained that the Senate's interest in judicial appointments goes far beyond examining the scholarly qualifications of nominees to the Supreme Court.

Gittenstein proposed that the Senate not only has the right, but the duty "to scrutinize the political and philosophical views of potential members of the nation's highest court." Mr. Gittenstein had primary responsibility for the highly publicized and widely

criticized Judiciary Committee hearings on the nominations 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 wrong. The intent 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 theorized that three situations create an increased need for legislative activism in the nomination process: when a President seeks to remake the court in his own image, when the Senate and President are deeply divided on the issues of the day, and when the balance of the court itself will be shifted by the nominee. All three of those circumstances were present in the Bork nomination, said Gittenstein.

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.

Some students later commented that when they sought to test the validity of his theoretical framework, Gittenstein changed roles from disinterested scholar to impassioned politico 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 for the

Continued on Page Eight

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### 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.—Army P.

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John Daniels, University of Bridgeport Law School

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# 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 people 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, including one to be 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: nobody 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."



Health care specialist Clark Havighurst.

RANDY REPCHICK

A combination of factors helped bring Professor Havighurst to M-W to do his reflecting. First of all the opportunity arose at a convenient time. Also, Williamsburg isn't that far from Durham. Considering that Havighurst has also visited at Stanford, Michigan and

Northwestern, Marshall-Wythe is in pretty good company. Professor Havighurst has enjoyed his stay in Williamsburg and has been impressed with the students here.

If there was any thing that he could change here at M-W it would be the addition of a course on

health care. The reason is that it is an area that cuts across legal disciplines and unlike some other areas the focus is on how to make in industry work. He feels that such a course is a good way to bring what students have learned in other courses together.

## 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 and statesmanship. "Knowing how a potential justice will rule on 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.

So perhaps 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. Stevnes — The Virginia Farmworker Assistance Project, Peninsula Legal Aid, Hamptown and Belle Haven, Virginia

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

Wendy L. Wiebalk — Willafay McKenna and Karen Rose/Williamsburg Task Force for Battered Women, Williamsburg, Virginia.

## The Last Word

The first issues 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.

From Frazier and Kohler, I got a guffaw. 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, Yeats, Murphy and Burns become regular voices.

Our fav professor Spanogle interviewed. Reasons for departures of faculty reviewed.

Clariett's SBA nitpicking produced "Das Holt." Little Willy's Superbowl pics caused some revolt.

Baby Jesse arrives, The Corr issue survives. Yeats makes the Sadie Hawkins tradition alive.

Legal writing objections, Frazier-Kohler infections,

The results of recent SBA elections.

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

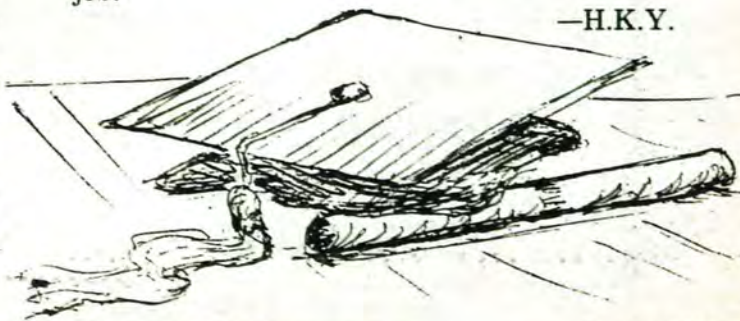
But not as much as Coven was pissed.

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.



1988-89

## Moot Court Board

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# 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, Seamans, Chrerin & Mellott in Pittsburgh, described the large-firm (150 lawyers) experience, Chris Hoenenberger of Shackelford, Heonenberger, Thomas & Willis in Orange, Va., that of the small firm (eight lawyers), and Marged Harris, with the Environmental Protection Agency in Washington, D.C., that of service in a government agency. Dean Kaplan welcomed the panel, whose members were introduced by Stephan J. Boardman, of Arent, Fox, Kintner, Plotkin & Kahn in Washington, D.C.

### Large Firm Do's and Don'ts

Ray Stoner described his large firm's summer internship program as highly organized, with a "preceptor" assigned to each summer associate and a project coordinator supervising assignments.

Associates are required to maintain timelogs. After each project the partner for whom it was assigned completes a form evaluating the associate's work and attitudes. Very few associates, however, are denied a permanent offer on the basis of these evaluations. More important factors are poise, articulateness, and how well associates fit in socially.

Despite allusions to a summer regimen of dining and dining at his firm that left some in the audience wondering where they had gone wrong, Stoner stressed that the most important aspect of a summer position is the work experience. He advised associates not to adopt an attitude of "I hope I don't screw up," but rather to approach their assignments aggressively and with initiative. He recommended taking on as many different types of projects and impressing as many different people as possible.

Associates ought to ask questions concerning a project when the partner first assigns it, then return once, a day later, to verify that they're moving in the right direction. Beyond annoying a part-

ner unnecessarily, Stoner said, the worst sin an associate might commit is to miss a deadline without warning the partner beforehand.

### Agencies, Small Firms Not Fungible

"If there is a common characteristic among small firms," according to Chris Hoenenberger, "it is that there are no common denominators." Each firm tends to assume the personality of its principals. Few if any small firms, however, have the sort of internship program described by Stoner. A summer associate may find himself with 10-15 projects that have sat on the back burner for six months, matters no one else wants to handle.

Hoenenberger advised small-firm associates to work closely with the office staff and learn its system. As for impressing the boss, he said partners care most about competent legal analysis, effective client contact, ethical character, ability to assume responsibility, and the associate's personality.

Marged Harris indicated that government agencies are not fungible. Some have elaborate

orientation programs, some have perfunctory ones and some—including her own Environmental Protection Agency—have none at all. Swimming rather than sinking in these waters may require that a summer associate find out in advance where to park her car, where her office is, where her supervisor's office is, and what all those government acronyms mean. Most government agencies rely heavily on LEXIS, and because a department's law library is often minimal, associates ought to bring in their own reference works and Bluebook.

Harris described government work as even more pragmatic and less scholarly than at law firms. An associate may learn only a narrow area of the law. As a corrective, 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 earned increasing recognition in the legal community.

## Separated Powers Symposium Calendar of Events

### FRIDAY, APRIL 8

#### SESSION I — SEPARATION OF POWERS: EARLY VERSIONS AND PRACTICE

Marshall-Wythe Room 120, 9:30 a.m.-noon—Principal Remarks: Gerhard Casper, William B. Graham Professor of Law, University of Chicago Law School.

Panel: William B. Gwyn, Professor of Political Science, Tulane University; Maeva Marcus, Director of the Documentary History Project, Supreme Court of the United States; Russell K. Osgood, Professor of Law, University of Minnesota.

Moderator: William B. Spong, Jr., Dean and Dudley W. Woodbridge Professor of Law Emeritus  
Phi Beta Kappa Hall, Dodge Room 12:15 p.m.—LUNCHEON

#### 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, Yale University; Robert F. Nagel, Moses Lasky

Professor of Law, University of Colorado; Richard J. Pierce, Jr., George W. Hutchinson, Professor of Law, Southern Methodist University; Peter M. Shane, Professor of Law, University of Iowa.

Moderator: Gene R. Nichol  
Muscarelle Museum of Art 5:00 p.m.-6:00 pm.—COCKTAILS

### SATURDAY, APRIL 9

Law School Patio or Lounge, 9:00 a.m.-9:30 a.m.—COFFEE

#### SESSION III—THE IMPORTANCE OF PARTY GOVERNMENT UNDER THE AMERICAN SYSTEM

Marshall-Wythe Room 119, 9:30 a.m.-12:00—Principal Remarks: Lloyd N. Cutler, Esq., Wilmer, Cutler & Pickering.

Panel: Philip C. Bobbitt, Professor of Law and Graves, Dougherty, Hearon and Moody Centennial, Faculty Fellow, The University of Texas; Erwin Chemerinsky, Professor of Law, University of Southern California; James L. Sundquist, Senior Fellow of the Government Studies Program, The Brookings Institution.  
Moderator: Rodney Smolla, Professor of Law, University of Arkansas and Director Designate, Institute of Bill of Rights Law.

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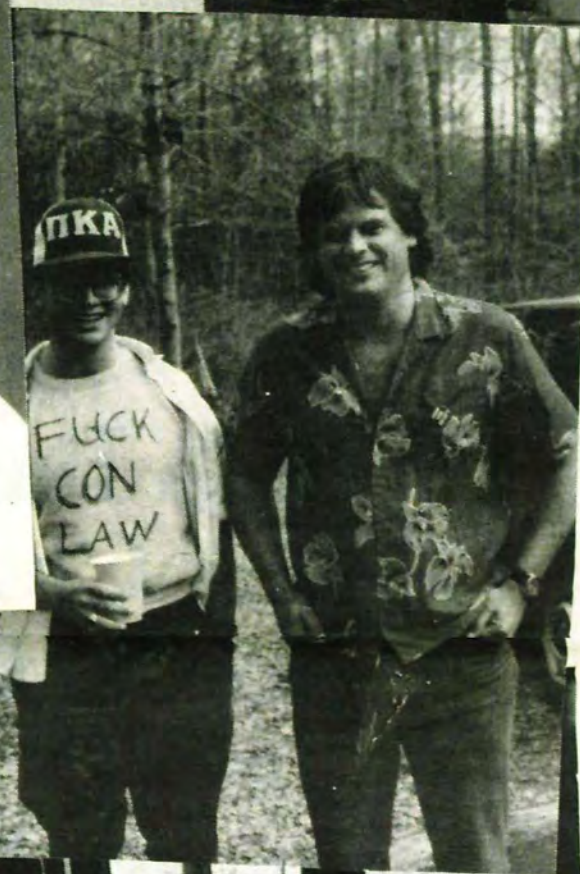
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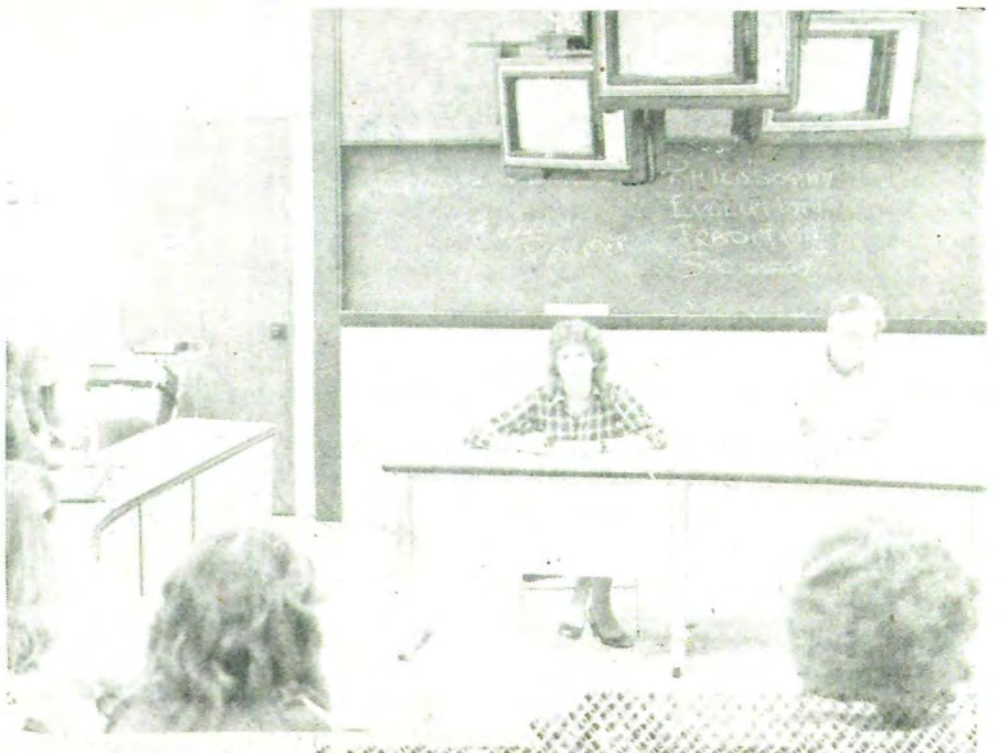
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# An Adieu





# 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 the clear underdog surpassing 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 strength of the frontcourt, anchored by all-everything Danny Manning. Things were going well early, but a series of injuries left Kansas with only Manning on which to rely for most of the season. However, even with this huge loss, Kansas managed to win twenty-six games and seventeen out of their last nineteen. The key to this success was, of course, Manning, who remained a dominant figure all season long. The gist of this long tirade is that if a team has Danning Manning, that team should not be counted out of any game.

No, 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. This is only my 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 1984. 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. I actually feel sorry for Billy Tubbs, because I'm afraid he has whetted the appetite of Oklahoma fans for something which I don't think he'll ever have the opportunity of doing. Of course, wouldn't it be interesting if I am wrong?

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.

## Intellectual Heavy-Hitters Meet

The Law Review staff and the Marshall-Wythe faculty gathered for the annual softball contest on Friday April 1. A contest it wasn't, however, as the Law Review won easily.

Professor Nichol played first base for the faculty and performed admirably despite his attempt to add a new rule which would prevent left-handed batting. Faye Shealy played second base, Professor Havighurst played short and Professor Koch tended third to round out the infield. The outfield consisted of professors LeBel,

Devins, Selassie, and Dean Williamson. Some memorable performances were turned in by the outfield, although Professor Selassie had a little trouble getting used to the mechanics of America's favorite sport.

Professor Butler pitched, but was shelled early. Mr. John Tucker, husband of Professor Barnard, played catcher to finish the battery. No one knew if he was a legitimate substitute or the faculty's idea of a ringer. Professor George and Dean Vick provided emotional support. Also in attendance were select members of Professor Koch's and Professor

Devin's respective families, who ran playfully along the sidelines but at times showed a great interest in beer. If anything, the faculty seemed to enjoy the game.

The Law Review staff combined impressive offense with some key defensive plays to keep the faculty off balance. Pat Miller and Jeff Lowe provided the pitching which kept the faculty pinned for most of the game. Others who played for the Law Review included: Mark Pearson, John Faber, John Neff, Rob Lachenauer, Neal McBrayer, Mike Burchette, Paula Harrell, Larry Gennari, Steve Mister, and Marty Marchaterre.

## Prurient Interest Competes in Tourney

On March 25, Prurient Interest traveled to Charlottesville, Virginia to compete in the 5th Annual University of Virginia Softball Tournament, sponsored by the UVa law school. Teams from 35 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 of the tournament to the eventual winners.

Because of rain, there were several delays and cancellations throughout the weekend. Finally, on Sunday the 27th, the tourna-

ment 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 #1 (of four) eventually won the tournament every 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.

## Rats Win

Last week the Soul Rats won the final playoff game to capture the Men's A-2 league title in basketball. Another Marshall-Wythe team, Round Mound, had given the Rats trouble in the season but Round Mound was eliminated early in the playoffs.

The Rats were led by tough inside play by Tom Kohler, Neal Keese, and Tom Falat. Backcourt support and ball handling were supplied by Dave Cozad, Kenny Harrell, and Mark Kallanbach. Billy Power, the captain of the team, injured himself early in the season and watched the final games from the bench.

## 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 the carrels ever be cleared?

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