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# The ADVOCATE

Marshall-Wythe School of Law



Vol. XXII, No. 5

November 15, 1990

Eight Pages

## BOIES -- THE 90th DAY

by Peter Kay

Pledging to "stand by his word," SBA president David Boies will resign as promised on November 24 if he cannot fulfill the six campaign promises made in last year's controversial election. Upon Boies' resignation, if it occurs, Gary Reinhardt, current vice-president would be elevated to the presidency. The SBA would then hold a special election for the vice presidential spot. The final facet of Boies' campaign -- the \$500 challenge -- would require Boies to contribute \$250 to the Public Service Fund, and throw a \$250 party for the law school.

Stressing he would consider his campaign goals achieved if he received firm commitments from the parties relevant to each promise within ninety days, Boies recently discussed their chances of success.

### Moot Court

Academic credit for Moot Court raises the most difficulties because of the longstanding policy that

activities receiving BSA funding are ineligible for credit. Short of changing that policy, Boies hopes to split Moot Court into academic and activity components, with the academic component strongly supervised by the faculty and receiving credit. He states his chance for achieving this goal are about "50-50."

### Exciting Speakers

While emphasizing that Justice Scalia will be this year's graduation speaker, Boies also promises an appearance by Senator Chuck Robb. On the more controversial side, Boies is negotiating to bring Ollie North on campus. On the backburner is a plan to hold a Free Speech symposium centered around the speech rights of hate groups like the KKK.

### Better Parties

This year's Barrister's ball will be held in a hotel ballroom rather than the rather incommensurate Campus Center.

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## SIX MODEST PROPOSALS:

1. Better Parties
2. Academic Credit for Moot Court
3. Published Teacher Evaluations
4. Expanded Library Hours
5. Nationally Recognized Speakers
6. More Real Estate Law Classes

I WILL ACHIEVE ALL  
SIX OF THESE PROPOSALS  
WITHIN 90 DAYS OR  
I WILL RESIGN!  
VOTE TODAY!

**DAVID BOIES**  
SBA PRESIDENT

## VACATIONING FOR CREDIT

by Amy Jarmon

Are you tired of rejection letters for second-year summer jobs? Have Torts and Contracts got you down? Don't despair! Instead get your passport updated and get ready for the summer of your life. Whether you are a first year or a second year William and Mary's Summer School of Law in Europe is the perfect solution to the law school blues. There are two programs for you to choose from: London and Exeter, England or

Madrid, Spain.

William and Mary founded the first summer school program in law in Europe in 1967 when it started the program at University of Exeter. Summer 1991 is the twenty-fifth anniversary of this program, and the College is planning several events to celebrate. There will be an International Social Reception and Disco at Exeter to allow our students to meet international graduate students

from Western and Central Europe. There will be a Silver Jubilee Address with a distinguished guest of honor. In addition, there will be a Silver Jubilee Banquet and Disco to celebrate. Eighty-seven students attended the program in 1990 and over 100 are expected to join the anniversary celebration class of 1991.

In England you will spend ten days in London studying at the University of

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## DORM PLANS

by Heather Sue Ramsey

There is good news, and there is more good news. The good news: funding for the graduate student housing complex located mere steps from Marshall-Wythe exists, and construction will begin soon. And more good news: law students won't lose any parking spaces during the fourteen month construction period.

Dean Galloway confirmed that despite earlier difficulties acquiring funding from the state, construction of a housing complex adjacent to the law school should begin in March of 1991. Contractors are presently bidding on the proposed plans and the state expects to award a contract in January.

Despite the delay in funding, the complex should be available for the 1992-1993 academic year. As the state approved the entire funding program, the College need not depend on annual appropriations to cover building costs. Without these state funding delays, Dean Galloway expects the complex to open on schedule.

Architect Jane Wright designed the complex to accommodate the needs of graduate students. Each unit

will have two or three private bedrooms, one or two bathrooms, a large common room and a modern kitchen. Wright included a children's play area in her design to make the apartments more attractive to students with small children.

The College intends to comfortably furnish the apartments, but students with their own furniture may have the option of unfurnished apartments. Nine and twelve month leases will be available to suit students' needs.

The Office for Residence Life will assign the new housing to both law and non-law graduate students. Due to the location, law students may have priority, but the complex is not exclusively

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## Inside This Issue

Questions?

Answers?

COMPLAINTS?!



Michelle Sedgewick

Go to Madrid - live here!



# INTER ALIA

As the end of the semester and the holidays approach, here are some things to keep in mind:

Share everything.  
Play fair.  
Don't hit people.  
Put things back where you found them.  
Clean up your own mess.  
Don't take things that aren't yours.  
Say you are sorry when you hurt somebody.  
Wash your hands before you eat.  
Flush.  
Warm cookies and milk are good for you.  
Live a balanced life -- learn some and think some and draw and paint and sing and dance and play and work every day some.  
Take a nap every afternoon.  
When you go out into the world, watch out for traffic, hold hands and stick together.  
Be aware of wonder.

*All I Really Need to Know I Learned in Kindergarten* by Robert Fulghum

"There can't be a crisis next week. My schedule is already full."

-- Henry Kissinger

Sometimes somebody just says it perfectly.



## The ADVOCATE

### Marshall-Wythe School of Law

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

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## Letters to the Editor

To the Editor:

With Election Day a little more than a week behind us, I feel compelled to comment on the voter apathy I witnessed.

Generally, Americans have an appalling voting record -- the lowest of all democratic nations. On Election Day, I heard several commentators say they were expecting "heavy" turnout for certain races. I was shocked to learn that only 50% of the eligible voting population need to cast a ballot to obtain "heavy" turnout. Virginia, by the way, was reported to have had the second lowest turnout of all the states. Kind of makes you proud ....

Even more upsetting than the apathy in the general population is the apathy I witnessed among my friends and fellow students right here in Williamsburg. Maybe I'm crazy, but I consider the right to vote a privilege. Furthermore, I consider it a responsibility. By definition, a democracy is a government by the people. That means all the people. By choosing to live in a democracy, we make a pact with each other to assist in this governing process. Granted, we do not live in a pure democracy, we are a republic. Nevertheless, Webster's defines "republic" as a "government in which the supreme power is held by the citizens entitled to vote and exercised by elected officers and representatives governing according to law." Notice that even in this definition, people voting and electing is a central feature. What then, is the problem?

Why did I hear one friend say, "Where do we even go to vote around here?"; and

another say, "I think I have to vote where my parents live"; or still another, "Do we have anyone to elect this time?" Why did one 25-year old woman (who has been eligible to vote in two presidential elections) not know that one has to register prior to Election Day in order to vote?

The people here at Marshall-Wythe are among the most intelligent and well-educated in the nation. They will be the leaders of their communities, their professions, and maybe even the country. How can they be so intelligent, yet so unable to see beyond the doors of the law school? How can one not know that every two years, the entire House of Representatives is up for reelection? Or that one third of the Senate is up every other year? Following are a few common excuses as well as some responses to these excuses:

1) I don't have time to vote. -- It takes about five minutes to vote.

2) I don't know all the issues. -- First, it's not necessary to know every candidate's stand on every issue. I'm not advocating irresponsible voting, but even a vote along straight party lines can be important because the balance between Republicans and Democrats is very important in Congress. Second, it's very easy to gain a lot of information in a short time: Pick up a newspaper -- local papers as well as the Washington Post profiled the candidates in each congressional district, the senatorial candidates, and the four proposed amendments to the Virginia constitution.

3) I'm not staying in Williamsburg, so it doesn't matter. -- Every member of Congress votes on every bill, not just those that pertain to the state/district that he or she represents. In addition, many of us are staying in Virginia, and there were four constitutional amendments on the last ballot.

4) My vote doesn't matter. -- If you really believe this, then you do not believe in democracy. The system only works when people use it. With 25%-35% of the population electing our leaders, is it any wonder that people feel alienated from the government.

5) I'm not into politics. -- This isn't about politics, it's about your life. It's about the taxes you pay and how that money will be spent, it's about whether abortion will be legal, what the rate of inflation will be, whether we'll have a recession and whether (a very real option right now) we'll go to war.

Perhaps I should have written this letter before the election, so that a few more people would have voted. Unfortunately, since last November, I'd forgotten how angry it makes me when people ignore and abuse their rights as citizens. Next time, I won't forget and I'll get on my soap box a few weeks earlier. Maybe next time, some of you won't forget either.

Caryl Lazzaro (3L)

## THE BEST AND WORST OF WILLIAMSBURG SURVEY RESULTS

### THE BEST

Pizza - Paul's  
Hamburgers - Polo Club  
Sandwiches - Cheese Shop  
Seafood - Cap'n Bill's  
Beers on Draft - The Leaf  
Ethnic Food - Chez Trinh; Peking  
Fast Food - Wendy's; McDonalds  
Ice Cream/Frozen Yogurt - Baskin-Robbins  
CD Selection - Bandbox  
Dinner from parents - Williamsburg Inn  
Place to take a date - Frank's Truckstop;  
Yorktown Pub; Le Clos  
Grocery Store - The "Disco" Farm Fresh  
(Merrimac Trail)  
Outlet Store - Anything at Berkeley Commons  
Movie Theater - Dog Street  
Dry Cleaners - Swan's  
Apartments - Steeplechase

### THE WORST

Pancake House - All of them  
Outlet Store - Evan Picone  
Tourist Trap - Christmas Mouse  
Restaurant Service -  
Anywhere on Richmond Road  
Food - Anywhere on Richmond Road

### FAVORITES

Newspaper: Washington Post;  
The Advocate  
CW Attraction: Any of the taverns  
Radio Station: WCWM; "The Fox"  
(106.9)  
Favorite Instructor  
at Aerobics Plus:  
Martha

ANY MORE QUESTIONS?



## VACATIONING

Continued from Page One

London and then four weeks in Exeter at the University of Exeter. London's bustle, myriad of historic sites, Wimbledon matches and excellent theatre are real incentives. In addition, visits to Parliament and Lincoln's Inn bring the English legal system to life. The beauty of Exeter in Devonshire will also capture your heart. Exeter is southwest of London and only 12 miles from the South Devon beaches. Nearby are the beautiful moors of Dartmoor National Park with their shaggy sheep, ponies and hiking trails. Also within easy train rides are Tintagel (King Arthur's Castle), the art colony of St. Ives, Plymouth (sailing point of the Mayflower), Mount St. Michael (a castle perched on an island and reached by a causeway during low tide), and Stonehenge.

The Exeter Cathedral is a superb example of the Decorated Gothic Style (1280-1370) with Norman transept towers unique in England. An organ recital during the evening in the Cathedral is awe-inspiring. The Guildhall on High Street dates from the Middle Ages. The Crown Courts meet in the Castle which stands amid the old ruins of the city wall. Tours of the underground passageways which used to carry water to the city and a ghost walk are also fun. There are many pubs, including a favorite of Charles Dickens, and lots of places to get cream tea (scones, the addictive Devonshire cream, jam, and tea).

Because classes meet just Monday through Thursday, many students use the long weekends to travel throughout Britain and to the Continent. Numerous economical train packages are available. Edinburgh is a must see with its castle dominating the city and thousands of woolen items

## DORM PLANS

Continued from Page One

for Marshall-Wythe students.

Unfortunately, comfort and location will not be cheap. The cost for the new units will be comparable to those of area apartments, and significantly higher than that of Dillard and Ludwell housing.

Although funding for improved lighting in the law school area was originally contemplated, the approved construction does not include it. The path from the new complex to the law school, however, will have adequate lighting for late night sojourns to the law library.

In preparation for construction, the College considered the disruption to the law school parking lot. Commuting students will lose a few paved spaces and most of the graveled parking area. To compensate, an alternative

beckoning as souvenirs. A number of students went to St. Andrews for golf. Others spent a weekend in Paris being wowed by its architecture, art and beauty. Ireland and Scotland were also popular pre- and post-program trips.

The academics are taught by professors from the University of Exeter Law Faculty and our own Neal Devins. Professor Devins will be teaching a course titled "The Family and the State". Other Exeter courses will be: English Legal System, The Law and Institutions of the European Community, International Business Transactions, and Business Law of the European Community. Professor Emeric Fischer will be the summer manager. One exciting possibility is to arrive a week early to take Legal Clerking. In this one-credit course you work full-time for a solicitor or barrister in Exeter and gain an insider's view on the English legal system. Your duties will vary depending on your assignment, but last summer students observed in the courts, sat in on client interviews, wrote memoranda, acted as under-counsel in court, and worked on correspondence for clients.

The facilities at University of Exeter include an outdoor pool, tennis courts, dining hall, pub, and playing fields. The residence hall has single rooms with common kitchen and bathrooms as well as some rooms for families. Tuition is \$875.00; room and board are \$990.00. Room and board for the legal clerking week are on your own though the cost of the course is included in the tuition fee.

Sample comments to entice you further: Elizabeth Hallock (2L): "Be sure to go horseback riding on the Moors."

parking area, i.e., the grass covered area behind the graveled area, will be available. Unfortunately, this temporary parking area will not have lighting at night. Ultimately, the construction will create more, but less convenient, student parking spaces.

Tom Barrett (2L): "The Exeter program provided me with a unique opportunity to experience the English legal tradition, both in the classroom and in everyday practice."

For those of you who want a warmer climate for your summer abroad, there is the program in Madrid. William and Mary began the program at Complutense University in 1988. It was the first summer law program in Spain. The program has been highly successful with 129 students attending in 1990. Tuition for the Madrid program is \$900.00, and room and board is \$990.00.

Madrid is located in the center of Spain on a great, central plateau. It is a vibrant city with a population of four million. As the capital of Spain it offers a wide range of cultural and historic features as well as an active business and legal community. Students can delight in the flamenco dancers and bullfighting as well as the rastro, a sort of flea market. Madrid also has a wide range of spectator sports and facilities for many participant sports. Three-day weekends make it possible to take advantage of the historic cities and regions of Spain within easy reach by rail or car. Many students visit Barcelona, the beaches, and neighboring countries.

The program takes advantage of the Spanish legal community offered to students

for their comparison to the American system. A visit to the Supreme Court of Spain with an address by Judge Fernandez-Flores, a member of the Supreme Court, is a highlight of the program. Judge Fernandez-Flores is Special Advisor to the William and Mary program. Other visits include the Constitutional Court of Spain and the Chamber of Deputies (the Spanish Legislature). There are also visits in small groups to Madrid law firms to complete the experience.

Madrid also has its fill of receptions and fiestas. There is a welcome reception for students as well as a gala outdoor evening reception to celebrate the end of the program. Like the England program, students enjoy the many bars and other entertainments in Madrid. Close friends are made not only with the American students but other graduate students as well.

The University is located on an old estate in the western part of Madrid. Our students stay in a superb facility which has a dining room, recreation area, lounge and bar, swimming pool, tennis court, and basketball court. All rooms are single rooms except for a few doubles for married couples. Each floor has common bathroom facilities.

On the academic side, courses are taught by Professor Tom Collins from William and Mary and professors from Complutense University of

Madrid. Professor Collins will be in Madrid for his second summer in a row teaching "Mass Media". Other course selections include: Spanish Constitutional Law and Policy, Introduction to Civil Law, European Civil Rights Law, and the EEC Legal System. Legal Clerking is also available in Madrid to students who are fluent in Spanish.

Interested? Here are some further comments to tease you:

William Devan (2L): "Madrid was a lot of fun. One of the best parts of the program was the three-day weekends. I got to go up to Pamplona and run with the bulls on one weekend. I visited Barcelona before the madness of the '92 Olympics hit. Spent a lot of time on the beaches of the Med. On the academics: The professors were great. The reading was always optional. It was a great way to get a first-hand account of what's going on with the EEC in '92."

Joan Ziegler (2L): "If you can possibly go to Spain, go. The cultural diversity is truly an enrichment inside and outside the classroom. Not only were the different European countries represented but all regions of the United States. It was a great program."

## BOIES -- THE 90TH DAY

Continued from Page One

In addition, the SBA this year sponsored a Golf Tournament.

Increased Real Estate Offerings

In addition to asking the administration to increase enrollment limits in current real estate courses, Boies hopes to sponsor single day no credit seminars by local practitioners on relevant land use topics.

Faculty Evaluations

While plans are still tentative, Boies envisions an independent SBA evaluation form that would ask more relevant questions than the standard William and Mary evaluation form. The results would be collated and distributed among the student body.

Regardless of the resignation issue, Boies feels a degree of accomplishment in opening the channels of communication necessary to achieve his stated goals. He further stated the current SBA administration has pledged to pursue his plans if he does step down.

An informal survey of the student body reveals mixed responses to the possibility of Boies' resignation. Some students, disturbed by Boies' campaign methods, think that Boies ought to abide by his promise and step down. Others feel that the resignation would be too disruptive, especially in light of Boies' performance as compared to that of last year's somewhat inert SBA. A

significant minority of students perceive the SBA as having no significant role in their lives at Marshall-Wythe and no real power to effect decisions, and are apathetic.

If Boies chooses not to step down, and student sentiment calls for his resignation, a little-used power of the Judicial Council could remove him. Upon a student complaint alleging malfeasance in office, and a determination of merit by the Judicial Council, a public removal hearing would be held, followed by a decision to remove or not to remove by the Council. The issue of whether failure to fulfill promises constitutes malfeasance has yet to be determined.

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# A KRISTMAS KAROL

by Peter Kay

It is well beyond argument that in America, Christmas is a secular, commercial holiday. In Williamsburg the marketing of Christmas has taken the inevitable step: Christmas franchises, which have become as ubiquitous here as pancake houses. In addition to three Christmas Mouse outlets, Williamsburg boasts several independent "classic Christmas" shops (including one at the Pottery).

Upon entering the Christmas Mouse, the shopper is immediately assailed by an aroma of cinnamon not unlike that produced by hundreds of elves chewing Dentyne. Tinkly Christmas Muzak encourages the shopper to browse among rows of fake trees, keepsake ornaments, and shockingly overpriced pseudo-teutonic figurines. White birch wreaths line the walls. Fellow consumers tread as quietly as

the proverbial mouse, as if the store were a museum. Although it abuts a Wendy's and a defunct Mini golf course, the store suggests a Norman Rockwell atmosphere of familial hominess. It is all very quaint and somewhat disturbing.

Packaged Christmas quaintness is a natural outgrowth of Williamsburg. After a day learning that Colonial life consisted primarily of bonneted women churning butter in antique tubs while their husbands carved handsome duck decoys (as opposed to fighting Indians and dying of the plague), the shopper is primed to dispense with the remainder of his or her personal disposable income in furtherance of said quaintness.

Due to my own obligatory childhood visit to CW and until relatively recently, I believed that the colonial American economy had its base primarily

in scented candles and soap balls. The Ralph Laurenesque reconstructed history of Colonial Williamsburg dovetails quite nicely with the merchandising that has grown around it.

Like Ralph Lauren (ne Lipschitz), my first encounters with Christmas came as a Jewish kid growing up in the Bronx. First and foremost, Christmas meant no school. I also got to watch the Rudolf, Grinch, and Charlie Brown specials on TV. I remember staring in amazement as some of my neighbors configured well-lit phalanxes of plastic Santas, Biblical characters, and other figures that to this day I cannot identify, into patterns of religious significance. Not to be denied their own Hallmark fun, Jews displayed electric menorahs and exchanged "holiday" cards. None of this prepared me for Williamsburg.

A classic Christmas is

not a Bronx Christmas. Gaudy flashing colored lights have been replaced with tiny unblinking white strands. Handcrafted wooden figurines now stand in the place of the four-foot glow-in-the-dark Wise Men. Classic. Just as it adheres to rock music, Coca-Cola, and MTV, the concept of "classic" implies a return to tradition after unsatisfactory Modern and Post-Modern experimental periods. Modern Christmas brought plastic trees and snow. Postmodern Christmas flowered in the mid-eighties, when women punched and bit one another in order to grab the last Cabbage Patch doll at Toys-R-Us. Each period failed as miserably as New Coke did, and Classic was back.

Classic rock radio stands for the widely accepted and untrue proposition that the

music of the sixties and early seventies had the power to eliminate greed, hatred, war, and hunger in the world. Franchised Classic Christmas represents an equally fraudulent, but eminently marketable, belief in a quasi-historical period of Currier and Ives gentility. Like Colonial Williamsburg, it reconstructs a past that never existed but for sincere and myopic hindsight. With the destruction of authentic American traditions, Christmas and otherwise, engendered by television's monopoly on our collective memory, franchised consumer classicism fills a void that is as profitable as it is bottomless.

## A POEM . . .

WEBB v. MCGOWIN

### FACTS

While Webb was dropping pine blocks from above,  
He saw McGowin below.  
He had already given the block a shove,  
So down with it he had to go.

In consideration for Webb's injuries, McGowin  
Agreed that he would give  
A fifteen-dollar-a-fortnight allowance  
To Webb, for as long as Webb lived.

But some eight years later McGowin died  
And his relatives cancelled (of course),  
So now the court has to decide  
If the promise can be enforced.

### HOLDING

McGowin's rescue from death or much pain  
Was of infinitely more worth  
Than any kind of financial gain  
That you can receive on Earth.

When someone receives a material benefit,  
And then feels a moral obligation  
To pay the person who gave him it,  
There's sufficient consideration.

His subsequent agreement must therefore stick.  
It's enforceable in full,  
Just like in Boothe v. Fitzpatrick,  
Where the plaintiff had cared for a bull.

And another important point in this case:  
Appellant was injured severely  
So the agreement, if taken at its face,  
Was clearly intended sincerely.

The Appeals Court is sure. They couldn't be surer.  
The court below didn't understand it.  
They erred when they granted defendant's demurrer.

Reversed and remanded.

by Sean Sell (1L)

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# ZIEMER FOR THE AMERICAN WAY

by David Ziemer

This past summer, I used my grant from the William & Mary Public Service Fund to live while I worked as a legal intern for the People for the American Way (People) in Washington, D.C. People is a bipartisan, non-profit organization formed ten years ago to fight the religious right. My personal desire was and is to work in the first amendment area defending freedom of religion and speech. Although the organization is involved in several other areas, and is primarily a lobbyist organization, it has a permanent legal department of three people, two of whom do first amendment law. The third is in charge of reviewing federal judicial nominees.

All three attorneys were highly intelligent and dedicated lawyers with whom it was a great pleasure to work, though occasionally humbling. The most enjoyable aspect of the job was always knowing that I was on the side of the law on which I wanted to be. The way the litigation section of the legal department operates is that an individual who feels his/her rights are being violated contacts the organization. In my capacity as a summer intern, I would review each file to determine whether the individual's problem was one with which we could help. As

the organization has a very liberal reputation, quite a few of these people want us to support positions with no basis in law or fact. Most, however, have genuinely had their rights violated. At this point, I would do research to determine whether we would be able to help them, which was a very satisfying process when the answer was yes.

One person with whom I worked had been prohibited from tape recording school board meetings after she had used such recordings to criticize local policies. I also did research to assist an historian who had been trying for a decade to receive a history from the Air Force under the Freedom of Information Act. Despite the fact that the document had been completed and unedited and that portions of it had been published, the Air Force maintained that it was an unfinished draft, which is exempt under the terms of the Act. I also worked on a case involving the removal of a textbook by a fundamentalist religious organization and a school board acting in violation of the state's Open Meeting Law. We also received a request from an artist whose exhibit had been padlocked by local authorities to write an *amicus curiae* brief. I chose the position we should take in

that case, as his own lawyer's position and brief were completely without foundation in law. In spite of this prior inadequacy, however, the local officials had abused their authority in handling the matter.

I also drafted a law review article reviewing the first amendment decisions of the previous Supreme Court term for the legal director of the organization, who will be publishing the article this fall. This was a fascinating task even if disturbing in light of recent decisions. I did very little during most of the summer in the area of judicial nominations. I did, however, write one report to be sent to the Senate Judiciary Committee, and once Souter was nominated for the vacant Supreme Court seat, reading the briefs he wrote as New Hampshire Attorney General was all I did. My experience was very interesting and rewarding. It was also very exciting to work for People while the fight to defeat the flag amendment was going on. Although I did very little myself, the non-legal departments did little else at that time, and it was a very uplifting experience to have been there.

Thank you to everyone who works to support PSF and who contributed to enable me

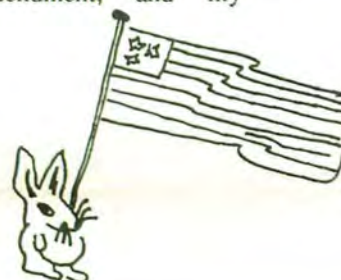


Carrie Leonard

Dave Ziemer (3L) clerked at People for the American Way through a grant from PSF.

to spend my summer defending civil liberties. And to those who may disapprove of defending such activities, let me add that only because of my extreme dedication to the first amendment, and my

stubbornness, did the organization back away from its prior position of supporting certain election reform laws prohibiting the campaign expenditures of corporations.



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# HOLA, QUE T'AL?

by Wendy Watson

Learning to use a word processor instead of a "typing machine." Being able to leave the car unlocked without fear of it being stolen. Being surrounded by thousands of trees, still brushed with their vibrant fall colors. These are just a few of the new facts of life for Professor Santiago Sanchez Gonzalez.

Professor Gonzalez and his wife, Professor Maria Dolores (Lola) Lopez Diaz, are visiting Williamsburg while Professor Gonzalez is on sabbatical from the law school of the Universidad Nacional de Educacion a Distancia in Madrid, Spain. They arrived October 8, and although Gonzalez's sabbatical ends in the middle of June, they are considering staying in the United States until September.

In Spain, Professor Gonzalez teaches Political Law (which corresponds roughly to our Constitutional Law). Gonzalez explained that currently, Political Law is a mandatory two-year course, with the first year devoted to the study of general concepts and philosophy and the second

year spent on practical applications. Reforms of legal education may lead to a format change in the near future.

Professor Diaz, after teaching high-school Spanish language and literature for 17 years, received her Ph.D. in Seventeenth Century Spanish novella this September. While in Williamsburg, Professor Diaz is teaching Spanish language and literature through the Undergraduate Department of Romance Languages.

According to Professor Gonzalez, he is devoting his sabbatical to "reading." In actuality, Gonzalez fills his days studying freedom of speech. Ultimately he hopes to write a short, clear handbook on the subject for Spanish students and journalists. He is also considering writing an article in English for the Spring Bill of Rights Institute Symposium on the right of private persons to reply to the press and other mass media. Professor Gonzalez characterized freedom of speech as the "hub of the rest of the rights. Without freedom of speech the rest are worth

nothing."

Gonzalez and Diaz chose Williamsburg as the site for their stay in the United States as a result of Professor Gonzalez's affiliation with William and Mary's summer Madrid program. For the past four years, Marshall-Wythe has organized a summer program in Madrid open to students from all law schools. For three of those years, Professor Gonzalez has taught Spanish Constitutional Law and Policy to the students in that program. Marshall-Wythe Professors Williams, Levy and Smolla all aided Professors Gonzalez and Diaz in the organization of their stay in the U.S.

Gonzalez said that while he finds it strange to be in such a small town after living in Madrid, he is particularly impressed with the nature surrounding Williamsburg. He has been collecting some fall leaves, one of which, a bright crimson leaf, he uses as a bookmark. He expressed some dismay, however, that even here, nature is "spoiled" by pollution. In particular, he commented on

the deplorable state of Lake Matoaka, comparing it to a similarly polluted river that runs through his hometown of Toledo, Spain.

Gonzalez further compared Williamsburg and Toledo with respect to their historical natures. He mentioned that Colonial Williamsburg is "full of a sense of history for many people which [he] cannot appreciate fully." He explained that the house in Toledo in which he was raised was built in the 17th century and that buildings that old are not uncommon. So from his perspective, Colonial Williamsburg is not particularly old. Gonzalez remarked that he found Jamestown more interesting because of its historical significance than the culturally oriented Williamsburg.

While Professors Gonzalez and Diaz are in the United States, they plan to do some further traveling. They hope to go to Boston for Thanksgiving and to see San Francisco, Big Sur and Carmel over the winter break. Gonzalez said they were

considering taking a trip to Canada in the spring, when the weather would be more favorable.

Professor Gonzalez said that he did not overly miss his friends and family in Spain, as he knows he will be returning in a year. He is only sorry "that they are not able to see what [he is] seeing."



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2Ls : The Graduation Committee needs representatives from the Class of 1992 to start planning for the '92 graduation and festivities. Interested persons should contact Maxine Cholmondeley (3L) via hanging file. IT'S NOT TOO EARLY TO GET STARTED!!

### COURT APPOINTED ATTORNEY PROJECT

There will be a meeting to schedule court dates for spring semester on Monday, November 19, 7:30 pm, in Room 119.

The meeting is open to all students. If you are unable to attend, please contact John Edwards (2L) or Linda Fox (2L) via, what else?, hanging file.

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Stephanie Burks

The Judicial Council's proposed amendment to the SBA Constitution was passed by a vote of 309 in favor and only 16 against. The amendment clarifies the SBA's ability to amend the Honor Code.



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# COLLEGE ATHLETES: ELIGIBILITY AND THE DRAFT

by Mychal Schulz

"When someone says to me, 'I'm going to protect you by depriving you of your rights,' something is wrong with the process." - Joe Restic, Harvard football coach

In the pro football draft last spring, 20 out of the 38 undergraduates who declared for the draft were undrafted. Most notably Brad Gaines of Vanderbilt, the SEC's 1989 leading receiver, Braxton Banks, a fullback for Notre Dame who sat out last year with a knee injury, and Eugene Burkhalter, a defensive back from Washington. Banks and Gaines instituted court actions seeking to force the NCAA to reinstate their final year of eligibility before this season began, directly challenging NCAA regulations that prohibited them from so doing.

Bylaw 12.2.4.1 of the National Collegiate Athletic Association states that when a college football player declares his intention to enter the draft, he automatically forfeits his remaining collegiate eligibility. Bylaw 12.3 provides for the same result if an athlete consults an agent or an attorney for advice about entering the professional ranks.

In denying Banks' motion for a preliminary injunction that would have allowed him to rejoin the Notre Dame team, the United States District Court in South Bend stated that, while it sympathized with Banks'

position, the NCAA regulations did not constitute an unreasonable restraint on an athlete's ability to compete in the marketplace and were not violative of any federal laws, including the Sherman Antitrust Act. A month later, Gaines also lost his suit for an injunction.

Lost in this legal maneuvering, however, is the basic unfairness of the NCAA regulations in issue. Proponents of the rules argue that the bylaws represent one of the few "bright lines" between professional and amateur athletes. Elimination of the rule, it is argued, would hurt professional teams because of the uncertainty of whether a draft pick would actually play for the team, and would hurt college teams because every spring a coach would not know who would be present for practice or how many scholarships would be available. Perhaps the most powerful argument for retention of the bylaws is that an athlete's decision to forego his final year of eligibility is freely and knowingly made, without duress. Why should the rules be abandoned simply because a player makes an economic decision that doesn't turn out well? Such guarantees are not available to others who make similar economic decisions based on what they believe is a good decision.

What the above arguments fail to recognize,

however, is that this is a game that is in issue, not a make or break situation which will result in the profit or loss of a business. Too often the NCAA loses sight of that minor point. In the rush to capture the almighty entertainment dollar, the welfare of the student-athlete is too often overlooked.

The Banks case is particularly instructive. A key member of the Irish 1988 national championship team, he started ahead of Anthony Johnson, projected by many as the top fullback in last year's draft. Despite a knee injury that kept him out last year, Banks believed that he would be drafted, a belief encouraged by the fact that every NFL team contacted him expressing interest. He therefore entered the draft, only to find that, after a mediocre time in the 40 yard dash at a scout combine, the interest in him had disappeared. He was not drafted. In addition, he was not offered nor did he sign a free agent contract. He never received any money from any NFL team. Though he consulted with a family friend who was an attorney, he never signed a contract with an agent, nor did he receive any money from an agent. Tough luck said the NCAA. Since Banks had merely expressed an intention to enter the draft, he was no longer eligible to play college football.

What Banks needed was some good advice, but the

NCAA makes this difficult, if not impossible, for such advice might constitute consultation with an agent. The result, as Banks found, is that an athlete may either make an informed choice and lose his eligibility, or make an uninformed choice and lose his eligibility.

If, as the NCAA contends, the rules make sense, then why do they apply only to basketball and football, which just happen to be the two revenue-producing sports at just about every school? Why should a tuba player be able to go out and seek a job with a symphony, fail to do so, and then be able to return and march in the school band, yet the football player cannot do essentially the same thing? It makes no sense.

Fortunately, the NCAA is finally beginning to recognize this. At the same time that NCAA lawyers were vigorously arguing the viability of the rules, Dick Schultz, the executive director of the NCAA, was stating his belief that athletes should be allowed to test their worth without losing their eligibility. At present the NCAA Professional Sports Liaison Committee, under the direction of Charles Theokas, Temple's athletic director, is formulating a resolution that will allow undergraduates to enter the draft, and if after going undrafted or being drafted lower than expected, be allowed to return to school.

Signing a contract or receiving money from an agent or team, however, automatically forfeits eligibility. Such a rule not only makes sense, but is fair to those who are too often overlooked, the athlete.

Another route for the NCAA to explore is a draft similar to the National Hockey League or Major League Baseball. Under these arrangements, a team may draft a player who then decides to remain in school. The drafting team, however, still retains his rights for a specified period of time. Such a system would allow athletes to stay in schools and allay professional teams' fears that they would draft a player but never have the opportunity to sign him.

Whatever approach the NCAA takes, one thing is clear, the present system cannot stand. The big losers at present are the athletes. Finding the door to the NFL shut in their faces, they also find that the NCAA has closed the door behind them. Instead of taking away an athlete's opportunity to compete because of a bad economic decision, a decision that doesn't implicate any sense of fair play, the NCAA would do better to realize that college football is just a game. For Banks, Gaines and Burkhalter, their college careers are over, but for future undergraduates, such do or die decisions will hopefully be eliminated.

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