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Marshall-Wythe Celebrates 225 Years

by William Y. Durbin

It was 225 years ago today (almost), Thomas Jefferson got the Commonwealth to pay. The school's been going in and out of style, but it's guaranteed to raise a smile.

The Marshall-Wythe School of Law celebrated the 225th anniversary of its founding with a gala event on Friday, Nov. 12. The school literally rolled out the red carpet in honor of the event, welcoming approximately 425 alumni, students, faculty, staff and other friends of the law school. Culminating in remarks from distinguished guests, including Lieutenant Governor Timothy M. Kaine, Attorney General Jerry W. Kilgore, and President Timothy J. Sullivan, the evening showcased the roller coaster ride of William & Mary Law School's rich history and bright future.

Speaking to a double-capacity audience in the William B. Spong, Jr. Classroom (popularly known as room 119) and its twin classroom next door, Dean Taylor Reveley welcomed attendees to the celebration. He addressed both rooms simultaneously though a live video feed but half-joked about the need for alumni to endow a large hall. By way of introducing the distinguished guests, Dean Reveley set the tone for the evening.

"Turning 225 is a genuinely big deal," he said. "It suggests tenacious staying power—including surviving Yankees' burning the law library—and real human vitality. Thomas Jefferson had an idea, he convinced the Virginia Board of Visitors of its importance and he recruited George Wythe to get the school going."

At the urging of Jefferson, William & Mary established a professorship of Law and Police on December 4, 1779. The College selected George Wythe, under whom Jefferson had studied, to fill the post. Wythe began teaching the law to William & Mary students in January of 1780, sometimes in the Wren Building and other times out of his own home.

So from the beginning, facilities were something of an issue. In its 225 years, even after a 60-year hiatus owing to the Civil War, William & Mary Law School has lived all over campus. Before moving into the current building in 1980, the school called Tucker Hall, the old William & Mary library, home. The basement of Bryant Complex dormitory housed the school at one point.

"The American Bar Association was so displeased with the facilities of the law school that, if the current building hadn't been built, the law school might have sunk," Reveley said.

To remedy that situation, William & Mary opened its new building in 1980 and added the North Wing in 2002. The library expansion and renovation, which begins in May 2005 and is scheduled to be completed in 2007, will continue the school's plans of major physical plant bolstering.

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Fmr Gitmo Special Prosecutor Sheds Light On Military Commissions

by Myriem Seabron

A day after U.S. District Judge James Robertson caused a bit of a furor in Washington by declaring the Guantanamo Bay Military Commissions “unlawful” in their current form, Colonel Fred Borch, former Chief Prosecutor at Guantanamo (May 2003 - June 2004) stood before a small but engaged crowd to talk about something so many of us have heard mentioned so often, but still know so very little about.

The subject of Colonel Borch’s presentation was the administration’s view of how the law should be applied as “a tool of justice” in the war on terror. Introduced by Professor Lederer as not only a superior lawyer and soldier, but also one of the “most accomplished military historians of his time,” Borch set the tone for the talk early on by making it clear that he encouraged questions and wanted to be as honest as possible with the people who had gathered to hear him speak.

Prior to September 11th, 2001, the U.S. government had not deemed it appropriate to characterize on-going conflicts with militant terrorist organizations like al-Qaeda as a war. Citing the example of the federal prosecutions of those charged in connection with the first attack on the World Trade Center in the early ’90s, Borch spoke about action against terrorism being viewed as a law enforcement exercise before 9/11.

After the tragic events of September 11th, 2001, the government was forced to reconsider its position as it looked to the best way to respond to the attacks on the eastern seaboard. In order to secure international legal standing for a military response, the U.S. government’s official position changed. Although we may not have been willing to recognize it, America had been at war with “terror” since at least 1998—when Osama Bin Laden released his fatwa (a religious ruling or pronouncement) declaring war on America and her citizens.

The factual basis for the government’s position could be found not only in the attacks on September 11th, but on the spate of terrorist attacks against U.S. targets abroad since the early ’90s (including the embassy attacks in Africa and the bombing of the U.S.S. Cole). The legal basis was to be found in Article II of the Constitution, NATO’s invocation of the Article 5 mutual defense clause, UN Security Council Resolution 1368, and in the joint resolution Congress passed authorizing the use of force.

Borch emphasized the significance of this action—conducting a “war” against non-state actors, he said, constituted a “revolutionary change” in how international conflicts were waged.

It is necessary that the conflict with terrorist organizations be framed in this way because “in order to prosecute a war crime, the case has to be made that there is a war.”

While it is true that many in the international community may not agree with this legal reasoning, Borch spoke with the matter-of-fact insight of a military historian: “State practice is what makes international law.”

Having made clear that the war on terror is a new kind of war, Colonel Borch moved on to talk about the classification of those who fought in this war. Suggesting that “enemy combatants” is a valence term and a misnomer to boot, Borch offered instead the term “unqualified belligerents.” What does that mean, exactly? In the Colonel’s words: “It really means that the only people who have protection against prosecution for killing are men and women wearing a uniform...[and] in the employ of a state.” Anyone else is an unlawful combatant engaged in unqualified belligerence.

These classifications seem like semantics but how the enemy is categorized makes a great deal of difference in the war on terror. The refusal of the current administration to consider captured enemy “prisoners of war” Borch explains, is rooted in the understanding of the logistical nightmares that would result in terms of prosecuting any of the captured. None of those awarded P.O.W. status may be tried by any procedures different than those a nation would use on its own troops.

“So why not apply the [Uniform Code of Military Justice]?” asked one member of the audience. Borch’s answer was simple—it would make prosecution impossible. The rules of evidence and procedure would be exceptionally difficult to satisfy, given the circumstances under which many of those being detained were captured. He gave a few examples: The UCMJ has a rule against hearsay, yet much of the evidence comes from the accused prisoners. Soldiers on site gather whatever they can during raids, dumping everything into boxes and shipping them out...everything is sorted abroad. “[There would be] problems with the chain of custody, problems with authenticity.” Observers of the process, Borch suggested, must consider that peacetime law enforcement practices simply could not be transferred to the battlefield environment.

There was a question posed about subject matter jurisdiction, which Borch confirmed was the sort of thing that had to be established at the start of each trial. “This is quite unlike any procedure, process or tribunal” the United States has employed since the second World War, Borch said, and as such, the system is being continuously refined.

What rules, then, are set going into the Guantanamo Military Commissions? Although the Bill of Rights does not apply to military commissions, Borch explained how the accused still retained many of the same presumptive rights: the presumption of innocence (guilt beyond a reasonable doubt must be proved to a panel of 3-7 officers), the defense may cross-examine any witness as well as call witnesses and...
W&M Students Visit the Supreme Court (In Style!)

by Marie Siessenger

On November 8, twenty-two students in Professor Devins’ Supreme Court seminar class traveled to Washington, D.C. to watch oral arguments, meet Justice Stevens, and discuss all things Supreme with two D.C. attorneys who frequently practice before the Court, as well as Federal Election Commissioner Michael Toner.

The morning commute started early for the Supreme Court students, who departed Williamsburg at 5:30am. Upon arriving at the Court, the students were ushered into the West Conference Room, and then into the courtroom. Starting promptly at 10am, arguments were presented in the cases of Devenpeck v. Alford, a Fourth Amendment case involving the closely related offense doctrine that has been percolating in the Circuit Courts of Appeals. The question was whether a defendant who was arrested by an officer with probable cause for an offense, but informed that the arrest was for a different offense, could then be charged with the offense that gave the officer probable cause to make the arrest.

Arguments in the second case of the morning revolved around the issue of what documents a court could consider in enhancing the sentence of a defendant under the Armed Career Criminal Act. The case was Shepard v. United States. Prior to being arrested for being a felon in possession of a firearm, the defendant had pled guilty to the offense of burglary under Massachusetts’ nongeneric burglary statute, which defined the offense as breaking and entering into a building, ship, vessel, or motor vehicle. A U.S. District Court judge ruled that the complaints and police reports could not be used to determine whether Shepard’s plea was to generic burglary (which involves breaking into a building or other structure with the intent to commit a crime) or to the more specific facets of Massachusetts’ burglary statute.

Student reactions to the morning session were unanimously positive. “I really enjoyed Justice Scalia’s quips, he was entertaining,” said Dave Hall (3L). “I was surprised at the different skill levels of the lawyers. The bench was not as aggressive as I thought they would be—I expected nonstop questioning, and while there were a lot of questions, there were not as many as I would have expected,” said Chris Burch (3L).

Following a brief sojourn to the Supreme Court cafeteria for lunch, the students met with Justice Stevens to discuss his judicial career and jurisprudential philosophy. Professor Devins delivered a faculty award to Justice Stevens. “Justice Stevens was very articulate and in tune with social views,” said Stephanie Jamnach (3L). “I thought that [he] was really down to earth,” echoed Amber Jannusch (3L). Spier also commented that it was “humble of Justice Stevens to admit that he had made a mistake in a previous judgment.”

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News

The Election and the Perception of Lawyers

by Yuval Rubinstein

Now that the 2004 election is finally behind us, we can expect a barrage of post-election recaps pinpointing the campaign issues that shaped the presidential race. Although terrorism and gay marriage are undoubtedly at the top of the list, one recurring theme throughout the 2004 race was the vilification of lawyers, and trial lawyers in particular. Certainly, lawyer-bashing is a long and proud American tradition; historian John Bach McMaster notes that, during the revolutionary period, lawyers were denounced as “bloodsuckers, as pickpockets, as windbags, [and] as smooth-tongued rogues.”

In recent years, trial attorneys have emerged as the scourge of corporate America, and are routinely blamed for rising insurance premiums that force doctors out of business, rising health care costs, and a host of other societal ills. In response, a number of states have implemented liability caps, while no less than seven tort-reform bills have been introduced in the Senate during the past two years. When John Edwards, the famed trial lawyer, was chosen as John Kerry’s running-mate, it was no surprise that the business community expressed its disapproval. But even those of us desensitized by years of lawyer jokes were taken aback by the sheer vitriol hurled against lawyers, and Edwards in particular.

President Bush himself led the charge against trial attorneys. “You cannot be pro-doctor and pro-patient and pro-trial lawyer at the same time,” Bush said at one campaign rally. Not to be outdone, Dick Cheney also got into the act. “It’s a lot easier for America’s businesses to hire workers when they know they don’t have to keep hiring lawyers,” Cheney bellowed.

While the Bush-Cheney campaign was withering in its assaults on Edwards and the trial bar, corporate chiefs were positively apoplectic at the prospect of a trial lawyer being a heartbeat away from the presidency. The U.S. Chamber of Commerce, led by Tom Donohue, chose to abandon its “traditional neutrality” by running a multi-million dollar ad campaign in five key swing states attacking Edwards. As Dirk Van Dongen, president of the National Association of Wholesaler-Distributors, wailed, “There aren’t many things today that cause an immediate emotional reaction, but the nerves of the business community really ping when you hear the phrase ‘trial lawyer.’”

Indeed, the level of anti-lawyer invective became so great that ABA president Dennis Archer sent a letter to the national chairman of both parties urging them to refrain from the “name calling and finger pointing” that was harming the reputation of a profession steeped in the traditions of public service.

Given all this anti-trial lawyer animosity, one could reasonably conclude that Edwards’ presence on the Democratic ticket proved a hindrance. But is this really the case?

Although the sound and fury coming from America’s beloved captains of industry was heard loud and clear, it isn’t necessarily indicative of public opinion. For example, a July Gallup poll found that 67% of respondents viewed Edwards’ trial lawyer experience as a strength, not a weakness. Furthermore, when Edwards first ran for the Senate in North Carolina in 1998, Republican incumbent Lauch Faircloth launched a blistering anti-lawyer campaign against Edwards. The final campaign ad even featured side-by-side photos of Edwards and Bill Clinton with Pinocchio-style noses, while denouncing them as “two tobacco-taxing liberal lawyers who are well known for stretching the truth.”

This scorched-earth campaign strategy backfired on Faircloth.

So what’s going on? I think the public’s attitude toward trial lawyers, and lawyers in general, is more complex than we’re led to believe. Lawyers are perceived as the unethical ambulance chaser and the virtuous defender of the little guy. Although these two competing images are in constant tension, the public will choose one or the other depending on the situation. Therefore, a trial lawyer like Edwards, who has represented dozens of sympathetic clients over the years, will be perceived as an Atticus Finch-style crusader. On the other hand, attorneys such as Mark Geragos, F. Lee Bailey, and Johnnie Cochran seem like the real-life embodiments of The Simpsons’ Lionel Hutz.

For better or worse, I don’t think there’s anything we can do to alter the public’s Jekyll and Hyde image of lawyers. It’s the inevitable byproduct of our adversarial system of justice. In the meantime, sit back, relax, and take the ubiquitous lawyer jokes in stride.
Blood, Stitches, Losses, and Wins:
Intramurals Update

by Jennifer Rinker

The last two weeks of intramural play for the law student teams have seen some major action. While the men’s floor hockey unfortunately lost their bid for the championship to archrival VIMS, the Tom Jackson Project co-rec basketball team finished the regular season at 4-0, securing a top seed at the playoffs.

The men’s A League basketball team Tom Jackson Project suffered their first ever loss two Sundays ago. Considering the mayhem erupting on the court that night, it is a tribute to their skills that they only lost by a few final points. The team started with a player injured and out from the start. Team Captain Chris Bauer fouled out. Matt Barndt took an elbow (or shoulder) to the nose, busting open a half inch gash. Stalwart and tough as he is, Barndt bandaged it up and continued play only to minutes later take another blow to the eye, opening up a second bloody wound on his lower right eyelid. (I feel like I’m covering boxing rather than basketball, but these folks are hard core). Committed to winning at all costs, even if that meant massive amounts of blood loss, Barndt again patched up the eye and stepped back on the court. With no cutman around to effectively stop the bleeding, and ultimately and finally concerned about his injuries, Barndt removed himself from the game and to the hospital where he received several stitches to patch up the cuts. Now down to only three players, spectator David Morrison, geared up with Michael Sweikar’s spare shoes (who has spare athletic shoes?), stepped out from the stands, but ultimately to no avail. Despite all heroic efforts, Tom Jackson Project fell short only 5 points in the last five minutes of the game.

Men’s B League team the Therapists finished the regular season 0-4. Team Captain Evan Wooten summed up the winless regular season: “the team DID take home awards for ‘overall team hilarity’ and ‘most post-game beers consumed in the rec-center parking lot.’” Wooten also acknowledged the For-Fun aspect of intramurals, thankful for the fact that “even 0-4 teams make the playoffs.” The Therapists already have the cooler filled for their first playoff game.

Advocate coverage of Intramural soccer has been admittedly sparse. Obviously, the teams field more than the three players listed in the rosters last issue. To supplement: The men’s team Old School won their first game, “mercy-ruling the MBA team 5-0 off goals by Donnie Regan, James Farrell, Dathan Young, John Stepleford, and Dave Baron,” said Team Captain Theo Lu. Mike Kauffman, Brian Flaherty, Jason Hobbie, Chris Johnson, Matt Widmer, Mike Spies, Brian Arquiar, and Joe Fojlon round out the Old School men’s league roster.

The co-rec soccer team of Theo Lu, Donnie Regan, James Farrell, Mike Kauffman, Dave Baron, Brian Flaherty, Jason Hobbie, Chris Johnson, Christian Eberhart, Kelly Street, Alexis McLeod, Joyce Fetterman, Megan Hoffman (injured), Lauren Eade, Vickie Sarfo-Katana, and Amy Liesenfeld are the defending champs, winning their first regular season game this year.

Good luck to everyone in finishing out the regular seasons and in the respective playoffs.

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Celebration, from front page

The distinguished guest speakers picked up Dean Reveley’s past-is-future theme, discussing the importance of remembering as well as looking ahead. Lieutenant Governor Kaine described the law school as a “treasure to Virginia and the nation” for helping the rule of law endure over the last 225 years. Pointing to the important people and ideas that came out of William & Mary Law School, Attorney General Kilgore called it the alma mater of a nation. Both were thankful to the school for what it has done and looked forward to even more distinguished accomplishments.

The attorney general once served as editor of The Advocate.

Governor Mark Warner had hoped to attend, but his duties as chairman of the National Governors Association, holding a meeting with newly elected governors over the weekend, kept him away.

President Sullivan, a former professor and dean of the law school, delivered some of the most poignant words of the evening. Recognizing the accomplishments of his predecessors, President Sullivan reminded the audience that those men were instrumental in helping the school weather troubled times in order to reach the remarkable milestone.

“It would be wrong to celebrate the present, without remembering how close we came to its not happening,” Sullivan said, referring to the times over the last 225 years when the school’s survival was “hanging by a thread.” He mentioned the accreditation problem of the 1970s and the Board of Visitors threat close the school in 1939. But each time, people like Dean Spong, who headed the law school from 1976 to 1985, believed in the school and brought it back.

“History teaches us that we should be confident that greatness is within our grasp,” he said. “The best is yet to come.”

Through a host of fare, Marshall-Wythe was able to show off the facilities many of its alumni did not enjoy and provide glimpses of what is to come. Attendees enjoyed sumptuous food and drink and live music as they looked over renderings for the library expansion and renovation or watched high-tech presentations in the McGlothlin Courtroom.

James P. White, who sat on the ABA’s committee criticizing the law school’s facilities in the mid-1970s, attended Friday’s celebration.

“I am very, very gratified, not to mention amazed,” Dean White said of his being able to witness the school’s transformation. “I think this already one of the leading law schools in the country, and it will continue to be one of the leading law schools in the country.”

The alumni and development office paid particular attention to the classes of 1928 through 1965, many of which are quite small. The school hoped the anniversary would provide a good reason for those alumni to return to Marshall-Wythe to see how much it has changed.

“Many people will not have been in this building before,” said Sally Kellam, Associate Dean of Development & Alumni Affairs. “Some alumni were here when the school was run on a shoe string. We want them to see how the law school has changed and how well it’s doing. It’s a nice way to celebrate the past and look toward the future at the same time.”

Perhaps the man himself put it best. Two historical interpreters brought Thomas Jefferson and George Wythe back to life on Friday night, and Wythe had some telling words for his audience in the Spong Classroom. In discussing his signing of Jefferson’s Declaration of Independence, he said that that was not the most important document he put his name to. Rather, the Virginia constitution and bill of rights were more important because, unlike the declaration, which merely broke from the past, those documents “laid the foundation for the future.”

In the same way, Marshall-Wythe can be proud of its 225 years of history—from its auspicious beginnings to its mid-life crisis to its surging into the 21st century—for the school has continued to lay a foundation for the future of legal education in the United States.
by David J. Byassee

On November 5 and 6, Professor Eric Kades, along with the William & Mary Property Rights Project and the Institute of Bill of Rights Law, presented the Inaugural Brigham-Kanner Property Rights Conference. It was nothing less than a meeting of the artisans who have crafted the 20th century law of eminent domain.

For those who have not yet been introduced to the concept of eminent domain, I will provide a brief introduction to the topic. Although somewhat elementary, it may provide some foundation of understanding. Already-informed readers may wish to skip ahead one paragraph.

The law of eminent domain emerges from the Fifth Amendment to the U.S. Constitution: “nor shall private property be taken for public use, without just compensation.” This passage implies that the government may take private property in order to put it to public use so long as just compensation is provided. Where the topic finds friction is where the rubber meets the road—in the application of theory to practice. Several critical questions emerge. What exactly constitutes a “taking”? Which of the historic bundle of property rights—to possess, to exclude, to alienate—are the determinative factors? Is the denominator in determining whether “any gainful use remains” the portion of the property affected, or the property as a whole?

The agenda for the conference included a dinner and, in the Wren Building, presentation of the Inaugural Brigham-Kanner Prize to Professor Frank I. Michelman. Michelman is a professor at Harvard Law School, where he has taught since 1963. He was selected as the inaugural honoree largely for his influential article, “Property, Utility, and Fairness: Comments on the Ethical Foundations of ‘Just Compensation’ Law,” which was published in 1967 in the 80th volume of the Harvard Law Review. That article was published 37 years ago, and, according to Professor Gregory Stein of the University of Tennessee College of Law, it has been cited more in the last ten years than in the entire previous 27. According to Professor Richard J. Lazarus of Georgetown University Law Center, the article has been cited 22 times by the U.S. Supreme Court, often by both the majority and the dissent, and was heavily relied upon by the Court in its landmark eminent domain decision of Penn Central Transportation Company v. City of New York in 1978.

Why has Professor Michelman’s article been so influential? Professor Gregory Alexander of Cornell Law School stated that Michelman invented the economic model of takings, signaling out the concept of distinct, investment-backed expectations. That model, said Professor Lazarus, is “akin to the biblical text in takings law.”

Professor Stein hailed Michelman for his embrace of complexity, stating that he is “known not so much as arguing a point, as making it available to the listener.” Continuing in the spirit of this embrace of complexity, Honorable Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit, Honorable Rebecca Smith of the U.S. District Court, Eastern District of Virginia, and Honorable Jonathan Aggar of the Roanoke City Circuit Court sat as a panel fielding questions from the audience. A “Great Constitutional Question,” as Professor Laura Underkuffer of Duke Law School put it, was entertained during this dialogue: how do we merge majoritarian democracy with individual rights? Cutting to the heart of the issue, Judge Kozinski was asked “isn’t a liberty right trumped by meagerly providing fair compensation in the exercise of eminent domain?”

To which Kozinski replied “this is what happens when we live in a complex world. If you want liberties, go live somewhere in the forest.” Although it garnered chuckles from the audience, I was troubled by this answer and if afforded the opportunity I would ask Kozinski:

What happens when I do live in the forest and the federal government wishes to expel me from my land in order to protect a sucker fish?

Finally, Professor Gideon Kanner of Loyola Law School posited that the compensation provided in eminent domain cases is never just. He argued that this is because the concept of compensation entails an element of indemnity that is not present in valuation, thus making fair market value compensation insufficient to justly compensate for additional losses suffered. He surmised that compensation provided in eminent domain cases is best described by a phrase once told to him by a judge, “very unjust to your client, but that is just compensation.”

Ultimately, it became clear that the exercise of eminent domain for a clear public use, e.g., building an airport, road or highway, are the easy eminent domain cases. The tough cases are when governments seek to exercise the power for an alternate private use, e.g., tearing down slums in order to redevelop. These are complicated questions about what is right and fair, said Professor Rosenberg of William & Mary Law School.

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**Supreme Court from pg 3**

The afternoon sessions were punctuated by visits from Carter Phillips and Maureen Mahoney, two attorneys who have extensive advocacy experience before the Court. Phillips’ presentation concentrated on the cirtorari process. “He was very intelligent and impressive. I thought that [his comments] were very thorough. He gave a truthful, but rather dismal, appraisal of the cirtorari process,” said Emily Tulli (2L). “It was interesting to hear his critiques of the use of law clerks at the Court,” said Spier. Phillips emphasized the necessity of writing a cirtorari brief in such a manner as to appeal to the clerks in the cert pool.

Mahoney’s presentation focused on oral arguments. She said that the key to Supreme Court practice was preparation. Mahoney’s most recent high court triumph was for the University of Michigan Law School in *Grutter v. Bollinger*. She described the exhaustive process through which she prepares for oral argument. Professor Devins said that “having Carter and Maureen share their insights on Supreme Court lawyering with the group was a real highlight. These two are among the very best and having them speak candidly about how they manage their practices was a real treat.”

Commissioner Toner spoke on election issues, a topic that generated a surprising level of excitement at 6pm among a group that had all arisen well before dawn. The freewheeling conversation moved from absentee ballots to the relative merits of local control versus federal control over election administration to the structure of the FEC and proposals to alter it. Toner will have the opportunity to resume the discourse with students next semester in his Campaign Finance Seminar.

The nonlegal highlight of the trip was certainly the mode of transportation—a veritable rolling palace with mirrored walls, sofa-like seats, and satellite TV. Driver Keith successfully shepherded the road trippers into, around, and back out of the District. He won particular praise for the pre-Court pit-stop he made at a local Starbucks.

“The bus was rocking!” enthused Jennifer Kane (3L). Several sleep-deprived students gleefully abandoned their academic aspirations for the allure of the West Wing, Lifeline, and VH1 Classic. Their more studious counterparts popped in earplugs and hid behind MPRE study books, but most eventually succumbed to temptation (in the form of an impromptu game of Taboo). Perhaps the most heated oral arguments of the day erupted upon the discovery that all of the television sets on the bus were controlled by a single remote control.
WEAVing a Defense against Domestic Violence

by Stephanie Jung

I interned at the Emergency Domestic Relations Project of Women Empowered Against Violence (WEAVE) at the Domestic Violence Intervention Clinic (DVIC) inside the D.C. courthouse. The office was ruled by a triumvirate of agencies, WEAVE, the D.C. Coalition Against Domestic Violence, and the Office of the Attorney General (OAG).

The OAG had ultimate authority, but many of their employees were merely assigned to the DVIC, without interest in or understanding of the complicated issues surrounding domestic violence. Long at work in the DVIC, these people experienced the common problem of working in domestic violence: internalizing the cycle of violence and acting it out on co-workers. Others were motivated, caring individuals who worked with clients to achieve protection. Their interns were similarly divided, the caring and capable, and those who were so puffed up in their own minds that they freely insulted clients and endangered clients’ ability to receive their protection order.

My boss, the only WEAVE employee at the DVIC on a daily basis, was amazing in her capacity to care, and her capability to handle all clients. Yet she was a classic example of how domestic violence work without therapy and a supportive environment can quickly burn out anyone.

The survivors, usually sent to the DVIC by police officers who responded to domestic disturbance calls, arrived hours or days after an incident to file civil protection orders against their abusers. Sometimes the abusers themselves would try to preemptively file a civil protection order against the victim in order to keep the victim from being able to seek help from the DVIC counselors. The clients were often angry, blindly distributing hatred toward people trying to help them because of the frustration of their situation, or were so worn down by their circumstances that they barely spoke.

My job was more difficult as a result, trying to elicit specific details about the violence for the petition to present to the judge, typi- ing the blood into bloodless words. Some had not slept in days, some were high, some so badly beaten that understanding their words was nearly impossible.

The complaints ranged from the grossly disturbing to the absurdly trivial. I saw people who had been set on fire or tied to cars and dragged down the street. Contrast that with the woman who filed complaint under the property damage sections because her son had removed the lock from her washing machine to do “too many loads of laundry.”

One client was a successful lawyer and mother, married to another lawyer, who also appeared at the DVIC and caused a situation requiring the use of the panic button for the U.S. Marshals guarding the courthouse. Most petitions would be dismissed, the petitioner failing to appear in court, the inability to serve the abuser, or voluntary dismissals by frightened petitioners.

Law & Order Meets Jerry Springer: the Newport News Commonwealth Attorney's Office

by Brian Hayes

Through the generosity of the Public Service Fund, I was able to spend this summer (following my 2L year) working for the Newport News Commonwealth’s Attorney. From my point of view, it was the ideal summer legal job, and I would recommend it to almost anyone.

For those who have completed two years of law school, the single greatest advantage of working in a prosecutor’s office is the opportunity to try cases. Over the course of the summer, I was assigned several dozen cases. Most of these—as is generally true of criminal cases—were resolved by some means other than trial. However, about ten did go to trial, and I enjoyed every one of them. When it comes to improving trial advocacy skills, there is simply no course or book that can compare with the value of actual experience. Any prospective trial lawyer will find this aspect of the job immensely rewarding.

If you are specifically interested in becoming a prosecutor, it is difficult to imagine a better place to intern than Newport News. The city is in the enviable position of being a relatively small jurisdiction with an unusually high rate of violent crime. The result is that the local prosecutors carry an enormous caseload and are eager for assistance. In New York or Chicago, a student intern (or even a new attorney) might be limited to handling traffic cases or pre-trial proceedings. In contrast, by midsummer I was assigned to felony cases. I had to have an attorney present in court and to approve any plea agreement or disposition, but virtually every other aspect of the cases was left to my judgment. I am unaware of any other legal employer who extends this level of responsibility to student interns.

In addition, the office has a well-deserved reputation for integrity and professionalism. Why did I say that I would recommend the job to “almost” anyone? First, it will not suit those who are uncomfortable dealing with people—including some very interesting, bizarre, and difficult people. If you cannot stand being yelled at by a victim’s ex-boyfriend when the victim (who has since married the defendant) fails to show up for court, look elsewhere. In addition, interviewing and witness preparation are absolutely critical. Those witnesses may be uncooperative, dishonest, or traumatized. It is very rewarding to be able to resolve their cases successfully, but the process is often frustrating.

Criminal law is also not for everyone. The cases I encountered over the summer ranged from the hilarious (the defendant who exposed himself to a neighboring family, then claimed that he did so to prevent the neighbor from committing suicide) to the horrifying (particularly child sexual abuse cases, which are impossible to get used to). It is eye-opening, and sometimes disheartening, to see the intimate details of people’s lives dragged out in court.

With those small warnings, I’ll conclude by saying that I loved the experience and could not have made a better choice. I encourage those who enjoy responsibility and want the chance to try cases to consider pursuing a summer job or school-year externship working in Newport News.
A Summer in the US Attorney's Office

by Erin Kulpa

My first real trial—a parking ticket. I know, it's not glamorous. But it was an amazing experience.

When I found out that I would be working at the United States Attorney's Office for my summer internship, I had visions of my first trial—second chair on an interesting drug case tried before a jury. In fact, after my first few weeks, I thought that would be exactly how it happened. I had been assigned to assist an attorney working on a fascinating drug distribution case, with witnesses coming from as far as the US Virgin Islands and Chicago. The trial had been set for mid-July, and I had been working on the case from the ground level. I had already appeared on behalf of my clients from the ground level.

The summer interns sort of take over the misdemeanor docket, dividing it up each week. It was good for getting our feet wet, and was where we learned to get over any apprehension we had about standing up and talking in court. Most of the cases we had early on involved just procedural matters—reading charges, requesting trial dates, handling guilty pleas, and sentencing arguments. We also covered the various parking tickets set for court each week. Just about every ticket was pre-paid before court, and those that didn't pre-pay showed up just to ask that their fine be reduced. Parking tickets never went to trial. Well, almost never.

It was just two weeks before my trial was set. I had a parking ticket assigned to me during the misdemeanor docket. I found the driver who had been charged with the offense before court began, expecting to simply explain to him why the reduced fine would be.

I informed him that he would be pleading not guilty, and that he had pictures. I had 15 minutes to come up with my direct examination of the police officer who wrote the ticket, as well as my arguments and theory of the case. Yes, even parking ticket trials need a theory of the case (especially when the other guy has pictures). I won't tell you what happened (though the only people who ever say that are those who lose), but I will say that the judge came down from the bench to compliment me on the job I had done regardless of the outcome.

I felt exhilarated. Sure, it doesn't make for as good of a story as if my first trial had been that drug case, and I certainly had more complex and substantial court appearances. But after that trial I had an amazing sense of accomplishment—for the first time, I felt like an attorney.
An Attempt to Generate Discussion about Poverty

by Rajdeep Singh Jolly

Republican friends contend that most materially "poor" people in this country are rich with respect to materially poor people in other parts of the world. For this reason, my friends dismiss suggestions that America has a poverty problem. There may be something to this argument.

I traveled to New Delhi last summer. I did not conduct a social scientific survey, but I observed multiple shanty towns and shanty homes constructed out of metal sheets and cardboard boxes. I observed bare-footed and bare-clothed children playing near heaps of garbage. I observed lots of homelessness. Many homeless Indians—including children—were attempting to sell newspapers or flowers or incense sticks to motorists and pedestrians. One child outside my office attempted to gain entry and employment by telling me—falsely—that his toilet-cleaning services had been requested. Another child clutched my leg as I sat in a motorized rickshaw after I declined to purchase flowers from her.

Rickshaws are part of a larger story about class. In the universe of rickshaw drivers, there are motorized rickshaw drivers and there are bicycle rickshaw drivers. Depending on distance, motorized rickshaw drivers fetch between 30 and 60 rupees per ride (which converts to a range of $0.65 to $1.30). Many have installed cab-style meters in their vehicles, but cab drivers fare much better. Bicycle rickshaw drivers fetch far less than their motorized counterparts, in part because they cannot travel very far. Bicycle rickshaw drivers also work far harder than their motorized counterparts; I never rode in a bicycle rickshaw, but I observed many overweight ladies doing so.

Every home I visited in New Delhi employed domestic servants. One was an old lady with a crooked back. Another was a teenage boy. Most were middle aged. All of them avoided eye contact with me. One was called "stupid" by his employer for failing to retrieve an empty glass from me in a timely fashion.

The crooked back suggested a lifetime of sweeping. The avoidance of eye contact suggested timidity or even shame in the presence of others more fortunate. The imputation of stupidity suggested lack of respect for at least some domestic servants.

There were plenty of beggars in New Delhi, but there were also plenty of people desperate to find work. I reckon none of them had health insurance or any hope of pursuing higher education. I'm not sure they even had such expectations. In thinking about the injustice of poverty, the critical question may be whether such expectations are justified. If I work hard, am I within my rights to have housing? If I work hard, am I within my rights to have health care? If I work hard, am I within my rights to have opportunities to educate myself or at least my children?

To me, real poverty is this: working hard and not receiving any real hope of housing yourself, strengthening your health, or educating yourself or your children. If any American works hard and still cannot afford housing, still cannot afford health care, or still cannot afford an education, then America has a poverty problem. For all their talk about moral values, I wonder if Republicans agree.
Sex & The Law: I'm Okay, You're... a Kinky Fetish-having Freak

by Nicole Travers

The Supreme Court has told us that it is unconstitutional to discriminate against people based on their sex. They seem to be vacillating on whether it is unconstitutional to discriminate against people based on their sexual orientation, but I believe that eventually the answer will be yes. But what about discrimination against people based on other aspects of their sex lives? I'm talking about fetishes, the weird aspect of sex.

Merriam-Webster Online, my favorite cheap-as-free online dictionary, tells us that “fetish” comes from the Latin. It means “an object of irrational reverence or obsessive devotion,” and “an object or bodily part whose real or fantasized presence is psychologically necessary for sexual gratification and that is an object of fixation to the extent that it may interfere with complete sexual expression.” So right away we know things are going a little strange. Anything that interferes with a complete sexual expression goes down on my list as “bad.”

Lots of people claim they have fetishes, when all they have is a preference. Like my friend who never goes to a party without her red fuzzy handcuffs attached to her belt, in the hopes that she might see them on someone unwitting lad. That’s not a fetish, though she sometimes describes it as one. What makes a fetish a fetish is that it becomes necessary to you during sex, like the law student who can’t reach climax unless she imagines herself on her summer employer’s desk.1 You know a fetish is a fetish when you can’t have sex without it.

But what happens when the fetishes become weird? Sure, there are plenty that only happen in your head, but what happens when it becomes necessary to act them out? Like alcohol and drugs, fantasies can only last you so long until you begin to need more to satisfy your cravings. And sure, it’s one thing to break into a law firm to have sex on a desk, but what if your fantasies get really strange? How do you start enacting them? How can you keep them from the general public? And most importantly, who do you enact them with?

This is where the discrimination comes in. Fetishists with the stranger sexual proclivities have a tough time finding a partner who will share in their desires, or at least be “game,” or willing to try them out. It’s unlikely that the lad or lass you are eyeing has a “non-discrimination” policy towards dating fetishists. You have to step carefully, and test the potential partner’s tolerance level for the weird. You can’t make a move, or fully disclose the fetish until you feel he or she is comfortable hearing about it—and even then, it may be difficult to get him/her to try it out without further persuasion.

And what of the object of the fetishist’s affection? The person who learns of a fetish has a dual problem. She wants to be open-minded and accommodating, especially if she likes the fetishist enough to want to date him/her in the long term. But what happens when she thinks the fetish itself is just too weird or creepy?

Take, for instance, something that happened to me this week. A friend of mine came for a visit, and used my computer. When I took over to check my e-mail, I saw that there was a new website in my Mozilla history. Curious, I clicked on it, and was horrified by what I saw. The web site was a “furry” site.

For those of you who don’t watch CSI, a “furry” is a person who enjoys dressing up in animal costumes for the purposes of having sex with other people dressed in animal costumes. This is especially creepy for me, because as a child, I was always frightened of people who dressed in character costumes at theme parks. To this day, I can’t stand being touched by anyone in an animal costume, and the desire to have sex with someone thus garbed is absolutely unthinkable. But there are people who not only enjoy it, but allow it to really encompass their lives, and the proprietress of this web site is one of them.3 Evidently, as my friend explained, they come up with characters who they feel reflect their inner selves, and use their dressing up as a way to bring parts of their personality to light in a way that they felt they couldn’t before.

After the explanation, I felt a little less creeped out by the practice, but not by a lot. Discovering your inner self with someone you love is one thing, but dressing up in full body animal costumes to do it is quite another.4 But it did get me to thinking. What if someone I really cared about presented me with the fact that he, too, is a furry? Given my personal animosity towards full body animal costumes, would I be able to reconcile my desire to be with him with my desire not to have to deal with a fetish? Am I an anti-fetishite?

Even with my horror at the prospect of discriminating against someone for their sexual proclivities, I still have to admit that there are things I just won’t do, even for love. But prospects for fetishists are not as bleak as they once were. With the advent of the internet age, it is pretty easy to find others who share your fetishes, though it might take a few tries to really get it right. So until the Supreme Court decides that our dating habits must take a nondiscriminatory form, fetishists may have to remain separate from non-fetishists. In the meantime, all I ask is that my stuffed animals be left alone.

1 This happens to all law students, right guys? Right? Hello?
2 Read: nosy.
3 And don’t get me started on the “plushie” side of furryism. If you don’t know what that is, don’t try to find out. This is the stuff of which serious childhood traumas are made.
**Features**

**Skyscrapers and the Napkin: Reflections of a 1L**

*by H. Van Smith*

I could fail in one month. I have no idea, and that’s the beauty. No one knows where they stand. Law students are planners. Too talkative for computers, too idealistic for a business degree, and thousands like me report every year with hope—hope that, by paying a lot of money, we’ll become part of a mythical guild that trains tomorrow’s leaders and, along the way, buy a Mercedes.

Back to failing. There are no exams until finals, no grades until finals, no proof that the prime years and dwindling hours spent hovered in books matters a damn. And it’s frustrating. And so we break. Class comes and you fight with someone else to get your answer heard. It matters not, and the professor cools a wry smile knowing it’s all for naught, realizing the name on your exam is a number, but enjoying the fight. He’s a ref at a boxing match enjoying a good K-O.

And somewhere along the way the euphoria breaks too. You realize the law is work like everything else, that you work not in constant praise from a society that glorifies the profession on each of its major networks and in reruns on cable, but amongst other fighters. And the fighters want blood, and the best do little else. Some give up, convinced that they always wanted to work for Legal Aid—they always hire, so why try?

But most still fight. They begin to fight for the edge. But how to get it without tests? At the bar, we commiserate together about the class, and bonds develop again. But the faint taste of familiarity comes with each new conversation. And you quietly consider that the conversation you had with this person is the same you had with the last. Civil Procedure sucks; The Property professor’s funny; and isn’t Kelly fake? Oh, and last weekend, Chris got so drunk.

At this point, it’s November. It’s too late to get a refund or your pride back if you walk out now; so you stick it out, and walk back into the library. But then you sit and stare at a case and it hits you. No—not a punch, but a hovering fog. Is this what I want to do for the rest of my life? Is this my calling? Your heart beats faster as you suddenly realize, as you would in a marriage at times, that maybe this just isn’t supposed to work. Have I made a mistake?

You drift off to a car parked in high school and you’re with a girl. You’ve taken her to Applebee’s and you tell her you have to break up because you’re going off to college. As she cries and asks why, you’re thinking of all the fun times to be had, and then law school and into the city. You imagine success and good clothes, in that old Honda Civic with that girl who just stopped loving you; you begin to equate the size of the buildings with power and money; the size and traits of skyscrapers somehow transferring to the people who work within them. And maybe they do.

That’s why New York is the best; the buildings are high and the people are naturally cool. They never tell you that the offices inside are the same size as they are in the little buildings anywhere else and in between. But none of that matters. It’s all image, and the perception to a teen is that anything is possible—and you go, drive off, and leave that girl behind.

A sniff from behind and you’re back. Everyone has a laptop and a book and a tired look. Most look a lot more tired than they did three months ago, or has it been only two? However long, we’re still in the first semester. And I have two more hours of reading to do before the Daily Show on Comedy Central, then to bed. The case is a good one. It’s about this guy who gets drunk and sells his farm jotted on a napkin to another guy who’s been after him to sell it for years in Dinwiddie, Virginia, 1954. The farmer realizes “okay, I wasn’t that drunk, but just wanted to pull this guy’s leg.” Well, the other guy doesn’t laugh and holds the farmer to the napkin contract. The best part is the judge enforced the contract. And $50,000 for 456 acres back then was a good deal. The course is Contracts and the lesson is that only external not internal actions truly matter when considering manifestation of assent in a bargain-for exchange.

It will be better tomorrow; it wasn’t so bad today. You’ll sleep well; you left all the rockets in Baghdad.

Note: H. Van Smith served with the Coalition Provisional Authority in Iraq from December 2003 until June 2004. -ed.

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**Potpourri: Rodeos and Hunting**

*by Rajdeep Singh Jolly*

**Rodeos**: A few days back, I fortuitously caught portions of a rodeo competition on television. One competitor on horseback scored many points and earned much applause for throwing a rope around a calf’s neck, pinning down the calf, and tying the calf’s legs. There is no justification for treating animals in this manner. When a calf runs away from a rope-wielding abuser, it does not seem to manifest consent to being roped, pinned, and tied; moreover, as pain-perceivers, few of us would consent to such treatment. Ultimately, I reckon justification just isn’t as fun as tormenting a baby cow.

**Hunting**: A few days later, I fortuitously caught portions of a hunting expedition on television. Two outdoorsmen crawled over a hill, spotted a horned mammal, shot it dead, and congratulated each other. If I decide to hunt stray dogs—and puppies too—and decorate my walls with their hollowed carcasses, would those outdoorsmen congratulate me?

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**Top Ten Ways We Celebrated Marshall-Wyte’s 225th**

*by Rob Eingurt*

1. Finished our transfer applications.
2. Learned how to properly pronounce “Wythe”.
3. Regretted #4. Well, ok, only on a smidge.
4. Drank too much champagne, took a last-minute flight to Vegas with some 2L. We really didn’t even know, ditched 2L in airport while they played slots, shared a cab to the Bellagio with a stranger, made out with said stranger, lost at blackjack 37 times in a row, started to cry, got “asked” to leave Bellagio by an ex-pugilist named Maurice, rented a car to drive to L.A. where we met some dude who got us into SkyBar where we partied with the Hilton sisters and the Olsen twins who dropped out of NYU, crashed at some house we swore we’d seen on “Cribs”, got up around noon, showed on some In-n-Out, called parents to wire us some money to pay for flight back to Norfolk, begged fiancé to come pick us up at airport. . . . will be sleeping on couch for next 3 months.

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*Horoscopes will return next semester. Yeah, I don’t care that you don’t find them funny . . . I do. Nyah nyah nyah.*

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**Wednesday, November 17, 2004**