2008 Supreme Court Preview
WTF? FCC v. Fox Television Stations

by Mark Pike

On Friday night, September 26, a few of the nation’s leading law scholars argued whether fleeting expletives can be broadcast publicly.

Law School, argued to uphold the June 2007 decision of the U.S. Court of Appeals for the Second Circuit. The majority decision at the Court of Appeals did not reach the First Amendment issues, but instead replied “Get Rid of the Draft,” effectively demonstrating Chemerinsky’s reasoning.

In the end, the justices remanded the case 6-3 but with a split in reasoning because of the First Amendment concerns. The justices clarified their decision by stating that they voted in the manner they thought was constitutionally consistent, but not in a predictive manner for the Supreme Court’s impending decision this term. The case has been scheduled for argument on November 4, 2008, which is also election day.

Four members of the Supreme Court Preview 2008 Moot Court. From left: Joan Biskupic, Paul Smith, William Van Alstyne, Timothy Zick.

Search for New Dean Commences

By Justin Meyer

After the recent loss of the “interim” prefix to his title, it is clear now President Taylor Reveley will not return to the law school. A search for a new dean at Marshall-Wythe has commenced. The provost has selected a committee of seven faculty members, two alumni, two members of the university community outside of the law school and one student as members of the search committee. The campaign is fielding candidates by placing ads and soliciting recommendations from the faculty and alumni.

The process for the selection starts with the solicitation of candidates. While that takes place, a series of meetings, including one with law students slated for October 2, 2008, will take place. These meetings are meant to discuss what the law school community believes are necessary qualities in the new dean, and provide open forums in a selection process that Dean Eric Kades says will remain mostly confidential to protect the privacy of the candidates.

It is believed that most of the applications will have been submitted by the end of October, and at that point, the committee will begin the first phase of elimination, narrowing the field to between 10 and 20 candidates. These candidates will be invited in for one hour interviews. The field will again be reduced and 4 to 5 candidates will be invited back for two day interviews. These interviews will involve meetings with the provost and President Reveley, as well as open lectures on the prospective dean’s vision for the
Game Day?

By Robert Bauer

Many of us came from schools where Game Day meant something and where being surrounded by 60,000 of your closest friends while doing the "Stick It In" dance was a common fall experience. I'm talking about Virginia Tech, Ohio State, UNC Chapel Hill, Maryland, Oklahoma, Georgia, Florida, and a host of others. Others come from schools like James Madison where the attendance wasn't so great but there was a fine tradition of victory and of throwing party supplies after touchdowns.

If you went to such a school for college and you're new at William & Mary this year, you may have noticed a difference. In an obvious display of Not Learning My Lesson, I actually went to four W&M football games last year. Ouch. The crowd wasn't into it: coming late, leaving early, and not filling the interim with loud cheers or much more than clapping. At the game against Virginia Tech, I sat and dozed off during the least interesting football game I've ever seen (and I've watched plenty of Big Ten games!).

I blame it on the lack of mascot and team identification. We're still the Tribe, but each athlete was formerly an Indian. The old logo had a W&M with feathers; the interim one was about these and the new one seems to have been phoned in. For this we can thank the NCAA, who decided Continued on Page 8.

The Marshall-Wythe Press

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Editor-in-Chief

Abigail Murchison
News Editor

Ashley Ahlbrand
Articles Editor

Robert Bauer
Contribution Writer

Tusk and Ass "T & A"

By Bishop Garrison

On Veep Interviews....

Bishop: Katie Couric was throwing Palin softballs the whole time. And when Palin couldn't hit any of them, she finally said "screw it" and began beating up on her. Rightfully so.

Elyse: But here's the thing, when Obama was first in the national eye, promoting his book, he made the media rounds and they all kissed his ass. "Tell us more about your father's dreams, your poor single mother... etc." It took them two years to ask him tough questions. But two weeks in, Sarah Palin is expected to know everything about every foreign leader.

Bishop: One, Senator Obama is a handsome and polished black man from the mean inner city streets. People wanted to know about his plight. It's similar to my own, actually, with the exception of that entire inner city thing... and being polished. We're both black and handsome, though. There's something to be said about that. Two, Sarah Palin isn't expected to know everything about foreign leaders. I just want her to understand that seeing a part of the Russian wilderness from her house has NOTHING to do with her abilities in foreign policy. In that interview, it was like watching a fifth-grade trying to answer a question about quantum physics using her Etch-A-Sketch.

Elyse: You and Obama have another thing in common as well, you both think very highly of yourselves. I will admit that Palin's interview with Couric was not her finest moment. However, Palin did have a pretty good idea that 1) Americans did not have TV sets in 1929, and 2) FDR was not President during the stock market crash that set off the Great Depression, both facts that Senator Biden seems to think are true. He's the experienced one? I have every confidence that as she becomes more comfortable with the media, Palin will show to the American people her intelligence and awareness of issues, and rely less on the apparently limited prep work that the campaign is providing her with. We also have no idea what was edited out of the interview, because knowing the liberal media, it was probably a lot. It made a better story to have Palin flustered. The media do not think that pretty women can be smart, so she has started off at a disadvantage, and now they make fun of her intelligence while concurrently making inappropriate sexual jokes about her.

Bishop: Sorry, I don't care what "she wasn't prepared" spin you put on it, she is a political train wreck. The only reason people tune in is to see what ridiculous line is going to come out of her mouth this time. I'm sure all of your classmate from the 3 colleges she went to over the course of five years studying communications will agree with you on her academic prowess. Bishop and Elyse: All we agree on this week is that Paul Newman was a great actor and would have been a damn fine President.

Corrections

The photo of the class of 2011 on the cover of the September 16 issue was courtesy of Colonial Photography.

Our publisher apologizes for printing the September 16 issue without page numbers and in an incorrect order.

You are cordially invited...

The next issue of the Marshall-Wythe Press will be published on Thursday, October 16. Deadline for submissions is Monday, October 6 at 5 p.m.

Students, faculty, and anyone remotely related to the law school are invited to submit articles for publication.
The Thrills of Legal Skills: What’s Changed and Why

By Abigail Murchison

Legal Skills has a new look this year. While the overall structure of Marshall-Wythe's required two-year program remains in tact, the nuts and bolts have been tightened and tweaked. Over the summer, a team of faculty, administrators, and students reviewed and adjusted the curriculum to respond to student feedback and to re-commit the program to its pedagogical objectives.

First on the list was to recapture the small-firm atmosphere. As Professor Patty Roberts explained, there are 14 1L law firms this year, bringing the office size back down to 16 students in each firm. The smaller class size emphasizes collegiality and team work, while providing students ample opportunities to exercise their skills, enabling "action rather than just observation," Roberts said.

The schedule of writing assignments has also changed, with deliberate emphasis placed on process and revision. In Legal Skills I, writing projects are broken down into discrete, mini-assignments, each with its own deadline, focus, and opportunity for feedback. For example, 1Ls will submit partial drafts of their Client A memos, get comments from their junior and senior partners, and ultimately stitch the components together into a final product.

Junior Partner Chris Payne-Tsoupros (2L) said that because of the new syllabus, longer time frame, and opportunities for additional feedback, "the Client A memos will be stronger than they would have been otherwise." Roberts added, "The Legal Skills faculty can better help students sharpen the substance of their arguments if they've mastered the fundamentals." Current 2Ls and 3Ls might be sad—or jealous—to learn that the State Bar Memo has been trimmed from the first-year syllabus. Instead, based on the closed research project, 1Ls will offer arguments for or against an applicant's admission to the Wythe state bar in oral arguments.

Also new this year, the Bluebook is making an earlier appearance in Legal Skills. In the past, the rules of uniform citation were creatures of second-semester discovery for 1Ls. Now, at each firm meeting, Junior Partners showcase a "Rule of the Week," offering 1Ls a gentle, measured introduction to a formatting system that will ultimately come to dominate their professional lives.

Renovations to the 2L curriculum "bring trial teaching back into the law office," Roberts said. The learning-by-doing model will enable all students to develop practical courtroom skills while continuing to cultivate habits of professionalism and ethical advocacy. In response to student evaluations, 2L assignments have been adjusted to allow more time for job interviews and journal work. Roberts emphasized: "We take student evaluations very seriously. We read every last comment."

In large part, however, the program has remained unchanged. Since professors Moliterno, Lederer, and Levy "had remarkable foresight more than twenty years ago when they put the program together." "What's remarkable," Roberts commented, "is that while other schools are scrambling to develop programs [that integrate legal thinking with legal practice], we need only to tweak ours here at William & Mary."

On Wednesday September 24, 2008, NBC's Today show broadcast a portion of its morning show live from DoG street right here in Williamsburg. Matt Lauer and Al Roker visited Virginia because of the state's role as a swing state in the upcoming election. Lauer talked politics with Governor Tim Kaine and former Governor and Senator George Allen from the Governor's Palace in Colonial Williamsburg. Lauer later was nearly overcome by cannon fire in a demonstration. Meanwhile, Roker conversed with Thomas Jefferson and listened to a performance of African music by re-enactors. Many curious onlookers and fans arrived as early as 4 a.m. to get a spot in the front of the crowd, and many people, including William & Mary students, brought signs in support of their candidates.

From Page 1:

The search committee will present three final candidates to the president and provost for them to select. However, the president is not obligated to choose from these three candidates and can either select someone else or request that the search committee begin again.

As of now, the committee has only released a generic list of qualities which they are looking for in the new dean, who would be expected to take over as of July 1, 2009, but as the discussions continue both within the committee and in the community, it is expected that the requirements will become more focused.

Dean Kades would not comment on whether Interim Dean Lynda Butler was a candidate for the post, and Dean Butler did not respond to an e-mailed request for comment. However, Dean Kades did say that if Dean Butler did not permanently take the post, she would return to her prior position as a professor and would most likely be entitled to either a semest er or year of leave which she would be able to take immediately if she so chooses.

Photo credit: NBC
CLCT Hosts Successful Lab Trial

By Laura Jacobson

On Saturday, September 13, the Center of Legal and Court Technology conducted a Laboratory Trial to analyze the elderly response to modern courtroom technology. The trial was conducted at the William & Mary School of Law and utilized assistive technology devices targeting vision and hearing impairments which are available in many modern courtrooms. Multi-media trial presentation software was also utilized in the proceeding, as well as PowerPoint presentations and live transcripts in an effort to gauge their effectiveness for elderly persons. This year’s lab trial is one of many ways the CLCT is working in partnership with the American Foundation for the Blind to make the legal system more available to those who have trouble seeing, hearing, and moving.

The fictitious case In Re Leslie Lyndon built on information gathered in a 2006 state-of-the-art CLCT lab trial that tested the ability of assistive technology to provide equal courtroom access to judges, lawyers, witnesses, and jurors with a variety of disabilities. The CLCT is a non-profit research, education, and consulting public service organization committed to improving the judicial process through the appropriate use of technology. It is a joint initiative of William & Mary School of Law and the National

The trial featured multiple remote witnesses, including a historic testimony of a remote witness appearing via video conference from Williamsburg Landing, a local retirement community. This remote testimony is believed to be the first time in world history that a witness has testified from home using a personal computer (John Calabrese, 3L, examines her at right).

A juror views evidence through Freedom Scientific’s Desktop Video Magnifier (above right).

Casino Night 2008

PSF Raised
Nearly $2000;
Significantly
More Than Ever
Before!
Seven Days, and $1.4 Trillion, on Wall Street

By Matthew Myer

It would be difficult to overstate the gravity of the events that unfolded on Wall Street in the seven days from Friday, September 12 to Thursday, September 18. Perhaps tracing each day’s headlines would be the best way to develop a proper—and sober—perspective. Roughly six months after the Federal Reserve financed the fire sale of investment bank Bear Sterns to JP Morgan, and one week after the executive branch assumed control of $5 trillion in debt owned by quasi-private lenders Fannie Mae and Freddie Mac, the following events transpired:

Friday, Sept. 12
A meeting was called at 6 p.m. at the New York Branch of the Federal Reserve (Fed) to discuss the fate of Lehman Bros. investment bank. Lehman’s stock price had fallen sharply upon concerns they would have to declare bankruptcy the following week. Tim Geithner, NY Fed President, Treasury Secretary Hank Paulson, SEC Chairman Christopher Cox, and roughly 30 banks’ representatives were in attendance. The details, as presented in stories broken by The Wall Street Journal and CNBC.com, were sketchy.

Saturday, Sept. 13
Friday night’s talks continued throughout the day, and details about them began to emerge: the Fed wanted the big banks to contribute about $3 billion each to a new “bad” bank, which would buy and hold Lehman’s real estate-backed assets in risk of default. Lehman’s “good” assets would be purchased in a merger with either Bank of America or Barclays PLC. However, the banks were (understandably) reluctant to use their capital to finance their competitors’ mergers.

Nevertheless, a tentative agreement was drafted overnight for debate on Sunday. As a contingency plan, Lehman hired Weil, Gotshal & Manges LLP to prepare a bankruptcy filing.

Sunday, Sept. 14
Before noon, the “bad” bank, “good” assets deal seemed likely. A special trading session for “credit default swap” contracts was announced for Sunday afternoon so that banks that had contracts with Lehman as an intermediary could eliminate it, enabling the counterparties to face each other directly. This was intended to reduce Lehman’s net assets in an orderly way, and therefore reduce investor animosity on Monday.

However, Bank of America pulled out of the talks, followed by Barclays on Sunday afternoon. Instead of merging with Lehman, Bank of America announced a shotgun wedding with Merrill Lynch on Sunday evening. Merrill had been rumored to be “next” after Lehman. Alone at the altar, Lehman had no choice but to declare bankruptcy. All eyes now turned to insurer American International Group (AIG).

Monday, Sept. 15
AIG’s stock price fell 61% on Monday, down 92% for the year. The insurer, which would have been forced to pay contracts it issued on the debt of several Wall Street firms, should they have declared bankruptcy, needed cash to remain solvent. The Fed hosted meetings with company executives throughout the afternoon, and initially rebuffed speculation it would bailout the firm.

Tuesday, Sept. 16
However, because AIG had net assets of $1 trillion, the Fed announced it would loan the company up to $85 billion in exchange for an 80% equity stake. Of course, with new shares of stock being issued to the Fed, the value of each share already outstanding would be greatly diluted.

Wednesday, Sept. 17
Reuters reported that the government’s tab for recent interventions had reached $900 billion:

$4 billion—grants to communities to buy and repair homes abandoned by foreclosure

$29 billion—Bear Sterns bailout in March

$85 billion—AIG loan for an 80% stock stake

$87 billion—repayments to JP Morgan Chase for financing it provided to underpin Lehman’s trades

$200 billion—Fannie Mae and Freddie Mac bailout ($100 billion in preferred stock for each firm) at the beginning of Sept.

$300 billion—Federal Housing Administration mortgage refinancing passed in a housing rescue bill

$200 billion—increases in loans made to banks through the Fed’s Term Auction Facility

Thursday, Sept. 18
Treasury Secretary Paulson proposed financing a fund which would buy and hold all of the “toxic” debts on banks’ balance sheets. The cost was projected to be at least $500 billion; however, the costs of the loans subsequently repaid would be recovered.

Thoughtful observers, in their musings upon these events, will ask one question as they seek to understand them: in a market short of capital, within a country with a $9 trillion national debt, where did the Federal Reserve find $1.4 trillion of new financing? That is a good question.
Water, Water Everywhere, But Not A Drop to Drink

By Abigail Murchison

Clean drinking water is clear and transparent, but the ethics of its ownership can be murky.

On September 16, guest speaker Tony Arnold delivered a lecture entitled “Water Privatization Trends in the U.S.: Issues of Human Rights and National Security.” A graduate of Stanford Law School and a professor at the University of Louisville, Arnold has long worked in the public interest specializing in the environmental regulation of land use, water, and property.

“Water privatization is a growing trend in the U.S.,” Arnold said. Between 1997 and 2000, 70 cities entered into long-term contracts with private entities to manage their water supplies. Arnold defined water privatization broadly to encompass a variety of arrangements. “It includes outsourcing specific services, like billing or maintenance,” he said. It also includes an outright transfer of ownership and control of a city’s water facilities to private firms. Cities contract with private firms to manage their water systems for a variety of reasons, Arnold said. To keep taxes low and to free up funds for other projects, cities will hire a private firm with the expertise to regulate water systems cheaply and efficiently. Cities contract with private firms to meet the stringent standards of the Safe Drinking Water Act, a technical and expensive challenge. “Cities may lack the financial capacity to upgrade their infrastructure, without substantially increasing water-service rates or stretching their bond capability.” However, outsourcing water management to private firms does not necessarily ensure efficient results. “Empirical evidence regarding efficiency has been mixed at best,” Arnold said. Some privatization projects completely failed. In 2003, Arnold noted, the city of Atlanta had to re-take control of its water infrastructure when the private contractors amassed a backlog of 14,000 work orders and the “tap water regularly ran a rusty brown color.”

If a private provider of public water services does operate efficiently, Arnold suggested, “it doesn’t necessarily operate optimally.” Privatized water infrastructure might be cheaper than its governmental counterpart, but it might still lack in environmental soundness. Privatization of water can engender real benefits, Arnold pointed out, especially in poorer corners of the globe. “Financially strapped developing nations turn to private corporations to bring safe drinking water to large populations, to meet the needs of people who lack basic access,” Arnold said. Water privatization has helped “stem the 2.2 deaths worldwide due to lack of safe drinking water and sanitation.”

We do ourselves a disservice—and even trample on human rights—to commodify water, Arnold suggested. “It is unworkable to view water as a profit-generating commodity,” Arnold said. “It is unworkable to treat it like private property with economic value we must maximize and capture,” he added, lamenting how individual Americans generally feel entitled to long showers and lawn-watering even during droughts. “Conservation has become inconvenient.”

Arnold advocates reconceptualizing water rights. Drawing from innovations in property law that conceive of a “web of interests,” Arnold argued for a holistic conception of water rights, rather than a one-dimensional anthropocentric view. Re-framing the right, he suggested, is a critical step toward ensuring universal access. Arnold suggested that water be viewed as a “public resource owned and controlled by government.”

Guest speaker, Tony Arnold. Photo credit: Whitney Weatherly (2L).


Lecture by I.L. “Pep” Fuller Title: An International Holistic Approach to Dealing with Global Warming Summary: An international negotiator examines the factors involved in slowing global warming in a manner that maximizes environmental benefits, fosters international security, creates a level playing field in international trade and suggests principles to incorporate in a new balanced international agreement to deal with climate change. Biography: I. L. “Pep” Fuller served his country for 44 years in the Marine Corps, the Foreign Service, the Environmental Protection Agency and the Executive Office of the President, Office of the U.S. Trade Representative. He represented the United States in International negotiations including; environmental and health provisions of the NAFTA; the Uruguay Trade Round that created the World Trade Organization; and environmental treaties banning the world’s most dangerous chemicals (POP’s) and requiring prior notification and consent before shipping of hazardous chemicals to other countries (PIC). For these and other accomplishments the President awarded him the rank of Meritorious Senior Executive. He received his BA from the University of Mississippi, was awarded the Fulbright and Rotary International scholarships and accepted the latter for graduate study in law and philosophy at the University of Munich. He received his J.D. from the University of Virginia (62) and his Masters in International and Comparative Law from Georgetown (64).

October 1, 2008 5:6:30 in Room 124. Information courtesy of Cardozo.
Environmental Initiatives at W&M

Student Environmental Action Coalition (SEAC), an undergraduate organization committed to enacting environmental change on campus and in the community, organized the collection of trash bags from all of the outdoor trash cans on the undergraduate campus. With the help of Facilities Management, SEAC students displayed the filled trash bags on a tarp on the undergraduate quad so that students could visualize the amount of garbage amassed merely from 4 p.m. the prior afternoon to 9 a.m. that morning (left). To emphasize how much of that “trash” was actually composed of recyclable goods, the students separated out paper, plastics and glass from the trash in an example bag (below). Outdoor recycling receptacles are to be placed on the undergraduate campus to alleviate the problem of throwing out recyclable products and to reduce the overall amount of waste students trash daily.

The College currently emits 62,560 metric tons of carbon dioxide each year.
The College's energy bill is $6 million annually.
The College produces about 3,110 tons of solid waste each year, only 23% of which is recycled.

The recycling initiative is one of many Green initiatives currently in effect at William & Mary, including the following proposals under consideration by the University:

Public, Great, And Global:
W&M and the American College and University Presidents Climate Commitment
A report addressing foreseeable questions that the President and the Administration may have about the role of the College in climate change and social responsibility. The report provides substantive recommendations regarding how the College can lessen its impact on the local and global environment.

Campus Emissions Audit
A forthcoming report assessing the amount and sources of greenhouse gas emissions on William and Mary’s campus.

Proposal for Office of Sustainability
A proposal for the creation of an Office of Sustainability on William and Mary’s campus to coordinate sustainability initiatives throughout the university.

Curriculum Proposal - Sustainability Proficiency Requirement
A proposal to integrate sustainability into the curriculum of all William & Mary students in a simple, effective, and flexible way.

Financial Feasibility
Report addressing the short-term costs and long-term financial benefits of greening William and Mary. We found that innovative funding sources and strategic planning will allow the college to quickly recoup investments and save millions of dollars in energy bills over the next three decades.

--information courtesy of http://greeningwm.com/whatwe doi.html

Contact SEAC to get involved: envcat@wm.edu

Come join the Environmental Law Society for pumpkin picking trip to a local farm via the Jamestown Ferry.
Meet at the Law School at 2 p.m. on Friday, October 3.

Check the Environmental Law Society board for more updates!
Opinions

Pastors for Politicians?

by Adam G. Wentland

On September 28, 2008, the Alliance Defense Fund (ADF) is calling for Christian pastors to begin endorsing political candidates, which has been illegal since 1954. The issue stems from the First Amendment's Free Speech Clause potentially trumping the IRS Tax Code 26 U.S.C § 501(c)(3), which exempts religious organizations from income tax so long as those organizations do not endorse specific political candidates.

The ADF's plan is to regain the right of religious organizations to both announce political candidates they support and maintain their tax exempt status. The ADF is hoping the IRS will take away the tax-exempt status of those churches participating in the September 28th rally. The churches, and thus the ADF, will then have a cause of action against the IRS. The ADF hopes for a ruling by the courts that declares such tax codes against religious organizations as unconstitutional.

The most notable group against the ADF's goals is Americans United [for Separation of Church and State]. The AU is in full support of the tax provision, and even has an online "Report a Violation" form to stop "potentially illegal electioneering by religious leaders or groups."

The ADF seeks to encourage pastors to exercise their right to freedom of speech. This free speech will force the IRS to remove the churches' tax-exempt status. The churches, in turn, will have a claim under the Free Exercise Clause of the First Amendment because the government will be taxing those various political churches. Almost certainly, the view the ADF will endorse is that any tax on a religious organization is a restriction on the practice of religion, which is blatantly unconstitutional. Supporting specific political candidates is part of the pastor's duty as written in the Bible, the ADF claims, and taxing specific religious duties is against the Free Exercise Clause.

The AU and IRS will most likely respond by giving an alternative view: the tax code is simply intended to prevent political lobbyist organizations from qualifying under the tax-exempt status of 501(c)(3).

The AU will probably push the notion that people should not use religion to interject their political beliefs on others. It can also be argued that this restriction is really derived from the Establishment Clause of the First Amendment, as allowing religions to back specific candidates will eventually evolve into state and federally established religions.

The common question regarding conflicts between the Establishment and Free Exercise Clauses arises in this case as well: Which is the greater evil? Will allowing religion a greater role in political elections be better or worse than restricting the freedom to practice religion?

The IRS Tax Code, when implemented in 1954, clearly had large effects on religious organizations at the time. Prior to 1954, religious leaders routinely endorsed political candidates and often pressed their followers to take up the same endorsement. Pastors fears of losing their exempt status obviously played a role in how they conducted sermons.

Before the Tax Code's adoption, religion was not thought to be too intrusive on government affairs. In other words, there was not an Establishment Clause issue, which weakens the AU's concern about Establishment Clause conflicts. However, that is not to say voiding the Tax Code would not cause an Establishment Clause problem today. Allowing pastors to endorse political candidates may be seen to conflict with the Establishment Clause now. The endorsements may also have a greater effect on elections today.

The ADF has a strong case for two reasons. First, the ADF's position is also tied to free speech concerns; this is not just a Free Exercise Clause issue. This twist may give the extra "boost" in Constitutional authority necessary to push the Free Exercise Clause over the Establishment Clause in this particular situation. Second, the history of the Tax Code tends to speak to the unrealistic concerns of Establishment Clause conflicts.

Although the Tax Code may not eventually be ruled unconstitutional, the the Supreme Court potentially may hear the case, which would bode well for further clarification on First Amendment conflicts.

The next meeting of the Women's Law Society is tomorrow, Wednesday, October 1.

Email wmws@wm.edu for more information.

Students and Faculty Converse Women's Law Society Mixer

On September 17, 2008, a recent Wednesday evening, the newly formed, Women's Law Society in conjunction with the SBA hosted a mixer to meet and greet fellow students and faculty at Marshall-Wythe. This year, Amy Rose, Emily Mayer, Jen Fleming and Rebecca Roman joined together to enact their passion for women's issues both substantively in the law and in the legal profession and formed the Women's Law Society, which provides all members of the community a forum for discussion, activism, support and collaboration. As Emily Mayer (2L) described, the Society envisions itself as an equalizing network—not as a hierarchy—and therefore encourages everyone to be involved throughout the coming year.

From Page 2.

What is there to do for those of us craving a more familiar football experience? I'm afraid W&M football may just not be for you. Instead, saunter down to Paul's and bask in your school's glory while everyone else cheers on their own teams and, when those few hardy souls wander in from across the street, raise your glass in tribute and toast their forlorn by saying "Oh, we had a game today?"
Everything You Always Wanted To Know About the English Legal System

By Benjamin J. Sykes

OK, so most of you reading this will have a pretty good appreciation of the origins of American common law. Today, students in American J.D. programs burn the midnight oil (five hours after their English cousins turn in for the night) over the McNaghten Rules (1843) or those interested in strict liability might run across the important decision in Rylands v. Fletcher (1868). Other than the common reference in law school introductory classes to the kings chancellor only accepting pleadings from wronged parties where the complaint “matched” his list of standard “writs” your only other encounters with the dispensation of law in the U.K. are those striking wigged characters on the covers of your Emanuel’s study guides.

Before I leap into a Lonely Planet Guide of Her Majesty’s Courts Service, it’s probably wise to explain an important distinction on how the legal profession is divided in Great Britain. In the first years of law school, British students study the law just like American J.D. students here. However, prior to the final year of law school they must decide whether they have aspirations to be a Barrister (and spend the majority of the working lives in the courts) or whether their future lies in the role of a solicitor doing all the work of an attorney except (for the most part) appearing in court. Students must then prepare for these roles by taking either the Bar Vocational Course or the Legal Practice Course before they graduate. In practice, both roles merit the honored title of “lawyer” but on a day-to-day basis their work is different. Barristers work in “Chambers” (think leather high-backed chairs and brandy) and are briefed and called to court by their solicitors to argue on behalf of the client. Most Barristers specialize in a particular field, but those working in crime often do both prosecution and defense work. This is a treasured facet of the independent bar. Solicitors, on the other hand, populate the familiar law firms up and down the country. They cannot argue in the higher courts, and when they do appear in a court it will be without a wig and will be referred to as “my friend” and most definitely not “my learned friend,” a title reserved specifically for a Barrister. Other than that, a solicitor will undertake all of the work of an American attorney.

If you’re still reading this you’ll probably find the rest of this article even better, so here goes my attempt at a snapshot of the longest standing judicial system in the modern world. Her Majesty’s Courts service is made up of single hierarchical court structure. For a person charged with any criminal offence, their first appearance will always be before the local magistrates court. The “Mags” sit in teams of three (always encompassing at least one woman) in local court buildings in most towns and all cities in the U.K. Serving as a Mag is a voluntary position and requires no legal qualifications, although inevitably some do pursue these. The Mags sentencing powers are limited to 6 months in prison and a 5,000 GBP fine. They alone will adjudicate the less serious “summary offences.” They will also try the “either way” offences triable either summarily or on indictment at the choice of the defendant. It is safe to say that the wise defendant pleads guilty to an either way offence before the Mags and therefore avoids the wrath of a Crown Court judge. Their role where a defendant is charged with an indictable only offence is much simpler: They will remand a defendant to the Crown court (think Circuit Court) for trial, either by

Hablamos Español

Se rumora que alguna vez, una celebre personalidad de la cual nadie parece recordar su nombre dijo: “El francés es el idioma del amor, el inglés el idioma para hablar de negócios, el alemán el idioma de la guerra y el español el idioma de la amistad.” Por un lado no se qué tan cierto sea lo dicho anteriormente, pero sin duda alguna, para los que en nuestra niñez solíamos ver a Pepe le Peu en los “Tiny Toons,” cuando escuchamos alguien hablando en francés, aunque no tengamos la mas mínima idea de lo que se está diciendo, inevitablemente nos suena al lenguaje del amor. Por otro lado cuando escuchamos hablar en alemán, los desenredados de este idioma escucharan órdenes marciales, en la conversación que bien podría tratarse de los versos más románticos y tiernos. El inglés por su parte es un idioma sencillo, preciso, directo al grano, sin muchos adjetivos, sin tildes, en otras palabras el idioma científico por excelencia.

Tratado de referirme a mi idioma nativo lo más imparcialmente posible. El español es el idioma más completo para comunicar cualquier idea, pero muy en especial las abstractas, para expresar sentimientos, para entamar, para lograr argumentos convincentes, e incluso para discutir sin nunca prescindir de los buenos modales y la cortesía. El español logra todo esto con sutil complejidad ya que su vocabulario es rico en metafóras, hipérboles, similes y adjetivos de toda clase. En fin, el español ofrece muchas y variadas maneras para expresar ideas y comunicar mensajes.

Dada la gran similitud del español con el francés, el italiano el portugués y obviamente el latín, que es el origen de todos los idiomas mencionados, se facilita en gran medida al hispanohablante el diezdo aprendizaje de los mismos. Entre muchas de las virtudes del español, no se me puede escapar resaltar la inspiración para las líricas de la salsa, el merengue, el tango y la rumba, expresiones lingüísticas de la alegría hacia la vida, característica que sin duda define a los hispanohablantes de manera contundente.

Si has leído hasta este punto y has entendido un poco o todo lo que he escrito, te felicito porque reconoczo que aprender el idioma español no es una tarea fácil. De la misma forma como está lleno de ventajas expresivas, para lograr utilizar las mismas, hay que entrelazar con sus tildes, comas, diptongos, las palabras esdrújulas, graves y agudas, y como si fuera poco, las pronunciaciones de la letra “R.”

Se calcula que alrededor de 400 millones de personas alrededor del mundo hablan español, que se habla español en cuatro continentes y es la lengua oficial de 21 países en América. El idioma más hablado del mundo es el mandarín, el cual lo hablan mil millones de personas, seguido por el español que lo hablan 400 millones de personas y en tercer lugar el inglés, el cual se calcula lo hablan alrededor de 322 millones de personas. Aunque estas cifras no son exactas, nos dan una idea de la presencia y de la importancia del español en nuestro mundo.

The Spanish Club meets on Wednesdays from 6:30 to 7:30pm in the student lounge. Students meet to practice their Spanish conversational skills by discussing varying topics each week and attending cultural events. Newcomers are always welcome!
Judge or by Jury. The life of a magistrate can be a tough one. They will make preliminary decisions to deal with the most hardened killers, the 17-year-old single parent who has stolen bacon from the grocery store and everyone in between. Trips to the town on a weekend often mean bumping into Daz the drunk and disorderly after fining him 400 GBP and taking away his social. It's a tough and financially unrewarding life. For defendants charged with a more serious crime their case will make its second stop at the Crown Court. Here a Recorder or Circuit Judge will sit in judgment of the trial. Juries are still enamelled but only for the more serious offences such as Murder, Manslaughter, GBH and Rape. It is here in the Crown Court that the Barristers and Judges wear the robes and wigs that our system is best known for around the world.

Plaintiffs (we call them Claimants) bring their civil claims in a different court. Their cases are kept well away from the local tough justice hub. A District Judge or Circuit Judge will hear these cases along with other civil actions and Divorces, along in the local County Court. One major difference between the U.K. system and the American one is the issue of costs in civil litigation. In the U.K. the loser pays the winners reasonable costs. In practice what this means is that entire law firms have sprung up specializing solely in costs work. We have “costs lawyers.” No, really, if the parties cannot agree on what is reasonable, the parties pay more court fees, the court holds a costs hearing, barristers are hired, they plead as to why the law firm should receive more money than the opposition will agree on for their work, and more costs are then incurred. It is unheard of for a claim to be settled, client receives their money, and then the firms haggle over costs for 2 years following this. A second trial, so to speak. Thankfully, most claimants are ignorant of this fact. The system has long been due an overhaul. Once this is done it is most likely going to go down the American route, but that’s another story.

No trial whether civil or criminal would be complete without a good appeal on the law or in the case of the criminal courts, on the sentence. Appeals from both Crown and County courts usually go to the High Court in the first instance. This is the tall, gothic building in central London with the iron railings often seen on television reports as a backdrop to interviews with celebrities such as Michael Douglas and Catherine Zeta-Jones in their privacy claim against Hello! magazine. It's split into the Queen’s bench (contracts and torts), Chancery (equity and trusts, probate and wills), and family divisions, some in original jurisdiction others on appeal. These cases are presided over by High Court Judges, some of the most powerful people in the justice system. Appeals from both the Crown and County Courts as well as the High Court may be heard at the Court of Appeals. This equivalent of a State Supreme Court is split into a criminal division where appeals are heard by the Lord Chief Justice, and the civil division presided over by the Master of the Rolls. Each case will normally be heard by three Lord Justices' of Appeal though.

For the appellant who is stilled in hisquest for justice before the Court of Appeals he has one last resort, the House of Lords. The Lords are not only the court of last resort for the U.K., but also the entire commonwealth. Yes, we do still have an empire in this regard at least. Death penalty cases from as far a field as the Caribbean are argued in front of the Lords of Appeal in Ordinary or law Lords who sit in the Appellate Committee in Westminster. It is safe to say that all these hereditary peers started drawing a pension quite some time ago. They are about to be re-housed in their old age though as the work is almost complete on the new “Supreme Court” outside of London in what is a long overdue attempt at separation of powers. Despite this exodus from the top, the famous Royal Courts of Justice or “RCJ,” The Central Criminal Court or “Old Bailey” and the four Ins of Court all remain north of the Thames between Leicester Square and St. Paul’s. I highly recommend a visit to London’s fascinating legal quarter if you are ever in town.
By Britney Davis

The summer of my 1L year was spent interning with the Virginia Department of Employment Dispute Resolution (EDR) in Richmond, Virginia. EDR’s main function was to resolve disputes and improve the employer-employee relationship that existed within government agencies. As an intern, I was given research assignments that aided the attorneys in determining outcomes in cases involving Title VII discrimination, employer retaliation, and unequal pay based on gender (the Equal Pay Act). Additionally, I attended weekly meetings to report my findings.

My most interesting experience with EDR occurred when I attended a hearing. The hearing involved a former employee’s claim against a state school for wrongful termination. Both parties represented themselves (with the school being represented by its human resources officer—an officer whom EDR trains for purposes of the hearing), while EDR’s hearing officer acted as a fact-finder, and later the decision-maker. What made this hearing truly interesting was the revelation that the terminated employee had been sexually harassing not only his colleagues, but also the students attending the school. Witnesses were called to testify, and as a result, extremely explicit recounts of the terminated employee’s behaviors were brought to light. The testimony of the witnesses was so explicit at times that an awkwardness, and feeling of embarrassment, periodically filled the room. What I found even more interesting about this particular hearing was that, by the end of the hearing, the terminated employee admitted that he had in fact done and said some of the most egregious things that the witnesses claimed. Not only was his admission shocking, for nobody wants to believe that such behaviors are occurring amongst employees and towards students, but it was also shocking because it became clear that this disgruntled employee was wasting everyone’s time!

Overall, I feel my summer experience was what any 1L summer job should be. I was able to get an extreme amount of legal researching and writing experience, as well as a great deal of feedback. From the feedback I gained confidence in my abilities and confirmation that the skills learned over my 1L year were applicable to my future in law! I also made great friends and mentors who were able to give me advice, not only with respect to law, but also with respect to living a fulfilling life.

By Adrienne Sakiy

I’ll admit it: I was one of those people. Although I never wanted to put up a huge wall around the U.S. borders or deny humanitarian needs to out-of-status immigrants, I never understood how immigrants arrived in the country without status or why they wouldn’t simply follow immigration procedures like my parents did.

This summer as an intern with Gulfcoast Legal Services in St. Petersburg, Florida I worked in the Immigration Unit, and now I understand.

I worked primarily on the Children’s Immigration Project, where the clients are minors who are victims of crimes, abuse, abandonment, or neglect—many had no guardians or relatives in the United States. Special immigration statuses are reserved for this demographic to encourage victims to report crimes to law enforcement and provide them with help from organizations like the Department of Children and Families. Many clients had to go through guardianship proceedings or dependency hearings or needed injunctions against abusers.

Like most non-profits, there was no shortage of work to do during my internship. My duties included filing forms with immigration services, writing memos and briefs, assisting with clients’ personal statements for applications, searching through public records for evidence to bolster applications, and getting information from various agencies. Unfortunately, resources do not allow the organization to help every case. Staff meetings allowed me to see how these tough choices are made. In addition to the Children’s Immigration Project, the Immigration Taskforce at Gulfcoast dealt with a large amount of immigration cases involving domestic violence.

Attending immigration court with clients was surreal; it is a life-changing decision for the client, but feels commonplace by the tone of the courtroom, similar to my experiences with criminal court.

The position gave me experience with immigration legal work, but more rewarding was the opportunity to meet courageous and persistent children and women. The stories are far too many, but the common theme is children who needed the help. Whatever your stance on immigration, the fact is that these are children, who had no choice in coming into America without proper documentation and have nowhere else to go. Gulfcoast works to meet the growing need of immigrants and provide a voice and a chance to defenseless victims.

Clip & Save Marshall-Wythe Trading Cards! Collect them all!!!

This Week: Beyond the Bike Racks

Xuan (Vera) Zhang
Visiting Student

From? China
How often do you bike to school?
Everyday.
How long is the ride? 15 minutes.
Riding style: Enjoyable.
(I mean I enjoy the bike riding.)
Why bike? It’s a quick way to get to school, and good exercise.
My bike: A lovely “creature” that I have had for about one and a half months.
Helmet? No.
Ever hit anything? No.
The Last Page

Letter to the Editor:
Unimpressed? Just Criticize from your Arm Chair! That’s Easy!

By Jason Wool

As someone with a penchant for the inappropriate and a more-likely-to-laugh-than-not disposition, I was surprised to find myself slightly miffed at the single-page, supercilious effusion I found in my hanging file today, the Marshall-Wythe Unimpressed. To be blunt, I cannot fully express how ungrateful, not to mention pretentious, I found it to be.

To begin with, criticizing the hard work of others without putting your name on your criticism is cowardly. How, I wonder, can the authors of the Unimpressed possibly justify their use of pseudonyms? Are they afraid of retribution because they think their counter-establishment piece is on par with the work product of Publius?

Did they think Mark and I would exact revenge for the admittedly clever “Pool Runnings”? (Neither of us has ever been in a fight, I might point out. Mark is such a pacifist that when he plays RISK he tries to form to, for example, Anonymous’ protests against the Church of Scientology? The Unimpressed just comes off as bratty. Let’s be honest: there is no extremely important reason to have a who work hard to produce the paper do so because they wish to provide a service for their peers—a diversion, if you will, from the monotony of law school life. To condemn them for failing to put out an “adequate” product is much the same as telling a volunteer at Habitat for Humanity that their painting job is sub-par. Oh really? Because the volunteer doesn’t have to be there in the first place.

The paper may have had some problems, but they were to be expected. There were unexpected problems with the printer that did not reflect on the staff’s ability to produce quality work product, including spacing and pagination issues. But more to the point, the staff takes time out of their schedules to make this paper. These are your peers, not Pulitzer prize winners. They could be studying for Corporations or working on their cite checks, but instead they do the paper—for you, the Unimpressed. So instead of criticizing from your anonymous arm chairs by making a one page handout with little to no substance of which to speak, do what normal concerned students do: write an op-ed, and put your name on it. Make the paper better. End of story.

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This Week: Beyond the Bike Racks

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Jessie Coulter
2L

From? Winston-Salem, NC
How often do you bike to school? Everyday.
How long is the ride? 3 miles.
Riding style: Relaxed.
Why bike? It’s cheaper than driving, it builds exercise into my day, and it doesn’t put CO2 into the atmosphere.
My bike: The equivalent of a Subaru Wagon; Sexi wicker basket on the back; Together for 6 years.
Helmet? Most of the time.
Ever hit anything? Recently I was talking on my cell phone and riding (poor choice) down Richmond Road. I was talking to a friend who had just left the law school, and we passed each other. We stopped our conversation and waved, and as I put my phone back up to my ear, I almost hit an undergrad. Lesson learned.

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Abby Murchison
2L

From? Lexington, VA
How often do you bike to school? Everyday. I avoid rainstorms, but I don’t mind mild mists.
How long is the ride? 2.3 miles
Riding style: Risk-averse.
Why bike? To compensate for the hours spent inert at the library, and to make AI more happy.
My bike: Very purple, could be mistaken for a tweenerage’s two-wheeler.
Helmet? Yes, to avoid my disapproving senior citizen neighbors; Torts with Meese also encouraged proper protective gear.
Ever hit anything? If you see a squirrel limping on Griffin Street, just know that it is lucky to be alive (and so am I).
Etc. Last winter, a driver near the Walsh-Stinson Academy reached out of her window and gave me a Christmas cookie.