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Class of 2004 Starts Countdown to Graduation

Dean Reveley started the evening's celebrations with a speech full of appropriate sentiments about what a wonderful class we are (it's true), how well we party (ditto), and how much we must be looking forward to graduation (of course). He capped off the speech by leading the class of 2004 in a rousing cheer of "Oh-Four!" Just when we thought it couldn't get any more fun, Kevin Duffan (3L) stepped up to the mike to present a slide show of 3L class members in some of their finest and not-so-finest moments. Photos of Moot Court competitions, community service projects, toga parties, dances, lectures, Legal Thrills, IM softball, and at least one bare-naked torso graced the wall and reminded us of moments we've shared over the past years. Afterwards, the DJ started spinning and the 3Ls tore up the dance floor until midnight.

More than one 3L commented on how great it was to see so many people turn out for the event, as about 150 3Ls, spouses, and significant others showed up to celebrate and mingle with classmates. Carter Chandler (3L) got a happy birthday shout-out, and Spencer Wiegard (3L) had extra cause to celebrate after winning the raffle for a week's use of the Dean's parking space.

The event's success is due in no small part to Liv Moir of the Alumni Development Center and Lindsey Carney (3L), who planned and coordinated all the details that made 100th night an event to remember. Liv started Marshall-Wythe's 100th Night celebration last year, as a way for the 3L class to have a chance to celebrate together as a class before graduation. The law school gives the 1Ls a chance to bond through orientation and is considering various ideas for 2Ls to have a special event that would perpetuate the sense of class spirit without infringing on their busy schedules. Ah, thank goodness those days are behind us. Graduation, here we come!
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Who were your childhood heroes? Professor Meese paused, then confidently responded: “Eran Tarkington. He was the leading passer in NFL history for several years. He was the first person to throw more than 41,000 yards.”

Wow, and he made you want to become a lawyer? “No. He made me want to become a football player. And Julius Erving. He made me want to become a basketball player.” [Editorial comment: Professor Meese was actually a basketball player, and received offers to play for Brown, the Naval Academy, and Washington & Lee, but chose to become a student at William & Mary instead.]

At what point did you realize you wanted to become a lawyer? Professor Meese began, “Another one of my childhood heroes was Mr. Spock. I really liked the idea of logic, of thinking logically, and of constructing an argument. I think that one of the best things about law is that it is about reason and giving reasons for one result or another, and trying to explain why one result makes sense from certain premises. Those premises can be from a case law or a statute, and by the nature of the trade, you have to be able to engage in close readings of texts and understand what they mean, how to interpret them, and how to apply them... he was trying to make was that in a democracy, the law, and not just power, matters. Because lawyers deal in ideas and logic, they have a special role in a democracy.

Do you still want to be involved in politics? “No,” Professor Meese replied, “One of the things about academia is that you are forced into a more principled mode of discourse than we hear in the political arenas, or in the private bar.”

Speaking of academia, how did you end up becoming a law professor? “This is a funny story. When I was clerking for Frank Easterbrook there was a law clerk for another judge; she was really liberal, and she was from Yale, and we used to argue all the time about stuff. So, one day she said to me, ‘When are you going to become a professor?’ And I had never really thought about that. Judge Easterbrook had been a professor, and he was still writing law review articles, and I thought ‘Hey, this would be a cool job,’ and then I realized that it was possible, and some of my friends encouraged me at the time. Specifically, Judge Easterbrook and Justice Scalia both encouraged me. I’d already accepted an offer to work for Skadden Arps for four years and did so, and I liked that, but I also missed the chance to contemplate and write about what I wanted to write about, and the chance to have a more regular schedule, and a family that got a chance to see me. I definitely did not go to law school thinking that I would become a law professor.

Why William and Mary School of Law? “The students are terrific. The faculty is very collegial and involved in what’s going on here. I think that various opinions are respected and there is quite a variety of opinions on various things on the faculty. Williamsburg is also a great place to live. It was nice to come back and teach at my alma mater. The difference between being a professor at the Law School and an undergraduate student at the College is intergalactic... there is no comparison. It’s nice to come back in Williamsburg and have a car and some money. When I was a student here, I lived on campus, walked back and forth from one class to the other, and that’s what I did. If you had a friend that had a friend that had a car, then maybe you went to the grocery store and that was a big deal. I never went to Saf’s in four years, but I always ordered food from there...

Here’s a story. My dorm burnt down in my first year. (Professor Meese refused initially to comment on the cause.) Apparently some refrigerator cord shorted out and started a fire, and they thought they’d put the fire out and told us to come back the next morning. We came back and the fire still wasn’t out, and eventually the dorm burned down and had to be bulldozed.”

Though all of my L1 classmates will and should find this history fascinating, I wanted to get to something that the 2 and 3Ls would also want to know; Professor Meese’s weaknesses.

What was your most memorable lecturing error? “My most memorable lecturing error...” He paused, “I don’t think I’ve ever had one.”

So much for that angle.

What are your favorite movies? “Ben Hur, Gladiator, [Editorial comment: For those who don’t know, Professor Meese majored in Greek] Rudy, Hoosiers, Jaws... I like movies with real authentic characters and great dialogue, and Jaws does a great job of that. [Another editorial comment: Jaws does have great dialogue.] I like the movie Midway, oh, and I love Rocky, and Rocky IV (the one with Ivan Drago), Monty Python and the Holy Grail, and Spinal Tap.”

What was it like clerk ing for Justice Scalia on the Supreme Court? “It was tremendous. He was a great person to work for. He was a ‘hands on’ justice, and took his work very seriously. He was also a terrific writer, so you got to learn just by watching him write, which was a great asset of the job. He liked give and take between the law clerks, liked to discuss the cases. He was intellectually very secure so he could discuss things with you.”

Professor continued on page 3
and you could discuss things with him without fear that he would feel offended by disagreement. It was hard work, many hours a day and most weekends. I did it for a year. The other good thing about working for the Supreme Court was that I met a lot of other people besides the justices. A lot of them are now professors at other law schools; three of four Scalia clerks, three of the Marshall clerks, two Kennedy clerks, and four of the White clerks."

What did it take to get that clerkship?

“Well, it’s funny. In my class at Chicago, there were maybe six or seven people who everyone thought had a shot at it. Of that six or seven, three of us got it. Another clerked a few years later. As for what leads to it, part of it is luck. I think it helps to clerk for a judge whom the justice knows about and respects. The judge I clerked for, Frank Easterbrook on the 7th Circuit, is a remarkable judge, and I think that Justice Scalia thinks highly of him.”

Hopefully the readers that were looking for specific personal data are at least somewhat satisfied, or not dissatisfied, depending on how deep they thought I was going to dig. Those of you who have more of an academic interest in Professor Meese, though, should read his various law review articles. If you type his name into Google, you get 106 hits, (Julius Erving gets 37,500), but this is fame for a law professor. When I asked him what his big publications were, he responded:


How do you come up with ideas for articles, and what governs your analysis?

“I try to apply the economic paradigm known as transaction costs of economics. This is based on Ronald Coase’s theory of the firm back in the late ’30s, but which wasn’t really discovered until the ’60s. Since then, I’ve been trying to apply this to areas where it hasn’t yet been applied properly, to show that the law is based on certain contractual and out-of-date economic assumptions. Tying contracts is one example. Nobody else had brought together the varying transaction cost theories of tying contracts and used those theories collectively to analyze the doctrine in the way that I did. I usually try to translate the work of economists for legal scholars to make them understand why economics requires a different legal result—that is sort of my ultimate schtick.”

When I asked for clarification on transaction costs, (which I’m sure most readers are happy about), Professor Meese happily obliged. “Transactions costs involves buying and selling things from and to other parties, as opposed to doing it all yourself. To talk about a transaction cost is to talk about the unique cost that you incur by choosing to rely on the market to do it for you instead of doing it yourself. Coase’s article argues that the reason we have firms in the first place is to avoid unique costs that economic actors would incur by relying on the market to do things. This is the lens through which one might look at various contracts. All types of contracts between the firm and the market, tying contracts, vertical distribution contracts, exclusive dealing contracts, long term leases, (all are non-standard contracts). Transaction costs economics tries to explain these non-standard contracts in transaction costs terms.”

For the law students who understand that, you are better than I am. If you didn’t though, you can always find Professor Meese in his office, though perhaps not on weekends or during the football season.

“During football season I go to every home game and I tailgate with my parents and in-laws, go with friends and faculty... during Bowl Season I watch the big games.”

As this article should have proven, Professor Alan J. Meese is definitely one of the Law School’s most economics-oriented professors. I’ll end this with a quote from a 1L (female) in last semester’s torts class who asked not to be identified: “I love Professor Meese.”

Appeal Case Argued at William & Mary

by Marie Siessger

On Thursday, Jan. 22, students and faculty members filled the McGlothlin Courtroom to watch oral arguments before the U.S. Court of Appeals for the Armed Forces in the case of United States v. Fernando Garcia. The case, an appeal from the Court of Criminal Appeals for the Navy and Marine Corps, primarily revolved around a two-pronged argument regarding ineffective assistance of counsel and whether an on-premises objection to a search can be trumped by an off-premises consent.

The defense counsel advocated the reversal of Staff Sergeant Garcia’s conviction on the grounds that the defendant received ineffective assistance of counsel from both his civilian defense counsel and his military counsel. Garcia was convicted by general court-martial and received an initial sentence of 125 years for attempted robbery, conspiracy, larceny, housebreaking, and transporting and receiving stolen property. Noting that “this case was a fiasco,” Lt. Robert Sayler described how Garcia’s military counsel advised him to take the stand and confess, to the exclusion of all other options. Sayler explained to the court that a breakdown in the adversarial process occurred when Garcia took the stand. Moreover, Sayler said that the trial court defense counsel should not have waived the Article 32 hearing, as this too constituted reversible error.

On the issue of the warrantless search, Sayler said that “one who is away from the premises cannot consent over the objection of an on-site occupant,” where both parties have the common authority to consent to a search. In this case, Garcia’s wife gave her consent to a search of their family home while she was away from the premises. Unbeknownst to her, Garcia, who was present when the search was to be conducted, objected to the search.

Sayler advocated the adoption of a “common sense approach” to issues of this sort, namely, that an on-site occupant with common authority over the premises should be able to halt the entry of an invitee of an absent occupant.

Following appellant counsel’s presentation, Alex Pickands (3L) presented an oral argument as Student Amicus Counsel based on a brief he co-authored with Chris Clements (3L) and John Hackel (3L). The amici espoused a rule for searches that would apply to situations where a search of a marital home was contemplated. This rule would require the consent of the present spouse to legitimize a search where there was common control over the premises and an off-site spouse had consented. Pickands emphasized the particular need to protect military families from external intrusions, noting that the situation presented by Garcia, “is the rare case that should be protected against.” The family interests, Pickands said, should be “very close to paramount.”

Counsel for the appellee, Lt. Lars Johnson, denied that Garcia received ineffective assistance of counsel, suggesting that this was simply a case of a trial strategy gone awry. Acknowledging that the sentence Garcia received was harsh, Johnson said that “the result is really irrelevant,” and that the court should not use the outcome of the trial as a basis upon which the effectiveness of counsel should be judged. Johnson further contended that a search is reasonable where consent has been obtained from someone with the authority to give it, and that the rule advocated by the appellant and student amicus counsel was an unwarranted exception.

The five judges of the U.S. Court of Appeals for the Armed Forces answered questions about the Court from the audience following the hearing.
The St. George Tucker Lecture: "The Constitution Outside the Court"

by Jennifer Rinker

For those who have not had the good fortune to experience Professor Michael Gerhardt in the classroom, his 2003/04 St. George Tucker Lecture on January 29th was an edifying glimpse of his insight into constitutional activities inside and outside the Court and the pedagogical implications of this relationship.

A self-identified heretic among Con Law professors for the afternoon, Gerhardt began by proclaiming that so much of the constitutional law classroom focuses "misses a great deal of constitutional activity" because of its sole attention on the courts, and even then primarily only on THE Court. The cost, Gerhardt said, is that such concentration "might make us think that the Supreme Court is supreme in making constitutional law."

A more immense domain exists outside of the Court where other authorities also make constitutional law. To grasp the extent of these other authorities, Gerhardt reiterated the reality that the Court does not hear every case. Each case the Supreme Court does grant certiorari has already been decided elsewhere, Gerhardt said, and the Supreme Court, in fact, deals with a relatively small fraction of the case law. Because of the myriad precedent created, genuinely as numerous as the authorities making them, the result is a "vast array of activities that occur outside the Court that are largely ignored in law schools."

Gerhardt named one challenge as identifying these authorities. He directed listeners to speeches, correspondence, and other communications of constitutional issues, not just the development and passing of laws. The Senate filibuster was the example utilized in his lecture to illustrate the constitutional interpretation occurring in these non-judicial media.

The second challenge is how to evaluate these other sources, Gerhardt explained. Constitutional law measures the validity of an interpretation against some standard, original understanding, structure, etc. The Congress and Presidential actions are generally viewed with "disdain," Gerhardt said, because we tend to "assume members are rarely familiar with what goes on." Although there is less criticism of the President, still not much is expected "other than that they will act in their own self interest." In other words, there is no expectation, and perhaps a good deal of skepticism, that these individuals will make principled decisions.

Gerhardt summarized four lenses with the filibuster, Gerhardt explained, are that it, one, "frustrates or violates majority rule in the Senate every time a filibuster is successful" and, two, "may violate the Anti-Entrapment Principle... that prohibits a current legislature from binding the hands of a future one."

There is arguably a current majority in the Senate that wants to change the function of the filibuster. Bush has accused the Democrats of "disgraceful" use of the filibuster to block judicial recommendations, and has attempted to have the Republicans contest the rule. If the Republicans were to challenge the constitutionality of Rule 22, and the parliamentary were to determine it as constitutional, the appeal would go to the Vice President as leader of the Senate. He would in turn find the rule unconstitutional and appeal to the body. This would effectively result in an "implosion of the Senate," Gerhardt suspected. The Senate has recognized this in formally upholding Rule 22 as constitutional. Therefore, in order for provision 2 of Rule 22 to be implemented, bipartisan support for this kind of change is required.

The difference between constitutional interpretation inside and outside of the Court, Gerhardt illustrated, are primarily the Court's dependence upon outside events and entities and the Court's inability, historically, to deal with the major constitutional crises of the day. The President and the Senate make the Court, and the Court must depend on political authorities to support and implement its rulings, as in Brown v. Board of Education, for example. For the election of 1800 and secession, the Court was at the mercy of outside authorities because the answers were not to be found in the Constitution.

In closing, Gerhardt again urged that the huge domain of constitutional activity outside the Court be integrated into law schools' discussion of constitutional material. Thoroughly evaluating the principled decisions of constitutional activity outside the Court and then coordinating that with the activity of the Court, Gerhardt said, will result in a "more comprehensive understanding of how the Constitution works."

Professor Gerhardt and the Tucker Lectures

Professor Gerhardt has authored over 50 law review essays and articles in constitutional law and has been a consultant for high-profile decisions, including the White House nomination of Stephen Breyer to the Supreme Court. Many may recall, as Dean Reveley so eloquently introduced, that Gerhardt was "the most dispassionate, elegant, and learned talking head on all major networks during the Clinton impeachment."

Professor Gerhardt is on leave this spring serving as a visiting fellow in Princeton University's Politics Department.

The St. George Tucker Series, established in 1996, annually recognizes scholarly achievements of a senior member of the William & Mary faculty. The series has been made possible through the generosity of the Law School alumni.
**Must be a 3L: An Introduction to Transfer Students**

by Gary Abbott

Every year, the law school accepts a handful of transfer students from other law schools. Every year, these new faces show up in mostly 2L classes and, unless the transfer is more gregarious that most of us, few people know who they are. This situation usually continues until graduation, with 2L's assuming the person is a 3L and vice versa.

In an effort to solve one small puzzle in the infinite enigma of law school, The Advocate is pleased to present The Transfer Class of 2003.

James Hoffman, originally from Phoenix, Arizona, transferred here from Regent University. Married, with two dogs and two cats, James did undergrad at the Naval Academy. He came to W & M because he felt his options for learning military law and getting a naval law education would be better, as he plans on spending the next few years in JAG. Cost was another big factor in his seeking a transfer. Now that he has been here a semester, he says that the overall atmosphere at W & M is great, with professors and students alike being friendly, helpful, and accepting.

Vanessa Mercurio, and her dog, Hercules, came to us from Brooklyn, New York, where she was an undergraduate at Wagner College, via Loyola University in New Orleans. She didn't have any major problem with Loyola, it being the same size school and about as friendly as W & M, and she was on the Moot Court Team. She transferred because she has family nearer Williamsburg, she saw better educational and professional opportunities here, and she considered W & M a better school overall. She does miss the week off for Mardi Gras at Loyola, but will settle for our Spring Break. Since arriving, she has been impressed by the expert caliber of the professors at W & M, the warm reception by the students, and at how easy it has been to make friends.

Mitchell Wells, is part of a tag-team of transfers from Regent University, where he became friends with James Hoffman. Mitch lives in Richmond with his wife, Payton, and a German shepherd, Chopin, went to VMI for his B.A., has an M.P.A., from VCU, and is a former Virginia State Trooper. Besides cutting down on that horrendous drive to Virginia Beach and Regent, he transferred here with the thought that W & M will better prepare him for a planned future practice in Richmond. Now that he is here, and without elaborating much, Mitch says that "Everything" is better and he's glad to be here.

Christine Ho, Angela Benjamin-Davis, Jennifer Deschenes, and Timothy Schimpf have also joined the 3L class as transfer students.

**PSF Plans Profitable Semester for Students Working in Unpaid Positions**

by Adrienne Griffin

There he is . . . Mr. Marshall-Wythe?

Among the many events the Public Service fund has planned for this semester is a new one called the Mr. Marshall-Wythe Pageant. This competition will feature our talented male students performing in all the traditional categories: Formal Wear, Talent, Swimsuit, and Probing Questions of International Importance (e.g., "If chosen to be Mr. Marshall-Wythe, what would be the goal of your reign?""). The pageant will be held on Friday, February 20th.

If you are interested in becoming a contestant or volunteering to help out behind the scenes, contact Jennifer Lavigne (2L) or Christine Dealy (2L) and look for upcoming announcements about organizational meetings.

According to Elle O'Flaherty, 3L co-chair, PSF's goal for the year is to raise $30,000 to fund summer stipends. Although the organization is well on its way to breaking the previous record for fund-raising, it is hoped that this semester's events will exceed expectations. You can track the progress on the colorful thermometer affixed to the PSF bulletin board.

In addition to Mr. Marshall-Wythe, the annual Date Auction will be returning on Saturday, March 19th. For those who have never enjoyed the spectacle that is Date Auction, it basically involves students auctioning off dates and prizes donated by local businesses and the school's faculty. If you've ever wanted to buy Dean Reveley's parking space, or an evening of poker with a certain contracts professor, Date Auction is the event for you. Look for future announcements about how to volunteer to be a date (and start practicing that juggling routine now).

This semester will also feature more regularly scheduled bake sales, including one on Wednesday, February 4th. Of course, the PSF Gift Shop, featuring clothing of all kinds, will continue to operate in the lobby near the lobby entrance. To volunteer to help run the shop, check the sign-up sheet on the bulletin board or contact Sada Andrews (3L).

Finally, PSF is looking to recruit more board members to help run the organization. Applications must be received by Friday, February 6th. The applications can be found on the PSF bulletin board or contact Elle O'Flaherty or Emily Cromwell-Meyer (2L Co-chair) for more information.
A Reply to Professor Jolly's Reply

by S.L. Rundle

Four newspapers back, R.S. Jolly wrote “I cannot think of a satisfactory objection to homosexual marriage per se.” In response to my letter against his conclusion, Jolly wrote:

“…”

Jolly has stated the two independent grounds for the proscription of given acts, natural and divine law.

God’s existence. A scientist is walking in a field with God. The scientist says, “God, we do not need you anymore. Anything you can do, we can do. I can even make a man from dirt, same as you.” God says, “Fascinating. Show me.” The scientist bends down to grab a handful of dirt to take back to his lab. “No,” says God, “get your own dirt.”

This is an illustration of one of St. Thomas Aquinas’s five ways of proving God’s existence through the light of reason, the uncaused cause argument. The five ways are the argument from motion (everything in motion was set in motion), the argument from efficient causes (the uncaused cause), the argument from possible and necessary existence, the argument from degrees of excellence, and the argument from intelligent design.

The existence of God solves the infinite regression problem encountered in attempting to find the source of created existence. At some point up the chain, matter had to come into existence out of nothing.

The intelligent design argument, the fifth way, is sometimes called the watchmaker argument. If I show you my watch, made of metal and glass, you naturally presuppose a watchmaker. You would probably not accept my representation that rocks and sand moved randomly about the ocean floor, amalgamating metals and grinding silicon into glass, until one day the ocean just spat my watch up on the beach. A fortiori, the universe and its contents must have an intelligent designer. This argument tells us little about the nature of God, but it tells us a lot about why there are so few atheists.

God’s Secret Transmitting Capability. If one accepts any of the above proofs, it seems hard to doubt “God’s ability to transmit secrets about teleology” through human agents such as Jesus, Buddha, Muhammad, or Sri Guru Granth Sahib. (Teleology is the study of design or purpose in natural phenomena.)

God can create matter from non-matter, but He cannot communicate with us? Really? What exactly is holding Him back? The language barrier? Interference from the Van Allen belt? Deistic laryngitis from, say, three thousand years of bellowing at his Chosen people to shape up?

At this point, I think the two things have been shown which Jolly required before I would be privileged to assert that sex has natural purposes: that God exists and that God can communicate secrets about teleology. With the limbo bar set so high, however, let’s take it further.

R.S.”Ladies Call Me The Hammer” Jolly disputes that sex has two natural purposes (procreation and bonding): “sex is like a hammer, its purposes are imposed or defined from without by conscious agents.” This statement is not right. It is not even wrong. The error of this view of sex is apparent when one considers some of the natural human appetites together. A man eats because he has an appetite for food. Likewise, he drinks because he has an appetite for water. He sleeps because he has an appetite for rest. And he has sex because he has an appetite for sex.

Pleasure comes from indulging these appetites. But pleasure, what I think Jolly means by recreation, is not the purpose, it is the motive. Would Jolly deny that eating, drinking and sleeping are inherently without purpose, that their purposes are “defined from without by conscious agents”? Why does he single out the sexual appetite for special treatment? With the motive versus purpose confusion resolved, Jolly’s assertion that my argument leads to the conclusion that “recreational sex is evil” falls flat on its face.

Babies. Procreation is the more obvious of the two natural purposes of sex. The purposes of the appetites for food, drink, sleep, and sex are met when the body is nourished, refreshed, and assured, marginally, of the specie’s survival for another generation; for cooperating in the satisfaction of these essential appetites, man gets his carrot: pleasure.

Bonding. That bonding is the other natural purpose of sex requires a closer look. Bonding is certainly a consequence, indeed a natural consequence. We know when we hear someone talking about a “messy” breakup that the relationship was almost invariably sexual. Man and woman simply cannot give their bodies and hold their spirits apart. The gift of self is a package deal. But just because bonding is a consequence, is it a purpose? Demonstrating this can be done only somewhat satisfactorily without reference to divine, i.e. revealed, law.

At the most basic level, human mothers need additional support for their children to survive physically, spiritually, and emotionally, to sexual adulthood. There are reams of studies showing what happens when boys grow up without a father. They are unable, for instance, to restrain their aggression. Fatherless girls do not have it any easier.

A father helps his son to develop his sense of personal identity. A mother helps her daughter to develop her ability to relate to others. Fathers are necessary to provide male role models. Mothers are necessary to provide female role models. Neither male nor female can be described as simply “human.” That is the onus on theists to prove the existence of God and to not pull argumentative rabbits from thin air. If God does not exist, there is no reason why people should believe in or worship him. If they do, they are doing it out of fear, ignorance, and superstition.

Jolly states that “you should not pull inherent purposes out of thin air and argue on those tenuous grounds.” Even if he disagrees about the two purposes of sex, he cannot argue that I pulled them out of thin air. This is basic introduction to philosophy 101 stuff, what colleges [used to] teach before dumping the modern philosophers on undergrads. These purposes have been discussed and understood since the days of the Greek philosophers, most famously by Aristotle.

Interestingly, after Jolly puts the onus on theists to prove the existence of God and to not pull argumentative rabbits from thin air, he writes this: “Morality calls to mind honesty, compassion, friendliness, faithfulness, moderation, and fairness.” Is that out of thin air? What is the origin of these virtues and man’s respect for them? Did man discover them through trial and error? Lying did not work, so we’ll try honesty? Is Jolly saying that some intelligent designer inscribed a love of these virtues on man’s heart? If not, this certainly “look[s] a lot like imposition from without by conscious agents,” as Jolly wrote in response to my simple recitation of a millennium-old position on the inherent purposes of sex.

Finally, Jolly writes that “people feel guilty about affirming their sexuality because tightened fanatics [such as Rundle] equate sex with sin.” That was in response to my black letter statement that “any sexual act is evil which occurs outside of marriage’s bounds and in which the actors intentionally interfere with or prevent the creation of new life.” Jolly’s conclusion fails on its own terms,
Postscripts on Hate Speech and Religion

by R.S. Jolly

Last year, Paul Rush argued (a) that my characterization of homophobes as insensitive, ignorant, bigoted, and unvirtuous satisfies the European Union’s definition of hate speech, and (b) that one need not justify religious beliefs in order to abide by them. The trans-Atlantic hate speech charge misses its mark by about 10 light-years, and the justification claim is unjustified.

I do not advocate hatred, discrimination, or violence against homophobes, but I emphatically support their rehabilitation. Accordingly, I begin by examining seemingly contradictory attitudes among homophobes. Most homophobes would probably condemn the bias-based physical abuse and murder of homosexuals; after all, no self-interested person similarly situated would want to suffer the same fate and no compassionate person would wish the same for their child. Moreover, many homophobes would probably condemn the bias-based denial of housing and employment to homosexuals; after all, no self-interested person similarly situated would fancy stiffed opportunities to enjoy the privacy of home and fulfillment of work. Notwithstanding this, homophobes routinely run into the following contradiction:

Many of them would deny two consenting adults the right to marry, two responsible adults the right to raise children, and individuals the right to express their sexuality in the military. Why do rights to housing, employment, and life belong to a class separate from rights to marriage, family, and minimally unfettered self-expression? Are there good reasons to support this division or are homophobes trying to salvage tokens of inanity from a sinking ship? I cannot think of any exceptions to the elementary moral principle exhorting us to treat homosexuals as we would want ourselves or our children to be treated; can you?

If so, I urge you to bypass faith in support of your answer. According to Rush, we need not offer good reasons for abiding by religious tenets. To be sure, faith is a wonderful way of coping with the vicissitudes of life; the imposition of purpose onto the world buffers against the randomness of cancer and genocide, among other things. Faith is a form of finger-crossing, and it is an unequivocally flimsy way of proving a case, especially when it dictates that you violate the rights of others. Imagine the absurdity and injustice of criminal prosecution that relies entirely on divine intuition; imagine sending an innocent man to his death because God commands you to do so. If we insist on the highest evidentiary standards for justifying a person’s guilt or innocence, we should rely on the highest evidentiary standards for denying lawful abiding people their basic rights to flourish as human beings.

As quoted by Rush, the Vatican and almost a billion of its followers deny any “grounds for considering homosexual unions to be in any way similar or even remotely analogous to God’s plan for marriage and family.” Unfortunately, the concept of God is so utterly incomprehensible that attempts to flesh it out lead to gridlock: God exists? If so, how do we know? If we know that God exists because ancient prophets said so, how did they know? Why should we believe them rather than ancient atheists? Is God the sort of entity that takes the form of cosmic laws or is God the sort of entity that remains consciously indifferent to starving children? The danger of prescriptive religion lies in the power of its followers to ignore these fundamental questions and rally behind misogynistic mullahs and homophobic legislators.

Since fanatical homophobes are beyond redemption, I can only hope to challenge those who deal in reason: Prove to yourself that homosexual couples are inherently unfit to enjoy the privileges of marriage. (If you object to mixing homosexuality with marriage,” then prove that homosexual couples are unfit to enjoy the privileges of marriage or civil unions or whatever else you want to call that August bundle of rights and responsibilities.)

Prove to yourself that homosexuals are inherently unfit to raise responsible and respectful children; one might argue that homophobes are unfit to raise responsible and respectful children. Explain why expressing ordinary sexual homophobia in a military context is morally different from expressing ordinary heterosexuality in such a context. If your answer involves the usurpation of morale, based on widespread antipathy toward homosexuals within the military, then explain why the Pentagon should not start a program to educate its homosexual men and women about the humanity of homosexuals and the basic rights that flow from their personhood.

If you find yourself devoid of answers, have you considered the possibility that your beliefs are devoid of worth?
Redefining Homophobia: I Have a Grip!

by Shannon West

Allow me to set the record straight, Mr. Rush. If you accept full responsibility for the article that was printed under Mr. Rundle’s name, as he is an ignorant, pathetic dolt, you are, in fact, his megaphone of crap.

You define “hate speech” in terms of the European Union. While the EU is not a group that many victims of hate speech give any credence to, you nonetheless cleverly point out that sexual preference is not listed in its definition of “hate speech.” I wonder if you actually read the definition, or specifically, if you read, “against any individual or group of individuals, based on . . . descent.” Alright, as you are so big on definitions, let’s define that word. “Descent” is defined as “hereditary derivation” and “derivation” is defined as “origination.” We could define descent as the way we originate from our heredity. Argue against homosexuals all you want with the veil of your religious dogma, but science has repeatedly shown that homosexuality is the result of a genetic code that creates different hormone levels and sexual preferences in people. So you see, Mr. Rush, we can all manipulate any definition of a word to serve our means, just as you manipulated Mr. Rundle’s rambling to not fall within the realms of “hate speech.”

Since you enjoy equating the Vatican’s definition of homosexuality as a “troubling moral and social phenomenon,” with the opinion of each Catholic individually, let me explain a few things about the Catholic Church. It has a frightening similarity to the practice of law in this country. Both are man-made institutions, subject to the evolutions of human intellect and stupidity, and both are supposedly institutions that are obligated to correct the mistakes of their past and account for their beliefs in the present. Yet, the evolution of either institution does not occur overnight.

To state that the opinion of the Catholic Church or American law (or the EU, if that’s your cup of tea) is irrevocably conclusive is to ignore centuries of progressive thought that have altered each institution. As such, I imply that the opinion of each Catholic has individually evolved at the same pace. I may be wrong here, but I thought I was a unique person who happened to be Catholic. I didn’t realize that I was a clone of “800 million Catholics” in the world and “some 60 million Catholics” in America and that we all hold exactly the same beliefs. Please do not define me as a lemming. I don’t appreciate it.

Let me give an example, to both Mr. Rush and Mr. Rundle. Procreation was, at one time in past, considered the sole purpose of both sex and marriage in the Catholic Church. I doubt humans, at any point in history, ever truly thought during their sexual romps in marriage that, “Wow, this is some great procreating!” While Catholics were encouraged to view sex as a mechanical process for creating life, the Catholic Church eventually altered its definition of sex.

This revised definition includes that sex is also to have a “unitive function,” one that bonds couples in marriage and increases their communication. Yet, the Catholic Church insists that the essential aspect of the sexual experience is still procreation, and that any sexual act must be open to conception. So, according to the Catholic Church, homosexuality is not an ethical sexual act because one cannot conceive from it. I personally feel bad for all those sterile Catholics out there who cannot conceive children. Every day (maybe twice a day if they’re lucky) they are committing acts of such an amoral nature that, by the Catholic Church’s standpoint, they are “evil.” So you see, churches, humans, and those nasty little homosexuals can construe definitions to meet their own agenda.

Now here is your definition of homophobia, or lack thereof, that causes one to wonder how you made it past the third grade: “Call it homophobia if you want, despite the fact that Rundle openly acknowledges fostering a friendship with an openly bisexual individual. Yeah, sounds really homophobic to me.” However much I admire Mr. Rundle for rising above adversity to “foster” a relationship with someone so evil, I am actually reminded of a statement I sometimes hear from the more ignorant people I have encountered in my life.

Most people have probably heard racists defensively proclaim, “Sure I think every black person has a gun and wants to mug me. But, hey, I have that one black friend (that I “fostered”) a relationship—continued on page 9

Oops, I’m Gonna Go There Again...

Gays and the Advocate

by James Vatns

Paul Rush’s incredulity that anyone could think Seth Rundle’s article on homosexuality constituted “hate speech” surprised me. I respect a religious argument about homosexuality enough to know to avoid trying to refute it. Jennifer Rendle made no attempt to refute the religious basis of Mr. Rundle’s argument. Rather, she expressed her displeasure at reading an article which she felt was hateful and which made her feel unwelcome. Therefore, when Mr. Rush, without naming her, slammed Ms. Berndt’s article about her displeasure with Mr. Rundle’s article, and likened minded views, I was perplexed and a little bit upset.

While we’re now told Mr. Rundle’s article was published without his express consent, certainly by calling the actions of some of his classmates evil, Mr. Rundle couldn’t expect his classmates to get a warm fuzzy feeling all over and start skipping through the halls singing Britney Spears. Rundle’s article made unsubstantiated claims of increased domestic violence in gay relationships, and it equated homosexuality with a laundry list of societal ills, including my favorite, “scandalized friends and family.”

So was it hate speech or not? To me, it’s completely beside the point. As quick as Ms. Berndt may think the outcome of Mr. Rundle’s article, whether unintended or not, was hurtful and homophobic. Ms. Berndt called the Advocate on it, and then Mr. Rush responded with an attack on likened minded views which pointedly offered no apology to those who might have been offended. Rather, Mr. Rush chose to respond with a strongly worded opinion that told his classmates to “get a grip” and “knock it off.” Where was the “respect, compassion, and sensitivity?” Worse yet, Mr. Rush laced his argument with unsubstantiated assertions, leaps of logic, and facile thinking. Now that’s “absurd.”
I Have a Grip! continued from page 9

ship with) so I am not racist.” I ask, Mr. Rush, how you ever academically progressed beyond the third grade because even in third grade, I recognized racists for who they were. You are in law school, and you still cannot recognize homophobia. If you were attempting to define Rundle as anything but homophobic, then your IQ is as low as Rundle’s tolerance. Forrest Gump couldn’t contemplate your friend being defined as anything but homophobic.

Now, on to your own manipulation of the definition of a friend. You state, “Do you actually hate everyone with whom you disagree? Wow, and at an institution of debate, no less!” You use examples of views on abortion and war as areas in which people can differentiate on beliefs and still be friends. I agree with this point. People can still differ on choices they make in their lives and coexist in amazing friendships—the choice to have an abortion, the choice to go to war.

However, Mr. Rundle finds his friend’s very existence “evil.” Homosexuality is not a choice; it is as inherent in a person’s existence as the color of their skin or the shape of their eyes. To attack as “evil” the essence of a person is to attack everything about them. Let me make this very clear (especially to the bisexual person to whom Mr. Rundle and Mr. Rush refer) — Seth Rundle has no gay friends.

Finally, because I am getting tired of writing and think I would rather yell at you instead, please stop using the Catholic Church as your security blanket for everything. Don’t get me wrong — I love being Catholic, I loved going to a Catholic University and living with two strong Catholic, lesbian roommates, and I love Pope John Paul II. I realize that this newspaper is supposed to “advocate” heated debate about the law and its wonderful tentacles that seep into all other areas of life. However, I would personally like to address this ignorance at a human level and leave the law out of it.

As a person, I would like to say to Mr. Rundle and Mr. Rush—be a strong Catholic, be a strong whatever, I know I am, but try to figure out your own opinions before an institution defines them. If we never had anyone who “thought outside the box” (no pun intended), then both the practice of law and the Catholic Church, or any religion for that matter, would cease to exist. The only thing else I have left to write is to beg Mr. Rush to stop adding emphasis and exclamation points to everything. It’s annoying and evil!

House of Haiku: Basho’s Lessons for the Legal Aesthete

By Jeff Spann

State of the Union,
Jobs lost, debt gained, war waged,
Dubya marches on.
(The most acute, and surprisingly savvy, political criticism of Dubya’s State of the Union address came from actress Meryl Streep when she mentioned that “the two biggest problems in America are not steroids in professional sports and too many people wanting to make lifetime commitments to each other.” Exactly.)

The power of beer.
Fight cancer at the Green Leaf.
Happy news, mes freres.
(Headline Tokyo: Guzzling Beer Helps Rats Stay Cancer Free. The researchers captioning this valiant crusade acknowledge that it is premature at this time to believe the cure for cancer rests at the bottom of a pilsner glass, but we at the house of haiku are prepared to give this pronouncement our full endorsement. We are partial to any science, no matter how slipshod, promoting the benefits of guzzling beer. Here’s to you, Dr. Hajime Nozawa, and all your rodent conscripts. Cheers.)

One hundred days, nights,
The ride is nearing the end.
Gather ye rosebuds.
(These days the members of the 3L class are feeling like inmates on the eve of parole. We cannot wait to break free from this colonial big house, but we also have a slight trepidation about making our way in the world. Rest assured, most everyone will make it. In the meantime, it’s not too early to celebrate our impending liberation from Sam Sadler’s list serve.)

The state of Georgia,
Move to ban evolution,
Monkey business.
(Former President Jimmy Carter announced that “as a Christian and a trained engineer” he is embarrassed by efforts to remove all things Darwin from the Georgia public education curriculum. As a sometimes deist and soon to be attorney, I delight in the hilarity of the Peach State joining the genius of Kansas, and becoming the latest state to host a celebrity death match between the Almighty and Sir Charles. Georgia has the interesting distinction of being one of the last states to abandon the Confederate flag and one of the first to abandon all reason.)

The Lighter Side of...

by Nick Heydearich

You might have noticed the light-hearted “debate” clogging today’s paper, implicating such upbeat questions as: What is the purpose of sex? Should homosexuals be allowed to marry? Where can I get my own megaphone of crap? To increase the confusion and offend more people, yours truly has humbly volunteered his answers.

The purpose of sex
I may not be the sharpest knife in the drawer, but even I know that the purpose of sex is to sell otherwise unmerchandiseable goods, such as Christina Aguilera singles or Paul Walker movies.

Sex and marriage
If Married with Children taught us anything, it’s that there is a strong negative correlation between sex and marriage. Conservatives opposed to the biblical sin of sodomy should look to homosexual union as a surefire way to keep homosexuals from having sex.

Homosexuals want what?
Basically, certain members of the homosexual community merely want the right to lock themselves into frigid, loveless relationships for the rest of their lives just like everyone else. Contrary to what you may have heard on the 700 Club, nobody is advocating mandatory homosexual marriage. At least not yet. That’s phase two.

Marriage
There are several reasons for getting married, namely 1) Revenge, 2) To illicit sympathy, and 3) A practical joke. Wedding ceremonies are also a good occasion to speak Klingon. There are also certain benefits to marriage, such as letting your figure go and never having to clean up after yourself again. Plus, there are tax breaks.

On the bright side, the United States has the highest divorce rate in the world! The most recent data puts it at 54%. Note that America is the only nation with drive-through wedding chapels that offer refunds.

Why are so many bigoted jerks opposed to gay marriage?
At first it may seem ironic that the most vocal opponents of gay marriage also fancy themselves the champions of small, unobstructive government. Personally, I suspect that the main opposition to gay marriage is based on fear of an impending shortage of Catholic priests and women’s prison guards.

However, opposition to gay marriage is not entirely unfounded. Society has a valid interest in preventing the possibility of Jerry Falwell and Michael Savage coming out of the closet and breeding with each other. There is also a strong moral interest in picking on homosexuals and making sure they remember who’s in charge of deciding what’s right and wrong.
Don't Say "I Told You So" Until December: Resolutions for 2004

by Tim Castor

Although this forum may not be as conducive to confessing as say, the bathroom in the Real World pad, I would like to take this opportunity to get something off my chest. As much as it saddens me to say this, I have yet to put together a list of New Year’s resolutions. I realize that Glamour, Cosmopolitan, and all of the other self-reporting publications that provide our society with much-needed college advertisements would frown upon my failure to set goals to turn my frown upside down and lose those unsightly love handles (they may be unsightly, but the existence of love handles significantly decreases the prevalence of piggyback ride accidents). I guess my excuse for not composing my list of resolutions is that I simply forgot, for I do not associate Dick Clark and a large hood that one will actually clean the bathtub more frequently than in Dallas. While I was initially thrilled to see the prominent coverage that was given to the newly created Reveley Challenge Cup, I was very disappointed at the lack of accuracy in your article.

For instance, whether I am at the library studying, at home sleeping, or in an alley chasing a rooster in order to build my endurance, Legal Skills is there with me. In another vein, Legal Skills’ tough love quickly made me realize that it was time to make the switch from J.C. Penny clip-on to J.C. Penny necktie. Legal Skills not only supports me, but also looks out for those who are close to me. Most notably, Legal Skills makes sure that my pet, Mr. Hangy the hanging file, is always well fed. Because of all of Legal Skills’ benevolent conduct, I hereby resolve to abstain from mocking Legal Skills or ditching Legal Skills on Friday and Saturday nights in favor of the local discotheque.

My second resolution for 2004 is to respect my roommate, Black’s Law Dictionary. When I first arrived at William and Mary, several people told me that I should befriend Black’s Law Dictionary, as his expertise would prove useful in the course of my studies. I followed this advice, and during the first few weeks of law school career, I consulted Black’s Law Dictionary on a number of occasions. That point in time constituted the high water mark of our relationship, as I felt important and I gained valuable knowledge without suffering too many paper cuts.

Since that time, however, the ever-expanding vat of knowledge that resides in my head has grown to the point that I do not typically need the assistance of Black’s Law Dictionary. As such, he has taken on different responsibilities. Whereas he once filled the role of purveyor of wisdom, he now serves as the rudimentary device that separates my Playstation 2 from the floor, thereby preventing those unruddy buntings from ganging up on an unsuspecting John Madden (although I tend to think that Madden’s eyebrows alone could fend off any hostilities). Even though fighting the war against dust is a valiant undertaking, I realize that the purpose of Black’s Law Dictionary is of a much higher order. I hereby resolve, therefore, to consult with Black’s Law Dictionary at least once a week, possibly over some Earl Grey and Fig Newtons.

My third and final resolution for 2004 is to appreciate the law school library. I hereby resolve to enjoy the Cup’s creation to the Class of 1984 is much more than a little error. It is very troubling.

To begin, the Cup was conceived on behalf of the Class of 1983 by myself, Jim Penny and our close friend and classmate Marvin Mohney (not Mahney as spelled in the article). Contrary to your article, we are all proud members of the Class of 1983, not 1984. The challenge embodied by the Reveley Challenge Cup, while directed to ALL alumni classes and donors, was specifically directed to the Class of 1984, our rivals in many respects. Indeed, Stephen Horvath, Chairman of the Class of 1984 20th Reunion Committee, flew to Williamsburg from London, England, specifically to accept the challenge of the Cup from the Class of 1983.

The error in your article of attributing the Cup’s creation to the Class of 1984 is much more than a little error. It is very troubling.

The Reveley Challenge Cup is the beginning of what the Class of 1983 hopes will become a tradition of exceptional giving to the Law School by alumni and donors. If its purpose and meaning are successfully conveyed, the Cup should enhance a legacy that Dean Reveley has firmly begun. I had hoped that the message of the Cup would be exuberant, consistent and accurate. Only then can the Cup succeed as something more than a mere symbol or token. Only then can the Cup serve as a tool to drive and motivate alumni and donors to support the Law School in a manner consistent with its rich history. So far, based on your article, I am disappointed.

I would be happy to talk to you to explain the meaning and goal of the Cup if you would care to talk to me. In fact, the mission statement for the Cup resides with Sally Bellamy, Chair of the Class of 1984 20th Reunion Committee, to explain the meaning and goal of the Cup.
Simfonicron's Iolanthe: A Magical Production

by Nicholas Heiderstadt

On Sunday, January 25th, at William and Mary's Phi Beta Kappa Memorial Hall, the Simfonicron Light Opera Company presented Gilbert and Sullivan's comic opera Iolanthe. Simfonicron, a fully student-run joint venture between four undergraduate musical organizations, has been presenting light opera at the College since 1964. Their production of Iolanthe is wonderful.

The opera's story is that of the eponymous fairy Iolanthe, exiled from the realm of the fairy queen for marrying a mortal. Iolanthe's son, Strephon, is an Arcadian shepherd, and a seeming abductee from some unsuspecting Spenserian epic. Owing to his mixed parentage, Strephon is only a fairy from the waist up; his legs are mortal. He is also in love with Phyllis, young ward of Britain's Lord Chancellor.

The Lord Chancellor, however, would just as soon give himself his own consent to marry Phyllis, who is, indeed, the object of affection of every peer in Britain's House of Lords. The plot, in typical Gilbert and Sullivan fashion, only gets more complicated from there, involving misunderstandings about the age of fairies, multiple engagements, and a mass growing of wings. Suffice to say it's deliberately confusing and quite fun.

Director Evan Hoffman keeps the tone appropriately light. None of Gilbert and Sullivan's operettas take themselves seriously, but Iolanthe is particularly demented in its blend of pastoral fantasy and contemporary (for the turn of last century, at least) social satire. Rather than plumbing the philosophical depths of such a clash, Gilbert and Sullivan use the situation to feed its own absurdity. In their world, fairies still dance and sing, but they are honest enough to admit that they have no idea why; everyone seems to want to marry everyone else, regardless of rank, age, and even species; and the bigger the deus ex machina the better.

The company takes the opera to its illogically logical limit, treating the audience to a pleasant contrast between leaping, frantically mugging, sometimes roller-skating fairies and the fiercely stolid members of Parliament. Even the sets, simple and still until they disgorge fairies from every angle, and the lighting, which reacts with pronounced drama, choreography, direction, and musical talent find a particularly strong outlet in Simfonicron's fine cast.

The chorus is small for an opera company, but quite strong vocally. The actors also do a fine job, walking well the fine line between complete deadpan and over-the-top absurdity, and rarely milking joke lines. The male choristers also deserve particular mention for managing to keep their faces straight to a man while forming a Broadway-style kick line and wearing parliamentary robes of office. The company has also updated the lyrics of several of librettist Gilbert's satires, inserting references to everything from J. Lo to Virginia's current budget crisis. Some are show-stoppingly funny, but others, particularly the descent of a giant heart bearing a portrait of William and Mary President Timothy J. Sullivan, seem forced.

By the time you read this, Iolanthe unfortunately will have closed, but if you are interested in seeing more Gilbert and Sullivan here in Williamsburg, the New York Gilbert and Sullivan Company will be presenting H.M.S. Pinafore at the College in March. Look for more information as the date approaches.

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Other Upcoming Events of Interest:

• The Muscarelle Museum of Art presents "American Studio Glass: A Survey of the Movement" through March. Guest curator David J. Wagner will give a gallery talk about the exhibit on Sunday, February 22nd at 5:30 p.m. Admission is free.

• Innovative acoustic band Old School Freight Train performs at the Williamsburg Library Theatre Saturday, February 7th at 8 p.m. Tickets are $12 for adults, $10 for students with ID, and $6 for anyone under 16.

• William and Mary's I.T. (Improvisational Theatre) performs spontaneous comedy based on audience suggestions at the Kimball Theatre Friday, February 13th at 8 p.m. All seats $5.

• Fiddler/guitarist/banjoist/singer Bruce Molsky comes to Ewell Recital Hall on Valentine's Day, Saturday, February 14th at 8 p.m. Admission is free.

• Famed folk artists the Cantrells play at Williamsburg Library Theatre Friday, February 20th at 8 p.m. Tickets are $12 for adults, $10 for students with ID, and $6 for those under 16.

• Billy Collins, United States Poet Laureate 2001-03, will read his work at the Kimball Theatre on Wednesday, February 25th at 8 p.m. Admission is free but tickets are required.

• Canadian quintet Tanglefoot comes to the Williamsburg Library Theatre Sunday, February 28th at 8 p.m. Tickets are $13 for adults, $10 for students with ID, and $7 for those under 16.

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Classes are cancelled for two days during a raging four-inch storm. Photographs by Nicholas Heydenrych
Piscean Parables: Big Fish is Charming, but Nothing Special

by Marie Siesseger

There’s nothing terribly original about a big fish story. Primitive cave drawings of finned fantasies suggest that man has been capable of hyperbole roughly since the time he decided to record history. And despite his better efforts to prove that he’s wired differently than all of the rest of us, even the weirdly wonderful Tim Burton simply can’t shake the crutch of conventionality in his latest film, Big Fish.

Giants, witches, carneys and general creepiness notwithstanding, the travelogue-biography of Edward Bloom laid out in Big Fish plods along a decidedly pedestrian plot line. The freakish sideshow attractions (Helena Bonham-Carter makes a clean sweep in the creepy category) are really just that—the cinematic version of a smoke-and-mirrors trick Burton plays to make us think that he’s doing something that’s nifty and novel, when he really just swiped a cookie-cutter Hollywood tear-jerker about a grown man and his dying dad and filled it with kooky creepy-crawlies. Danny Devito might take the cake here.

As the tall-tale-telling father, Albert Finney does a respectable job of what he’s asked to do, which sadly isn’t much. There’s a bigger character under those bed-sheets that is just screaming for greater development, but Burton shies away from allowing the elder Edward Bloom enough time to fully open up. As a result, Finney’s performance resembles nothing so much as an audition for the role of Big Daddy in Cat on a Hot Tin Roof—you can almost hear the background bellow of: “Mendacity, MEN-da-ci-ty!” Which is too bad, really, because clearly the dying Ed Bloom deserves a grander exit. And Finney, of course, deserves a better part.

Ewan McGregor, with his oddly infectious grin, couldn’t have been cast better. Playing the younger incarnation of Ed Bloom, McGregor seems to be ideally suited for the fantastic universe of Edward’s epics. Big Fish marks the second stint in recent memory where McGregor has been a bit larger than life (he also fit nicely into the marvellous make-believe world of Moulin Rouge), a quality that probably makes him better suited for the stage than the silver screen.

McGregor’s campy caricature of a Southern boy headed out to make it in the great wide open, although admirably executed by the Scottish McGregor, seems typical of a somewhat alarming casting trend that’s been cropping up in recent releases. Since when was an accent from New South Wales considered “Southern” enough to pass for a Savannah socialite’s speech? And I mean the Savannah in Georgia, not the kind on the plains of Australia.

Not to disparage the immensely talented Kidman, or her Brit-born cinematic beau, Jude Law, but films should require a bit less suspension of disbelief, especially historical fiction flicks. Cold Mountain, NC sort of disjunctures between reality and make-believe that the movie strives for. In a more realistic context, the tangled tongues wouldn’t have worked out so neatly.

The principal problem in Big Fish is that it aims too high. In adopting a weirder-than-thou attitude towards a wholly typical story line, Burton simply took on too much, but perhaps Big Fish is a better film for it. Yes, it teeters precariously close to tearjerker status for a few moments, but the formulaic folderol from which the story has clearly been gleaned was rather elegantly ripped apart at the seams and reassembled by Burton.

If nothing else, Big Fish is quite a visual feast.