The Advocate (Vol. 1, Issue 9)
PSF Date Auction
Grosses Over $13,000

by Marie Siesseger

"Going once, going twice, SOLD!" The unmistakable cry of the auctioneer reverberated through the halls of the University Center last Friday at the annual Public Service Fund Date Auction. Over the course of the night, more than 30 prospective singles hit the stage to strut their stuff in the hope of garnering a high bid, and all were very successful. With some of the individual dinner-date packages going for more than $200, the event proved highly profitable for PSF (and perhaps some of the lucky bidders too!).

Between acts, the audience had the opportunity to browse the silent auction, which included big-ticket items such as a week at a beach house, a cruise, and Dean Reveley's coveted parking space. Professors generously opened their homes and offered lunches out on the town as part of the silent auction as well.

Emily Meyer (2L) served as the chairperson for the Date Auction. Expressing her enthusiasm at the outcome, Meyer said that "this year's date auction nearly tripled the gross revenue of last year's, due to the energetic acts and generous bidders...which made all of the hard work worthwhile." Fellow organizer Heather Johnson (2L) echoed Meyer's words regarding the planning of the Date Auction. "It's time-consuming, and sometimes discouraging (it's tough to go around asking for freebies!), but overall hugely rewarding beyond the obvious benefit of the money raised for public service.

Characterizing the Date Auction as "the most fun event all year," Johnson noted that the event occupies a special place in the Law School. The Auction shows off a multitude of talents that the traditional law school setting never reveals, including "break-dancing, cheerleading (should I say exotic dancing?), and creativity with produce!," Johnson said. Indeed, all of those abilities—and many more!—were on display Friday night.

PSF Chair Elle O'Flaherty (2L) also commented that "all of the dates were very impressive on stage, and the faculty response and willingness to auction themselves was overwhelming. We couldn't have had more support from the school." O'Flaherty commended Meyer for finding a host of new prizes such as the cruise and an additional beach house. In particular, the organizers emphasized their gratitude to the PSF volunteers, the community members who made contributions, the professors who donated their time and belongings for auction, the dates, and all of the audience members who came out to cheer (and spend!).

This year's auction grossed over $13,000, a substantial jump from the $5,000 raised last year. The addition of the Date Auction proceeds to the PSF reserves places the total for this year at nearly $30,000, which rivals the fundraising efforts of any prior year. The upcoming alumni auction should make this a record-breaking year for PSF. "Hopefully, this means that we will be able to fund more stipends than last year," O'Flaherty said. Johnson expressed similar sentiments, noting that the Date Auction "is the ultimate example of law students supporting one another—financially and otherwise."

The proceeds of the Date Auction go to the Public Service Fund's summer stipend program, which provides financial assistance for students who take unpaid internships in the public interest sector. "We expect it to be even bigger next year and have already started working on cruises, trips and beach houses to auction off next spring," Meyer said.

Scalia Speaks on Originalism

by D.G. Judy

A half-dozen protesters stood on the steps of William and Mary Hall on the evening of March 16. Inside there were twice as many Secret Service agents, and a crowd of about 1200 students, faculty, and townsmen. Justice Scalia was in town.

Scalia took the podium after an introduction by a very excited undergraduate and along lines that are surely familiar to most law students (let alone professors), made his case for originalism.

Stating that originalism was once legal orthodoxy, Scalia described in three steps the process by which the Court has "liberated itself from the text" of the Constitution.

First, he said, the Court began to give different meanings to the words in the text. Second, the Court adopted "what is called substantive due process." Scalia observed that this is "a contradiction in terms." When the Court then abandoned any requirement that its interpretation comport with the American history and traditions, Scalia said, the job was complete, and the Court was free to find new rights that the Constitution did not contain when adopted.

Scalia then turned his discussion to the now-dominant philosophy of the "living Constitution." He lamented that even schoolchildren recite this "silly, anthropomorphic" phrase when visiting the Scalia continued on page 2

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Justice Scalia Speaks at William & Mary

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Court (and wryly observed that he was apparently arguing for a "dead Constitution...a hard sell.").

Scalia said three fallacies persist about the debate between the living Constitution and originalism: first, seeing the Constitution as "alive" allows it to be flexible in the face of a changing society; second, originalism is a politically conservative ideology; and third, the changes wrought by living-Constitution judges have led, and will lead, to ever greater freedom.

To the first, Scalia replied that the living Constitution was actually inflexible; each issue it resolves by a new interpretation of the Constitution is removed from the democratic process. The second idea is a fallacy, Scalia said, because under the "living" theory both liberals and conservatives will turn the Constitution to their ends, given a chance. Last, referring to Maryland v. Craig (allowing some child witnesses to testify in criminal cases via closed-circuit TV) and the Sixth Amendment, Scalia said "the living Constitution can eliminate rights as well as create them."

Though quite substantive, Scalia's speech was by no means dry (have pity on my summary!). Indeed, the Justice revealed himself to be a dynamic and engaging speaker.

By turns impish, impassioned, sarcastic and sincere, Scalia drew laughter and applause at many points. Some of the better one-liners of the night:

(On originalism's historicity; observing that people sometimes ask him how long he has been an originalist):

"And it's as though they were asking me how long I've been eating human flesh...."

(On the "evolving standards of decency that mark the progress of a maturing society"):

"[I suppose] societies only mature, they never rot."

(And later, on judges' dubious fitness to determine those standards):

"I certainly don't [know what they are]; I'm afraid to ask!"

(On his regrettable duty, given the original meaning of the First Amendment; to vote with the majority for one's right to burn the flag; to prolonged applause):

"I do not like bearded, sandal-wearing weirdos who go around burning the flag."

(On his very conservative wife's reaction to the flag-burning decision; illustrative of the hard days originalist judges sometimes have):

"I came downstairs and the paper was open on the table [to the story about the decision], and she was standing there, cooking breakfast, humming 'Stars and Stripes Forever...I don't need that."

(On living-Constitution judges' blissful freedom from such unpleasantness):

[They come home and get asked how their day was, and they say]

"Great! The Constitution meant just what I thought it ought to mean."

(On whether he planned to become a Supreme Court Justice; to much laughter):

"I haven't calculated many things in my life; if I had, I wouldn't have nine kids..."

(On the marvelousness of his wife; softening, perhaps, the ribaldry of the previous comment):

"I take care of the Constitution and she takes care of everything else."

(On the danger [of paying federal judges too little] that the federal benches will be filled with people without families to support):

"We will have] people less like the kind of people we want to have there, [like] heady-eyed weirdos who don't need money, [who] live on cereal and bubblegum."

(On what advice he could give to the young people present; quoting the aged Lord Talleyrand, whose wisdom was sought by an aspiring young diplomat):

"Young man, never stand when you can sit; and go to the toilet whenever you can."

(The serious advice Scalia then gave was for all present to read the Federalist Papers — which all law students, of course, have already done...)\n
Despite the comedy, there was a slightly tragic tone to Justice Scalia's message. Having described the ill effects he sees in the living Constitution theory, particularly the politicization of nominations to the Court, and resulting damage to the Court's legitimacy. Scalia declined to offer an "upbeat" closing, saying he sees little chance of a correction in the near future, and "we are in the early years of this and already the evil consequences are being felt."
The annual Environmental Law and Policy Review Symposium hosted on March 26 and 27 at the Marshall-Wythe School of Law brought together diverse participants from throughout the country to discuss "the role of international law and legal institutions in furthering the goals of conservation of the environment and protection of human rights," as the symposium description reads.

There is no better synopsis that could be prepared on the objectives of the symposium than ELPR's own press release: "Today more than ever, the global community has come to recognize that environmental destruction has an alarming and significant effect on humankind. The impact of the environment on human rights is boundless; women, indigenous groups, and children are but a few of the vulnerable groups that directly experience the adverse effects of environmental degradation. Thus, the goal of the Symposium is to provide a broad debate and discussion on the cutting-edge issues that are associated with the dynamic relationship that exists between these two interrelated bodies of law."

Three separate panel discussions were conducted through the course of the two-day symposium. The first panel discussion, carrying the title of the symposium, served as a wonderful introduction to the topic of linkage between the environment and human rights. Participants included Mr. Scott Pasternak, Assistant Corporation Counsel of the Environmental Law Division in the New York City Law Department and former attorney with Earth Watch, Professor Ved Nanda, Thompson G. Marsh Professor of Law at the University of Denver, Professor Linda Malone of the College of William & Mary, and moderator Mr. Pep Fuller, Former Counselor of International Affairs of the United States Environmental Protection Agency.

Friday's afternoon panel entitled "Linking the Environmental and Human Rights: Legal and Cultural Issues Facing Native American Populations" included panelists Mr. Russel Lawrence Barsh, Director of the Center for the Study of Coast Salish Environments, Ms. Suzan Shawn Harjo, President and Executive Director of the Morning Start Institute, with William & Mary's Adjunct Professor Christie Warren moderating.

Saturday morning's panel discussion entitled "Linking the Environmental and Human Rights: Select Issues in South America and Beyond" featured panelists Günther Handl, Eberhard Deutsch Professor of Public International Law at Tulane, Professor Luz Nagle of Stetson University College of Law, and Mr. David Bookbinder, Washington Legal Director of the Sierra Club, with moderator Professor Linda Malone. The ELPR should be commended for their selection of participants with such diverse and stellar academic and professional backgrounds. It speaks volumes to the reception of the ELPR Journal to attract this quality of participants and authors.

The papers presented in the symposium this year will be published in the ELPR Journal during the next academic year. The space available here is unfortunately too short to devote the time to each of the topics as they deserve, but perhaps it will be sufficient information to generate interest in the 1L class to rank ELPR in the Joint Journal Competition. Be on the lookout for the real meat of the discussion when the volumes are printed next year.

BLSA Clothing Drive to Benefit Needy Families in Williamsburg

The BLSA's Janelle Lyons (2L), Leasa Woods (2L), and Kendra Arnold (3L) are pictured above with the winning contribution to the Clothing Drive, donated by the Legal Skills firm of Moliterno, Fox, Maddox and Pierro. The drive was organized by Janelle Lyons and will benefit families in the Williamsburg area.

ATTENTION!

WHO: You or anyone who wants to keep it real.

WHAT: Working for Housing Partnerships in low income Williamsburg neighborhoods with non-skilled, manual labor (the soul-refreshing kind).

WHEN: Saturday, April 10th from 8am until about noon.

WHERE: Meet at Housing Partnerships on Richmond Road by the Goodyear Tire Garage.

WHY: A 100% guarantee that there is nothing more important you could be doing on that day.

HOW: Contact Sada (srandr@wm.edu) or Joe (jeashm@wm.edu)
The Professor Grover Interview

by Nick DePalma

Some of the more discerning readers may or may not have realized that all of my interviews thus far have been with male lawyers. Thus, it is particularly fitting that this interview center not only on a female lawyer, but a female lawyer who actively fights sex discrimination (indeed, all kinds of discrimination), Professor Susan Grover. Professor Grover agreed to meet with me on relatively short notice and provided me with an equal opportunity to get the female perspective on being a lawyer, as well as the chance to hear some of the more colorful bits of her history.

The following is a transcript from our conversation.

Adv: Before law school, if you could have changed one aspect of American society, what would it have been?
G: I perceived the biggest problem in American society to be child abuse or oppression of anyone who does not have the power to fight back.
Adv: Why?
G: Because I observed it, and saw it destroy people’s lives.
Adv: After legal knowledge, same question.
G: I think what I most want to change is the problems spawned by poverty. Violence is one result of poverty, although of course not restricted to those living in poverty.
Adv: Would you mind enumerating those problems?
G: Poverty is really freezing a whole class of people from being able to improve themselves, to get a meaningful role in society. Poverty is keeping a lid on the development and progress of a very large group of people. It is hard to move forward in your life if you have no money and no help.
Adv: What are ways that we could address that issue as a society?
G: Improve public education for all children. The whole test orientation I think is defeating. Also, there are a lot of children in the public school system whose parents are not able to give needed parenting, and I don’t think that as a school system, Virginia is responding to all of that problem. I’ve been in public schools in inner cities in Virginia where very small children need attention that they’re not getting. And we need to find ways for more of our citizens to engage in work that is meaningful, dignified and earns a living wage.
Adv: Speaking of children, what about your early childhood do you remember most favorably?
G: I remember putting on plays with friends, creating shows and plays...
Adv: Was this Shakespeare?
G: No, we wrote the scripts.
Adv: Are you familiar with To Kill a Mockingbird?
G: It was more doing dances, and pirouettes and songs, probably imitating Ed Sullivan.
Adv: Was Ed Sullivan a childhood hero of yours?
G: He was a hero of mine once The Beatles came into existence, because he introduced us all to The Beatles.
Adv: Did you have any other childhood heroes or heroines?
G: Florence Nightingale. [A famous nurse in the Crimean War who attended to soldiers... See http://www.florence-nightingale.co.uk/fl02.htm for more information, Eds.]
Adv: What were your childhood ambitions?
G: I wanted to go around saving people. When I was little I wanted to have an orphanage, and I wanted to be a nurse, and I wanted to take care of poor children who didn’t have anyone to take care of them.
Adv: At what point did that change into becoming a lawyer?
G: Well, it’s not completely gone, and I would say that for most of my adult working life, I have found little ways of doing those kinds of altruistic things, and sometimes I can call that my work. I don’t think I’ve abandoned that, I just think that I’ve tried to take it along with me and use it as an attitude. I try to have that attitude even now...
Adv: Do you have any interesting stories / were you ever arrested?
G: I haven’t been arrested. But after college I lived in a house in the woods near Hollins University (then it was “College,” and I hate that they have changed the name), that had no glass in the windows, nor running water—it did have electricity—but those were my hippie days. I was a hippie for a couple of years after college, and the Vermont thing was a couple of years after that. I was living in Vermont in a little black trailer, working for the railroad.
Adv: Were you hammering spikes?
G: Yes—tamping ties... I was a gandy dancer. [n. slang: A railroad worker. Eds.] I traveled around a lot in this country in my hippie days. I went west and worked as a wait-person... Hitchhiked across France in 1971—I lived there for a year and studied there.
Adv: What was living in France like?
G: Very educational. It broadened my perspectives. I learned more about political life, because in France the people had more interest in politics than I was accustomed to in this country. I was there right after the ’68 riots—student riots in France where they were protesting a lot of different kinds of oppressions. I remember there were a lot of Socialists. A lot of people didn’t like capitalism at all and felt that the governing structures in the developed world were very oppressive and needed to be reformed.
Adv: Do you have any “During Law School Stories?” Paper Chase Stories?
G: I married my future ex-husband during law school. I paid and worked my way through law school.
Adv: Okay, let’s switch gears and try some favorite things, starting with food.
G: Cookies (not Oreos)... Homemade chocolate chip cookies.
Adv: Music?
Adv: Books?
G: It used to be Larry McMurtry. I read fiction and then I forget it immediately after I read it. Right now I’m reading “I Don’t Know How She Does It,” and my next book is going to be “Nice Girls Don’t Get the Corner Office,” by Frankel.
Adv: Pets?
G: My little dog Charly is deceased. In fact the third year class are well aware of Charly, because they were with me in Civil Procedure during 9/11, and then when Charly died... it was a rough semester. So, I have no pets now, and don’t intend to get any. I am living pet-free.
Adv: Movies? [Also, just randomly, Professor Grover hasn’t seen The Goonies, Eds.]
G: Slam and Once Were Warriors. Slam is about race discrimination and poetry, and Once Were Warriors is about triumph in the face of domestic violence. I also like Ghost Dog.
Adv: Do you have any current role models (as opposed to childhood heroes)?
G: Actually, I kind of admired Carol Burnett. I thought she was very funny. There’s not one person out there who has everything... My son, and my students for example, teach me all kinds of things that I

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IBRL Presents Debate on Originalism

by Adrienne Griffin

Originalism was in the air around William & Mary during the middle of March, 2004. With Justice Scalia’s visit still fresh in many law students’ minds, the Institute of Bill of Rights Law presented a debate on Monday, March 22 entitled “Should we Interpret the Constitution According to the Understanding of the Framers?” Defending originalism, and speaking first, was W&M’s own Professor Allan Meese. In the other corner was Professor Michael Klarman of the University of Virginia. The tone of the debate was generally serious, yet also somewhat light-hearted, with Klarman noting that he and Meese had debated on the very same issue on several previous occasions. After Meese and Klarman gave their respective views, Meese was granted time for rebuttal. This was followed by a question and answer session with the audience.

Near the beginning of his presentation, Meese declared that “if you agree with Marbury v. Madison, you have to be an originalist.” He further explained that originalism does not search for “the subjective thoughts of the Framers,” but rather operates on the assumption that the Constitution is binding and permanent. Meese extolled originalism as the only way to prevent judges from becoming “philosopher-kings” who are not checked in their decision-making. He also challenged those who reject originalism to propose an alternate theory of judicial review, something Meese contended they have failed to do. Meese next anticipated one of Klarman’s objections to originalism by discussing dead hand control. Meese asserted that we allow dead hand control in the form of statutes that have been in existence for decades and that we have the democratic process of constitutional amendment to allow for living hand control when desired by the people. Finally, Meese summarized his support for originalism by stating that a lack of originalism has contributed to the decline of government by the people and the over-politicization of the judiciary.

Professor Klarman began his argument by acknowledging that originalism promotes the virtues of judicial restraint and democratic decision-making. He agreed that originalism “unites us with our common intellectual ancestors” but countered that there is an “exclusory aspect to this commonality.” As a further argument against originalism, Klarman noted the Framers “were pretty much writing on a blank slate” and because they did not have the benefits of experience, some of their choices did not work. For example, Klarman noted the Framers thought presidential elections would be decided in the House, rather than by the electoral college and that they also envisioned the United States as a country without political parties. Although Klarman acknowledged constraining judges is a “real virtue” of originalism, he also called dead hand control a “huge offsetting vice” and an “enormous problem.” He cited the difficulty of amending the constitution as evidence of this control, seen recently with the failure of both the Equal Rights Amendment and an amendment that would prohibit flag-burning. Finally, Klarman asserted there are no originalists on the Court.

Professor Grover Speaks

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didn’t use to know about how to treat people, and how to be open minded, and things like that.
Adv: What is your life outside the law?
G: I’m trying to get more of it. I like to be with my friends, I like to be with my family, I like to be outside—hiking, rafting, I like to swim, I like to go to the movies, I like to go camping. I like nature. I also do yoga all the time, but that’s more like water, like staying alive, not like recreational activity.
Adv: Any up-and-coming law review articles?
G: Right now I’m working on problems related to sexual harassment, and when the employer should be held responsible for things the supervisor does. I have been working on cases where the supervisor has sexually harassed someone so badly she feels forced to quit, but the supervisor does not technically fire her, and the company can escape liability. The Supreme Court is listening to a case on this issue next week.
Adv: Okay, almost done. Anything you would like to highlight for law students?
G: I would say that I really, really, really love my work. There is no part of my work that I don’t love. I just hope that every student who reads this, when they set out to use their law degrees, keeps looking until they find work they love. You’ve got all the time in the world, and the main thing is to move forward, try to get rid of the parts of your job that you don’t like, and to get more things that you do like.
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And that’s it for another Advocate Interview...
A Guiding Light You May Have Missed: William T. Coleman, Jr.

by David Byassee

On March 17, 2004 our faculty presented William T. Coleman with the Marshall-Wythe Medalion, an honor annually bestowed upon an outstanding leader of the legal profession. While visiting to receive this award, Mr. Coleman joined students for an informal luncheon prior to delivering a lecture entitled "Years 2004-2009: Challenges."

The Marshall-Wythe Medalion is no modest award; it has previously been bestowed upon multiple Supreme Court Justices. However, after learning that Mr. Coleman was awarded the Presidential Medal of Freedom, "the highest honor given to civilians," by President Clinton, I could not help feel as though ours was a humble token of appreciation.

Living a life one commentator defined by the word "achievement" in both the private and public sectors of the law, Mr. Coleman exemplifies the "citizen lawyer" the Marshall-Wythe School of Law tries to inculcate. Not surprisingly, one of the first things he did when meeting with students was to urge that the wonderful opportunity of attending law school be taken advantage of. Crediting law for allowing the peoples of the world to live in a civilized manner, Mr. Coleman emphasized that general understanding of a broad range of subject matter was a prerequisite to vision capable of coping with the unfathomable challenges our future holds.

Much like the rest of his life, Mr. Coleman's lecture followed his bark with bite. Peering down from a bird's eye view across the spectrum of American life, his lecture began by explaining a great generation of public servants is reaching retirement age and needs to be replaced with people who have similar zeal, talent, and commitment. Next tackling the social security system, he explained that the system made more sense at the time of its inception than it does now, but due to the powerful senior vote it has remained substantially the same through times of social change. Moving to education and race, Mr. Coleman discussed the problem of deteriorating school districts in urban and rural communities, and noted that the rate of blacks graduating from college today is only twenty percent of those incarcerated. "Race is still a burning issue in the United States," said Mr. Coleman, explaining part of the problem is that the black middle class has failed to reach out to the urban poor. That said, he pointed to how the nation has progressed to where the President is advised in matters of national security by Colin Powell on his left and Condoleezza Rice on his right.

Shifting focus to labor forces, Mr. Coleman shared his concern that unionization was falling by the wayside, and although that might be the way of the future, there appears to be no clear focus on the future role of the American worker. On the topic of globalization, he stressed that the developing global community is creating change in the landscape of politics. That being so, Mr. Coleman urged for diversification and internationalization of education. Referring to comments by Bill Gates, he emphasized that within ten years the technology of today will look like horse and buggy, which will create unforeseeable challenges.

The theme of generalization as opposed to specialization was captured in a metaphor: a botanist lost sight of the forest while paying too much attention to the oak tree. The expectation is that a diverse educational background will enable the public to engage in and benefit from debate on the merits, and not merely be moved by soundbytes. The final message carried by this monumental man who spoke with a grandfatherly gentleness was "think big!"

News

BLSA and LGLA Host Student Discussion

by Nicole Travers

"Dr. King himself said that 'injustice anywhere is a threat to justice everywhere.' That's why King said he would never be satisfied 'until justice rolls down like waters and righteousness like a mighty stream.'" — Keith Boykin, President of the National Black Justice Coalition

The LGLA and BLSA of William and Mary co-hosted a mediated discussion session entitled "Examining the intersection between racism, sexism and homophobia." The two groups were joined in hosting by the bus. They are as privileged a group as any. To compare their attempts to affirm deviant sexual conduct to the legitimate discrimination claims of true minorities is a sham. The student group discussed the benefits and disadvantages of comparing the two movements, for instance the air of legitimacy it would give the gay rights movement to people who are undecided in their views of homosexuality, versus the possibility of "turning off" the black community, and risking further opposition from them.

The group also discussed the embracing of "whiteness" in the gay community, and the consequent exclusion of gay blacks and other minorities from the movement. Students postulated that one element of this division is the assumption that the racial civil rights movement is "over," and race is no longer a focus on minorities within both groups.

In the first discussion group, one of the focuses was the legitimacy of comparing the struggle for gay rights to the racial civil rights movement. At first glance, there are similarities—for instance hate crimes targeted at both racial and sexual minorities, and "unconscious discrimination" against both groups. However, equalizing the two movements may stir antagonism. Gayle quoted former Family Research Council Director of Cultural Studies Robert H. Knight, who stated "Homosexuals have never been forced to sit in the back of the bus. They are as privileged a group as any. To compare their attempts to affirm deviant sexual conduct to the legitimate discrimination claims of true minorities is a sham." The student group discussed the benefits and disadvantages of comparing the two movements, for instance the air of legitimacy it would give the gay rights movement to people who are undecided in their views of homosexuality, versus the possibility of "turning off" the black community, and risking further opposition from them.

The students who attended the discussion session were very positive about the experience. "Regardless of whether or not we all agree, it's important to understand divergent opinions and the diverse life experiences that influence them. The discussion session provided us with such an opportunity," said Sarah Baker.
Prof. Ved Nanda: The Right to a Healthy Environment

by Jennifer Rinker

Probably no other presentation of the day better captured the objectives of the Environmental Law and Policy Review annual symposium in demonstrating the convergence of human rights and the environment than Prof. Ved Nanda’s International Tribunal’s Recognition of the Right to a Healthy Environment.

Professor Nanda addressed whether the formal recognition of a right to a healthy environment will further the goals of both human rights and environmental protection. Pursuing environmental degradation cases through the avenue of existing human rights protections already functions and appears to be the better practical application of resources than pushing for the declaration of a right to a healthy environment. Efforts to garner the recognition of the right to a healthy environment per se have been unsuccessful. The Rio Conference in 1992 was one such example where representatives were urging for that recognition. Ultimately, the Conference compromised in stating that human beings are at the center of concerns of sustainable development and are entitled to “harmony with nature.” This is only one of several instances Professor Nanda outlined where this attempt has largely been unsuccessful.

In contrast, however, Professor Nanda highlighted numerous cases where clever lawyers have utilized the existing human rights protections under various separate articles of the International Covenant on Civil and Political Rights to gain a judicial guarantee to a fair trial, but have stretched the horizons to include environmental harms and their adverse impacts on life. In addition, the United Nations Human Rights Committee interprets Article 27 very broadly. Article 27 reads: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.” Under the broad interpretation, therefore, indigenous groups in Finland, for example, challenged a governmental decision to permit a stone quarry that was culturally significant to that group. Although the Committee rejected the claim and provided great deference to the government in its decision on the grounds that the amount of quarrying to date was not yet a violation, the Committee did warn that if the impacts increased to the level amounting to a denial of culture, it would be in violation of Article 27.

In Brazil, the government was attempting to redistribute indigenous lands in the Amazon, and the Yanomami Indians challenged this as a right to property and cultural traditions and exercises. The process of boundary demarcation spurred violent encounters and the tribes have been exposed to diseases. The Yanomami claimed significant intrusion into the cultural lifestyle of the tribe. (As an aside and not mentioned by Professor Nanda, those interested in the Yanomami plight should read Darkness in El Dorado: How Scientists and Journalists Devastated the Amazon, by Patrick Tierney.) The Committee determined that the deforestation and introduction of foreign diseases as a result of the environmental harms did constitute a threat to the right to life and rights outlined at Article 27.

In Ecuador, oil development projects had similar impacts to the environment and to the indigenous life and way of life. The tribe appealed to the Inter-American Commission claiming Article 27 violation. Among the numerous violations was the disposal of waste products into open pits. The Commission held that severe environmental pollution may impose a risk to health and life and determined that the government has a duty to protect.

In Norway, an indigenous group claimed a proposed hydroelectric project would flood traditional grazing lands. Here the Committee held that there was no Article 27 violation because the land involved was too small and deference was given to the government in determining the necessity of the project to the well-being of the country. Professor Nanda noted that gypsy bands are beginning to bring similar right to culture cases against governments.

Professor Nanda concluded the discussion by acknowledging that there is a remedy for relief for environmental harms that affect human life and human ways of life. Environmental issues can be addressed and corrected through the application of human rights protections. Perhaps pursuit of a formal recognition of the right to a “healthy environment” should be abandoned and efforts focused globally on the mechanisms in place that have largely proven successful, the constructive recognition of right to healthy environment through the ever broad interpretation of other formally recognized human rights.

Student Discussion

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(1L) Both Gayle and Callins expressed their hope that they would hold more sessions as the semester comes to a close in order to promote a greater dialogue between their respective student groups. When they brought the two discussion groups together at the end of the session, they again quoted Keith Boykin: “True, the civil rights movement is not the same as the gay rights movement. Blacks are not the same as gays. And racism is not the same as homophobia. But that’s not the point. No two groups suffer discrimination in the same way. Anti-Semitism, for example, differs from sexism, both of which differ from racism. But we don’t require Jews and women to prove their similarity to the black struggle in order to be protected by the law. In the end, it matters not whether they are similarly oppressed, which was first oppressed, or whether they are identically oppressed. What matters is that no group of people should be oppressed.”
Cheyenne & Hodulgee Muscogee Leader and Activist Suzan Harjo at ELPR Symposium

by Jennifer Rinker

The afternoon session of the ELPR annual symposium discussed legal and cultural issues facing Native American populations in the United States. Ms. Suzan Harjo has not only a long history of successes in the protection of Native American interests and sacred places, she has a personal and traditional interest as well. The perspective she provides as a Native American woman is one that few have the opportunity to hear. William & Mary students were honored that she shared what traditional and cultural knowledge she was able to, recognizing that the common and exclusive knowledge of those values and beliefs are a very treasured aspect of Indian existence.

Ms. Harjo began with a poignant story about her father’s experience in the Anglo school system. Unfortunately, it is impossible to do justice to the story-telling by attempting to recreate it here. Suffice to say that her father’s experiences with not being able to speak his own language in the school cafeteria forever disabled his ability to have a conversation while at the dinner table. Being beaten up for asking for the salt because he asked for it in his Indian language left a permanent scar. The same sort of silencing is threatened by limiting or denying access to Indian sacred places for the practice of indigenous religions and other traditional cultural practices.

Ms. Harjo warned that sacred places are being desecrated and destroyed while some others are being preserved because of protective measures actually instituted by some responsible Federal agencies or because Indians have regained property rights to the areas. Regardless of ownership, the Native American interest is to safeguard the conditions and access to the sacred places. Ultimately, it is the traditional practices that must survive. The history of generational religious oppression and assimilation through mandatory English schooling and Indian boarding schools, among scores of other government sanctioned programs, Ms. Harjo says, has effectively resulted in an almost internalization and perpetuation of anglicized Indian culture. Further limiting access to the sacred places prevents elders from themselves practicing their religions and, more importantly, teaching the religions to the next generations.

Ms. Harjo then identified for the symposium participants a number of sacred places now protected through her diligent efforts and the efforts of other interested groups, including the National Trust for Historic Preservation. Ms. Harjo also identified sacred places that are unfortunately still endangered by development projects or to which Indian people are not allowed access.

Bear Butte (Holy Mountain) in South Dakota, for example, has a personal significance for her Cheyenne ancestry, and upwards of sixty other Nations use Holy Mountain traditionally. The Cheyenne-Arapaho Tribes actually own 120 acres on the mountain because a local land owner offered the Tribe right of first refusal in the sale. The U.S. Department of the Interior ended up paying $1000 per acre in the name of all of the people who have used Bear Butte for traditional religious purposes. That notwithstanding, encroaching development, like Sturgess, South Dakota, in the foothills of Bear Butte, has resulted in a drop in the water table that may eventually cut off mountain spring flow crucial for the growth of traditional plants collected from the mountain.

Bear Medicine Lodge, which most non-Indians know as Devil’s Tower, is under the jurisdiction of the Park Service. The Park Service attempted to limit climbing of Devil’s Tower during the month of June, when many indigenous ceremonies are held. The Park Service was sued as a result of that voluntary prohibition, but it was ultimately successful and the prohibition remains in place.

Interestingly, the Vatican has actually weighed in against claims by Native Americans that Mount Graham in Arizona is a sacred place. In response to efforts to construct large telescopes on the mountain, the Vatican formally declared that, in its opinion, Mount Graham was not a sacred place.

Rock art sites on Bureau of Land Management lands in California were previously in danger from a Canadian gold mining operation. As a result of the advocacy actions by and on behalf of Native Americans, California passed legislation allowing anyone to mine as long as all reclamation was paid for and the location was returned completely to its original condition. Ms. Harjo summarized. Although this has temporarily protected the rock art panels, the Canadian company has now filed a lawsuit asserting Chapter 11 violations of NAFTA.

Other parts of the country to which Native Americans place religious or cultural significance include the Everglades, Glacier Park, Chaco Canyon, Haskell Baker Wetlands in Kansas, Petroglyphs National Monument, Yellowstone, Ocmulgee (the largest archaeological and burial site in North America), and other environmentally delicate places that are actively used and currently all under threat from pollution, roads, proposed mining, and other developments.

As Ms. Harjo noted, several sites have been adequately protected, but Indian people are still being prosecuted for accessing their sacred places to practice their religion and traditional ways of life. Ms. Harjo embraces her role as an optimistic Indian woman, and points to the continuing efforts within the United States government and its laws to protect and gain access to sacred sites.

Ms. Suzan Harjo

Ms. Suzan Shawn Harjo is Cheyenne & Hodulgee Muscogee who has helped reclaim more than one million acres of land and numerous sacred places for Native Peoples. Key federal Indian law she has developed include the 1996 Executive Order on Indian Sacred Sites, the 1990 Native American Graves Protection and Repatriation Act, the 1989 National Museum of the American Indian Act, and the 1978 American Indian Religious Freedom Act. Ms. Harjo is President and Executive Director of The Morning Star Institute, a national Indian rights organization founded in 1984 for Native Peoples’ traditional and cultural advocacy, arts promotion and research.

Morning Star was the sponsoring organization for The 1992 Alliance (1990-1993) and for the initial lawsuit, Harjo et al v. Pro Football, Inc., regarding the trademarks and name of Washington’s professional football team. The plaintiffs won the case in 1999 and the case is currently on appeal. Ms. Harjo is a Columnist for Indian Country Today, the leading Native American newspaper, a Founding Trustee of the National Museum of the American Indian (1990-1996), Guest Curator of the Peabody Essex Museum, Honorary Guest for the 2001 Tulsa Indian Art Festival, a 1996 Sanford University Visiting Mentor, a 1992 Dartmouth College Montgomery Fellow, and the first Native American person selected for the honor by Stanford’s Haas Center for Public Policy.
My Experience as a Bone Marrow Donor

by Ward P. Griffin

READING THIS MAY HELP SAVE SOMEONE’S LIFE

With the annual Bone Marrow Drive approaching, I would like to share my experience with you in the hope that you will take a few minutes out of your day to register with the National Bone Marrow Registry. You see, last year I was contemplating whether to finally sign up, something I had intended to do for quite a few years. Luckily, I signed up. As fate would have it, within months of joining the Registry, I was selected as a match for someone in need and spent a good portion of my Winter Break going through the process of donating. The rewards of the experience far outweighed any inconveniences.

Before telling you about my experience, it’s important for you to understand the stakes that are involved. Growing up in Tampa, my little sister was diagnosed with cancer (at age 4) and spent roughly three years in and around hospitals – having surgeries, enduring intensive chemotherapy sessions, and generally trying to survive when so many kids around her were dying. Spending a good part of my early teenage years at All Children’s Hospital, I had the privilege of meeting a great bunch of kids that had trouble mustering the energy to walk. The lucky ones survived. Many of them did not. And it seemed that each time we visited the hospital, we would learn of another tragedy.

The simple fact is many cancers are treatable if caught in time. Leukemia — and other diseases like it — are a different story. In order to have a chance, doctors must find a suitable donor match among the many individuals on the Bone Marrow Registry. That’s where you come in. YOU can help save a life.

Getting onto the Registry is EASY. At the scheduled times during the upcoming Bone Marrow Drive, simply approach the booth set up at the Law School, fill out the questionnaire, and give a small amount of blood. The entire process takes maybe 30 minutes. You will receive an identification card and some additional information. That’s it. You may never get the call. If you’re lucky, however, you will be notified, maybe in a few months, maybe a few years, that you are a match for someone in need.

Here’s how it works. First, the National Marrow Donor Program (NMDP) must find a suitable hospital for the donation to take place. No hospitals in the Hampton Roads/Richmond area have the capabilities, so the NMDP will attempt to schedule your donation to coincide with a trip to visit your family or, perhaps, will fly you to a hospital of your choice. Once that has been arranged, you must have a physical, which includes blood tests, chest X-rays, and an EKG. Such testing may be done at MCV in Richmond.

Once everything checks out, you will proceed directly into the donation process. Over the 4-5 days leading up to the extraction, you will be required to receive shots of a medication that stimulates your body to produce additional bone marrow. You will experience one mild side effect: after the first couple days of injections, your bones will begin to ache a bit (though that can be easily cured with Advil). That aching fully subsides within one day of completing the donation.

There are two different ways to donate. The newest — and least intrusive — means of donating involves extracting peripheral stem cells, which is how I donated. This is an incredibly easy and relatively painless procedure. For approximately 6-8 hours (over a span of 1-2 days), you will be hooked up to a machine that withdraws blood from one arm, extracts the stem cells, then returns the remaining blood to your body through your other arm. It’s very similar to giving plasma and no more painful than giving blood. This is an outpatient procedure, so you will not be required to stay overnight in the hospital.

You may be familiar with the old way of extracting marrow, which involves pulling bone marrow directly from your bones, typically in the lower back/pelvic area. Due to the use of anesthesia, donors undergoing this procedure are required to stay in the hospital (no more than 2 days, if memory serves). Please do not be frightened off by that statement! Though that possibility may seem frightening, it is important to note that doctors increasingly are requesting stem cells rather than marrow (the center at which I donated stated that approximately 90% of the requests they receive ask for peripheral stem cells). The likelihood that you would be required to undergo this procedure is slim.

That’s it. Besides some follow-up blood tests to make sure that your body has returned to normal, the process is completed. The mild inconvenience that you endure allows another human being to have a fighting chance at survival. In my situation, the recipient was a 52-year-old woman suffering from myelodysplasia, a precursor to leukemia. I don’t know who she is, but I can assume her importance to those in her life. For all I know, she’s a wife, a sister, a daughter, a mother. At last check, the procedure went well and she is recovering, though it is too soon to know her long-term prognosis.

And that might be the greatest "fringe benefit" for the donor. As a donor, you will receive periodic updates on the status of the recipient. You will have an opportunity to follow the recovery of the recipient after the donation. After one year has passed, if both parties consent, the NMDP will release contact information to the donor and recipient, allowing for the two individuals to communicate with each other (and possibly meet in person).

But even if such contact never takes place, you will know that you gave that person a fighting chance at survival. And that’s what it’s all about.

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[Ed note: If you go during the last hour of the bone marrow drive, it takes all of ten minutes.]

BONE MARROW DAY

Law students will be able to put themselves into the National Bone Marrow Registry on April 14th all day in the Lobby. All it takes is a prick of the finger, and you will be entered into the registry. The registry is used to find potential bone marrow donors for leukemia, cancer, and other blood disorder sufferers. So please take a few minutes and help this immensely important cause. Additionally, if you want to help with the Drive or have questions about the registry or the Drive, please contact 3L Jeff Thurnher at jstthur@wm.edu.
Sex and the Law

by Shannon Hadeed

Spring is in the air, birds are chirping, and all else of that
cheesy Hallmark nonsense is polluting my generally jaded life. So,
as spring is the time that most animals go into heat, and school gets
out forever soon, I figure I should respond to two apt inquiries I
have received. The first one is for break-ups and the second for new
loves, so that I don’t alienate those glazy-eyed people who are getting
some action on a regular basis for the first time in years. Finally, I will
be closing with advice to men on how not to pick up women outside
of the law school where the “Aren’t you in my Contracts class?” still doesn’t work.

What is the appropriate thing to do about your stuff and your ex’s stuff after the break-up? Well, as anybody who has taken a property class knows, gifts are gifts. But, contracts makes it clear that if there was an implied contract, the gift might have been given for consideration (e.g. marriage or sex). So, unless it’s an engagement ring, even if you broke up today and yesterday was Christmas, it’s completely inappropriate to ask for your gifts back. You may offer to give them back, but it is not required.

As for all the rest of the stuff that has co-mingled at residences, such as boxer shorts, t-shirts, skirts, books, cd’s, pots, pans, toys, you should collect it all and give it back; you can ask for it back but don’t expect to always get it. The hurt party has a propensity to “lose” or “forget” to where your cd collection and favorite clothing items have disappeared. If the break-up was bad, I recommend that you put your ex’s stuff in a pile in the back yard and torch it. The nights are still cool enough that you could roast some marshmallows.

But if there is a whole lot of stuff, burn in small amounts to avoid the arrival of fire engines. Oh, and it’s no fun if nobody knows about it, so take a picture, smile big, and show it to your ex. Do not give it to your ex, because if you end up in court that could be used as evidence. Otherwise, you can just claim you have no idea what they are talking about. Another option is to hold their items for ransom in exchange for yours. As for that ring ladies, you know what I say - give back the ring, but keep the diamond. And for those of you divorcing, get a lawyer.

We just got together a few weeks ago, and it’s her/his birthday this week. What do I do? For both sexes, dinner at a semi-nice or really nice restaurant is always a good option. You could cook for them as well which always goes over well with the ladies. But it’s clear that, in addition, you are going to have to break down and get a present. An exquisite bouquet may get men off the hook, but there are some parameters. Don’t get flowers from a grocery store or any other place that sells them in clear plastic wrap. Go to a florist, and trust me, it’s not as intimidating as it seems. You can get a smaller bouquet that is much more attractive for the same price, and it shows a foresight that grocery flowers don’t. Also, try not to stick with the standard dozen red roses. Get a mixed bouquet. Or fire and ice roses. You can always ask the florist for advice; they are good at it, and it’s their job.

As for presents, for both sexes, you should keep it small. A cd, dvd, book, or something you think they need. Don’t get a gift certificate; nothing says impersonal like a gift certificate. The only way to get away with a gift certificate is to get one for a specific service, like a manicure or massage, or to one of their favorite spots (e.g. Wawa or 7-11). You don’t know a lot about them, but show what you know. Don’t get boxer shorts or lingerie. Get a card, and write something in it. Men, for some reason, feel that just signing their name is adequate. Let me dissuade you of that delusion. There is nothing worse than just signing your name; it means the card could be for anyone. So write a line or two; after all, if you are in law school you must be able to at least put a coherent sentence together.

Finally, words of the wise to men who will be out on their own this summer. These are some examples of attempts that don’t work at the law school and won’t work anywhere else either.

1. Don’t introduce yourself by saying, “Hey, I’m a 1L,” and then explain that you are in law school and are going to be rich someday. This is especially not effective if she is a 3L. Generally, spouting about how much money you do make or will make comes off as pathetic. And what does it say about the woman if she is interested for that reason? If she turns out to be shallow and interested only in material wealth, just remember, you sold yourself as a meal ticket and it’s her job.

2. Don’t ask her to use smaller words because you don’t understand what she is saying at times. If you can’t understand her vocabulary, this is a clear indication that there is no long-term future for the two of you.

3. Don’t hit on women when they are using the stair-climber at the gym. When she is sweating, panting and trying to exercise is not when she wants to engage in conversation, especially if she’s interested in you. Wait until she is showered and leaving the gym if you want to talk. If you must hit on a woman while she is on the stair-climber, be sure to not use a line such as the following: “So, you decided to tighten up that ass did ya?”

4. Don’t email girls in the class below you with your old outlines with the caveat, “If you open this you’ve agreed to go on a date with me.” This is especially ineffective if she knows you have a 2.6 GPA and no job yet.

5. Do not, under any circumstances, use the double-snap of your fingers followed by the double-gun and a cheesy smile. Nothing says LAW DORK better.

6. If you’re trying to win back a girl you used to date, after having cheated on her, make sure you never mention that you now have erectile dysfunction and no other girls turn you on. Erectile dysfunction is never hot.

7. Don’t tell a girl you just want to cuddle because you’re a twenty-two year old virgin - even if you think she will have forgotten it by the time you do get lucky. Contrary to popular belief, women like to have sex too. (I know, it’s taboo, but spring is in the air.)

8. If you are a bad dancer when a woman teases you about it, don’t say; “I may not have rhythm on the dance floor but you should see me in bed.”

9. If you have a crush on a friend, don’t get extremely intoxicated continued on pg. 11
What Some Members of the Administration Don’t Want You to Know About Grades

by Joshua Heslinga

Law students learn the importance of context with respect to subject matter quickly. Facts and surrounding circumstances play a critical role in legal analysis in any area of law.

So, why is it that some faculty and members of the administration do not want students to have a context in which to consider law school grades?

Just a few years ago, the law library kept a notebook that had the grade distributions for each class, so that students could see what their B+ or A- from a particular professor meant (by looking at exactly how many students received each grade in each class). Was it a small class with a large number of “A”s, such that your A- isn’t that impressive? Were there just a few low grades, so that your B puts you in pretty sad company?

The context of grade distributions provides information that’s important for a student to be able to evaluate how they did in a particular class.

I’ve heard people suggest that the curve provides context. The context provided by the grading curve is nonexistent at times and, I think, inadequate the rest of the time.

According to the law school grading policy, available online if you’re up in the middle of the night and don’t want to be, the curve only applies to classes with more than 30 students. For smaller classes, the context of the curve doesn’t exist. Even for larger classes, the flexibility of the numbers in the curve makes for significant uncertainty. Each step of the curve has 10% wiggle room (for all forms of “A”s, for each form of “B”, and then for all forms of “C”s and lower). In the case of higher grades, any certainty is further obscured by the fact that the curve does not specify how much of the percentage should be “A”s vs. “A-”s.

Grade distributions can also serve a prospective, not just retrospective, purpose. Wouldn’t it be nice to make fully-informed registration decisions? When you hear that Professor X is tough or Professor Y is easy, wouldn’t it be helpful to be able to substantiate or dispel these rumors? When a class is taught by three professors, wouldn’t it be reassuring to know that all students were measured by the same yardstick?

I can imagine why faculty wouldn’t want to be accountable in this manner, but as long as law school is a relative endeavor (where one’s results are directly related to and only useful in light of their status compared to other students), students ought to be able to see what they’re in for with a particular class.

Philosophically, the advocates of secrecy also advance a paternalistic argument—that it’s not good for students to focus on their grades and relative performance. This is particularly true for first year students, who don’t even have the overall context of class rank until after their second semester. I guess I have too much faith in my fellow students. I think we’re all adults capable of rational decision-making. I doubt that making grade distributions available would cause any serious problems. (It didn’t in the past.)

The legal argument that those holding the line against openness make is that grade distributions are faculty personnel matters. I find this a dubious argument, but even if one accepts it as true, that doesn’t rule out the release of grade distributions. Virginia law allows the subject of a personnel record to consent to its release.

I hope that the proponents of withholding relevant and useful information from students are a minority on the faculty. If the faculty hasn’t fully debated this subject, I hope they will, and that such a debate will involve input from students. I hope those individuals on the faculty who realize that grade distributions should be nothing to hide and can be useful will consent to making their classes’ grade distributions available to any student who wants to see them.

And I hope that the administration will resume the practice of putting released grade distributions on file in the library so that the information is accessible to students. It is intimidating to have to go to a faculty member and ask for a grade distribution. (It’s also potentially fruitless—when I asked one of my first-term professors if they would release a grade distribution, they told me no. Why? Because the general rule at W&M was that they weren’t released. Nice and circular.)

Given the importance of grading in law school, the somewhat subjective character of grading, the institutional nature of grading (evidenced most strongly by the mandatory curve), and the fact that students are paying substantial amounts of money to attend this law school, I believe that the students of W&M law school deserve to know the grades that are given out (in the form of grade distributions).

Do you agree? (Disagree?) I’m interested in hearing from you. Write to me at jdhels@wm.edu.

Sex and the Law

continued from pg. 10

before talking to her. And if you must, try to keep your distance when speaking. Beer breath is not as sexy as it is on TV. Also, spilling beer on yourself is inevitable, and it’s just an unsubstantiated urban myth that the scent of beer is an aphrodisiac.

10. If you invite a woman back to your place and things don’t work out, don’t yell out after her as she leaves, “I’ll be up all night if you want to come back!” Trust me, she won’t be coming back.

11. If a girl already has a boyfriend, you have to take the extra time to show her you care - to woo her away. This does not include calling her on a daily basis to inform her of her boyfriend’s infidelity - especially if she finds out you needed to make up the facts, including details (to add color to the story) such as names of girls she doesn’t like. If she dumps her boyfriend, it’s NOT guaranteed that the first thing she’s going to want to do is have sex with you. A much better approach is just to listen to her complain about her boyfriend and try not to be anything like him. If you can take his place as her best friend and confidante, you are halfway there.

If you have any questions or suggestions for this column, feel free to e-mail me at slhade@wm.edu.

Start practicing your free throws!

It’s almost time for the annual Ali Kaplan Bone Marrow Drive Free Throw Event. This special event held every year on the Law School Patio will take place on April 12th. So gather your 5 person team and shoot some free throws for a good cause. Pizza and sodas will be available for all participants.
The Old Grey Lady's Slip is Showing

by Paul Rush

I once had a professor who pretended (presumably for the sake of us unsuspectingly fragile students) that she could teach her subject from a politically neutral perspective. This she did, day after day. In the meantime, deftly prying apart our jaws, she proceeded to cram politically charged pacificist mantras down our gullets with her sandaled foot. Every day was Thanksgiving, and I was the stuffed turkey.

We expect bias, to some extent, from a variety of sources every day. We can even appreciate bias from special interest organizations, political groups, and those engaged in healthy debate. But, to our detriment, we far too often ignore it in our news.

Actually, there is an important distinction that must be made at this point between overt and latent bias. Overt bias is easily recognizable, obvious, apparent, and transparent; as such, it subsequently receives far more attention and draws greater criticism. While it may be easy to lambast Fox News for its blatantly conservative leanings, it is by no means clever. After all, the company is owned by one megacorporate magnate Rupert Murdoch. What do you expect? Many of its hosts are unapologetically conservative. Though it retains its "fair and balanced" reputation by continually offering both sides of an issue an equal chance at expression, this label slides off of many of the network's hosts like butter off of Teflon.

But it is the latent bias, the bias that slips under our radars, that is so deplorable, so insidious, so detestable, so dishonest, and so shameful. Among the worst offenders are NPR, PBS, CNN, and that Holy Grail of journalism, the feared Old Grey Lady herself, the New York Times.

Recently, an article appeared in the Times on March 16, written by Adam Nagourney and Janet Elder entitled "Poll Shows Concern Over Country's Direction." The article, indicative of the Times standard practice, stands as a testimony to one of the most disturbing trends in non-editorial "reporting." In it, the Times takes recent numbers from a Times/CBS poll and tortures them with anti-Bush adjectivization.

Setting aside the anti-Bush filler commentary, and focusing merely on the "description" of its poll numbers, we find the following examples:

1) The poll reports: In a two-way race, 46% support Bush, and 43% support Kerry. In a three-way race of Bush, Kerry, and Nader, 46% support Bush, 38% support Kerry, and 7% support Nader. (This is a margin of 3-8% for Bush over Kerry.)

The Times comments: "the two men are effectively tied."

2) The poll reports: 30% say Bush will make the economy better, while 36% say Kerry will make the economy better. (This is a margin of 6% of Kerry over Bush for economic improvement.)

The Times comments: "Mr. Kerry is viewed as much more likely to succeed than Bush. However, where Bush defeats Kerry by 3-8% there is an "effective tie," at 17% Bush "enjoys an advantage," and at 18% no comment at all. Mark Twain once said that there are lies, there are damned lies, and 6. Defend the bearded sandal-wearing weirdoes at least once in your career. You'll get loads of mileage out of it.

3) The Times comments: "Mr. Kerry is viewed as much more likely to succeed at creating jobs and improving the economy than Mr. Bush." Also, "there's sweeping concern ... about the president's economic policies." Whatever happened to the "effective tie" described in the first example? One wonders... By the way, did I mention a 3% margin of error?

The poll reports: 33% say Kerry says what he believes as opposed to what he thinks people want to hear, while 51% say Bush says what he believes as opposed to what he thinks people want to hear. (This is a margin of 18% of Bush over Kerry on this issue.)

The Times comments: nothing. Zero. Zip. Zilch. That's a whopping 18% difference in favor of President Bush (a title, by the way, not used once in the article) on the issue of honesty of belief, and it merits no cute adjectives like "sweeping" or even a mild "much more likely" that it frequently uses throughout the article to describe Senator Kerry's far thinner margins of victory in the poll. Incredible.

4) The poll reports: 78% say Bush is likely to protect us from a terrorist attack, while 61% say Kerry is likely to protect us from a terrorist attack. (This is a margin of 17% of Bush over Kerry on this issue.)

The Times comments: Bush "enjoys an advantage over Mr. Kerry." Wow. Back to straight-faced reporting for the noble journalists at the revered Times. Just the facts, ma'am. How objective.

The lesson? In poll aspects where Bush losses to Kerry by 6%, this means there is "sweeping concern" and that Kerry is "much more likely to succeed" than Bush. However, where Bush defeats Kerry by 3-8% there is an "effective tie," at 17% Bush "enjoys an advantage," and at 18% no comment at all.

1. There is originalism, and there is nothing.
2. Well, maybe there is some thing, but whatever it is, originalism is better than it is.
3. Even if it is iced cream.
4. Yes, even New York Super Fudge Chunk.
5. The Constitution implies nothing except the things it implies.
6. Defend the bearded, sandal-wearing weirdoes at least once in your career. You'll get loads of mileage out of it.
7. Non-originalists are excitable (and possibly bearded) people who are always seeing things that aren't there, like UFOs, ghosts, and the right to court-appointed attorneys.
8. Substantive due process also does not exist. (1Ls, mention this on your Con Law final and your professor will be sure to take note.)
9. Pay no attention to that stare desiccis beyond the Roosevelt Administration.
10. The fact that, only a year after the unanimous appointment of an originalist justice to the Supreme Court, the bearded weirdoes in Congress fought tooth and nail is certainly no reflection on the philosophy. And always remember, boys and girls....

The country is doomed to slide into uncontrolled judicial chaos. And is bearded.
Candor: Rousing Republicans and Dissing Democrats

by R.S. Jolly

According to Paul Rush, John Kerry embodies contradiction. While this may be true, I would rather have a confused “liberal” in office than an unconfused right-wing machine bent on weaponizing fiscal irresponsibility to lay the groundwork for the eradication of social programs. To be fair, the Bush Machine is mired in contradiction; to be frank, the Bush Machine and many Democrats are part of a larger problem.

I am annoyed by efforts to pathologize liberalism. Is it wrong to believe that equality of opportunity and universal healthcare constitute nobler priorities than aristocratic self-enrichment and gratuitous warmongering? Is it wrong to believe that society benefits from having a greater supply of smart and healthy—and thus more productive—citizens? Fiscal conservatism can be compatible with liberal ideals: as a society, we should invest in institutions that uplift vulnerable people before we invest in billionaires and bombs. The run-of-the-mill illiberal rebuttal to liberal aspirations involves lazy ascriptions of naivete or idealism: such ascription lacks precision, destroys hope, and makes me want to run into an elementary school and tell children that lives of cynicism, insecurity, and drudgery await them if illiberals sink their tentacles into their minds.

A theory circulates among progressives about the Bush Machine’s adoption of credit-card economics; roughly speaking, the Bush Machine hopes to borrow-and-spend to no end; consequently, the budget deficit will metastasize to such an extent that future politicians will necessarily face an inexorable dilemma: raise taxes or cut spending; since taxation makes people queasy, future politicians will have to slough off social programs. What a compassionate idea!

As for the Bush Machine’s contradictions, compassionate conservatism is one of them. There is nothing compassionate about rewarding wealth more than work; there is nothing conservative about generating record deficits. (Incidentally, “compassionate conservatism” implies that old-time conservatism is uncompassionate.) More egregious contradictions arise whenever President Bush invokes his faith: Will the muck inherit the earth if wealth continues to be a prerequisite for electability? Does turning the other cheek require us to follow the foreign policy of the American Enterprise Institute’s Michael Ledeem, who famously counseled that “every ten years or so, the United States needs to pick up some small crappy little country and throw it against the wall, just to show the world we mean business?”

Half of the American electorate tends to yawn on Election Day: Who can blame them when politics is reduced to money-marinated sloganeering and when the bipartisan Commission on Presidential Debates systematically excludes alternative parties? To appear in a debate with potential to reach millions of voters, the Commission “requires that [a] candidate have a level of support of at least 15% ... of the national electorate as determined by five selected national public opinion polling organizations, using the average of those organizations’ most recent publicly-reported results at the time of the determination.” In other words, Ralph Nader, Gary Hart, Ross Perot, John Hagelin, Howard Phillips, Pat Buchanan, and others with enough popular traction to land on ballots need to secure at least 15% of the popular vote as measured by opinion polls in order to secure their best hope of securing at least 5% of the popular vote as measured by opinion polls. Competition breeds innovation: it forces people like Kerry and Bush to avoid contradiction, and, most important of all, it shakes democracy out of its slumber.

Can International Law Protect Native American Claims to Sacred Places?

by Jennifer Rinker

Professor Nanda’s presentation at the ELPR symposium highlighted claims indigenous populations make for violations of Article 27 of the United Nations International Covenant on Civil and Political Rights (ICCP). Specifically, Professor Nanda concentrated on claims regarding the access and protection of traditional places. In light of Ms. Harjo’s summary of Native American Sacred Places to which American Indian groups have little or no access, the question arises as to whether Native American groups can apply the same international remedies Professor Nanda summarized. (See Professor Ved Nanda Speaks and Cheyenne & Hodulgee Muscogee Leader and Activist this issue.)

It is difficult not to recognize a parallel between the cases Professor Nanda cited from Brazil, Norway, Finland, and Ecuador to the numerous instances Ms. Harjo listed and described from the United States in which traditional people are partially or totally limited from accessing sacred places. Within the wording of Article 27 of the ICCP, the Indian groups from the United States are “ethnic, religious or linguistic minorities” that “shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.” Access to these sacred places is vital, according to Ms. Harjo, in the continuance of traditional practices.

The successes Ms. Harjo and others have already achieved in regaining access to and protections of sacred places are being thwarted by environmental degradation or where access has been denied or severely limited... and see what happens.
Get your Sushi Fix at Soya

by Nicole Lillibridge

Soya Japanese Cuisine & Sushi—4511 John Tyler Highway, located next to Cities Grille.

I am no expert on quality sushi, although when I get a craving for it, it rivals a chocolate craving (which is quite a feat). I have learned, though trial and error, to avoid some of the more refined offerings at most sushi establishments. As such, I can say with confidence that I do not like sea urchin, nor do I care for cuttlefish. Having admitted to these failings as a sushi connoisseur, I am prepared to declare Soya the best sushi available in Williamsburg.

Foremost in this consideration is quality of the seafood. The yellowtail tuna ($3.95, a la carte) was firm, incredibly fresh, and expertly prepared. While the unagi (eel) was slightly overcooked, it, too, was quite good ($5.95). My companion and I also sampled a ridiculous sampling of the maki sushi (rolls) that Soya has to offer. The variety of the offerings represents the best available in this town. They offer the Dragon roll (fried shrimp with cream cheese), the Ahi roll (tempura tuna roll), the Lobster Tail roll, and varied combinations not available at fine sushi purveyors such as Fresh Market.

The Otosan roll, recommended by our very capable waiter, is a favorite of regulars at the restaurant. It appears on the menu as “California roll with Baked Scallops” ($7.95) and it was quite good, although a bit more rich than I would usually like in a meal of sushi. Essentially, the roll is a California roll topped with a creamy baked concoction of scallops and seasoning, similar to a seafood chowder. My first bite of it was wonderful, but the flavor of the fish was overpowering by the rich scallop sauce. While I understand its popularity and recommend trying it, the roll was a bit too rich for me. The Spider roll (soft shell crab) ($8.95) was excellent, perfectly crisp and very fresh tasting. We rounded out our quite substantial meal with the kamicaze roll (spicy tuna) ($4.95) which is aptly named.

One of my goals in getting sushi, often, is that kick you get when you use just a bit too much wasabi. I like to feel like I’ve been kicked in the face once or twice during a meal of good sushi. This roll kicked me in the face, with no additional smear of wasabi necessary. Of course, I learned this the hard way, but it was worth it. I should note that Soya has a wide variety of appetizers available as well. The shumai (small shrimp dumplings) ($2.95) were excellent and not too filling.

The second most important consideration in evaluating a sushi establishment, for my taste, is the quality of the miso soup and the house salad. Both were excellent at Soya. Another consideration, not to be underestimated, has to be the atmosphere of the restaurant. I likely would not have said this a couple of years ago, before I became used to eating sushi in a back room with the karaoke equipment and indifferent service. Soya welcomes its sushi diners and Hibachi customers alike with open arms. The sushi bar is not the focus of the room, but it is pleasing to the eye nonetheless. The spotless bathroom features serene, artful photographs of natural elements. Indeed, this was one of the cleanest restaurants I have ever seen. The floors and the furnishings sparked.

Finally, the service was impeccable. Although a bit slow, one must account for the fact that my companion and I ordered enough food for six people. (I feel rather guilty admitting to such decadence, but we did distribute our leftovers among hungry housemates, which should count for something.) Our waiter was knowledgeable and friendly and happily corrected a slight mistake in our final bill (an honest one that actually was to our advantage). I would prefer never to patronize any other sushi establishment in this town. Lunch is a great deal at Miyako—it’s tough to beat a full sushi lunch at the same price as a Manhattan Bagel sandwich in the lounge. Soya has some decent lunch deals as well—Bento Box for $8.95, Sushi Regular for $7.95, and Hibachi Chicken for $5.95. My apologies to those with loyalties to other sushi restaurants. As I mentioned at the outset, I am not an expert on Japanese cuisine, but this place works for me.

Little Maurizio’s: Large Portions at a Small Price

by Brendan Chandonnet

It happens to me almost every year. Something amazing moves into my neighborhood just as I am about to leave, and while I am happy I had the opportunity to enjoy it, the thought of what could have been won’t leave my mind. In college, it was the grocery store that moved across the street from my fraternity house three weeks before graduation. Second year of law school, it was the Wawa moving in the year after I left the GradPlex. This year it is Little Maurizio’s, moving in 2 months before graduation. My only consolation is knowing that if it had moved in sooner, I would have needed heart surgery by now.

I stopped into Little Maurizio’s Italian-American Grill (366 York Plaza on Merrimack Trail) for lunch about two weeks ago anxious to try a new restaurant close my house. Since then I have eaten either in or taken out at least 5 times. Simply put, the food is outstanding, and when great Italian food is on a menu where not a single item exceeds 8 dollars, it is impossible to stay away.

The restaurant is not large (seating for 30) and is self-serve (i.e., you pick up your own food after it is prepared); however, it is designed to be a deli/grill rather than a true sit-down restaurant. But, a friendly staff and quick food preparation clearly make up for the lack of available service. If you call in your order before you go, it is always ready when you get there. While the menu reads more like a lunch menu, don’t be deceived; the portions are certainly large enough for dinner and, in fact, border on being too large for one person to eat. My favorite items on the menu come from the “New York Style” section, which lists their calzones and strombolis. Both are huge and are filled with a variety of fresh toppings. I prefer the strombolis because they are filled with their homemade pizza sauce, which is made fresh every day, and is easily the best in Williamsburg. All calzones and strombolis, even ones your create yourself, range from $5.50 to $8.00, and for $7.00 their Philly steak stromboli rivals any Italian take-out in Philly.

In addition, the menu has a variety of pasta dishes and sandwiches ranging from $4.99 to $6.99. One sandwich of note is their steak sandwich, which is an entire steak in a fresh baked roll. Other sandwiches include clubs, burgers and parmesan subs. While I have not tried all of their sandwiches, they are all freshly made, individually grilled and extremely large.

Overall I would highly recommend this restaurant for lunch or dinner. The service is quick, the prices are low and the food is excellent.
Angel @Law Angel @Law Angel @Law
by Shannon Hadeed

Dear God,

Well, I have been thinking of wallpapering my room with rejection letters, but first I thought I might highlight and translate my favorite parts just to make it more colorful. Between those from judges and those from firms it's hard to tell which ones are more insulting. We know they have had the same rough draft, tell me what you think.

Good old Lincoln probably received a few himself. Bush built his house on a hill made out of rejection letters. It's a shame that voters couldn't send them, he might have had a mountain.

So, I translated an example of one for you, to give you an idea of what I am talking about or to let you know why, perhaps, law students do crazy things.

What? Do think it's a tad unprofessional? Would it reflect badly on our career center? Yeah, but it might catch on and become a national standard. Plus, it would give me so much satisfaction and personal enjoyment.

I can tell I have been here too long, I am getting confused. Lord, will you please remind me, does GPA stand for grade point average or great personal achievement? I am not my grades, right? People's friends and family don't stop calling or caring just because your GPA is not up to snuff, do they? I haven't heard anyone say, "He has such a high GPA, I really like him." Clients don't say "Hey, before I hire you, what was your GPA?" Have you ever heard an eulogy that included a GPA? I have never seen a tombstone that says "Here lies J. Random Lawyer, he had a 3.75." In the morning I don't I think to myself, hmmmm am I a 4.0 today? Even if I did, it would vary so much from moment to moment that even at the end of the day I would have trouble telling you if I felt like a 2.1 or a 3.5. Would somebody really think "That's your GPA, oh you're that kind of person, I just remembered I have an appointment." Or the opposite "That's your GPA? Wow, um when can we get together, anytime that's good for you is good for me." You don't hear couples say "Have you met my wife yet, she has a really high GPA." I mean, I understand for some people their GPA is a great personal achievement, and that's all good but I am beginning to lose focus. There are hundreds of elements that contribute to making a person who they are and GPA is pretty low on the list, don't you think? It just feels like law school has twisted the saying "You are what you eat" into "You are your grades." So remind me, am I here to work on my grade point average or great personal achievement? Shouldn't I just try to be the best that I can be in every aspect? Isn't the point to be a great lawyer? Or how about just a great person? (I know it sounds a bit cheesy.)

I can't think of a single person in history who was remembered for their grades. Oh, wait except maybe Einstein, because didn't he flunk out of math? But that's why it's remembered, because to go from flunking out of math to changing the face of science is a great personal achievement.

See what I mean though? It's beginning to addle my brain. Don't you think enough is enough? Can't I leave yet? I think you better get me out of here before I end up doing something drastic like tattooing my GPA on my arm to end the suspense and secrecy. I know, bad idea.

Groveling & Piteous,
AL

Moot Court Announcement

by Kevin Duffan

Our Moot Court team had even more success over spring break as the two teams we sent to Howard University had a great showing for William and Mary.

Howard team #1, comprised of Misty Evans and Sarah Poulter advanced to the semifinals, and Howard team #2 comprised of Heather Hodgman and Shannon Frankel advanced to the quarterfinals. To top things off, Misty Evans also received the Best Oralist award, making her the third W&M team member to receive such a distinction this year.

In the Seton Hall criminal procedure tournament this past weekend (March 27th and 28th), the team comprised of Will Hamilton and Kristina Rozek advanced all the way to the final round where they were narrowly beaten. There were over 20 teams in this tournament, making their success even more impressive. To top it off, they also won Best Respondent Brief.

Congrats to all!
The Ladykillers: Style over Substance

by Nicole Travers

I'm not exactly sure whether I should be writing a review of this movie. On the one hand, I'm a huge Cohen brothers fan. I've seen and loved practically every movie they've ever made. But on the other hand, I've never seen the original Ladykillers, the British 50's film starring Alec Guinness and Peter Sellars. My ignorance of the source material presents a decided handicap on my ability to analyze this film, but I'll have to do the best I can.

The Ladykillers is presented in true Cohen style, right from the start, with Irma P. Hall as Marva Munson, an aged widow who frequents the local sheriff's office in order to complain about her young neighbors and their "hippity-hop" music. Her verbal barrages alone are enough to make the movie a treat. The real meat of the movie begins when Colonel Sanders clone Professor G.H. Dorr, Ph.D (Tom Hanks) arrives at her door, spitting obscure four-syllable nothings through prosthetic teeth, and inquiring about the room Mrs. Munson has to let. It seems he is on sabbatical from the University of Mississippi in order to manage his Renaissance music quintet, but he shows a disconcerting interest in the earthen walls of Marva's root cellar.

The other members of the "quintet" are introduced one by one: Gawain (Marlon Wyans), a young and irrepressible janitor at the nearby riverboat casino, Pancake (J.K. Simmons) a mustachioed demolitions expert, The General (Tzi Ma), a taciturn warrior who may or may not have been a dictator in his "native French Indochina," and Lump (Ryan Hurst), a huge footballer who constantly calls Professor Dorr "coach." It should surprise no one that this group of misfits is not actually a Renaissance quintet, but a gang of criminals bent on robbing the counting house of Gawain's riverboat casino by tunneling through the walls of Marva's cellar.

The plot of the movie seems rather throwaway, and it's easy to write it off as the inferior of such Cohen masterpieces as The Hudsucker Proxy and The Big Lebowski. But The Ladykillers has many moments, both beautiful and hysterical, that set it far apart from the brainless comedy films so beloved by studios today. The dialogue between Hanks and Hall is always priceless, and a testament to the Cohens' obvious obsession with American language and expression. Hanks is in top form, especially when in full "southern charmer" mode, reciting classic poetry to Hall's gaggle of church friends at tea.

Gawain and his fellow janitors issue non-stop soliloquies so peppered with profanity and "hippity-hop" sentiment, it is difficult not to double over laughing (especially when he declares his intention to sue his boss for "punitive damages"). The General doesn't say much, but he does have one absolutely brilliant scene of slapstick comedy that got the biggest laugh in the theater.

But it is Irma P. Hall who truly makes this movie shine. Her portrayal of the quintessential southern African-American widow is so sincere that it destroys any hint of stereotype, and renders a beautiful and believable character equal to, and often surpassing, Hanks' Dor.

In addition, the Cohens continue their tradition of choosing the perfect soundtrack for their film, including a mélange of stirring gospel tracks by artists including the Rev. Thomas Dorsey, the Soul Stirrers, and Blind Willie Johnson.

All told, this film is an amusing side project for the Cohens, and fans of their work will enjoy it. Still, one can't help but worry that these "side projects" will replace the more interesting and substantial films for which they are famed. If the brothers are receptive to advice, I would tell them to steer away from their more "commercial" light works of the past two years, and to take the time to let their imaginations really run wild.

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every Sunday
11:00 AM - 3:30 PM

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Talk to the Leafe about your Commencement Party needs!