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## William & Mary Law Softball Team Returns to the Sweet 16 at UVA

by Tom Jackson  
Contributor

CHARLOTTESVILLE, Virginia—The mighty mighty bats returned to Charlottesville with a bang. William & Mary's law school softball team road into the 25th Annual Virginia Law Softball Invitational looking to continue their storied success of the last decade. The team (known in Williamsburg as the Tom Jackson Project) had been to the Sweet Sixteen at least four straight times but hadn't won the tournament since 1998.

Friday, April 4 the colonial giants headed to the left side of the state and arrived in time for the "registration party" which boasted free beer from 4:30 pm to 10 pm. For most teams this would prove disastrous with a 10:00 PM game with Boston University fast approaching. But "nay," said the Tribe, it's only BU, let's eat, drink and be merry. And so they did. As game time grew closer team disciplinarian Carrie Harris rallied the troops (i.e. cut-off Hinchcliffe and Johnny O'Kane) for a pre-game feast of Mellow Mushroom and then they were off to battle the Terriers.

In the last three years' opening games the Tribe has outscored its last three opponents 46-12. Game one has historically been a slaughter no matter which team the Tribe plays. And this year was no different. In 2006 the Tribe walked away with a 15-5 win over UVA



Members of the Tom Jackson Project take time out from their batting practice to pose for a photo op. Photo courtesy of David Bules, Staff Writer.

Blue (their number two team). In 2007 it was the Tribe 17-5 over Boston U. And here in 2008, in a 30-minute time-limited game (two innings) the Tribe prevailed 14-2 over Boston U.

In total the Tribe has now played Boston U three times in three years. The three games against Boston U have now reached a rough total of seven innings (one, four, and two respectively) or one full game combined. The Tribe has outscored Boston U 52-7 over the three years (21-0 in 1/2 inning, 17-5 in 4 innings and 14-2 in 2 innings). We make it rain. The Tribe has been sober for at least one of their games against Boston U over the last three years. FALSE.

Enough statistics let's get to more pressing matters. Most legit injury: Johnny O'Kane's shoulder. Johnny slid into home headfirst and caught his shoulder on the foot of the Boston U catcher. Stupidest injuries: Johnny O'Kane's bathroom incident; Mary Mintel's knee (Johnny O'Kane and Carrie Harris had an impromptu riot in the middle of the hotel room and tackled each other into Mary's knee. Mary was sleeping); Bules's foot (he actually heard a pop when he got out of his chair at Chipotle).

Biggest hit of the tournament: Big Bear Hinchcliffe's game-winning double against Appalachian. Most predictable event: (tie) Carrie Harris starting fights and the "disappearance"

of Dan Redding before the Sweet Sixteen. Most appropriate at-bat song: (tie) "Big Man" by Girls, Guns & Glory for Hinchcliffe and "Proud Mary" by Credence Clearwater Revival for Mary Mintel. One player on some random team heard "Big Man" playing on the iPod speakers and informed us that his roommates are members of Girls, Guns & Glory. What are the odds?

Appalachian Law School was next for the Tribe. Now, this is not Appalachian State, so they are no underdogs. ASL is perched in Grundy, Virginia. But as these tournaments go, the "barely-accredited" teams are pretty sick. ASL's number one team finished in the Final Four in 2007. This was ASL's number two team. After falling behind 4-0 in the top of the first, the Tribe came back to pull within one in the bottom of the inning. The mighty mighty yellow t-shirts later took the lead 6-4 and held it for about four innings. But the roof started to cave in as the Tribe started to throw the ball around.

A few bad throws later the golden gems found themselves down 9-6. ASL promptly and unilaterally declared that it was the last half-inning and if the Tribe didn't score it was over. After a brief conference with the umpire, ASL was half correct. If the Tribe didn't bat for more than three minutes the game would continue. If it did, it was over no matter who was on top at the end of

the inning.

The Tribe found itself in an unfamiliar position, as they have never trailed late in the game during the "pod" rounds. But Mintel quieted any fears with a leadoff single. O'Kane added another. Bules walked after teammates reminded him a female batter was behind him in the order (the UVA rules state that if a male walks on three pitches and a female follows him in the order, the female walks too putting the male on second base and advancing all runners). Harris took the option to walk, and Mintel was in to score making it 9-7.

The next batter, Jason Stickler, sent Continued on page 2.



2L Mike Hinchcliffe hits one out of the park for The Tom Jackson Project.

Photo courtesy of David Bules, Staff Writer.

### INSIDE

News in Brief.....	4
Upcoming Events.....	6
LLMs Speak.....	8
A Call for Ethics.....	10
Arts Brief.....	15



## Tom Jackson Project

Continued from front page.

a soaring fly ball into short centerfield. O'Kane tagged at third, Bules (the tying run) tagged at second. The centerfielder, knowing O'Kane's run didn't matter went for the double play and tried to throw Bules out at third. In retrospect Bules said, "I probably should not have gone, but I couldn't resist." Ladies and gentlemen, there isn't an outfielder on the planet that was going to throw him out.

Bules slid headfirst into third, beating the throw, and as he looked up he watched the centerfielder's throw sail over the fence into the woods. Bules scored on the overthrow, which put Harris on third as the potential winning run with one out. All that Big Bear Hinchliffe had to do was a) not strike out and b) not hit a line drive to an infielder. The Big Bear drove the first pitch on a line into centerfield, Harris scored and Big Bear landed on second. Game over. Tribe 10-ASL 9.

With the win over ASL, the Tribe was virtually guaranteed to win its pod and secure a top 16 seed and bye in the single elimination portion of the tournament on Sunday. All they had to do was beat Michigan or lose while giving up only a few runs (to beat ASL in a



Softball players pose "American Gothic" style. Pictured left to right: Johnny O'Kane (2L), Jason Stickler (3L), Carrie Harris (3L), Nora Burke (3L), and Dan Redding (2L)

potential tie-breaker). Though the top of the first inning against Michigan was a disaster, as the Tribe suddenly forgot how to play softball, they remembered how to play and won an incredibly boring game 22-6 in four innings.

After three games the Tribe had

outscored its opponents 46-17. This was slightly down from 2007 (61-14). But in 2007 the Tribe had the advantage of playing on fields with fences and hit 15 home runs. This year no such luck. With the rain the games were on all grass fields or fields with no fences meaning outfielders could catch balls in the air that normally would be way out of the park (just ask Kurt Wolber).

With the win and ensuing bye the Tribe was guaranteed a spot in the round of 32 on Sunday and would play until they lost. This prompted Harris to challenge every team on earth to games of flip cup. She even challenged a group of umpires. "Mr. Umpire, I swear I will throw beer on you if you don't come over here and play." The rest of the day hilarity ensued. If you've ever played a weekend tournament, where beer is around, you know that it's a disaster waiting to happen when you finish your last game before happy hour even starts. This was no exception as we were done playing by 4 pm Saturday.

UVA puts on a fabulous tournament, and Saturday night they always rent out three bars and donate 40 kegs for softball players to devour. Mind you there are 64 co-ed and 48 regular division teams for a total of 112 teams. Even if every team only fielded the minimum 10 players, that's still 1,200 players. It was crowded to say the least (mainly because the storied O'Neil's is boarded up and closed). Late Saturday night is the last time we saw Redding.

Somewhere on the way home from this night of tasty libations, Hinchliffe

(Photo courtesy of David Bules, Staff Writer. got lost. This wouldn't be news except he had walked to the bars from the hotel and vice versa, roughly seven times in the last two years and it's only two blocks away. Several team members received the following text messages: "I'm lost" and "what the duck" (yes he said duck). Apparently he found himself in a shopping center and left the following voicemail on a teammates phone: "DUDE, I'm in Ben & Jerry's or a Chipotle or something. Where are you guys?" NOT at Chipotle or Ben & Jerry's. Those restaurants are three miles the wrong way going away from the hotel NOT towards it.

Early Sunday morning the team woke up to a few calls from UVA field marshals explaining that the games had to be moved up because of rain and that there would be 30-minute time limits. 30-minute time limits are a disaster, especially in single elimination rounds. But the team jumped up (and by jumped we mean we dragged them out of bed) and headed to the field (swamp).

In our collective century or so of baseball and softball, none of us has ever seen anything like what happened when we got into this mess Sunday morning. First, there was a torrential downpour the entire day. Second, the 30-minute time limit is fine, as long as you don't start adding eleventy-seven more stupid rules on top of it. Third, the rules they added were insane.

Rule 1: 30-minute time limit. Rule 2: one-pitch. Usually one-pitch is an

Continued next page.

## THE ADVOCATE

"Complete and objective reporting of student news and opinion"

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Letters to the Editor and opinion articles may not necessarily reflect the opinion of the newspaper or its staff. All letters to the Editor should be submitted by 5 p.m. on the Thursday prior to publication.

*The Advocate* will not print a letter without confirmation of the author's name. We may withhold the name on request. Letters over 500 words may be returned to the writer with a request that the letter be edited for the sake of space.

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## Tom Jackson Project

Continued from front page.

extra inning rule where you get one pitch per at bat to walk, strike out, or hit the ball fair. But, they said no walks this time. This means you get one pitch to hit it fair, strike out, or foul out. Rule 3: your own pitcher pitches to your team. Imagine this: two pitchers are standing on the mound, your own pitcher pitching to you and the other team's pitcher playing defense. This is idiotic. Rule 4: they sent home the 48 teams who did not win their pod, leaving the 16 best teams (including the Tribe) in the Sweet Sixteen. We were fine with this rule. Rule 5: your smallest player had to tie his or her leg to the biggest player's leg to have a three-legged race. Okay, we made that one up, but can you imagine two people that would look funnier, tied together screaming at each other in southern accents that no one can understand, than Hinchcliffe and Carrie Harris.

In the Sweet Sixteen the Tribe took on Villanova under the Johnny-bananas-monkey-rules that UVA made up as they went along. Villanova was legit. They took the lead on a triple and home run in the first 3-0. The Tribe came back to tie it, but Villanova went up 4-3 going into the last inning. The Wildcats held on ending the Tribe's quest for the Final Four and a date with UVA Blue

(their number one team). It's not clear whether the Tribe would have beat Villanova had the game been played under normal rules on a normal field and in normal weather. But all in all, it was a great tournament.

The Tribe graduates five players, Bules, Stickler, Harris, Nora Burke and Sarah Fulton. Next year O'Kane will join an elite class of players who started every game for three years (Chris Bauer '06, Mike Spies '07, Michael Sweikar '07, Bules and Harris). O'Kane, Hinchcliffe and Cameron Roundtree, return as the heirs apparent to the Tribe thrown of glory. Mintel and Laura LeRoux return after they had an absolutely stellar first season with the Tribe.

Most importantly the Tribe is now one of the law school's most well funded organizations. The graduating players have donated over \$3,500 spread across the next three years, meaning the team can finally get real jerseys and have their hotel paid-for should they make it to UVA. These perks alone should be sufficient reasons to attract the best new players to fill the void of four starters graduating.

Next year look for Redding and Andrew English to return along with Gabby Culp, all of whom have played for the Tribe. Rising 2L Rachel Jones is rumored to be at the top of the Tribe's list of the most-coveted ball players. General Manager Harris will start negotiations this week and hopefully wrap them up before finals. It should be a wild summer for free agency, but



David Bules proves being team captain is a messy job

Photo courtesy of David Bules, Staff Writer.

the perks of playing for the Tribe (Tom Jackson Project) are usually too good to pass up. The endowment only adds to the allure of the legendary Tom Jackson Project. With over 105 wins

during the last seven years, the Tom Jackson Project is the winningest team in Marshall-Wythe history.

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## News in Brief

by Tara St. Angelo  
Co-Editor-in-Chief  
with contributions by Rob  
Poggenklass & Neal Hoffman

### Hansen and Wang Share Hot Dog Eating Title

The law school's toughest competitive eaters gathered on the patio for the Retros Hot Dog Eating Contest sponsored by the J. Reuben Clark Law Society.

Contestants were given five minutes to eat as many hot dogs and their accompanying buns as possible. Last year's champion Matt Hansen (3L) beat his record of seven hot dogs and con-

sumed eight. Newcomer Bin Wang (3L) tied the returning champ's record. All proceeds were donated to the Foodbank of the Virginia Peninsula.

The final results were as follows:

Matt Hansen- 8  
Bin Wang- 8  
Alper Ozinal- 7  
David Bules- 6.25  
Ben Bigger- 6  
Todd Garvey- 5.25  
Alan Kennedy-Shaffer- 5  
David Sella-Villa- 4.5  
Zach Ulrich- 4.5  
Jason Wool- 4  
Troy Gwartney- 4  
Ben Anger- 3.5  
Karl Thorpe- 3  
John Miller- 2.5



ABOVE: Matt Hansen (left) and Bin Wang (right) share the glory and congratulate each other on a job well done.

BELOW: Jesse St. Cyr (3L) counts off Hansen's second hot dog.

Photos courtesy of Matt Purcell, Contributor.



### BLSA Fashion Show

Photos by Whitney Weatherly, Staff Photographer.







Sherwin Ignacio (1L) launches a kick ball into the outfield during the Mar. 29 tournament to benefit Global Playground.

## Kickball Tournament Raises Money and Awareness

Four teams participated in the SBA Kickball Tournament held at Kidsburg Park on Saturday, Mar. 29. A team of predominately upperclassmen, led by left-footed superstar kickballer David Crain, won the championship. The tournament helped raise money for Global Playground, a 501(c)(3) organization that provides educational resources to the estimated 1.75 billion children who live in underdeveloped countries.

Photo by Rob Poggenklass, News Editor.

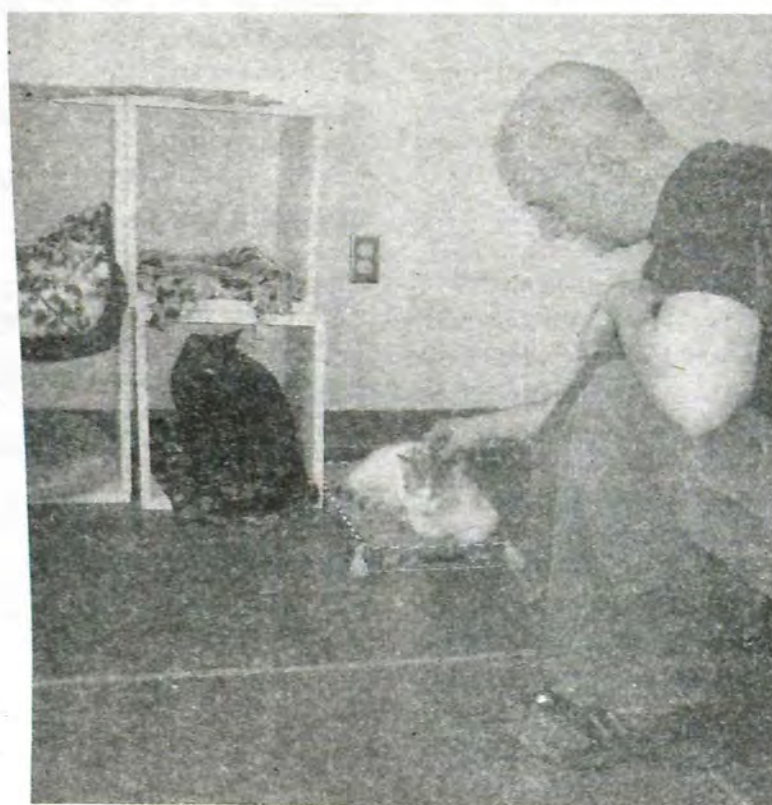
## Law School Frisbee Team Takes Home Championship, Embarrasses All Other Teams

The law school's ultimate frisbee team, The Newtons, won the intramural ultimate frisbee tournament on Saturday. No other team was a match for The Newtons. The team easily won the first round of the day against Kappa Delta 20-0. In the second round they allowed the Flying Squirrels to score three points. The Newtons took home the title against the Squirrels with a score of 20-3.

Team members include: Anne Battle (3L), Kate Codd (3L), Dave ("J.D.") Goodman (3L), Justin Graf (3L), Neal Hoffman (2L), Erik Jennings (2L), Alex McCallion (1L), Christina Murtaugh (2L), John Newton (3L), Amy Owens (3L), Kathleen Parks (1L), Nathan Pollard (3L), Andrew Reeve (1L), and Dan Williams (1L).

## Donate to the Williamsburg Area Humane Society

The Heritage Humane Society gets over half its operating budget from donations and has nearly 100% success in adopting out animals. Please make the animals' stay more comfortable this summer by donating the following items in the marked box in the student lounge from now until the end of finals. For a complete list of needed items please contact Joelle Laszlo.



Three law students, Joelle Laszlo (2L), Aida Carini (3L), and Damian Yemma (1L) volunteered at the Heritage Humane Society on Sat. April 12.

ABOVE: Carini helped to spruce up the living quarters of her furry friends. (NOT PICTURED: Carini's blisters as a result of a day of manual labor)

LEFT: Yemma brightens the day of a few neglected felines.

Photos by Joelle Laszlo,  
Staff Photographer



# ACLU Aims to Restore Voting Rights for Felons

by Rob Poggenklass  
News Editor

The W&M Law chapter of the American Civil Liberties Union (ACLU) has joined a statewide effort to restore voting rights to felons who have served their time and been released from prison. On Saturday, Apr. 5, more than a dozen members of the fledgling ACLU chapter attended a seminar led by Adisa Muse, director of the Voter Restoration Project.

Virginia is one of three states in the union—Kentucky and Florida are the others—with laws that prevent the automatic restoration of voting rights to felons upon their release. The felon disenfranchisement laws, enacted primarily in Southern states, are remnants of the Jim Crow era. While some states, such as Maine, have gone so far as to allow criminals the right to vote while they are still in prison, Virginia has an estimated felon population of 250,000 to 300,000 who cannot vote or serve on a jury.

Instead, Virginia's laws leave the discretion of voting rights restoration to the governor, a process administered by the Secretary of the Commonwealth's office. According to Muse, former Gov. Mark Warner restored voting rights to 3,400 felons during his four years in office, while Gov. Tim Kaine has approved approximately 1,100 restoration

applications.

Muse was hired as director of the Voter Restoration Project on Mar. 3. He hopes to create a wave of public support for restoring voting rights for felons and, in the process, change the way people talk about the subject.

"We have to look at whether voting is a right or a privilege," Muse said. "The attitude that everyone needs to have is that it's a right, because the effect we're looking to have is a Constitutional change. People need to understand that this is a fundamental right."

The Supreme Court has not ruled on the precise issue of felony disenfranchisement. In a 1985 decision, *Hunter v. Underwood*, a unanimous Court held that the disenfranchisement of criminals convicted of "any crime involving moral turpitude" violated the Equal Protection Clause of the 14th Amendment.

"If someone has been convicted of a felony—once you deny them the right to vote, you're putting them in a class they can never get out of," Muse said. "It's really difficult for them to be successful, to set examples for their children. For most people, engagement starts at home. Voting isn't nature; voting's nurture. When people see that their family members don't vote, they don't vote. It just breeds a certain amount of apathy, and it breeds a certain amount of cynicism."

Muse has collected a series of law



From left: Adisa Muse, Megan Hay, Genevieve Jenkins, Erik Jennings and Tom Fitzpatrick.

Photo by Rob Poggenklass, News Editor.

review articles on felon voting disenfranchisement, which he hopes to turn into a larger public relations effort that reaches Virginia citizens and, ultimately, Virginia legislators.

"When you have law review articles written on the subject, you give it to decision makers—lawmakers, judges, practitioners in the criminal justice system, editors of newspapers—they start looking at it differently," Muse said. "Then the question is not, 'Why do they deserve the right to vote?'—[instead] it's, 'Why are we denying them that right?'"

In the meantime, starting this sum-

mer, members of the W&M Law ACLU will begin reaching out to felons who are good candidates for voting rights restoration. Before the end of the semester, the group will appoint a student chair or two to lead the project. Another training session will be held in the fall, opening the door for more volunteers to get involved.

"I see this as, in many respects, a student-driven project," Muse said. "A lot of the insight is going to come from students—young folks who are by nature more inquisitive, but who haven't been tainted with complacency."

## Upcoming Events

Look to this space for news about speakers, meetings, and other events at the law school. If your organization has an event in the next month you would like advertised, please email [TheAdvocateWM@gmail.com](mailto:TheAdvocateWM@gmail.com).

### Thursday, April 17

*Mother Courage and Her Children*  
8 pm, PBK Hall

This main stage production is a political drama by Bertolt Brecht about a peasant woman and her children trying to survive during the Thirty Years' War. For advance purchase of \$5 student tickets, contact the box office at 221-2674.

### Friday, April 18

Last day of class!

*J. Reuben Clark Society Symposium*  
1-4 pm, room 119

The symposium entitled "The Williamsburg Charter Revisited: Significant Developments in Law and Religion in the Past 20 Years Time" will feature a keynote speech by Prof. Gene R. Nichol. Preeminent scholars and a leading attorney will discuss significant developments in constitutional jurisprudence in the past 20 years with a focus on how

interpretations of the First Amendment's Establishment Clause have affected religions and churches in the U.S. Contact Matt Purcell, [mdpurc@wm.edu](mailto:mdpurc@wm.edu), for more information.

### Gallery Talk

5:30 pm, Muscarelle Art Museum  
Margaret Collard, student curator, will speak on Jasper Johns.

### Screening of Michael Clayton

7 pm, James Blair Hall, room 229  
The first annual Ethics Week hosted by the undergrad Judicial Council closes with this screening about an attorney who faces one of the biggest cases in his career, but must consider facts that could sway the outcome of the case.

*Mother Courage and Her Children*  
8 pm, PBK Hall

For advance purchase of \$5 student tickets, contact the box office at 221-2674.

### Saturday, April 19

*Ying-Yang Twins Concert*  
8 pm, Lake Matoaka Amphitheatre  
Contact [www.wm.edu/boxoffice](http://www.wm.edu/boxoffice) for ticket information.

*Mother Courage and Her Children*  
8 pm, PBK Hall

### Sunday, April 20

*Screen on the Green*  
8:30 pm, Sunken Gardens  
Screenings of Juno and Cloverfield.

*Mother Courage and Her Children*  
8 pm, PBK Hall  
For advance purchase of \$5 student tickets, contact the box office at 221-2674.

### Friday, April 25

*Freaky Friday*  
Most restaurants in Newtown will be open until at least 11pm and will have specials for W&M students.

### Sunday, April 27

*Mad Hatter's Tea*  
2-4 pm, Muscarelle Art Museum  
This themed event features the antics of a magician and juggler and a musical performance by Tim Seaman on the dulcimer. For advance purchase of discount tickets (\$12/adult, \$6/child) contact 221-2707.

*Piano Recital*  
7 pm, Ewell Recital Hall  
Pianist and WM lecturer Anna Kijanowska will present a solo recital of well-known and rare compositions by Polish composers.



## "A Tale of Two Executives": Prakash Delivers Cutler Lecture

by Abby Murchison  
News Editor

Would the Framers of the Constitution recognize the current scope of presidential power? Does it bear any resemblance to that which they created? Would they consider the invasion of Iraq a proper exercise of the commander-in-chief power? Would they approve of federal laws enabling executive agencies to operate free from presidential supervision?

On Mar. 27, Prof. Saikrishna Prakash probed these very questions as this year's Cutler lecturer. A visiting professor at UVA this spring, Prakash teaches constitutional and administrative law at the University of San Diego. He clerked for Justice Clarence Thomas on the U.S. Supreme Court from 1994 to 1995. With history as his guide, Prakash delivered "A Tale of Two Executives," contrasting the Chief Executive's broad power to "execute the laws" against the Commander-in-Chief's constitutionally narrow authority to initiate war.

As Prakash observed, Congress's exclusive power to declare war imposes constitutional limits on executive military power. "However, in wartime, the public tends to see an imperial President, a potent decision-maker, an autocrat who can order wire-tapping and torture," he said. President Bush himself endorsed the loftiness of executive authority when, in conversation with journalist Bob Woodward, he remarked, "I do not need to explain why I say things. That's the interesting thing about being the President. Maybe somebody needs to explain to me why they say something, but I don't feel like I owe anybody an explanation."

To some, the Constitution's Commander-in-Chief Clause seems to grant the President vast power over the military, including the authority to initiate war. However, as Prakash argued, neither history nor the Constitution supports so broad an interpretation. The Constitution's "declare war" clause establishes the primacy of Congress over war and military powers, Prakash said: "The president cannot declare war. This power resides exclusively with Congress."

Prakash complicated this seemingly uncontroversial viewpoint by suggesting that "declaring war" includes a wide range of activities beyond formal declaration. Historically, "declaring war" did not refer to an official pronouncement of military objectives and aggression. Indeed, a formal declaration would undermine the effectiveness of

a strategically clandestine attack. Offering numerous examples from history, Prakash said that anything indicating a decision to wage war was itself a declaration of war.

"Formal declarations were historically rare," Prakash said. Therefore, many acts of military mobilization today "would fit into an 18th century conception of declaring war."

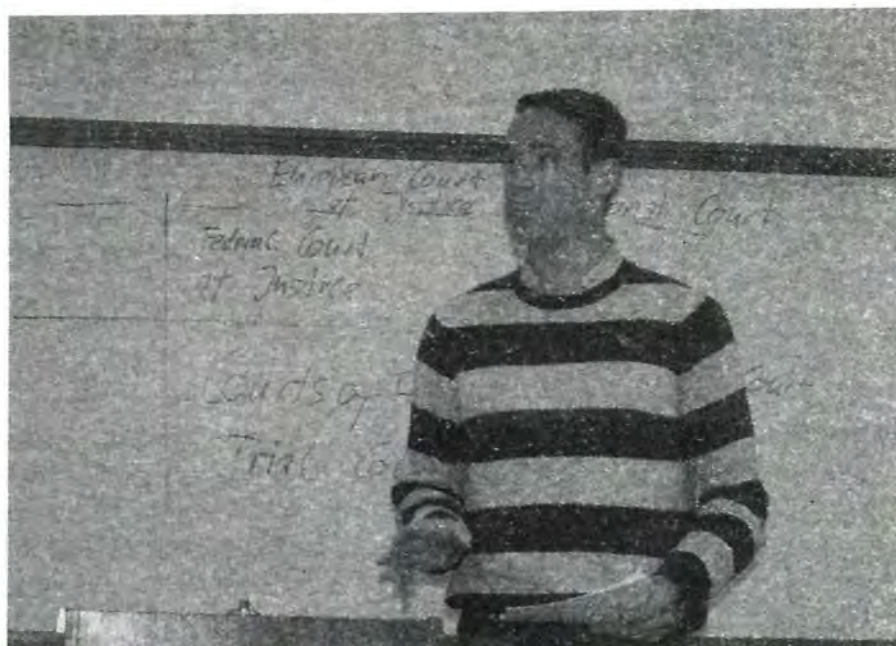
"If the President orders an invasion, he has effectively declared war just as if he had said, 'I declare war.'" The "declare war" power is not one the President holds concurrently with Congress, Prakash said. Historical evidence suggests that the Framers wanted to make declaration of war difficult, an objective defeated by creating two parallel means of getting there.

Despite the constitutional limits on the commander-in-chief power, the President can still make substantive decisions about strategy, Prakash said. Under the Constitution's allocation of war power, "the President is neither autocrat nor cipher."

In his "Tale of Two Executives," Prakash also described the scope of the President's power to "take care that the laws be faithfully executed." Again, Prakash observed a disconnect between the Framers' creation and its present-day iteration. The Framers created a unitary executive to avoid problems of delay and dissent which might befall a triumvirate. However, the "chief administrator" aspect of the executive power has moved away from the original conception, according to Prakash. He referred specifically to the Securities and Exchange Commission, which executes important federal laws free from presidential oversight.

As described by Prakash, the executive is "fractured" by the competing measures of the "Take Care" Clause and the commander-in-chief power. The executive is further "fractured" between the Framers' original idea and its present-day version. The nature of the fracture also derives from public perception: there is a marked disparity between what we the people see as the scope of executive authority—and what the scope actually is within the constitutional framework.

The Cutler Lecture Series was established in 1927 by James Goold Cutler of Rochester, New York, to provide an annual lecture at W&M by "an outstanding authority on the Constitution of the United States." Each lecture is published in the W&M Law Review.



Philip Oppermann, a German citizen discusses contract theory and the structure of the judiciary in Germany.

Photo by Whitney Weatherly, Staff Photographer.

## LLMs Gather to Share Legal Knowledge and Dispel Myths

by Kelly Pereira  
Co-Editor-in-Chief

In what has recently become an annual event, the International Law Society (ILS) sponsored a pizza lunch on April 2 in which several LLM students gave presentations on the legal system or a discrete legal issue in their home countries. The Legal Systems Program presenters, students from the Ukraine, Germany, the United Kingdom, and China, each briefly introduced a variety of topics from constitutional reform to contract theory to comparative legal education.

Tetyana Yaremko stated that in the Ukraine there are no federalism or personal jurisdiction issues, although the Autonomous Republic of Crimea has its own parliament. The country's unicameral legislative branch has representatives from the twenty-four oblasts (provinces). This civil law country is currently experiencing rapid change (Tetyana pointed out that all the Ukrainian legal information that she could find on the web was out of date).

The principal source of law in the Ukraine is the constitution which was written in 1996 and extensively reformed in 2004. A major constitutional reform was divesting the executive branch of significant powers including appointment of the prime minister. The president still retains the power to appoint the minister of defense and minister of foreign affairs, subject to confirmation by the parliament.

In the Ukraine, case decisions have persuasive authority only. The supreme court periodically reviews the lower courts, however, and it issues guidelines that while not technically mandatory are generally followed.

Philipp Oppermann baffled us all with the German legal principle of abstraction. The German civil code is divided into five books. Abstraction involves two of the five books: the law of obligations and contracts. Philipp explained that in any sale of goods, the principle of abstraction conceives of three contracts, separating the contractual obligation between the parties from the conveyance of legal ownership of a good and the purchase price. Wikipedia's entry for the "abstraction principle" summarizes the three contracts as follows, "the contract of sale itself, obliging the seller to transfer ownership of the product to the buyer and the buyer to pay the price; a contract that transfers ownership of the product to the buyer, fulfilling the seller's obligation; and a contract that transfers ownership of the money (bills and coins) from the buyer to the seller, fulfilling the buyer's obligation."

Although the principle of abstraction is completely unique to Germany, its civil law was heavily influenced by Roman and French law. The court system consists of both state and federal levels as well as an international level, the European Court of Justice. Some cases advance directly to the federal constitutional court, but in rare instances a case can work its way all the way through the system.

Busola Taiwo organized her comments around the United Kingdom's constitution, or perhaps more accurately, the lack thereof. The constitution is not a single document but rather a compilation of sources of law including: acts of parliament, treaties incorporated by acts of parliament, European Union law, common law, conventions (historical

Continued on next page.



## LLM Students Speak

Continued from previous page.

prerogatives (the collection of powers belonging to the queen). The queen has a ceremonial role—if she refused to appoint the prime minister and his cabinet or sign acts of parliament—a constitutional crisis would ensue.

Some of the overarching constitutional principles in the U.K. are parliamentary sovereignty, rule of law, unitary state, constitutional monarchy, European Union supremacy, and separation of powers. The Appellate Committee of the House of Lords is currently the court of last resort but the Constitutional Reform Act of 2005 will divest it of jurisdiction in October of 2009, replacing it with the Supreme Court of the U.K. Then-sitting Law Lords will become the twelve justices of the supreme court, but subsequent vacancies will not be filled by members of the House of Lords.

Xue Cher Luo dispelled five common myths about Chinese law. First, it is only half true that Chinese people file few lawsuits. Although most disputes are resolved by alternative dispute resolution, data indicates a tremendous increase in civil lawsuits. Second, it is false that Chinese laws are intentionally vague and lack interpretative guidance from commentary or case law. Statutes do rely on a large body of unwritten principles, but The Supreme Court Gazette offers commentary.

Third, it is false that Chinese judges are not independent. This misconception probably arises because all cases are decided by a panel of judges and judgments are made anonymously (They are not attributable to any particular judge(s), and there are no separate opinions or dissents.). Fourth, it is only half true that there is no legal precedent. Prior decisions have no binding force but are persuasive. Fifth and finally, it is false that China is purely a civil law country. There is a common law legal system in Hong Kong.

Jing Jin, also of China, was unable to present at the luncheon due to time constraints, but shared with me some of the similarities and differences between legal education in China and the U.S. In order to enter a Chinese law school, a student needs a high entrance exam score, knowledge of a second language, and course work in politics and law. Applicants can enter a bachelor's level program, or strong candidates can directly enter a master's level program. Usually, but not always, a master's degree is required to enter a doctoral program. A bachelor's program takes four years, and a master's or doctoral

program takes two to three years.

The bachelor of law curriculum is largely required coursework, but the master's and doctoral programs are mostly elective. The advanced degrees also generally require publication in a law journal. Chinese professors generally teach in a lecture-style. Legal history is taught, but Confucianism, one of the historical sources of Chinese law (in addition to feudalism and Western law), is only studied by elective.

It is important for Chinese lawyers to know international law, particularly international trade law and law of the World Trade Organization. Since 2002, all law candidates (including prospective judges) take the same bar exam. The specialized practices of securities and IP require an additional exam. There is not a continuing legal education requirement as in the U.S., but there is a so-called "annual check" of practitioners.

When asked about major difference between Chinese and American legal education, Jing said she was very impressed with Westlaw and Lexis: "it is amazing and very helpful for legal academy and practice." I noticed that the majority of the LLM students this year are Chinese females, so I asked about the numbers of women studying and practicing law in China. Jing said, "Actually, I believe in China, there are more female students in law school, but it seem[s] to me there are less female lawyers[s]." She speculated that this is because, "not all law students will become lawyer[s]. We have many choices after graduation from law school."

I asked Jing what she liked and disliked about studying at William & Mary. She said, "I like this beautiful place and this friendly school[,] and I found Conlaw is interesting." As for the dislikes, "U.S. law is very complicated and technical. . . . Also, the law school's cou[r]se setting, [especially] for 1Ls is a little bit demanding. Thus, I feel that we [are] just like a studying robot in some sense." She continued that the food was also an adjustment as well as the slow pace of life in Williamsburg: "for people [ ] from China, we generally feel a little lonely[:]; you know in China, we are surrounded by friends, relatives, and at least by people, but now we are surrounded by squirrels."

Our LLMs are a great wealth of knowledge. If any of these topics peaked your curiosity seek out an LLM.



LEFT: Xue Cher Luo from China talks about five myths concerning Chinese law.



BELOW: Tetyana Yaremko from Ukraine discusses Constitutional reform.

Photos by Whitney Weatherly, Staff Photographer.

Environmental Law Society

## TONER CARTRIDGE RECYCLING PROGRAM



Collection bins can be found under the hanging files and in the faculty lounge.

Contact [benjamin.david.novak@gmail.com](mailto:benjamin.david.novak@gmail.com) for more information



# Environmental Law Society Attends National Conference

by Jessie Coulter  
Contributor

"It is better to be vexed to death than to bring a lawsuit." So says a Chinese proverb popular among China's environmental alternative dispute resolution crowd. This was one of many legal gems that members of William & Mary's Environmental Law Society (the original ELS) picked up over Easter weekend in Vermont. At 5:47 p.m. on Mar. 20, five intrepid ELS members started driving to Burlington, Vermont, for the 2008 National Association of Environmental Law Societies Conference. At 6:32 a.m., just as the sun's rays began glinting off mounds of snow and Moose Crossing signs, Carrie Boyd, Tom Fitzpatrick, Elana Stanley, Benjamin Novak, and yours truly, Jessie Coulter, rolled into town, ready for a weekend of learning, networking, and shade-grown coffee drinking.

The conference title, "Picking Up the Pieces: Reclaiming Global Environmental Leadership," reflected the conference's focus on environmental policies being implemented by local and regional authorities in the absence of national environmental initiatives. Conference speakers and attendees discussed the possibilities of small legislation, many expressing hope that larger governmental bodies will follow suit in the near future. The speakers had come from as close as Burlington itself, and as far as Shanghai, China.

Re-evaluating established environmental practices and changing old ideas were common themes throughout the conference's workshops. Several panelists claimed that environmental innovations depend vitally on changes in mindset. When cities and states change the way they perceive energy and resources, a policy sea change often follows. Clean water, an issue that conference speakers agreed brings people together like no other environmental issue, depends a great deal on mindset. According to government officials and non-profit workers at the conference, Americans are not running out of water; they're throwing it away. One panelist asked conference members to think about the cycle of American water usage: we take fresh water, dirty it up, clean it, and put it in the ocean. The panelist suggested creating water treatment systems that cycle treated fresh water within a city or region, instead of expending vast amounts of energy to pipe water to dumping outlets.

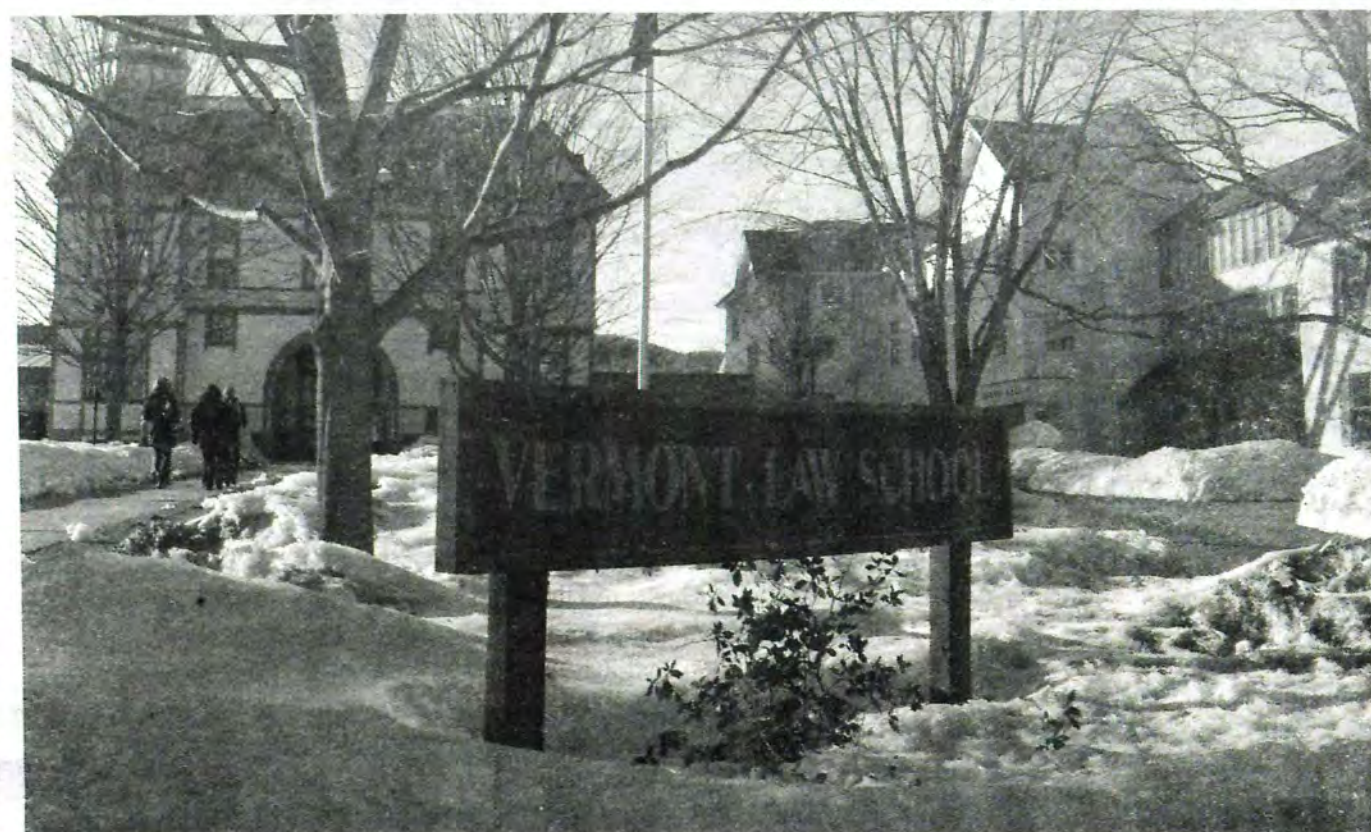
Ever heard of water defying gravity in California? Flowing uphill to those who can afford it? Changing systems like southern California's would require a vast mindset sea change. But some



ABOVE: Members of the Environmental Law Society, Carrie Boyd (3L), Tom Fitzpatrick (1L), Elana Stanley (1L), Benjamin Novak (1L), and Jessie Coulter (1L).

BELOW: Vermont Law School blanketed in snow.

Photos courtesy of Jessie Coulter, Contributor.



panelists were hopeful. A city official from South Burlington pointed out that peer pressure among mayors can spur on change in water management, quipping, "You don't want to be the [one] at the National League of Cities banquet who just built a wastewater treatment plant with ocean dumping and no cogeneration." It would be worse than a Geek Squad member having last year's iPod at the Apple Worldwide Development Conference.

Traveling back down what felt like the entire East Coast on Sunday, your

five ELS members enthusiastically discussed plans for new ELS projects . . . until ironically running out of gas north of New York City. Satisfied that their visual demonstration of the limitations of our planet's fossil fuel resources had attracted the attention, and sneers, of enough Easter holiday drivers, the five sent up an eco-friendly distress flare, attracting the attention of a friendly AAA truck who had some 10% ethanol unleaded.

Back on the road, the five agreed that one of their favorite speakers had

been Vermont Senator Bernard Sanders (an Independent), who wrapped up the conference with an address on the status of national environmental issues. Sanders has co-sponsored a bill with Senator Barbara Boxer to reduce American carbon emissions significantly in the next ten years. Shaking an emphatic finger at his audience, Sanders declared in his sharp New England accent that he tells anyone and everyone who believes we do not have the means today to seriously curtail global warming, "Yer dead wrawng."



# A Call for Ethics: A Critique of The Advocate

by Neal Hoffman  
Contributor

This piece focuses on the ethical requirements of journalism, conflicts of interest, and the concern and problems that arose from an article run by Mr. Kennedy-Shaffer in the last issue (released Tuesday, Mar. 25) of *The Advocate*.

First, in the interest of disclosure, I'm writing this from the viewpoint of a three-year editor-in-chief of an undergraduate, political newspaper. Additionally, I was asked to write this article by Kelly Pereira and Tara St. Angelo, the Co-Editors-in-Chief of *The Advocate*, after I raised a concern about Mr. Kennedy-Shaffer's article with them, and Jenny Case, the newly elected SBA president. Finally, I voted with the majority in both polls cited by Mr. Kennedy-Shaffer, in favor of direct election in the referendum, and against Mr. Kennedy-Shaffer in every election.

The article in question, *Hope for the SBA*, was an editorial, printed in the Features section of the paper. The article begins with Mr. Kennedy-Shaffer's opinions describing the law school poll and student referendum on direct election of law school senators. The article mentions a Mar. 11-13 survey and the Student Assembly referendum placed on the ballot. Next, the article shifts its attention to this past SBA presidential election between Ms. Case and Mr. English, the candidates' views on the issue of direct election, and the results of a second survey about the new SBA leadership. Finally, the last five paragraphs are solely opinion sections about making the SBA better in the future.

At the time this article was released, Mr. Kennedy-Shaffer was running for a position in the SBA leadership as a 3L representative. The intent to run forms were due Mar. 21, so, even before the issue was sent to the printers, Mr. Kennedy-Shaffer was aware he was running for the position. Indeed, according to Ms. St. Angelo, Mr. Kennedy-Shaffer was given time after that Friday in which he might modify his article if he desired to do so, due to the emergence of the SBA election and referendum results. So, not only was he aware he'd be running for a position, but he had time in which he could have modified his article to include that information.

This brings us then to the problems. The article is rife with failed disclosures stemming from a variety of conflicts of interest. That is, Mr. Kennedy-Shaffer's private interests clash repeatedly with his obligations as a responsible journalist. I'll mention just a few below.

In the past, *The Advocate* has sent out polls attempting to gauge student opinion on issues. These polls are created and run by Mr. Kennedy-Shaffer, yet there is no mention of this fact in the article.\* As a side issue, this is also important because access to the newspaper's poll data allows Mr. Kennedy-Shaffer (and no other candidate) to utilize this information in crafting his campaign strategy.

After speaking with Ms. St. Angelo, I was informed that all of the poll questions Mr. Kennedy-Shaffer sends out are to be approved by the Co-Editors-in-Chief of *The Advocate*. All of them were, except for one: Mr. Kennedy-Shaffer's poll question on election/appointment of senators. This poll question was never specifically approved, and, according to Ms. St. Angelo, "We saw that question for the first time with the rest of the law school. For that reason, we chose not to run the poll in the News section. . . . Alan still wanted to use the results, but we did not want to have it appear as though we [*The Advocate*] sanctioned the results." However, no disclosure of any form regarding this or any poll ever appeared in Mr. Kennedy-Shaffer's article.

In his article, Mr. Kennedy-Shaffer references the SA Review Board's decision about the SA Constitution and direct election of law school senators. However, he failed to disclose that he and Sen. Luppino-Esposito were the organizers behind the constitutional challenge. Additionally, if Mr. Kennedy-Shaffer was involved in the process of creating and presenting the referendum bill, he did not mention such a connection, including whether or not he helped draft the bill or signed the petition.

It is also critical for purposes of honesty and openness for Mr. Kennedy-Shaffer to inform readers, in this column and past columns, that Mr. Kennedy-Shaffer had applied for and was not appointed to the position of law school senator. This (revealing personal bias) would allow a reader unfamiliar with Mr. Kennedy-Shaffer or the issues to make a fully informed judgment about the article's merits.

Regarding the grad school referendum (which Mr. Kennedy-Shaffer may have helped create), Mr. Kennedy-Shaffer should have disclosed that, on the day of the election, he emailed students, reminded them of the referendum, and urged them to vote.

Mr. Kennedy-Shaffer chose to focus his piece predominately on the upcoming SBA elections. Thus, Mr. Kennedy-Shaffer should have disclosed that he was a past candidate for SBA president, and that he has run for SBA positions every year since he arrived

at law school. But above all else, his biggest failure as a journalist and editor was his failure to disclose that he was a candidate seeking an SBA position at the time of publication. This action, in my opinion, was a travesty of journalistic ethics and a conflict of interest of the highest order.

These same ethical concerns are echoed in the policies of a number of news organizations across the country. For example, the American Society of Newspaper Editors states: "[N]ewspapermen and women who abuse the power of their professional role for selfish motives or unworthy purposes are faithless to [the] public trust. . . . Journalists must avoid impropriety and the appearance of impropriety as well as any conflict of interest or the appearance of conflict. They should neither accept anything nor pursue any activity that might compromise or seem to compromise their integrity. . . . Good faith with the reader is the foundation of good journalism. Every effort must be made to assure that the news content is accurate, free from bias and in context, and that all sides are presented fairly. Editorials, analytical articles and commentary should be held to the same standards of accuracy with respect to facts as news reports. Significant errors of fact, as well as errors of omission, should be corrected promptly and prominently."<sup>1</sup>

Likewise, according to the Society of Professional Journalists, "Journalists should be honest, fair and courageous in gathering, reporting and interpreting information," and they "should be free of obligation to any interest other than the public's right to know."<sup>2</sup>

According to the managing editors of the Associated Press, a "newspaper should guard against inaccuracies, carelessness, bias, or distortion through either emphasis or omission" and "should strive for impartial treatment of issues. . . . Involvement in such things as politics, community affairs, demonstrations, and social causes that could cause a conflict of interest . . . should be avoided."

Regarding political involvement, *The New York Times's* employee ethics policy states: "Journalists do not take part in politics. While staff members are entitled to vote and to register in party primaries, they must do nothing that might raise questions about their professional neutrality or that of our news operations. . . . No staff member may seek public office anywhere. Seeking or serving in public office violates the professional detachment expected of a journalist. Active participation by one of our staff can sow a suspicion of favoritism in political coverage."<sup>3</sup>

Here, Mr. Kennedy-Shaffer's pri-

vate interests (getting elected and voicing his personal opinions) clash with his public duties as a responsible journalist. Language such as, "The SBA will only be successful if," "The SBA needs," "we will elect leaders," "we have the opportunity," sounds very different if the information, "by the way, I'm also running for one of these positions," is included. The language ceases to become an independent call for action and instead becomes a campaign platform. Additionally, some of the language used in the article bears a resemblance to language used in Mr. Kennedy-Shaffer's campaign flyers and handouts.

This newspaper was released on Tuesday, Mar. 25, the day before the SBA election, and was placed in every single student's hanging file. My concern over Mr. Kennedy-Shaffer's article (other than the failed disclosures) emerges because no other candidate was given a platform in *The Advocate* from which to express his views. No one but Mr. Kennedy-Shaffer. And the thing is, utilizing *The Advocate* as a place to allow all candidates to express their views on the issues before the election would be a great idea, so long as no candidate was in charge of overseeing that portion of the issue.

At the end of the day, it doesn't really matter. Mr. Kennedy-Shaffer lost the election, and no harm came from the publication to any of the other candidates. But there is a lesson here from which we can all benefit: when we involve ourselves in outside activities, we can become bound by the standards and obligations of those endeavors. Mr. Kennedy-Shaffer, if you choose to act as a journalist, you should hold yourself to the ethical standards of a journalist. When you use a newspaper for personal gain, you place the integrity of the entire publication at issue. And while that may not result in any consequences here, it may well result in consequences out of school. How we act outside the practice of law can carry as many consequences for us as how we act in the practice of law.

1 The American Society of Newspaper Editors Statement of Principles can be found at <http://www.asne.org/index.cfm?ID=888>. These and other quotations have been altered for emphasis.

2 Quotations from the Society of Professional Journalists and the Associated Press managing editors can be found at [http://www.justicejournalism.org/crimeguide/chapter06/sidebars/chap06\\_xside4.html](http://www.justicejournalism.org/crimeguide/chapter06/sidebars/chap06_xside4.html).

3 The New York Times Company Policy on Ethics in Journalism can be found at <http://www.nytimes.com/press/ethics.html>.

\* Editors' Note: Kennedy-Shaffer does administer the polls for *The Advocate* and has been trained by the College's Human Subjects Committee. The results of each poll conducted this semester are accurate, and the methods of conduct are sound. This article questions Kennedy-Shaffer's motivations for conducting the polls,



## A Farewell to Shug's Nights

by David Bules  
Features Staff Writer



Sadly this will be the last time I write for *The Advocate*. For two years, I've had fun writing these columns, and it's time to turn it over to someone else. But before I leave, I figured I'd leave thanks to some people and leave some thoughts for the year to come. So this column is about the most influential people and the unsung heroes of Marshall-Wythe. These lists are comprised entirely of my own thoughts after observing the goings-on of Marshall-Wythe for the last three years. Take them with a grain of salt. The lists include only students, faculty, and administration returning for the 2008-2009 academic year. So, without further ado, here are those lists in no particular order.

**Students:** Any list of influential students will include the most influential organizations. SBA President Jennifer Gwynne Case has served SBA for two-plus years in the capacity of 1L Rep, Secretary, and now President. Jenny also spends time as Lead Notes Editor of the *Law Review* and a Legal Skills TA. Throughout her time at Marshall-Wythe Jenny Gwynne has solidified her position as a person the entire student body can count on. She braved a tough campaign this year to reach her goal of becoming SBA President. And she hasn't stopped there. She recently led SBA through the collective appointment process. SBA chose a nearly flawless Honor Council, group of law school Senators, and Grad Council representatives. I imagine she will graduate from Marshall-Wythe next May as one of the most successful SBA Presidents in recent memory.

The SBA recently appointed Bishop B.J. Garrison as the Chief Justice of the law school Honor Council. Bishop is a rising 2L and, in the past five years, maybe longer, no rising 2L has ever been awarded this position. Mark my words: Bishop will be remembered as one of the greatest Chief Justices this school has ever seen. His military background and leadership style is reminiscent of former Chief Justice Chris Johnson ('06). SBA hit a home run appointing Bishop as the Chief Justice, and hit another one naming Trenton Brown (2L) to the Council. Between Bishop and Trenton the Honor Council has the strong personality tandem that it once had in days of old. The Chief Justice has historically had a right-hand man, and Trenton Brown would fit this role perfectly if that's how

things turn out. The SBA couldn't have gone wrong here.

1Ls Meezan Qayumi and Zachariah DeMeola burst onto the Marshall-Wythe political scene in fall 2007. Both served as SBA 1L Reps and then won seats for 2008-2009 as Treasurer and Secretary, respectively. Meezan appears to be at the center of every event for the 1L class and from what his peers say he is a very trustworthy man. Zach is about as politically savvy as students come. He helped argue the SBA budget numerous times to the Finance Committee and has become very familiar with the inner-workings of the Student Assembly. Both Meezan and Zach assisted me with the law school's argument before the Student Assembly Senate in which we persuaded a unanimous Senate to accept a bill and referendum on the appointment/election issue. Thanks to their help, SBA preserved its right to appoint Senators to the SA.

Newly anointed Moot Court Chief Justice and *Law Review* Notes Editor, John J. O'Kane IV, is no stranger to positions of power. O'Kane started in centerfield for the Tribe softball team as 1L and again as a 2L this year batting leadoff. This feat has been accomplished by a precious few. O'Kane and Larry Perrone (3L) won the Tulane Sports Law Moot Court Tournament over Mardi Gras, bringing the Moot Court team its first overall title in years. He's a connoisseur of constitutional law and is willing to help anyone who asks for tutoring. About the only organization he doesn't have his hands in is SBA. But O'Kane deserves everything he has worked for.

Three years ago, there was no such thing as the Election Law Society. Since then, this organization has been booming. With Jeff Palmore ending his term as President, Ali McGuire (1L) takes over. Ali is a force to be reckoned with and her devotion to ELS will only strengthen its position as one of the most influential organizations in the law school. Under her leadership, Ali will take this organization to new heights during the important 2008 election season. This summer Ali will be working for the Republican National Committee. Also heading to the RNC is Brandi Zehr, who joins this list after having an enormously successful William & Mary career on both the law school and undergraduate campuses.

**Faculty:** Alan J. Meese, the Ball Professor of Law at Marshall-Wythe, has an impressive resume. Meese played football for the College of William & Mary before graduating Order of the Coif at the University of Chicago Law School. He then clerked for Judge

Easterbrook on the Seventh Circuit and Justice Scalia on the United States Supreme Court. Oh, and he found time after that to work at Skadden Arps (no relation to 2L Arpan Sura). Meese is also the President of the Faculty Senate and chairs the Senate's Executive Committee. As for his students, having taken Professor Meese for Antitrust and Economic Analysis of Law, I can say he's one of the more entertaining professors I've had. And students in our class, such as the famous 3L Shana Hoffstetter, agree.

Professor Laura Heymann arrived at Marshall-Wythe in 2005. After graduating Order of the Coif from the University of California at Berkeley School of Law (Boalt Hall) she worked at Wilmer Hale and then AOL. Professor Heymann instantly caught the attention of 1Ls when she began teaching Torts because of her laid-back, open-discussion style. She also teaches Trademark Law and Intellectual Property Law. In a short three years, Heymann has solidified her place among the faculty elite.

Professor Michael Steven Green (or MSG as some students refer to him) is a student favorite. Green went the opposite route from Heymann, graduating from Berkeley undergrad and Yale law. Later he clerked for Judge Richard Posner on the Seventh Circuit. According to some students who have taken Professor Green's classes, he is well known for his explanation on what the law should be and his dislike for textbook supplementals written by second-rate law school graduates. Green captivates his students to the point of making a complex class like Conflict of Laws seem rather interesting.

**Administration:** Interim President W. Taylor Reveley III has achieved a legendary career in private practice and is among the nation's academic elite. Reveley has won the hearts of Marshall-Wythe students since he arrived in 1998.

Dean Lynda Butler recently took over in the interim for Reveley, and she has continued the law school's success. Applications were up over 7% this year when the national trend was down about 3%. Hopefully she will forgive me for this, but Butler was the new professor that everyone loved, much like Heymann, when my father was at Marshall-Wythe attending her Property class.

When all order in the law school seems to have been lost, Dean Lizbeth Jackson saves the day. Jackson is a calming force when times get tough. Along with Butler and Reveley and Dean Faye Shealy, she has helped move the school forward in this time of transi-

tion. These four deans and former deans (President) are about as distinguished as they come, and their presence makes Marshall-Wythe a better place.

**Unsung Heroes:** While some students are presidents of their respective organizations, no organization can function without its diverse membership. Joelle Laszlo (2L) tops this list and her work is simply invaluable. Joelle is a hard-working member of just about all of the organizations in the law school. I cannot tell you how much we all appreciate Joelle. And if you see her, thank her. She has undoubtedly had a part in making your organization work flawlessly.

David W. Tyler is another student who is part of many organizations. David pulled off the trio of *Law Review*, Moot Court, and Trial Team. In addition he is on the *Law Review* Editorial Board this year and was on the Moot Court board last year. David may not be 100% committed to Legal Skills, but his work elsewhere is greatly appreciated.

Farewell: and so it ends. This column will be in good hands next year, as Ali McGuire will take over. I am very confident she'll bring back the humor and wit with which we Features columnists once wrote. And with that I bid you farewell. Enjoy the graduation issue next time. It's been a fun two years on *The Advocate*. Good luck in your future endeavors and Godspeed. Sincerely yours, David T. Bules.

\*Faculty background information gathered from Marshall-Wythe School of Law website.



# CENSORED: How the Pub Council Undermines Our Freedom of the Press

by Alan  
Kennedy-Shaffer  
Features Editor



Having devoted the last two years of my life to *The Advocate*, it was painful for me to receive email notification on March 27 that the Publications Council has passed over the Class of 2009 and selected a first year, arts writer to become the next Editor-in-Chief of the law school newspaper.

I was informed that the Publications Council made this decision based on mistaken assurances from Tara St. Angelo (3L) and Kelly Pereira (3L), the outgoing co-editors-in-chief, that I would remain on *The Advocate*. It is illuminating that the outgoing Co-Editors-in-Chief refer to me as the "Features Editor/Columnist/Reporter/Poll Administrator."

30,000 words, give or take, has been my written contribution to *The Advocate*. That includes 20,000 words

in over 20 editorial columns, 10,000 words in seven cover stories and numerous other news stories, and dozens of photographs. I have served as a star reporter and the only political columnist on topics ranging from former President Gene Nichol to Interim President Taylor Reveley, from the Iraq War to Darfur, and from elections to global warming. I also created and maintained *The Advocate's* website and initiated the first student polling operation on campus.

Over the last two years, we have carved out a place for dialogue and political discourse at the law school that students have come to recognize and respect. Law students and staff universally know me and respect my work for *The Advocate*, even though some disagree with my opinions.

The Class of 2009 staff members unanimously considered me the natural and most qualified person to become Editor-in-Chief and the Publications Council's irrational decision will do irreparable harm to our newspaper's reputation. To presume that I would remain on *The Advocate* to guide a first year writer with scant involvement,

selected for political reasons, is beyond comprehension.

*The Advocate* staff has long acknowledged that I am the most prolific, most proactive, and most devoted senior editor, and the Publications Council's mistake will cost us our investigative integrity and relationships carefully built up over the last two years. To not inform me (after agreeing to do so) that a junior staff member was also applying for the position undermined the interview process and added insult to injury.

I am disappointed and saddened that the outgoing editors-in-chief and the Publications Council would cast aside my credentials and toll the death knell for all the progress that the Class of 2009 and I have made at *The Advocate*. As a "true professional," I recognized the Publications Council's politically motivated decision for what it was and offered my resignation from *The Advocate*.

But that is only half of the story.

The outgoing Editors-in-Chief responded to my resignation letter by insulting me, insulting the fellow staff writer and prominent member of the law

school community who recommended me for the position of Editor-in-Chief, and calling the Class of 2009 "lack-luster." They did not initially send me or any other law student their response—I was given a copy by a Publications Council member who believes that the Publications Council should not exist.

In a subsequent meeting, the outgoing Editors-in-Chief admitted that they and the Publications Council did not make me the new Editor-in-Chief of *The Advocate* because I am too outspoken, too involved, and too opinionated.

That an otherwise qualified journalist and senior editor would be disqualified from becoming Editor-in-Chief for being too opinionated is unconscionable. Freedom of the press depends on editors, reporters, and columnists retaining our independence and freedom of thought.

The Publications Council undermines the freedom of the press by allowing administrators and undergraduates who know nothing about the law school student newspaper to select our Editor-in-Chief behind closed doors. What Continued on Page 13.

## The Pub Council Process Was Conducted Fairly

by Patty Roberts  
Assistant Dean  
Contributor

There are those who may not agree with our University's policy of having the Publications Council make the selection of editors and station managers of its members, but that is not the focus of this article. Instead, as a member of the Pub Council for more than five years, two as Chair, I would like to respond to recent allegations of unfairness and censorship in the selection process of *The Advocate's* new Editor-in-Chief. I make this response as an individual member, and not on behalf of the entire Council, because the response was necessitated between a Friday late afternoon submission and a Sunday publication date. I do not offer this as the position of the Council; instead, I simply hope to address some of the false allegations that were made regarding the process.

The Publications Council includes as its voting members the editor or station manager of each publication/media member, as well as three faculty/administrative members appointed by the Provost. I am one of those appointees. Mark Constantine is an ex officio mem-

ber from the Student Activities Office. For those publication or media members who have co-editors/managers, for instance *The Advocate*, only one vote is allowed to that member publication.

I have been part of the election process for many years, and each year, written applications are submitted to the Pub Council by those interested in being considered for the positions of leaders of their publications or media organizations. Written recommendations may also be submitted in support of an applicant. Each applicant is afforded an interview with the voting members of the Council, who then discuss the candidates in a closed session and, when ready to do so, proceed to a vote. It was during a recent vote of the Council that Alan Kennedy-Shaffer was not selected as Editor of *The Advocate*. The decision was made after a consideration of both candidates' applications, recommendations, interviews, and a thoughtful discussion by the members. Mr. Kennedy-Shaffer had worked with several of the voting members in the past, as a journalist, so he was known to a number of the members outside the Council interview process as well.

Mr. Kennedy-Shaffer asserts that he was told that the Pub Council made the decision not to select him as Editor

after assurances from the current Editors that he would remain on *The Advocate*. I cannot speak to what he was told, however I can state that it was the Pub Council's hope that he would continue to make his significant contributions to *The Advocate* if not selected, and we asked that the current Editors convey that to him when informing him of the decision. The hope that Mr. Kennedy-Shaffer would continue to be involved was not the basis for our decision. It was simply recognition of the positive contributions he had made to *The Advocate* as a writer. There was no presumption made that he would remain on *The Advocate*, and certainly not to "guide a first-year writer" in her editorial responsibilities.

Mr. Kennedy-Shaffer noted in his application materials and his interview that he was the choice of the Class of 2009 staff members. However, as our process currently stands, it is the members of the Pub Council who select the editors—ALL editors and station managers, not just the Editor of *The Advocate*—rather than the current members of any publication or media organization. The current editors/managers are often asked during deliberations for their recommendations and those of their members.

As to the "other half of the story," it

is not a juicy one. While I cannot speak to what Mr. Kennedy-Shaffer was told regarding an additional applicant to the position of Editor, I can state that there is no requirement in the application process that applicants be told that there are additional candidates for the position. I also cannot speak to what Mr. Kennedy-Shaffer was told about the Pub Council's decision, I can only state that as a voting member present during the discussion, any allegation that the decision was made because he was "too outspoken, too involved, and too opinionated" is simply false. When Mr. Kennedy-Shaffer met with me, the current Editors, and Dean Jackson to discuss his disappointment with the decision, I explained that while I could not discuss the details of the deliberation, I could assure him that the decision was made fairly and without political motivation. I mistakenly thought that he took me at my word.

Mr. Kennedy-Shaffer alleges that "an otherwise qualified journalist and senior editor would be disqualified from becoming editor-in-chief for being too opinionated." There was no disqualification in the Pub Council's process, nor was there discussion concerning either candidate's "opinions." In my

Continued on page 13.



## CENSORED

Continued from Page 12.

right do the undergraduate editors of the yearbook, the humor magazine, and the literary magazine have to determine the fate of the law school student newspaper? Shouldn't we, as a newspaper staff, select our own Editor-in-Chief?

The Publications Council should get out of the business of censorship and return to its core purpose of doling out funds. The Editor-in-Chief selection process is too important to entrust to a body with little knowledge of individual publications and even less ability to insulate itself from the dangers of censorship.

Student journalists, like other journalists, must stand on principle and

defy the censors. We must declare our independence from the pressures of administrators and others who disfavor discussion of tough issues and squash investigations of abuses of power. We must keep in mind, as Thomas Jefferson did, that "our liberty depends on the freedom of the press."

We must restore the freedom of the press here at the College of William and Mary.

*This is Alan Kennedy-Shaffer's final column as Features Editor/Columnist/Reporter/Poll Administrator for The Advocate here at the William & Mary School of Law.*

## Process Was Fair

Continued from Page 12.

experience, the members of the Pub Council, when selecting editors or stations managers, consider not only the writing experience of applicants, but also their ability to lead and manage, among other things. I have never been part of a Pub Council deliberation that discussed censorship of any publication through selection of its leader. In fact, the voting members of Pub Council, by the time selection of editors and managers occurs, have all been leaders of their publications and media organizations for a year, often more, and the very idea of censorship of any publication or station on campus would enrage them. They

are each, however, experienced writers, editors, managers and leaders, and know what qualities we should be seeking in the next year's leaders. I have been continually impressed at the careful and reasoned consideration that each of the undergraduate editors and managers puts into the selection process, often with a maturity that defies their years.

Again, my response is not meant to argue whether the Pub Council should select editors and managers. It is simply meant to assure the law school community that, while disappointing to Mr. Kennedy-Shaffer, the decision regarding the new Editor of *The Advocate* was made after a fair and deliberate process, without the motivation to censor him or anyone else.

# Setting the Record Straight: The Difficult Decision of Selecting a New Editor-in-Chief

by Kelly Periera  
and Tara St. Angelo  
Co-Editors-in-Chief

**W**e feel that Dean Roberts's statement fully refutes the assertions by Alan Kennedy-Shaffer that the decision by the Publications Council to select Jenny Kane as Editor-in-Chief was in any way political or irrational or intended as censorship. Our publication record shows that we have always given Kennedy-Shaffer space to express his views on a variety of topics. His resignation was not foreseen and was fully voluntary.

We feel compelled to address additional inaccuracies in Kennedy-Shaffer's column concerning the qualifications of our legitimately selected Editor-in-Chief and our supposed devaluing of contributions by the Class of 2009. We are saddened that Kennedy-Shaffer has chosen *The Advocate* as a forum to air such accusations because we clarified these and other issues at a meeting on March 31. At that meeting, we spoke in our individual capacities, and not on behalf of the Council, and encouraged Kennedy-Shaffer to approach the Council with any lingering concerns. He has not done so.

On March 26, the Council, consisting of 13 members, met and interviewed the two candidates for Editor-in-Chief. The Council considered both candidates' previously submitted applications and resumes, and Kennedy-Shaffer submitted a recommendation of support from a member of the Class of 2009. Each candidate interviewed with the Council, and then the Council deliberated and

made its decision.

We drafted an email to Kane to inform her of the decision, and we waited to receive her acceptance before we transmitted the news to Kennedy-Shaffer on March 27. In that email, we gave tribute to his many contributions to *The Advocate* by referring to him as "Features Editor/Columnist/Reporter/Poll Administrator" and expressed on behalf of the Council, as well as ourselves, the sentiment that he continue with *The Advocate* in that capacity. Early the next morning, Kennedy-Shaffer drafted a lengthy email to the Publications Council and several administrators as well as uninvolved parties, which consisted largely of the same material in his column this issue. We drafted an email exclusively to the Council and administration to apologize for Kennedy-Shaffer's "highly unprofessional" email and to refute his many misrepresentations (It is to that email that Kennedy-Shaffer refers as "insulting"). That email has been redacted for confidentiality but read as follows:

"We are shocked and ashamed that Alan would call [Jenny's] qualifications into question. Jenny has an impressive background in publication and editorial work. She has had more than "scant" involvement with the paper. She has aided with editing tasks, unlike Alan. She has also single-handedly started an "Arts" section of the paper. Because of her we have inspired students to contribute entertainment and fashion columns to *The Advocate*. We believe that Jenny has the passion and experience to bring *The Advocate* to new levels, and we are dismayed that Alan would refute that.

We also feel as though Alan misrep-

resented himself. His letter of recommendation from a Class of 2009 staff member came from . . . a respected member of the law school community, [but] we would classify his involvement with the newspaper as "scant." His only contribution to the newspaper this year was an article chronicling his summer at a non-profit organization. The law school's Public Service Fund, which provided [his] stipend for that summer work, required him to write that article. In addition, the involvement of the Class of 2009 with the newspaper this year has been lack-luster, with the exception of [a] prized photographer . . . and Alan. We do not know to what other Class of 2009 staff members Alan refers."

Clearly, we did not belittle the contributions of any 2Ls. Rather, we simply pointed out that only two 2Ls are current staff members of *The Advocate*. We apologize to the Class of 2009 and to the student who recommended Kennedy-Shaffer for the position for any unintended slight. We are very sorry that our messages were misinterpreted. The Class of 2009 has obviously contributed greatly to the law school community.

Kennedy-Shaffer's column is also rife with additional misrepresentations. *The Advocate* does not have such positions as "senior" and "junior" editor; Kennedy-Shaffer is not our only political columnist; and we never assured him that he was the only candidate for the position or that we would notify him of other potential candidates.

As a final note, we gave Kennedy-Shaffer adequate opportunity to amend his column this week to avoid this undignified exchange in print. We asked that "you voluntarily reframe your

editorial as a critique of the Publications Council process rather than supposition about what did or did not happen at a particular meeting. You are welcome to catalog your many contributions to the paper and state that [you] disagree with the decision, but please consider leaving out the email, the discussion of the Council proceedings, and our meeting with you." (The reason we requested such changes was not censorship, but rather the facts that we are bound by confidentiality not to discuss the substantive content of those proceedings and we lacked the opportunity to seek a response from the Council due to time constraints in publishing this issue.) We recognize that the Publications Council EIC selection process is a legitimate and important topic of discussion, and we encourage that discussion in an appropriate manner.

We are also proud of content of this issue and we hope that the law school community does not let this discussion of Kennedy-Shaffer's grievances overshadow the hard work of our staff.

Kennedy-Shaffer also declined an opportunity to respond to Neal Hoffman's column in this issue.



## A Call for Reform

by David Sella-Villa  
Contributor

A few weeks out from SBA elections, life at Marshall-Wythe has returned to its end of semester stressful normalcy. Students across the law school's participatory spectrum have tucked away thoughts on these past elections and opened up outlines on Torts and Trust & Estates. The time and intellectual distance has created some space for more dispassionate reflection on our SBA election system.

Two years on the Honor Council and two elections on the Election Committee granted me access to every aspect of the SBA election process. Coming out of this rewarding service experience, my feelings on the election process have matured and changed. This article, therefore, reflects my personal feelings and in no way reflects the feelings, thoughts, or policies of the SBA or the Honor Council.

The current system for SBA elections works pretty well. Over the course of a few short days candidates can get out their message, solicit votes, and stuff everyone with brownies, all while maintaining a high level of energy. The SBA boosts its profile without distracting itself for too long from the impressive amount of work it does. A few Honor Council members get a chance to use the

position of integrity to facilitate a fair and relatively undistruptive process in law school life. A short timeframe for campaign minimizes disturbance to the usual groove of studies, job hunting, and socializing. In short, the upsides can't be cast aside lightly.

The elections process, however, leaves a few interests without much of a voice. Election rules appear before each election with little advanced warning. People who support the candidates are limited to following the same campaign rules as the candidates. Candidates who lose have no way of knowing by how many votes. Voters don't have a private place to vote and don't know what happens after their ballot gets dropped into that worn black box. Election Committee members, bound by the Honor Council's code of confidentiality, have no forum for telling their side of election-rule-enforcement stories.

The tradeoff between the costs and benefits in the elections systems reflects the ideas which we uphold—either they stem from our values or because we tolerate this equilibrium. The sentiments which emerged during these past elections called this equilibrium into question. The current SBA election system, therefore, may not address the interests and values of our community. My call, therefore, is to give the SBA elections system legitimacy.

Is the current system a legitimate

reflection of the interests and values of our community? It well may be, but the system, as it currently incarnates itself each new election, does not grow out of a community mandate. Simply, the SBA asks the Honor Council to run the elections. The SBA constitution calls for this. The Honor Council selects a committee to write the election rules and run the elections. I emphasize, the current system might well be the best way to run SBA elections. I call on the SBA, though, to make sure that this is the case.

The source of the current system is the SBA constitution. The SBA constitution, however, leaves no room for community comment on the election system. A step in assuring that the election system actually reflects the community interest would be to amend the SBA constitution. An amendment might simply establish a one time (or periodic) election review committee.

This committee could include SBA officers, Honor Council members, former candidates, faculty, administration, and other interested members of our law school community. The committee's work would be to evaluate every aspect of the SBA election process. From these evaluations, new election rules and procedures could be offered for community comment. Those with an interest can have their say and

those who don't care wouldn't have to be bothered at all. The SBA election rules and procedures might not change much, but the new procedures would emerge from a discursive process in which people would know that they have been heard.

Reforming the SBA constitution is not a small endeavor. I do not make these suggestions lightly. From where I have sat, it seemed like a lot of unrequited emotions and interests took out their frustration against the SBA election system. The current SBA officers have demonstrated their interest in the school, and I am confident they will serve us well. If this issue is as big as I sense it has been at times, the incoming SBA officers are some of the best people we have to start a process of reform. We, as a community, should get behind them if they decide to take such a significant step.

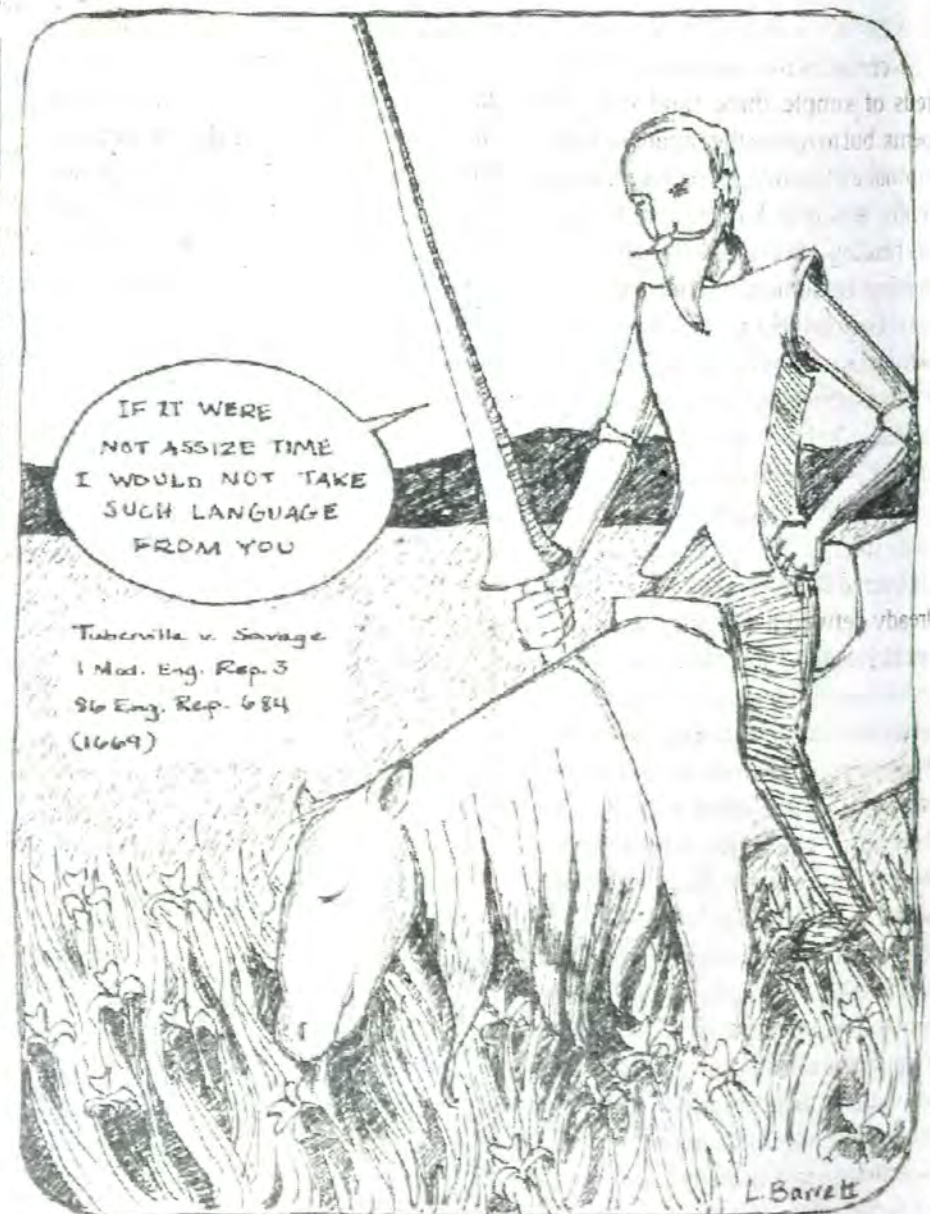
## Letter to the Editor: Chivalry is Dead (in a Good Way)

With all due respect to the chivalric intention of Dave Bules's "Gentlemen's Agreement," I feel obliged to voice my dissent. My feeling is that, beyond certain polite gestures such as opening doors or saying "After you," chivalry is a relic of the past. I do not mean this simply in the sense that it has gone out of fashion, but that it is part and parcel to a paternalistic past in which women were often viewed either as property or as incapable weaklings unable to fend for themselves. Those who are familiar with stories like "The Yellow Wallpaper" by Charlotte Perkins Gilman or "The Awakening" by Kate Chopin are aware that this condescending attitude towards women is mostly associated with the late 19th and early 20th centuries. Thus, although it does not surprise me that such attitudes persist in this day and age—due, at least in part, to the fact that some people link chivalry to a romanticism that has largely been lost—I believe it necessary to protest, even if everyone is expecting it, and

even if no one agrees with me.

The very idea that men need to agree together not to harm women presumes that the default rule is that men can harm women. The fact is, however, that both men and women can harm others, both male and female. The laws that we have established as a society were put in place precisely to prevent this harm. There is absolutely no need for men to agree, as if there is some gender-wide Old Boys Club, not to harm women. To do so implies that there is a choice in the matter, and, frankly, there is not. I would hope, in an era where a woman is a serious contender for the office of the Presidency, where women are CEOs and high-ranking officials worldwide, and where many women could beat the hell out of a number of their male peers, that this would be obvious. So, although I respect the spirit of the Agreement, I find it to be not only useless but also a symbol of an ugly past.

--Jason Wool, Contributor





## The Arts Brief

Look to this space each week for the more "cultured" side of *The Advocate*

# Kerouac Realigned, Part 2: Haiku

by Jenny Kane  
Arts  
Correspondent



### Facts

At some point ahead, you will take a turn off the road, where the road meets the woods. You will have no choice but to take each step, watching each step as you take it, so as not to trip: dirt and leaves and roots. Grass grows uncut and trees laid out across the trail will ask you: over or around? Turn and ask yourself: do I dare or will I stop?

Formerly determined not to revise, Jack Kerouac took his turn and wrote and re-wrote in pocket notebooks, along with sketches and doodles, within street addresses, or cached in the prose of novels—three lines, seventeen syllables or less or more. Watching his steps, taking his steps with newly found discipline after *On the Road* was done, after love had failed him, with no choice but “to look in dismay at the power of looking,” Kerouac set out to revise the Japanese haiku form.

### Procedural History

Kerouac wrote and re-wrote hundreds of simple three (and two) line poems, but to revise the Japanese haiku, or to make it his own, or to make it a thing wholly new and American? Kerouac was reading Thoreau in the 1950s and studying Buddhism. After Kerouac's friend Gary Snyder returned to California from Japan, Snyder brought with him new translations of haiku to trade with the Beats. In his study of R.H. Blyth's *Haiku* (1949), Kerouac likely learned the traditional instruments of the Japanese haiku (the seasons, nature, etc.) and discovered there also the elements that already defined his literary sensibility: the cut, juxtaposition, clarity, and vision. Reduction of language to essence was not unfamiliar to Kerouac. Describing the prose in his *Dharma Bums* in a 1968 interview for *The Paris Review*, Kerouac observed: “A sentence that's short and sweet with a sudden jump of thought is a kind of haiku, and there's a lot of freedom and fun in surprising yourself with that, let the mind willy-nilly jump from the branch to the bird.” Reduction of language to its essence in haiku, but not without this “surprise” factor; not exponential like *On the Road*, but mythic nonetheless and an experiment: a turn, “a sudden jump.”

### Issue

What is the American haiku? Is it haiku or something else? Why does the American form's connection to traditional haiku seem to matter?

### Holding

Buried in another scroll manuscript, entitled “Is there a Beat Generation?” we find three lines: “Fall trees— / dog knocks— / Old itch (a Beat generation haiku).”

### Reasoning

Enacting his American haiku, Kerouac scratches the “Old itch” of the 19th century American ideals of the Transcendentalist movement. In *Walden*, Thoreau exhorted man “to live deliberately,” and “to drive life into a corner, and reduce it to its lowest terms.” Thoreau wanted to unify the generations, and Kerouac listened across the century to hear Thoreau's call: “Simplicity, simplicity, simplicity! I say, let your affairs be as two or three, and not a hundred or a thousand.” And yet, Kerouac's “(a Beat generation haiku),” with its parenthetical specimen label is also a tease; an absurd and surreal image that is both impossible to imagine and instantly visible. “This is not a haiku,” Kerouac seems to say in writing these lines—three, two-syllable lines—and in naming it a haiku. Like the famous Magritte painting, however, this is not a haiku inasmuch as it is a painting of a haiku, a representation of the form as

Kerouac sees it, standing outside the lines, a parenthetical spectator but also its author.

Kerouac recorded as mantra in one of his notebooks: “Keep the eye STEADILY on the object, for haiku. WRITE HAIKUS THEN PAINT THE SCENE DESCRIBING THEM!” By his rendering, Kerouac write-paints nature: “Nodding against the wall, / the flowers / Sneeze” and “The earth winked / at me—right / In the john.” In both of these examples, Kerouac's absurdist humor peaks at the turn, the third and final line in the haiku. Suddenly, the encapsulation of what might have been an ordinary (or slightly out of the ordinary) image becomes in the same instant: surreal, humorous, and sublime. When compared to a traditional Japanese haiku (albeit in translation) by Basho—“old pond / a frog jumps / the sound of water”—it becomes evident how Kerouac's comedic turn almost seems to mock the integrity of the form. After looking, however, at another of Basho's haiku—“now then, let's go out / to enjoy the snow until / I slip and fall!”—the tone of Kerouac's haiku does not seem quite so revolutionary or hypocritical.

The writing and the painting of scenes in haiku happens for Kerouac in the same kind of progression as when you take steps and watch your feet taking steps in the woods, such that your steady focus on one movement leads the image to

appear simultaneously still and yet in constant motion. Haiku is the poet's zoetrope.

One of my favorite Kerouac haiku is: “Beautiful young girls running / up the library steps / With shorts on.” This haiku plays indirectly on traditional seasonal imagery, but with a uniquely American twist. It is both nostalgic in its tenure and yet fresh, as it captures the singular yet generic image of girls running up the library steps. While the turn is more subtle and less immediately humorous in this poem, it provides the detail that shapes and re-shapes how and when we see the beautiful girls running up the library steps. With the added detail about the shorts, the image is more defined (it is warm out; we see legs running up the library steps, beautiful girls' legs), while the detail about the shorts also seems to make the image to become more mythic (a pair of shorts on a beautiful girl could change the way you see the everyday act of walking up library steps).

Whether the “haikus” are two lines or two syllables, scribbled or in sentences, Kerouac found, in his revision of the traditional form, a new medium for the American mystic, a new way to scratch the “Old itch,” a turn off the road.

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