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News Letter



MARSHALL - WYTHE SCHOOL OF LAW
COLLEGE OF WILLIAM AND MARY
Williamsburg, Virginia

Volume Fourteen

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LAW SCHOOL ASSOCIATION HOLDS MEET APRIL 25-26

Ceremonies in appreciation of two well-known members of the law faculty, now deceased, marked the pre-business session of the William and Mary Law School Association April 26. Association President Steve Harris advised the alumni attendees of the recent death of Professor Joseph M. Cormack, a longtime teacher at Marshall-Wythe, who had lived in Austin, Tex. for most of the time since his retirement in 1962.

Relatives of the late Dean Dudley W. Woodbridge presented a new portrait of the venerated teacher, the work of Thomas L. Williams. The portrait was accepted by President Davis Y. Paschall, who said that it is planned to include it among the portraits of distinguished College faculty members in the library.

This year's Law Week activities began April 25 with the fifth annual Law Review Awards Banquet, and concluded the evening of April 26 with the annual Barristers' Ball.

A separate story on the Law Review awards and new editorial staff appears on an inside page.

TWO NATIONAL SESSIONS HELD HERE IN MARCH

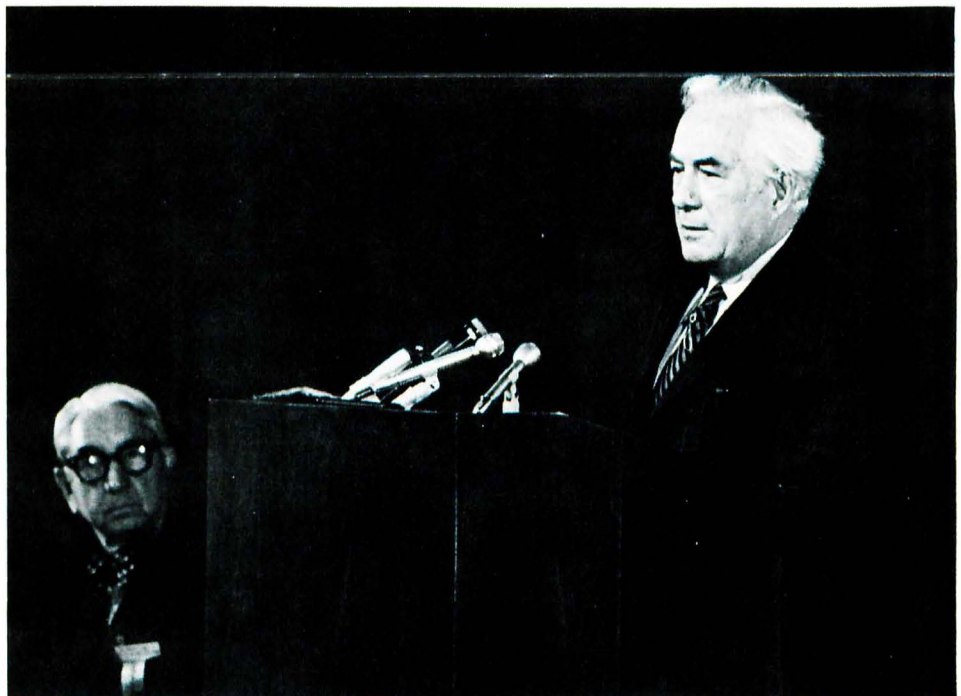
The steady growth of Williamsburg as a center for regional and national conferences of law-related groups reached a climax in March when two successive weekends witnessed major gatherings of professionals at the Conference Center.

March 11-14 witnessed the historic National Conference on the Judiciary which brought together more than 450 state and federal judicial officers, including President Nixon, Attorney General John N. Mitchell, Chief Justice Warren E. Burger, and more than 40 state chief justices and attorneys general as well as leading jurists, attorneys, law teachers and laymen from each of the 50 states.

March 18-20 witnessed the equally historic 17th National Conference of Law Reviews, attended by the largest delegation — more than 100 law reviews and 150 persons — since the conference was created. The permanent funding of this conference was one of the major concrete achievements of the session.

Both conferences are separately reported inside.

Chief Justice Warren E. Burger delivers keynote address to delegates to National Conference on the Judiciary at Williamsburg Conference Center. Left, Associate Justice Tom C. Clark (ret.), national chairman of the Conference.



Justice Tom Clark, national chairman of the Conference on the Judiciary, enjoys a story with Governor and Mrs. Linwood Holton during a break at the Williamsburg Conference Center.



TEI SUMMER TAX COURSE IS SET FOR JUNE 13-25

The second annual course in advanced tax law and accounting, for sixty selected executives of leading American corporations, will be held at the Law School the last half of June. As it was last year, this course will be jointly sponsored by the Law School and the Tax Executives Institute, Inc. Dr. Thomas C. Atkeson, Chancellor Professor Emeritus of Law and Taxation, and Associate Dean John E. Donaldson are on the planning committee, and will be joined by Professor Emeric Fischer in the teaching staff.

The course is designed for a specific type of student — the junior corporate tax man with between one and five years of federal tax experience. The course is intended to give these individuals a understanding of the fundamental principles of seventeen different areas of substantive and procedural tax law and administration. Classes are taught by tax practitioners, tax law faculty, Internal Revenue officers and corporate tax officials.

The course will open June 13 and will follow a daily pattern of six hours of classroom lectures and two hours of evening preparation. Classes will meet in the moot courtroom of the Law School.

On July 1, the Law School will take over the formal editorial responsibility for the TEI magazine, *The Tax Executive*.

EXETER LAW PROGRAM SETS RECORD ENROLLMENT

With several thousands American lawyers in London this summer for the overseas meeting of the American Bar Association, the enrollment for the fifth annual Summer School of Law in England has also exceeded all previous records. As of May 1, nearly 100 persons have indicated an intention to register and attend the six-week session on the University of Exeter campus. This substantially doubles the 1970 record high of nearly 70 students.

This "embarrassment of riches" in terms of interest among all the country's law schools will present certain problems of housing and classroom space, but at the same time it suggests the fact that the program in England has now attained a consistently high rating in American legal education.

Five members of the Law School faculty will teach in the 1971 program: Dean James P. Whyte, Professor Bolling R. Powell, and Assistant Professors Richard A. Walck, Robert E. Scott and Richard A. Williamson. A sixth member of the Law School faculty — Professor William F. Swindler — will also be in England to report on the results of the National Conference on the Judiciary at the ABA meetings.

SBA, MOOT COURT HEADS CHOSEN

Alan G. Endere of Clarksville won a closely contested election as president of the Student Bar Association for 1971-72 at the annual spring balloting in April. Other officers for the coming year are:

Vice-President—Thomas W. Wright, Richmond

Secretary—Morgan E. Scott, Dublin.

Treasurer—Samuel T. Powell, McLean.

Placement Director—Martin D. Walsh, Arlington.

The new officers for the Moot Court Board have also been announced, as follows:

Chief Clerk—Ronald E. Burgess, Perth Amboy, N. J.

Administrative Clerk—Robert R. White, Virginia Beach.

Judicial Clerk—Lee Robert Arzt, New York City.

Case Clerk—Thomas W. Wright, Richmond.

BOOHAR TO EDIT 1971-72 REVIEW

One army officer relieved another as editor-in-chief of the *William and Mary Law Review* at the fifth annual awards banquet April 23, when H. Robert Mayer, on leave from the armed forces to complete his legal training, turned over the office to Charles W. Boochar, Jr., another officer on leave for the same purpose.

The Hon. Robert R. Mehriige, Jr., judge of the United States District Court in Richmond, was the featured speaker of the evening.

Boohar, a native of Lancaster, Pa., announced the new staff of the 1971-72 *Law Review* later this spring. It includes:

Executive Editors — Richard C. Josephson, Bethesda, Md. and J. W. Montgomery, III, Richmond.

Special Projects Editor—Douglas S. Wood, Virginia Beach.

Managing Editor—William M. Musser, III, Lancaster, Pa.

Articles Editor—Robert R. Kaplan, Los Angeles.

Notes Editors—Richard B. Blackwell, Newport News, and Alvin D. Treado, Marquette, Mich.

Current Decisions Editor—Robert C. Koch, Chicago.

President Richard M. Nixon, Justice Tom C. Clark and Attorney General John N. Mitchell await the presentation of the President, who gave a nationally televised opening address to the Williamsburg judicial conference.



Among the panelists at the first working session of the National Conference on the Judiciary were Dean Dorothy W. Nelson of the Southern California Law Center, who served as panel chairman for the speakers, Richard W. Velde, left, deputy director of the Law Enforcement Assistance Administration, and Ernest C. Friesen, Jr., director of the Institute for Court Management, University of Denver.



HISTORIC CONFERENCE ON THE JUDICIARY ATTRACTS 600 PERSONS TO WILLIAMSBURG

Every state of the Union, leading judicial agencies of the federal government, were represented in the National Conference on the Judiciary which held four days of intensive sessions at the Williamsburg Conference Center March 11-14. An official enrollment of about 450 persons was swelled by approximately 150 more staff attendants who accompanied the conference delegates.

Opening with a special address by President Richard M. Nixon, the Conference was subsequently keyed by an address on "Deferred Maintenance" by Chief Justice Warren E. Burger. Both of these addresses were given in the Virginia Room to capacity audiences and a large contingent of press and television correspondents.

From the opening addresses to the closing session on resolutions, the emphasis was on coordinated, carefully tested efforts to introduce new programs for modernization into the state judicial systems. Both Nixon and Burger called for, and the principal resolution at the end endorsed, a proposal to create a National Center for State Courts which would provide such coordination. The plans for organizing and launching such an agency are now going forward under a committee created by the National Conference of Chief Justices.

Following the President's speech, Deputy Administrator Richard Velde of the Law Enforcement Assistance Administration spoke on what the LEAA has done since its creation in 1968, when Congress charged it with helping to improve the criminal

justice system throughout the nation. Toward this end the LEAA has spent three quarters of a billion dollars of which over 85% went to state programs in block grants, to be used in solving the problems that receive priority in that state. For example, in Illinois there is a program to survey all the state district attorneys' offices and to establish several model offices. In Michigan the LEAA set up a program of court management which is expected to reduce the time from arrest to trial to no more than 90 days.

The other 15% of LEAA's money are given out as direct grants to specific programs. Projects which have received funding include:

A grant of \$115,000 toward the organization of this conference.

Grants to the Institute of Court Management for various studies.

Grants to study the services offered juvenile offenders.

Grants to enable courts to integrate their records and paper work with new data retrieval procedures, and the developing of new techniques for "computerizing" court records. Velde described "Project Search," a now operational program of computerizing and distributing interstate data on criminal records.

Ernest C. Friesen, Jr., director of the Institute of Court Management at the University of Denver, reported on the first class of trained administrators graduated from the Institute at the end of 1970.

The Institute was created in response to Chief Justice Burger's 1969 ABA address calling for the introduction of management-trained personnel into metropolitan and higher state courts.

Chief Justice Burger's address set the scope of the Conference with the admission that "the failure of our machinery is now a matter of common knowledge fully documented by innumerable studies and surveys." The Chief Justice pointed out that the problem may be divided into three major areas — enforcement, trial, and rehabilitation, and that all three are in need of reevaluation and overhaul. Then he set the priorities of the Conference by putting the problems of procedure and technique ahead of the problems of substantive law.

Chief Justice Edward M. Pringle of Colorado spoke on the role of the state court system. After pointing out many of the difficulties faced by a state chief justice, he presented the tools he believed necessary before a chief justice can properly carry out his responsibilities.

- Reorganized and unified court structure, with elimination of overlapping jurisdiction and integration of minor courts.

- Constitutional authority and responsibility vested in the chief justice for administration of the statewide judicial system and rules.

- Some form of judicial selection and tenure, other than partisan elections, based upon merit and to include a removal plan.

- Constitutional provision for a state court administrator, appointed by the chief justice.

- State funding administered by the judicial branch, with budget preparation and submission thereof directly to the legislature.

- A separate judicial personnel system administered by the judicial branch.

Edward B. McConnell, state court administrator for New Jersey, spoke on the role of the state court administrator. He stated that the "courts of this country have not been mismanaged; for lack of managers they have simply been unmanaged." To aid those who were not familiar with the role of an administrator, Mr. McConnell listed many of the responsibilities of his office, which included:

- Employment and placement of court reporters and transcribers, to virtually eliminate late transcripts.

- Collecting and investigating all monies held by the courts, obtaining a daily average of a 7.2% yield on \$32,000,000.

- Publishing of weekly selected court opinions.

- A variety of studies and research or pilot projects, some being financed by LEAA.

- Management of a impartial medical expert program for screening malpractice claims.

- Preparation of the annual legislature request for the courts.

- Setting up a uniform state wide administrative procedure and forms.

Dean Charles Joiner of Wayne State University in Michigan rounded out this session of the Conference with a summary of the several forms in which appellate systems are organized in the various states. He urged an objective study of a choice between a panel division of the single appellate court in a state, a full-fledged intermediate court program in states where the volume of business and the number of metropolitan centers justified it, and a two-division organization of courts of criminal and civil appeal.

On the subject of state trial courts, all three speakers — Judge Sam Phillips McKenzie of the

(Continued on Page 8)

Chief Justice Harold F. Snead of the Virginia Supreme Court of Appeals, and Attorney General Andrew P. Miller are among the listeners at the keynote address by Chief Justice Burger.



LAW REVIEW CONFERENCE SETS NEW RECORDS HERE

The largest number of law reviews in the 17-year history of the National Conference of Law Reviews held a three-day meeting in Williamsburg March 18-20 and in the opinion of all present set a number of records qualitatively as well as quantitatively.

Michael E. Kris of Buffalo, N. Y., as local director and national chairman of the year-long planning for the conference, received a special Law School faculty citation for his work at the spring luncheon of the Student Bar Association in April. G. Richard Gold, Bruce E. Titus and Ray C. Stoner headed a staff of local students who implemented the intricate planning and arrangements.

Former Senator Joseph D. Tydings of Maryland, and William H. Rehnquist, Assistant Attorney General of the United States (Office of Legal Counsel), were the luncheon and banquet speakers respectively.

Permanent funding and administration for the Conference of Law Reviews, in cooperation with the American Trial Lawyers Association was agreed upon at one of the most important business meetings in the history of the Conference. Professor William B. Schwartz of Boston University, ATLA

general director, attended the meeting to discuss details of the linkup.

Timothy C. Blake of the University of Florida, first vice-president of the ABA Law Student Division, and Barlow F. Christensen of the American Bar Center in Chicago, ABA Project Director, were among other panelists for the business session.

A new feature of the discussion programs was an emphasis on new issues in law reform and judicial administration, fields of editorial treatment which have often been overlooked by law reviews.

For the panel on law reform generally, the speakers included Virginia Attorney General Andrew P. Miller; Professor Delmar Karlen, director of the Institute of Judicial Administration; Gerald Aksen, general counsel for the American Arbitration Association; Russell M. Coombs, chief counsel for the Pennsylvania Crime Commission; and John P. Frank, author and attorney of Phoenix, Arizona., whose paper was read by Dean Monrad Paulsen of the University of Virginia.

On judicial administration, panelists included Richard M. Markus, president of the American Trial Lawyers Association; Glenn R. Winters, executive director of the American Judicature Society; Robert Lipscher of the Institute of Judicial Administration; and Professor William F. Swindler of Marshall-Wythe, coordinator for the National Conference on the Judiciary.

Judge Elmo B. Hunter, president of the American Judicature Society, chats with William B. Spann, Jr., president of the House of Delegates, American Bar Association, prior to Mr. Spann's luncheon address.





Chief Justice Robert W. Calvert of Texas, president of the National Conference of Chief Justices, one of the Conference luncheon speakers.

LAW REVIEW ISSUES COVER WIDE RANGE

The 1970 Sherwell Lecture, a study of legal rights and duties in college faculty administration, and a survey of election law reform in Virginia were featured articles in Volume 12:2 of the *William and Mary Law Review*. The third issue, coming out this month, will carry four articles—two on military justice, one on “shareholder withdrawal,” and a review of international antitrust law.

Judge Carl McGowan’s “Constitutional Interpretation and Criminal Identification” has already been widely cited as the most challenging Sherwell Lecture to date. Ronald C. Brown, who joined the Law School faculty this year, wrote an exhaustive review of “Professors and Unions: The Faculty Senate—an Effective Alternative to Collective Bargaining in Higher Education?” Judge H. Emory Widener, Jr. reviews the impact of the 1970 state legislative reform on election law practice in the state.

Henry B. Rothblatt, widely known as the defense counsel for the Green Berets, discusses “Military Justice: The Need for Change,” while the other side of the argument is given by Louis B. Nichols, of the ABA Section on Criminal Law and the National College of District Attorneys, in “The Justice of Military Justice.” John W. Lee, Richmond attorney, writes on “Shareholder Withdrawal—Loan or Dividend: Repayments, Estoppel, and Other Anomalies.” Mark R. Joelson, Washington lawyer and a speaker at last fall’s international law symposium, reviews “‘International Antitrust: A Look at Recent Developments.’”

LEGISLATIVE STUDIES MEET WIDE RESPONSE

The second, third and fourth numbers in the series of legislative research studies by the Seminar in Legislative Research have attracted wide attention this spring. The series began with a summary of “The Business of the 1970 General Assembly” which was also widely distributed. Numbers are prepared in various formats for distribution to limited or general readership according to the nature of the subject.

Following its widely cited study of the post-conviction procedures for the 50 states, prepared for the Federal Judicial Center, the Seminar has prepared a draft post-conviction statute for Virginia. Practicing attorneys recommended by the Virginia State Bar and the Virginia Trial Lawyers Association, as well as representatives of the Office of the Attorney General, the Division of Justice and Crime Prevention, and the Division of Statutory Research and Drafting, have formed an advisory board for the project. Tentative Drafts Nos. 1 and 2 have been prepared and submitted to the board for criticism and revision, and a number of copies have also been sent in response to out-of-state inquiries.

Another project, undertaken at the request of the Division of Community Affairs and Planning, is concerned with laws for control of water and solid waste pollution in Virginia. This project consists of a resume of existing Virginia law compared with federal and state law on the subject, with comments on possible courses of legislative action in the Commonwealth. In preparing this report, the Seminar is drawing upon a growing file of materials from other states with which it has established a systematic plan for exchanges.

The final project for the current semester is a pilot study of the most recently adopted American Bar Association Standards for Administration of Criminal Justice, as compared with Virginia statutes, rules of court or practice. A number of states, under ABA auspices, have been working on similar comparative analyses, and the pilot study by the Seminar is intended to demonstrate the scope of such a project if undertaken on a similar scale in Virginia.

LAW FRATERNITIES ELECT OFFICERS

New officers for Phi Alpha Delta for 1971-72 are:

Justice—Richard Potter, Springfield.
 Vice-Justice—Mark Korotach, Ansonia, Conn.
 Clerk—Karen Uplinger, Syracuse, N. Y.
 Treasurer—William Duncan, McLean.
 Marshal—Stephen Isaacs, Richmond.
 New officers for Phi Delta Phi for 1971-72 are:
 Magister—George N. Hudson, Williamsburg.
 Vice-Magister—John W. Bane, Hampton.
 Clerk—Robert G. Byrum, Norfolk.
 Exchequer—Terry F. Polley, LaMirada, Calif.
 Historian—Morgan E. Scott, Dublin.

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Superior Court of Atlanta, Judge Zita L. Weinshienck of the Denver County Court, and Associate Justice Thomas W. Pomeroy, Jr. of the Pennsylvania Supreme Court — urged a unified system of full-time courts of as nearly equal jurisdiction as possible.

Glenn Winters, Director of the American Judicature Society, spoke on slowly improving systems of compensation for full-time judges, whose national average income is still substantially below that of successful practitioners who appear before them. He urged that, irrespective of the size of the state, the work of the judge should be uniformly of the same quality and should be uniformly compensated.

On the topic of "Qualified Judges," the first speaker was Dean Lawrence M. Hyde, Jr. of the National College of State Trial Judges. Realizing that the caliber of an individual judge is fundamental to our judicial process, Dean Hyde called for a system of selection that would be aggressive, systematic, dignified, selective, and would provide tenure. The plan which he suggested receives full support from the American Judicature Society and the American Bar Association. It is generally called the Missouri Plan, and consists of four basic elements:

1. Nomination of a panel of judicial candidates by a non partisan commission made up of laymen and lawyers.

2. A limitation on the executive to appoint judges only from the panel submitted by the commission.

3. Review of the appointment by the voters after a short probationary period.

4. Periodic review over a period of years by the voters.

Along with proper selection Dean Hyde also pointed out the need of properly training a judge before the assumption of responsibilities.

Associate Justice, Louis H. Burke of the Supreme Court of California discussed the problems of tenure, discipline and removal of judges. Believing that justice is best served when a judge has security

of tenure, Justice Burke advocated the California Plan, which subjects any judge to an expeditious method for removal for cause. This plan provides for a "permanent commission and staff to screen complaints from any person desiring to lodge them against any judge," to determine the merits of such complaints, and report the findings to the state Supreme Court which acts as an appellant proceedings and will make final determination of the complaint. The commission is composed of laymen as well as lawyers, all preceding are confidential, and allows for voluntary retirement of judges.

On the problems of Criminal justice, Judge Tim C. Murphy of the Superior Court of the District of Columbia devised the changing concepts in bail and detention. Historically, the only way for a defendant to be released before trial was to post bond, and the bondsmen determined who would qualify for a bond. This worked an obvious hardship on the poor who were the ones who had the most to lose by staying in jail, but imposed no restrictions upon the high risk criminals who had access to money. To correct this in the D. C. court system the 1966 Bail Reform Act was passed, which provided that any person charged with a non-capital offense should be released pending trial on his personal recognizance unless it is determined that such a release will not reasonably assure the appearance of the person as required.

For those who do not qualify for personal recognizance then the alternatives are (1) release to supervisory custody, (2) restrictions on travel and abode, (3) 10% cash bond, (4) surety bond. Since its operation in D. C. several necessities have become clear to allow smoother running of the machinery. Those empowered with the job of making the recommendation to the court also have to have the money and facilities to follow up with notice of when and where the individual should show up for court. Also it has been suggested that there be a review of those remaining in custody 72 hours after the arrest, to allow more time for the cumulation of data on the individual. Also, it became obvious that there was a need for the practice of preventive detention.

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