The Great Vizzini was wrong. There are not two, but three, classic blunders. Everyone knows you should never get involved in a land war in Asia, and most now know you should never go in against a Sicilian when death is on the line. But, as Marshall-Wythe learned two weeks ago, you should never try to plan a law school election in the midst of a tropical storm.

The William & Mary School of Law Honor Council conducted the Class of 2009’s ballot for its three Student Bar Association representatives on Wednesday, Sept. 6. But after election officials concluded one of the 12 candidates had violated rules governing campaign activities, they threw out that day’s votes, removed the candidate’s name from the ballot, and called a re-vote for the next day. Following all the campaigning, controversy, and — most importantly — delicious cookies, Jenny Case, Michael Hinchcliffe, and Kerry Loughman-Adams emerged as this year’s 1L SBA representatives.

The newly elected 1L reps went right to work for their classmates in selecting the new Honor Council. One week and 39 interviews after taking office, the new reps and the SBA officers selected 1Ls Jennifer Bacon, Trenton Brown, Andrew English, Dave Sella-Villa, and Sarah Simmons to join the Honor Council.

“The new Honor Council Justices are bright and gifted students,” Chief Justice Leondras Webster (3L) said. “I look forward to their participation in Honor Council activities. Hopefully they will be incorporated into the system quickly so that people will be able to bring questions [related to the Honor Code] to them as well.”

The new SBA representatives are a dedicated and enthusiastic threesome. Michael Hinchcliffe, for example, has ideas for the SBA that are “larger than life” and “the attitude that with nothing more than a little hard work and a disinclination to quit, one person can make big things happen.”

“I know I speak for both Jenny and Kerry when I say that the three of us will give our classmates nothing less than all we’ve got,” Hinchcliffe said.

Read more about them in B-LAW-Gs in this issue of The Advocate.

Case, Hinchcliffe, and Loughman-Adams were the top vote-getters in what was the second of two elections for 1L SBA reps. Honor Council officials conducting the elections called off the first ballot after they confirmed reports of a candidate’s violations of the rules governing campaigning.

Honor Council Justices Ryan Brady (2L) and David Bules (2L), two members of the Council appointed to oversee elections as the Elections Committee, received complaints that Alan Kennedy-Shaffer (1L) had violated several campaigning rules, including rules barring e-mails containing references to the election and campaigning in the lobby of the law school.

Alan Kennedy-Shaffer is a Features Editor for The Advocate. Although he served as a source for this article, contributing documents and information, he made no editorial decisions about it.

“The Elections Committee was created as a way to simplify monitoring of the elections,” Webster said. “Candidates know who to talk to and can get quick responses to their questions, which is important because elections take place over such a small time frame.”

Appointed by last year’s Chief Justice, Brady and Bules had overseen two elections prior to the 1L SBA elections.

The Elections Committee distributed the rules governing campaigning to all candidates as an e-mail attachment on Saturday, Sept. 2, less than 24 hours before a meeting with the candidates to discuss the rules, which immediately preceded the start of campaigning, noon on Sept. 3.

“The rules meeting had been set for that Friday,” Bules said, “but when the hurricane came, we e-mailed all the candidates to tell them the meeting would be rescheduled.”

To ensure everyone got the message that there would be no meeting, given the failure of the College’s e-mail servers, Bules trekked to school to pass the message on to anyone who had shown up. No one had.

When he met with all the candidates Sunday morning, Bules asked the candidates if they were satisfied with electronic copies of the rules. According to Bules, no candidate indicated to him otherwise.

Kennedy-Shaffer disagrees. He contends that he asked Bules for a printed copy of the rules at that meeting or, in the alternative, a printed copy of the rules that he could pick up at a later time. Kennedy-Shaffer maintains Bules denied both requests.

“I thought we would receive printed copies of the rules,” Kennedy-Shaffer said. “They sent out the rules late Saturday for a meeting that was Sunday morning — a couple of hours before the meeting. It’s clear Brady and Bules were not prepared. I think they are as much responsible for my misinterpretation as I am.”

To the contrary, Bules contends that in this election the rules were made available earlier than in other elections.

“Normally we would give out the rules at that meeting,” Bules said. “But because of the hurricane, we gave them out early.”

But Kennedy-Shaffer maintains that the Honor Council could have and should have supplied him and the rest of the candidates with printed copies of the rules.

“They could have easily distributed copies of the rules to our Continued on pg 8.
Douglas Discusses Foreign Law and the Death Penalty in the Supreme Court

by Neal Hoffman
Contributor

A group of about 30 students met on Monday, Sept. 4 to hear Davison Douglas, the Arthur B. Hanson Professor of Law and director of the election law program, speak on the topic of “International Law, the Death Penalty, and the Supreme Court.”

Douglas began by addressing why the issue of applying international law in domestic cases is so contentious. According to Douglas, major court decisions that referenced international law, such as Lawrence v. Texas and Grutter v. Bollinger, provoked a cultural unhappiness that divided liberals and conservatives. Judges and politicians who did not like the constitutional shift seized upon the usage of international law as a major issue. This has led to highly charged responses, such as the Reaffirmation of American Independence Resolution introduced in Congress, which criticized judicial reliance on foreign law and the intense partisan dialogue regarding the nominations of Justices Roberts and Alito.

In Grutter, Justice Ginsberg, in her opinion upholding the University of Michigan’s affirmative action policies, referenced the legal treatment of affirmative action in other countries. Justice Kennedy, in Lawrence, cited decisions by the European Court of Human Rights in his opinion declaring the Texas same-sex sodomy statute unconstitutional.

However, to Douglas, the situation is not nearly as alarming as many individuals claim.

“The Supreme Court is not saying, “Our constitution says x, but foreign law says y, and because we like y better, we’ll go with y,”” he said. Rather, foreign law is most often used as further support to the legal conclusions that the Justices have drawn based on American precedents.

To make this point, Douglas referred to Roper v. Simmons, which declared the use of the death penalty on juveniles unconstitutional. In writing the decision, Justice Kennedy found that during the past decade, only three states had imposed the death penalty on juveniles and five states had explicitly rejected the death penalty for minors by statute or judicial decision. That information led Kennedy to conclude that, in light of “evolving standards of decency” under the 8th Amendment, the juvenile death penalty constituted cruel and unusual punishment.

After evaluating the issue in accordance with the Court’s earlier precedents, Kennedy then noted in Section IV of his opinion in Roper that the use of the death penalty in the United States stood in sharp contrast with the practices of the rest of the world. Though Kennedy acknowledged that foreign law was not controlling, he felt that it was proper to take international opinions into account. He noted particularly that only seven countries other than the United States have executed juvenile offenders since 1990, and all of them have now either made a public disavowal of the practice or abolished it completely.

In Atkins v. Virginia, Douglas noted that Justice Stevens used a similar approach in declaring the death penalty unconstitutional for the mentally handicapped, by referencing international law in his footnotes.

The usage of international law is not nearly as uncommon as we might think, Douglas remarked. In reaching this conclusion, Douglas and his law student assistants researched hundreds of cases, looking for instances in which Supreme Court Justices had utilized foreign law to support their conclusions when interpreting the meaning of certain provisions of the U.S. Constitution. The results, he said, show that a large majority of Justices have, at some point, joined or written an opinion in which the Court has cited foreign law when interpreting our constitutional text.

Cases citing foreign law when interpreting the U.S. Constitution are also not a new occurrence. Douglas cited several cases from the 19th and early 20th centuries in which the Court cited foreign law when interpreting our Constitution and also commented on Justices who made frequent use of foreign law in their opinions, including Justices Story and Frankfurter.

After the lecture, Douglas took a number of questions from students. In response to a comment regarding the usage of international law by nations other than the United States, Douglas remarked that most western nations refer to foreign law Continued on pg 3.
Illustrating Plaintiffs' and Defendants' Perspectives

by Sarah Abshear
Contributor

The Office of Career Services hosted the program “Handling Complex Litigation: Plaintiffs’ & Defendants’ Perspectives” in the Courtroom on Thursday, Sept. 7, 2006. The program featured two William & Mary Law alumni, Michael Baumann ’79 and Joseph Barton ’00. Michael Baumann is a partner in the law firm Kirkland and Ellis LLP and helped to open the Los Angeles branch of the firm. Joseph Barton is an associate at the Washington, D.C. branch of the law firm Cohen, Milstein, Hausfeld, & Toll, PLLC. Baumann and Barton presented two different perspectives on handling complex litigation. Barton represents plaintiffs in class actions, whereas Baumann represents defendants in class actions.

Barton began by discussing how he generally gets clients in the first place. He explained that there are generally three ways. Direct contact by the client and referrals from smaller, less specialized firms are common. Sometimes the lawyer will identify a problem and then look for clients who were affected. For example, a whistleblower who does not want to take action himself might call a law firm to report misconduct on behalf of a business he works for. Then the lawyers will have to find the clients who were affected by this misconduct.

Baumann gets his clients differently because they are not the ones bringing a cause of action. In the ideal case, a defendant will know that she is about to be sued and will contact the firm before that actually occurs. In this case, the defense will have more time to investigate the situation. However, Baumann admitted that this is rare. More often, defendants are completely surprised by the lawsuits filed against them. The lawyers have less time to investigate because they are forced to meet a deadline to reply to the complaint by the plaintiff. Baumann claimed that this gives plaintiffs a certain advantage from the outset because they have already had time to do some investigation of the issue.

Baumann explained that often the first issue in a case is whether the court will certify the class. This must often be investigated before the investigation on the merits. Discovery can be bifurcated, which means that first there will be discovery on the class certification issue. After that is decided, there will be another discovery process on the merits. According to Barton, this process benefits defendants by causing delay. During the certification stage, defendants do not have to give plaintiffs any information. One huge advantage for the defense is that they usually have all of the important documents, whereas plaintiffs don’t have that much information. Bifurcated discovery enhances this advantage by allowing them to keep the documents longer. Furthermore, plaintiffs want to get to the merits as soon as possible; the merits might have an influence on whether the court will certify the class.

Both Baumann and Barton agreed that the jurisdiction in which the case is brought can have a big impact on the outcome. Now that Congress has passed legislation putting most class actions in federal court, the jurisdictions available have narrowed. However, there are still advantages to bringing a case in a certain circuit. Plaintiffs and defendants will usually battle out the jurisdiction issue because some circuits are notorious for supporting one side or the other. Baumann said that there was one jurisdiction that used to be known as “the plaintiff’s piggy bank.” Obviously, defendants try to stay out of that one. Barton noted that it is usually very difficult to keep a nationwide case from being removed to the jurisdiction where the corporation being sued is located.

Baumann and Barton also agreed that it is very important to have a professional working relationship with other attorneys. Whether the other attorneys are representing the opposite side of the case, or a different plaintiff in the same case, getting along with them should be a goal. Baumann said that he thinks a professional relationship is the best approach to settling a case. While some lawyers tend to view litigation as all-out war, this could end up being detrimental to the client’s interests. Barton agreed, noting that if you want to settle, you have to have a working relationship. He said that personality conflicts, hatred toward the other side, and belligerence can cause cases that could otherwise be settled go to trial.

One goal in litigation can often be to settle for something that is acceptable to both sides. However, both Baumann and Barton presented reasons their side might refuse to settle. Sometimes a plaintiff might be determined to go to trial regardless of what the defense offers. Sometimes the defense might not be willing to settle. Baumann explains this is most likely when there is something going on in the case that has deeper, broader implications for the company. For example, if the company admits to certain actions, it might be ineligible for government contracts.

Baumann and Barton discussed what a lawyer should strive for during a trial. Baumann stressed that when a complex case is being presented to a jury, you need to understand everything about the case and be able to reduce it to easily understandable laymen’s terms. You shouldn’t be patronizing to the jury, but you should make sure that it is easy for them to understand why your side should win. You should identify the two or three main issues that you think the jury needs to understand, and then make sure that they can understand them. He also said that you need to find enthusiastic witnesses and be enthusiastic yourself. You need your witnesses to be sympathetic and believable.

Barton agreed and added that some people just aren’t good witnesses. Even experts who are very intelligent might not be good at testifying. If your witness can’t break down complex issues in a way that the jury can understand, you need to get another one. Barton said that you need to be able to explain your case, no matter how complicated it might be, to someone in high school or with no knowledge of the law. You need to have a story that you can present that explains why nothing the defense said matters and why your story is the best. Both Barton and Kirkland agreed that your story is the most important part of any case.

To learn more about Kirkland and Ellis LLP, visit their website at http://www.kirkland.com. You can learn more about Michael Baumann himself by clicking on “Our firm,” then “Lawyers,” and then entering his name. To learn more about Cohen, Milstein, Hausfeld, & Toll PLLC, visit their website at http://www.cmht.com. You can learn more about Joseph Barton himself by clicking on “Attorney profiles” and then the letter “B.”

American Constitution Society, a network of liberal and progressive law students, lawyers, judges, and policymakers who seek to promote a vision of the Constitution that emphasizes individual rights, equal access to justice, and the separation of powers.
Look to this space for news about speakers and other major events at the law school. If your organization has an event in the next month you would like advertised, please e-mail TheAdvocateWM@gmail.com.

September 21
Keith Whittington, guest speaker of IBRL - Princeton University
Professor Keith Whittington will talk on “Presidents, Senators and Failed Supreme Court Nominations” from 1:00 p.m. to 1:50 p.m. in the Faculty Conference Room. Lunch will be provided for those who have RSVP’d.

September 22
David Baugh, guest speaker of Prof. Jim Heller - “Dungeons, Dragons, and Demons: Preserving the Constitution in an Age of Terror.” A trial lawyer from Richmond, Mr. Baugh has represented such clients as Ku Klux Klan Grand Dragon Barry Elton Black and U.S. Embassy bomber Mohamed Rashed Daoud Al-Owhali. The talk will be held from 9:00 a.m. to 10:00 a.m. in Room 127.

Lunch with Lawyers - Andy Ollis, a Patent Litigation Attorney, will be sharing his professional experience with students from 12:50 p.m. to 1:50 p.m. in the Faculty Conference Room.

September 23
Riverside Harvest Festival Run at the Williamsburg Winery
8:30 a.m. – 1 Mile Fun Run: free to run, $10 with t-shirt.
9:00 – 8 Mile Run: $35, includes shirt.
11:00 – Awards.
11:30 – Harvest Festival: $12 advance, $15 at door. Food, soda, beer, and wine for purchase, plus live music! 1:00 p.m. – Gin Blossoms take the stage.
The race and festival are to benefit the United Way of Greater Williamsburg (UWGW). Please contact jlgill@wm.edu for a registration form. If you would like to be part of the SBA team, please e-mail saful@wm.edu.

September 24
Virtual Moot Court - A videoconferenced moot court session with Australia will be open to observe in the Courtroom from 2:00 p.m. to 10:00 p.m.

September 25
Virginia Women’s Attorney Association Student/Faculty Mixer - Virginia Women’s Attorney Association, Hampton Roads Chapter will hold a “Meet and Greet” from 5:00 p.m. to 6:00 p.m. in Room 119 for students to learn more about the Virginia Women’s Attorney Association’s local chapter. Wine and light refreshments provided.

September 27
Constitution Day: Challenges to Judicial Independence - Professors Bill Van Alstyne, Dave Douglass, and Neal Devins will discuss recent congressional attacks on the courts, the popular election of state court judges, and other challenges to an independent judiciary. A 30-minute film featuring Supreme Court Justice and William & Mary Chancellor Sandra Day O’Connor will also be shown. The event will be held from 1:00 p.m. to 2:30 p.m. in Room 127.

September 30
SBA Paintball Outing - The SBA will be sponsoring a paintball outing. The cost is $25/person and includes all day air/field fees, mask and gun rental and 500 paintballs. If interested, e-mail Ryan Browning (rwbrow@wm.edu) and drop a check or cash (with name) in his hanging file. You must reserve your spot by Thursday, Sept. 21. The outing will run from 10:00 a.m. to 5:00 p.m.

October 2
Brenda Sue Thornton, guest speaker of Prof. Linda Malone
Brenda Sue Thornton, U.S. Department of Justice attorney in the Criminal Division, Counterterrorism Section, will speak about prosecuting human rights in East Timor and Rwanda. She will speak in her personal capacity, not as a government employee. The talk will be held at 4:00 p.m. in Room 124.

October 4
Professor Ron Wright, guest of Upcoming Events
Continued on pg 12.
Criminal Defense: a Calling and Passion

by Myriem Seabron
Layout Editor

Introduced as “the first in a series of informal talks” to be presented by the Journal of Women and the Law, Richmond criminal defense attorney Esther Windmueller spoke at the School of Law on Thursday, Sept. 14. Immediate past president of the Virginia Association of Criminal Defense Lawyers, Windmueller occasionally serves as a substitute judge and maintains an active criminal defense practice. The event was promoted as a chance to listen to Ms. Windmueller talk of her work and how an attorney should maintain the proper work-life balance, but she quickly dispelled any notion that she was interested in lecturing by immediately opening the floor to questions. The majority of the gathered crowd seemed very interested in how she approached her work as a criminal defense attorney, a subject which Ms. Windmueller addressed with refreshing honesty.

Ms. Windmueller said that she took up criminal defense work because she had “a natural affinity for the underdog.” Her only prosecutorial experience came as a 3L in the U.S. Attorney’s office – something she regrets now. She believes that if you’re going to do criminal law, it’s good to have experience on both sides, regardless of which avenue you ultimately want to pursue. She was drawn to defense work, in part because she treasures the opportunities when she gets to know the people she is defending. “Prosecutors – unless it’s a big case – don’t really get to have a relationship with the people they represent,” she explained. “There’s just ‘the victim.’” Windmueller said she valued the one-on-one contact she has with the people she defends.

Windmueller’s passion for what she does was clear to all who came to hear her speak. One student asked her what she does when confronted with someone she might personally think would be better off in jail. Windmueller’s answer was simple and heartfelt: “Represent the hell out of them.” The system doesn’t work if she doesn’t do that, she says, “which is why a lot of people can’t do what I do.” She compared the legal system to a clock, and analogized that the whole clock “doesn’t work, if I don’t do my job.”

According to Windmueller, representing criminals isn’t the hardest part of her job – it’s representing the innocent client, she said, that is the most “terrifying, awful, terrible” thing she is asked to do. The pressure is overwhelming because you never try the perfect case, and, as a criminal defense attorney, she feels “slated to lose all the time.” But she believes criminal defense work to be “the truest, highest calling.” When the system works and she is able to help clear an innocent person, Windmueller considers it very validating.

Clients come to her through two channels, mainly. Half of them are court-appointed, and the other half are retained clients, coming from referrals from other lawyers, old clients, and essentially just “lots of word of mouth.” Windmueller carries about 100 cases at a time. When not trying cases, she devotes much energy to lobbying the Virginia legislature for greater funding of the criminal justice system. Describing what the state of Virginia pays court-appointed lawyers as “an atrocity,” she joked that with the pay increase from $112 per case to $116, “now I can supersize my lunch.”

More seriously, Windmueller fears for the very practical concerns of trying to provide justice for the indigent on the cheap. It’s naïve, she says, to think that people can get justice for what Virginia pays court-appointed lawyers – Virginia provides the lowest compensation in the nation. “We’re the embarrassment of the United States,” Windmueller said flatly. “We’re behind Mississippi. I mean, what...Continued on pg 7.

Students for the Innocence Project Takes Flight at WM

by Kelly Pereira
News Editor

What would you do if you were imprisoned for a crime that you did not commit? The Innocence Project is a national organization that screens letters from prisoners in search of wrongful convictions. The project uses post-conviction DNA evidence to show conclusive proof of innocence.

DNA is now taken for granted as part of criminal investigation, but there are many people in prison for whom advances in DNA testing mean freedom. New DNA technology can correct formerly inconclusive tests. DNA testing can also be conclusive evidence of guilt. As The Innocence Project’s website (FAQS at innocenceproject.org) makes clear, “If and when DNA testing does not support a client’s claim of innocence, the Innocence Project closes the case. The Innocence Project makes clear to potential clients that, in addition to proving innocence, DNA testing may also reaffirm guilt and the results of all testing would become a matter of public record.”

The Project began at Benjamin N. Cardozo Law School in 1992 as a non-profit legal clinic. At the Cardozo clinic, students help with case work under the supervision of public attorneys. The Innocence Project has grown into a national network of law schools, journalism programs, and public defender offices that seeks to bring awareness to the public and training to legislators and law enforcement officers. The Program exists in thirty law schools and has been responsible for releasing 183 people.

This is the inaugural year of the SFIP at W&M as a student organization promoting awareness and a clinical program. The goals for this year are to raise awareness by bringing exonerees to campus, hosting criminal defense attorneys and other speakers, and sharing facts about wrongful convictions. With the help of 1Ls and 2Ls, Jordan and Nolan hope to design a clinical program. At the first information meeting, Jordan said, “It is a good way to get practical experience with those who need it the most.”

Getting a clinic off the ground would be no easy task, but there are lots of other programs to use as models. SFIP has the support of Dean Revely and Professors Moliterno and Marcus, but it will take student interest and involvement to start a clinic. SFIP needs students to contact other programs, lobby for our own program, and build a relationship with the Mid-Atlantic Innocence Project (MAIP) in Washington, D.C.

MAIP (midatlanticip.org) does intake and screening of letters from prisoners and trains students to follow up on 5% of these cases. Students do research, and pro bono attorneys take the cases to fruition. Wyman would like to see local attorneys get involved so that students can aid the entire process.

Beverly Monroe, an exoneree released in 2002 who lives in Kingsmill, is on the board of MAIP and has volunteered to be SFIP’s first speaker. Monroe was imprisoned for seven years for the murder of her partner of thirteen years. Upon the reversal of her conviction, the court found the prosecution to have been “deceitful and manipulative” of exculpatory evidence. After her release, she feared her release in its appeal to put her back in prison. For more about Monroe and other exonerees, read “Surviving Justice: America’s Wrongfully Convicted and Exonerated,” edited by Dave Eggers and Lola Vollen.
1L Forms Animal Law Society

by Kaila Gregory
Staff Writer

When animal rights advocate Grant Kidner learned that William & Mary Law School did not have an animal law society, he decided to form one himself.

“I’ve always been passionate about animals and fretted about them being mistreated,” said Kidner, a 1L.

“I hope to get others interested so they can learn what they can do as attorneys. They aren’t powerless,” he said. “They don’t have to just look on.”

Although the Animal Law Society is just getting started, Kidner called the response from the student body “exceptional.” Kidner said the 15 current members are the types of people who “have a history of loving animals and doing things to help them. The responses I got were people who were thrilled that there was a group now, so I couldn’t have been more pleased,” he said.

Angie Cupas (1L) joined the Animal Law Society because she adores animals, and, like many of the group’s members, she has plenty of experience volunteering to help them.

While working as a volunteer dog walker at the Richmond SPCA, Cupas saw “what a devastating effect an abusive and uncaring environment can have upon an animal.”

“During my time spent with the animals, I realized the importance of animal cruelty laws and other motions towards the protection of an animal’s well-being,” she said.

When trying to develop a group at William & Mary, Kidner looked at the activities of animal law organizations at other law schools, which include publishing animal law reviews, taking part in various educational action programs, participating in moot court and mock trial competitions, and holding debates over animal rights issues.

The William & Mary Animal Law Society plans to begin by focusing on education, taking action to teach other people about animal rights issues.

“We want to start by answering the question, ‘What is animal law?’ The public at large might have some incorrect or incomplete views about what animal rights are,” he said, noting that most people only think of animal rights advocates in terms of extreme activists.

Kidner said that the group will also look at the laws designed to protect animals. “The laws are very lax concerning animal abuse,” he said, describing a recent U.S. case in which two young men tortured and killed a woman’s cat. In addition to charging the men with animal abuse, the judge of the case awarded the woman damages for emotional suffering due to the loss of her cat.

“It’s great that that step was made, but it just recognized that the animal had emotional value to humans,” said Kidner of the decision. “It fails to recognize the inherent value in the life of animals themselves. It’s a step, but I think we should [go] further.”

Cupas said some of the group’s members have also raised the issue that animal cruelty laws can be problematic to implement. “Animal protection laws can be misconstrued and wrongfully imposed upon shelters and voluntary rescue programs that attempt to prevent cruelty,” she said.

Kidner said he has always had an interest in animals and considered becoming a veterinarian before deciding to attend law school. “I’m a suburban boy who should have grown up on a farm,” he said. “There’s no one really close to me who’s that big on animals, but... it absolutely breaks my heart to hear about animals being mistreated.”

Like Kidner, Cupas said she hopes that the Animal Law Society will have an impact on the William & Mary community. “It’s my belief that through the Animal Law Society, we can raise awareness of the importance of protecting our furry (and not-so-furry) friends through proper application of animal rights laws and fight for victims who literally cannot speak for themselves,” she said.

Students who are interested in joining the Animal Law Society or being involved in any capacity should contact Kidner at gh kidn@wm.edu.

Author Lou Fisher Addresses Issue of State Secrets

by Kaila Gregory
Staff Writer


Professor Neal Devins, the director of the Institute of Bill of Rights Law, said the institute is running a workshop series this fall, “intended to allow law students and faculty opportunities to talk with academics... and government officials about cutting edge issues at the intersection of law and politics.”

Devins said that Fisher’s work on national security made him a perfect fit for the workshop series. “Since he had just written a book about state secrets, we thought it would be great for him to make a public talk about that book,” said Devins.

Fisher is a senior scholar in the law library at the Library of Congress and a former senior specialist in separation of powers at the Congressional Research Service of the Library of Congress. In addition, Fisher has written more than a dozen books, including “Constitutional Conflicts Between Congress and the President” and “Presidential War Power.”

When speaking about his latest book to members of the William & Mary community, Fisher explained the 1953 case of United States v. Reynolds, in which widows whose husbands died in the crash of a B-29 bomber sued the government for negligence and sought accident reports on the crash as evidence. They were told that the release of the documents would threaten national security by revealing the bomber’s top-secret mission.

“They needed those documents to prove their case of negligence,” said Fisher of the widows.

After losing the case for failing to turn over the documents to the judge, the government appealed to the U.S. Supreme Court and invoked the state secrets privilege.

“The Court decided 6 to 3 that [the Air Force’s accident report] fell under the state secrets privilege without looking at the papers,” said Fisher, noting that the Justices based their decision on a letter from the Secretary of the Air Force describing the information that was contained. “The government was looking for a case to establish state secrets, and this was it.”

In 2000, the 41-year-old daughter of one of the B-29 victims purchased the declassified and released accident report from the Internet. When she looked at the report, she found there were no government secrets in the accident report, said Fisher. “Sometimes people claim state secrets when it’s really just embarrassing information or criminal activities [contained in the materials]. You can’t distinguish legitimate from illegitimate claims without having access to the documents.”

As a result, Fisher said judges should have access to documents that allegedly contain state secrets as a means of “getting to the truth without damaging national security.”

“When the Executive claims that material cannot be released because it threatens national security, the judges should get to determine the validity of this claim by seeing the entire article,” said Fisher.

Fisher noted that the state secrets issue extends well beyond the Reynolds case into current constitutional issues and debates over separation of powers.

“There are some huge variations on judges as to how assertive Continued on pg 7.
Smith & Yoo Provide Preview of Things to Come

by David Benatar
Staff Writer

Hours before the Supreme Court Preview was set to begin, William & Mary law students and members of the Williamsburg community gathered to watch John Yoo and Paul Smith speak in a panel discussion called “The Protection of Individual Rights and the Roberts Court: Minority Rights, the War on Terror, and the Supreme Court.” The event, sponsored by the Federalist Society, the American Constitution Society (ACS), and the Institute of the Bill of Rights Student Division (IBRL), allowed Yoo and Smith to discuss controversial issues, such as the role the judiciary should play in relation to the elected branches of government, the direction the Roberts Court is likely to take, and what issues are at stake in the coming years.

The debate over whether to adopt original intent or a more “evolutionary” process dominated much of the discussion. “Original intent is manipulated at times by conservatives,” argued Smith, who argued for a more evolutionary approach. Yoo, on the contrary, argued that the “Reagan Revolution” to appoint more conservative judges “has yet to succeed, but has made important advances.” He pointed to the nominations of Justices Roberts and Alito as a product of the “Reagan Revolution.”

Both Yoo and Smith are very accomplished in their own rights. According to his faculty profile on the University of California Berkeley School of Law website, Yoo, a professor of law and former deputy assistant general in the Office of Legal Counsel at the U.S. Department of Justice, has worked on issues involving foreign affairs, national security, and the separation of powers. He is perhaps best known for helping formulate legal policy for the Bush administration with respect to “enemy combatants.” Speaking at William and Mary for the third time in four years, Yoo argued on behalf of the Federalist Society.

Smith is a partner at Jenner & Block LLP and a member of the firm’s litigation department. According to the firm’s website, Smith has argued numerous cases before the Supreme Court, including Lawrence v. Texas, which involved the constitutionality of the Texas sodomy statute, and LULAC v. Perry, the Texas redistricting case argued earlier this year. For the American Constitution Society, the choice to have Smith speak on its behalf was not a difficult one. “Paul Smith is one of the top Supreme Court litigants in the country and someone who has been on the front lines in voting rights and First Amendment cases,” said Jacksy Billsborrow, Vice President of ACS. “Having [Smith] speak is a great way to build up our presence on campus and get our perspective out there.”

Smith, the first to speak, immediately jumped into discussing the direction of the Court. “The Roberts Court has moved to the right, due to the Alito appointment,” Smith claimed in his speech. Smith argued for a more progressive judicial philosophy, saying, in part, that judges should “find basic values in the Constitution and apply them to modern cases, to fit the current world we live in.”

Yoo had a different view on the direction of the Court. He did not see the Roberts court as being as conservative as Smith claimed. “The Roberts Court, like the Rehnquist [Court], is still quite polarized; however, there has been a solidification of the conservative block into four votes,” said Yoo. Furthermore, Yoo contended that while the “Reagan Revolution” has yet to succeed, “it has made advances . . . [Justices Roberts and Alito] are both products of the Reagan Revolution.”

Paul Smith had an opportunity to discuss his role in the landmark Lawrence v. Texas case, one that is very familiar to any law student. “We had to try a different way to articulate about the Constitution other than history,” Smith said, although the legal team still used history to “look at the prior cases and the values reflected in them.”

When all was said and done, the student body had been treated to an engaging discussion over very pertinent issues affecting the judiciary. “Working with IBRL and the Federalist Society gives us a great opportunity to do something extra and add to the debate on campus,” said Billsborrow. “Our goal is that the student body benefit from this debate.” Given the spirited discussion and large audience, it appears that that goal was reached.

More information on John Yoo can be found on his faculty profile at the University of California Berkeley School of Law website (www.law.berkeley.edu). Likewise, a detailed profile of Paul Smith can be found at the website of Jenner & Block LLP (www.jenner.com).

Defense, continued from pg 5.

Is that? The statement got a hearty laugh from those assembled, and Windmueller allowed a smile herself, before getting serious again. A second serious issue that requires change is discovery: “We don’t have any. We have trial by ambush. The prosecution goes ‘We call Joe Schmo.’ I go, ‘Joe Schmo? Who’s Joe Schmo?’ I look over at my client, and he goes ‘Oh, [expletive deleted].’

Prosecutors needn’t tell the defense what witnesses they plan to call. “How do I get prepared to cross-examine an expert witness when I don’t even know what he’s going to testify to?” Windmueller asked rhetorically – her exasperation clear. The maddening thing, she said, was how inefficient the system was. There are times evidence will surface late in a trial, and she can only think, “Well, if I’d known that, I would have pled!”

Trying to change things has proven very difficult, she explained, because change must come from the General Assembly. Unfortunately for Windmueller and her brethren, there are fewer lawyers in the General Assembly than ever. Current members “don’t get it at all,” and criminal defense lawyers, she says, are the least popular group there is. This is largely because defense lawyers, and their clients, are not popular with the electorate. “We’re criminals. Who’s going to stand up and say that we need anything?”

Fisher, continued from pg 6.

they want to be in checking the executive branch when [the Executive] claims state secrets,” he said. “Many [judges], unfortunately, behave as if they were an arm of the executive branch.”

Dean Taylor Reveley was among those who attended Fisher’s talk, calling the author “an example of the very knowledgeable people whom we bring to the law school every year.”

“They bring important perspectives, impart a lot of knowledge, and add zest to the intellectual life of the school,” Reveley said of the numerous speakers who visit the law school campus. “Fisher... is one of the leading experts in the galaxy on how the U.S. Constitution divides the war powers among our various branches of government. He brings to his analysis of the war powers a profound skepticism about the virtues of presidential power.”

Despite the fact that Fisher’s views on the war powers often diverge from his own, Reveley noted, “I always enjoy listening to [Fisher] and always learn something when I do.”
SBA Elections continued from cover:

hanging files on Thursday [or at an earlier interest meeting] instead of [forcing us] to interpret rules with contradictory statements made by Bules on Sunday,” he said.

But Bules is confident that the rules were made sufficiently available to the candidates.

“All the candidates asked lots of questions about what is OK and what is not,” he said. “I even spent time with Alan after the meeting answering questions about the rules.”

Kennedy-Shaffer later acknowledged that he had not read the rules in advance of the meeting of Sept. 3.

“I took Bules at his word and it turned out to be a mistake,” he said. “In that sense I was wrong for believing Bules when he discussed the rules on Sunday.”

The distribution and understanding of the campaigning rules became relevant on election day. Although the polls opened as scheduled at 8 a.m., by mid-afternoon the Elections Committee had removed Kennedy-Shaffer’s name from the ballot and decided to have a new election without Kennedy-Shaffer the following day.

The Elections Committee received several complaints that Kennedy-Shaffer had violated two of the campaigning rules: “Refrain from sending emails that reference the election” and “Campaigning at the polls, located in the lobby, is prohibited.” After substantiating the complaints from several witnesses, they concluded to their satisfaction that Kennedy-Shaffer had committed the violations.

“We felt terrible about removing [Kennedy-Shaffer from the ballot], but you have to play by the rules,” Brady said. “It’s like if you foul out of a basketball game, you can’t say you thought you were allowed six fouls instead of five. You can’t say the rules were dumb to begin with. Once you start playing, you have to play by the rules. It doesn’t matter if you don’t know them.”

The details of the violations are outlined in the Honor Council’s sanction report, which follows this article. As the campaigning rules clearly state, “Any actual violation will result in removing the candidate’s name from the ballot.”

Dismayed about what he saw as arbitrary and unfair treatment by the Honor Council, Kennedy-Shaffer distributed printed copies of an open letter to the entire first-year class, dropping them in their hanging files that afternoon. In his letter, he challenged the propriety with which the rules were presented to him as well as the lack of due process in the decision. That open letter also follows this article.

“I think Alan is an enthusiastic, well-meaning candidate who may have received a raw deal,” said fellow 1L Dave Holtman. “The SBA [and Honor Council] should have been, and still should be, more forthcoming about [the] decision.”

Despite the belief by some that Kennedy-Shaffer may have been mistreated, Bules maintains that the rules were clear, particularly with regard to the use of e-mail.

“If there were any question that the rules were not clear, after all this happened, I would have expected to receive complaints from others saying that they didn’t think the rules were clear either,” he said. “Instead I got a flood of e-mails [from other candidates] saying that they understood the rules. I was never worried about whether the rules were clear. Everybody let us know they were fine with them.”

Indeed, Hinchcliffe backed up Bules’s confidence in the candidates’ understanding of the rules.

“I thought the Honor Council did a good job making the rules clear, both [orally] and in written form,” Hinchcliffe said. “If any one of the candidates had a question about the rules, an Honor Council member was always accessible and willing to help. It’s a shame that the election was so controversial.”

The SBA Secretary Sarah Fulton e-mailed the first-year class on the evening of Sept. 6 announcing that the elections had been rescheduled for Thursday, Sept. 7 from 8 a.m. to 5 p.m. What she did not say, but what students discovered that morning at the polls, was that Kennedy-Shaffer had been removed from the ballot for good.

Despite being disqualified from the election, Kennedy-Shaffer continues his quest to make the law school elections more open and democratic — not for his own sake or because he wants the outcome of this election changed, but for the sake of future candidates.

“It really comes down to establishing better standards and objective rules that can be applied fairly to prevent problems from coming up in the first place,” Kennedy-Shaffer said. “Having [and disseminating] written rules governing the process allows candidates and voters to know their rights and exercise their rights without relying on arbitrary decision-making of election monitors.”

He has been working with members of the Honor Council and the law school administration to improve the rules governing future elections, going so far as to propose model rules.

“My hope is that this controversy results in improvements in the election process,” he said. “That is really what I’m working toward. I’m trying to make our elections more fair, more democratic, and more trustworthy.”

Although those model rules have not been reprinted here, it is clear from Kennedy-Shaffer’s response to the Honor Council sanction report, which is reprinted, that he believes the issues of notice, due process, and right of appeal should be taken more seriously in the future.

“Every election brings new challenges for the Honor Council,” said Webster, Chief Justice of the Honor Council. “This year we implemented a couple of new policies as a way to answer past questions and concerns that had been brought to our attention. Although we are upset that we had to take someone off the ballot, the system worked. The rules were given to the candidates, and the candidates for the most part followed them.”

In the interests of fairness and full disclosure, The Advocate here reprints in their entirety three documents pertinent to the removal of Kennedy-Shaffer from the ballot. First is Kennedy-Shaffer’s open letter.

Continued on pg. 9
The Honor Council's sanction report of Kennedy-Shaffer. Third is Kennedy-Shaffer's response to the sanction report. Although the latter two documents were originally drafted as part of confidential proceedings, Kennedy-Shaffer waived his right to confidentiality to the satisfaction of the Honor Council and allowed these documents to be made available to The Advocate. The Honor Council provided The Advocate with the sanction report and requested its publication.

Pg. 1 continued

1. Distributing printed copies of the rules -- DENIED!
2. Reporting all election results (vote totals) publicly -- DENIED!
3. Randomizing ballot order to give all candidates a fair shot -- DENIED!
4. Allowing candidates to contact their friends in an unobtrusive manner -- DENIED!

Pg. 2 of 2

5. Due process and right of appeal for all candidates accused of rule violations -- DENIED!

The facts clearly show that Brady and Bules' decision to remove my name from the ballot and discount all votes for me cast before 2 pm render the outcome of the 1L Representative elections illegitimate. There is nothing more damaging to the spirit of free and open elections than having election officials substitute their own judgment for yours.

Please consider the significance of having elections where the rules are not printed, candidates are removed on a whim, and your vote is thrown out because you put your trust in an election process plagued with error. I am disappointed with the way in which the SBA ran this election and hope that these problems will be corrected in the future.

All I ask is for ALL votes to be counted and for the results to be announced publicly.

Respectfully yours,

Alan Kennedy-Shaffer
Sanction Report - 5 pages

September 8, 2006

Mr. Alan Kennedy-Shaffer
414 Merrimac Trail Apartment 5
Williamsburg, Virginia 23185

Dear Mr. Kennedy-Shaffer,

At your request, we have prepared an official report regarding the removal of your name from the 2006-2007 SBA 1L Rep. Election. We have consistently kept you, a witness, and in the presence of the election.

The following outlines the facts and determinations concerning the situation:

VIOLATION #1

1. At 10:31 AM, Wednesday, September 6, 2006, Honor Council Justice David T. Bulle received a complaint via e-mail alleging that Mr. Alan Kennedy-Shaffer violated the election rules. The e-mail complaint included the same e-mail sent by Mr. Kennedy-Shaffer, the text of which is below:

   Subject: FW: Thanks for your support!

2. At 10:51 AM, Wednesday, September 6, 2006, Justice Bulle received a second complaint via e-mail alleging that Mr. Kennedy-Shaffer violated the election rules. The e-mail complaint included the same e-mail sent by Mr. Kennedy-Shaffer referenced in Paragraph 1.

DETERMINATION

7. Rule 12 of the Rules for 1L SBA Rep Campaigning states, "Please immediately forward any possible violations to Ryan Brady at rbrady@gmail.com (775-741-1052) or David Bulle at dbulle@vwm.edu (775-813-1507). All alleged possible violations will be investigated. Any actual violations will result in removing the candidate's name from the ballot. At decisions will be final.

8. Justice Ryan R. Brady and David T. Bulle, met with Mr. Kennedy-Shaffer in the Legal Skills conference room at approximately 1:00 PM, Wednesday, September 6, 2006. Chief Justice Leonor J. Webster presided over the meeting as an observer to ensure that order was kept. During the meeting, Mr. Kennedy-Shaffer was told of both alleged violations. He was given advance to explain his side to the alleged violations. His responses follow:

   a. In response to the alleged e-mail violation, Mr. Kennedy-Shaffer acknowledged sending a "couple dozen" e-mails to students similar to the e-mail above, referring to the election, and thanking recipients for their support.

   b. In response to the alleged lobby violation, Mr. Kennedy-Shaffer acknowledged giving at least one sticker to at least one student in the lobby.

For space considerations, the fifth page containing the Honor Council Justices' signatures, Kennedy-Shaffer's acknowledgment of receipt of the document, and a carbon copy notice to Associate Dean Libeth Jackson and Honor Council Chief Justice Leonor J. Webster has been omitted.
Mr. Ryan R. Brady  
Mr. David T. Bules

Dear Mr. Brady and Mr. Bules:

In response to your report regarding the removal of my name from the 2006-2007 SBA IL Rep. Election, I submit the following corrections to the numerous factual errors and distortions appearing in your report. I have consistently suggested election procedures that would have made the 2006-2007 SBA IL Rep. Election fair and open as possible. I have also made every effort to resolve the matter confidentially but you refused to accept the alternative resolutions that I presented to you in our meeting at approximately 1:00 PM, Wednesday, September 6, 2006. At no point did you provide me with notice of the rules, due process during the investigation, or a right of appeal of your decision to remove me from the ballot.

The following points outline the facts and broader implications concerning this situation:

VIOLATION of NOTICE
1. The claims that I violated rules 2, 5, and 6 of the Rules for IL SBA Rep Campaigning, while denied, are irrelevant because Mr. Bules and Mr. Brady failed to provide adequate notice of the rules to all candidates. They also made verbal statements contradictory to the rules alleged to have been violated.
2. At approximately 11:30 am on Sunday, September 3, 2006, Mr. Bules explicitly stated, "The rules do not prohibit you from sending e-mail." Mr. Bules also stated, "If you send e-mail, make sure the recipient is your friend. Mr. Bules also stated, "Do not send bulk e-mails or use list-servers." I and several other candidates witnessed these statements.
3. At approximately 11:45 am on Sunday, September 3, 2006, during a meeting with all candidates, I requested a printed copy of the rules. Mr. Bules denied this request.

2. After being explicitly denied any right of appeal, I wrote an open letter to my fellow IL students in which I made clear my concerns regarding the way in which Mr. Brady and Mr. Bules managed the election. I hand-delivered a copy of this letter to Mr. Bules and Mr. Webster. I explicitly mentioned the denial of notice, denial of due process, denial of the right of appeal, and failure to publicly release all results (including vote totals for every candidate) as evidence of the illegitimacy of the sanctions against me.

3. As of Friday, September 8, 2006, Mr. Brady and Mr. Bules have yet to respond to any of my complaints regarding the legitimacy of the election procedures and the legitimacy of the sanctions against me due to the fact that the rules governing the election were not printed and distributed to candidates. Since Mr. Brady and Mr. Bules have failed to question any of my assertions that I was denied notice, denied due process, and denied the right of appeal, it is assumed that they accept the validity of these claims and waive their right to challenge them.

IMPLICATIONS
To respect candidates to follow rules that are not printed and distributed and are not available upon request is undemocratic and incongruous with the spirit of free and fair elections. Until the Honor Council prints and distributes copies of the rules governing SBA elections, gives adequate notice to all candidates, provides due process for all candidates accused of violating election rules, honors the right of candidates to appeal sanctions, and makes public all results, the SBA elections will not be legitimate. As someone deeply rooted in the belief that free and fair elections are vital to the democratic process, I hope that Mr. Brady, Mr. Bules, and the rest of the Honor Council will seriously consider revising the election rules to guarantee each candidate a fair shot.

Respectfully Submitted,

Mr. Ryan R. Brady

Mr. David T. Bules

Cc: Mr. Leonard J. Webster, Associate Dean Lizbeth A. Jackson

I acknowledge I have received the SBA 1L Rep Election Sanction Response.

Mr. Alan Kennedy-Shaffer
Sadler Bucks Trend, Sends E-mail Unrelated to Sexual Assault/Death of a W&M Student

by Mike Kourabas
Features Editor

The W&M community was stunned on a recent Monday afternoon when, at roughly 3:30 p.m., an e-mail appeared in every student’s inbox, sent by our very own Sam Sadler. No, the receipt of an e-mail from Sadler was not the shocking bit. We are graced with eloquent notifications, courtesy of our Vice President, rather frequently (too frequently, one might say, given the usual subject matter of such e-mails).

Prior to this e-mail, one could count on the substantive portion of a Sadler e-mail covering one of two somber topics: (1) sexual assault committed on campus; or (2) the death of a fellow Tribe (Tribe person? Tribe? Tribesman?). That is why Sadler’s latest offering shook the very foundations of the W&M Community. Soon after I checked my W&M e-mail account for the 500th time last Monday, I received a phone call from an old roommate, the Stormin’ Mormon himself, and a man recently married, Mr. Ben Lusty.2

“Mike, did you see that e-mail?” I, of course, had already read the e-mail and begun to contemplate its significance. There was a moment of poignant silence, after which I replied quietly, “I did, Ben. I certainly did.”3

Of course, like most W&M students, Sadler’s e-mails were the topic of much conversation in my apartment last year. Such conversations often included themes such as, “What is your favorite Sadler e-mail?” or “Which Sadler e-mail this week best captured the mood of the traumatic event which it detailed?” or “Has Sadler finally gone overboard in outing various rape suspects?”

Needless to say, we had exhausted most Sadler-related discussions. So, I guess you could say I was excited to see Sadler move away from his comfort zone. Nobody really knew what he could do outside of the rape/suicide paradigm. We’d seen Sadler wade into the “death not by suicide” area in a few e-mails, and he handled himself quite nicely. But a leap like this — an e-mail about deaths that occurred five years ago! — was simply unprecedented.

True, it could be said that this last e-mail wasn’t too far a-field from what Sadler usually discusses. To be sure, when one has such a distinct knack for writing about tragedy, anything related thereto could be construed as being within one’s area of expertise. I, however — like most others I’m sure4 — don’t buy this argument, hence the collective shock we felt when Sadler’s “9/11 Memorial” e-mail graced our inboxes.

Essentially, I think it is the temporal gap between the time the e-mail was written and the occurrence of the relevant tragedy that really evinces Sadler’s willingness to broaden his e-mail writing repertoire. Furthermore, the actual subject matter is the memorial service itself, which is only related to tragedy and isn’t a tragedy in itself. In fact, many view memorial services to be quite therapeutic and, perhaps, the antitheses of tragedy.

The rejoinder to that argument is that memorial services couldn’t exist but-for the occurrence of tragedies, and, therefore, an e-mail about a memorial service is inherently about tragedy, if in fact somewhat removed from the event itself.

I, myself, am more sympathetic to the former proposition. Think of it this way. The typical Sadler e-mail proceeds thusly: “Dear W&M Community . . . I regret to inform you . . . more information to come . . .” With that in mind, Sadler’s latest is a complete divergence from his old form.

First, not once does he inform us of a tragic event. He reminds us of one — note the title of the e-mail, “A Reminder” — but that is a far cry from the typical, let me drop some awful news about some tragic event that just happened, most likely pretty close to wherever you, the reader, might be, informative technique that Sadler typically utilizes.

Second, the tone of the e-mail, while patently somber, is not as devastatingly blunt as is typical. I think this style choice is also reflected in Sadler’s choice to center his name at the bottom, as opposed to using the usual left-justified format.5 To me, this signifies a sense of control. Sadler clearly feels comfortable, the tragic events being five years in the past, and indicates as much in the chosen declarative tone and signature-placement.

Yes, it is true, the phrase “awful human toll” is used once, which some might point to as an indication that this is just Sadler up to his same old tricks. I have no rejoinder to that claim, really. Frankly, I think the use of that phrase does no more than stir the pot.6

Many in our community thought that Sadler might vacate the tragedy genre after the infamous “Sorry I used the wrong name of the kid that just died” incident of two summers ago.7 Incoming students such as myself were devastated to learn, only months before we were to arrive, that one of our soon-to-be fellow Tribesman had perished. However, nothing could match the shock we felt when we realized that our own VP had used the name of the wrong kid (!) in his informative e-mail. Dan Leary, former Rutgers Crew star and captain, captured all of our reactions perfectly when he said, “Mike, I really thought about transferring after that e-mail blunder. I really did.”

However, it wasn’t until now that Sadler felt confident enough to jump genres. Maybe it’s because the Summer ’05 blunder is long forgotten (well, it was, until I just brought it back up I guess). Or maybe the power of the moment, 9/11’s five year anniversary, gave him the strength to grow as a writer. Whatever it is, I’m just thankful I was here to witness it.

---

1 I am sure that Sam Sadler often sends e-mails on different topics. Maybe I only open the ones with subject lines that pique my interest. I don’t know. Anyway, this article is based on an observation I made last year, regarding the often disturbing content of Sam Sadler’s student-wide e-mails.

2 Such conversation never actually took place, and Ben Lusty may or may not be affectionately referred to as the Stormin’ Mormon around campus. However, he was in fact recently married. I wasn’t invited to the wedding.

3 Id.

4 I haven’t actually discussed this with anyone else and have absolutely no idea if anyone will even get what it is I am writing about.

5 Does he always center his name at the bottom of the e-mails? Conveniently, I just emptied my inbox and trash and have no way of verifying this. Anyway, it’s not that important.

6 Yes, I used “rejoinder” and “stir the pot” in one paragraph. Mission Accomplished (despite the questionable usage of the latter).

7 This is, in fact, factual. Well, sort of. I think.

8 Nor did this conversation ever take place. Leary wasn’t really the captain of the Rutgers crew team, either.
Fun Things To Do in Colonial Williamsburg

by Kate Yashinski
Copy Editor

Last summer, when I arrived at William & Mary a wide-eyed 1L, I was a little nervous about law school and a whole lot excited about living right next to Colonial Williamsburg. With a brand new B.A. in history and a passion for corsets and petticoats, I couldn’t believe my luck that I was attending law school within walking distance of my all-time favorite vacation spot. Silly me, I thought I’d find plenty of other law students who felt the same way, and we’d spend our free time (haha, I know, “free time”) learning things like how eighteenth century cooperers made barrels.

And then I met you all. Now, I am sure that there are other Marshall-Wytheites out there who love CW as much as I do; however, I haven’t met any. In fact, I have known several law students who have never set foot in the historic area, like my 3L (3L!) junior partner last year. The purpose of this article is to make sure that the same thing doesn’t happen to you.

First of all, let’s clear some things up. You need a CW admissions ticket to get into most buildings in the historic area, but there are

Continued on pg 14.

Dying For Peace in Darfur

by Alan Kennedy-Shaffer
Features Editor

Blood streaked down Kaldoum Adam Ahmed’s face and bruises covered her back, but the soldiers did not stop.

“You must tell us where he is!” one of the soldiers yelled angrily.

“I don’t know,” Ahmed answered calmly.

“I don’t know.” Wearing the green camouflage uniforms and caps of the Sudanese army, the soldiers kept whispering to the pregnant woman until she was convinced that she was telling them the truth.

“If you want to kill me,” Ahmed whispered, “you can kill me.” The soldiers did not kill Ahmed. She was one of the lucky ones.1 Ahmed’s husband, Adouma Ahmed Khames, also survived the brutal attack on their village in the Darfur region of Sudan that day in July, hiding under a pile of rotting grass. Knowing that the soldiers were likely to return again the next morning, Khames headed west during the night with other survivors. Ahmed stayed another day before leaving the destroyed village of Deker. She walked east with her five children, seven months pregnant and distraught from the horrors that she had just witnessed. She left behind mass graves hastily dug to bury friends and relatives who had not fared so well with the gun-toting, truck-driving messengers of death. She also left behind four

1 The above account comes directly from Craig Timberg, In Darfur’s Death Grip, WASH. POST (Sept. 6, 2006).
2 Id.
3 See, e.g. Craig Timberg, Sudan’s Offensive Comes at Key Time, WASH. POST (Sept. 5, 2006); Eric Reeves, Accommodating Genocide, WASH POST (Sept. 3, 2006); Glen Kessler & Craig Timberg, Sudan Says No As US Backs UN Force in Darfur, WASH. POST (Sept. 1, 2006).
4 Id.
5 Id.
Marshall-Wythe Student B-LAW-GS

by Tara St. Angelo
Business Editor

Did you see the mannequin in the lounge? Get a handwritten note in your hanging file? Or feast on a Goodie Bag filled with candy? You can thank this year’s newly elected 1L representatives: Mike Hinchcliffe, Jenny Case, and Kerry Loughman-Adams.

Interview with Mike Hinchcliffe by Nathan Pollard

Mike Hinchcliffe comes from Lexington, Kentucky, but he attended the University of Richmond. Mike made the “long” journey from Richmond to Williamsburg after he graduated, although the journey may not have taken him as long as most since Mike has an avid dislike for the unending 25 mph speed limits in Williamsburg. Mike professes to be a fun and approachable guy, but don’t let the blond hair fool you. Although Mike looks like he could have been a founding member of a boy band (he can sing too – Mike was a member of an a capella group at Richmond), he’s a man with a plan. Mike was a student senator at Richmond and is bringing all of his organization skills to the SBA. Mike’s main goal this year is to put together a huge event on behalf of the 1L class. He wants to see people “having fun and realize it’s my fault.” Mike’s fun-loving and innovative nature made itself known to the students of the law school during the first days of campaigning with the introduction of Thor and Farmer Bob, the mannequin next to the hanging files. Mike wanted to create a buzz without spending a lot of money. This is when the soccer ball-headed figure was born. Although Mike may have confused a good majority of the students, he got what he wanted: attention (and a spot as an SBA representative).

Jenny Case, of Greenville, South Carolina, took a less conspicuous road of communicating with students. Jenny slipped handwritten notes into people’s hanging files. Jenny, a political science and communication studies major, knows how to communicate with people. The aching of her hand after writing out dozens of personalized notes (Jenny wishes she could have written something to every 1L, but her hand cramped up around note number 50) paid off in the end. Jenny is no stranger to student government. Her transition to law school was natural after serving as student attorney general at Clemson University. Jenny’s main goal this year is to integrate the 1L class into the law school. She recognizes the diverse backgrounds of the students and wants to make everyone feel included with events tailored to everyone.

Kerry Loughman-Adams’s election to the SBA is directly in line with Jenny’s goals. Kerry, who is now the only married member of the SBA, attended West Point and served in the military for five years. Kerry brings career, life, and family experience to the SBA and will be injecting her unique experiences into the SBA this year. Her perception of law school is that the work part of every student’s life is pretty much the same, but all of our lives apart from that are so different. Kerry says, “We are all about to begin our professional lives, and the SBA should reflect this.” Kerry wants to focus on events that pertain to “life sports,” like networking. Kerry, though, does have experience at athletic sports as a veteran of the West Point soccer team. (I hope the B-LAW-Gs don’t create a scramble to try and recruit Kerry for a Friday soccer team.)

Sadly/Luckily, the mysterious F. Scott Scotch (who oddly resembles our own Features Editor Mike Kourabas) did not win a seat in the SBA, or even make it on the ballot.

The 1L reps have started off their terms right. Look for all of them in the Bar Crawl photo collage on page 16! F. Scott Scotch was as missing from Bar Crawl as he was missing from this year’s ballot.

CW, continued from pg 13.

Walking Tour

some that are open to the public, like the taverns, most stores, and the church. Your William & Mary ID acts as your CW admission ticket, you lucky duck! There’s yet another benefit to being a W&M student: You can purchase admission tickets for your non-student family and friends at a 25% discount. Not everything is free or discounted, though; these perks may not apply to evening program tickets.

When you go during the day, make sure you hit up the Capitol and the Governor’s Palace, the two most important and impressive buildings of Virginia’s colonial government. Other than that, wander around DOG and Nicholson Streets and enter places that have British flags in front of them. You can visit beautiful houses of rich men like Peyton Randolph and also small shops of tradesmen like carpenters and wigmakers. For two hours each day, part of DOG Street is dedicated to Revolutionary City, a two-day outdoor interactive play that chronicles the lives of Williamsburg residents as they experienced the events of the American Revolution.

Although most of the historic buildings close at 5:00, there are other fun things to do at night. For example, Chowning’s Tavern is an eighteenth century bar where you can drink, eat, play colonial games, and listen to drinking songs performed by CW’s very own balladeers. You can also purchase tickets for evening programs, including some that are especially suitable for young lawyers-to-be, such as Cry Witch (a reenactment of a felony witchcraft trial) and Crime and Punishment (a self-explanatory historical walking tour).

Best of all, you can buy tickets for a Tavern Ghost Walk, a super fun and slightly scary lantern-lit walking tour, led by one of your fellow law students. Ah yes, not only am I a tourist at CW, I am also an employee, and this is a shameless advertisement for you to come on one of my tours. Email me (keyash@wm.edu) or Heidi Schultz (hgshcu@wm.edu), another 2L who also does ghost walks, for more information.

There are plenty more things to do at CW. So, next time you walk down South Henry Street, don’t stop at the Cheese Shoppe or the bookstore. Instead, turn right, take a stroll down DOG Street, and learn something new.
Welcome to bizarro world! Ladies, you are about to learn what men like, dislike, love, and hate. Men, you are about to learn what not to do if you plan on having a successful relationship. My name is David Bules, and I am terrible at dating. Ironically, people come to me all the time asking for dating advice. I followed that advice, I’d be married by now. This column is going to be a weekly question and answer forum, so feel free to sound off on dating, send in questions, and rip apart my dating style. Ladies, this is where you will get answers to what exactly men are trying to tell you with their actions and words. Men, feel free to ask questions too because sometimes women’s minds are not easy to decipher.

Last year, my younger sister gave me the book “He’s Just Not That Into You: The No-Excuses Truth to Understanding Guys,” written by former Sex and the City employees Greg Behrendt and Liz Tuccillo and based on the famous Sex and the City episode. She told me I had to read it right away, because I do everything in this book. Indeed, the majority of pages exposed a litany of my feeble tactics.

While working as a server at a restaurant in Auburn, my very-sweet-southern-belle’-cougar’-of-a-boss nicknamed me Shug, as in Sugar. She said I was sweeter than sugar and I had a way with words, whatever the hell that meant. After that nickname, I realized my gift whatever the hell that meant. After a-boss nicknamed me Shug, as in this book. Indeed, the majority of famous City because sometimes women off on dating, send in questions, and to me all the time asking for dating. Ironically, people come successful relationship. My name Men, you are about to learn what men like, dislike, love, and hate. Ladies, you are about to learn what you all about.

While mistakes were certainly made, I’m constantly amazed at how much people care about these elections – a marked change from my undergraduate experience at Laurentian University (LU). It got me thinking about the difference between W&M and the fine educational institution that is LU.

Before I go any further, I should point out that Laurentian is not a typical school in Canada. Most other Canadian schools bear a strong resemblance to W&M (good academics, horrible athletics). So without further ado, here’s a handy scorecard to compare W&M Law to Laurentian (LU).

Elections – Here at W&M we have hotly contested elections where people campaign hard to win. At Laurentian, not so much. The annual SGA (Student General Association) elections would bring in massive numbers of voters. In 2001 my residence (Huntington, 184 students) posted our best turnout ever: 122. I will still not acknowledge we are dating. I will not see other people again until I am seeing her, but I will not call it dating. As soon as we break up, I start referring to her as my ex-girlfriend, because at this point I am no longer freaked out and I can acknowledge I dated someone. One “ex-girlfriend” from college even created a special term for this and informed my stepmother that “ex-girlfriend” and I were “exclusively non-dating.” Another ex-girlfriend called it “faux-dating.” I prefer the former. There is one thing I am proud of though: I can honestly say I have never cheated

Continued on pg 16.

1 Ladies, I have an engagement ring fund. Think I’m kidding? Ask a few of my friends.
2 By the way, in case you were wondering, my type is a feisty southern belle with an accent thick enough to turn heads. You know … Louisiana style.
3 This is part of an elaborate experiment for my best friend Brady and I to double-date two All-Ohio softball players (we played baseball for 16 years). Brady was convinced we could make our own softball team in like ten years with those athletic genes. Also, on an unrelated note, double-dating twins with your best friend is also a bad idea. Incidentally you’ve actually picked the psycho one. There is no such thing as identical.
4 Backwards huh? And I went to college in the South.
5 DTR stands for the “determining-the-relationship” talk. I’ve never heard of a single DTR that turned out well.
6 I have been in long-term relationships. These happen when the girl is astute enough NOT to bring up the DTR.
7 This conversation took place while they were downing their fifth shot of tequila and racing through the bar on spiny chairs with wheels. That’s just how they roll.
8 Yes, I never heard of a single DTR that turned out well. I’ll go ahead and tell you the worst thing I’ve ever done. I convinced my high school girlfriend that she cheated on me, just to get her to break up with me. She never did cheat on me and never even said she liked anyone else, but after an hour she was apologizing profusely, and I told her it was too late. 4 Now that you know the worst, it can only go uphill from here.
9 My dating style is utterly ridiculous. I always have a crush that I keep out there because I can always say I never messed that one up. When I do decide to ask a girl a out, it normally involves me waiting for her to come talk to me at the bar. I will date the girl for about two weeks, and then comes the inevitable DTR. “This is when I hit the road.” I am afraid of titles, and for three years I did not believe in the word “girlfriend.” Ironically, even if I date a girl for six months, I still will not acknowledge we are dating. I will not see other people again until I am seeing her, but I will not call it dating. As soon as we break up, I start referring to her as my ex-girlfriend, because at this point I am no longer freaked out and I can acknowledge I dated someone. One “ex-girlfriend” from college even created a special term for this and informed my stepmother that “ex-girlfriend” and I were “exclusively non-dating.” Another ex-girlfriend called it “faux-dating.” I prefer the former. There is one thing I am proud of though: I can honestly say I have never cheated

Continued on pg 16.

1 No, I haven’t been here for five years. We have two a year: 1L’s in the fall, upper years in the spring.
2 And by fine, I mean horrible.
3 Or, because we were a completely bilingual university (the only one in Canada)
4 Université Laurentienne.
5 By this I mean bake brownies.
6 Not to be confused with the French student association, “Association des étudiants et étudiantes francophones,” which loosely translates to “Massive waste of time and money.”
7 Which is a bit like saying, “He’s a really tall midget.”
8 Which despite the name is not a gay bar.
9 Even getting a number of Bostons to join in the chant with us.
10 How this was allowed I have no idea. Six years later, it still seems absolutely
**Bacon, continued from pg 15.**

– not exactly an athletic powerhouse. W&M, on the other hand, boasts numerous athletic teams, gets pretty decent attendance, and doesn’t share the campus gym with the local retirement community. Advantage Tribe.

**Academics** – W&M is a highly respected academic institution across the country and boasts exemplary graduate programs. LU? Not so much. Our admission standards include tests like “walking and chewing gum” and “being alive.” I actually knew one guy who had not graduated high school and still got in.\(^9\) Shockingly, the graduation rate was not very high (about 25%). Huge advantage W&M.

**Attractiveness of the Students** – Here at W&M we’re not exactly known for having the most attractive student body in the world, but as bad as it is sometimes, it’s nothing compared to LU. Our students were downright ugly – and are mostly covered by parkas.\(^10\) Not exactly a breeding ground for beauty. Advantage W&M.

**Partying** – This isn’t really a contest. We have some good times here at W&M, but it’s nothing compared to LU. A party wasn’t a party at LU unless the following things happened: (1) someone got into a fight, (2) someone went to the hospital, and (3) someone got naked. Picture the craziest night you’ve had at W&M, times it by 10 – and that’s a typical Wednesday afternoon at LU. Advantage LU.

So, that’s a brief comparison between life here at W&M and life in Sudbury. For those of you keeping score, W&M wins, 4-3. Which, having attended both is not all indicative of the differences between the two schools. In reality, W&M is much, much better. Anyway, that’s all for this edition, stay tuned for next week’s 10 page preview of the upcoming NHL season.

---

\(^7\)Guys, if she says this ... RUN! Run like you’ve never run before. Run like Justin Gatlin (circa whenever he started taking roids).

\(^8\)Nothing you say following those words will be acceptable. We have already walked out or hung up.

\(^9\)There is an exception to this rule: If she wakes you up to say this phrase in the middle of the night ... enjoy it, this is the capstone of your life. If you don’t understand this, think of it like a “happy ending” to whatever dream you were having when she woke you up.

---

**Shug, continued from pg 15.**

on a girl, and I think cheating is the single worst thing you can do to a person.

Now that you have an introduction, I’ll finish with the focus all on you, ladies. There are certain things you never want to say to a guy. I’m talking about the “run for the hills” and “throw up the red flag” phrases that slip out of your mouths. Not every girl uses these, but if you catch yourself blurting these out, don’t be surprised if the guy leaves your house with emergency chest pains. Here is the Top-Ten List of “Worst things to say to a guy”:

1. “Prove to me you really like me.”
2. “My ex-boyfriend ...”
3. “You ...”
4. “I still don’t believe you like me.”
5. “You don’t pay enough attention to me.”
6. “You’re out of my league.”
7. “I bet you say that to every girl.”
8. “I wish my parents liked you.”
9. “I love you.”
10. “Let’s talk.”

Guys, your list will come next week. So everyone please send your questions, hypothetical “Say I have this friend who ...” scenarios, and comments to dbule@wm.edu.

The more accurate the story, the better advice I’ll be able to give. And don’t worry, I will never use that slip out of your mouths. Not very girl uses these, but if you do say these things, here are some phrases you can throw in box.

---

Huge advantage W&M.

**Academics** – W&M is a highly respected academic institution across the country and boasts exemplary graduate programs. LU? Not so much. Our admission standards include tests like “walking and chewing gum” and “being alive.” I actually knew one guy who had not graduated high school and still got in. Shockingly, the graduation rate was not very high (about 25%). Huge advantage W&M.

**Attractiveness of the Students** – Here at W&M we’re not exactly known for having the most attractive student body in the world, but as bad as it is sometimes, it’s nothing compared to LU. Our students were downright ugly – and are mostly covered by parkas. Not exactly a breeding ground for beauty. Advantage W&M.

**Partying** – This isn’t really a contest. We have some good times here at W&M, but it’s nothing compared to LU. A party wasn’t a party at LU unless the following things happened: (1) someone got into a fight, (2) someone went to the hospital, and (3) someone got naked. Picture the craziest night you’ve had at W&M, times it by 10 – and that’s a typical Wednesday afternoon at LU. Advantage LU.

So, that’s a brief comparison between life here at W&M and life in Sudbury. For those of you keeping score, W&M wins, 4-3. Which, having attended both is not all indicative of the differences between the two schools. In reality, W&M is much, much better. Anyway, that’s all for this edition, stay tuned for next week’s 10 page preview of the upcoming NHL season.

---

Sudbury, typical Wednesday night.

Nothing that happens at a party can be considered normal, but as bad as it is sometimes, it’s nothing compared to LU. The two schools. In reality, W&M is not exactly an athletic powerhouse. W&M, on the other hand, boasts numerous athletic teams, gets pretty decent attendance, and doesn’t share the campus gym with the local retirement community. Advantage Tribe.

**Academics** – W&M is a highly respected academic institution across the country and boasts exemplary graduate programs. LU? Not so much. Our admission standards include tests like “walking and chewing gum” and “being alive.” I actually knew one guy who had not graduated high school and still got in. Shockingly, the graduation rate was not very high (about 25%). Huge advantage W&M.

**Attractiveness of the Students** – Here at W&M we’re not exactly known for having the most attractive student body in the world, but as bad as it is sometimes, it’s nothing compared to LU. Our students were downright ugly – and are mostly covered by parkas. Not exactly a breeding ground for beauty. Advantage W&M.

**Partying** – This isn’t really a contest. We have some good times here at W&M, but it’s nothing compared to LU. A party wasn’t a party at LU unless the following things happened: (1) someone got into a fight, (2) someone went to the hospital, and (3) someone got naked. Picture the craziest night you’ve had at W&M, times it by 10 – and that’s a typical Wednesday afternoon at LU. Advantage LU.

So, that’s a brief comparison between life here at W&M and life in Sudbury. For those of you keeping score, W&M wins, 4-3. Which, having attended both is not all indicative of the differences between the two schools. In reality, W&M is much, much better. Anyway, that’s all for this edition, stay tuned for next week’s 10 page preview of the upcoming NHL season.

---

Guys, if she says this ... RUN! Run like you’ve never run before. Run like Justin Gatlin (circa whenever he started taking roids).

Nothing you say following those words will be acceptable. We have already walked out or hung up.

There is an exception to this rule: If she wakes you up to say this phrase in the middle of the night ... enjoy it, this is the capstone of your life. If you don’t understand this, think of it like a “happy ending” to whatever dream you were having when she woke you up.