1991

Conference for the Federal Judiciary in Honor of the Bicentennial of the Bill of Rights (Program)

Institute of Bill of Rights Law at The College of William & Mary School of Law

Repository Citation
https://scholarship.law.wm.edu/ibrlevents/58

Copyright © 1991 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
https://scholarship.law.wm.edu/ibrlevents
CONFERENCE FOR THE FEDERAL JUDICIARY
IN HONOR OF THE
BICENTENNIAL OF THE BILL OF RIGHTS
OCTOBER 20-23, 1991
WILLIAMSBURG, VIRGINIA

Sunday, October 20

Noon to 6:00 p.m.
General Registration at Hotels

6:00 p.m.
President's Reception
Wren Court Yard
Sponsored by West Publishing Company
The College of William and Mary

Welcoming Remarks:
Paul R. Verkuil, President, College of William and Mary
The Honorable Lawrence Douglas Wilder, Governor, Commonwealth of Virginia
Monday, October 21

7:30 a.m.
North Gallery, Williamsburg Lodge
Continental Breakfast

8:30 a.m.
Auditorium, Williamsburg Lodge
Welcoming Remarks

PRESIDING:
The Honorable Adrian G. Duplantier, United States District Court for the Eastern District of Louisiana, and Member, Committee on the Bicentennial, and Chairman, Conference Subcommittee

First Plenary Session
"An Historical Perspective: If Those Who Created the Bill of Rights Could Talk to Us Today, What Would They Say, and Should it Matter?"

PRESIDING:
The Honorable Damon J. Keith, United States Court of Appeals for the Sixth Circuit, and Chairman, Committee on the Bicentennial

SESSION MODERATOR:
The Honorable Arthur L. Alarcon, United States Court of Appeals for the Ninth Circuit, and Member, Committee on the Bicentennial

PANELISTS:
The Honorable Lewis F. Powell, Jr., Associate Justice of the Supreme Court of the United States (retired)
Stephen L. Carter, William Nelson Cromwell Professor of Law, Yale Law School
Maeva Marcus, Director, Documentary History Project, United States Supreme Court
Lawrence M. Friedman, Marion Rice Kirkwood Professor, Stanford Law School

Break (20 Minutes)

10:00 a.m.
Auditorium, Williamsburg Lodge
Second Plenary Session
"Rights of Conscience and Participation: The First Amendment"

PRESIDING:
The Honorable Jaime Pieras, Jr., United States District Court for the District of Puerto Rico, and Member, Committee on the Bicentennial

SESSION MODERATOR:
Rodney A. Smolla, Arthur B. Hanson Professor of Law and Director, Institute of Bill of Rights Law, College of William and Mary, Marshall-Wythe School of Law
PANELISTS:
The Honorable Aubrey E. Robinson, Jr., Chief Judge, United States District Court for the District of Columbia
The Honorable Martin L.C. Feldman, United States District Court for the Eastern District of Louisiana
Martha L. Minow, Professor of Law, Harvard Law School
Jesse H. Choper, Dean and Professor of Law, University of California at Berkeley School of Law
Lani Guinier, Professor of Law, University of Pennsylvania Law School
Lee C. Bollinger, Dean and Professor of Law, University of Michigan Law School
Roslyn A. Mazer, Esq., Dickstein, Shapiro, & Morin, Washington, D.C.
Robert H. Giles, Publisher, The Detroit News
Anthony Lewis, Columnist, The New York Times

Break (30 Minutes)

Breakout Sessions

Session 1: What's Left of the Free Exercise Clause?
The Honorable Alice M. Batchelder, United States District Court for the Northern District of Ohio
Jesse H. Choper, Dean and Professor of Law, University of California at Berkeley School of Law

Session 2: Freedom of Speech and Press - A Look to the Future
The Honorable William J. Bauer, Chief Judge, United States Court of Appeals for the Seventh Circuit
Lee C. Bollinger, Dean and Professor of Law, University of Michigan Law School
Robert H. Giles, Publisher, The Detroit News

Session 3: The "Original Intent" Debate
The Honorable Thomas A. Wiseman, Jr., United States District Court for the Middle District of Tennessee
Stephen L. Carter, William Nelson Cromwell Professor of Law, Yale Law School
John E. Nowak, Professor of Law, University of Illinois College of Law.
Session 4: The Press and Individual Privacy
The Honorable Anthony A. Alaimo, United States District Court for the Southern District of Georgia
Anthony Lewis, Columnist, The New York Times
John J. Walsh, Esq., Cadwalader, Wickersham & Taft, New York, New York

Session 5: The Religion Clauses from an Historical Perspective
The Honorable Robert B. Propst, United States District Court for the Northern District of Alabama
Melvin I. Urofsky, Professor of History, Virginia Commonwealth University

Session 6: The Role of History in Constitutional Interpretation
The Honorable Juan R. Torruella, United States Court of Appeals for the First Circuit
Lawrence M. Friedman, Marion Rice Kirkwood Professor, Stanford Law School

Session 7: The Procedural and Practical Aspects of Closing Criminal Trials
The Honorable John F. Keenan, United States District Court for the Southern District of New York
Paul Marcus, Professor of Law and Dean Emeritus, University of Arizona College of Law

Session 8: The First Amendment and the Law of Libel
The Honorable Gilbert S. Merritt, Chief Judge, United States Court of Appeals for the Sixth Circuit
Michael J. Gerhardt, Professor of Law, College of William and Mary, Marshall-Wythe School of Law
Roslyn A. Mazer, Esq., Dickstein, Shapiro, & Morin, Washington, D.C.

Session 9: Free Speech on Campus
The Honorable Kenneth Ripple, United States Court of Appeals for the Seventh Circuit
Paul R. Verkuil, President, The College of William and Mary

Session 10: Gender Discrimination in American Legal Institutions
Dr. Cynthia Harrison, Chief, Federal Judicial History Office Federal Judicial Center
Tuesday, October 22

7:30 a.m.
North Gallery, Williamsburg Lodge

8:30 a.m.
Auditorium, Williamsburg Lodge

Lani Guinier, Professor of Law, University of Pennsylvania Law School

Adjourn until Afternoon and Evening Events

Cutler Lecture: "The Constitution and Peremptory Challenges"

Martha L. Minow, Professor of Law, Harvard Law School

The Cutler Lecture is an endowed distinguished lecture series, established in 1927 by James Goold Cutler, to provide an annual lecture at the College of William and Mary by "an outstanding authority on the Constitution of the United States."

Dedication of Bill of Rights Plaque

The Honorable Frank X. Altimari, United States Court of Appeals for the Second Circuit, and Member, Committee on the Bicentennial

Throughout the Bicentennial commemoration period, the Judicial Conference Committee on the Bicentennial of the Constitution has presented bronze plaques of the Bill of Rights to court houses, universities, and other institutions around the world. Such a plaque has been presented to the Institute of Bill of Rights Law at the College of William and Mary.

Reception

Welcoming Remarks:
Larry L. Sipes, President, National Center for State Courts
The Honorable Robert C. Murphy, Chief Judge, Court of Appeals of Maryland, and Member, Committee on the Bicentennial
The Honorable Harry L. Carrico, Chief Justice, Supreme Court of Virginia

Continental Breakfast

Third Plenary Session

"The Bill of Rights and Criminal Procedure: A Frank Assessment of the Modern Criminal Justice System."

PRESIDING:
The Honorable James E. Noland, United States District Court for the Southern District of Indiana, and Member, Committee on the Bicentennial

SESSION MODERATOR:
Richard A. Williamson, Vice Dean and Chancellor Professor of Law, College of William and Mary, Marshall-Wythe School of Law

PANELISTS:
The Honorable William Steele Sessions, Director, Federal Bureau of Investigation
10:00 a.m.
Auditorium, Williamsburg Lodge

The Honorable George P. Kazen, United States District Court for the
Southern District of Texas

The Honorable Neal B. Biggers, Jr., Chief Judge, United States
District Court for the Northern District of Mississippi

The Honorable Frank A. Kaufman, United States District Court for
the District of Maryland

Vivian O. Berger, Vice Dean and Professor of Law, Columbia
University School of Law

Stephen J. Wermiel, Journalist, The Wall Street Journal

Break (15 Minutes)

10:15 a.m.
Auditorium, Williamsburg Lodge

Fourth Plenary Session
"New Technology, Due Process, and Privacy in the Next Century: A
Futuristic Moot Court Argument"

PRESIDING:
The Honorable William Brevard Hand, United States District Court for
the Southern District of Alabama, and Member, Committee on the
Bicentennial

THE MOOT COURT

The Honorable James B. Loken, United States Court of Appeals for the
Eighth Circuit

The Honorable Henry A. Politz, United States Court of Appeals for the
Fifth Circuit

The Honorable Collins J. Seitz, United States Court of Appeals for the
Third Circuit

THE ADVOCATES:

Ann Mayhew, J.D., 1991, The College of William and Mary, Marshall-
Wythe School of Law, and Member of the 1991 National Moot Court
Championship Team

Monica Taylor, J.D., 1991, The College of William and Mary, Marshall-
Wythe School of Law, and Member of the 1991 National Moot Court
Championship Team

Steve Nacham, J.D., 1991, The College of William and Mary, Marshall-
Wythe School of Law, and Member of the 1991 National Moot Court
Championship Team

10:55 a.m.
Auditorium, Williamsburg Lodge

Fifth Plenary Session
"The Bill of Rights and the Once and Future Right of Privacy":
A Roundtable Discussion
PRESIDING:
The Honorable Helen W. Nies, Chief Judge, United States Court of Appeals for the Federal Circuit, and Member, Committee on the Bicentennial

SESSION MODERATOR:
The Honorable Alcmenarie H. Stotler, United States District Court for the Central District of California

PANELISTS:
Walter E. Murphy, McCormick Professor of Jurisprudence, Princeton University
Anita L. Allen, Professor of Law, Georgetown University Law Center
John J. Walsh, Esq., Cadwalader Wickersham & Taft, New York, New York
John E. Nowak, Professor of Law, University of Illinois College of Law

Break (25 Minutes)

Breakout Sessions
Session 1: Developments in Capital Punishment Cases
The Honorable James Hughes Hancock, United States District Court for the Northern District of Alabama
The Honorable Nathaniel R. Jones, United States Court of Appeals for the Sixth Circuit
Vivian O. Berger, Vice Dean and Professor of Law, Columbia University School of Law

Session 2: The Impact of the Post - 1987 Sentencing Changes
The Honorable A. David Mazzone, United States District Court for the District of Massachusetts, and Member, United States Sentencing Commission
The Honorable Garnett Thomas Eisele, United States District Court for the Eastern District of Arkansas

Session 3: Criminal Procedure and the War on Drugs
The Honorable Stanley Marcus, United States District Court for the Southern District of Florida
Paul Marcus, Professor of Law and Dean Emeritus, University of Arizona College of Law

Session 4: Developments in Search and Seizure, Confessions, and Related Issues
The Honorable Jackson L. Kiser, United States District Court for the Western District of Virginia

Richard A. Williamson, Vice Dean and Chancellor Professor of Law, College of William and Mary, Marshall-Wythe School of Law

Session 5: The Bill of Rights, Privacy, and the American Family

The Honorable Gustave Diamond, United States District Court for the Western District of Pennsylvania

Anita L. Allen, Professor of Law, Georgetown University Law Center

Session 6: Managing Complex Civil Rights and Civil Liberties Litigation

The Honorable Robert R. Merhige, Jr., United States District Court for the Eastern District of Virginia

Myles V. Lynk, Esq., Dewey Ballantine, Washington, D.C.

Neal E. Devins, Professor of Law, College of William and Mary, Marshall-Wythe School of Law

Session 7: The Rhetoric of Liberty: The Bill of Rights in the Political Arena

The Honorable Diana E. Murphy, United States District Court for the District of Minnesota

Walter F. Murphy, McCormick Professor of Jurisprudence, Princeton University

Russell R. Wheeler, Deputy Director, The Federal Judicial Center

Session 8: Equality, Liberty, and Affirmative Action

The Honorable A. Leon Higginbotham, Jr., United States Court of Appeals for the Third Circuit

Robert M. O'Neil, Professor of Law and President Emeritus of the University of Virginia, and Director, The Thomas Jefferson Center for the Protection of Free Expression, University of Virginia

Session 9: The Bill of Rights and the Environment: Of Takings, Due Process, and Economic Liberties

The Honorable Thomas J. Curran, United States District Court for the Eastern District of Wisconsin

Linda A. Malone, Professor of Law, College of William and Mary, Marshall-Wythe School of Law

Session 10: The Bill of Rights and Administrative Law
Wednesday, October 23

7:30 a.m.
North Gallery, Williamsburg Lodge

8:30 a.m.
Auditorium, Williamsburg Lodge

10:00 a.m.
Auditorium, Williamsburg Lodge

The Honorable Ruth Bader Ginsburg, United States Court of Appeals for the District of Columbia

Charles H. Koch, Jr., Dudley W. Woodbridge Professor of Law, College of William and Mary, Marshall-Wythe School of Law

Adjourn until Evening Events

Keynote Address

The Honorable Jan Martenson, Under-Secretary-General for Human Rights, United Nations, Geneva, Switzerland

Performance of the Musical: We The People

Continental Breakfast

Sixth Plenary Session
"The Federal Judiciary and the Bill of Rights in the International Community: Reports from Abroad"

PRESIDING: The Honorable Adrian G. Duplantier, United States District Court for the Eastern District of Louisiana, and Member of Committee on the Bicentennial, and Chairman, Conference Subcommittee

PANELISTS:
The Honorable William W. Schwarzer, Director, Federal Judicial Center, and District Judge, United States District Court for the Northern District of California

Dr. Herbert Hausmaninger, Universität Wien, Institut für Römisches Recht Und Antike Rechtsgeschichte

William H. Webster, Esq., Milbank, Tweed, Hadley & McCloy, Washington, D.C. and former Director, The Central Intelligence Agency

A.E. Dick Howard, White Burkett Miller Professor of Law and Public Affairs, University of Virginia

Break (30 Minutes)

Seventh Plenary Session
"Public Understanding of the Bill of Rights: The Roles of Courts, Universities, and Other American and World Institutions"

PRESIDING:
Timothy Jackson Sullivan, Dean and John Stewart Bryan Professor of Jurisprudence, College of William and Mary, Marshall-Wythe School of Law
SESSION MODERATOR:
Kermit L. Hall, Professor of History and Law, University of Florida

PANELISTS:
The Honorable Jan Martenson, Under-Secretary-General for Human Rights, United Nations, Geneva, Switzerland

Betsy Levin, Executive Director, Association of American Law Schools, and Professor of Law, University of Colorado

Talbot D'Alemberthe, President, American Bar Association

William T. Coleman, Jr., Esq., O'Melveny & Meyers, Washington, D.C.

Closing Remarks and Adjournment

Rodney A. Smolla, Arthur B. Hanson Professor of Law and Director, Institute of Bill of Rights Law, College of William and Mary, Marshall-Wythe School of Law

The Honorable Damon J. Keith, United States Court of Appeals for the Sixth Circuit, and Chairman, Committee on the Bicentennial

The Honorable Adrian G. Duplantier, United States District Court for the Eastern District of Louisiana, and Member, Committee on the Bicentennial, and Chairman, Conference Subcommittee

Adjourn
JUDICIAL CONFERENCE OF THE UNITED STATES COMMITTEE
ON THE BICENTENNIAL OF THE CONSTITUTION

Judge Damon J. Keith, Chairman
Justice Harry A. Blackmun
Chief Justice Warren E. Burger (retired)
Judge Arthur L. Alarcon
Judge Frank X. Altimari
Judge Adrian G. Duplantier
Judge William Brevard Hand
Judge Patrick F. Kelly
Judge Robert C. Murphy
Judge Helen W. Nies
Judge James E. Noland
Judge Jaime Peras, Jr.

CONTRIBUTING SPONSORS
The Bill of Rights Conference Subcommittee gratefully acknowledges the assistance of our contributing sponsors, without whom this conference would not have been possible:

THE FEDERAL JUDICIAL CENTER
The Honorable William W. Schwarzer, Director
Russell R. Wheeler, Deputy Director

THE COMMISSION ON THE BICENTENNIAL
OF THE UNITED STATES CONSTITUTION
Chief Justice (retired) Warren E. Burger, Chairman

SPECIAL THANKS
The College of William and Mary and the Bill of Rights Conference Subcommittee wish to express their appreciation to the following organizations for the support they provided for this conference:

WEST PUBLISHING COMPANY
for support of the President’s Reception and Dinner

MEAD DATA CENTRAL
for support of the Chancellors Reception and Dinner

FEDERAL JUDGES ASSOCIATION
for support of the Keynote Address and We the People presentation
Sponsors:
R.R. Bowker/Martindale-Hubbell
Mathew Bender & Company, Inc.
Weil, Gotshal & Manges

Donors:
Hunton & Williams
Arnold & Porter
McGuire, Woods, Battle & Booth
The Coca-Cola Company
for providing Coca-Cola products

ACKNOWLEDGMENTS
The Bill of Rights Conference Subcommittee wishes to express its appreciation to the following individuals and organizations, who helped make this conference possible:

Russell R. Wheeler, Deputy Director, Federal Judicial Center
Toby D. Slawsky, Assistant General Counsel, Administrative Office of the United States Courts
Elaine J. Lewis-Clark, Administrative Office of the United States Courts
United States Marshals Service
Sumpter T. Priddy, Jr., President Emeritus, Virginia Retail Merchants Association, and Public Affairs Consultant
Virginia State Bar Association
Connie Desaulniers, Special Consultant, Institute of Bill of Rights Law
Chamberlain & Johnson Worldwide, Special Consultants, to the Institute of Bill of Rights Law
Kay P. Kindred, Deputy Director, Institute of Bill of Rights Law
Mildred Arthur, Administrative Assistant, Institute of Bill of Rights Law
Student Bar Association, College of William and Mary, Marshall-Wythe School of Law
The Administration, Faculty and Staff of the College of William and Mary
The Institute of Bill of Rights Law was established in 1982 at the College of William and Mary, Marshall-Wythe School of Law, to support research and education on the Constitution and Bill of Rights. The programs and publications of the Institute are designed to enrich the educational experience of law students, broaden public knowledge, promote scholarly research, and facilitate creative public policy solutions to conflicts involving constitutional issues.

The Marshall-Wythe School of Law at the College of William and Mary is named for John Marshall, the Chief Justice of the United States most responsible for forging the authority of the Constitution, and George Wythe, who held the first chair of law in America at William and Mary, from 1779-1790. Wythe's students included John Marshall and Thomas Jefferson.
The Bill of Rights Conference Subcommittee

Judge Damon J. Keith
Chairman,
Committee on the Bicentennial
of the Constitution

Judge Adrian G. Duplantier
Chairman,
Bill of Rights Conference
Subcommittee

Judge William Brevard Hand

Judge James E. Noland

Judge Jaime Pieras, Jr.

The College Of
WILLIAM & MARY

The Institute of Bill of Rights Law • Marshall-Wythe School of Law
Williamsburg, Virginia 23185 • (804) 221-3010 Fax (804) 221-3201

Front Cover Etching
"The manner in which the American Colonies declared themselves independent"
is courtesy of the Colonial Williamsburg Foundation.