Faculty Previews

Supreme Court Term

Katie Dickinson, 2L
Contributing Writer

Eight years ago, Professor Murchison first brought the Supreme Court to life to highlight compelling cases the nation’s highest court would consider over the coming year. Previously sponsored by the American Constitutional Society, this year Andrea Hilton organized the event, even moving the venue to the Stackhouse Theater and incorporating a dinner discussion as an entirely new component to a seminal W&L Law experience. On Tuesday, Oct. 2, six of our favorite professors introduced the lineup of fascinating cases before the Supreme Court for the 2013–2014 term.

First, Professor Massie explained “Town of Greece v. Galloway,” the Supreme Court’s second ever occasion to address legislative prayer. The case arose when the Town of Greece replaced its practice of holding a moment of silence at the beginning of meetings with an opening prayer by rotating local chaplains. The District Court granted summary judgment for the Town of Greece, but the Second Circuit reversed, holding that the prayers were an invalid practice because they were overwhelmingly Christian. Professor Massie stated that the respondents have adopted a “Get Kennedy’s Vote” strategy arguing that prayers are unconstitutional because they constitute coercive pressure to participate, a position in line with Kennedy’s dissent in County of Allegheny v. American Legion.

Next, Professor Drumbl outlined the bizarre and darkly humorous facts in Bond v. U.S. When Carol Anne Bond found out her best friend and her husband were involved in an affair, Ms. Bond, a microbiologist, engaged in a series of haphazard attempts to poison her friend using various chemicals acquired through her job and from Amazon.com. Federal prosecutors charged Bond under the Chemical Weapons Convention Implementation Act. The case has already been before the Supreme Court once, when it granted Bond standing to challenge the charges on freedom of speech grounds. The Third Circuit has affirmed Bond’s conviction. Professor Drumbl speculated that the outcome of this case could be an unusual mix of justices on either side, and that a decision in Bond’s favor might cause additional head-aches for the United States in future treaty negotiations and implementation efforts.

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The battleground: a small square table with four chairs and a single glass water pitcher on its surface. The room’s very design suggested a looming battle between two opposing teams, separated by space and ideology, competing for the best outcome—and the judge’s favor. The D.C. Circuit ruled that intrasession appointments are unconstitutional. The case comes down to a question about the law and the prospect of a trial, or whether we must stop fighting for the rights to our stories, but when the story is told, and the audience’s reaction is what we truly need or deserve. The one-sid ed discussion did not last long, however. Once the substantive discussion of the proposed issues got underway, both sides showed excellent teamwork. The round quickly transitioned into an elegant, fluid, and orderly march through each point that the parties wanted to address. Ms. Lisa Schenkel, one of the three judges for the finals, even went on to say during judges’ comments that it was clear the teams had prepared thoroughly and knew exactly what role they were each expected to play. She further commended the negotiators for their prowess in building off of their partner’s points and suggestions, and skillfully avoiding stepping on one another’s toes and undermining each other.

In the second round, Ethan and Trisha Bishop-Watt took advantage of the attorneys’ ingenuity of the attorneys involved. Instead it creates an environment where the arguments are framed solely on the law and the prospect of a trial, or whether we must stop fighting for the rights to our stories, but when the story is told, and the audience’s reaction is what we truly need or deserve. The one-sided discussion did not last long, however. Once the substantive discussion of the proposed issues got underway, both sides showed excellent teamwork. The round quickly transitioned into an elegant, fluid, and orderly march through each point that the parties wanted to address. Ms. Lisa Schenkel, one of the three judges for the finals, even went on to say during judges’ comments that it was clear the teams had prepared thoroughly and knew exactly what role they were each expected to play. She further commended the negotiators for their prowess in building off of their partner’s points and suggestions, and skillfully avoiding stepping on one another’s toes and undermining each other.

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The Grape Escape: A Spirited Tour of the Rockbridge Beer & Wine Festival

W&L Law Class of 2016
Continued from Page 1

norms for this school.

The immediate concern for an overly small class might be a loss of diversity. A survey of the class profile data posted on the admissions webpage certainly appears to substantiate this—with plenty of wildcards in this deck. There are apparently as many musicians, dancers, and performing artists as last year who have discovered that a career as an attorney is perhaps more lucrative than performing variations on Kenny G on a street corner. And while the upper classes may be sounding roulette the 1L teams at LSF, thus far, we have fairly well-matched in unique skills.

We see your U.S. Olympic swimming competitor with a professional tennis player, and raise you a speaker of Tagalog, two pastry chefs, and three eagle scouts.

Looking beyond W&L, an article appeared in *The Washington Post* last week on shrinking law class sizes. Though it focused on regional D.C. schools, it pointed to a nationwide downward trend in law school enrollment. Our school’s peers are choosing between lowering their standards in order to fill the class rooms from a shrinking applicant pool, or committing to a significantly smaller class to the detriment of school budgets.

But while it appears to be a reluctant concession to the state of the legal market for these other schools, here it is the convenient norm. A glance at the statistics shows that current LSAT scores and GPAs hold with W&L’s traditional profile. Most other statistics appear to hold true for the classes as well, like the eternal belief among undergrads that Political Science is the perfect pre-law degree.

Even with the smallest class in twenty years, W&L’s commitment to a small community insulates the school from having to make such tough choices between quality and budgets.

Some of the benefits of a return to smaller class sizes are fairly evident—less academic competition, more individual attention, less competitive SBA elections. But upon closer examination, there may be extra, hidden benefits to being the successors to the Class of 2015. According to Dean Demleitner, the Class of 2015 propelled the school forward to meet the needs of the larger class. “We moved forward on things on our agenda that we might have otherwise put into action much later.” One such place is a program focused on the D.C. area for summer jobs.

So after the Class of 2015, we are, in a sense, the collective exhale, the sigh of relief. A push that might be pushed to its absolute limit, we have last year’s class to thank for stretching the proverbial lung capacity of the admissions office, enabling them take deeper breaths on our behalf in the future. The truth is that the last year’s class size did test the school’s limits in ways that ultimately may prove beneficial to those who have arrived in its wake. For now, at least, some breathing room has returned to Washington & Lee Law.

Image Sourced from the Washington & Lee Law website

Negotiations Competition
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of wines that ranged from bold to sour, with their watermelon wine being a pleasant surprise at the end. Their white and red sangrias were also delicious and complex.

Lexington Vineyards, our closest local winery, served a selection similar to Fincastle. Their white wines were of a well-balanced quality that made up for their reds, which I did not enjoy. I can’t claim to be the most experienced critic, but wine probably shouldn’t taste like ketchup. Virginia Mountain Vineyards, on the other hand, did not have a single bad wine. The white wines were sweet and pleasant, and the reds had a boldness that didn’t overstay their welcome. Their cinnamon-heavy holiday spice wine brought the season to mind and was probably my favorite of the dessert wines.

Peaks of Otter Winery cornered the market on the flavored wines, providing fruity liquid interpretations of mangoes, strawberry shortcakes, pumpkin pies (served with whipped cream), chili peppers (served with cheese white) and blueberry muffins. A special mention goes out to their infamous “Kiss the Devil,” a jalapeno wine that came with a sticker and a persistent burning sensation on the tongue that wasn’t entirely unpleasant.

Last on the wine tour, with the largest selection at the festival, was Horton Vineyards. Horton had a number of wines in all categories of red, white, and fruit-flavored. In addition to generally having good wine, they also had an impressive selection of dessert wines, which is why my whirlwind tour of all the winery samples came to an end with notes of both white and dark chocolate.

I would be remiss if I failed to mention the non-wine parts of the festival. The beer tasting included local breweries such as Devil’s Backbone and Blue Lab alongside Starr Hill, Sunken City, and Bold Rock (promoting their hard cider). Music was provided by the English Channel, a fun-loving band running on the platform of “all English, all the time.” Excellent covers of hits by The Beatles, Queen, and Who among others choiced across the field. Food vendors provided pork, beef, and hot dogs for everyone, and the event was well attended by students and locals alike.

So, who won? This writer’s choice, mildly biased by my preference for red wines, has to go to Horton’s North Ridge “Brother at War” red wine. This wine combines a complex fragrance with a mild, dry flavor that brings good meals to mind. I actually had to go out and get a steak dinner after a few glasses. The student’s choice award, however, goes to DeVault’s pineapple sangria. Cool, smooth, and not alcohol-tasting at all, there were so many discarded DeVault pitchers around that I had no choice but to acknowledge the overwhelming preference of the law student population. It certainly set the tone for the day as students passed pitchers around under the influence of the sangria and jamming out to “I Wanna Hold Your Hand.” Maybe that Voss fellow was onto something after all.

on the role of representing “Ramp- page” while Bret Marfat and Kyle Virtue represented FastTimes.

One moment of this round highlighted the team’s resourcefulness when the two teams seemed to approach a bit of an impasse on the subject of the timing and release of the game. Instead of allowing the negotiation to grind to a halt, the FastTimes representa-tives quickly recommended tab-ling the discussion on that topic for the moment. Both sides agreed that the timing and release of the game would largely hinge on decisions they would need to make with regard to the development of the game itself, the nature of the promotion for the game, and other related elements that could have a distinct impact on the timing and release of the game.

Although the competition was close, James and Donavan took first place. As Mr. Robert J. Grey, Jr. put it when he announced the winners and the runners-up, James and Donovan eked out a victory over second place recipients Marc and Joby by the “hair on their chin.” Mr. Grey went on to say how impressed he was with the skill and professionalism displayed by all of the contestants, as well as the exciting atmosphere. And, I would encourage anyone who hasn’t consid-ered getting involved with the com-petition to absolutely do so.
Moving Forward: W&L Law’s Faculty Welcomes its Newest Members

Vincent Smith, 1L Contributing Writer

With the beginning of each academic year, a sense of novelty and change always fills the air. Returning students prepare for a year of new classes and more challenging opportunities, while new students come in to embrace a completely different environment to further their education. As this new year commences at W&L, the School of Law welcomes in four new faculty members: Professors David Baluarte, Margaret Hu, Victoria Shannon, and Kish Vinayagamoorthy.

Each has begun in earnest to enrich the educational environment and each brings a unique perspective from their past educational and vocational experiences.

While their biographies are filled with myriad legal accomplishments, each professor exudes a particular passion for teaching. Professor Vinayagamoorthy has always been interested in academia. Through her experiences in investor state arbitration and international litigation and her work as a member of the Visiting Faculty at Villanova, she brings a passion for international law. She seeks to integrate different aspects of international business into the transnational law classroom that is fundamental to the 1L spring curriculum. The Law School has attracted many students to the W & L community through its emphasis on international law, which intrigued Professor Shannon. She joins W&L after serving for five years as the Deputy Director for Arbitration and Alternative Dispute Resolution (ADR) in the North America Office of the International Court of Arbitration and one year as an Adjunct Faculty Member at Fordham Law School. She greatly appreciates W&L’s Transnational Law Institute and the inclusion of the Transnational Law course in the first year, which reflects W&L’s dedication to international law and legal studies. She believes that students can have a foundational understanding of the international legal system in preparation for upper-level classes.

Guided by past experiences, each professor brings unique insights to W&L that will help their students understand distinct attributes of not only the legal realm, but also how legal issues relate to current policy concerns. Professor Baluarte, the new Director of the Immigrant Rights Clinic, brings his expertise from working in the Immigration Unit of the U.S. Court of Appeals for the Second Circuit to provide practical experience to 1L students as they prepare for employment in this developing policy field. Professor Hu worked in the Justice Department for nine years, including service on a special policy council dealing with immigration for three years. She has critical insights into immigration policy development, and an in-depth understanding of how the issues of increased data collection continue to affect the immigration discussion.

Each new professor brings wonderful new ideas and passion to the faculty of Washington & Lee. Each one is grateful to be in a special community that, though nestled in a small town in the Shenandoah Valley, provides a vibrant atmosphere with speakers and guests that enrich the lives of not only the students, but the faculty as well. As the 2013-2014 school year moves forward, it is an honor to have these four new professors at our school, each a valuable new asset to the academic environment and a source of guidance to students in preparing for the challenges of the legal held.

Kish Vinayagamoorthy Assistant Professor of Law JD, LLM: Duke Law School M.Phil: University of Cambridge (England) BA: University of Windsor (Ontario, Canada)

Victoria Shannon Assistant Professor of Law JD: Harvard Law School BA: Harvard University

David Baluarte Assistant Clinical Professor of Law Director, Immigrant Rights Clinic JD: American University Washington College of Law BA: Simon University

Margaret Hu Assistant Professor of Law JD: Duke Law School BA: University of Kansas

Images Sourced from the Washington & Lux Law website

Over the Bridge

David Pelletier, 3L Staff Writer

Lewis Hall. Often it seems this is a Life in which life begins and ends, whether in the classroom, in the reading room, down in the stacks, or at your carrel. As law students, it is easy to become absorbed in classes, journals, or the Moot Court Board’s most recent competition. Our world often revolves around the next class, an upcoming interview or looming job application deadline. Opportunities are missed in Lexington at large and, particularly, over the bridge.

Many of you, particularly 1Ls, took the opportunity during Orientation’s Service Day to begin to make important connections with the W&L Community. Similar opportunities exist every week among law school groups and the University as a whole.

Campus Kitchen provides one such opportunity. “The mission of The Campus Kitchens Project is to use service as a way to strengthen bodies, empower minds, and build communities,” (www.wlu.edu/x38717.xml) Campus Kitchen provides meals in many forms to organizations within the Rede- bridge area. One of their major projects is providing food for students in need of weekend meals. These children, without the help from Campus Kitchen, would only be guaranteed their meals while at school. W&L’s Campus Kitchen has served more than 125,000 meals to date.

The Law School’s Public Interest Law Students Association (PILSA) has partnered with Campus Kitchen to assist with this endeavor. On October 31st at the Global Services House, both law and undergraduate students will be stuffing backpacks for the program. All students are encouraged to participate in this activity. The goal may not be as much as increasing one’s experience but simply an effort to make a difference. This is a wonderful opportunity to connect with our classmates and the undergraduate students, and have a positive impact in our local community.

PILSA arranged a Public Interest Mixer on October 3rd. While I am aware that public interest practice might not be everyone’s area of interest, I highlight this because I think it was a great example of how organizations reaching out to Washington and Lee as a whole. This mixer was attended by both students and faculty from the law and undergraduate campuses. It was a wonderful chance to network, build relationships, and plan for future events like the Campus Kitchen activity.

Many of the law school’s organizations have corresponding undergraduate student groups which share their missions, at least in part. To name a few examples: BLSA has a counterpart in the Student Association for Black Unity (SABU); OUTLaw has a counterpart in the GLBT Equality Initiative; and WLSO has a counterpart in Knowledge Empowering Women Leaders (KEWL). These undergraduate student groups provide additional opportunities for law students and local organizations to make a difference. By pairing with these groups, our organizations can expand their reach and impact by combining budgets as well as bringing in other active participants to attract speakers and other programming. These partnerships can also provide opportunities for law student mentors and share our diverse life experiences with like-minded undergraduates. I encourage those of you who participate in these organizations to follow PILSA’s lead and reach out to grow the impact that our voices and actions can have.

In my role as a member of the Executive Committee, I get to see and interact with these groups on a much more frequent basis than most other law students. If you have any questions about what is available or who to contact, please feel free to reach out to me at pelletier.dj@wlu.edu. I have no doubt that each of your classes, groups, and organizations, whether small or large, brings a new dimension to life at W&L. Ms. Laura Puleo and newly elected 1L Ms. Alex Eichenbaum, would be willing to help as well.

If you have never once in a while been curious about what is happening at the University as a whole. See what is out there, what other opportunities are available for you to engage. Beyond being lawyers in training, we are an amazing group with diverse passions and backgrounds that we should continue to enrich and explore, both here and over the bridge.
There are a few things current law students consistently impress on new and prospective students:

1. How great the W&L community is,
2. How fun 1L is, and
3. How wise it is to take a class from Professor Murchison before graduating.

Regarded as an invaluable contribution to W&L's faculty, Professor Murchison has often been described as 1Ls' "[ LEGENDARY. Most students are aware of Professor Murchison's impressive resume from his Faculty Profile on the Law School's website, but few students are likely aware of what donuts, F. Scott Fitzgerald, and Smokey Robinson & the Miracles have to do with Professor Murchison. Here's your chance to find out!

The Law News: What made you decide on a career in law?

Professor Brian Murchison: I was sixteen and growing up around DC when Robert F. Kennedy and Martin Luther King died in 1968, so that explains some things.

BM: I arrived at law school barely a month after getting home from my two years teaching English in West Africa, so one memory is just being disoriented. The school seemed pretty sterile and pompous. Then suddenly one of my professors came up to me in the hallway and said something like, "You're looking a little low; I think you need to cheer up," and things began to change. A big memory is working in a clinical program. We were representing inmates at the federal prison in Danbury, CT. I had a dynamic professor who was a cardboard box holding about forty donuts, and I'd get a dime for each donut I sold. The vacations, whose doors I'd knock on at 7 a.m., would either yell at me to leave them alone and let them sleep, or they'd be incredibly excited to be buying really delicious doughnuts, peddled by a foil kid.

TLN: What was, not necessarily your best, but your most vivid memory of law school?

BM: I'm obligated to do everything that is right thing to do; (2) you may need help one day, and those that you helped will remember you; and (3) the better that W&L graduates are, the better that our collective reputation will be in the legal community.

TLN: What's your favorite song or band?

BM: F. Scott Fitzgerald.

TLN: What would you do on a weekend off— an ideal day?

BM: Hit the road with my wife, Ann, to see our kids (and now grandkids!). Or spend a day in New York. At the U.S. Open with my son, Anthony, watching somebody try to beat Nadal.

TLN: What's your favorite place to eat in Lexington?

BM: The Southern Inn for Sunday brunch.

TLN: Who did you want to be when you grew up?

BM: Smokey Robinson & The Miracles.

TLN: Any guilty pleasures?

BM: Spielberg's "Artificial Intelligence."

TLN: Many people discourage students from going to law school, citing the saturated job market. Would you do it all over again? What would you tell current or prospective law students?

BM: Definitely yes. The market may be saturated in many places, but not in all. Check out some of the markets besides DC and New York; there are rich opportunities to get terrific experience and training at a very high level.

TLN: Who do you want to meet?

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From the Desk of the Editor-in-Chief, The Law Review

Thomas “Spike” Short, 3L
Contributing Writer

On behalf of the Washington and Lee Law Review, I would like to wish the Law School students, faculty, and staff the very best in the new school year.

The fall is a busy time for the Law Review as our signature events take place in September and November—the Law Review Student Notes Colloquium and the Law Review Symposium. The Student Notes Colloquium honored the award winning Notes of Meghan Flint (A Continuing War with Asbestos: The Statemate Among State Courts on Liability for Take-Home Asbestos Exposure) and Kyle Dolinsky (CAD’s Cradle: Untangling Copyrightability, Derivative Works, and Fair Use in 3D Printing).

The Law Review could not have been prouder of Meghan and Kyle, who delivered fascinating presentations on their complex note topics at the Colloquium. The Colloquium also featured stimulating presentations by two in-house faculty members, Professor Wiant and Professor Fraley, and two outside faculty members, Professor Grimmelman and Professor Parlett, to comment on Meghan and Kyle’s notes.

The Law Review’s Symposium, “Roe at 40 – The Controversy Continues,” will be held on Thursday, November 7th and Friday, November 8th. The Symposium is sponsored by the ACLU of Virginia, the Frances Lewis Law Center, the Provost’s Office of Washington and Lee University, University Faculty for Life, Virginia NOW, and the Washington and Lee Law Review. The Law Review and Dean Samuel Calhoun have recruited some of the most distinguished legal scholars in the field of reproductive rights. The Symposium’s focus on balance ensures that the Symposium will provide a full exchange of views and arguments. Everyone’s expectation is that participants and attendees will change their opinion on abortion. Rather, the hope is that everyone will understand the topic and one another’s perspectives better for having participated. All are invited to attend. More information is available on our website, www.law.wlu.edu/research.

In addition to our (occasionally grueling) editing regime, the Law Review is also looking to the future. We are working to improve the online-only Write-on as well as working to establish an online supplement to our hard copy publication. The online supplement, Sidebar, will feature shorter works focusing on current events in the law, responses or comments to articles published in the Washington and Lee Law Review, and responses or comments to articles published by our faculty in other journals. The Law Review is also excited to begin working with a new faculty advisor this year, Professor Christopher Brunet.

Lastly, the Law Review is forever grateful to a number of people in Sydney Lewis Hall and beyond, particularly Lisa Gearheart, Wendy Rice, Linda Newell, Ben Hartless, Robin Wilson, our staffwriters, and our board. Their efforts make everything we do possible: thank you. I am honored to have been given the opportunity to address you here. If anyone would like to know more about what we do, please feel free to contact me with questions or comments. I can be reached at short.t@law.wlu.edu.

From the Desk of the Executive Editor, The German Law Journal

David Hurst, 3L
Contributing Writer

The German Law Journal (“GLJ”) was in full swing well before we returned for the fall semester. Over the summer, our editorial teams have been hard at work to prepare some magnificent—and timely—special issues for the fourteen volume. Our May special issue, “The Future of Generation Europe,” called for a new paradigm for the European Union, arguing that the European Union should better reflect European social norms. Our August special issue, Constitutional Reasoning, was a massive (31 article) survey of the reasoning deployed in constitutional courts around the world. We were privileged to have the President of the Budeverfassungsgericht (Federal Constitutional Court), the highest court in Germany, write the preface to this special issue, in which he congratulates the convening editors and the GLJ for their work in producing Constitutional Reasonings. Our October special issue, Lisbon v. Lisbon, highlighted the inherent tensions in the European Union’s protection of fundamental rights, and the fact that economic policy—which was the starting point of the European project—remains the driving force for greater integration among member states. Finally, as a sneak peak, the fourteenth volume will close in December with Political Constitutions, a special issue that provides invaluable commentary on the revival of “political constitutions” in constitutional practice and political theory.

Our own research has been off to a great start this year. Each year, the GLJ convenes a seminar—called the “German Law in Context” seminar—to explore a current development in Germany from legal, social, economic, and political perspectives. This year, the seminar is entitled: “Defending Democracy: German Law and the Struggle against Extremism.” This year’s seminar strives for an understanding of Germany’s (unhappy) history with, and responses to, political extremism. This year’s program is shaping up to be truly unique. We’ve partnered with editorial teams from the University of Virginia to present a remarkable, thought provoking program. Best of all, the programming is open to the public. We will have four more events this semester and I highly encourage you all to attend. The schedule is published on our website www.law.wlu.edu and we hope to see you here.

By way of background, the GLJ was founded in Germany by Professor Russ Miller and Professor Peer Grimmelman (of the Osgoode Hall Law School). The GLJ is a monthly, online publication that covers developments in German, European, and public international law. It is currently ranked #2 in the field of European law and is the #1 online, peer-reviewed legal journal on any subject. Each issue reaches thousands of readers around the globe. Moreover, the GLJ receives significant praise from around the world. Of course, such distinctions could only be possible through the hard work of the GLJ’s student editorial team. I thank each member of the GLJ for their dedication to this project.

If anyone is interested in learning more about the GLJ, please don’t hesitate to contact me with questions.
Law Student Prepares Amicus Brief for Fantasy Football

Second year law students at the University of Mississippi School of Law are taking a unique approach to reviewing the law of contracts. While all students were required to review first year materials prior to taking the bar exam, most students wait until after their third year to do so. They might register for a bar exam review course or even form study groups. But what better way to study contracts than to inject the law into a real-world situation? So when a trade dispute created contention in their fantasy football league, these 2Ls decided to run straight to the law of contracts.

Football fantasy is a weekly online competition. At the beginning of each NFL season, friends and family form “leagues” and draft real-life players onto their squads. Every weekend, each owner’s drafted players’ performance directly affects his or her imaginary team. Therefore, the better a real-world player performs in a given week, the more points a fantasy team accumulates. As is the case with the NFL, owners in fantasy leagues are free to make player trades with one another to further their team’s hopes of eventually winning the league’s playoffs. As with any voluntary obligation, sometimes one of the parties gets cold feet.

This was one of those times. When the Cleveland Browns traded star running back Trent Richardson to the Indianapolis Colts, Colts running back Ahmad Bradshaw went from a consistent starter to a fantasy afterthought. A mere four hours before this trade, the Roethlisberger Rapists cited Ahmad Bradshaw in a fantasy football league, these 2Ls decided to run straight to the law of contracts.

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Two different interpretations of the Uniform Commercial Code apply to transactions in the real-world league and the fantasy football league. According to UCC § 2-306, the Uniform Commercial Code applies to transactions in goods. While not a service, it is not clear that a digital representation of a player’s performance even qualifies as a good. But if I were the owner of Eric’s Amazing Team, I am not sure I would strain myself in responding: as of this writing, Ahmad Bradshaw has produced more fantasy points as a backup in Indianapolis than Trent Richardson has produced as the Colts’ feature back.

Despite the brief’s use of authority, the league may want to verify that the UCC applies to the sale of players in a fantasy football league. According to UCC § 2-102, the Uniform Commercial Code applies to transactions in goods. While not a service, it is not clear that a digital representation of a player’s performance even qualifies as a good. But if I were the owner of Eric’s Amazing Team, I am not sure I would strain myself in responding: as of this writing, Ahmad Bradshaw has produced more fantasy points as a backup in Indianapolis than Trent Richardson has produced as the Colts’ feature back.

Rapists argued that a sudden trade is analogous to an unanticipated injury, and that both teams own- ers believed the trade to be fair when they made the deal and assumed the risk of a change in circumstances. The Roethlisberger Rapists cited, among other authorities, Uniform Commercial Code § 2-716, which provided for specific performance.

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Big Changes for Law Technology & Law Media Services

Over the summer, while you were away from campus with research, internships, and clerkships, Law Technology Services joined a larger improvement process within the Law School and within the University as a whole.

Not only did we install all new PCs in nearly every classroom and instructional space, we began planning for projector upgrades in five of our primary classrooms and started a dialogue with the Library about how to better align our joint resources of equipment and personnel.

For those of us working in Law Technology & Law Media Services, the implications of these changes are broader still. Although perhaps invisible to the naked eye, all of us left the direct reporting line within the Law School and joined the University-wide Information Technology Services (ITS) organization.

We look forward to teaming up with ITS, who share our long-standing goal of ensuring you the best technology experience possible with a minimum of “noise” during necessary changes in software, systems, and upgrades. If you have any questions, suggestions or other input, please stop by and talk with us or email us at the above address.

New This Fall!

1) With Instructor permission, Law Media can record and render lecture audio content from eligible classrooms into the portable and convenient MP3 format!

2) More student help during expanded hours, including mid-day shifts on many Saturdays & Sundays!

3) Starting Oct. 7, more accessible technology help; support will be available most mornings at the Library Circulation Desk!

4) Many instructors are exploring the use of Sakai as a course or content management system that, in several key aspects, is more accessible than the Stable or the use of mapped network drives.
Is it a Crime to Enforce Justice? 

Bret Reed, 3L  
Contributing Writer  

Stephanie Wilkinson’s Too Much & Too Many effectively catalogue the enormous problems facing our criminal justice system, including the explosion of criminal laws and the appalling numbers of Americans that are incarcerated. This issue desperately needs resolution. Her explanation for these problems, however, bogs down in a familiar refrain of pandering politicians, reactionary prosecutors, and irrational public fear. Unfortunately, she avoids discussing some of the central causes for US incarceration and fails to support the moral assumptions implied in her proposed solutions. By sidestepping the heart of the overcriminalization issue she leaves the debate where it has languished for a generation. Wilkinson fails to mention one of the central reasons for our incarceration surge: America’s explosion in violent crime. The violent crime rate more than tripled between 1960 and 1990, according to FBI statistics (which limited “violent crime” to homicide, forcible rape, robbery, and aggravated assault). The US incarceration rate also tripled by 1990, which is more indicative of a working system than a failing one. Violent crime has subsided somewhat since 1990, but it still remains at an outrageous level: a forcible rape, for example, occurs every 6 minutes in the US. Our country’s intense fear of violence is a matter of bitter experience, not false perceptions. This begs a question that Wilkinson ignores: is the fundamental problem that too many Americans are imprisoned, or that too many Americans are committing crimes? Wilkinson might respond that we should at least reduce the number of incarcerated non-violent offenders. This argument assumes — but does not explain why — that non-violent crimes should be taken less seriously. Americans have reasonably determined that crimes such as burglary, arson, and theft are serious invasions of the rights of others and are worthy of imprisonment. Americans have also decided that a sustained meth epidemic, for instance, is a public health crisis and should be met with serious penalties. Wilkinson obviously does not believe this, but her sensibilities should not prevail over the democratic process. Nor should a solution proposed by Professor Luna — that the judiciary can preclude or prevent mass incarceration by the government — be left unresolved. Luna claims that this drastic remedy is justified because of a “dysfunctional political process.” Regardless, however, of whether stricter laws were a good response to three decades of escalating victimization, judicial wavering, and crack / meth epidemics (and their associated violence), they were the people’s response. This is simply democratic, not dysfunctional.

In every instance Too Much & Too Many lays the blame for incarceration on society instead of on conduct that is properly criminalized. It seems devoid of heartbeat for the countless lives that are forever changed by outrages committed on victims or their loved ones, or for communities that are drowning in disorder. I agree that incarceration for our incarceration surge: America’s explosion in violent crime. The violent crime rate more than tripled between 1960 and 1990, according to FBI statistics (which limited “violent crime” to homicide, forcible rape, robbery, and aggravated assault). The US incarceration rate also tripled by 1990, which is more indicative of a working system than a failing one. Violent crime has subsided somewhat since 1990, but it still remains at an outrageous level: a forcible rape, for example, occurs every 6 minutes in the US. Our country’s intense fear of violence is a matter of bitter experience, not false perceptions. This begs a question that Wilkinson ignores: is the fundamental problem that too many Americans are imprisoned, or that too many Americans are committing crimes? Wilkinson might respond that we should at least reduce the number of incarcerated non-violent offenders. This argument assumes — but does not explain why — that non-violent crimes should be taken less seriously. Americans have reasonably determined that crimes such as burglary, arson, and theft are serious invasions of the rights of others and are worthy of imprisonment. Americans have also decided that a sustained meth epidemic, for instance, is a public health crisis and should be met with serious penalties. Wilkinson obviously does not believe this, but her sensibilities should not prevail over the democratic process. Nor should a solution proposed by Professor Luna — that the judiciary can preclude or prevent mass incarceration by the government — be left unresolved. Luna claims that this drastic remedy is justified because of a “dysfunctional political process.” Regardless, however, of whether stricter laws were a good response to three decades of escalating victimization, judicial wavering, and crack / meth epidemics (and their associated violence), they were the people’s response. This is simply democratic, not dysfunctional.

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Lexington is a small and peaceful place, which at first glance may appear to be a bit boring. However, there are many places to go and things to do in Lexington and its surrounding area. If you find yourself at home looking for something to do, peruse our list of the top 100 things a Washington and Lee Law Student should do before they die. This edition explores the first 25 of our to-do list, with the rest to follow in subsequent issues of The Law News.

**100. Coffee Shops** - Although there is no Starbucks in Lexington, there is still quality coffee. Cool Beans Coffee and Bagels or the Lexington Coffee Shop offer excellent coffee selections.

99. **Cheese to You** - The cute little artisan cheese shop we have in town! If you love fancy cheeses then this is definitely the place for you!

98. **Viti Cantine** - That would be the origin of the loud bang that always makes me think we’re under attack, most likely by aliens. Because … why not?

97. **Cocoa Mill Chocolatier** - I’ve mentioned fancy cheeses, but we also have fresh, delicious chocolates in town, too!

96. **Rockbridge Regional Library** - This is conveniently located right on Main Street. If you can stomach going to a library with no intention of doing homework, then this is a great place to grab a book not related to law.

95. **Rockbridge Pie Festival** - Unfortunately, this has already happened (you probably saw the banners up all over town). Regardless, if you get the chance you have to go next year! They have delicious pies, a mile swim (where contestants got a free piece of pie), and a pie-baking competition — if that’s your thing!

94. **Farmer’s Market** - Not exclusive to Lexington, but definitely a great place to go and support local produce.

93. **Antique Shops** - If you are looking for treasure, there are plenty of places to find it in Lexington. Go to one of the antique shops such as Duke’s, and see what you can uncover.

92. **Devil’s Marble Yard** - If you love hiking, this trail is a great one. It’s an 8.3–11.3 mile hike (walker’s preference) with amazing views.

91. **Pronto Gelateria** - If you’re looking for a nice treat in town, Pronto is a great place. They have coffee, wine, and gelato. And they’re willing to give you any combination of the three your crazy heart might desire.

90. **Mazzoli** - This one is pretty obvious, and I imagine most of you have found your way there already. This infamous bar is the best place to run into your classmates when they feel like going out and socializing.

89. **The Maury River** - If being outside is for you, then spend some time on the Maury River. Not only can you fish, but there is ample opportunity to go kayaking.

88. **Green Hill Medieval Faire** - Most law students live on a budget and may not be able to travel great distances. The Medieval Fair in Salem, VA allows you to travel back in time to a place far away, and it will only run you $5.00.

87. **Virginia Gold Orchard** - There's a family-owned orchard right outside of town that produces Asian pears, which, if you’ve never had one, are described on the Gold Orchard website as being “as crunchy as an apple, as juicy as a melon.”

86. **Frontier Culture Museum** - Take a 30-minute commute and visit lands far away, such as Germany or West Africa, or time long past, such as a 1740’s American settlement.

85. **The Virginia Horse Center** - Many equestrian events are offered at the center. It also plays host to dog shows and regional fairs if that’s what piques your interest.

84. **Stonewall Jackson House** - If you were a history major in undergrad or you just love history, visit this museum and learn about Stonewall Jackson’s pre-Civil War days. Point of interest: his body is in the cemetery here, but one of his arms is actually buried elsewhere.

83. **Goshen Pass** - It’s just a short drive away and the ideal place for hiking, picnicking, swimming, camping, kayaking, fishing, etc. If you are looking to do something outdoorsy then you can probably do it here.

82. **Blue Ridge Parkway** - Fall is almost here. Take a relaxing drive on the Blue Ridge Parkway and enjoy the changing of the leaves on the majestic Blue Ridge Mountains.

81. **Haunted Tours** - Halloween is approaching quickly and many of you probably want a good scare. Mark and Sherry Cline’s Haunting Tales Ghost Tour in Lexington is offered on Fridays and Saturdays throughout October.

80. **Pantler Falls** - A waterfall and swimming hole near Lynchburg, VA. The secret here: you can go cliff jumping, CLIFF JUMPING! But heads up, the water is quite cold this time of year. We also mean that literally. NO DIVING! Side effects of diving include death.

79. **Rockbridge Beer and Wine Festival** - This was October 5th at the Virginia Horse Center. There were signs up all over town so this probably won’t startle anyone, but the Rockbridge area is home to some great vineyards and distilleries!

78. **Hull’s Drive-In** - This movie theater is one of only a handful of drive-ins left in Virginia. Not only can you enjoy a movie from your car, but there are many movies available to choose from.

77. **NASCAR Race at Martinsville** - The track is located in Martinsville, VA, which is only two hours away. Bring a cooler and a grill and enjoy some great tailgating before you enjoy the race. This would come higher on the list, but since the race is in October we wanted to let you know now.

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75. **Antelope** - All the food here is great and the vinyl selection is amazing. If you’re looking for new releases, look no further.

74. **Federal Hill** - You can get some great hot dogs and beer here, and the view of the river is breathtaking.

73. **Baker’s Cider Mill** - If you are looking for a great place to go for a family outing, this is it. They have a petting zoo, a hay ride, and pumpkin patch.

72. **Breaux Bridge** - This town is known for its Crawfish Festival, but you can also find many other seafood-related events throughout the year.

71. **The Rockbridge Pie Festival** - Lexington, and definitely a great place to grab a book related to law.

70. **The Virginia Gold Orchard** - There are many places to find great champagne and wine in this area.

69. **The Blue Ridge Mountain Music Festival** - If you are a music lover, you need to check out this festival. They have live music, food, and drinks.

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Where are you from, Herman Hoying?

I grew up in Indiana; Orleans for a year. three years, and did a clerkship in New York City for a year, NYC for two years. I currently live in San Francisco. I practiced in Atlanta for a year, and I have applied during exams when I was a law student.

What is your favorite/least favorite part about being a corporate litigator?

The downsides are the stresses and amount of work. Being at a big firm has the advantage that clients will bring you their most complex work and having access to these novel issues are probably the best part about my work.

What was your favorite memory of W&L or Lexington?

My favorite memory was probably going to the Palms and being able to relax and take my mind off studying. I think Lexington is the perfect place to study law because there aren’t a lot of distractions, but if you really want to, you can always find something to do. Also, on the academic side, I think the access to the professors is a great resource.

Alumni Spotlight: Herman Hoying

Herman Hoying: I grew up in Indiana; I currently live in San Francisco. I practiced in Atlanta for a year, NYC for two years, and did a clerkship in New York City for a year. I currently live in San Francisco. I practiced in Atlanta for a year, and I have applied during exams when I was a law student.

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Bona Fide Bolognaise

Dan Jacobs, 2L

Staff Writer

Life can be hectic during law school. Showowering becomes optional, working out a thing of the past, and cooking an actual meal seems ludicrous when we have that much to do. However, during those evenings when you realize law school isn’t everything and personal happiness seems important, you desire for a good, home-cooked meal can be overwhelming. With the fall weather starting to set in, a spicy Bolognaise with noodles will be sure to make your stomach happy and impress your friends. It’s a quick, but delicious meal that takes about a half-hour from start to finish. Enjoy!

Ingredients:

- 1 lb. ground beef or chuck (you want a high fat content)
- 1 long rosemary sprig
- 2 diced Portobello mushroom caps
- 3 cloves garlic, chopped
- 1/2 large white onion, diced
- 3 carrots, diced 1/2” pieces
- 1/2 large bell pepper, diced
- 1/2 c. Red wine (optional)
- 1 jar of tomato sauce (Prego eg.)
- Olive oil, butter, salt & pepper

Cooked pasta

Start out by putting a good-sized pot on the stove to get warm. Add butter, oil, and the diced onion. Sauté the onion until it is translucent. Add the carrots, garlic, and pepper and sauté for five (5) minutes. You can combine salt with pepper for added flavor. Once everything is to your satisfaction, add a whole jar of that delicious, store-bought tomato sauce. In a separate pan, cook the ground beef until it is brown and breaking up into clumps. Add those diced Portobello mushroom caps (if you’re using them).

Season with salt and pepper for added flavor. Add the optional wine at this point, and let it all reduce for 5 minutes.

At the end of the five minutes, add the meat mixture to the tomato sauce and vegetable pot. Allow all this tastiness to simmer for 5 minutes. If you have the extra time, let the meat and sauce simmer longer for better flavor. Pour the sauce over the pasta (you’ll want to boil that while everything is going on). Add some Parmesan cheese on top for a little extra flavor.

Any leftovers can be used for lasagna, poured over any meat (a pork chop, fried chicken breast, etc.) and broiled with cheese on top, or eaten as is. Bon appetit!

WL: Do you have any advice in general for W&L students?

HH: I think you should try to be open and not have blinders on so that you don’t miss a potential opportunity.

WL: What do you like to do for fun?

HH: Outside of law and work, I occupy my time playing volleyball, watching sports, and enjoying good food, beer, wine, and bourbon with friends.

The Law News: Where are you from, and where do you live now?

Mr. Hoying, a 2003 graduate of W&L, graduated in 2003. He is currently an associate in Morgan Lewis’s litigation practice.

The Law News: What are your favorite/least favorite parts about being a corporate litigator?

Herman Hoying: I grew up in Indiana; I currently live in San Francisco. I practiced in Atlanta for a year, NYC for two years, and did a clerkship in New York City for a year. I currently live in San Francisco. I practiced in Atlanta for a year, and I have applied during exams when I was a law student.

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Mae might come knocking on your parents’ door. And that’s a chance they just can’t take.

### 4. Disappearing White People

According to NBC News, Caucasian Americans will be a minority by the year 2043.

That one was really just a test. If it actually scared you, then you might be a bigot. If so, you should probably fix that.

### 5. Assassin Pens

Think of the most vicious, mundane objects that you come into contact with literally every day. None of them could be plotting your demise, right? Wrong. Around 100 people die annually from choking on ballpoint pens.

Who would have guessed that your favorite writing utensil will someday become lodged in your throat? But it’s not too late to protect yourself! Get rid of all your pens and never use one again.

You should probably ditch pencils too, since they’re pretty pointy. Markers are out as well; their fumes melt your brain. So from now on, write everything in crayon. Law professors, managing partners and judges will surely appreciate your originality and creative flair.

It’s a scary world out there, so watch out. As a final caution, plenty of newspaper ink is toxic. There’s no reason to wear earplugs at night.

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### Terrifying... But True

With Halloween right around the corner, it seemed appropriate to write about scary things. Not ghosts hiding in your closet. I’m talking about real things that you should actually be afraid of. So let’s count down the horrifying things that are keeping all of us awake at night.

#### 1. Ear-Seeking Bug-Ninjas:

Think being attacked in your sleep is just the stuff of cheesy Kung-Fu movies or Hitchcock flicks? Think again. According to the Huffington Post, many insects get their jollies by crawling into our facial orifices while we sleep. “[A] 12-year-old Colorado boy woke up crying because a moth had crawled into his ear. . . . From the 24 bug specimens that were retained from people’s ears, they found that 10 were cockroaches and 3 were beetles.”

That’s disgusting. The only place that flies, lice, and dominatons need to be sleeping is the nearestroach motel. Looks like your middle-aged, nymphomaniac neighbors aren’t the only reason to wear earplugs at night.

#### 2. Never Sleep Again:

Remember all of that crap people told you about needing plenty of sleep to stay healthy and perform at your best? It was all lies! A massive sleep study conducted at the University of California by Daniel Kripke found that people who slept 6 or 7 hours per day died younger than those who slept 6 or 7.

But we already knew that sleep was for the weak; that’s why we’re in law school. While all those sound sleepers are killing themselves with slumber, the good law students are mainlining caffeine in preparation for a rigorous evening of discerning the rule against perpetuities, and whether or not any cares about it.

#### 3. Your Parents Are Trying to Steal You:

According to Parents.com, a full 49% of kidnappings are committed by the victim’s close family members. Despite all their assurances that they are “proud of you,” that they “love you,” and that “lots of fifteen-year-old boys listen to Celine Dion,” you’ve always known the truth: they’re just boys listening to Celine Dion, “you’ve got a good mind,” and that “lots of fifteen-year-old boys listen to Celine Dion.”

If it actually scared you, then you might be a bigot. If so, you should probably fix that.

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### An Institution W&L Law Will Not Let Go...

#### No Matter How Hard He Tries

While Professor Frederic Lee Kirgis (namesake for the beloved “Kirgis Fellows Program”) embarks upon his (approximately) zillionth illustrious year at Washington and Lee School of Law as an Emeritus faculty member, and while it is no secret that he has attempted to retire a few times already (eight to be exact), many law students speculate about why W&L will not “just let the poor man go already.”

Most come to the logical conclusion that it’s because Professor Kirgis is a distinguished and valued member of the faculty at W&L Law, so the administration will hang on to him as long as it can. Perhaps the school was in dire need of faculty and summoned him because, like a utility infielder, he can adeptly teach three different kinds of law: Transnational, Contracts, and Conflict of Laws (he happens to be teaching Contracts to the author this semester).

Certainly more baffling and mysterious than why W&L keeps asking Professor Kirgis back, is why he stays; or more pointedly, how in the world W&L is persuading him to stay, despite his repeated attempts to gravely bow out.

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It is no secret to anyone who has attended law school that the first week of classes can breathe extreme tension and uncertainty into the entire student body. However, as classes came to a close on the semester’s first Friday, law students at Washington & Lee allowed themselves to trade casebooks for playbooks, instructors for quarterbacks, and the stresses of exams, loans and a tumultuous job market for the onset of the Law School Football League season.

As I came out for the first time to witness in person the hallowed tradition that is the W&L Law School Football League, it became immediately apparent that the admissions office goes not to tremendous lengths to try and recruit, but also individuals who possess raw athleticism and football talent. In fact, after interviewing many of the players before the games began, and listening intently to their personal stories, one could argue that football is the primary reason why many of the players chose W&L Law. When speaking to Hector DeJesus, wide receiver for the Monster Verdicts, he waxed nostalgically about his years as a former high school football star, a career inexplicably overlooked by the top collegiate football programs. Smith explained, “I pretty much had a full ride all lined up at USC. I mean, I watched the games every week on TV. I had the USC flag on the antenna of my car. Man, I even bought a USC T-shirt.”

It is no secret to anyone who has attended law school that the first week of classes can breathe extreme tension and uncertainty into the entire student body. However, as classes came to a close on the semester’s first Friday, law students at Washington & Lee allowed themselves to trade casebooks for playbooks, instructors for quarterbacks, and the stresses of exams, loans and a tumultuous job market for the onset of the Law School Football League season.

As I came out for the first time to witness in person the hallowed tradition that is the W&L Law School Football League, it became immediately apparent that the admissions office goes not to tremendous lengths to try and recruit, but also individuals who possess raw athleticism and football talent. In fact, after interviewing many of the players before the games began, and listening intently to their personal stories, one could argue that football is the primary reason why many of the players chose W&L Law. When speaking to Hector DeJesus, wide receiver for the Monster Verdicts, he waxed nostalgically about his years as a former high school football star, a career inexplicably overlooked by the top collegiate football programs. Smith explained, “I pretty much had a full ride all lined up at USC. I mean, I watched the games every week on TV. I had the USC flag on the antenna of my car. Man, I even bought a USC T-shirt.”

But if absolutely forced to come up with a prediction on the outcome of this season, I found myself frequently arriving at the conclusion that the level of talent plainly visible on Friday afternoons at W&L Law is so high, it is almost impossible to distinguish between teams. But if absolutely forced to come up with a prediction, I will take Jimmy Football and the Huge Subpoenas to run the table and go undefeated, only to be upset in the championship game by Hector and the Monster Verdicts. Every great season needs an unexpected ending. And I see this season as being nothing short of spectacular.