Law & Courts

Newsletter of the Law & Courts Section of the American Political Science Association

Summer 2006

Volume 16 No. 3

Click Here to Navigate to Table of Contents on Page 2

A Letter from the Section Chair

Perestroika and Public Law

Mark A. Graber

mgraber@gvpt.umd.edu

University of Maryland, College Park

Political scientists and members of the law and courts field dispute the merits of the Perestroika movement. Some public law scholars are enthusiastic Perestroikans. Others are severe critics. Many find the issues confusing and have difficulties discerning what Perestroika stands for. Some confusion stems from the tendency of the Perestroika listserv to be a forum for political scientists with any complaint against the discipline. Common grievances range from concerns with whether small colleges are sufficiently represented at national conferences to criticisms of particular scholarship analyzing the Middle East. Other confusions are caused by an occasional tension between two central Perestroikan themes. The first concern is that political science has become too driven by methods. The second is that political science is too driven by particular methods. These themes are obviously related, but the second is often expressed in ways that conflict with the first. Rather than worry about the methods courses being offered in political science departments, this essay suggests that both the discipline and the public law field should embrace a problems oriented approach to politics that recognizes how diverse methods are likely to yield distinctive, important, and complementary insights into fundamental problems of political organization, law, and courts.

Barry Friedman, a law professor from New York University who works closely with public law scholars of many methodological bents, recently took much public law scholarship to task for emphasizing problems within a particular methodological tradition at the expense of broader problems in the world. "Too often," he wrote, "positive scholars of judicial behavior seem to be trapped in their own disciplinary debates, without pausing to examine why it is that they are studying what courts and legal institutions do."[1] Friedman's essay was directed against the more behavioral side of public law, but critics of behaviorialism are hardly immune to his critique. Several essays in Ronald Kahn and Kenneth I. Kersch's *The Supreme Court and American Political Development* (2006)[2] express more concern with improving political science understandings of internal and external influences on Supreme Court decisionmaking than with explaining how these better understandings bear on important questions confronting constitutional decisionmakers. Mine is particularly guilty of misplaced priorities.[3] I began by raising questions about why courts are so deferential in wartime. The essay then degenerated into an analysis of why the existing strategic

continued on page 4

Table of Contents

Point and Click to Navigate to Article

Instructions to Contributors

General Information

Law and Courts publishes articles, notes, news items, announcements, commentaries, and features of interest to members of the Law and Courts Section of the APSA. **Law and Courts** is published three times a year in Winter, Spring, and Summer. Deadlines for submission of materials are: November 1 (Winter), March 1 (Spring), and July 1 (Summer). Contributions to **Law and Courts** should be sent to the editor:

J. Mitchell Pickerill, Editor
Law and Courts
Department of Political Science
Washington State University
801 Johnson Tower
Pullman WA 99164
mitchp@wsu.edu

Articles, Notes, and Commentary

We will be glad to consider articles and notes concerning matters of interest to readers of **Law and Courts.** Research findings, teaching innovations, or commentary on developments in the field are encouraged.

Footnote and reference style should follow that of the *American Political Science Review.* Please submit two copies of the manuscript electronically as either an MS Word document or as a PDF file. Contact the editor or assistant editor if you wish to submit in a different format. Graphics are best submitted as separate files. In addition to bibliography and notes, a listing of website addresses cited in the article with the accompanying page number should be included.

Symposia

Collections of related articles or notes are especially welcome. Please contact the Editor if you have ideas for symposia or if you are interested in editing a collection of common articles. Symposia submissions should follow the guidelines for other manuscripts.

Announcements

Announcements and section news will be included in **Law and Courts**, as well as information regarding upcoming conferences. Organizers of panels are encouraged to inform the Editor so that papers and participants may be reported. Developments in the field such as fellowships, grants, and awards will be announced when possible. Finally, authors should notify ***BOOKS TO WATCH FOR EDITOR***:

Keith Bybee, kjbybee@maxwell.syr.edu,

of publication of manuscripts or works soon to be completed.

(Chair's Column, continued from Page 1)

model of judicial decisionmaking fails to explain several decisions handed down during the Civil War. Lost in the methodological verbiage were far more important conclusions about how long-standing court systems are likely to evolve in ways that legally compel less strategically oriented justices to be deferential to elected officials during wartime and provide more strategically oriented justices with legal tools for preserving judicial capital during other crises. As that essay suggests, my charge is less that our field is indifferent to normative concerns than that pressures to explain ourselves as political scientists or members of a distinctive law and courts subfield tend to result in our writing drifting from the jurisprudential concerns that originally animated our research. As recent discussions of WORDSCORE, the role of law in judicial decisionmaking, or legal consciousness suggest, members of our field may be overpromoting the methodological significance of our research while slighting our potential and actual contributions to better understandings of legal and judicial phenomena.

Political science and public law scholarship primarily directed toward improving our understanding of the political and legal universe would be far more rooted in political theory and public policy than is presently the case. Scholars seeking to explain judicial voting, for example, would self-consciously present their works as contributions to debates over how justices should decide cases instead of as critiques of previous efforts to explain judicial decisions. This presentation would require political scientists to keep up with the relevant developments in jurisprudence to ensure that their research was informing contemporary legal controversies and not merely driving another stake into long dead debates. The more normatively informed public law scholarship that would result would still be an empirical public law scholarship, only scholars doing empirical analysis would explain more carefully than they presently do how their research bears on some important jurisprudential question.

Problem oriented public law scholarship might reduce the overemphasis on certainty in political science and public law. More accuracy is always better than less, but accuracy is not an end in itself. Political science scholarship is valuable only to the extent that works help citizens and policymakers make better political decisions. Aristotle provided the best standard for social science research when he observed "we must not expect more precision than the subject-matter admits of."[4] Policymakers and citizens will benefit substantially if social scientists provide a bit more certainty on the merits of torture[5] or the decline of clemency in capital cases,[6] even if these matters do not admit of much certainty. Studying trends in the average height of federal judges is unlikely to promote a better legal system, no matter how certain the findings.

Most important, scholars of law and courts who self-consciously adopt a problems oriented perspective are likely to identify at least as much with scholars exploring similar problems as scholars using similar methods. Comparative constitutionalism will probably best flourish if researchers using different methods build on each other's findings as much as they build on scholarship applying similar methods to the study of courts in the United States. Just as psychiatrists recognize that all longstanding therapies solve some problems, but none work perfectly for all,[7] so most longstanding methods of political inquiry likely shed some light on various problems in the world, but none is likely to provide all the normatively relevant information necessary to resolve any political or legal problem.

Calling on political science departments to mandate a qualitative methods course for every required quantitative methods course seems antithetical to a more problems oriented political science and public law. Younger scholars already learn too much about methods and too little about either politics or law during their graduate training. Sophisticated use of regression or path dependence analysis in too many manuscripts is ruined because the author is unaware of relevant judicial decisions or clearly misstates the relevant jurisprudential problem. Most methods, qualitative methods in particular, can be taught in classes not explicitly devoted to methods. Students will learn much about the new institutionalism and positive public law simply by taking classes in "Law and Society" or "Constitutional Courts" that assign works relying on a variety of methodological approaches. Statistics are best learned in a separate course. Students evaluating the argument in Michael W. McCann's (1994) *Rights at Work: Pay Equity and the Politics of Legal Mobilization*[8] need a good background course in social movements more than a specialized course in interviewing. A specialized statistics course is probably necessary to determine whether the analysis in Jeffrey A. Segal and Harold J. Spaeth's (2002) *The Supreme Court and the Attitudinal Model Revisited*[9] is correctly done.

Demands for separate but equal methods courses reinforce perceptions that our methods matter more than our findings. All schools in public law were originally inspired by concerns with the role of law in democratic societies. Behavioralism is rooted in concerns that justices may be more policymakers than lawgivers, much historical institutionalism is animated by

concerns that the countermajoritarian problem does not describe what justices do in the United States and abroad, much law and society scholarship explores how law on the book often does not conform to actual human experience. A problems oriented perspective highlights our common commitment to fostering a more democratic rule of law too often obscured by an overemphasis on methods.

(Notes)

[1] Friedman, Barry. 2006. "Taking Law Seriously." *Perspectives on Politics* 4: 261-262.

[2] Kersch, Kenneth I., and Ronald Kahn. 2006. *The Supreme Court and American Political Development*. Lawrence, Kansas: University of Kansas Press.

[3] The offending essay is Mark A. Graber, "Legal, Strategic or Legal Strategy: Deciding to Decide during the Civil War and Reconstruction," *The Supreme Court & American Political Development*. Even the title evinces more concern with problems in political science than problems in the world.

[4] Aristotle. 1980. *The Nicomachean Ethics* (translated by David Ross). Oxford: Oxford University Press, p. 2.

[5] See, i.e., Levinson, Sanford. 2004. *Torture: A Collection*. New York: Oxford University Press.

[6] See, i.e., Sarat, Austin. 2005. *Mercy on Trial: What it Means to Stop an Execution.* Princeton, NJ: Princeton University Press.

[7] See Frank, Jerome D. and Julia B. Frank. 1991. *Persuasion and Healing: A Comparative Study of Psychotherapy,* 3rd ed. Baltimore, Md: Johns Hopkins University Press.

[8] McCann, Michael W. 1994. *Rights at Work: Pay Equity and the Politics of Legal Mobilization*. Chicago: University of Chicago Press.

[9] Segal, Jeffrey A., and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press.

Symposium: Mock Trial and Political Science

An Introduction to Mock Trial

Sara L. Zeigler
Associate Professor and Interim Chair
President-Elect, American Mock Trial Association
Eastern Kentucky University
Sara.Zeigler@eku.edu

Mock Trial is a trial simulation activity in which students play the roles of witnesses and attorneys and conduct abbreviated trials against college students from other institutions. Unlike moot court, which deals with appellate argument, mock trial requires student attorneys to structure and conduct direct examinations of their own witnesses and to cross-examine witnesses competing for the opposing team. Mock trial also provides opportunities for students who are not interested in law school to build communication, public presentation and critical thinking skills by serving as witnesses. All participants have the opportunity to develop skills necessary for teamwork, competitive activities (including grace in the face of defeat) and professional conduct. Students receive case materials that include witness affidavits, exhibits, statutory and case law and other materials to be used in developing the presentation to be used at "trial" during tournaments. Students work with the same set of materials for the academic year, providing them with an opportunity to learn from mistakes made in competition, to develop a deeper understanding of the relevant evidentiary issues and hone their presentation skills. The case usually undergoes substantial changes prior to national competitions. Students who participate for multiple academic years will work with both civil and criminal problems, as civil and criminal cases are used in alternate years.

The American Mock Trial Association (AMTA) is the governing body for most intercollegiate mock trial competition. Founded in 1985 by Richard Calkins, then Dean of Drake Law School, AMTA is a non-profit organization based in Iowa. AMTA sponsors 23 regional tournaments and three national-level tournaments per year, in addition to soliciting and altering case materials for use in competition. AMTA has one part-time employee, who manages basic office functions and the remainder of the efforts necessary for managing and hosting tournaments, administering the budget, assigning programs to competition sites, selecting and updating the case materials and developing the rules for competition is performed by the volunteers who comprise the Board of Directors. The AMTA Board of Directors has strong representation from all regions of the nation and from institutions ranging from the small private liberal arts college to the regional public university to major research institutions. Most Directors are actively involved in administering programs and contain an even mix of attorneys and Ph.D.-level educators. In 2005-2006, approximately 500 teams registered to compete in AMTA-sanctioned events.

The competitive season begins as early as August 15, when case materials are made available on the AMTA web site to teams who have remitted registration fees. Students work with the materials for weeks or months (depending on the institution's calendar) prior to participating in invitational tournaments. Invitational tournaments are optional events, but they provide essential practice for teams. They are hosted by AMTA member institutions, but are neither sponsored nor administered by AMTA. Some invitationals are open to any AMTA member institution willing to pay tournament fees, others are "elite" tournaments limited to programs that have consistently performed well at the national level. Most open invitationals post advertisements on the AMTA web site and charge competition fees ranging from $70-$100 per team. Additional costs include travel to and from the tournament site, rental vehicles, lodging and meals. Most successful programs require students to compete at invitationals. The earliest invitational competitions are held in mid-October and this "practice" season runs until the end of January.

Regional Qualifying Tournaments

In late January and early February, students attend regional qualifying tournaments. These events are sponsored by AMTA, with hosts submitting formal proposals to host and receive a stipend in exchange for their services. AMTA sends

two representatives to each regional tournament to supervise tabulation, ensure compliance with the rules of competition and decorum and to resolve inter-team conflicts. Because host institutions usually field teams in competition, the presence of the AMTA Representatives and their supervision of every task from assigning judges to ruling on the use of a disputed demonstrative item guarantees that decisions are unbiased and in accordance with the rules.

All teams that register for regional competition are assigned to a regional tournament site, ideally a site within a three-hour drive of the teams' home institutions. Most regional fields consist of 22-26 teams. Those teams compete for "bids" or the opportunity to compete at the national level, as well as for trophies and recognition. Outstanding individual performances also receive recognition. Each regional tournament recognizes the top five teams, the top ten student attorneys and the top ten student witnesses. The number of bids to national-level competition depends upon the number of teams competing and the historical performances of teams from those programs. Approximately one-third of the teams competing at the regional level qualify for "post-season" tournaments.

National Tournaments

AMTA hosts three national tournaments and distributes slots based upon the regional performances of teams, with each institution limited to two national bids. The two-bid limit creates opportunities for a greater number of institutions to participate and ensures that larger programs (those able to field 6 or more teams) do not overwhelm smaller programs and exclude them from the opportunity to engage in national-level competition.

There are two tiers or levels of postseason tournaments. The top competition is the National Championship Tournament, which is limited to 64 teams from across the nation. Most regional tournaments offer Championship bids to only two or three teams – those taking the top honors at the regional tournament. The Championship Tournament is held in April and the site rotates among several established hosts. National tournaments, held in March, provide a post-regional experience for the second tier of teams, those with solid performances that placed below the top two to three places at the regional tournament. Ninety-six teams compete at the national tournaments, divided between two institutional hosts. From the national tournaments, twelve teams qualify to compete at the Championship level. Thus, teams that missed an opportunity to qualify for Championship at the regional tournament may have a second opportunity to qualify for the most elite level of competition.

At all postseason tournaments, students compete for team and individual awards. AMTA Representatives (four per national-level tournament) supervise tabulation and tournament administration at each event.

Exploring Options:

- Observe or judge at a tournament in your area.
- Attend the Newcomers' Conference and Tournament, sponsored by the AMTA Development Committee and hosted by Hamline University.
- Contact AMTA for resources regarding tournament participation, integrating mock trial into your curriculum and securing institutional support.
- Identify established programs with similar student populations, resources and profiles and contact their administrators/coaches for advice (AMTA can assist).

Starting a Program:

- Go to the AMTA website and access the registration/membership form. Joining provides you with access to case materials (which you may use in classes or in competition or both), as well as the opportunity to register for regional competition. AMTA offers discounts for new programs – an institution fielding two teams should budget $600 for membership and regional fees, or more if qualifying for national competition.

- Review the "invitational tournaments" link on the AMTA web page for information about pre-regional competitions in your area. Most students benefit greatly from attending at least one competition prior to the regional tournament, or more as your budget permits.

- At invitational competition or at the Newcomers' Conference and Tournament, talk to other coaches about preparation techniques, coaching practices, travel rules, etc.

- Do not underestimate the amount of YOUR time mock trial can consume. Although mock trial is a rewarding experience that allows you to develop close mentoring relationships with students while helping them to acquire essential skills (whether or not they plan to attend law school), it requires more faculty time than a conventional 3-hour course. As an illustration, I calculated the contact hours for mock trial, as compared to a conventional course. A 3-hour course required the faculty member to spend approximately 48 classroom hours. Mock trial consumes 176, with tournament time estimated at 10 hours per day. This does not take into account the fact that the faculty member is "on call" for students during the entire tournament weekend nor does it consider the fact that more than one coach usually accompanies a team.

Becoming More Involved in AMTA

Volunteer to assist with tabulation and other tournament duties at events you attend. This provides you with an opportunity to become acquainted with the Directors who work at most invitational, regional and national tournaments (either as coaches or as AMTA Representatives).

Review the committee assignments and charges on the AMTA web page. If there is an area to which you can contribute expertise or insight, contact the committee chair or the President-Elect to volunteer. Some committees are limited to Directors and non-Directors do not have voting privileges. However, this does not mean that non-Directors cannot provide input.

Attend the annual meeting of the Board of Directors. Information appears on the AMTA web page several months in advance of the meeting, which is held in June. The 2007 meeting is hosted by Lewis University in Romeoville, IL.

Key Resources:

AMTA Web page: www.collegemocktrial.org.

AMTA Main Office:

2700 Westown Parkway, Suite 220
West Des Moines, IA 50266-1411
ph: (515) 283-0803
fax: (515) 283-0702
email: amta@dwx.com

AMTA CONTACTS WILLING TO HELP:

Sara L. Zeigler, Ph. D
Eastern Kentucky University
AMTA President-Elect
859-622-5931
Sara.Zeigler@eku.edu

Glen A. Halva-Neubauer
Furman University
AMTA Development Committee Chair
Glen.Halva-Neubauer@furman.edu

Mock Trial and the Undergraduate Experience: Competition can be Good

Elizabeth Ellen Gordon and William Gillespie
Kennesaw State University
egordon@kennesaw.edu
wlgillespie@hotmail.com

Through our experiences as mock trial coaches at a large, public teaching university, we have become interested in how mock trial and similar competitive simulations fit into undergraduate education. We know that students benefit greatly and in many different ways from participation in these programs, but little empirical work has been done to demonstrate this. Therefore, we are embarking on research with the larger goal of evaluating the pedagogy of competitive role-playing simulations for undergraduates. Our first focus is mock trial. While a good deal of pedagogical literature emphasizes the benefits of role-playing and simulations, competitive learning environments are rarely mentioned, and when they are, it is usually in a derogatory manner. Cooperative learning environments, in contrast, are extolled as more effective. And yet, students from elementary school through professional training engage in academic competitions – from spelling bees to science fairs to quiz bowls to law school moot courts. Surely something is going on here that is not captured in the literature. While many of these activities involve a cooperative, team-oriented component, competition is also integral to the endeavor.

As a first step in this research, we wanted to know how mock trial programs fit into institutions and curricula. Since this information was not available, we administered a survey to educator coaches of mock trial teams registered with the American Mock Trial Association (AMTA) during the 2005-2006 academic year. Paper surveys were distributed to coaches at the Mid-South Invitational Tournament (held at Middle Tennessee State University in November 2005) and at the National Championship Tournament (held in Des Moines, Iowa, in April 2006). In May and June 2006, online surveys were administered to all mock trial coaches who had not already responded at the tournaments. We surveyed 180 coaches, and received 45 responses, for a response rate of 25 percent. Questions in the survey instrument elicited nuts-and-bolts information about mock trial programs such as funding sources, academic credit, and institutional home. Open-ended pedagogical questions elicited coaches' perspectives on what types of students take mock trial, what students benefit most and least from it, and what they learn.

Institutional Characteristics

Almost all of our respondents are either educator or attorney coaches: thus, these individuals appear well prepared to answer our questions. Roughly half represented private and half public colleges and universities. Slightly more than half (28) of the respondents coached at institutions with enrollments between 2000 to 15000 students. Ten respondents coached at larger schools (with enrollments over 15000 students), and eight were from smaller schools (enrollments of fewer than 2000 students). A variety of academic departments sponsor mock trial programs, but about one-third of our respondents cited political science departments or multidisciplinary departments with political science included as their mock trial sponsors. Other departmental sponsors include English, history, criminal justice, pre-law, communications, business and economics, paralegal, legal studies, public policy, and sociology. Eighteen respondents claimed no sponsorship by academic departments.

Funding Mock Trial Teams

The most common sources of mock trial funding are university level funding, student activity fees, and donations from mock trial participants themselves. Departmental discretionary funds and club fundraisers also appear frequently as sources of team funding. Lab fees and alumni support are less popular but relied upon by some schools. Additionally, some schools have creatively tapped other funding sources such as local law firms, LSAT preparation test sponsorship, a private "public discourse" grant, participants' families, and the school's Honors College. For some, institutional funding comes with the limitation that the money can only be used for official mock trial tournaments (and not for scrimmaging and other training events).

Coaches

About one third of the survey respondents indicate that they receive direct compensation for mock trial coaching duties. For the two-thirds who do not receive compensation for this task, the educational value of mock trial and the experience of working with students were the most popular reasons for coaching these teams. Academic coaches hold either a Ph.D. or a J.D. (about evenly split), while, not surprisingly, almost all of the legal coaches have a J.D.

Mock Trial Program Characteristics

Roughly half of our respondents (23) coach at schools that initiated a mock trial program in the 1990s. A few schools (5) began in the 1980s, and 15 of the schools started their mock trial teams since 2000. About two-thirds of the schools (29) offer some sort of academic credit for mock trial, with credits varying from one hour per class to more than three hours credit. Nineteen schools permit mock trial participants to retake the class for additional hours of credit. Three respondents mention including legal simulations using AMTA rules in classes other than mock trial. On average, schools sponsored 2.03 teams to AMTA regional tournaments, with most schools sponsoring either one or two teams. However, some respondents' schools sponsored up to five teams in regional competition.

Mock Trial Team Management

Approximately half of our respondents' teams (22) conduct auditions to select team members. Other selection mechanisms include scrimmage performance, attendance and interest in mock trial. A few teams used mixed methods including essays/ tests, peer voting, etc. with auditions to select team members. For those with multiple teams, most respondents indicate that the coach either makes the selection decision outright or participates in that decision with the team captains. Relatively few schools use grade point average, academic seniority, or an academic course requirement to select teams; in fact, 41 programs allow all undergraduates to participate on mock trial teams. Decisions on legal strategy and case theory are made by the legal or academic coach for about half of the teams responding. Other teams make such decisions through team voting, and about a quarter of the respondents report that team captains make strategic decisions. Some schools use a mix of the above methods to reach team decisions.

Time Involvement by Students in Mock Trial

Most teams have formal scheduled meetings once or twice a week, but about one quarter of the coaches report that their teams meet three times or more per week. Formal meetings for about half of the responding schools take up no more than two hours per week; for the other half, such meetings take up two to four hours per week. In addition, most respondents indicate that their teams meet informally once or twice a week, with a few teams meeting more often. These informal meetings can also be lengthy. Half of the coaches report informal meetings lasting up to two hours per week, but the other half indicate that team members meet outside of official practices between two and six hours per week. Given the length of the season (September to April), this is a significant time commitment by mock trial participants as well as coaches.

Mock Trial Competition

Teams compete frequently. About half of our respondents indicate that their teams compete in three or four invitational tournaments per year. Another quarter compete in one or two tournaments yearly, and about one-sixth of the coaches send teams to more than four invitational tournaments per year. Over 80 percent of the coaches indicate that their teams engage in informal scrimmages with other schools as well. Thus, mock trial participants, when compared with other simulations such as Model UN, appear to compete more often. Over the past five years, all but one of our respondents have sent teams to AMTA regional qualifying tournaments. Twenty-seven have competed at the silver level national tournaments, and 18 have participated in the National Championship Tournament at Des Moines, Iowa.

Typical Mock Trial Students

Many coaches described their typical "mockers" as law-school bound students with majors in political science or other liberal arts disciplines. Others focused on the personality types who are attracted to mock trial: students who are competitive, motivated, hardworking, ambitious, and involved in many campus organizations. Still others described typical mock trial

students as academic achievers with strong verbal skills.

Skills Developed Through Mock Trial

All the responding coaches listed multiple skills they believe to be developed by mock trial participation. Many of the skills they cite are useful for all students, regardless of whether or not their future plans include law school and legal practice. The most frequently mentioned skills are universally applicable: critical thinking, public speaking, and teamwork. Coming close behind are analytical skills and the ability to think on one's feet. A few mentioned skills directly related to the study of law, such as legal reasoning, content knowledge of the law and legal system, and evidence. But some coaches lauded mock trial's tendency to build character traits like leadership, poise, and confidence. One coach emphasized that mock trial can develop different skills for different students, as needed: "So much depends on the 'raw clay' that arrives. Some need socialization. Some need to focus on grammar, diction or articulation. Some need help on manners, dressing for success, developing academic discipline." Another wrote about the delayed benefits of mock trial: "I think mock trial develops students in ways that they don't realize for years to come. Many students have written to me to tell me this long after they have graduated. They develop skills that get them through graduate school and life in general. Mock trial is beneficial beyond belief."

Students Who Benefit Most and Least from Mock Trial

When asked what kind of student benefits most and least from mock trial, coaches offered many different descriptions. Naturally, the law-school bound were singled out as a group that benefits greatly, but so were smart students, motivated students, and students who need and enjoy challenges. Many coaches responded that all students benefit quite a bit from mock trial; as one coach wrote, "Mock Trial is the height of individualized education." Some coaches also stressed the social benefits associated with mock trial participation, and wrote that the students who benefit the most are those who are introverted, in need of better speaking skills, or "geeky and awkward." As for those who benefit least, coaches cite students who are not dedicated, will not do the work, or cannot or will not put in the time necessary. These comments highlight the intense student commitment required in mock trial programs. Other students who benefit less include those who do not take criticism well and those who take mock trial just for the credit, according to some coaches.

Competition and Teamwork in Mock Trial

Overwhelmingly, coaches report that the competition element enhances the learning experience by providing motivation, camaraderie, and a reward for hard work. Only a couple said it detracts, while a few said it can go either way. One coach reported that cut-throat competition in his/her region had become unhealthy for those students "who aren't headed for stints in the salt mines of the large urban law firms." Another analyzed the competition angle this way: "The initial 'hook' for many students is the opportunity to compete in an academic rather than physical setting. They are often people who have sought an outlet for their competitive personalities without success in athletic settings, and are excited to find their strength elsewhere. That competitive nature often causes conflict, particularly early in the season as students sort through their roles on the team. Occasionally, a student is never able to accept anything less than what he or she sees as the 'best' position (whether in terms of the case itself or leadership of the team). Fortunately, we are nearly always able to find a solution to that problem early on."

Coaches are almost evenly split on whether or not teamwork is difficult for their students. Most who acknowledge the challenge qualified their response by explaining that teamwork was "sometimes" a problem or was a problem for some students. One was much more emphatic on the difficulties of teamwork: "Absolutely, positively, without a doubt. All of 'us' coaches have talked about this and talk about it again every year. Some years are worse than others, mostly when there are more new mockers - seasoned mockers are not as bad. I even think it would be beneficial to have some kind of teamwork or teambuilding class PRIOR to mock trial." Another analyzed the ways in which teamwork was a challenge: "In terms of problem solving, preparation, criticism, teamwork is not a problem, but in terms of the subtle aspects of team support, teamwork is a problem. In other words, students need to work on the unspoken moral support in all aspects of the mock trial process."

Conclusion

These preliminary results encourage us to further explore the research subject. Just as we suspected, educator coaches find that competition is mostly an enhancement for the learning process, a proposition we will investigate further. Another conclusion that can be drawn from this survey is that mock trial programs can exist and thrive under many conditions: in small private colleges as well in large public universities. Schools have found multiple ways to fund, oversee, and manage these programs. A common thread throughout the data is the intense commitment of coaches and students to these programs. Traveling to tournaments, scrimmaging with other schools, meeting several times a week for practice – all of these speak to the time commitment. The majority of coaches do not receive payment specifically for their coaching; they do it for the satisfaction they receive. Students take on leadership responsibilities on many teams, and some students compete even without academic credit. In our own experience (which we believe to be typical), the credit offered by our institution is in no way proportional to the work, responsibility and time students put into mock trial. But the successful ones do not take mock trial for the credit. They do it because they love it, and we know of no pedagogical substitute for that.

Building a Quality Mock Trial Program in Increments

Glen A. Halva-Neubauer
Furman University
glen.halva-neubauer@furman.edu

As a student of US domestic policy, I have lectured about and considered the role of incrementalism in describing the development of a host of public programs. The concept meshes well with my own approach to developing programs, especially Furman University's mock trial program. From humble beginnings in 1995, Furman's program is now among the most developed in the American Mock Trial Association (AMTA) community, which includes some 275 institutions across the nation. In 2005-2006, Furman supported five mock trial teams, hosted a regional tournament, fielded teams at myriad invitational tournaments, and operated a week-long summer camp for high school students. The staff includes a faculty member and three attorney coaches.

Furman's development model is premised on having a committed faculty member and attorney coaches. A faculty member and coaching staff are essential to raising money and networking, the principal components of Furman's development model.

Faculty

Sustaining a program in the long run without a strong faculty presence is difficult. At the dawn of the Furman program, there was a faculty presence. An attorney from the community was recruited to join the staff as the coach. Faculty involvement puts an imprimatur of legitimacy on mock trial projects that student-led programs only rarely enjoy. Having secured a faculty member and an attorney coach, take the next step: raising money.

Raising Money

Finding a stable funding source is essential. I strongly recommend starting a program with one team. Having success with one team will increase enthusiasm for the mock trial project among students, faculty, and administrators. And that enthusiasm will lead to an expansion of one's program.

Starting small also requires less money. While Furman's political science department paid the registration and tournament fees, there was no money for travel. From the beginning, multiple funding sources were developed. Travel support was secured from the Association of Furman Students (AFS), the University's student government organization. When additional travel monies were needed, we turned to the local legal community to support our travel to Minneapolis-St. Paul.

At the end of the first season, it was clear that we needed a line in the University budget. AFS funding was limited, and it did not fund faculty travel to tournaments and had severe limits on funding hotel and registration fees. A year later, the Dean provided a line-item in the budget. AFS continued to provide monies.

By the third year, the Dean had provided small stipends for our attorney coaches and with additional funding from AFS, we were able to add a third team. As our aspirations rose, we attended more invitational tournaments. At the same time, mock trial was becoming a national event, and it required travel to far-flung places. The financial pressures of developing a large program with multiple teams and also one that had national aspirations required several adjustments. Our students started paying for a portion of the expenses associated with travel. Consistent with our multi-pronged fund-raising approach, we solicited lawyer alums and sold sponsorships for the regional tournament to local law firms. We hosted a Kaplan LSAT preparation course on campus and used the rental fees to assist the mock trial program. And most recently we have written grants to the South Carolina Bar Foundation to support the regional mock trial tournament.

As a result of using an incremental approach to program growth coupled with seeking multiple sources of funding, Furman now boasts a large and successful program. Fundraising is inextricably tied to networking.

Network, Network, Network

Mock trial offers an unparalleled opportunity to connect the University with its alumni, the local and state Bars, and parents. Additionally, those connections forge links with other divisions of the University. Furman's first coach was an alum who was the local prosecutor, and he gave instant legitimacy to the program. He also proved to be a first-rate fundraiser as have other attorney coaches.

Hosting a regional tournament each year provides our program with an opportunity to bring nearly 200 attorneys and judges from South and North Carolina, Georgia, and Tennessee to campus. The tournament allows a firmer bond to form between the local and state legal community and the Furman program. Attorneys and judges enjoy coming to campus, and they are usually impressed with the performance of the students. Hosting the tournament allows the University to highlight one of its programs and its relationship to the local legal community. We work closely with the Greenville Bar Association in staging this event as well as several local law firms.

The tournament also allows the program to connect with our alums, many of whom serve as judges. This activity brings an important constituency to campus and provides them with an opportunity to reconnect with the University. In so doing, it provides an important supportive constituency for the mock trial program.

And never forget the power of parents. Furman mock trial parents travel with the team, attend the regional tournament in large numbers, give money, and offer advice. I cannot imagine the Furman program without their immeasurable support.

Building a network also includes creating links to the University's public relations and admissions departments. A mock trial program builds new avenues to recruit high-ability prospective students; it offers opportunities to showcase a university program to high school students, which we have done through our summer program. Our marketing and public relations staff have highlighted the mock trial program as an example of Furman's commitment to engaged learning—a problem-solving, project-oriented, and research-based approach to liberal learning—the anchoring concept of the University's strategic plan.

Adopt an Incremental Approach

Raise money from internal and external sources, and network, network, network. This model has not only led to the development of Furman's successful program, but also has strengthened relationships with the local legal community, alums, and parents. Mock trial not only provides an unparalleled learning opportunity for students, but it also creates opportunities for the University's admission and development divisions.

Mock Trial as Part of an Undergraduate Political Science Curriculum

John R. Vile
Middle Tennessee University
jvile@mtsu.edu

Several years ago, I taught a student with a painful illness that her doctors could not initially identify. Although she was majoring in music, she had observed mock trial in high school and had enrolled in my mock trial class and was enjoying it. As the semester progressed, her doctors diagnosed her illness, and she had to have surgery and drop out of her other classes. Through the kindness of an invitational tournament director who accommodated her need to rest, she was able to participate in a mock trial tournament after her surgery. Three years later, I was reading the personal statement that she had written for law school. She described the semester of her illness as pivotal to her future. That semester she had decided that law, rather than music, was her true passion. She subsequently went on to earn an All-American designation both in mock trial and in mediation (another activity that has developed from the American Mock Trial Association), graduated from a prestigious law school where she excelled in trial advocacy and moot court, and is now practicing law and working on an LL.M. Even though she now lives some distance away, she returns almost every year to judge at our invitational tournament. She is my daughter.

Although my daughter's story is more dramatic than most, she is far from the only student I have taught who clarified an interest in law through taking a course and participating in mock trial. At some schools, mock trial begins as a purely extracurricular activity, and at some it remains so. We eventually decided to create a course at Middle Tennessee State University because we found that having a scheduled time to meet was one of the best ways on a predominately commuter campus to get everyone together at the same time and place for scrimmages. I have subsequently found that I can use the credit hours generated to pay one of the lawyers who regularly assists me with this activity.

We offer a one-hour mock trial class each fall semester, and allow students to repeat it up to four times. We require all who enroll to attend, to pass a test on the rules, to present us with written copies of opening and closing statements and/or directs and cross-examinations, and to participate in at least one invitational tournament. In contrast to some programs that are large enough to have try-outs, we virtually accept all comers, with the understanding that we will place students on the regional and national teams that we compose in the spring on an invitation only basis. We currently have two other classes that we treat much the same way. One is a mediation class, and the other involves students involved in Model United Nations competitions. We do not currently have a moot court program, but if we did, we would treat it in a similar fashion.

Beginning with last year our academic year began starting later, and this has required us to alter our schedule, but we generally spend the first couple of weeks introducing students to how mock trial operates, illustrating key roles, and testing them on their knowledge of the Rules of Evidence. We spend most of the rest of the semester engaging in intra-university scrimmages and preparing for tournaments—like lab courses in the sciences, our "one-hour" class usually meets at least three to four hours, and students do extra work outside of class. The American Mock Trial Association supplies case materials for all teams that register with it. The packet usually includes about 75 pages of stipulations, affidavits, exhibits, and other materials in addition to many additional pages of rules, which vary little from year to year. We allow students to download these individually.[1] Many students also buy *Pleasing the Court: A Mock Trial Handbook*.[2] I hesitate to require students to buy it since I am its author, but of several books that deal with trial advocacy, it is the one most clearly tailored to, and, I believe, most widely used by, the college audience.

Our campus is now putting renewed focus on experiential learning, and mock trial was the first class that we have certified for experiential learning credit in political science. One of the greatest difficulties of the course is that once students get the case, which they usually have in hand sometime between mid-August and early September, most students find that it is more fun to play character roles and come up with direct and cross-examinations before exerting more difficult labor learning the rules, but an early tournament usually alerts them to the fact that both learning processes need to go hand in hand.

Our program has been blessed to have multiple teams. We generally find that it works best to have an even number so that every team can scrimmage, or at least has to prepare to scrimmage, at least once a week. Although this might seem monotonous, teams are responsible for preparing both sides of the case, AMTA materials leave room for enough choice among witnesses, and students improve as they have time to practice so that it is rare to see a round without some new innovation. We further try to vary rounds by allowing students to play different roles, alternating the judges that we use, and holding some of our scrimmages at the downtown courthouse (tournaments increasingly reserve courthouses for this function).

We offer a regular introductory three-hour Introduction to Law and the Legal System, a class that other schools call Judicial Process, where we encourage instructors to include a mock trial component, and a number of students who got interested in mock trial through this course later joined our mock trial team.[3] Thomas Ambrosio has recently written an article suggesting that a mock trial component can also be an important part of classes in international law.[4] As in many other schools, the most prominent classes within our pre-law emphasis focus either on legal research or writing or on constitutional law. One reason that mock trial provides such a healthy balancing pedagogical focus is that it focuses on the trial court rather than the appellate level. Students achieve a far better understanding of the different burdens of proof in civil and criminal cases, of the dangers of hearsay evidence, and of the importance of rules of fair play by participating in mock trial than they can simply by reading this information in a book. They also learn additional skills in professional deportment, teamwork, and rhetorical skills.

Because mock trial focuses both on method and content, colleges may offer it either within a department of speech or within a law-related or political science department—fellow contributors to this newsletter issue attest that political scientists are well-represented among coaches. Although like many coaches I was a college debater, as a political scientist, I hesitate to portray myself as an "expert" in speech, but I am convinced that one of the primary benefits of mock trial is the experience that it gives students in oral presentation, and I think it is almost as important to stress oral presentations (and the analytical thinking that direct interaction with other players promotes) across the curriculum as it is to address writing and other skills in this manner. Because mock trial tournaments recruit real attorneys to judge, the activity encourages students to make their cases as they would in real courtrooms before real juries rather than in the opaque and hurried pace that some other more inbred speech events sometimes encourage. In any event, we see ourselves as supplementing, rather than supplanting, formal speech instruction on our campus, and we often find it not only prudent but also helpful to invite individuals from our speech and theatre departments to observe our students and look for ways to improve our students' presentation skills.

I have now coached mock trial for seventeen years, and the activity has continued to expand throughout this time period. There are now scores of invitational tournaments in addition to regional and national competitions, so that even students who do not advance to regional or national competitions can still participate in intercollegiate events. Indeed, my primary concern about the activity at present is that the number of tournaments has increased at such a rapid pace and so many coaches are compelled to send their students to multiple tournaments that I fear it will be increasingly difficult to recruit individuals, and students, who have the time and energy to participate (I feel a bit like the parishioner who said that she would like to be a Baptist, but she just didn't have the energy to go to all the meetings). We have increasingly struggled with the recognition that, while we do offer a class, we still regard mock trial chiefly as an *extra*-curricular activity, and we believe that students should be able to participate in it while doing justice to their studies and while having some time for other worthy activities.

As a father of a "mocker" and as a coach, mock trial has provided me with many memories and helped me to establish many friendships with students that reached beyond the ordinary classroom. I enjoy seeing students progress, traveling to tournaments with them, being able to write letters of recommendation on behalf of students that I have seen in contexts other than the classroom, and often being invited to their weddings or graduations. I enjoy seeing them realize that they can successfully compete against students from other schools, often with far more prestigious reputations.

Even when not offered for credit, the activity takes far more time than a typical undergraduate class and there is a rare political scientist who does not find it helpful, if not essential, to have the help of at least one attorney and/or mock trial alum. In addition to the emotional travails and time-commitments of coaching, mock trial teachers and advisors often find themselves saddled with the responsibility of obtaining funding, making motel arrangements, driving or flying relatively long distances to compete, and attempting to publicize mock trial activities. In such circumstances, it is critical to have support from one's chair or one's dean and the departmental secretary.

(Notes)

[1] Students do this by going directly to the American Mock Trial Association Website at www.collegemocktrial.org.

[2] Vile, John R. 2004. *Pleasing the Court: A Mock Trial Handbook*, 3rd ed. Boston: Houghton Mifflin. Ordering information may be found on the mock trial website, cited in the previous footnote.

[3] In an earlier article, a colleague and I described how this had reinvigorated our teaching. See: Vile, John R., and Thomas R. VanDervort. 1994. "Revitalizing Undergraduate Programs Through Intercollegiate Mock Trial Competition." *PS: Political Science and Politics* 27: 714-717. VanDervort (2000) has introduced a mock trial component into his text *Equal Justice Under the Law: An Introduction to American Law and the Legal System*, 2nd ed. West Legal Studies/ Thomson Learning.

[4] See: Ambrosio, Thomas. 2006. "Trying Saddam Hussein: Teaching International Law Through an Undergraduate Mock Trial." *International Studies Perspective* 7: 159-71.

Mock Trial is Rewarding in Every Way

James Headley
Associate Professor of Government, Attorney, and Mock Trial Coach
Eastern Washington University
jheadley@mail.ewu.edu

Students, professors and coaches all gain tremendously from participating in the American Mock Trial Association (AMTA). Mock Trial has serious moments and entertaining ones. Through it all, students learn something about the law, refine their sense of judgment, and learn something about life. An account of the more serious benefits and aspects of Mock Trial follows, but consider this entertaining one first. Years ago, one of my mock trial students, who I will call "Tom," was trying to figure out how to deal with a witness who was a first responder to an accident scene. This witness happened to be a pig farmer, and what the pig farmer smelled at the scene could have been an issue- whether or not gasoline was smelled at the scene, etc. Tom hoped to call the witness' powers of perception into question to cast doubt. Well, Tom asked, "Mr. Jones, you are a pig farmer correct?" and "Pigs are stinky animals aren't they, and you work with pigs all day?" The combination of questions as delivered sounded like Tom was accusing the pig farmer of being stinky like his pigs! Not the effect Tom sought, but a good laugh nonetheless. Moreover, this story illustrates an aspect of mock trial- students refine their judgment and learn how and when to ask the right questions to hopefully produce the desired effect- to help build their case and not offend in the process! Tom, by the way, went on to a great law school, clerked for a federal judge, and works for a major law firm now and is quite successful.

Some students begin participating in Mock Trial early in their academic careers as sophomores, or in some programs, even freshman. Juniors and seniors are more common participants in our mock trial program. Mock Trial helps students develop the skill of critical thinking and introduces them to the workings of the legal system, and can prepare them to further pursue legal education or any other career. Mock Trial is open to all majors; a diversity of majors can enrich the program. Mock Trial has a place in pre-law programs and it has been an asset to our pre-law program. Every year we assemble between one and three teams of between six and eight students per team and we receive a mock trial case from AMTA. The case alternates each year between a civil case and a criminal case. Students, put in a position similar to that of actual attorneys, are presented with a mountain of case material: witness affidavits, particular pieces of evidence, laws, and limited rules of evidence. Each team member synthesizes the material into a plaintiff's case and a defense case, learning the case from both perspectives. The teams construct a story or theme out of the evidence for both the plaintiff and defense, and the teams practice telling that story in ever more convincing ways through the witness testimony, "real evidence" and demonstrative evidence. This process begins in the fall and builds ultimately to competition in the winter each year. Students experience critical thinking in a unique and valuable way as they examine how all of the particulars of the case fit together from both the plaintiff's and defense's perspectives- again, much as real attorneys do. The students develop important practical individual skills, such as public speaking, thinking on their feet, and refining their sense of timing in a courtroom. Confidence is increased in Mock Trial, as the environment encourages students to practice and participate. More and less talented students all grow in Mock Trial. As a coach, it is rewarding to see talented students get even better at public speaking and

arguing in mock trials- sometimes the students perform better than many real attorneys that I have seen! It is always impressive to see a talented mock trial participant, of any team, give a great performance. It is a competition, and that can motivate students and teams are assembled in competitive ways. Seeing less talented students learn and grow in Mock Trial is also rewarding. Ideally there is a place on one of our varied teams for all who want to participate, put in the sweat equity, and learn. Recently a student of mine, who I will call "Joe" for purposes of this writing, had a major break-through. Joe participated for a number of years, and is determined to become an attorney. Considering his performance in the first couple of years, it was obvious that public speaking was, to put it mildly, a challenge for Joe and his goal of becoming an attorney, at least a trial attorney, an ominous one. Late this last season he made a break-through. Joe "found his voice," almost literally. It took three years to figure out what was going on, and he achieved a whole new level in public speaking ability. Joe may not achieve great acclaim as a trial attorney, but he *could be* a trial attorney some day.

Students also develop group skills. I often say that Mock Trial is a kind of group project and it really is. Strong, determined personalities, often not compromising ones, are typically drawn to compete in Mock Trial, and they learn to make things work with one another for the good of the whole team, sometimes with attendant growing pains and occasional high drama. This brings up an important point about Mock Trial. Students put a lot of effort into it and have a lot of "sweat equity" in the team and in the case. Mock Trial presents individual and group challenges, sometimes "shared adversity" through which the students persevere and bond. This bond of respect and friendship develops in Mock Trial and is a tremendous overall reward of Mock Trial. The bond of respect and friendship developed in Mock Trial lasts a lifetime. I have seen former teams graduate and go on to tremendous successes in their own lives, but they stay in touch with one another years after they graduate.

As a professor and coach, the greatest reward is sharing the experience, growing pains, and the ups and downs with the teams and individuals. Former members of Mock Trial stay in touch and it is rewarding to see how they go on to bigger and better things. Yet they stay in touch and some have returned to help judge current teams, and some former members have come back to help coach. Coaches of other programs became close friends – a benefit I just did not foresee and another that I am grateful for.

Mock Trial brings students from different universities and life experiences together at competitions, as part of a larger AMTA community. Students benefit from interacting with students from these other universities and life experiences. Students and coaches may think from time to time that they are done with Mock Trial, but Mock Trial is never done with students and coaches. Mock Trial is a community, a generous and benevolent community that extends to include many teams, coaches, professors, judges, universities and programs around the country, all united under the American Mock Trial Association umbrella. Tragically, one of our beloved team members and mock trial attorneys, Tony Burkhardt, passed away last year. The loss was felt by all of us, and shared by the entire Mock Trial community. Though Mock Trial is a competitive endeavor, the competition is typically left in the courtroom, and members of the community support each other as best as they can. Eastern Washington University's loss of Tony Burkhardt, was shared by the entire Mock Trial community. The outreach and support from members of the Mock Trial community was at times overwhelming and always comforting. To all who supported Tony's family and friends in his loss, please again accept our heart-felt thank you. Some of the best times in Tony's life involved Mock Trial, some of the best times in my life involve Mock Trial, and I think the same could be said by all who participate in Mock Trial. Mock Trial is rewarding, and those students, professors, and coaches, who already participate- you know what I mean. If your university does not currently participate in Mock Trial, consider starting a team and joining the AMTA community, and buckle your seat belt and hold on! The rewards of Mock Trial are many and lasting.

Books To Watch For

Keith J. Bybee
Syracuse University
kjbybee@maxwell.syr.edu

Constitutional and Legal Rights of Women: Cases in Law and Social Change (Roxbury Press, 3rd ed.) by **Judith Baer** (Texas A&M University) and **Leslie F. Goldstein** (University of Delaware) is the first undergraduate-focused women and the law casebook to provide a comprehensive treatment of the legal status of all American women. Building on Leslie Goldstein's previous casebooks, this volume combines updated material on constitutional law, gender discrimination, and women's rights with new cases and readings on family law, gay rights, and criminal law. Topics include, but are not limited to, constitutional history, job discrimination, gender equality and advances in reproductive technology, law, divorce, child custody, education, same-sex marriage, pornography, and domestic violence.

What causes attention to various policy areas to ebb and flow on the Supreme Court's agenda? In **Answering the Call of the Court: How Justices and Litigants Set the Supreme Court Agenda** (University of Virginia Press), **Vanessa A. Baird** (University of Colorado-Boulder) provides the first scholarly attempt to connect justices' priorities, litigants' strategies, and aggregate policy outputs of the U.S. Supreme Court. The author argues that when justices signal their interest in a particular policy area, litigants respond by sponsoring well crafted cases in those policy areas — cases that the justices can then use to expand the Court's agenda. Thus, in issue areas ranging across discrimination, free expression, welfare policy, immigration and economic regulation, strategic supporters of litigation pay attention to the goals of Supreme Court justices and bring cases the justices can use to achieve those goals.

The Supreme Court Compendium (CQ Press, 4th ed.), edited by **Lee Epstein** (Northwestern University School of Law), **Thomas G. Walker** (Emory University), **Jeffrey A. Segal** (SUNY, Stony Brook), **and Harold J. Spaeth** (Michigan State University) presents historical and statistical information on every aspect of the U.S. Supreme Court, including its history, development as an institution, the justices' backgrounds, nominations, and confirmations, and the Court's relationship with the public and other governmental and judicial bodies. Updated for 2006, the volume includes new perspectives on the legacy of the Rehnquist court and more than 180 updated tables and charts. The volume also features an institutional overview of the Court's history including a chronology of important events from 1787-2006, important Congressional legislation relating to the Supreme Court, internet sites relating to law and courts, and background information on all the justices.

Drawing on his own experience as a former judge in the Israeli military courts, **Emanuel Gross** (Haifa University) explores the legal and moral complexities democracies encounter when faced with terrorism in his new book, **The Struggle of Democracy Against Terrorism: Lessons from the United States, the United Kingdom, and Israel** (University of Virginia Press). With particular criticisms of the USA Patriot Act, the author outlines the three cornerstones of Israel's experience with terrorism applicable to other countries. On this platform, the author bases his examination of the various laws that apply to a democracy's fight against terrorism, providing a broad picture of the dangers imposed by the measures these nations currently use to combat terrorism. The book features a foreword by Aharon Barak, President of the Supreme Court of Israel.

The **Institutions of American Democracy: The Judiciary** (Oxford University Press, 2005), edited by **Kermit L. Hall** (University at Albany) and **Kevin T. McGuire** (University of North Carolina at Chapel Hill) examines the role of the judicial branch in American democracy, compares international models, and discusses possible measures for reform. Is the Supreme Court an institution of social justice? Is there a case for judicially created and protected social rights? Have the courts become sovereign when interpreting the Constitution?

Essays consider these questions and examine topics that include the judiciary in the founding of the nation; turning points in the history of the American judicial system; the separation of powers; how the Supreme Court resolves political conflicts through legal means; what Americans know about the judiciary and its functions; and whether the American scheme of courts is the best way to support democracy. Contributors include Jarosla Pelikan, Kermit L. Hall, Kevin T. McGuire**,** William E. Nelson, Cass R. Sunstein, Richard A. Brisbin, Jr., Keith E. Whittington, Joel B. Grossman, Paul R. Brace, Melinda Gann Hall, Donald P. Kommers, Lynn Mather, Gregory A. Caldeira, Gerald N. Rosenberg, Doris Marie Provine, Charles R. Epp, Sue Davis, Mark A. Graber, David A. Yalof, James W. Ely, Jr.**,** and Lawrence Baum.

As **Daniel W. Hamilton (**Chicago-Kent College of Law) notes in **The Limits of Sovereignty: Property Confiscation in the Union and the Confederacy during the Civil War** (University of Chicago Press), Americans take for granted that government does not have the right to permanently seize private property without just compensation. Yet for much of American history, such a view constituted the weaker side of an ongoing argument about government sovereignty and individual rights. What brought about this drastic shift in legal and political thought? **Hamilton** locates the change in the crucible of the Civil War. In the early days of the war, Congress passed the First and Second Confiscation Acts, authorizing the Union to seize private property in the rebellious states of the Confederacy, and the Confederate Congress responded with the broader Sequestration Act. The competing acts fueled a sustained debate among legislators and lawyers about the principles underlying alternative ideas of private property and state power, a debate which by 1870 was increasingly dominated by today's view of more limited government power.

Over the last thirty years, a good deal of attention has been paid to executive branch interpretation of the Constitution. **Executing the Constitution: Putting the President Back into the Constitution** (SUNY Press) edited by **Christopher S. Kelley** (Miami University) focuses on the creative interpretation of constitutional powers to either expand executive branch policymaking or to shield its prerogatives. In analyzing and explaining the unilateral decisions presidents have made during and since the Vietnam War, this book draws attention to some dramatic changes in the executive branch that explain the development and use of presidential signing statements, administrative clearance, unilateral foreign policy declarations, and executive privilege. Contributors include Ryan J. Barilleaux, Michael Cairo, Graham G. Dodds, Maureen P. Haney, Patrick J. Haney, Christopher S. Kelley, Kevin J. McMahon, Richard M. Pious, Mark J. Rozell, Robert J. Spitzer, George Thomas, Walt Vanderbush, and Kevan M. Yenerall.

The **Encyclopedia of Sexual Behavior and the Law** (CQ Press), edited by **Robert L. Maddex (**Independent Scholar**),** addresses sexual policy in the United States as it is shaped by federal laws, state laws, and court cases. The volume contains 150 encyclopedic entries that cover broad policy areas, significant statutes, medical and health policies and issues, and the role of government agencies and institutions.

In **American Cultural Pluralism and Law**, (Praeger/Greenwood, 3rd ed.), **Jill Norgren** (John Jay College of Criminal Justice, CUNY) and **Serena Nanda** (John Jay College of Criminal Justice, CUNY), argue that law is an instrument of social policy that has generally furthered an assimilationist agenda in our culturally diverse society. The authors also argue, however, that law has offered some opportunity for cultural autonomy. Drawing on court cases, legislation, and legal ethnographies, the authors analyze legal challenges to the existing social order raised by a wide range of groups, including Native Americans and Native Hawaiians, homeless persons, immigrants, Puerto Ricans, disabled persons, Rastafarians, Satmar Hasidim, women, homosexuals, African Americans, Mormons and the Amish. This new edition also includes a new chapter on cultural pluralism and law, post-9/11.

Since the hiring of the first Supreme Court law clerk by Associate Justice Horace Gray in the late 1880s, court observers and the general public have demonstrated a consistent fascination with law clerks and the influence — real or imagined — that they wield over judicial decisions. In **Courtiers of the Marble Palace: The Rise and Influence of the Supreme Court Law Clerk** (Stanford University Press), **Todd Peppers** (Roanoke College) provides the first systematic examination of the "clerkship institution" — the web of formal and informal norms and rules surrounding the hiring and utilization of law clerks by the individual justices on the United States Supreme Court. Drawing on personal interviews with fifty-three former

clerks and correspondence with an additional ninety, as well as personal interviews with a number of non-clerks, including Justice Antonin Scalia, the author assesses the work lives of and the relationships between justices and their clerks.

Ralph A. Rossum (Claremont McKenna College) and **G. Alan Tarr** (Rutgers University) have completed the latest edition of **American Constitutional Law** (Thomson Wadsworth, 7th ed., forthcoming in 2007). This two-volume text for constitutional law courses, which is now available for order, emphasizes textual analysis and the political theory underlying the Constitution. Among the features of the new edition is a substantially expanded treatment of "Rights During War and Other Emergencies," including both criticism and defenses of the NSA wiretapping.

The federal government is a party, as plaintiff or defendant, in between one-fifth and one-third of all civil cases in the federal courts. **Litigation With the Federal Government** (American Law Institute-American Bar Association, 4th ed.) by **Gregory C. Sisk (**University of St. Thomas School of Law) analyzes the unique principles, rules, and statutes that govern when the sovereign is a party to a court action. In assessing the balance between allowing access to court relief and protecting important governmental policy operations from judicial intervention, the author examines civil suits against the federal government, including such subjects as contract litigation, tort claims, discovery and privilege involving the sovereign United States, and attorney's fee awards against the federal government.

Theories of distributive justice are most severely tested in the area of disability. In **Distributive Justice and Disability: Utilitarianism against Egalitarianism** (Yale University Press), **Mark S. Stein** (University of Missouri-St. Louis) argues that utilitarianism performs better than egalitarian theories in this area: egalitarian theories help the disabled either too little or too much, while utilitarianism achieves the proper balance by placing resources where they will do the most good. In the course of developing a broad critique of egalitarian theory from a utilitarian perspective, the author addresses the work of egalitarian theorists John Rawls, Ronald Dworkin, Amartya Sen, Bruce Ackerman, Martha Nussbaum, Norman Daniels, Philippe Van Parijs, and others.

Biographical Encyclopedia of the Supreme Court: The Lives and Legal Philosophies of the Justices (CQ Press)**, e**dited by **Melvin I. Urofsky (**Virginia Commonwealth University) features original, signed essays that highlight the judicial opinions and legal philosophies of each of the 108 men and 2 women who have served on the nation's highest bench. Entries are arranged alphabetically by justice and discuss each justice's legal philosophy and approach to judicial duties along with his or her significant legal opinions. This volume is an updated edition of **The Supreme Court Justices: A Biographical Dictionary** (Taylor & Francis, 1994). In addition to new essays profiling recently appointed Chief Justice John Roberts and Associate Justice Samuel Alito, this new edition includes updated profiles on the current members of the Roberts Court, and revised essays on selected former justices. The original entries are highlighted by analysis from legal historians, scholars, and journalists. Each entry also includes an updated bibliographic essay and a list of noteworthy opinions written by each justice.

Awards

Law & Courts Section Awards

Lifetime Achievement Award

The **Lifetime Achievement Award** is presented annually to honor a distinguished career of scholarly achievement and service in the field of Law and Courts: **Sheldon Goldman, University of Massachusetts, Amherst**.

C. Herman Pritchett Award

The **C. Herman Pritchett Award** is given annually for the best book on Law and Courts written by a political scientist and published the previous year: *Recognizing Aboriginal Title: The Mabo Case and Indigenous Resistance to English-Settler Colonialism (*University of Toronto Press: Toronto, 2005) by **Peter H. Russell, University of Toronto**.

American Judicature Society

The **American Judicature Society Award** is given annually for the best paper on Law and Courts presented at the previous year's meetings of the American, Midwest, Northeastern, Southern, Southwest, or Western Political Science Associations: "Mapping the Policies of the U.S. Supreme Court: Data, Opinions, and Constitutional Law" by **Kevin T. McGuire, University of North Carolina, Chapel Hill** and **Georg Vanberg, University of North Carolina, Chapel Hill.**

The CQ Press Award

The **CQ Press Award** is presented to the best graduate student paper on Law and Courts: **Matthew Ingram**, University of New Mexico, "Judicial Efficiency in 17 Mexican States, 1993-2000."

Wadsworth Publishing Award

The **Wadsworth Publishing Award** is presented for a book or journal article, ten years or older, that has made a lasting impression on the field of Law and Courts: **Michael McCann, University of Washington**. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*.

The McGraw Hill Award

The **McGraw Hill Award** is awarded for the best journal article on Law and Courts written by a political scientist and published the previous year: **Lee Epstein, Northwestern University School of Law, Daniel Ho, Harvard University, Gary King, Harvard University,** and **Jeffrey A. Segal, State University of New York at Stony Brook**. 2005. "The Supreme Court During Crisis." *New York University Law Review* 80:1.

Teaching and Mentoring Award

The **Teaching and Mentoring Award** recognizes innovation in instruction in Law and Courts**: Ron Kahn, Oberlin College.**

Other Awards

Edward S. Corwin Award

The Corwin award, which carries a prize of $750, is awarded annually by the American Political Science Association for the best doctoral dissertation completed and accepted during that year or the previous year in the field of public law, broadly defined to include the judicial process, judicial behavior, judicial biography, courts, law, legal systems, the American constitutional system, civil liberties, any other substantial area, or any work which deals in a significant fashion with a topic related to or having substantial impact on the American Constitution: **Justin Wert, University of Oklahoma** supervised by **Rogers Smith, University of Pennsylvania**.

Alexander George Award

The **Alexander L. George Article Award** honors Alexander George's contributions to the comparative case-study method, including his work linking that method to a systematic concern with research design, and his contribution of developing the idea and the practice of process tracing. This award may be granted to a journal article or to a chapter in an edited volume that stands on its own as an article: **George Thomas, Williams College** for his essay, "What Dataset? The Qualitative Foundations of Law and Courts Scholarship," published in the Winter edition of the Law and Courts newsletter available at: http://www.law.nyu.edu/lawcourts/pubs/newsletter/Winter%202006.pdf

Announcements

Congratulations to Jon Gould, George Mason University and Lauren Cohen Bell, Randolph-Macon College for their Selection as Supreme Court Fellows.

Search for new Law & Courts Editor

The Law and Courts Section of the APSA is seeking a new editor for its newsletter *LAW & COURTS*. The newsletter is a vital source of information for Section members and publishes important exchanges and debates about developments in the law and courts field. It is published electronically three times a year (Winter, Spring and Summer). The editorship is an excellent opportunity for leadership and service to the discipline. It also offers a chance to meet a range of other law and courts scholars and helps shape discourse in the field. The new editor will be responsible for the Winter 2008 issue. The position is appointed for a three-year term and requires a modest time commitment (3-4 hours per month). Familiarity or previous experience with maintaining electronic mailing lists and Adobe Pagemaker software would be helpful but is not necessary.

Nominations and self-nominations should include a short letter outlining interest in the position and ideas for the newsletter, and a current vitae. They should be sent to Mitch Pickerill, Chair of the Search Committee, at mitchp@wsu.edu, by March 1, 2007. You may also contact the other members of the Search Committee, Sara Benesh at sbenesh@uwm.edu or Kathleen Sullivan at sullivak@ohio.edu.

Conferences & Events

American Political Science Association
http://www.apsanet.org/section_222.cfm
August 31-Sep. 3, 2006 Philadelphia, PA
Law and Courts: Robert M. Howard, *Georgia State University*
polrhh@langate.gsu.edu
Constitutional Law and Jursiprudence: Carol Nackenoff, *Swarthmore College*
Cnacken1@swarthmore.edu

Georgia Political Science Association
http://www.gpsanet.org/
November 16-18, 2006 Savannah, GA

Northeastern Political Science Association
http://www.northeasternpsa.org/
November 9-11 Boston, MA
Program Chair: Bruce Caswell, *Rowan University*
caswell@rowan.edu

Northwest Political Science Association
http://www.lclark.edu/~pnwpsa/
October 19-21, 2006 Bend, OR
Law and Courts: Cornell W. Clayton, *Washington State University*
cornell@mail.wsu.edu

Western Political Science Association
http://www.csus.edu/org/wpsa/index.stm
March 8-10, 2007 Las Vegas, NV
Deadline for Proposals September 11
Judicial Politics and Public Law: Don Crowley, *University of Idaho*
crowley@uidaho.edu

Southern Political Science Association
http://www.spsa.net
January 4-6, 2007 New Orleans, LA

Midwest Political Science Association
http://www.indiana.edu/~mpsa/conferences/conferences.html
April 12-15, 2007 Chicago, IL
Deadline for Proposals October 2
Judicial Politics : Valerie Hoekstra, *Arizona State University*
valerie.hoekstra@asu.edu
Public Law : Julie Novkov, *University of Oregon*
novkov@uoregon.edu