Law & Courts

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

Winter 2004

Volume 14 No. 1

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A Letter from the Section Chair

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I enjoyed seeing colleagues and friends in Philadelphia last August and learning about their most recent activities—professional, political, and otherwise. The 99th Annual Meeting of the APSA was largely a success for Law and Courts. Constitutional Law & Jurisprudence and Law and Courts had a total of thirty panels, which covered the panopoly of research interests of the members of the section. Unfortunately, attendance at the panels was slightly down this year with the result that the number of panels allocated to Law and Courts and Constitutional Law and Jurisprudence for the 2004 meeting is fifteen and five respectively. Keith Whittington, the program chair for Constitutional Law and Jurisprudence, expects that with co-sponsoring the number will be closer to what it was in 2003.1

According to the APSA's most recent count in early December, the membership of Law and Courts now totals 871. Out of the thirty-seven organized sections, we are currently vying for second place. Comparative Politics has 1588 members while Public Policy, with 876, has moved into second place. So please tell new colleagues and graduate students about Law and Courts and encourage them to join.

The concerns of Law and Courts are consistent with the stated theme of the APSA's 2004 annual meeting: "Global Inequalities." In the spring, 2002 issue of the Law and Courts Newsletter, then Section Chair Neal Tate applauded the arrival of comparative judicial politics.2 Since then, the scholarship in the field of comparative judicial studies by members of the Section has been impressive both in terms of quality and quantity. Recent studies of the interplay between politics and judicial institutions in other countries have provided major contributions to the field. Examples include, Gary Jeffrey Jacobsohn, *The Wheel Of Law: India's Secularism in Comparative Constitutional Context* (Princeton University Press, 2003); Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge University Press, 2003); and James L. Gibson and Amanda Gouws, *Overcoming Intolerance in South Africa* (Cambridge University Press, 2002).

Additionally, studies of legal institutions that cross national boundaries and/or examine the relationship between democracy and judicial power are playing an increasingly important role in the study of law and courts. Just a few examples include, Leslie Goldstein, *Constituting Federal Sovereignty: The European Union in Comparative Context* (The Johns Hopkins Press, 2001), Lisa Conant, *Justice Contained: Law And Politics in the*

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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 **NEW** editor:

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Articles, Notes, and Commentary

UPDATES!!

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 PDF files. In addition to bibliography and notes, a listing of website addresses sited 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 posible. Finally, authors should notify:

Keith Bybee, kjbybee@maxwell.syr.edu,

of publication of manuscripts or works soon to be completed.

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European Union (Cornell University Press, 2002); and Ran Hirschl, *Towards Juristocracy: The Origins And Consequences Of The New Constitutionalism* (Harvard University Press, 2004). My short list, which leaves out numerous other important books and articles in the area of comparative judicial studies, is intended to underline the growing importance of the study of judicial politics outside the United States as well as legal institutions that cross national boundaries.

Diversity is an issue that is of interest to all of us in academia and particularly to the members of Law and Courts. Efforts to reach beyond the study of legal institutions in the United States are consistent with a concern for diversity. Recent developments closer to home are also closely connected to such a concern. Last June the United States Supreme Court upheld an affirmative action admission's program at the University of Michigan Law School. The five-member majority reaffirmed Justice Powell's pronouncement in 1978 in the Bakke Case that although affirmative action policies will be treated as other racial classifications and subjected to maximum scrutiny, they may be upheld if they are sufficiently narrowly tailored to achieve the compelling interest of attaining diversity in the student body.[3] The concern with diversity is not limited to the quest for genuine racial integration in higher education. An additional aspect of diversity in the academy that is important is that which is made possible by including a variety of perspectives regarding both political ideologies as well methodological approaches. There were two important discussions this past fall that serve to emphasize the concerns of members of the Law and Courts section with diversity in this regard. One, which began as an OpEd piece in the New York Times and continued on the Law Courts Discussion list, concerned the question of whether conservative political views are excluded or at least seriously disadvantaged in Political Science departments.[4] The second controversy was sparked by a response to the Call for Papers for the 2004 meeting and revolved around the issue of whether contrasting methodologies are being given equal consideration and respect within the Section. I wish to draw attention to these discussions in order to underline the importance of diversity in all the senses in which I have used it here. I am looking forward to 2004, hoping that it will be a productive year and one in which all members of the section will strive for diversity.

Notes

1 Originally Law and Courts received 18 and Constitutional Law & Jurisprudence received seven but co-sponsoring brought the final count to thirty.

2 http://www.law.nyu.edu/lawcourts/pubs/newsletter/spring02.pdf

3 (Grutter v Bollinger No. 02-241, June 23, 2003 see, (http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&navby=case&vol=000&invol=02-241).

4 David Brooks, "Lonely Campus Voices," New York Times, September 27, 2003; for the complete discussion see, http://www.danpinello.com/Debate.htm

Articles

Remarks from S. Sidney Ulmer from the Lifetime Achievemnet Award Presentation

S. Sidney Ulmer, Professor Emeritus
University of Kentucky

(These remarks were presented by S. Sidney Ulmer on August 29, 2003 upon being presented the Lifetime Achievment Award by the Law andCourts Section of the American Political Science Association in Philadelphia, Pennsylvania.)

Some years ago, Brad Canon and I had a colleague at Kentucky named Amry Vandenbosch. Amry was one of the founders of the United Nations who lived into his nineties. He was the recipient of many honors during his working career and later in life.

In his retirement years when we would congratulate him on receiving some special recognition, he would say: "If you live long enough someone will want to give you an award." When I first heard that comment, I thought about it for a moment. But then recognizing that his evidence consisted of a simple correlation and an "n" of one, I did not find the observation very compelling. But, at this moment, I am wondering whether I should rethink my position on that issue.

But in any event, I am honored to be here to receive the Lifetime Achievement Award. As a member of the Association for 50 years, I have had my share of podium-moments. But nothing tops this. So I want to thank Kevin McGuire, Larry Baum and his committee, and the Law and Courts Section for making it all happen.

Looking back over my years as a political scientist, I am very proud of the progress we have made in advancing our knowledge of judicial behavior and institutions.

At the same time, all is not peaches and cream in paradise. The July 2003 issue of PS carries a set of seven papers dealing specifically with methods and methodology and a number of broader questions about the state of Political Science as a discipline.

One particularly bold suggestion is that Political Science has no discursive substantive core, lacks a sense of common purpose, and is riven by theoretical and methodological, as well as epistemological divides. That comment made me wonder to what extent it might be equally applicable to the judicial sub field. So I spoke with enough of you to get a sense of the fit. What I find is that we are not playing on the same piano. And if we are, the melodies are somewhat discordant and the lyrics don't make sense to everyone.

Drawing on my reading of the PS papers and, my conversations with some of you, I think I have a good sense of current thinking about our research endeavor and how we carry it out.

If you will indulge me, I would like to outline briefly two Modes of thinking that encapsulate some of our contrasting views. These Modes, which I call Mode 1 and Mode 2, raise real issues and imaginary or real extrapolations therefrom. In this way I can bring to the forefront a mix of issues and give you much with which to disagree. But don't be surprised if a thought or two of mine somehow finds its way into the mix. (Parenthetically, if you have your program handy you may want to underline the word "imaginary.")

The first Mode draws heavily from Pluralism, defined as a state in which those with disparate interests and perspectives on theory, data, and methods pursue a common goal.

The second Mode has a somewhat allegorical relationship with free market economics.

These two Modes have several things in common. Both have the goal of advancing and disseminating knowledge through the pages of the major Political Science journals. At the initial stage of idea germination both Models are open and tolerant of different choices as to what we study and how we study it. And in both, the method of choice in any particular study is that which is most appropriate for answering our research question. Unfortunately the word "appropriate" is not defined. But beyond that, discrepancies abound.

Mode 1 calls for no a priori theoretical, methodological, or data commitments. Thus it runs the risk of misperceiving the inequalities that characterize each of these dimensions. And without standards for addressing the quality of research, Mode 1 thinkers cannot resolve the epistemological uncertainty that presently plagues us.

To advance knowledge we must have a reasonable agreement on how to recognize a new judicial fact – some process and principles for making the determination that any new research finding is in reality advancement in knowledge. The argument of fallibilism-that knowledge may be temporary and erroneous—does not derail the need to address the epistemological problem. Some postmodernists contend that there is no distinction between facts and values. I concede that such an argument may be made. But, surely we profit more if we assume the distinction.

While Mode 1 seeks publication in Political Science journals, it does not allow the journals to always publish the "best research" available to them. For it offers no definition of that term. Instead it requires that journal editors publish articles that are representative of Political Science as a whole, both as to method and field substance. And it stipulates that articles appearing in the journals must reflect, with mathematical exactitude, the frequency with which such work is being done in the field. It also requires all editors to recognize that the rich theoretical, methodological, and substantive variety of our discipline has not been reflected as well as it should have been in our journals.

To reach these goals, the editors are required to expand their boards, reach out to a wider audience or set of readers, and encourage the submission of research featuring a mix of theory, data, and methods. If this were a chess game, the Mode 1 game would be open to any and all opening moves. But the end game would, to some extent, be determined by the restrictive parameters imposed on the journal editors.

So, in general, Mode 1 has a tone of "live and let live". That is well meaning, perhaps. But its seeming reluctance to be judgmental or to be judged is the first hop toward nihilism.

In Mode 2, different implications flow. Here knowledge is the product and research is the process of production. The Political Science journals constitute the market. The definition for "best research" is: that based on a theory that is logically satisfying, that generates interesting questions and hypotheses, that uses the highest quality of data available, and methods appropriate for analyzing that data.

In Mode 2 thinking, the equality of theory, methods, and data is specifically rejected. That is, Mode 2 thinkers do not shrink from being judgmental in such matters. The key here is the quality of data or evidence for the conclusions offered. According to Mode 2 thinkers, that quality should be publicly designated (i.e., a hierarchy of evidence should be established) and details provided by each journal editor and his advisors as end-users. The process will be to specify the different categories of research in which we engage, and establish a hierarchy of evidence appropriate to each.

I do not propose to detail the possible contents of such a hierarchal framework for I do not want to distract you.

Over time, the decisions made by journal editors and those empowered to advise them, are expected by Mode 2 thinkers to narrow our understanding of acceptable epistemological processes. Now should you ask at this point, "who is to judge the judges?" Those subscribing to Mode 2 thinking would likely suggest that we have to place our trust somewhere. And should we want to narrow the possibility of editorial misjudgment, we should introduce current and potential editors to

some kind of training-as is already done in other disciplines-but not in Political Science to my knowledge. I ran that suggestion by an editor of a major Political Science journal. He agreed that editorial training classes could be beneficial in some cases.

In this free market scheme, competition between knowledge products is to be expected. And competition has consequences. Thus, all knowledge products will not be equally successful. Some entrepreneurs will fail to get funding for their research. Some will get past this hurdle and turn out to be non-competitive. Bankruptcies will occur. In short, there will be winners and losers. Research utilizing a higher level of evidence will be preferred over that using a lower level, with the proviso that where only lower quality data is available and the research question demands an answer, insistence on high level evidence may be waived.

Mode 2 may sound a little harsh on first blush. But by categorizing different kinds of research and establishing a hierarchy of evidence for each category, no one way of doing business is unduly threatened. For all that is required is that within your category you use the best data available for assessing your particular research question. So we see that Mode 2 also implies a kind of pluralism. For once we have categorized research and rank ordered evidence from best to worse, all are free to engage in the investigation of their choice. And by employing a common frame of reference, we gain the ability to evaluate level of evidence across a variety of research conditions.

In the final analysis, the validation of evidence will be determined by the end-users who do or do not believe and act upon the "knowledge" we provide them. And a potential solution to our epistemological standoff may lie in tracking end-user's choices overtime. By doing so we can determine the weight they attach to the theories, methods, and evidence we use in producing our research results. It strikes me that this is a research project that is feasible and desirable given the epistemological quagmire in which we now find ourselves—assuming, of course, that we are willing to concede to the end-user the authority to determine our preferred theory of knowledge.

In the Mode 1 and Mode 2 Models the end-user appears to be the Political Science journals. At least, I am not seeing studies showing otherwise. But others would seem obvious. For example end-users would certainly include those who cite our research in their own papers and publications. But the journals and those who cite them are like fish swimming in the same bowl. They can see the world surrounding them, but they are having utterly no impact on it. Other significant end-users would be policy makers who have need for what we can provide. But they are on the outside of the glass looking in.

To improve on this situation, we should stop viewing publications in our journals as an end in itself. It is inherent in human nature to see publication in this way. I can't tell you not to pursue publication as an end goal when your very job might be on the line. For it may gain you a promotion, a salary increase, a lighter teaching load or even vault you into the rarefied atmosphere of the glitterati (here I am reminded of Ralph Waldo Emerson's observation that "to be great is to be misunderstood.")

But in any event, such ends as I have described should not be the brightest stars in our firmament. To dim the glow, I would call on our journal editors to devise strategies to prevent us from conceptualizing our journals as end-users. And it seems to me that an evidence classification scheme would be a useful first step in that direction.

We need to go beyond Modes 1 and 2 in our thinking and concern ourselves with the world that policy makers must confront every day. In particular, they need the knowledge and insights that we can provide about judicial institutions and behavior. We should seek to be a major source of such knowledge. If we are not, we should wonder why.

In summary, it clear that our two styles of thinking involve a clash of polarizing ideas and it is unlikely that twain shall ever meet. To continue as before is hindering if not damaging the development of the field. I do not see many conversions or new baptisms on the horizon. To get pass this point we must:

First, stop appending pejorative labels to those with whom we disagree. Lacking immaculate perception, the righteous should stop condemning the wicked.

Second, we should continue the dialogue over epistemological and other differences in a constructive manner.

Third, we should set up a classification scheme that will provide a common framework across all types of research so we may judge the relevance of evidence to conclusions.

And finally, we should facilitate the ability of end- users to utilize our product, by assigning an evidence classification to each publication. In short, we do not want potential end-users to become end-losers. For if they do not buy our product, they cannot capitalize on the expertise that we have to offer.

At this point, I think I have given you enough, imagined or otherwise, to brook some disagreements. But the sunny side of that is that disagreement is often the beginning of dialogue leading toward positive ends. Obviously, I do not have all the answers to the questions I have raised. Only you can furnish them. But if you have found enough to disagree with in all this, may that be the first step in the search for solutions to our troubles.

If so, my last words before such an esteemed Political Science audience will not have been tossed to the wind.

Notes

WRITING SUCCESSFUL MOOT COURT CASES FOR IN-CLASS SIMULATIONS

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Introduction

Faculty wishing to go beyond lectures or assigned readings frequently adopt role playing exercises that involve problem-based learning (Greening, 1998; Albanese, 1993; Hensley, 1993).[1] Such exercises often increase course enrollment and participation, assist students to improve their critical and analytical skills, and, if the project involves group work, expose students to new ways of thinking as well as to their classmates. It is popular for faculty adopting role-playing exercises to have students engage in academic simulation of appellate advocacy known as moot court. (Deardoff and Aliotta, 2003; Knerr and Sommerman, 2001; Guiliuzza, 1991). Moot courts come in different formats and can simulate different aspects of the judicial process from case selection to oral argument (Weizer and Walsh, 2002; Canon, 1997; Hensley, 1993; Collins and Rogoff, 1991; Claude and Parker, 1984). This includes having students serve as lawyers or judges as well as serving as "law clerks, reporters, or amicus brief writers." (Knerr and Sommerman, 2001: 4). In some simulations, students serve as the lawyers and the judges. In others, faculty, alumni, or local attorneys serve as the judges or, on occasion, as the lawyers. (Knerr and Sommerman, 2001). Moot court usually blends a written assignment (e.g., legal briefs that summarize a side's arguments or judicial opinions) with a discussion session between the lawyers and the judges known as oral argument. Whether all students participate in oral argument, or whether events in oral argument unfold without a pre-determined scripting, is up to faculty running the simulations. Moot court may end with oral argument, or, there may be a phase when the court deliberates and votes on the case and produces an opinion, which the class discusses, and debates (Ringel, 2002a; Tolley, 2002). There is great diversity in moot court. There is at least one thing, however, that moots courts have in common — students learn about the law and the judicial process.[2]

Where is Moot Court Used?

Moot court is especially popular in law schools and in undergraduate courses related to the law or the judicial process. Such courses may be most associated with political science, however, it is important to note that moot court is commonly used in a variety of disciplines including media, history, journalism, sociology, art, economics, business, and the life sciences. (Carlson and Skaggs, 2000; Dhooge, 1999; Bentley, 1996). Moot court is used in a wide range of disciplines because students enjoy it and it can be used to educate students about a variety of subjects.

Moot Court vs. Mock Trial

Moot court is not to be confused with mock trial. In mock trial, students try facts before a court that rules on questions such as innocence or guilt. Mock trials feature prosecution and defense teams who deliver opening and closing statements, and examine and cross-examine witnesses. In moot court, the trial has already occurred; the issue is not to decide facts, but to address issues such as whether the trial court erred in its application or interpretation of the law, or whether a law is constitutional. Moot court lawyers argue for a set time period before a panel of judges, which asks them questions and, depending upon the simulation, deliberates privately before rendering a verdict.[3]

Authors's Intentions for this Article

This article focuses on a very specific aspect of moot court; case selection. Readers interested in learning more about moot courts, in particular their basic framework or structure, how to organize and run a moot court, or moot court possibilities beyond the classroom, will find a healthy scholarship of articles (Canon, 1997; Kenety, 1995; Cooper, 1979), and conference papers (Ringel, 2002b, Tolley, 2002, Weizer and Walsh, 2002) devoted to such issues.[4] Our intention is to compliment the existing literature by focusing on certain key issues associated with deciding on a moot court scenario. Typically, one either creates a fictional case of his or her own design, or one selects a real case. A real case can either be an active case or one that has already been decided. The decision about what case to use may be the most important decision a moot court instructor or facilitator makes. The case you select will say a lot about your expectations for your students; there is a fine line between being too easy and too difficult. Moreover, a case needs to capture the students' interest. At the same time, it needs to be relevant to the subject matter taught in class.

There are strengths and weaknesses associated with creating a case, and selecting a real case. We have used both approaches and are acquainted with many of pros and cons associated with each approach. We do not presume to walk readers through the creative act of writing a case or through the entire thought process associated with picking a real case. Our intent is to call the reader's attention to several issues or dilemmas associated with the art of selecting a case for moot court. This article is divided into three sections. The first section discusses strategies for creating fictional moot court scenarios. The second section focuses on strategies for how to select a real court case for a moot court. The final section offers a summary and discusses issues related to selecting moot court scenarios that might invite future inquiry and discussion.

Creating A Case for Moot Court:

The Pros and Cons:

Creating your own moot court case is an art that may require some time and trial and error. The decision to create a fictional case should be made carefully with awareness of the possible costs and benefits with which it may be associated. In brief, the costs can be summarized as follows:

- It can take considerable time and effort to create a court case. One needs to research issues and brainstorm possible scenarios. With real cases, such work is not needed.

- No matter how precise and careful one is, there always seems to be a factual question that arises that even the most gifted of case writers was unable to foresee.

- Real cases include lower court opinions that students might read, which may help to sharpen issues. Unless one is willing to produce mock-lower court rulings (a time consuming process, no doubt) fictional moot court scenarios will lack such opinions.

Having noted the costs associated with creating a fictional set of facts for a moot court, we turn to the possible benefits associated with such an endeavor. The benefits are as follows:

- It can be fun and rewarding. There is a certain satisfaction that comes from the creative act of conceiving a moot court scenario. There is the basic controversy to envision and the case's path through the courts to describe. This is not to mention the different parties (who often have such colorful names) to create.[5] Seeing students bring this scenario (which began in your head) to life and give it new angles or twists can be quite fulfilling. One of our former students has said that there is quite a "rush" associated with developing an argument and knowing that you "nailed it" when you presented it to the class. In truth, there is a similar rush that comes from designing a case that goes well.

- Protection against plagiarism. Sadly, students, intentionally or not, cheat. Using real cases, for which briefs and opinions can be found on-line or through a phone call to a law firm or a court clerk, opens the door to plagiarism. One way to shut that door, or at least see that it is tougher to get past, is to create your own fictional case.

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- Real cases, if the facts are dry, may fail to spark student interest. Creating your own case makes it possible to "spice things up" through outrageous sets of facts, crazy names, or interesting subplots. Such an approach might hold student interest.

- Some of us may prefer raising a limited number of issues. Others prefer cases that raise a host of issues or allow students to explore issues outside the parameters of the facts before them *per se*. If you write your own case, you can influence the number and type of issues that students raise in their preparation for oral argument.

- When selecting a real case, one should also be aware that a decision might be rendered in the midst of your semester; such a mid-semester ruling might affect a student court trying the same case. Choosing a fictional case eliminates this concern.

Setting Out to Write Your Own Case

Once you decide to write your own case, you will need to select a subject for your case. The options available to you are endless. We have written cases that touch on a diverse population of subjects that include obscenity, a presidential line-item veto, anti-terrorism measures, the expulsion of a member of the U.S. House of Representatives for actions related to official business, and a federalism case that involved both school vouchers and compulsory weapons checks at public schools. Unfortunately, it is impossible to always correctly predict what issues will excite students and what will bore them. Most surprising to us was the popularity of a line-item veto case[6] as well as the lack of interest in cases involving the expulsion from the U.S. House of Representatives of would-be Representative David Duke for actions taken while conducting official business[7]and a challenge to congressional reforms of the electoral college.[8] Our best guess is that if the subject is germane to the class, and if it involves basic constitutional questions dressed in an appealing or, better yet, a shockingly fantastic way, such will grab, and keep, most students' interest. We often run proposed cases past former students for their opinions and comments with respect to how they would view the case and how they expect other students would feel about the proposed case.

A second decision that one must make with respect to moot court cases is how difficult or involved to make them. This may depend in part on the nature and dynamics of the class. Arguments exist on both sides. The remainder of this section discusses some of these arguments.

A certain amount of student feedback indicates a preference for cases that are not "too cut and dried" but allow for student innovation and a sense of achievement in the finished product. Seen in this light, a case whose facts are too cut and dry or too vague may fail to adequately motivate students. Assignments that are challenging and provocative may motivate students to view legal issues in ways that may be unusual or abstract. If you use such a case, it is important to stress to students that there is no *right or wrong* decision. Students seem to respond well to such a scenario. Using a difficult or involved case may help prepare students who intend to attend law school for law school moot court experiences and, in an ideal world, it will help prepare would-be lawyers for their legal practice. In addition, a case that is involved and raises several tough issues may help keep oral argument from focusing too much on too narrow a range of issues. An additional reason for developing cases that are fairly difficult or involved that, is if recycled, such cases are likely to turn on different issues as succeeding classes of students will be likely to view the case differently.[9]

There may be reasons for using a case that is more cut and dry or less challenging. One reason may be that your class is simply not ready or well suited for a case that is particularly involved or of a higher level of difficult.[10] A case that is long on complexity may prove inappropriate for a non-law class in which the objectives may have more to do with teamwork or leadership skills or very specific issues related to the law than learning about the judicial process or about constitutional law in general. Such a case may intimidate or needlessly confuse students. A case that is too involved or to too tough may stunt their interest or prompt them to drop out of their group.[11] In addition, one may sacrifice a certain amount of depth with respect to studying and understanding issues when one opts for a case that causes students to consider too broad a range of subjects. This can be exacerbated if students suffer from a lack of selectivity in their writing and researching.[12] A final reason for choosing a less involved or less complex case may be the amount of time commitment that you can afford. Moot court almost inherently means extra work for instructors and facilitators. Writing an involved case can be a lot of work. Using such a case may confuse students, or, in the ideal world, it will spark their interest. Such a case may also cause students a bit of angst. Either way, heightened student interest or anxiety may add to your workload. This can be both

good (as in rewarding) and bad (as in time commitment). Your workload may be increased by a case that is too tough or too overwhelming for students or if it contributes to collective action problems within the legal teams. Consequently, one is advised to consider one's own schedule and goals before designing a moot court case.

The Act of Writing Your Moot Court Case

Thus far, we have discussed several key issues or dilemmas associated with deciding whether to create your own moot court scenario. Once you have elected to write such a case, and you have settled on a topic for your fictional case and how elaborate or difficult to make it, you are ready to begin the creative act. As we indicated in the introduction, we will not presume to instruct or walk the reader through the creative process of writing a case. Such is beyond the scope of this article. We will, however, offer several tips intended to guide you through this process.

* Decide What to Include in Your Case Handout: At a minimum, one would expect to provide students with some summary of the case facts. As the instructor or facilitator, you must decide what else, if anything, to give students. Extra materials might include: a sample legal brief that students are to use as a guide, a fictional opinion of a lower court that is now being appealed, handouts to guide them through their written assignment, or a table of case citations relevant to the case before them.

* Decide What Rules to Set: A moot court needs rules. Some rules may be obvious. For instance, rules are needed to dictate how legal teams and the justices are to conduct themselves prior to and during oral argument. With respect to the case you write, rules will be needed to govern the use of the materials that students receive. For example, students need to agree not to reinvent the facts, and the justices should limit their inquiry to the facts included in the case you give them. You should consider prior to distributing your case whether students will be allowed to introduce cases or issues not included in the materials that students are provided. In the event of a tie vote, standard court rules dictate that the appellee wins as the decision will revert to the immediate decision of the most recent court to hear the case. You would do well to be certain that the facts indicate which side is the appellant and which is the appellee. If you wish to require that all students participate in oral argument, include enough issues to make it possible for students to comply with such a rule.

* Decide How Many Teams to Include in the Facts: If creating your own case, you have control over how many parties there are to the case. This is a bonus for classes that are too big for two legal teams. In such instances, you might opt for three or even four legal teams.

* Make the Case's Significance Clear: For some cases, such as a hypothetical case that closely follows the facts of Bush v. Gore (2000), or a direct challenge to abortion rights or to *Miranda* warnings, the significance may be appear to be readily apparent. For other cases, the significance may not be as obvious. Either way, there is no harm in making the significance of the class's fictional case clear both in class handouts as well as in your lectures, e-mails, or out of class conversations with students.

* Be Creative: Nothing grabs student attention like a case that not only raises an interesting topic, but also does so in a unique, even outrageous, manner. For example, free speech cases are almost always a sure-fire success. Not all free speech cases are equal, however. Contrast the likely affect of a commercial speech case or a challenge to campaign finance laws based on first amendment grounds with a case involving obscenity, flag-burning, or even nude dancing. In such cases, which are already settled precedent, dressing the cases up to distinguish them from existing case law may increase the odds of capturing (and keeping) student attention. Consider, for instance, the difference between the run-of-the-mill presidential line item veto law, and one that asks if an amendment to the Constitution to provide for such a power would violate the idea of the doctrine of separation of powers in general and, as such, might violate the spirit of the Constitution itself. Dressing the case as such asks not only about a line-item veto, but also raises the issue of whether a constitutional amendment can be at such odds with the majority of the text itself so as to be invalid unto itself. Creativity tends to make cases appear more mysterious, if that word can be used. Upon discovering that there may be more to your case than meets the eye, students may be motivated to go through it like one peels an onion; issue by issue (or layer by layer) looking for additional issues or arguments. If you can achieve this just through your writing, you have won a great deal of the battle to motivate.

Selecting a Pre-Existing Case for Moot Court:

Many of the same considerations involved in writing one's own case apply to choosing a pre-existing case as well. The case should be relevant to the subject matter of the course, should be interesting, and should lend itself to making the points the instructor wants to make concerning constitutional doctrine and/or interpretation. In addition, one needs to decide how much to borrow from reality and how much to adjust reality to suit one's purposes. At one extreme, one could choose a case that is just about to go to the Supreme Court, refer students to on-line briefs in the case as well as the decisions of the courts below, and have them take the case from there. There are several reasons why this course of action may not be the best. First, the amount of material is usually massive. Second, the materials are sometimes more difficult to understand than is optimum for an exercise of this sort. Third, real cases often raise a number of issues and instructors might prefer to focus on one or two key issue in a moot court exercise. Fourth, judges in a case that has since been decided may find it difficult to be "neutral" or may be reluctant to diverge in their vote from the real ruling. For these reasons, simply using a real case in its entirely may not be the best course of action.

At the other extreme, one might find a case that is in its very early stages of development, or even one that did not get very far in the courts, and use it to prepare a case using a process much like that described above. For instance, one might read that a high school English teacher was dismissed by her local school board because someone noticed a picture of her in the nude taking part in a Wiccan ceremony, the picture having been posted on the web page of the Wiccan coven that sponsored the ceremony in question. One might use this set of facts to develop an essentially fictitious case in the manner described in this article. There might never have been an actual case filed in the real situation, but that need not stop one from fantasizing a bit and finding a way to get a case based on these facts to the United States Supreme Court.

A third scenario might be selecting a case that has proceeded through the courts, perhaps even as far as having been accepted for review by the United States Supreme Court, and then editing or writing synopses of the relevant documents (i.e., briefs, opinions) and using these rather than the real documents in the moot court exercise. One might keep the real name of the case or disguise it by using made-up names (the lure of funny names based on bad puns is great). Use of fictitious names can discourage students from looking for the real documents and relying on them in writing their briefs and opinions. Trying to discourage such research has pedagogical as well as practical reasons. To be sure, one wants to discourage plagiarism and encourage students to think and analyze rather than borrow and copy, but one might also want to focus students on certain key doctrines and precedents and may not be able to do so if they rely too much on documents that include discussion of other issues and cases. In either event, students should be instructed to rely solely on the materials provided by the instructor and not on those found in the real briefs and opinions.

Whether one adopts one of these three approaches or uses one somewhere in between, one must do the same things as one would do in a totally invented moot court scenario: decide what to include in handouts, decide what rules to set, decide on teams, and make clear the significance of the case. These considerations need to be addressed in much the same way as they would be if one were writing a case from scratch.

Why would one want to use a real case rather than an invented one? Not to decrease one's workload. Unless one adopts the first scenario and uses real materials exclusively, one still has to write a set of facts and other materials to go along with them. Using real situations does somewhat ease the burden of creativity. Real cases are often stranger than those one might make up. Using a real case relieves one of having to think up strange factual situations; they are often out there to be found. Knowing that the absurd scenario one is asking students to deal with came from the real world gives one a sense of confidence.

Why might one not want to use a real case? Largely because real cases do not necessarily raise issues that one wants them to raise. This is why one might want to tweak reality a bit and embellish the facts found in the actual case. Changing the names of parties to cases is advisable when one changes the facts of the case. Sometimes tweaking reality will not achieve one's objectives. When that is the case, one should probably undertake the task of writing an entirely fictional case.

But whether one uses an entirely fictional case or one based at least in part on reality, moot court exercises are an interesting device for improving student involvement in constitutional law courses. While they involve a great deal of work for the

instructor, they can be fun to write and run. Constitutional law instructors should strongly consider using moot courts in their courses.

How to Utilize the Internet

Whether you create your own case, or choose a pre-existing case, faculty will find a number of on-line legal aid services useful. Faculty creating their own cases might comb on-line web sites for an idea for a case, perhaps a real case to emulate, or they may use such sites to researching case-law. Faculty selecting a real case will want to look on-line to find such cases and to view what materials pertaining to the case exist on-line. Useful web-sites for these purposes include those of advocacy groups, such as the American Civil Liberties Union (http://www.aclu.org), the National Association of Colored Persons (http://www.naacp.org), or the Mexican-American Legal Defense and Education League (http://www.maldef.org), as well as web-sites run by think-tanks such as the Heritage Foundation (http://www.Heritage.org), or the Cato Institute (http://www.Cato.org). It may be beneficial to use government web-sites such as those of the U.S. Supreme Court (http://www.supremecourtus.gov), the different federal courts of appeals (http://www.uscourts.gov), or various state courts (for example, http://www.courtinfo.ca.gov). In addition, there are a number of legal source engines that provide links to cases or legal publications. These include http://www.FindLaw.com, http://www.oyez.org/oyez/frontpage, http://www.romingerlegal.com/supreme.htm, and, where available, LEXIS-NEXIS. Faculty wishing to view past moot court cases used in classes taught by other instructors might examine university web-sites, while those interested in discovered cases used by moot court tournaments might visit moot court tournament web-sites such as http://honors.uta.edu/mootcourt/about.htm.

Summary

A key decision that must be made before moot court is whether to use a real or a fictional set of facts. This article addresses certain key issues associated with deciding which type of case to use in your moot court scenario. Whether you elect to create a case, or to use an existing one, there are certain issues that one must consider. These include selecting a case that is relevant to class, one that is appropriate in terms of complexity and difficulty, and one that will keep student interest. In deciding whether to use a real or a fictional case one should weigh at least three issues.

* The time and energies it will take to create a fictional case can be considerable. Real cases may consume less time and effort.

* No matter how precise and careful one is, there always seems to be a factual question that arises that even the most gifted of case writers was unable to foresee.

* Real cases can invite plagiarism. Creating a fictional case may lesson such activity.

For those who decide to write their own case, this article offers some general advice meant to produce an enjoyable moot court experience. Most salient, perhaps, is the need to produce a case that is both exciting and appropriate for your class topic and the level of your students. Faculty is advised to be as clear and concise with their students as possible and to produce a case whose general significance is clear and whose subject will grab students. While it is impossible to always know what will interest students, relying on classic issues such as free speech or free press or privacy, or incorporating current events such as the 2000 flap over the electoral collapse, or a challenge to presidential war powers are likely to produce a successful moot court.

This article also offers advice to those who elect to use an existing case for their moot court scenario. Faculty elect to go this route, are advised to consider using a real case that has yet to be resolved. Such an approach may work to reduce plagiarism. It may also help to avoid students being overwhelmed by a mountain of material available to a given case. In addition it may encourage student-judges to in fact be "neutral" as well innovative in their approach to the case. Faculty who wish to use a real case, but =one that has been decided, might choose to edit the materials available to the students, or limit what materials they may access and present. Faculty opting for this approach are encouraged to alter the names and dates of the case.

Whichever approach one selects, faculty will find moot court to be a fair bit of work. Chances are, however, that the rewards will exceed whatever costs are associated with the project. For students there can be, to quote a former student, a genuine "rush" that comes with participating in oral argument. For faculty, our formal participation may be more limited. There is, however, a similar "rush" that comes from designing or selecting a case that students like and enjoy. For moot court facilitators, it does not get much better than that!

Notes

1. Readers who desire more information about problem-based learning (PBL) are encouraged to review the following web-sites:

http://www.udel.edu/pbl/

http://66.218.71.225/search/cache?p=%ef%bb%bfproblem+based+learning+literature&ei=UTF-8&url=Ld255inAUgkJ:www.samford.edu/pbl/how2.html

http://www.pbl.uci.edu/whatispbl.html

2. This appellate court is often comprised of students, or former students. It may also be comprised of faculty, or in some instances it may feature attorneys or even real judges who volunteer their time. In at least scenario it is reported that students serve as the justices while real lawyers or judges argue the case. Charles R. Knerr, and Andrew B. Sommerman, "Bringing the Court into the Undergraduate Classroom: Appellate Simulation in American College," *Laws and Courts* 11:2 (Spring, 2001: 4).

3. Depending upon the simulation the court may announce which legal term performed best. It might also include some verdict that addresses the merits or issues of the case. In such instances, the court may be assigned the task of producing a written opinion that explains the rationale or justification for its decision and provides some direction for future courts deliberating similar issues.

4. A review of the literature reveals a general lack of books on the subject. Typical of the books on the subject that do exist is Harvard Law School Board of Students and David Hill, 1991. *Introduction to Advocacy: Brief Writing and Oral Argument in Moot Court Competition.* 5th Ed. (New York: Foundation Press, 1996). Written for law students, this text assumes a certain level of knowledge and interest on the part of students that might be ill suited for undergraduates. Faculty interested in a "how to" moot court book for undergraduates might examine the forthcoming Peter Lang Press publication written by Paul Weizer, Kimi King, Charles Knerr, Lewis Ringel, William Schreckhise, and Andrew Sommerman, entitled *How to Please the Court: A Moot Court Handbook.*

5. One can have quite a good time designing a case. This is especially true when it comes to name. Fictional moot court cases are renowned for both inside and not too subtle jokes that provide a welcome escape from academic life. One can envision characters who share monikers with controversial public figures such as Bud Selig, David Duke, Anita Bryant, Chelsea Clinton, Andrew Giuliani, or an unpopular college president We have named characters in our cases after personal friends (most of whom view it as a kind of badge of honor) or simply employed fun names to say such as Geronimo Gusmano, Mortimer Vontz, or the fictitious Senator Sam Snort.

6. This was used during a period of deficit spending at both the United States Naval Academy and Louisiana State University.

7. Duke was in fact running for the U.S. House of Representatives at that time and the case was used in Baton Rouge at Louisiana State University.

8. This was a post-2000 election case used at California State Long Beach University.

9. This can be especially true of intervening events. We suspect, for example, that a recycled anti-terrorism case which was used in the Spring of 1999 might result in a different result post 9/11/2001 than it did in the Fall of 1999 when the bill was found unconstitutional.

10. Of course, one might not know about the abilities of the students in a class prior to writing the case.

11. One might desire screening out "slackers" before moot court starts; however, once teams are selected and the clock is ticking, losing students at that juncture may be less than ideal.

12. For that reason we often remind our students that the compulsion to know everything is the road to insanity. Sadly, it does not always work.

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Books To Watch For

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Due for release in November by Oxford University Press is *The Cultural Defense*, by **Alison Dundes Renteln** (University of Southern California). This book amasses hundreds of cases from the U.S. and around the world in which cultural issues take center stage—from a trial in California, where Navajo defendants assert First Amendment rights to justify their use of hallucinogen peyote, to an Ibo man from Nigeria who sues an airline for transporting his mother's corpse in a cloth sack, to Los Angeles where two Cambodian men are prosecuted for attempting to eat a four month-old puppy. Examining these cases, **Renteln** asks whether there is room in modern legal systems for a cultural defense. Though cultural practices vary dramatically, **Renteln** explains that there are discernible patterns to the cultural arguments used in the courtroom. These regularities offer judges a starting point for creating a body of law that takes culture into account. **Renteln** contends that a systematic treatment of culture in law is not only possible, but ultimately more equitable. A just pluralistic society requires a legal system that can assess diverse motivations and recognize the key role that culture plays in influencing human behavior.

In *Same-Sex Marriage and the Constitution*, **Evan Gerstmann** (Loyola Marymount University) asks whether the U.S. Constitution protects the right to same-sex marriage. Answering this question in the affirmative, **Gerstmann** concludes that the strongest argument in support of such a right is that there is a fundamental right to marriage broad enough to encompass same-sex marriage. The author also examines whether relatively conservative judges would rule that such a right exists, whether such a ruling would be appropriate in a democratic society, and whether such a court-created law could be effective in the face of public opposition. *Same-Sex Marriage and the Constitution* is available from Cambridge University Press.

Judicial Review in New Democracies: Constitutional Courts in Asian Cases was released this summer by Cambridge University Press. In this new book **Thomas Ginsburg** (University of Illinois at Urbana-Champaign) offers a political theory of judicial review as providing insurance to constitution-drafters. While judicial review places constraints on government, it is sought as a solution to the problem of uncertainty in constitutional design. According to this view, judicial review provides "insurance" to prospective electoral losers, thereby facilitating democracy. **Ginsburg** tests this theory on a range of data, including detailed cases studies of three constitutional courts in East Asia where law is traditionally viewed as a tool of authoritarian rulers.

How much does regulation matter in shaping corporate environmental behavior? **Neil A. Gunningham** (Australian National University), **Robert A. Kagan** (University of California, Berkeley), and **Dorothy Thornton** (University of California, Berkeley) examine this question in *Shades of Green: Business, Regulation and Environment*. Based on an in-depth study of fourteen pulp manufacturing mills in the U.S., Canada, Australia and New Zealand, this book argues that steadily tightening regulatory standards have been crucial for raising environmental performance. But while all firms have shown improvement, some have improved more than others, many going substantially beyond compliance. According to the authors, variation in corporate behavior is accounted for primarily by variations in local social pressures and corporate environmental management style. *Shades of Green* is available from Stanford University Press.

The Federal Clean Air Act of 1970 is widely seen as a revolutionary legal response to the failures of the earlier common law regime, which had governed air pollution in the United States for more than a century. In *Chasing the Wind*: *Regulating Air Pollution in the Common Law State*, **Noga Morag-Levine** (Princeton University) challenges this view, highlighting striking continuities between the assumptions governing current air pollution regulation in the United States and the principles that

had guided the earlier nuisance regime. Most importantly, this continuity is evident in the centrality of risk-based standards within contemporary American air pollution regulatory policy. Under the European approach, by contrast, the feasibility-based technology standard is the regulatory instrument of choice. Through historical analysis of the evolution of Anglo-American air pollution law and contemporary case studies of localized pollution disputes, *Chasing the Wind* argues for an overhaul in U.S. air pollution policy. This reform, following the European model, would forgo the unrealizable promise of complete, perfectly tailored protection—a hallmark of both nuisance law and the Clean Air Act—in favor of incremental, across-the-board pollution reductions. **Morag-Levine** argues that prevailing critiques of technology standards as inefficient and undemocratic instruments of "command and control" fit with a longstanding pattern of American suspicion of civil law modeled interventions. This distrust, she concludes, has impeded the development of environmental regulation that would be less adversarial in process and more equitable in outcome.

What impact do state-level institutions have on the behavior of state supreme court justices and interest groups participating as amici curiae in those courts? Is the information provided by interest groups conditioned on the judicial retention system, or whether the state uses the ballot initiative, and does that information impact the decision making process of the justices? In *Amici Curiae and Strategic Behavior in State Supreme Courts* (Praeger Publishers), **Scott A. Comparato** (Southern Illinois University, Carbondale) seeks to answer these questions by employing strategic theories of judicial and group behavior, with groups motivated by the attainment of policy and group maintenance, and state supreme court justices motivated by policy and the continued maintenance of their position on the court. The book analyzes litigant and amicus curiae briefs, as well as judicial decisions, from seven state supreme courts to evaluate the effects of state level institutions on the types of information provided to state supreme court justices, and how those justices respond to that information. The results suggest that interest groups do behave strategically, providing information to justices that they believe will be useful in helping the justices retain their seat on the court and achieve their desired policy outcomes. There is also support for the expectation that the information provided by litigants and amici, as well as the retention method, has a direct impact on the decision-making of justices. In light of these results, **Comparato** argues that the information provided in amicus curiae briefs allows both groups and state supreme court justices to achieve their respective goals.

Set for publication by Johns Hopkins University Press in early 2004 is *The Communitarian Constitution*, by **Beau Breslin** (Skidmore College). A work of constitutional theory, *The Communitarian Constitution* explores the American communitarian project not from a traditional theoretical perspective, but from a different vantage point—that of constitutionalism. It examines the question of whether it is possible to construct a communitarian polity that is also a constitutionalist one. The work begins by tracing the development of contemporary American communitarianism from its more theoretical roots in the writings of MacIntyre, Sandel, Walzer and Taylor, to the predominately prescriptive works of Barber, Glendon, Galston and Etzioni. It then connects this communitarian tradition with the literature of constitutional theory. Utilizing the writings of Thomas Paine, Alexander Hamilton, James Madison, and others, **Breslin** distinguishes the modern interpretation of constitutionalism from its classical predecessor and concludes that the current conception of communitarianism can only adequately sustain the principles of the classical, or underdeveloped, form.

University Press of Kansas recently announced the publication of *Common Law Liberty: Rethinking American Constitutionalism* by **James R. Stoner, Jr.** (Louisiana State University). This new book examines the common law's central contributions to and enduring impact on American constitutional law. **Stoner** distinguishes between two common laws: one understood by the Founders and rooted in British traditions of jurisprudence and one that corrupted the first by redefining common law as mere "judge-made law" or "judicial process," dangerously disconnected from the values and norms of the communities it serves. The latter, **Stoner** argues, has been a disastrous development, shrouding the common law's original meaning and vitality, replacing its spirited liberty with personal license, giving far too much discretion to judges who wish to depart from tradition and precedent, and, thus, undermining our constitutional system of checks-and-balances. **Stoner** seeks to highlight what has been abandoned or suppressed in the name of judicial activism and the modern rights-oriented Constitution and suggests that perhaps the common law, in its original sense, provides a viable alternative to what he sees as the debilitating relativism of our current age.

In spring 2004 the University of Michigan Press will publish a 30th anniversary edition of **Stuart Scheingold's**, *The Politics of Rights*. In this classic work, **Scheingold** (University of Washington) describes the law's hold on the popular imagination in the U.S., identifying a powerful ideology he famously labeled "the myth of rights." While the myth of rights lures us to the law and often creates a false hope in the power and efficacy of the legal system, deploying rights can serve as a resource to activate and mobilize those seeking to advance social reform. The anniversary edition of this volume will have a foreword by **Malcolm M. Feeley** (University of California, Berkeley) and a lengthy preface by **Scheingold**. This publication will make this seminal book, so instrumental in establishing the subfields of impact studies and cultural studies of law, readily available to a new generation of students and scholars.

Drawing Lines in Quicksand: Courts, Legislatures, and Redistricting (Peter Lang Publishing) examines judicial performance in redistricting through the lens of institutional policy-making capacity. Authored by **Jeremy Buchman** (Long Island University, C.W. Post Campus), this book asks whether federal courts are institutionally well-equipped, relative to other institutional alternatives, to formulate redistricting policy. According to **Buchman**, a common perception of courts as highly constrained policy actors does not mesh comfortably with the role courts play in developing voting rights and redistricting policy. The most frequently noted limitations on judicial policy making—its reactive character and a lack of ability to enforce decisions—either are irrelevant to redistricting, are offset in some measure by endogenously determined judicial powers, or can be readily circumvented in practice. The factors with the most substantial effects on judicial performance in redistricting are those concerning the raw materials (judges' specialized knowledge and gaps therein, sources of information available to judges) and the tools of policy making. Because a consideration of judicial policy-making capacity requires cross-institutional analysis, **Buchman** also examines three institutional alternatives to the status quo: legislative districting with unfettered discretion, legislative districting constrained by ostensibly neutral districting criteria, and bipartisan districting commissions.

Forthcoming from ABC-CLIO is *The Waite Court: Justices, Rulings, Legacy*, by **Donald Grier Stephenson, Jr.** (Franklin and Marshall College). A volume in the Supreme Court Handbooks series, the book offers an exploration of the major decisions and personalities of the Supreme Court during the fourteen-year tenure of Chief Justice Morrison Remick Waite (1874-1888). Waite may be the only chief justice who was said to have died of overwork. He and his bench inherited some controversial decisions and appointments from the preceding Chase Court, and rendered over 3,000 decisions during Waite's tenure, some of which involved civil rights issues and increased governmental regulation of the economy. The book attempts a fresh interpretation of the Court during this period with analyses of key decisions, profiles of the fifteen Waite-era justices, and a review of the unique involvement of several of them in the 1876 presidential election electoral predicament.

The second edition of *American Constitutional Law: Essays, Cases, and Comparative Notes* will be available early in 2004 from Rowman and Littlefield. Edited by **Donald P. Kommers** (Notre Dame Law School), **John E. Finn** (Wesleyan University), and **Gary J. Jacobsohn** (Williams College), the second edition is up-to-date and distinctive for the comparative perspective it brings to the study of American constitutional law. This volume features a new chapter on voting and political representation, expanded introductory essays highlighting issues of constitutional design and borrowing from other nations, updated critical essays that introduce students to the Supreme Court's most recent work, and new cases and materials on the Patriot Act and other efforts to combat terrorism in the United States and abroad.

Knowledge of how to conduct research in constitutional law is valuable not only for legal professionals but for anyone interested in the political and legal systems of the United States. In the third edition of *Researching Constitutional Law* (Waveland Press), **Albert P. Melone** (Southern Illinois University) introduces the process of legal research with writing aimed at the lay reader. This practical reference work guides students on every aspect of writing a research paper, from showing how to brief a legal case to explaining elementary quantitative analysis techniques. Also included are extensive lists of primary and secondary sources, summaries of leading Supreme Court opinions, and a sample student research design. **Melone** references the most up-to-date print and electronic legal research materials throughout the thoroughly revised third edition. *Researching Constitutional Law* will be available in January 2004.

Section News & Awards

APSA Centennial Center for Political Science & Public Affairs Visiting Scholars Program

The American Political Science Association recently opened the Centennial Center for Political Science & Public Affairs in its headquarters building in Washington. As part of its programs, the Centennial Center assists scholars from the United States and abroad whose research and teaching would benefit from a stay in and access to the incomparable resources available in the nation's capital. The Center provides Visiting Scholars the infrastructure needed to conduct their work, including furnished work space with computer, phone, fax, conference space, and library access.

The Center has space to host 10 scholars for extended periods of time, ranging from weeks to months. Space for shorter "drop-in" stays is also available. Scholars are expected to pursue their own research and teaching projects and contribute to the intellectual life of the residential community by sharing their work with Center colleagues in occasional informal seminars.

Eligibility is limited to APSA members. Senior or junior faculty members, post-doctoral fellows, and advanced graduate students are strongly encouraged to apply. A short application form is required and submissions will be reviewed on a rolling basis. Positions are awarded based on space availability and relevant Center programming.

For more information and an application please visit the Centennial Center web site <www.apsanet.org/centennialcenter> or call Sean Twombly at 202.483.2512.

Appointed Committees, Law and Courts Section, 2003-2004

AWARD COMMITTEES

Note: For these awards, "political scientists" are defined as persons who have an earned Ph.D. in political science or whose primary appointment is in a political science department.

C. Herman Pritchett Award Committee

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. Casebooks and edited books are not eligible. Books may be nominated by publishers or by members of the Section. The award carries a cash prize of $250. To be considered for this year's competition, a copy of the nominated book must be submitted to each member of the awards committee. The deadline for nominations for the award is February 15, 2004.

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Law and Courts Section Nominating Committee

Please send nominations for Chair-Elect and THREE Executive Committee members to Elliot Slotnick, the chair of the Nominating Committee, who will forward them to the committee members. The Nominating Committee's recommendations for 2004-2005 officers will be submitted for election at the 2004 business meeting of the section at the APSA meeting. The deadline for submitting nominations is February 15, 2004.

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Lifetime Achievement Award Committee

The Lifetime Achievement Award honors a distinguished career of scholarly achievement and service to the Law and Courts field. Nominees must be political scientists who are at least 65 years of age or who have been active in the field for at least 25 years. Nominations from previous competitions will be carried forward to the current year's competition. The committee will retain nominations for 3 years, but one may re-nominate an individual and renew the materials in the file.

Nominations may be made by any member of the Section and should consist of a statement outlining the contributions of the nominee and, if possible, the nominee's vitae. Nomination materials should be sent to the Chair of the Committee who will forward them to other members. Committee members may not make nominations for this award. Previous winners of the award are Henry Abraham, Walter Murphy, Harold Spaeth, Sam Krislov, Glendon Schubert, Beverly Blair Cook, Martin Shapiro, Walter Berns, and Sidney Ulmer. Deadline for submission of nominations is February 15, 2004.

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McGraw Hill Award Committee

The McGraw Hill Award recognizes the best journal article on law and courts written by a political scientist and published during the previous calendar year. Articles published in all refereed journals and in law reviews are eligible, but book reviews, review essays, and chapters published in edited volumes are not eligible. Journal editors and members of the section may nominate articles. To be considered for this year's competition, a copy of the nominated paper should be submitted to each member of the award committee (e-mail attachments, in the form of .pdf files, are acceptable). The deadline for nominations is February 15, 2004.

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Teaching and Mentoring Committee

This Committee selects the winner of the Teaching and Mentoring Award, which recognizes innovative teaching and instructional methods and materials in law and courts. Examples of innovations that might be recognized by this award include (but are not limited to) outstanding textbooks, web sites, classroom exercises, syllabi, or other devices designed to enhance the transmission of knowledge about law and courts to undergraduate or graduate students. The Teaching and Mentoring Award is supported by a contribution from the Division for Public Education of the American Bar Association.

Any member of the section may make a nomination for the Teaching and Mentoring Award by submitting to each member of the award committee a statement identifying the nominee and outlining the nature of the nominee's innovation and the contribution it makes to achieving the purposes of the award (e-mail attachments, in the form of .pdf files, are acceptable). The deadline for nominations is February 15, 2004.

The Teaching and Mentoring Committee also advises the Organized Section on matters related to teaching and mentoring of students and colleagues.

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Wadsworth Publishing Award Committee

The Wadsworth Publishing Award is given annually for a book or journal article, 10 years or older, that has made a lasting impression on the field of law and courts. Only books and articles written by political scientists are eligible; single-authored works produced by winners of the Lifetime Achievement Award are not eligible. The award carries a cash prize of $250. Any member of the Section may submit a nomination. The nomination should include a statement outlining the nature of the contribution of the nominated work. To be considered for this year's competition, nomination statements should be submitted to each member of the award committee. The deadline for nominations is February 15, 2004.

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CQ Press Award Committee

The CQ Press Award is given annually for the best paper on law and courts written by a graduate student. To be eligible the nominated paper must have been written by a full-time graduate student. Single- and co-authored papers are eligible. In the case of co-authored papers, each author must have been a full-time graduate student at the time the paper was written. Papers may have been written for any purpose (e.g., seminars, scholarly meetings, potential publication in scholarly journals). This is not a thesis or dissertation competition. Papers may be nominated by faculty members or by the students themselves. The papers must have been written during the twelve months previous to the nomination deadline. The award carries a cash prize of $200. To be considered for this year's competition, a copy of the nominated paper should be submitted to each member of the award committee (e-mail attachments, in the form of .pdf files, are acceptable). The nomination deadline is June 1, 2004.

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CALL FOR PAPERS
The Politics Network of the Social Science History Association

The Politics Network of the Social Science History Association invites proposals for papers dealing with political history from historians, political scientists, sociologists and other scholars for the 29th Annual Meeting of the SSHA scheduled for Nov 18th to the 21st, 2004 at Chicago's Palmer House.

Besides a general call for papers on political subjects, the Network announces two focused invitations: from the Program Committee and the Network. The program committee has chosen "Markets as Sites for Interdisciplinary History" as the theme for next year's meeting, and encourages proposals from scholars who can apply the concept to political analysis. Discussion at the Politics Networks meeting at the last Annual Meeting (in Baltimore) identified the following as subjects of particular interest.

Since the 2004 election will precede the conference by a few days, oneor more panels dissecting the outcome and speculating on its impact would be very timely. The site of next year's convention in the Windy City provoked interest in studies of machine politics in its various manifestations. The network has seen an outpouring of gender studies in recent years, and hopes to see more next year. We would be very interested in papers on gender and party organization, as well as papers exploring the role of gender in the critical realignment process, or the relationship between imperialism and women suffrage.

The political polarization of the American electorate as well as among the elite has sparked much interest since the mid-1990s. We would like to hear from political scientists, historians or other social scientists who can discuss the current trend or put it into historical context.

Recent developments in California and Texas prompt a re-evaluation of political norms and traditions bearing on electoral processes and majority/ minority rights. The California recall revived attention to the subject of direct democracy. The issue of redistricting has come to the fore through the actions of Texas and other states. Elsewhere, state legislatures have experimented with requiring super majorities (of 60% or two-thirds) when it comes to raising taxes. In short, the rules of the game may be changing in important respects and we are hope there are scholars out there ready to address them for us.

The recent death of William E. Gienapp, author of The Origins of the Republican Party 1852-56, calls for a session offering a retrospective on his research or the topics on which he wrote.

The network is always interested in sessions that can offer a comparative perspective on politics that transcends nation states. Given the ever expanding role of information technology in the classroom, we also envision a session on "Teaching U. S. Politics with a Laptop." We are looking for persons who have developed databases or presentations using a variety of software to demo and perhaps share their creations with others.

The SSHA encourages the participation of graduate students and recent Ph.D.s as well as more-established scholars. We also look for input from a wide range of disciplines and departments.

Forward all proposals, abstracts or queries to Jack Reynolds at jreynold@utsa.edu. Proposals can be submitted either for individual papers or a complete session. The deadline for submitting the former is Feb. 2, 2004 and for the latter Feb. 16, 2004. Participating in the conference will require pre-registration, which carries with it a one year membership in the Social Science History Association.

SSHA-Rockefeller Graduate Student Travel Awards will be offered to thirty graduate students to subsidize their participation in the 2004 program. Applications are due by Saturday, March 6, 2004. Papers with non-student co-authors are not eligible. Students should apply for the awards online at www.ssha.org/ssha2004/travelgrants.html and also submit conference paper or session proposals to the program committee as usual. The application for the travel award must include the following information for all authors: Name of all authors, Institution and Department, Postal Address, Email address, Abstract of paper (250 word maximum). Applications will be judged by a committee appointed by the President of SSHA.

Conferences & Events

Western Political Science Association (http://www.csus.edu/ORG/WPSA/mtgs.stm)
March 11-13, 2004 Portland, OR
Judicial Politics & Public Law: Valerie Hoekstra Valerie.Hoekstra@asu.edu

Southwestern Social Science Scienc Association (http://www.sssaonline.org/meeting.htm)
March 17-20, 2004 Corpus Christi, TX
Political Science: Martin Overby overby@missouri.edu

Midwest Political Science Assoc. (http://www.indiana.edu/~mpsa/conferences/conferences.html)
April 15-18, 2004 Chicago, IL
Judicial Politics: Melinda Gann Hall hallme@msu.edu
Public Law: Mark Graber mgraber@gvpt.umd.edu

New England Poltiical Science Association (www.nepsa.org)
April 30 - May 1, 2004 Portsmouth, NH
Public Law: Paul Carresse paul.carrese@usafa.edu

Law & Society Association (http://www.lawandsociety.org/)
May 27-30 Chicago, IL

Justice Studies Association (http://www.apsanet.org/ps/conferences/justicestudiesassoc.cfm)
May 29-31 Albany, NY
Law & Courts: Dan Okada: bquist@mvcc.edu

Law & Humanities Jr. Scholar Workshop (http://www.apsanet.org/PS/conferences/lhjsw.cfm)
June 1-2 Columbia Law School NY, NY
Law & Courts: Jinah Paek: culture@columbia.law.edu

Pre-Law Advisors National Conference
June 9-12, 2004 Boston, Ma
for regiatration information contact: Frank X.J. Homer at Homerfl@scranton.edu