OUR INTERVIEW WITH DR. WALLACE F. CALDWELL, PROFESSOR OF CONSTITUTIONAL LAW

ALL PRESIDENTS ARE IDEOLOGICAL IN APPOINTING JUSTICES

After the resignation of Justice David Souter, President Barack Obama has his first opportunity to appoint a new member to the Supreme Court. George W. Bush appointed John Roberts and Samuel Alito. Along with the departure of Sandra Day O'Connor and William Rehnquist, the current Court is almost evenly divided along the conservative-liberal lines, with Anthony Kennedy as a swing vote. In July 2007, Senator Obama stated: We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges.

Please comment on Obama’s statements in light of the current Supreme Court ideological makeup.

Caldwell: I don't think that the appointment of a new justice to the Supreme Court will make much difference. On the important issues of the day that draw public attention, the Court is split 4-4 along ideological grounds – four conservatives and four moderate-liberals. Justice Kennedy offers a "swing vote" on most cases that matter. From this perspective, the Court is a "Kennedy Court" even though the Chief Justice is John Roberts.

I also don't think that President Obama will have to spend much political capital should he appoint a moderate-liberal to replace Justice Souter. From news accounts, the President has surrounded himself with persons who have thoroughly vetted a substantial number of excellent candidates from which to appoint the new justice. The President is a lawyer and has been a professor of Constitutional Law. He seems to have sensible notions about the type of lawyer or judge he is looking for. He has consulted with key senators from both political parties, and his choice of candidate is not likely to have a difficult time getting the consent of the Senate. He is very high in the political polls.

I think that modern presidents try to pick a candidate for the Court based on what he and his advisors determine to be the candidate's "real politics"—meaning how they think the candidate will vote on key issues important to the president's future political agenda. I note in passing here that there are no guarantees that, once appointed, a justice will vote as expected, as Justice Souter's judicial performance bears witness.

(Continued on page 2)
In light of the ongoing nominating process, outline the Supreme Court appointment rules. Who is advising President Obama in his decision? What can we expect from the upcoming senatorial debate?

Caldwell: As to the nominating process, each president decides how he or she will go about nominating a candidate. He may or may not seek to have candidates rated by the American Bar Association. The president may also interview candidates. He almost always discusses the candidate with key senators, usually from his own party. He also may consult with key advisors as he chooses and even friends.

Historically, who among the American presidents were the most and least ideological in their Supreme Court appointments?

Caldwell: All presidents are ideological in appointing justices. As noted above, most presidents try to appoint to the Court on the basis of the candidate's "real politics." Almost unlimited other considerations may impinge on the decision, e.g., race, gender, geography, religion, his/her written record if one exists, his/her law school, age, friendship, work experience, scholarship, moral character, general life experience, and even as President Obama has said, the candidate's "empathy" (apparently meaning the capacity to know what is at stake for litigants and the people).

Sometimes, the Supreme Court justice disappoints: a strict constructionists votes with modernists, and vice versa...

Caldwell: I will respond by giving you a few well-known examples. Justice Souter was appointed by the senior President Bush, and turned out to vote regularly with the liberals on the Court. The call from the political right now is: "No more Souters." Justice Blackmun was appointed by President Nixon. He voted initially with Court conservatives. After having penned Roe v. Wade, he voted for the most part with the Brennan-Marshall liberal wing of the Court. Chief Justice Warren was appointed by President Eisenhower expecting strong and moderate leadership. Warren provided the strong leadership President Eisenhower expected. However, he took a liberal and very activist approach to public law, particularly civil liberties. President Eisenhower also appointed Justice Brennan, a superbly qualified candidate who Ike thought to be a moderate. Once appointed, Brennan became one of the most vocal and activist liberals on the Court. As to Ike's opinion of both Warren and Brennan, he was later asked if he had made any mistakes while he had been president. He replied, "Yes, two, and they are both sitting on the Supreme Court." His reference was to "both" Warren and Brennan. Justice Frankfurter-- teacher, superb lawyer, friend and advisor to President Roosevelt, and personally a lifelong liberal-- was appointed with the expectation that he would join with other Roosevelt appointed liberal justices on the Court. Justice Frankfurter supported New Deal programs when enacted by Congress but soon became an advocate of judicial restraint, a theory basic to the conservative opposition to the judicial expansion of civil rights and liberties.

In a perfect world, all judges, not only on the Supreme Court, would be bias-free, particularly in democracy. Why do they tend to be partisan?

Caldwell: I don't think that we have ever lived in a "perfect world." Likewise, I am not sure that judges and justices "tend to be partisan." Maybe so, but given the complexity of our lives in our mass and pluralistic society, our laws and legal problems are rarely simple. Judges take different views in applying law to complex problems that inevitably arise before them. Their views over time in reaching decisions may become consistent and opposing to decisions reached by other judges and justices. We tend, I think, to celebrate judicial views and decisions that we personally approve and oppose those we disagree with. As the saying goes, "It's whose ox is gored." Thus, we non-judges become "partisan."

What do you think about the following famous statement made exactly 221 years ago by Alexander Hamilton in The Federalist No. 78 about the Supreme Court's role among the three branches of the government? “[T]he judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution.”
Caldwell: We often forget that in writing the Federalist Papers, Madison, Hamilton and Jay were propagandists voicing a one-sided view of how the Constitution divided national governing powers. Briefly stated, the theory commonly announced as a fundamental principle of American constitutionalism is that laws are to be made by the legislature, executed or applied by executives, and interpreted by courts. As a correlative to this doctrine, it is understood that no power which properly belongs to one department of government can be "delegated to any other." The end of such arrangement is a "government of laws and not of men."

The separation of powers doctrine, as expressed by Hamilton in Federalist No. 78, has little or no historic applicability. It would be, in fact, difficult to imagine how such a government could operate. Legislatures have always exercised some "executive" functions. Executives have always exercised "legislative" powers in a variety of ways and also act "judicially" in some ways. Finally, the judicial branch exercises "legislative" and even "executive" functions. By almost any standard, it has become more and more evident that governing powers are not mutually exclusive. As a consequence, the so-called separation of powers doctrine, as described by Hamilton in No. 78, has increasingly been thought of as a working principle to be applied practically in a practical world. It is a relative concept, separation, in fact, being only in degree. While still paying lip-service to the general doctrine, students of our political system have recognized that under modern conditions practicality makes the doctrinaire application of that general theory impossible. Therefore, No. 78 doesn't help much in trying to understand our governing philosophy.

How do you see the overall role of the Supreme Court in everyday life of American society?

Caldwell: In response to this question, all one has to do is to listen to the daily news on radio or television, read a good daily newspaper, use a computer, read a good history book, or one of several news magazines to discover the impact of Supreme Court decisions in everyday life.

As far as I know, you have taught Constitutional Law for 45 years at six universities. At Humphreys, the elements of this discipline are presented not only at the law graduate program but also in several undergraduate courses, including Introduction to the Legal System, The Supreme Court in American Life: Landmark Cases, American Institutions, and History of the U.S. In your opinion, what should every Humphreys graduate know about the Constitution--at a minimum, and why?

Caldwell: Every student attending any college or university should read at a minimum a good newspaper. I taught some time ago for a couple of years in New York. I was pleasantly shocked to find that most of my students read daily The New York Times. What a difference it made for me and to them!

The U. S. Constitution is a relatively brief document; however, research literature about it has been growing at an enormous pace. What should a college student read about the Constitution in general, and about the Supreme Court in particular?

Caldwell: Additionally, for minimum knowledge I would recommend that those who wish to understand something about the Supreme Court and how it works should read the following: William H. Rehnquist, The Supreme Court (rev. ed.). A popular and readable book is Jeffrey Toobin, The Nine: The Secret World of the Supreme Court. There are numerous good biographies of Supreme Court justices. I would recommend: Linda Greenhouse, Becoming Justice Blackmun. As to the process or nominating Supreme Court justices, read Henry J. Abraham, Justices, Presidents and Senators: A History of the U.S. Supreme Court Appointments from Washington to Clinton (rev. ed.). A good comprehensive history of the Supreme Court is not difficult to find. Ask a librarian!

~ Stanislav Perkner
SHAKESPEARE ON TRIAL: SUPREME COURT JUSTICE CHALLENGES PLAYWRIGHT
HUMPHREYS FACULTY AND STUDENTS RALLY TO BARD’S DEFENSE
By Howard Lachtman, Adjunct Professor, Liberal Arts Department

Did Shakespeare write Shakespeare? Was the player a playwright? Or was the actor guilty of impersonating an author?

Most scholars agree the issue of authorship isn’t in doubt. They find no reason to suspect Shakespeare’s authenticity and ample evidence to believe otherwise. In his own day, they point out, Shakespeare was an honored and respected playwright. In 1598, for example, Francis Meres noted him as a “most excellent” master of comedy and drama. “The Muses would speak with Shakespeare’s fine filed phrase, if they would speake English,” Meres noted. Five years later, King James I granted Shakespeare’s acting company his royal license and a royal name (The King’s Men) not only “for the recreation of our loving subjects,” but “for our solace and pleasure when we shall think it good to see them during our pleasure.” Translation: the king, who knew a good thing when he saw it, was an enthusiastic Shakespeare fan.

(Continued on page 5)
While the weight of evidence is heavily on the side of The Bard’s Men (if I may call pro-Shakespeareans that), there are dissenters. The most recent and notable of them is John Paul Stevens, senior Justice of the United States Supreme Court. Stevens, joined in his view by Justice Antonin Scalia, contends that Shakespeare was a front who lent his name to work written by Edward de Vere, the 17th Earl of Oxford. According to this theory, the earl wanted to see his writing staged in public, but did not wish his august name associated with the enterprise (the theater being too “low” for his rank and dignity). Shakespeare and company obliged him, no doubt for a handsome fee. A conspiracy of silence cloaked the deal. And no one was the wiser.

Who but an aristocrat, Stevens argues, would have had exposure to the wide experience of life, love and court politics revealed in the plays? Who but an earl would have refused credit for works of genius? Who could assume that the magnificent plays could have been conceived by an ill-educated son of a glove maker from the provincial backwater of Stratford?

The anti-Shakespeare theory has many faults and many critics. Students and faculty of Humphreys College point to sloppy scholarship and a case they say is based largely on bias, conjecture, and insufficient evidence.

“This, in my view, is snobbery of the purest form,” Janet Marx says. “The fact that they are arguing over who wrote the plays is simply ridiculous.”

Student Rosalind Ross agrees. She wonders why Stevens and others seek to denigrate a playwright whose “astounding insight” and “message of human redemption” bespeaks a nobility that owed nothing to membership in the ruling class.

“The Bard is forever connected to this great body of work,” Ross asserts. “The justices may continue with their great debate theories forever, but the facts will not change.”

Liberal Arts Department Chair Cynthia Becerra notes that 2009 is the 400th anniversary of the publication of the Shakespearean sonnets. They clearly reflect the genius of Shakespeare and link to many of the profound themes expressed in his plays. The connection between the sonneteer and playwright is evident. “The sonnets are definitely his, no one claims otherwise, so far as I know,” Becerra says. “They are evidence that he, indeed, wrote the plays.”

What, then, influenced Stevens’s opinion? The idea came to him, he said, while on a visit to Stratford-upon-Avon. There, he noted the absence of literary memorabilia and wondered if Shakespeare himself was “missing.” “Where are the books?” he asked. “You can’t be a scholar of that depth and not have any books in your house. He never had any correspondence with his contemporaries; he was never shown to be present at any major event—the coronation of James or any of that stuff. I think the evidence that he was not the author is beyond a reasonable doubt.”

Shakespeare defenders say the absence of evidence after 400 years is not surprising. Books were rarities and letters haphazard in the absence of a postal system. The plays were unpublished; the First Folio did not appear until seven years after the author’s death. As for manuscripts, Shakespeare probably left those with friends in his troupe whom he could be sure would make the best and most productive use of them. Two such friends, John Heminges and Henry Condell, are, in fact, mentioned in his will and were instrumental in compiling the Folio. And as for Shakespeare being unconnected to James, has Stevens not heard of The King’s Men?

No evidence exists that anyone of Shakespeare’s day complained or suspected that the plays were written by another hand. In a small, competitive and rivalrous theater world like London, such a “secret” would not have lasted long. If no one had any reason to suspect Shakespeare then, should we now?

“Nobody gives any credence to those arguments,” says Professor Coppelia Kahn, president of the Shakespeare Association of America. She and other academics dismiss the Stevens conjecture and the notion that Shakespeare was ill equipped by his lack of background and education. His leap from Stratford obscurity to London fame may seem unlikely
to his critics, but not to those who see a natural progression from Globe stagehand, sceneshifter, performer and manager to playwright. There is evidence that this was, indeed, his route. In 1592, London writer Robert Greene noted that Shakespeare (whom he ridiculed as “an upstart crow” and “Shake-scene”) was a player turned playwright. Greene thought it presumptuous and deserving of ridicule. He would gladly have demolished the aspiring playwright if he suspected a ruse. But he made no such charge. On the contrary, the “tiger wrapped in the hide of a player” was a competitor of whom Greene was fearful. Here is evidence of the emerging talent that outclassed Greene and gained sufficient reputation to earn a place of honor on the list of Francis Meres.

“A lot of people like to think it’s Shakespeare because they like to think that a commoner can be such a brilliant writer,” Stevens said. “Even though there is no Santa Claus, it’s still a wonderful myth.”

But the facts show the “myth” is on the side of the anti-Shakespeareans. For one thing, de Vere died in 1604. The plays continued to be written and acknowledged as Shakespeare’s. The playwright continued to be active in the theater and patronized by King James (before whom a production of the lost play “Cardenio” is noted in the court calendar for 1612). Reasonable doubt would suggest that the plays were more likely the product of a living playwright than a dead one.

The “poor boy from nowhere” theory of discredited authorship overlooks the facts of native genius (Charles Dickens and Mark Twain were among the many poor boys who made good as authors). It also ignores the fact that young Shakespeare of London was in an ideal position to act, write and bring himself to the attention of commoners and kings. The play was the thing, the hot medium. Any young and active playwright in London could have received the education he needed, the audience he required, and perhaps a noble patron to underwrite his career. Did de Vere precede King James in this respect? If so, his relationship to Shakespeare was more likely financial than authorial. Moreover, Francis Meres notes among the “best for comedy” one “Edward Earle of Oxforde,” a clear reference to de Vere and evidence that the earl was not hiding his writing or masking his talent. If this part of him was known to the public, there was obviously no need for a front to disguise his identity, and thus the case against Shakespeare collapses.

While the anti-Shakespeareans continue to insist the “poor, ignorant, country boy” could not possibly have written the plays, there is abundant evidence to suggest that the issue of authorship is not in doubt except among those who have not fully studied the facts.

“Justice Stevens’ opinion doesn’t pass the test of evidence,” says Wallace Caldwell, Humphreys Professor of Law. “I have nothing against Justice Stevens playing games; I think he and the boys were having fun. But we have a lawyer’s standard of proof, and the burden of proof has not been met. The evidence that Shakespeare was not the author of the plays is inconclusive. Therefore, I am going to take the evidence that he actually wrote the plays until such time as more convincing evidence appears.”

Justice Stevens would also do well to consult the preface to the First Folio, written by Shakespeare’s friend and fellow playwright Ben Jonson. The Hemingway of his day, Jonson was a prickly character, noted for his “disputatious temper” and ready sword, and seldom given to praising his rivals and contemporaries. But he made a wonderful exception in the case of Shakespeare. “I confess thy writings to be such/As neither man nor muse can praise too much,” Jonson wrote, saluting the late playwright as “Soul of the Age! The applause! Delight! The wonder of our stage…Thou art a monument without a tomb.”

The case is made; the defense rests. While the anti-Shakespeareans may continue to ignore the facts and continue their comedy of ill-informed argument, it’s unlikely they will cancel the achievement of the playwright whose comment on their efforts might well echo his mischievous Puck: “Lord, what fools these mortals be!”
John Hope Franklin, a scholar and social activist who pioneered African-American studies, passed away in March. He was born in a middle-class black home in Rentiesville, Oklahoma, a half-century after the abolition of slavery. His parents named him after the educator John Hope. The family relocated to Tulsa, Oklahoma, shortly after the Tulsa Disaster of 1921, when the homes and businesses were burned to keep blacks out of affluent neighborhoods. His mother was a teacher and his father, an attorney who handled law suits from the famous Tulsa Race Riot. After his graduation from an all-black Booker T. Washington High School, at the age of 15, John Hope earned a B.A. at Fisk University, an all-black college, and an M.A. and Ph.D. in History at Harvard University, with the encouragement and financial help from his Professor Theodore Shirley Currier.

After graduation (1941), Franklin joined the Fisk University faculty. Two years later, he published the first of his many books, The Free Negro in North Carolina. His most influential book, From Slavery to Freedom: a History of African Americans (1947, 8th edition 2000), became an authoritative source for everyone who studies American history. It covers the rise of slavery in America, the relations between European and African cultures, and the distinctive cultural traditions of both slaves and free blacks. The book deals with the post-emancipation struggle for citizenship and a desegregated society. The latest edition (co-authored by Alfred A. Moss, Jr.) includes demographic trends, educational efforts, literary and cultural changes, problems in housing, health care, juvenile matters, and poverty, the expansion of the black middle class, and the persistence of discrimination in the administration of justice.

At the beginning of the 1950s, as NAACP board member, Franklin cooperated with Thurgood Marshall on the sociological case for Brown v. Board of Education.

Franklin’s academic career led him from Fisk and Howard Universities to Brooklyn College, University of Chicago, and Duke University. He was the first African American appointed to chair an academic department in a historically white institution (Brooklyn College).

Franklin was active in numerous professional organizations. He served on the editorial board of the Journal of Negro History (today’s Journal of African American History) and presided over The American Studies Association, Phi Beta Kappa, the Organization of American Historians, and the American Historical Associations. President John F. Kennedy appointed him to the Fulbright Board of Foreign Scholarships. President Bill Clinton awarded him the highest honor a civilian can receive, the Medal of Freedom. Duke University recently opened The John Hope Franklin Center for Interdisciplinary & International Studies. At the age of ninety, Franklin published his autobiography, Mirror to America (2006).

Toward the end of his distinguished career, Franklin summarized his credo: “My challenge was to weave into the fabric of American history enough of the presence of black so that the story of the United States could be told adequately and fairly… I want to be out there on the firing line, helping, directing, or doing something to try to make this a better world, a better place to live.” It is fair to say that Dr. John Hope Franklin was a pioneer who lived and died by his strong beliefs, and shared his hope for a better tomorrow in a world where respect and honor are valued.
CONGRATULATIONS, GRADUATES OF 2009.

The 2009 Humphreys College commencement ceremony will take place on Saturday, June 20, 2009, starting at 9:00 A.M. in the Jerry Medina Courtyard.

Main Campus
6650 Inglewood Avenue
Stockton, CA 95207
209.478.0800
Fax 209.478.8721

Branch Campus
3600 Sisk Road, Suite 3-A
Modesto, CA 95356
209.543.9411
Fax 209.543.9413

www.humphreys.edu

Humphreys College Newsletter Supplement, June 2009
Stanislav Perkner, Editor, sperkner@humphreys.edu
Cynthia Becerra, Co-Editor, cbecerra@humphreys.edu
Leslie Walton, Executive Editor, lwalton@humphreys.edu

CONGRATULATIONS, GRADUATES OF 2009.

The 2009 Humphreys College commencement ceremony will take place on Saturday, June 20, 2009, starting at 9:00 A.M. in the Jerry Medina Courtyard.

Main Campus
6650 Inglewood Avenue
Stockton, CA 95207
209.478.0800
Fax 209.478.8721

Branch Campus
3600 Sisk Road, Suite 3-A
Modesto, CA 95356
209.543.9411
Fax 209.543.9413

www.humphreys.edu

Humphreys College Newsletter Supplement, June 2009
Stanislav Perkner, Editor, sperkner@humphreys.edu
Cynthia Becerra, Co-Editor, cbecerra@humphreys.edu
Leslie Walton, Executive Editor, lwalton@humphreys.edu