"I would rather be exposed to the inconveniencies attending too much liberty than to those attending too small a degree of it." —THOMAS JEFFERSON

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For latest on alumni events: www.law.virginia.edu/alumni

Art in this issue:
Inmates of the Albemarle-Charlottesville Regional Jail participating in an "Beyond the Bars" program provided the artwork that appears on the cover and throughout this issue of UVA Lawyer. The program teaches inmates new and creative ways of self-expression so that they can better understand themselves and their responsibilities to others. For more information, go to http://beyond-bars.com.

All artists, except for those indicated, wish to remain anonymous.
An Endlessly Inquisitive Mind

This issue of the UVA Lawyer focuses on criminal law and procedure. We were inspired to do so as a tribute to former UVA Law professor William J. Stuntz ’84, who touched so many members of our community before his untimely death last spring.

Many people close to Bill—classmates, friends, students, members of his church, and members of our faculty and the faculty at Harvard Law School, where he taught for the last several years of his life—have spoken and written movingly about his kindness, decency, and humility and the deep Christian faith from which they proceeded.

Bill's scholarly personality was every bit as attractive. He was endlessly inquisitive and willing to look at an issue from multiple angles before reaching a conclusion. He thought deeply but also broadly, drawing insights from criminology, economics, history, and other fields to understand the structure of criminal law and procedure. Moreover, he was a profoundly generous scholar who was willing to spend hours helping others think through a problem in their own research.

Bill was not the type to claim to have a Theory of Everything, but there was one theme that ran through all his scholarship: the incoherence of Constitutional doctrines that regulate in minute detail the procedures by which police investigate crime, but put little or no limits on prosecutors' charging decisions or legislators' definitions of and sanctions for crimes. The result is a system that pays meticulous attention to the procedural rights of the accused while relentlessly expanding the scope of criminal liability to the point where the boundaries between innocent and criminal conduct are indistinct. The result, in Bill's view, is suboptimal both from a procedural and a substantive perspective.

The articles in this issue illustrate the explanatory power of Bill's insights. He pointed out that the boundary between acceptable and criminal conduct was increasingly being drawn not by the formal lawmaking process, but by on-the-fly decisions of prosecutors and police.
Stuntz] was a profoundly generous scholar who was willing to spend hours helping others think through a problem in their own research.

To those who undertake heavily regulated activities, this has become a fundamental fact of life. Lawyers representing clients in finance or other regulated industries in criminal prosecutions sometimes note that their job is less to persuade the prosecutor that the client’s conduct did not violate a regulation as it is to persuade the prosecutor that the conduct was not morally blameworthy.

Bill was also deeply concerned that the procedural revolution in criminal law had decreased, rather than increased, the accuracy of criminal adjudication. He worried that as judges inserted themselves more and more forcefully into the process by which evidence was gathered, they were largely abandoning any inquiry into the quality and sufficiency of that evidence. The recent identification of murder convictions called into substantial doubt by subsequent DNA testing of physical evidence did not surprise Bill.

Bill’s view that legislatures and courts had ceded excessive discretion to police and prosecutors did not stem from an instinctive distrust of them—quite the contrary. Bill had a deep respect for the professionalism and integrity of law enforcement professionals. He participated in training programs for them and encouraged students to consider careers as prosecutors. But this did not stop him from having grave concerns about the structure of the system within which they operate.

We asked several of our graduates and professors to share their perspectives on these structural issues. We hear on the prosecution side from Rick Moore ’80, Assistant Commonwealth’s Attorney for Orange County, Virginia (and head of the Law School’s Prosecution Clinic); Zane Memeger ’91, U.S. Attorney for the Eastern District of Pennsylvania; and Doug Gansler ’89, Attorney General of Maryland. From the criminal defense side we have Catherine Scott Bernard ’07, a public defender in Georgia; Professor Brandon Garrett, who has written extensively on wrongful conviction; Professors Deirdre Enright ’92 and Matt Engle from the Law School’s Innocence Project Clinic; and Professor Darryl Brown ’90, who was a public defender before becoming a professor of criminal law. The issue also includes pieces by two scholars who were Bill’s students and close friends: Professor David Skeel ’87 of the University of Pennsylvania Law School and our own Professor Barbara Armacost ’89. I hope you find ample food for thought in these pages.
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GERTNER AND LITHWICK | Brian McNeill

More Women Judges Needed

Female judges bring invaluable life experiences to the bench and more women are needed in the judiciary, U.S. Judge Nancy Gertner and Slate.com senior editor Dahlia Lithwick said at a Law School panel discussion titled “The Fairer Sex: A Conversation about Women in the Judiciary,” in October.

Gertner, who recently retired from full-time service with the U.S. District Court for the District of Massachusetts and is the author of In Defense of Women: Memoirs of an Unrepentant Advocate, said judges are asked to bring their experiences to the table when deciding cases, and that women can bring different experiences and perspectives.

“Context matters,” Gertner said. “It’s an illusion to believe that context doesn’t matter.” As an example she described a case she heard in which a woman accused her boss of making a vulgar unwanted sexual advance. While it might have sounded implausible to male judges hearing the claim, Gertner thought her life experiences as a woman informed her view otherwise.

“I can tell you that what’s plausible to me may be very different from what’s plausible to my male colleague,” she said. “The law, in fact, invites us to consider and make judgments about life experiences. You, of course, bring your life experiences to the table. I’m absolutely not saying I only believe women. It’s not a one-to-one correlation. But clearly you begin the analysis with your soul, with your person.”

Gertner dismissed the “bizarre and ridiculous” view that judges must ignore their life experiences when deciding the outcome of cases. She noted that when Supreme Court Justice Thurgood Marshall died, Justice Sandra Day O’Connor described how Marshall’s experiences were invaluable to the court.

“What O’Connor said was that [Marshall’s] presence in the Supreme Court deliberations made an enormous difference,” she said. “When you looked around the table, no other judge had ever lived in the segregated South. No other judge had ever represented people who were reviled. No other judge had gone through what he had gone through. And that context matters.”

Lithwick pointed out that women have comprised roughly 50 percent of the entering and exiting law school classes since the 1980s, but there is still an “unbelievable dearth” of women judges.

“Forty-nine of the 162 judges on the federal appeals courts right now are women,” she said. “There’s only one woman judge on the 8th Circuit. Only one on the 10th. The 3rd Circuit Court of Appeals is comprised of only 15 percent women. And only 30 percent of active trial judges in the federal district court are women. We’re not talking even close to 50 percent. And the question is, why?”

An even bigger question, Lithwick said, is does it actually even matter that the gender disparity on the bench is so wide? She noted that the first woman to serve on the Supreme Court of the United States, Sandra
Day O’Connor, famously said that a wise old man and a wise old woman would, at the end of the day, reach the same conclusion. In Lithwick’s view, however, female judges can make a remarkable difference.

“I’ve been covering the Supreme Court for an era in which there were two women, then when there was one woman, and now, magically, there are three women,” she said. “And I’m here to tell you, it matters a lot. It’s unbelievable how different it is to cover a Court with three women on it.”

Lithwick cited a 2008 study that found that in sex discrimination cases before three-judge panels on the federal appeals court between 1995 and 2002, male judges were 10 percent more likely to rule against the plaintiff than women judges. However, if a female judge was sitting on the panel with the male judges, then the male judges overwhelmingly were likely to bring their opinion in line with that of the female judge.

“What does that suggest? Not that women’s brains are different. I think that it suggests that thinking about gender from a woman’s perspective is weirdly contagious,” Lithwick said. “And that you don’t have to be a woman to understand what it is to be a female plaintiff in a sex discrimination suit, but it really helps to have a woman explain it to you.”

In the 2009 Supreme Court case Safford Unified School District v. Redding, Lithwick said, the justices heard how school officials strip-searched a 13-year-old Arizona girl who they believed possessed ibuprofen in violation of school rules.

“When this case is argued at the Supreme Court, some of the judges not only were not sympathetic but actually made light of the search, likening it to ‘Ha-ha-ha, this is what happened to me in gym class,’” Lithwick said. “And this was one of the few moments I’ve seen Ruth Bader Ginsburg really get mad on the bench and say, ‘This is nothing like something that happens in gym class. This is not something to be taken lightly. This is not a trivial search—this is a young girl being searched by school authorities in an incredibly intrusive way without her parents’ consent.’”

As it turned out, Lithwick said, the Court’s decision was 8–1 in the young girl’s favor.

“We need women on the court not because there’s some magical number of women on a court, but I think women have stories to tell and perspectives to share,” she said. “We’re so blessed to have these voices and these stories.”

The event was sponsored by the Feminist Legal Forum, the American Constitution Society for Law and Policy, the Jewish Law Students Association, Student Legal Forum, and Women of Color.

Find related MP3 online at www.law.virginia.edu/news.

In Wake of Wall Street Protests, Professors Illuminate ‘Corporate Personhood’

The spread of the Occupy Wall Street movement to cities across the country has led to a national discussion on the role of corporations and brought the term “corporate personhood” to the fore in recent weeks.

Although the movement itself has drawn both criticism and praise, the protesters’ outrage resonates with many Americans who feel large corporations too often exert their will at the expense of the people. Before that, the issue became politicized following the 2010 ruling by the Supreme Court of the United States, Citizens United v. Federal Election Commission, which said a federal ban on corporate and union electioneering violated the First Amendment.

Law School professors Edmund Kitch, Frederick Schauer, and Richard Schragger, as well as Dean Paul G. Mahoney recently weighed in on the topic of corporate personhood, including what it means and why it sometimes puts everyday people at odds with big business.

How does the law define “corporate personhood” and what is its value?

Schragger: Corporations and similar organizations are classified as APs, or “artificial persons.” Corporations are treated as singular thinking and acting entities for legal purposes. The corporate person is a fiction; corporations and other organizations are made up of individuals or “natural persons” but are not “persons” themselves—the law is what personifies them.
Whether it is good or bad for the law to personify corporations depends upon one’s goals. Certainly it is useful to treat the corporation as an entity that can sue and be sued, that can own property, and that can enter into contracts and commit torts. These are all things that make corporations look like individuals for legal purposes. But it would be strange to permit corporations to vote in elections or to claim violations of their “human rights” or their political rights more generally. The corporate form of organization is just that—a form of organization. Corporations are useful organizations—they help coordinate large numbers of natural persons and encourage investment and give room for individuals to engage in productive enterprise. But there are lots of different ways to organize natural persons in the world. Families, churches, clubs, towns, cities and other governments are all institutions that engage in productive activity. We do not have to treat any of them as persons for them to fulfill their missions.

Is the term being used correctly within the context of the protests?

Kitch: As far as I can tell, the Occupy Wall Street protesters do not care about whether or not the law treats corporations as legal persons for purposes of deciding whether or not they can make contracts, commit torts, own property, or bring lawsuits. When they refer to corporations they are not referring to the legal entities that are recognized by the law due to the operation of statutes for the incorporation of for-profit, nonprofit, and municipal entities. Rather, they are using the term corporations to refer to the social community of persons associated with the corporation: its leaders, its employees, its creditors, its shareholders, and even, perhaps, its customers.

Why do private corporations have personhood, while governmental or “public” corporations do not?

Schragger: Because of the ubiquity of corporations, we sometimes forget that they are literally creatures of the state. One does not have a “right” to incorporate. Before incorporation became routine, bureaucratized, and widely available, state legislatures would grant charters to particular enterprises to engage in specific tasks for specific lengths of time—often tasks that served the public, like running a canal or a ferry service. Cities were often chartered as well, and were considered by the law to be corporate bodies indistinguishable from other 18th- and 19th-century corporate entities. Over time, however, commercial or “private” corporations came to be seen as legally different from governmental or “public” corporations. The former became imbued with personhood and were understood as vulnerable to state interference.
and thus in need of the protective armor of rights. In contrast, the “municipal corporation” was distinguished on the grounds that it pursued public purposes and thus should be susceptible to democratic control.

Is the concept of corporate personhood essential for corporations to do business effectively in today’s society?

Kitch: [Without corporate personhood, the] business and other activities would have to be carried out through alternative legal arrangements. Whether that would be good or bad would turn on the structure and practicality of the alternative arrangements. Before the general corporation statutes became available in the middle of the 19th century, lawyers used the trust device as an alternative. Experience showed that the trust device involved a somewhat higher degree of legal uncertainty and required slightly more complex structures.

Mahoney: Corporate personhood actually benefits creditors and customers of corporations. Without personhood, they wouldn’t be able to sue “the corporation” but would have to sue individual shareholders, from whom it would be much more difficult to recover.

Are corporate “rights” at odds with the rights of natural persons, constitutional or otherwise?

Kitch: Corporations are not creatures of constitutions, but rather of the legislative power recognized by constitutions. It is the legislature that sets out the rules governing their existence.

Corporate personhood has no constitutional implications across the board. Courts decide on an issue-by-issue basis as to what provisions of a constitution affect corporations. Corporations, for instance, can’t vote, while people can. But corporations can assert a constitutional claim for compensation when their property is taken by the government, just as people can.

Schragger: For as long as there have been corporate bodies, their exercise of power has generated concern. In the 1920s and ’30s, Justice Louis Brandeis argued that the large corporations caused economic dislocation, distorted democracy, and undermined individual welfare. In his famous dissent in Liggett v. Lee, Brandeis wrote: “Through size, corporations, once merely an efficient tool employed by individuals in the conduct of private business, have become an institution … which has brought such concentration of economic power that so-called private corporations are sometimes able to dominate the state.” Brandeis further argued that the states can regulate these corporations; states had in the past limited their size and lifespan and dictated their purposes. “Whether the corporate privilege shall be granted or withheld is always a matter of state policy,” he wrote.

Brandeis was echoing other constitutional thinkers of the 19th and early 20th centuries, who worried that under the guise of corporate rights, “the most enormous and threatening powers in our country have been created”—to quote constitutional scholar Thomas Cooley, writing in the 1880s. Current-day constitutional scholars, like [University of Wisconsin–Madison professor Marc] Galanter, also worry about the capacity for artificial persons to dominate the legal and political landscape. “At the moment,” Galanter wrote in 2005, “it appears that APs are well on their way to capturing the legal profession and overwhelming or circumventing the courts.” This was prior to the recent Great Recession, which was precipitated in significant part by the risky lending practices of giant financial corporations. It was also written before the Citizens United decision, in which the Supreme Court struck down (in a 5–4 decision) a ban on corporate electioneering on First Amendment grounds.

Brandeis would have a lot to say about both events. He warned against corporate gigantism, arguing that it made the American

An Occupy Oakland protester wears makeup in observance of the traditional Mexican holiday “Day of the Dead,” Wednesday, Nov. 2, 2011, in Oakland, Calif. Oakland’s citywide general strike, a hastily planned and ambitious action called by Occupy protesters a day after police forcibly removed their City Hall encampment last week, seeks to shut down the Port of Oakland.
economy vulnerable to economic collapse. He called it "the curse of bigness;" we call it "too big to fail." He further railed against treating corporations as if they had rights over and above the state, and he urged extensive regulation of their activities in order to preserve democratic government. Justice John Paul Stevens wrote similarly in his 2010 dissent in the Citizens United case. He argued that "at bottom, the Court's opinion is … a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self-government since the founding, and who have fought against the distinctive corrupting potential of corporate electioneering since the days of Theodore Roosevelt."

Schauer: In the context of the First Amendment, and in particular freedom of speech and freedom of the press, revisiting the capacity of corporations to exercise First Amendment rights is implausible. Virtually all newspapers, magazines, motion pictures, and books, among other message-deliverers, are corporations, and to suggest that these entities do not possess First Amendment rights would undercut the information-and idea-providing function of the First Amendment, and would, in addition, be the occasion for a dramatic alteration in longstanding First Amendment doctrine and theory.

But to say this is not to foreclose careful thinking about the extent to which elections, like other First Amendment settings and institutions, are or should be subject to distinctive and institution-specific First Amendment rules, doctrines, tests, and principles. Thus, some election-specific regulations of corporate contributions and expenditures in the electoral process would be consistent with the increasing institution-specific nature of First Amendment doctrine, and would do far less violence to the general principles of freedom of speech and press than would the broad acceptance of the implausible proposition that corporations cannot be the holders or claimants of First Amendment rights. In a world in which many of our messages and information are created and transmitted by corporations and similar large organizations, limiting generally the constitutional right to transmit messages and information to natural persons only would be highly unfortunate.

Is there validity to the argument that corporations essentially represent the will of a group of people, both within the organization and outside of it, through “voting” with one’s dollars?

Kitch: Yes. People who associate with a corporation whether as shareholders, employees, or customers are indicating at some level an approval of its activities. The Occupy Wall Street protesters are perfectly aware of this, and recently urged the participants to close their accounts at large New York banks.

Alumni Q&A: Brian McNeill

From Tax Law to Tough Mudder

Tough Mudder participants run through the “Electroshock Therapy” obstacle, which consists of live dangling electric wires charged to 10,000 volts.

Alexander Patterson ’07 is in-house counsel and chief marketing officer for Tough Mudder, a grueling obstacle course competition held around the country that is billed as “probably the toughest event on the planet.”

In advance of a local Tough Mudder competition in October, Patterson returned to the Law School to describe his transition from a job in the tax law department of the law firm Davis Polk & Wardwell to his current position.

Prior to joining Tough Mudder, you spent a couple years practicing federal tax law. What caused you to decide to give that up?

Are we talking “proximate” causation or “but for” causation? OK, that is just a salute to Glen Robinson, my torts teacher. The answer is that after two years at Davis Polk in the tax department, it was clear to me that I didn’t want to practice tax law for the remainder of my career, and that such commitment was a prerequisite to succeed in that field. It was also clear to me that I had a lot of personal strengths that were not being put to use in the big law firm environment. After conversations with close mentors at the firm, I made the choice to leave to pursue other opportunities.

Which is tougher: law school or a Tough Mudder competition?

There are a lot of similarities: Both require a great deal of endurance and mental fortitude, both seemingly last a very long time, both cost a good chunk of change, and for many participants, both involve wearing costumes and drinking beer (Feb Club, anyone?). But at the end of the day, I’d have to honestly say that law school is tougher. You can get through Tough Mudder in one day. Lillian BeVier lasts all semester, and that’s just the start.
What sort of legal issues do you handle as Tough Mudder’s in-house counsel?

The issues I handle include: drafting contracts for new event venues, for vendors, sponsors, and new employees; ensuring we have the proper insurance coverage for the events; researching the enforceability of our participant liability waivers; advising on proper corporate organization for liability and tax structure; and finally, hiring and managing outside counsel in those instances in which litigation has arisen or more complex corporate matters require experienced advice.

I also oversee our relationship with Tough Mudder’s official charity partner, the Wounded Warrior Project, which provides programs and services to severely injured military service members during and after their transition from active duty to civilian life. In the last year alone, Tough Mudder participants have raised over $2 million for the WWP, something about which everyone at Tough Mudder is very proud.

Who was the toughest professor you had at UVA Law?

The toughest “professor” that I ever had was the hard-hitting combo of John Norton Moore and Bob Turner. First, they teach some pretty tough subjects, literally and figuratively: international law and national security law. Second, to do well in their classes you need to come up with novel thinking in a field that, well, let’s be honest, they basically dominate. That’s not easy.

Third and finally, it is tough to debate historical facts with men who were secretly advising the president when you were 7 years old and wearing He-Man pajamas.

In what ways did your time at UVA Law prepare you for your job at Tough Mudder?

Tough Mudder’s event is not a race, but is instead a challenge. Our participants are encouraged to put teamwork and camaraderie and the welfare of their fellow Mudders above their personal performance. The same can be said about the team of employees that we have assembled at Tough Mudder. UVA Law really embodied that spirit of teamwork and camaraderie, both among its students as well as between the students and professors.

Especially in a start-up company, culture is so important. The fact that my experience at UVA taught me the core value of camaraderie and fellowship rather than competition (and having fun in addition to working hard, as with the Libel show) has helped me to become a better team player at Tough Mudder as well as mentor and manager to others within the organization.

What can people expect at the Tough Mudder at Wintergreen?

In short, a really fun day with your teammates as you face off against 10 miles and 24 military-style obstacles designed by British Special Forces to test all-around strength, stamina, mental grit, teamwork, and camaraderie.

Among other obstacles, be prepared for the Berlin Walls (10-foot wooden walls), the Chernobyl Jacuzzi (dumpster filled with ice and water), the Fire Walker (gauntlet of flaming hay bales), and the famous ElectroShock Therapy (a run through a field of live dangling electric wires charged to 10,000 volts).

Oh, and then there’s the mountain itself, where we make you run up and down black diamond ski slopes. With a course like this, you can forget your finish time, as simply completing a Tough Mudder is a badge of honor. Not everyone will complete the event, but those who do will enjoy a cold pint of Dos Equis beer immediately upon finishing and earn the coveted Tough Mudder orange finisher headband.

Any tips you’d offer to UVA Law students or others who are planning to participate?

The one tip I would offer any prospective Mudder would be to get a good group of teammates who are generally fit but who more importantly know how to have a laugh and aren’t whiners. That and don’t be afraid of the ElectroShock Therapy obstacle. It’s only 10,000 volts.

Given your experiences, what career advice would you give to current UVA Law students?

My advice would be to follow the little voice inside your head to pursue your own (even if quirky) interests. If you are at UVA Law, it means you are smart and motivated enough to carve out a career in almost any industry you want, whether as a lawyer or even a non-lawyer, as I have done.

Ultimately tax law wasn’t the right fit for me, but the challenge of trying to master something different was part of what attracted me to tackle that area in the first place, and I am glad that I did it. When it was time for me to think of what I wanted to do next, I decided to apply only to jobs that I found interesting. That involved applications to work for senators and congressmen on Capitol Hill, in research positions at NGOs like Freedom House, and even a brief consulting project exploring my interest in automated vehicles and the goal of a world without traffic fatalities.

During this search, a close friend with whom I had actually done a mud run forwarded me an article about Tough Mudder, and the concept of a tough obstacle course challenge struck me as a great business idea. Having been at a big firm in a specialized
area of law, it seemed a great opportunity to work at a small company where I would not only be “exposed” to a multitude of legal issues but have real responsibility for making the right decisions. I quickly reached out to the founders—two Brits my age with an abundance of ambition and a wry sense of humor—and was successful in convincing them that they should make a lawyer one of their first full-time hires. As for transitioning to the head of the marketing department, it was a gradual shift where I simply kept getting involved on my own initiative and eventually at the right time raised my hand and said “I’d like the formal role.”

To an outside observer, the years since I graduated would not seem to have a consistent theme; but to anyone who really knows me, the consistent theme all along has been “Alex Patterson.” If I could tell only one thing to others at UVA Law, it would be to have the determination to follow your own unique interests and the willingness to take chances along the way.

Patterson’s talk, “An (Electro-) Shocking Transition: From Tax Lawyer to Chief Marketing Officer at Tough Mudder,” was sponsored by the UVA Law Entrepreneurship Club.

**ELECTION POLITICS | Brian McNeill**

**Obama Campaign GC Criticizes ‘Anti-Reform’ Movement**

Robert Bauer ’76, general counsel to President Barack Obama’s re-election campaign and a former White House counsel, told a Law School audience in October that an anti-reform movement has been dismantling rules that aim to protect confidence and integrity in government.

“I’m very troubled that there is an extremism in the opposition to reform, a sort of reckless and doctrinaire quality that is going to go a long, long way if it is taken to its logical conclusion to further undermine the fragile and critical trust the people have in their government and in the quality and effectiveness of self-governing,” said Bauer.

For roughly three decades after the Watergate scandal, Bauer said, there generally was bipartisan support for political reforms. Yet that support has frayed in recent years, particularly since the enactment of the McCain-Feingold campaign finance reform law in 2002 that limited soft-money contributions by corporations and unions.

A number of challenges to that law have been brought to the U.S. Supreme Court, he said, and many of those challenges have proven successful. One provision of the law sought to ban “sham issue advertising,” or political ads paid for by corporations or unions that circumvented longstanding restrictions by not being explicit about their electioneering but unmistakable in their intent.

“Most of you would recognize ads of this kind as the ones that say various unpleasant things about Bob Bauer and then close by saying, ‘Call Bob Bauer and tell him to stop being a bottom-feeding slimeball.’” Bauer said. “Most people thought broadcasting something like that before an election would narrow Bob Bauer’s election prospects.”

The Supreme Court significantly narrowed that provision to only advertisements...
that run immediately before an election and that referred to a particular candidate, Bauer said.

Even more notably, he said, the Court ruled in *Citizens United v. Federal Election Commission* that corporations and unions may independently fund election-year advertising, so long as the ads are not coordinated with a candidate’s campaign.

“It was a radical departure from understandings of the law,” he said.

The issue of voting access is also changing, Bauer said, with the case for improved access to the polls now competing with the case for more limited access. “Voting rights claims vie for attention with voting fraud claims,” he said.

“Around the country … state legislatures enacted or are considering passing laws that limit access to the polls in a variety of ways, through voter identification requirements, photo ID requirements, restrictions on third-party voter registration drives, limitations on early voting and in other ways,” he said. “It is fair to say that reform has come under direct attack or it’s been redefined, as in the case of voting rights, to be something quite different than we’d imagined it to be.”

In the past, government reforms have been backed by advocacy groups such as the League of Women Voters and Common Cause. Recently, he said, a number of new organizations are emerging to oppose reforms.

“We now see, springing up across the country, anti-reform organizations advocating against these reforms, attempting to show that government, in the enactment of these reforms, is either infringing intolerably on free-speech rights or doing the bidding of partisans or helping officeholders to entrench themselves in office,” he said.

Disclosure of political spending was once a “blessed refuge from disagreement,” Bauer said, in which both parties agreed that it was useful for transparency in government. Now, he said, the value of disclosure has come under attack, viewed by some as a way to vilify and muzzle corporate interests.

As an example, Bauer cited the failure of the Disclose Act of 2010, which was proposed by Democrats in the wake of *Citizens United* to require corporations and interest groups to disclose their political campaign expenditures.

“The debate was just marked from the beginning to end with suspicion about the purposes of disclosure and what lay behind the statute,” he said.

Government reform, Bauer argued, is too important to be swept up in the polarization of politics.

“We cannot make this out to be just one more brickbat that is thrown back and forth between one side to the other,” he said. “We cannot turn reform into something that is almost by definition disqualified because it is the government that ultimately enacts reforms, sometimes under public pressure, sometimes under the guidance of its wiser leaders.”

In addition to Bauer’s work for Obama’s re-election campaign, he also is founder and partner in the Perkins Coie political law group and general counsel to the Democratic National Committee. His talk, “The Law of Politics: Under Siege and In Transition,” was sponsored by the Student Legal Forum.

Find related video and MP3 online at www.law.virginia.edu/news.

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**WHAT HAS CHANGED? | Brian McNeill**

**‘War Model’ of Dealing with Terrorism Remains Strong Under Obama**

In the decade since the September 11 terrorist attacks, the U.S. government has adopted a “war model” in its legal approach to dealing with terrorism that remains strong today, a panel of professors said in a Law School discussion, “9/11 and the Law—10 Years Later.”


This development is backed in large measure by both political parties and all three branches of government, said Bradley, a former counselor on international law in the State Department’s Office of the Legal Adviser, as well as a former Virginia Law professor. He believes there has been a fairly high and surprising degree of continuity between the approaches of the administra-
tions of George W. Bush and Barack Obama.

Much like the Bush administration, he said, the Obama administration has repeatedly supported the power of the military to indefinitely detain those associated with al-Qaeda, the Taliban, and affiliated groups, regardless of whether the detainees were captured on a traditional battlefield. Both administrations backed the legality of military commission trials for suspected terrorists. And the Obama administration, similar to its predecessor, has resisted the extension of habeas corpus rights to military prisoners in Afghanistan.

“If it would be an overstatement to say there are no differences between the administrations,” Bradley said. “I think some of them are largely cosmetic. For example, the Obama administration very early said they were going to change the name of these detainees to ‘unprivileged enemy belligerents’ rather than ‘enemy combatants,’ but apparently with no change to the outcome for any of them.”

In fact, he noted, the Obama administration has been more aggressive in some ways than the Bush administration, notably ramping up targeted killings of suspected terrorists.

One key difference between the administrations, he pointed out, is that Obama has more clearly repudiated torture. Another notable potential difference would be the closing of the Guantanamo Bay detention facility, which Obama has promised to do. “Obama’s lawyers have maintained that it is lawful,” he said. “And in addition they have many more detainees in the comparable facility in Afghanistan and they certainly maintain the legality of that.”

Congress, Bradley said, has not specifically regulated military detention, but did adopt a broad use-of-force statute in the aftermath of 9/11 that the U.S. Supreme Court interpreted as a detention statute, and lawmakers have not resisted that interpretation. Congress also has passed two statutes regulating and allowing military trials for alleged terrorists, he said.

To a certain extent, even the courts have supported the war model, Bradley said.

“The Supreme Court is quite aware of what’s been happening in terms of detention and military trials over the last 10 years,” he said. “So its very lack of decision-making in this area, and its denial of review, in effect has allowed—as it well knows—for an indefinite military detention system to be in place. So its inaction is in fact an action.”


The Patriot Act, he said, was helpful in many respects, as it modernized wiretap and phone surveillance laws, while keeping surveillance of U.S. citizens under judicial supervision. It also enhanced tools available to deal with “lone wolf” terrorists and tightened border screening.

At the same time, he said, the law raised concerns over its surveillances provisions, as well as its authorization of “national security letters” that permitted law enforcement agencies to obtain certain documents without judicial scrutiny.

Martin added that the Patriot Act was proposed openly and marked up by Congress, which added a number of protections to its provisions.

“Even in those days, Congress was not a rubber stamp,” he said.

The greatest civil liberties concerns came after the Patriot Act, Martin said. These notably include the military commission order signed by Bush on Nov. 13, 2001, which set up a process for establishing military commissions to try individuals deemed enemy combatants. The process, he said, appeared to bar all judicial review, seemed to limit hearing rights and allowed convictions by two-thirds of the jury, even in capital cases.

“What was wrong was not going to the war model, but the particular kind of war model that the administration adopted,” Martin said. “A state of war does bring into play a different set of rules … It’s not the absence of rules altogether.”

Harrison, a former deputy assistant attorney general in the Department of Justice’s Office of Legal Counsel, addressed the issue of “inherent executive authority.”

The executive branch operates within a legal environment “that both empowers and constrains the executive branch and is not made by it, but rather is made through various mechanisms of lawmaker—constitutional and statutory,” he said.

In the wake of 9/11, he said, the Bush administration invoked its executive authority in its decision to take steps that conflicted with the law, such as bans on torture. Under the argument, he said, a commander in chief is authorized to make tactical decisions during a time of war, including such measures as enhanced interrogation.

“If a president has a certain amount of tactical authority, suppose he decides that some interrogation technique has to be used in order to achieve a military goal,” Harrison said. “It’s a very specific decision that under these circumstances, on these particular set of facts, it is necessary in order to win the war to take some step that is contrary to statute.”

Harrison, however, said he believes that argument is incorrect, based on the separation of powers.

“It doesn’t reflect the kind of tactical judgment that perhaps only the president can make,” he said. “Rather it is general, it is perspective, and it reflects wide-ranging considerations—the kinds of considerations that are appropriate exercises of the legislative, and not the executive, power.”

Nachbar, a judge advocate in the U.S. Army Reserve and a civilian senior adviser for the U.S. Department of Defense’s Office of Rule of Law and Detainee Policy, discussed the role of the courts in the war on terror.

Intellectual clarity between law and war is critical, he said, but has been “steadily undermined by virtually every actor in this arena, and courts are especially liable.” We
must be wary about undermining the rules that govern war, he said.

“The basis for claiming a right to engage in a war is a mixture of complicated, substantive, and institutional ones, none of which match well to the notions of due process that are likely to be at the heart of any Article III court decision about whether or not the executive can continue to detain someone at Guantanamo Bay,” Nachbar said. “Having courts insert themselves into determinations will necessarily muddle the justifications, potentially displacing one set of justifications underlying the law of war with a set of justifications that courts are already comfortable with, namely those surrounding concepts of due process.”

Find related MP3 online at www.law.virginia.edu/news.

RELIABLE MEMORY? | Brian McNeill

Monahan, Garrett Cited in ‘Landmark’ Opinion on Eyewitness ID

The New Jersey Supreme Court cited the work of Law professors John Monahan and Brandon Garrett in its sweeping new rules for the handling of eyewitness identifications in court, issued August 24.

The court’s unanimous 134-page decision, written by Chief Justice Stuart J. Rabner, cites the professors’ work in outlining new rules for eyewitness testimony that take into account scientific research about the reliability of human memory that has emerged since the U.S. Supreme Court handed down a test for the admission of eyewitness evidence 34 years ago.

“I testified that research on witness identification was the gold standard in the field of law and social science,” said Monahan, who is also a professor of psychology and psychiatric medicine. He testified via teleconference before a special master who conducted an exhaustive study of eyewitness identification research. “I think this opinion was a remarkably comprehensive and sophisticated analysis of a vast amount of data. It will go down as a landmark of courts’ use of social science research.”

The new rules, which apply only to New Jersey, provide courts with options beyond simply allowing eyewitness identifications or ruling them as inadmissible. The rules now allow courts to choose to admit an eyewitness identification, but with only a portion of the witness’ testimony. They also call for careful instructions to a jury, explaining why certain aspects of eyewitness identification may not be as reliable as they think.

“It’s a big opinion. It’s very important,” Garrett said. “What it does is provide a model for other states and really for the country in how to structure eyewitness identifications in the courtroom.”

The ruling cites Garrett’s book, Convicting the Innocent, which described eyewitness misidentifications in 190 of the first 250 DNA exonervations in the United States. Garrett said the new rules could lead to fewer cases going to trial with weak eyewitness evidence.

“With these jury instructions in place, prosecutors aren’t going to push cases where they know there was a departure from best practices or where there were real problems with eyewitness identifications because they know that the jury won’t be misled by a seemingly confident but unreliable eyewitness,” he said.

The opinion lays out factors for judges, prosecutors, and defense lawyers to consider when evaluating and litigating eyewitness identifications.

“[The court is] really giving the whole system a detailed social science framework—making clear what really matters when you’re evaluating an eyewitness identification,” Garrett said.

NATIONAL IDENTITY | Eric Williamson

Top ICE Lawyer Calls Immigration Policy a Balancing Act

U.S. immigration policy is at a crossroads, said Peter Vincent ’95, a senior immigration official who spoke at the Law School in September. “We are at the crux of a very large debate right now regarding what we are as Americans, what our national identity is, and what it should be, for the next hundred years or so, and what it means to allow individuals to come to the United States, or stay in the United States, and under what terms,” Vincent said during a talk sponsored by the school’s Immigration Law Program.
Vincent is the principal legal advisor for U.S. Immigration and Customs Enforcement (ICE), where he oversees the largest legal program within the Department of Homeland Security (DHS), supervising nearly 1,000 attorneys and an additional 350 legal and mission-support specialists who represent ICE in removal proceedings.

He spoke to students about his unique vantage point in the continuing debate over illegal immigration.

"With ICE, we are guaranteed to upset 50 percent of the people 100 percent of the time," Vincent said. "There is virtually nothing we do that does not get one side of the aisle upset at us. And I can tell you that is especially true with programs like Secure Communities [ICE’s effort to identify illegal immigrants through law enforcement’s sharing and matching of fingerprint information] or initiatives like prosecutorial discretion."

In fact, according to Vincent, prosecutorial discretion is central to the recent debate over immigration, and central to ICE’s ability to exercise its law enforcement mandate—choosing which cases to drop or pursue based on available resources and the relative threat an illegal immigrant may pose to the public.

Critics of prosecutorial discretion argue ICE is paving the way for amnesty by allowing illegal aliens to live and work in the country uncontested. But there are 10 to 12 million illegal immigrants in the United States, Vincent said, and his agency only has the resources to remove about 400,000 people per year. As a result, he said, ICE’s position is that deportation of otherwise law-abiding illegal immigrants should be a lesser priority.

"It makes sense for us in allocating how we prioritize our resources to focus on those cases that really subject our nation and our communities to the most harm," Vincent said. Homeland Security Secretary Janet Napolitano ‘83 reiterated the administration’s position on discretion in an August 18 letter to Sen. Richard Durbin and other U.S. senators.

The letter identified which cases are deemed to be high priority for ICE, including those with implications for public safety or national security, and which cases are deemed to be low priority, such as those involving families with children, or cases involving adults who have been in the country since childhood.

According to Vincent, the approximately 300,000 cases currently on the docket will be reviewed to see if they can be dismissed as being low priority and "sympathetic," a buzzword he used frequently in discussing what he sees as ICE’s humanitarian role, in addition to its law enforcement directive.

An interagency task force made up of representatives from the Department of Justice and DHS is currently reviewing the process, he said.

Napolitano’s letter was a response to Durbin’s Dream Act legislation, which would provide a conditional permanent residency track for illegal immigrant children.

But some critics read Napolitano’s well-publicized missive as an attempt by President Barack Obama to help shore up the Latin vote during the next election.

Vincent dismissed “cynics” who question his agency’s motives and said prosecutorial discretion has always been in use by the agency, despite its relatively recent elucidation before the public eye, and is the right of all law enforcement agencies.

"I’m incredibly proud of the administration—the secretary and director—for taking a real risk on prosecutorial discretion,” he said.

Vincent has been the principal legal advisor for ICE since May 2009. He previously served as the U.S. assistant judicial attaché, then judicial attaché for the Justice Department in Bogota, Colombia, where he was responsible for the extradition of some of the world’s most dangerous drug traffickers. He started his career in public service with Legacy Immigration and Naturalization Service, which would soon be largely integrated under ICE and Homeland Security following the September 11 attacks. Read more about Vincent’s career, as well as those of fellow alumni, John Morton ‘94 and Napolitano, in the archived spring 2010 issue at www.law.virginia.edu/uvalawyer.

Find related video and MP3 online at www.law.virginia.edu/news.
Holder Urges Grads to Emulate Robert Kennedy’s ’51 Legacy of Service

New Virginia Law graduates should continue the legacy of leadership established by predecessors such as Robert F. Kennedy ’51, U.S. Attorney General Eric Holder told the Class of 2011 during commencement on May 22.

“You made a critical choice, just as generations of UVA Law students have before you: to serve the cause of justice, and to dedicate yourselves to the principles that made our nation great and, surely, will guide our future progress,” Holder said during his keynote address. “As of today, you are no longer just students of the law. You are now stewards of our justice system.”

The federal government’s top lawyer addressed a class that included 372 J.D. graduates and 21 graduates receiving their master’s in law degree.

Holder recognized the public service of FBI Director Robert Mueller ’73 and Department of Homeland Security Secretary Janet Napolitano ’83—as well as that of U.S. Attorneys Tim Heaphy ’91, Neil MacBride ’92, and Zane Memeger ’91—but paid special tribute to Kennedy, who he said as a law student began to show the qualities that would later make him an effective attorney general and national leader.

Kennedy did not start out as a model student, but as a third-year student found a cause that ignited his passion, Holder said. That year, Kennedy was president of the Student Legal Forum and decided to invite Ralph Bunche to speak at the Law School.

“Dr. Bunche was a Nobel Peace Prize winner, a distinguished diplomat who helped establish the United Nations, and an African American,” Holder said. “At that time, not a single black student had enrolled in the J.D. program, or in UVA’s undergraduate college.”

Bunche agreed to speak, but said he would only do so before an integrated audience, Holder said. “Now, [Kennedy] easily could have avoided controversy, and politely explained to Dr. Bunche that such a thing would be impossible—that it was well beyond his power or control—and that, regrettably, the invitation would have to be withdrawn,” Holder said. “He could have bent to custom—and to state law—and moved on to the next distinguished name on his list of potential speakers.”

Instead, Kennedy went to the University’s student council and asked for a resolution allowing an integrated audience for the event, if not a sweeping change in University policy, Holder said. When that failed, he turned to the faculty, some of whom suggested that the Legal Forum “skirt the rules by declaring that a section of the audience would be for African Americans only, but then allowing people to sit wherever they liked,” Holder said.

In the end, Kennedy and some like-minded classmates went to UVA President Colgate Darden and convinced him that a recent Supreme Court decision integrating a Texas law school required the event to be desegregated, Holder said.

“When, at long last, Dr. Bunche arrived at Cabell Hall, it was filled to capacity. And, for the first time in history, nearly a third of the seats were taken by African Americans,” Holder said. “Sixty years later, I believe that Robert Kennedy would be proud to see this diverse and extremely talented group of graduates.”

At the beginning of the ceremony, Dean Paul G. Mahoney recalled that the orientation session for the Class of 2011 was among his first official duties as dean.

“Of course, in August 2008 we didn’t know what would happen over the next few months in the financial markets and over the next few years in the economy in general,” he said. “I truly admire those of you who have faced those challenges with maturity and grace. Your future successes—and I know there are many in store—will be all the more deserved for it.”

The Class of 2011 collectively put in more than 13,000 hours of pro bono work assisting those who can’t afford legal representation, Mahoney said. A record 75 members of the class met the Pro Bono Challenge, the highest number of any graduating class in school history, he said.

“You are trained to be leaders, and you will be: in your careers, in your communities, and in some cases in appointed or elected government service,” Mahoney said. “Your law school is proud of you and confident in your future.”

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Clerkships For 2010–11 Term

All are members of the class of 2011 unless otherwise noted.

Stewart Ackerley
The Hon. Karen LeCraft Henderson
U.S. Court of Appeals for the D.C. Circuit

Mahmud Ahmad ’08
The Hon. Allyson Duncan
U.S. Court of Appeals for the Fourth Circuit

Rianna Barrett
Virginia Beach (Virginia) Circuit Court

Alexander Blanchard
The Hon. Norman K. Moon ’62
U.S. District Court for the
Western District of Virginia

Doug Boyle ’10
The Hon. Boyce Martin ’63
U.S. Court of Appeals for the Sixth Circuit

Nathan Bryant ’09
The Hon. Kristen Mix
U.S. District Court for the
District of Colorado

Stephanie Cagniart
The Hon. Patrick Higginbotham
U.S. Court of Appeals for the Fifth Circuit

Jeff Chang
The Hon. Lawrence M. Lawson
New Jersey Superior Court

Tom Chen ’07
The Hon. Leonard Stark
U.S. District Court for the
District of Delaware

Celia Cohen ’10
The Hon. Alison Nathan
U.S. District Court for the Southern
District of New York

Alexander Cox
The Hon. Stephen Colloton
U.S. Court of Appeals for the Eighth Circuit

Anna Craft
The Hon. Joel F. Dubina
U.S. Court of Appeals for the
Eleventh Circuit

Alejandro Cruz ’10
The Hon. Eric Vitaliano
U.S. District Court for the Eastern
District of New York

Devon DeBacker
The Hon. Amul Thapar
U.S. District Court for the
Eastern District of Kentucky

Elizabeth DeFelice ’10
The Hon. Peggy Ableman
Delaware Superior Court

Rob Derise ’09
The Hon. Barbara Milano Keenan LL.M. ’92
U.S. Court of Appeals for the Fourth Circuit

Josh Drian
The Hon. Henry Morgan LL.M. ’98
U.S. District Court for the
Eastern District of Virginia

Clarke Edwards
The Hon. Gerald Tjoflat
U.S. Court of Appeals for the
Eleventh Circuit

Elspeth England
Alexandria (Virginia) Circuit Court
Lydie Essama
The Hon. Richard D. Bennett
U.S. District Court for the
District of Maryland

Bob Falconi
Fairfax (Virginia) Circuit Court

Carlton C. Gammons ’10
The Hon. Charlene Honeywell
U.S. District Court for the
Middle District of Florida

E. Rebecca Gantt
The Hon. Michael Boudin
U.S. Court of Appeals for the First Circuit

Matthew Gessesse ’07
The Hon. Mary Schoelen
U.S. Court of Appeals for Veterans Claims

Ashley Gillespie
Chesapeake (Virginia) Circuit Court

Shiva Goel
The Hon. Louis L. Stanton ’55
U.S. District Court for the
Southern District of New York

Wells Harrell
The Hon. T.S. Ellis
U.S. District Court for the
Eastern District of Virginia

Joshua Hess ’09
The Hon. Raymond Kethledge
U.S. Court of Appeals for the Sixth Circuit

Della Hodges
The Hon. Sharon Keller
Texas Court of Criminal Appeals

Erin Houlihan
Norfolk (Virginia) Circuit Court

Sarah Klapman ’09
The Hon. Raymond C. Clevenger III
U.S. Court of Appeals for the Federal Circuit

Andrew Koelz
Rockingham (Virginia) Circuit Court

Daniel Lipton
The Hon. Beverly Martin
U.S. Court of Appeals for the
Eleventh Circuit

Jamie Lisagor ’06
The Hon. Richard C. Tallman
U.S. Court of Appeals for the
Ninth Circuit

Lena Lockridge
The Hon. James P. Jones ’65
U.S. District Court for the
Western District of Virginia

Brinton Lucas
The Hon. J. Harvie Wilkinson ’72
U.S. Court of Appeals for the Fourth Circuit

Emily Mathews
Virginia Beach (Virginia) Circuit Court

Matt MacDonald ’10
The Hon. James Cacheris
U.S. District Court for the
Eastern District of Virginia

Fiona McCarthy ’10
The Hon. James Cacheris
U.S. District Court for the
Eastern District of Virginia

Keith McCracken ’99
The Hon. Catherine D. Eagles
U.S. District Court for the Middle District of
North Carolina

Jordan McKay ’09
The Hon. Alfred Irving
D.C. Superior Court

Noah Mink
The Hon. Priscilla Owen
U.S. Court of Appeals for the Fifth Circuit

Katie Mitchell
The Hon. William H. Pryor
U.S. Court of Appeals for the
Eleventh Circuit

David Mroz ’08
The Hon. Sharon Prost
U.S. Court of Appeals for the Federal Circuit

Calvin Nelson ’07
The Hon. Robert Leon Wilkins
U.S. District Court for the
District of Columbia

Tony Orlandi ’06
The Hon. Aleta Trauger
U.S. District Court for the
Middle District of Tennessee
Shaunik Panse ’09
The Hon. James Cott
U.S. District Court for the Southern District of New York

J. Eric Pardue ’10
The Hon. Bernice B. Donald
United States Court of Appeals for the Sixth Circuit

Anand Patel ’10
The Hon. William C. Bryson
U.S. Court of Appeals for the Federal Circuit

Abigail Perdue ’07
The Hon. Jimmy Reyna
U.S. Court of Appeals for the Federal Circuit

Joelle Perry ’10
The Hon. Colleen Kollar-Kotelly
U.S. District Court for the District of Columbia

Lanora Pettit ’10
The Hon. Diarmuid O’Scafflann L.L.M. ’92
U.S. Court of Appeals for the Ninth Circuit

Leigh Phillips
The Hon. Robert G. Mayer ’75
U.S. Bankruptcy Court for the Eastern District of Virginia

Alex Pogozelski
The Hon. J. Owen Forrester
U.S. District Court for the Northern District of Georgia

Matthew Potter
The Hon. Gregory Wormuth
U.S. District Court for the District of New Mexico

Lucy Ricca ’06
The Hon. James P. Jones ’65
U.S. District Court for the Western District of Virginia

Michael Robertson ’10
The Hon. Jane Boyle
U.S. District Court for the Northern District of Texas

Tyler Robinson
The Hon. Christine Miller
U.S. Court of Federal Claims

Natalie Ronollo
Arlington (Virginia) Circuit Court

Priya Roy
The Hon. Robert S. Ballou ’87
U.S. District Court for the Western District of Virginia

April Russo
The Hon. Robert E. Payne
U.S. District Court for the Eastern District of Virginia

Greg Sagstetter
Fairfax (Virginia) Circuit Court

Andrew Sauder ’10
The Hon. Myron T. Steele ’70, L.L.M. ’04
Delaware Supreme Court

Jeff Schmitt ’07
The Hon. Timothy Corrigan
U.S. District Court for the Middle District of Florida

Brent Schultheis
Alexandria (Virginia) Circuit Court

Laura Schuyler
The Hon. C. Ian McLachlan
Connecticut Supreme Court

Ravi Sharma
The Hon. John A. Gibney Jr. ’76
U.S. District Court for the Eastern District of Virginia

Kyle Smith
The Hon. William Holloway
U.S. Court of Appeals for the Tenth Circuit

Melanie Smith
The Hon. Jorge Solis
U.S. District Court for the Northern District of Texas

T. Peyton Smith
The Hon. Rhesa Barksdale
U.S. Court of Appeals for the Fifth Circuit

Seth Stoughton
The Hon. Kenneth Ripple ’68
U.S. Court of Appeals for the Seventh Circuit

Jeremy Tor
The Hon. Dan Polster
U.S. District Court for the Northern District of Ohio

Mike Toth ’06
The Hon. Ursula Ungaro
U.S. District Court for the Southern District of Florida
Sam Towell ’05
The Hon. Barbara Milano Keenan LL.M. ’92
U.S. Court of Appeals for the Fourth Circuit

Phil Trout ’09
The Hon. Amy Berman Jackson
U.S. District Court for the
District of Columbia

Amy Trueblood ’02, LL.M. ’98
The Hon. Stephen Limbaugh, Jr.
U.S. District Court for the Eastern District of Missouri

Joseph Van Tassell
The Hon. Julia Gibbons ’75
U.S. Court of Appeals for the Sixth Circuit

Kristen Voorhees
The Hon. Alex Martinez
Colorado Supreme Court

Jamar Walker
The Hon. Raymond A. Jackson ’73
U.S. District Court for the
Eastern District of Virginia

Katherine Watlington
The Hon. Henry E. Hudson
U.S. District Court for the
Eastern District of Virginia

Sarah White
The Hon. Costa M. Pleicones
South Carolina Supreme Court

Lauren Willard
The Hon. Alex Kozinski
U.S. Court of Appeals for the Ninth Circuit

Zach Williams ’10
The Hon. Eric Clay
U.S. Court of Appeals for the Sixth Circuit

Jonathan Wolfson ’10
The Hon. Edith Clement
U.S. Court of Appeals for the Fifth Circuit

Caroline Wray
The Hon. Patricia Minaldi
U.S. District Court for the
Eastern District of Louisiana

Brian Wright
The Hon. Norman K. Moon ’62
U.S. District Court for the
Western District of Virginia

U.S. Supreme Court Clerks:

Donald Burke ’08
The Hon. Antonin Scalia
U.S. Supreme Court

Mark Hiller ’09
The Hon. Sonia Sotomayor
U.S. Supreme Court

John Moran ’10
The Hon. Antonin Scalia
U.S. Supreme Court

Matt Nicholson ’09
The Hon. Clarence Thomas
U.S. Supreme Court

2011 GRADUATION AWARDS

MARGARET G. HYDE AWARD
JAMES C. SLAUGHTER HONOR AWARD
THOMAS MARSHALL MILLER PRIZE
Z SOCIETY SHANNON AWARD
ALUMNI ASSOCIATION BEST NOTE AWARD
ROBERT E. GOLDSTEN AWARD FOR DISTINCTION IN THE CLASSROOM
ROGER AND MADELEINE TRAYNOR PRIZE
HERBERT KRAMER/HERBERT BANGEL COMMUNITY SERVICE AWARD
MORTIMER CAPLIN PUBLIC SERVICE AWARD
EDWIN S. COHEN TAX PRIZE
EARLE K. SHAWE LABOR RELATIONS AWARD
JOHN M. OLIN PRIZE IN LAW AND ECONOMICS
EPPA HUNTON IV MEMORIAL BOOK AWARD
VIRGINIA TRIAL LAWYERS TRIAL ADVOCACY AWARD
VIRGINIA STATE BAR FAMILY LAW BOOK AWARD

Emily Rebecca Gantt
Jeree Michele Harris
Seth Wayne Stoughton
Emily Rebecca Gantt
Daniel Edward Lipton
Ravi Romel Sharma
Gerald Brinton Lucas IV
Daniel Adam Ross
Peggy Davis Nicholson
Kristin Nicole Weissinger
Rachel Lauren Paul
Joy Allison Williamson
Adam Milasincic
Andrew Philip Winerman
Jeremy Aaron Tor
David A. Leahy
Emily Groleau Rottier
Tackling Climate Change Necessary, Despite Tough Economic Times
The United States must move forward with laws and policies that halt global climate change, President Barack Obama’s former senior adviser on climate change and energy said at the Law School.

“Occupy Wall Street: Views on the OWS Movement and the Financial Crisis: A Panel Discussion”
Professor M. Todd Henderson of the University of Chicago School of Law, and Virginia Law professors Quinn Curtis and John Morley discuss the Occupy Wall Street protests and the financial crisis.

“Regulating Hedge Funds: Present Issues and Future Developments”
David Selden ’96, a partner at Fried Frank, and Professor John Morley address the general issues in regulating hedge funds.

“Wal-Mart v. Dukes: Curbing Class Action Abuse or Slashing Workers’ Rights?”
In a debate over the U.S. Supreme Court case, Wal-Mart v. Dukes, Joseph Sellers, attorney for the plaintiff, appeared alongside Mark Perry, lawyer for Wal-Mart, at the Law School. The debate was moderated by Professor George Rutherglen and featured Professor John Monahan.

2011 Supreme Court Roundup, with Professors A. E. Dick Howard ’61, Leslie Kendrick ’06, Toby Heytens ’00, David Martin, and George Rutherglen
In an annual tradition, University of Virginia law professors discussed the most important decisions of the U.S. Supreme Court from last term.

The Arizona Immigration Law, Sanctuary Cities, and Secure Communities: What Can States Do About Illegal Aliens?
Professor David Martin debated Arizona’s immigration law with Ilya Shapiro.

“Genes, Drugs and Moral Responsibility,” with Dr. Kenneth Kendler
Genes and behavior both play a role in how mental and addictive disorders develop, a leading authority on psychiatric and behavioral genetics said at the Law School.

Class of 2014 Most Competitive in School History
The 357 members of the entering Class of 2014 were selected via the most competitive application process in the school’s history and boast the highest-ever median undergraduate grade-point average.

“The Debt Ceiling and Section 4 of the 14th Amendment”
Professor John Harrison led a discussion with research assistants and professors about the extent of presidential power in the recent debate over raising the debt ceiling during a lunch talk.

“People Out of Place: The Sixties, the Supreme Court and Vagrancy Law”
Professor Risa Goluboff discusses her forthcoming book, “People Out of Place: The Sixties, the Supreme Court and Vagrancy Law,” during a faculty workshop.

Multimedia News Offerings at www.law.virginia.edu/news
The first rumor we students heard when Bill Stuntz returned to the University of Virginia to teach after his Supreme Court clerkship was that he hadn't gotten into Virginia the first time he applied. He'd been turned down, the story went, spent a year working as a clerk at a local hotel called the Boar's Head Inn, got in on his second try, then went on to graduate first in his class. It was fitting that even the rumor Bill spawned was encouraging to the rest of us (we too might start humbly yet achieve great success).¹

I sometimes wonder if that year as a hotel clerk was one of the secret ingredients of Bill's humility. At a presentation by a scholar in family law or bankruptcy, Bill would preface his question by saying that he didn't know anything about the subject and seem to mean it. After giving an hour of his time to work through an idea or a paper or a problem that someone was struggling with, he would apologize to them for “taking up so much of [their] afternoon.” This might be easy for someone who really doesn't know a great deal or really is presuming on the student's or friend's or colleague's time. It was almost unfathomable in a scholar who transformed an important area of legal scholarship—criminal law and criminal procedure—and pioneered another—contemporary Christianity and law.

One of Bill's colleagues once told me that Bill was the “dumbest smart person she'd ever met.” This wasn't intended as an insult (though I suspect she may also have had Bill's penchant for putting ketchup on steaks or his susceptibility to practical jokes in mind). What she meant was that Bill's intuitions—the ideas he thought were self-evident—were often anything but self-evident to everyone else. In one of his most famous articles, Bill showed that the new constitutional protections the Supreme Court had put in place for criminal defendants (such as the Miranda rule and an expanded exclusionary rule) may actually have had a perverse effect on criminal justice.² In another article, Bill identified and solved a paradox with the criminalization of gambling and the social battles over abortion and gay rights: the odd tendency of these laws to undermine the very norms they are designed to promote.³

Bill's commentary in popular magazines was as stunningly counterintuitive as his legal scholarship, and I believe his meditations on his cancer will have as powerful an impact in their way as his seminal criminal procedure articles.⁴ Indeed, they already have. Each time Bill emailed me a post for the blog we co-authored (always telling me not to use it unless I thought it was “okay”), I would brace for the emails I would receive as soon as it went up. Many confided, to paraphrase only slightly, that my “posts weren't so bad, but Bill's—well, they were simply unforgettable.” As my wife once put it: “Everything Bill writes is interesting.”

The irony of having such an original mind is that one's insights may become the conventional wisdom. Novel at the beginning, obvious when everyone else catches up.

Bill would never have begrudged this. This wasn't because he lacked ambition or didn't value it,⁵ but because he believed that our enterprise as legal scholars of trying to better understand and

¹ Much later I learned, much to my surprise, that even the first part of the rumor was true. I suspect that UVA's admissions standards, or perhaps the admissions officer, were soon changed.

² William J. Stuntz, The Uneasy Relationship Between Criminal Procedure and Criminal Justice, 107 YALE L.J. 1 (1997) (arguing that, because their fees are capped, defense attorneys may focus on the new procedural objections and forgo the careful investigation that would be necessary to determine whether the defendant may be innocent).


⁵ A small example: several months before a major conference at Harvard Law School honoring Bill's work last spring, I told him I was struggling to suppress my impulse to treat the conference as an opportunity to enhance my own professional status. Bill surprised me by saying: “I think you’re wrestling too much. There isn’t anything wrong with seeking some professional gain for yourself in this or any conference—that’s the chief reason to have conferences.”
perhaps improve the world is a collective one. This commitment to our common mission was perhaps most evident in something Bill, unlike most scholars of his stature, didn’t have: disciples. The work of some scholars—such as Daniel Richman of Columbia, my colleague Stephanos Bibas, or Barbara Armacost of the University of Virginia—would be hard to imagine without Bill’s inspiration. And countless scholars have borrowed from Stuntz—“stealing” his insights, as David Sklansky has written.6 But Bill encouraged new thinking, not devotion to his own ideas.

Two attributes of Bill’s insights will nevertheless keep them from dissolving into the conventional wisdom. The first is simply that his best known ideas were so radically new when he developed them. No one can talk about the unintended consequences of the Supreme Court’s constitutional criminal procedure cases or the political pressures to steadily expand federal criminal law without a nod to Bill’s work.

The other is more aesthetic: the arresting images that capture the ideas. Bill famously described the constant pressure to criminalize publicly salient misbehavior as a “one-way ratchet.”7 And he spoke of law’s “double game”—the need to police sinfulness without giving lawmakers so much discretion that they will enforce a law in discriminatory fashion, an objective he later called the “modest rule of law.”8

During my final year of law school—and Bill’s first of teaching—I did a small amount of research for him. Bill didn’t just give me a research assignment; he asked me to critique his draft, and treated my ill-informed comments as if they might teach him something. I wasn’t used to having professors who didn’t assume they already knew most of what there was to know. Many years later, an evening janitor got the same treatment when Bill and I encountered him as we walked through the tunnels of Harvard Law School on our way to a meeting with the law school’s Christian Legal Society students: Bill greeted the janitor by name, asked about his family, and stopped to talk.

Even in his final weeks, Bill loved to laugh. The last time I saw him, he joked, almost as soon as I walked in the door, that he had “already lived past [his] expiration date.”

In an essay about heaven, C.S. Lewis wrote:

> It may be possible for each to think too much of his own potential glory hereafter; it is hardly possible for him to think too often or too deeply about that of his neighbour. The load, or weight, or burden of my neighbour’s glory should be laid on my back, a load so heavy that only humility can carry it ….

The essay, which Bill once called his favorite Lewis writing, extols those who recognize both that "[t]here are no ordinary people,"10 and that even “the dullest and most uninteresting person you can talk to may one day be a creature which, if you saw it now, you would be strongly tempted to worship.”11

Anyone who knew Bill can guess, although Bill probably could not, why he was so strongly drawn to this essay: it’s about him. ■

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10 Id. at 19.
11 Id. at 18.
In 1993 at a congressional hearing on capital punishment, an increasingly agitated witness named Federico Macias listened to testimony acknowledging that while innocent persons may be executed, the sentencing statutes provided “unprecedented safeguards” and the risk was “minimal.”

It was not a “minimal” risk to Macias. Nine years earlier he had been wrongly convicted in Texas of hacking to death Robert and Naomi Haney with a machete during a burglary. Most of the goods stolen from the murdered couple were retrieved from the yard of 19-year-old Pedro Luevanos. Luevanos implicated Macias as his accomplice and as the actual killer. In return Luevanos received a 25-year-sentence while Macias was sentenced to death.
Lucky for Macias, if “lucky” means spending almost a decade on death row, Deirdre Enright ’92, then with Skadden, Arps, took on Macias’s case as member of the firm’s pro bono team of lawyers and investigators. Now director of investigation for the Innocence Project clinic at the Law School, Enright found considerable evidence to support a reversal based on ineffective counsel at trial. The law firm obtained a federal writ of habeas corpus to overturn Macias’s conviction. A unanimous panel of the U.S. Court of Appeals for the Fifth Circuit upheld the writ and found that not only was Macias’s original counsel grossly ineffective, they had also missed considerable evidence pointing to Macias’s innocence.

At the congressional hearing, Macias was among a group of exonerees who told the committee their stories. Macias had twice been so close to execution that he was transferred to the “watch cell,” the cell nearest to the execution chamber. As he listened to the testimony about the “minimal” risk to innocent people, he turned around in his chair and gave his legal team a look of complete disbelief that said, “Are you kidding? An innocent person, like … me?”

Finding Truth in a Labyrinth

FEDERICO MACIAS’S APPALLING experience on death row represents the illusory reality of all felony cases in the criminal justice system. Whether a case will proceed is utterly in the control of the prosecutor. Their discretion is close to absolute. If the prosecutor does charge, the case will follow a series of stories told by victims and defendants and witnesses, buttressed by forensic evidence, which build a grand narrative as the case navigates a maze of procedural rules.

The system relies fundamentally on the accuracy and reliability of the data it takes in; “garbage in—garbage out” in computer parlance. From the moment the police handcuff a defendant, information begins to flow into the criminal justice system. Did the police Mirandize the defendant, secure the crime scene, handle the evidence properly, maintain the chain of custody, conduct a proper lineup, obtain a voluntary confession?

At any point during this journey, luck, circumstance, incompetence, or tainted evidence can send the story seriously off the rails. But once “written” and finalized by plea bargain or trial, the story’s
“truth” becomes iconic, practically impervious to legal challenge post-conviction.

Like many professions—medicine comes first to mind—the criminal justice system's skilled practitioners maintain strict standards of conduct, but the stakes are high. Even the smallest error can have ruinous consequences for individuals, families, and communities. The guilty can be freed, or the innocent jailed, and judges have only a modest impact on the process; plea bargains account for 95% of all felony convictions. If the case does go to trial, judges usually rule only on procedural matters.

In fact, most felony cases do produce a legally accurate story. Most defendants do get a fair and impartial hearing. But the criminal justice system, like any human endeavor, suffers from frailty and error. Prosecutorial discretion is its core principle and, at times, its most glaring weakness.

The late William J. Stuntz '84, former professor at the Law School and seminal thinker on criminal law, often wrote about an unhealthy nexus between prosecutors and legislators that distorts original legislative intent, which Stuntz called the “expressive meaning” of the law.

“What, after all, does expressive criminal law express?” he asked. “Is the message the law that the legislature passes? Or is it the sum of the arrest and prosecution decisions of individual police officers and prosecutors?”

“Prosecutors are better off when criminal law is broad than when it is narrow,” he wrote. “Legislators are better off when prosecutors are better off. The potential for alliance is strong, and obvious. And given legislative supremacy—meaning legislatures control crime definition—and prosecutorial discretion—meaning prosecutors decide whom to charge, and for what—judges cannot separate these natural allies.”

Stuntz’s critique was particularly salient given that he was an evangelical Christian and a political conservative.

By the Numbers

“Criminal punishment is good and proper in the right cases, and incarceration may be a proper form of that punishment .... Still, those of us who live outside those awful warehouses have good reason to be penitent for what we have done to, and failed to do for, those inside.”

—William J. Stuntz, Christian Legal Theory

According to a 2006 Department of Justice report, over 7.2 million people in the United States are either in prison, on probation, or on parole; about one out of every 31 Americans.

Approximately 2.5 million are currently incarcerated in state (90%) or federal prison (10%). About 95% of criminal cases are state cases, but longer federal sentences create an outsized number of federal prisoners. The United States leads the world in the number of people it jails. China, with over four times the population, is second, incarcerating 1.6 million.

“We have a political system that puts crime on the front burner of political agendas in a way that’s not true in other countries,” says Darryl Brown ’90, a former public defender and now the Law School’s O.M Vickers professor of law. “That makes it more likely
“Drug prosecutions send the message that one norm applies on city streets and another in suburban malls—and, to a large extent, that one norm applies to African-Americans and another to whites. Those messages do indeed teach, but what they teach most effectively is cynicism about legal institutions.”

— William J. Stuntz, Christianity and the (Modest) Rule of Law

Since the “war on drugs” began in the 1970s, federal and local law enforcement authorities have prosecuted as felons those involved in the sale, use, and possession of a growing list of narcotics, hallucinogens, and other illegal substances. To a large extent, they have focused those efforts on minority communities in towns and cities. Police and prosecutors claim they are responding to citizen complaints and violent incidents in those areas. Civil liberties advocates instead see a disturbing pattern of discrimination that has used drug criminalization to target minority populations and deny them basic rights. Whatever the cause, U.S. Department of Justice reports show:

- Nearly 11 percent of all black men ages 30 to 34 were behind bars as of June 30, 2007.
- A black man is 11.8 times more likely than a white man to be sent to prison on drug charges, and a black woman is 4.8 times more likely than a white woman.
- In 16 states, blacks are sent to prison for drug offenses at a rate as high as 42 times the rate of whites.
- The prison population of drug offenders has grown from 40,000 to more than 500,000.
- Over 31 million people have been arrested.
- 80 percent of drug arrests are for possession.
- 80 percent of criminal defendants are indigent and cannot afford an attorney.

No one can deny that many neighborhoods nationwide are suffering from the crime and violence that surround the drug trade. But what is causing it: the drugs themselves, or the laws criminalizing them? If it’s the drug that causes violence in one community, why wouldn’t it in all?

Catherine Scott Bernard ’07, a defense attorney working in a public defender’s office in Georgia, has had “surprisingly frank” conversations with prosecutors, judges, and law enforcement officers about the “war on drugs.” “Some of them stick to the ‘drug dealers are bad people’ line, but almost all of them acknowledge that the drug war has been a failure and is causing a lot of harm, and that it doesn’t make any sense to send all these nonviolent people to prison while real criminals walk the streets.” (see page 38)

Rick Moore ’80, assistant Commonwealth Prosecutor for Orange County, Virginia, sees it very differently. “People get killed using meth, crack, cocaine, oxycontin, and ecstasy; they’re poison. They lead to more violence, more risky behavior, and more larcenies. They affect people’s judgment and their inhibitions. They destroy families.”

According to Moore, the police in his jurisdiction do not target specific areas; they are responding to calls from the community where violence is interrupting their day-to-day lives. “Kids in these neighborhoods waiting at the bus stop or walking to school are at risk,” he adds. “You don’t want that to be part of their world. Should the police chief devote an equal amount of resources snooping around the dorms for non-violent drug sales, or devote his resources to the neighborhood putting up with shots fired every weekend?”

But Moore also sees a problem in ignoring “peaceful” users. He understands the rough road addicts walk, but his ultimate responsibility is to the larger community. “We look at drug users as victims, too,” he says. “We’ll offer them help and incentives to get clean. That’s a win for the community. But if they turn that help down, we can’t let them continue to damage the community by inviting drug dealers to sell to them. You have to fight it on the demand side and the supply side.”

Bernard sees it from the other side of the wall. “As the person responsible for shuffling these poor souls through the process while having to explain ‘Yes, I know that the officer bullied his way into your home and then arrested you for having half a gram of cocaine, but the law says you should go to prison for 15 years,’ I would dearly love to have some way to reconcile that. Handling cases for people rightfully accused of burglary or aggravated assault or something else terrible is easy, since what’s happening to them is mostly appropriate. It’s just hard having to look so many peaceful people in the eye and tell them how they are going to suffer even though they’ve never hurt anyone.”
that we criminalize too much. Our punishment levels are five to seven times higher than those of any industrialized European countries.”

Do those punishment levels have any effect on the crime rate? “Americans commit more violent crimes than citizens of any European country, and about the same amount of property crime, non-violent crime, and drug crime. Clearly we aren’t getting more bang for the buck,” says Brown.

Brown would like to see a return at least to the sentencing levels the U.S. had in the early 1980s, before the “war on drugs” prompted increasingly severe sentencing policies. “Our incarceration policies were harsher in the early ’80s than they had been for most of the twentieth century, and more severe than Europe has ever had,” he says. “So that was hardly a lenient policy. But I just don’t think there’s any evidence that shows we’re improving safety or reducing crime from the ever-longer sentences we’ve added in the last fifteen to twenty years. And incarceration is incredibly costly financially, holding aside the human costs.”

“The relationship between punishment and crime is hard to establish,” adds Harmon. “As a society, we’re doing something deeply wrong.”

Further, since between one and five percent of guilty verdicts are incorrect, although it is virtually impossible to know for sure, too many innocent are being punished, but a far greater number suffer from the system’s mistreatment of the guilty.

“If you spend time in prisons,” says Harmon, “you find that you can’t imagine the problem to which prisons are the solution, unless you’re simply talking about not allowing people to be free to commit more crimes. But as a way of remedying the social problem of crime, it’s abhorrent. Our prison system is deeply dysfunctional.”

On the Street

“We are likely to come ever closer to a world in which the law on the books makes everyone a felon, and in which prosecutors and the police both define the law on the street and decide who has violated it.”

—William J. Stuntz, The Pathological Politics of Criminal Law

“We WANT POLICING TO WORK,” says Harmon. “We want it to reduce fear, to reduce disorder, and to reduce crime. It’s very easy to be critical about police use of excessive force and forget that we don’t presently have an alternative to policing to achieve these ends.”

There are approximately 17,000 police departments in the U.S., from the enormous municipal departments of major cities like New York (35,000) to the smallest two-person sheriff’s office in thousands of rural communities. Overall, there are close to 900,000 law enforcement officers in the U.S.

The vast majority of police officers work in intensely supervised environments, according to Harmon, who has prosecuted police for using excessive force.

The question is how to regulate policing to achieve social order at the lowest cost. For example, SWAT teams are much more intrusive than Terry stops (brief detention on reasonable suspicion), but each of them can cause harm. Are they worth it?

“In New York, police make more than 500,000 Terry stops a year,” Harmon says. “Those numbers are astronomical. Critics say police rarely find anything and they’re often violating constitutional rights. The police say they rarely violate constitutional rights and they often find something. That debate ignores that we have to weigh the benefits—even when Terry stops are constitutional and effective—against the aggregate dignity harm of stopping that many people on the street.”

Nor can one know if the presence of a SWAT team during a search increases the likelihood of civilian or police fatalities, she says. These
are often high risk situations where the occupants are very likely to be armed. Does a SWAT team protect or injure more people?

In both cases, there is simply no empirical evidence to know.

To further complicate the issue, institutional problems inside police departments can be hidden by an administrative system that can easily scapegoat a few bad actors, wash its hands, and resume normal operations.

“One of the most disturbing things I realized when I was prosecuting police officers was that instead of fixing the underlying problem of police misconduct, I was sometimes making it worse,” Harmon says. “Some of the people I prosecuted were bad people who did terrible things, but I also knew from my investigations that departments sometimes tolerated the bad behavior. Yet when federal prosecutors finish a case, the department chief often holds a press conference, thanks the Justice Department for taking care of the problem, and says everything can go back to normal.”

Rick Moore ’80, Assistant Commonwealth Attorney for Orange County, Virginia, and director of the Law School’s Prosecution Clinic, understands these concerns, but cautions that the necessary focus on the relatively small number of “bad actors” skew the reality. “If something really bad occurs in one percent or even five percent of cases, and that’s all a law student studies, they develop a jaded view of the police and prosecution because they really haven’t seen what’s out there. What you don’t hear about are the hundreds and thousands of things that happen every day where somebody’s been courteous or fair or transparent. That doesn’t get any press.”

Doug Gansler ’89, Attorney General of Maryland and a former county and federal prosecutor, agrees. “Most police officers are in it for the right reasons. They want to protect the community and they’re woefully underpaid to do that. Of course, some are better police officers than others. They’re going to go the extra mile to get better evidence to make a better case. They will look for their extra eyewitness or will to do a better job at the crime scene.”

At the Station House

“Criminal procedure’s rules and remedies are embedded in a larger system, a system that can adjust to those rules in ways other than obeying them. And the rules can in turn respond to the system in a variety of ways, not all of them pleasant. The more one focuses on that dynamic, the more problematic the law of criminal procedure seems…. Ever since the 1960s, the right has argued that criminal procedure frees too many of the guilty. The better criticism may be that it helps to imprison too many of the innocent.”

—William J. Stuntz, The Uneasy Relationship between Criminal Procedure and Criminal Justice

According to a Congressionally Mandated report from the National Academy of Sciences released in February 2009, even if the police perform their role to the highest professional standards, the validity of the data that flows within this closed system can still have “serious deficiencies.”

“With the exception of nuclear DNA analysis..., no forensic method has been rigorously shown able to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual or source,” says NAS. The report concluded that the forensic system is in a “nationwide crisis” and needs to be completely overhauled.

“Forensic evidence appears really powerful to people,” says Brandon Garrett, the Law School’s Roy L. and Rosamund Woodruff Morgan professor of law, who presented to the NAS committee. “It turns out, though, that much of that evidence is of unknown and untested reliability. Basic research still needs to be done for us to know what those conclusions really mean and whether the evidence really tells us what we’d like to know.”

Some of the basic techniques identified in the NAS report included fingerprint comparison, fiber comparison, hair comparison,
and ballistics comparison, all quite commonly used. Each contains detailed information, but that does not mean that there is any scientific support for analysts’ claims made confidently in reports and at trial that they can tell that the evidence came from the defendant.

Following up on his NAS analyses, Garrett conducted in-depth research of the trial transcripts of 250 exonerated defendants, and published his findings in his recent book, Convicting the Innocent: Where Criminal Prosecutions Go Wrong. The study provided a unique chance to start with a certainty and work backwards to see how that error occurred.

“We knew that these trials convicted innocent people,” he says, “so I wanted to read in detail the records from those cases and see what could be learned from that. What came out of it at the end of the day were some pretty distinct patterns and some real opportunities for changing criminal procedural rules.”

In each of these cases, the forensics seemed powerful, the evidence strong, the confessions real, and the eyewitnesses confident. But they all led to the wrong verdict. “The jury didn’t see the evidence as it really was,” Garrett found. “The evidence was not carefully documented and it was often contaminated.”

Examiners have long asserted that every fingerprint, every bullet casing, and every bullet is unique without testing those propositions, according to Garrett. “They have made exaggerated claims without scientific support. We just have no idea the frequency of particular markings on a fingerprint, and so we have no idea what it means for an examiner to say that fingerprints match.”

“As the NAS describes—and it is a powerful report well worth reading—there are a host of problems with these forensics,” concludes Garrett. “If research was done correctly and findings presented in a more cautious way, they could provide a sound source of evidence, but judges haven’t demanded much of forensic analysts. They’re given a free ride to present unreliable forensics in a misleading way.”

Eyewitness testimony is crucial in tens of thousands of cases each year, and while we all are familiar with how hard it is to recognize the faces of strangers, many do not realize how powerfully police lineup procedures can affect the confidence of a witness or even lead them to identify the wrong person. Fully three-quarters of the exoneree trials Garrett studied involved eyewitness testimony, and many cases had not just one, but two, three, or more eyewitness. Almost all of the eyewitnesses told the jury that they were absolutely certain of their identification. All of them were wrong.

False confessions are particularly disturbing. “I think we all have a visceral reaction to false confessions,” says Garrett. “It is an outright nightmare for an innocent person to be placed in an interrogation room, where the goal of the police is to get a confession.”

Still, why would someone confess to something that they didn’t do? Some innocent people may make a rational choice that the only way to escape the interrogation room is to play along with the police. “They may want to get out of this horrendous, grueling situation,” says Garrett. “They may have figured that since they’re innocent, they can clear it up later. They think, ‘I’ll just repeat after them and say what they tell me to say; it’s all a joke anyway. I’ll prove my innocence to the judge.’”

Psychologists call that phenomenon a coerced compliance confession. In other cases, which psychologists call coerced internalized confessions, the stress of an interrogation can convince an individual that they are guilty when they are not. Police may tell them that maybe they blacked out, or didn’t remember. “A particularly vulnerable person,” says Garrett, “can actually become convinced that they did something that they never did.”

Courts also allow police to lie during interrogations. It’s an approved practice. “Police can lie about almost anything,” says Enright. “Lie about what they know, lie about what evidence they have, lie about what witnesses have—or have not—told them. How can anyone think that feeding people false or misleading information will somehow generate the truth?”

“I can guarantee you that all the people who cast a wary eye at discretion wouldn’t want to live in a world where you didn’t have it. Say a kid whose parents just died burns down a building. Without discretion, that kid goes away to prison for two or three years when maybe we don’t need to lower the boom on a kid who has had that happen. If everybody got treated exactly the same without considering the circumstances, I don’t think we’d like the result.”

—RICK MOORE ’80
Matthew Engle, director of the Innocence Project Clinic at the Law School, says interrogators often tell suspects they are free to go, if.... “They say, 'Tell me now that you did it, and then you can go home. You can walk out the door. This can all end right now.' As soon as that so-called confession is signed, it's game over. If the defendant doesn't invoke his right to counsel immediately, this happens all the time.”

In the cases handled by Engle and Enright, police have given Miranda warnings orally and then asked the defendant to initial a piece of paper acknowledging that they have the right to remain silent. But then, “nobody invokes their right to counsel,” says Engle. Engle and Enright can recall only three or four clients during their careers who remained silent after being read their rights.

“Our clients tell us they didn’t have anything to hide,” says Enright. “They talked because they didn’t have any reason not to. Then the interrogator begins lying. The interrogator turns the tape recorder on and off and then perhaps they all go outside for the ‘I don't know anything’ cigarette break. And then, when they come back the defendant suddenly knows everything there is to know about the crime.”

Admittedly, these are extreme examples, and perhaps support Moore's point that they unfairly color a criminal justice system that overwhelmingly gets it right. Certainly, the Innocence Project handles those cases in which an extreme injustice is apparent. That's the clinic's norm. But the record is not so clear in Garrett's study of the exoneree cases.

“If anything, what is most disturbing is that in most jurisdictions, we are still using many of the same procedures used in those innocent people's cases,” he says. “It's not that hard or expensive to collect better evidence, to adopt scientific standards for presenting the forensics, to videotape the confessions, to make sure that the lineups are double-blind. These are all easy steps to take. Slowly, but hopefully surely, we will start to see real criminal procedure change.”

Garrett credits prosecutors in many jurisdictions around the country who have become an important force in improving criminal investigation. Prosecutors know that jurors are more aware of the problems with eyewitness memory. They want to tell the jury that they used double-blind lineups that prevented the possibility of suggestion. They want to videotape full interrogation sessions to show the jury nothing unprofessional happened.

“Wrongful convictions are a civil rights problem and a law enforcement problem. After all, in each of the cases I studied, the guilty remained free. Dozens committed additional rapes and murders before DNA testing freed the innocent and brought them to justice,” says Garrett. “Improving the accuracy of our criminal justice system is important to make sure we get it right the first time.”
Prosecution

“Legislators gain when they write criminal statutes in ways that benefit prosecutors. Prosecutors gain from statutes that enable them more easily to induce guilty pleas. Appellate courts lack the doctrinal tools to combat those tendencies.”

—William J. Stuntz, The Pathological Politics of Criminal Law

EFFECTIVE REGULATION of prosecutorial discretion rests with administrative agencies in each state, the federal government, and internal controls in individual prosecutors’ offices. The U.S. has essentially 51 jurisdictions, all but guaranteeing inconsistencies throughout, not only in regulating prosecutors but also in charging and sentencing.

Commit a crime in Maryland, for example, and your sentence would be lighter than if you had committed the same crime across the river in Virginia. “Is one right or one wrong?” asks Gansler. “Probably not. It just reflects the mores of the two different jurisdictions.”

Those differences came into stark relief in the case of Troy Davis in Georgia. Davis was executed for a murder he claimed he did not commit. His conviction was based solely on eyewitness testimony, notorious for its inaccuracy. The Georgia State Board of Pardons and Paroles and the Governor refused Davis's clemency application. Had Davis been convicted in Maryland, he could not have received the death penalty; a Maryland statute enacted in 2009 prevents the use of the death penalty on convictions obtained solely through eyewitness testimony.

Many other countries have centralized police and prosecutors. There are detailed rules they all must obey. “But that’s just not who we are,” says Harmon, “and there are real consequences to that. Do prosecutors have a lot of power? Sure they do.”

Gansler turns the issue of discretion around, particularly for new lawyers interested in protecting the innocent from false accusations. “You learn pretty quickly in our criminal justice system that the prosecutor has all the power,” he says. “If you’re inclined toward fairness in the system, then you learn that prosecution is where you should be. For example, if you’re confronted with an innocent defendant, you can make sure that person is released.”

Moore says the ideals of public service drive most prosecutors. “You’re helping uphold or enforce the community’s rules of safety and welfare. When people break the community’s rules, someone’s got to hold them accountable, and do it fairly. It’s the type of job where you can do what you think is right almost every day.”

State prosecutors handle approximately 95 percent of so-called ordinary crime: thefts, low to middle-level drug offenses, and violent crime. With limited resources, they tend to prosecute the most dangerous defendants who cause the most severe harm. Within those constraints, they have almost complete autonomy over what they choose to pursue.

“I don’t know of a case where you don’t have discretion,” says Moore. “We use our discretion not to prosecute—even a vicious murder—if we don’t think the evidence the police obtained is strong enough.”

State prosecutors can also target specific types of criminal activity that is damaging the community. When Gansler was the district attorney for Maryland’s Montgomery County, he started a special unit to combat criminal gang activity. Gansler appealed to his representative to bring a bill to the Maryland General Assembly to improve his ability to prosecute gang cases. When Gansler became the state’s Attorney General, he created a state-wide gang unit.

“That was a policy decision,” says Gansler. “Gangs are hurting kids and you can’t learn if you’re in school with gang members sitting next to you. We needed to address the gang problem in a different way than had previously been done.”

“Even though we represent the state, I really see us representing the victims. We are the justice they see at the murder scene. We’re what you get. We can’t bring back their loved one, but we can usher that person, at the nadir of their emotional existence, through the process of holding accountable the person who did this to them. There’s no greater satisfaction than that.”

—DOUG GANSLER ’89
Federal prosecutors focus primarily on high-profile white-collar crime, public corruption, organized crime, and inter-state and international drug trafficking operations. With so many federal statutes on the books, federal prosecutors exercise more discretion than state prosecutors. Working with a staff of 127 assistant U.S. attorneys, Zane Memeger ’91, U.S. Attorney for the Eastern District of Pennsylvania, has organized his office into two main sections, criminal and civil. The criminal division includes units on economic crime, public corruption and civil rights, government and health care fraud, violent crime, narcotics, cyber-crime, organized crime, and terrorism.

“It’s a question of resources,” says Memeger. “There are a lot of statutes on the books that we can enforce, and Philadelphia and its surrounding eight counties have a wide variety of issues that we need to address. Terrorism is the no. 1 priority for the Department of Justice, but putting that aside, we have industries in the area that create an environment for economic crime and corruption—financial, health care, education, insurance, shipping, and others. We also have 5.5 million people in our district, and we have significant violence issues involving drugs and armed robberies. Violent crime is generally on a downward trend throughout most of the nation, but not here in Philadelphia. Compared to other major cities, the shooting and murder rates remain consistently high.”

Like the assistant U.S. Attorneys in Memeger’s office, Harmon had a great deal of oversight. She couldn’t initiate a grand jury proceeding without the approval of a supervisor and assistant attorney general. She couldn’t bring an indictment or take a plea without approval.

“The picture of prosecutors as unconstrained actors in a system that simply empowers them needs to be refined for different areas of law,” she says. “It often doesn’t make sense to think about bad prosecutors or good prosecutors. I never met anyone trying to convict innocent people of crimes or to deny defendants their rights.”

**Defense**

“Perhaps sacrifice is an essential part of doing justice for the poor. Perhaps the key is not simply to generate accurate outcomes, but somehow to enter into the defendant’s distress. Barlette Carter’s idea, that Christianity requires seeing the world through the other’s eyes and not one’s own, may apply best to the world of criminal defense, where empathy is most needed yet seems to be in shortest supply.”

—William J. Stuntz, Christian Legal Theory

ANYONE WHO SPENDS A DAY in criminal court has to wonder how the system can work at all. The prosecutor stands by a stack of files, pulling one case after another off the top, calling a name, and then looking at it for the first time. Usually, neither the prosecutor nor the defense attorney nor the judge knows anything about the case. Nevertheless, they start negotiating plea bargains, guilty pleas, and even conduct short trials using only the information at hand. It would be extraordinary if they handled each case correctly.

“The defense attorney often has never met his or her client,” says Engle. “Not because they are lazy or incompetent, though that can happen, but because they’re overworked in a system with an enormous volume of cases.”

“One of the best solutions to the problems of the criminal justice system,” says Harmon, “is to fund defense lawyers better. One of the reasons that the innocence mistakes aren’t picked up sooner is because they didn’t have a Deirdre Enright the first time around. Criminal defendants just don’t have the resources they need.”

Flawed forensic evidence often goes unquestioned, adds Garrett. “Defense lawyers simply can’t afford their own experts and judges may not let them in anyway. If they don’t ask very many questions about the science, it’s because they don’t understand it without their own expert advice.”

“We’re not using the state of the art to get the best evidence available. We’re willing to spend hundreds of millions of dollars to build vast DNA databanks to find the guilty, but when it comes to spending a tiny fraction of that to make sure we don’t convict the innocent or to make sure that we correctly identify the guilty, our system doesn’t do it.”

—BRANDON GARRETT
A common complaint by the defense bar, especially in Virginia, is that prosecutors are not required to have an “open file” policy regarding discovery. By Virginia statute, a prosecutor must give the defense only exculpatory evidence, their client’s statement, and forensics reports. Although most Commonwealth’s attorneys go beyond that minimal requirement and have an “open file” policy, it’s not required.

Clearly, it is difficult to mount an effective defense if prosecutors never disclose the interactions between police and eyewitnesses, crime lab analysts, informants, or others which occurred before the lawyer even became involved. “If evidence is routinely undocumented, confessions are not videotaped, lab notes are not disclosed, lineups are not recorded, how can lawyers and judges and jurors sort out what went wrong?” says Garrett. “I found a disturbing number of cases where police and prosecutors concealed evidence of innocence—in cases where DNA later proved the defendant’s innocence. We will never know if still more evidence remains concealed to this day. And if there was so much misconduct in those very serious criminal trials, imagine what evidence never comes to light in the vast majority of cases where there is never a trial, but rather a plea bargain?”

The closed file policy turned out to be a very big problem in one of the Innocence Project’s cases involving the murder conviction of Justin Wolfe (see page 44). It took a decade—and a federal district court order—to compel the prosecution to open its files. When they were finally produced, Enright and Engle found a trove of evidence that might have exonerated Wolfe had it been discovered before trial. The judge agreed and vacated the verdict. Engle asks, “What does that suggest about the other 95% of the cases where that kind of scrutiny never takes place because discovery never happens?”

Moreover, why would the prosecution not turn over its files on request, especially in a death penalty case that draws such scrutiny? Some prosecutors might have convinced themselves that the defendant is guilty and if they give the defense this random piece of information, the defendant will use it to manufacture an illegitimate defense. “It betrays ignorance about how the system should work,” says Harmon, “but also a deep belief by the prosecutor that he is justified in doing it. That’s almost more disturbing than if evil prosecutors are actually out there doing the wrong thing on purpose.”
**Plea, or Take a Chance at Trial?**

“Broad criminal codes ensure inconsistency. Broad codes cannot be enforced as written; thus, the definition of the law-on-the-street necessarily differs, and may differ a lot, from the law-on-the-books.”

—William J. Stuntz, The Pathological Politics of Criminal Law

The sheer volume of cases forces the criminal justice system to rely largely on the plea bargain which, like the rest of the system, is entirely dependent on the quality and fairness of prosecutors. They set the terms of the debate, especially when they have a whole host of offenses to use. If they want, they can “stack” together multiple, overlapping offenses against a defendant—effectively picking sentences as well, since they are locked in to some charges—making trial a risky proposition even if the defense thinks they have a good chance of winning.

“Dramatic differences between trial and plea sentences put a lot of pressure on defendants facing those kinds of charges,” says Brown. “They often feel they need to plead guilty to things that they didn’t do. It can really skew their judgment.”

Unlike much of the rest of the world, the American criminal justice system does not regulate the discount the defendant can get between a plea bargain sentence and a sentence after trial. Every plea bargaining system that Brown has studied has a rule that prohibits discounts any larger than one-third of the sentence that a defendant would get after trial.

That would effectively limit the leverage a prosecutor can use against defense during plea negotiations. Instead, in a case that Stuntz wrote about in “Bordenkircher v. Hayes: The Rise of Plea Bargaining and the Decline of the Rule of Law,” the Supreme Court ruled that the prosecution can pose as dramatic a contrast between the plea outcome and the post-trial sentence as the statutes will allow. In that case, the prosecution offered two or three years for the plea bargain and, when the defendant turned it down, took the case to trial. The defendant was convicted and received a mandatory sentence of life in prison.

Further, defendants convicted by plea bargaining may not receive appropriate charges or sentences. “The prosecutor’s going to have a different idea than the defense of what’s fair,” says Brown. “The public also may have a different idea of what’s an appropriate resolution, but there is no real public supervision by the judge of the prosecution’s discretion and judgment.”

**Post-Conviction**

“Appellate criminal litigation used to be primarily substantive; the focus was on either the sufficiency of the evidence or the definition of crimes or defenses. Today it is overwhelmingly procedural; Fourth, Fifth, and Sixth Amendment claims have taken the place of substantive claims.”

—William J. Stuntz, The Pathological Politics of Criminal Law

Post-conviction challenges face daunting obstacles, for good reason. Judges are reluctant to draw conclusions from a cold record. They look rightly to the jury as the finder of facts. They are also time-consuming and expensive to reinvestigate and relitigate. But when there is a compelling reason to do so, and an ability to dedicate resources to the effort, good lawyers and investigators can introduce evidence that never arose at trial.

Prosecutors naturally react defensively when challenged post-conviction by new evidence or a recanting witness. “They have confidence in their case,” says Harmon. “Sometimes it’s personal bias, but they also know the costs to the victims, the victim’s family, and to the community that arise from reopening criminal matters.”

“*We can’t try every case* that comes in, but one of the things we have at the federal level is the luxury of time to investigate because our docket is not merely a reactive one. We can spend a lot of time working cases up through proactive investigations. We use wiretaps, video surveillance, and other investigative techniques in a number of our cases. The words and images of a defendant engaging in criminal activity are very powerful. When you sit down with the defendant and lay that out for them, they know what they did. They have to decide whether they’re going to accept responsibility or fight.”

—Zane Memeger ’91
The students keep us going. I tend to be a pretty pessimistic guy by nature and take a more jaundiced view of our cases, at least initially. But the students come into this with so much energy and talent and drive it gives me a boost of energy. When you work with a team of students like that, you get swept up into it.”

—MATTHEW ENGLE

Moore says prosecutors also want to ensure that they don’t wrongly vacate a proper conviction. “Prosecutors have a vested interest in the original outcome, but if they’re confronted with evidence they think really calls into question the original result, they’ll pursue that. But if they think this new information does not challenge their belief in the evidence of guilt, they’re going to fight you all the way.”

And that is a fight very difficult for a defense attorney to win. “The rules in post-conviction are very restrictive,” says Engle. “There are many procedural hurdles and roadblocks that prevent inmates from getting access to the information they need to attack a conviction, much less to have courts hear it and consider it and to prevail.”

Antonin Scalia’s dissent in Herrera shows the extreme height of those hurdles. “There is no basis in text, tradition, or even in contemporary practice (if that were enough), for finding in the Constitution a right to demand judicial consideration of newly discovered evidence of innocence brought forward after conviction.” To Scalia, procedure takes precedence over substance, even in a capital case.

It is an attitude that pervades the system. In his study of the exoneree trials, Garrett revealed a tortured path to freedom. It was exceedingly difficult for the convicted to get access to the DNA that ultimately established their innocence. Even with that, they had to wait years before being released. “It certainly doesn’t speak well that our system couldn’t respond quickly even to the easy cases where DNA shed clear light on their innocence,” he says.

Too often, says Enright, “We’re forced into these absurd positions. Why can’t a prosecutor just admit it was a mistake? They thought it was the defendant. Some tests showed they were wrong. Our criminal justice system, and all the players in it, has to be able to accommodate error and mistake, because we all know that we make them.”

The Innocence Project can spend years on a case. Dozens of students do the legwork. The clinic has all the advantages that none of the other players in the system had when it mattered. “Most criminal cases don’t get that kind of scrutiny post-conviction,” says Garrett. “You wonder how many others have the same problems.”

“We give them the presumption of innocence after they’ve been found guilty, because usually, nobody else did,” says Enright. “We start with the presumption that the potential client is telling the truth, and it’s disturbing how often they are.”

Certainty in law is the cornerstone of a stable society. But certainty itself can be a brittle thing. “Theories of everything, if they are at all plausible, are deep and rich and complex, so much so that none of us can finally get to the bottom of them,” warned Stuntz. “So the things the theory helps explain can also help explain the theory. Truth runs in both directions.”

“The students keep us going. I tend to be a pretty pessimistic guy by nature and take a more jaundiced view of our cases, at least initially. But the students come into this with so much energy and talent and drive it gives me a boost of energy. When you work with a team of students like that, you get swept up into it.”

—MATTHEW ENGLE
“Well, so what? That’s the kind of people they were; maybe there was something to it ….” That was the classic formula of the philistine in those years. “There was probably something to it …., In our country they don’t arrest people for nothing.” —Aleksandr Solzhenitsyn, The Gulag Archipelago, Vol. 1.

What would Solzhenitsyn make of the 21st century American criminal justice system? In 1939, 938 people out of every 100,000 in the Soviet Union were in the gulag. Seventy years later, 766 out of every 100,000 Americans were incarcerated, and 2,433 out of every 100,000 were on probation or parole. While our observer would be heartened that a U.S. inmate is six times less likely to die in custody than his early-twentieth century Soviet counterpart, he might be more curious about the philosophy of criminal justice that animates a free society jailing its citizens at a rate approaching Josef Stalin’s.

In prison, one essentially forfeits all civil rights. Probation is not much better; one loses Fourth, Fifth, Sixth, arguably Eighth, and often First and Second Amendment rights. A probationer can be reincarcerated on the thinnest of evidence. The fact that clients routinely request straight prison time instead of probation was initially shocking, but considering what probation requires in terms of money, time, and risk, the choice makes sense for a lot of people.

Working as a public defender has made me increasingly curious about our philosophy of criminal justice as well. Debating the merits of a law is one thing when you’re talking to the people who make and interpret and argue those laws, but it’s quite another when you’re talking to the people who are actually affected by them.

I spend a lot less time discussing theory and precedent, and a lot more time telling terrified families why their loved ones have been hauled off to jail and terrified inmates why
I, too, sing Amerikka.
I am the darker brother.
They send me to eat in the kitchen
when company comes,
but I laugh
and eat well, and grow strong
tomorrow.
I'll sit at the table
when company comes.

“Eat in the kitchen,”
then.

Besides,
they'll see how beautiful I am
and be ashamed
too am America.
they likely won’t be going home soon. Those conversations can be heart-wrenching even when the accused really has done something to deserve that treatment; it is just naturally unpleasant to watch people suffer.

But when those accused are charged with nothing more than peacefully using or distributing politically unpopular drugs (in contrast to alcohol, for example, which is legal but generally claims a broader range of negative effects), explaining why our country has deliberately chosen to treat them in the same way that we would a thief or a child molester becomes more than unpleasant—it becomes untenable.

The untenable seems to make up much of my routine, though. A client learns he is facing fifteen years in prison for sharing his prescription. A burglar has his charges dropped after he lets law enforcement watch him buy marijuana; the young man who sold him the nickel bag goes to prison. Some officers take the witness stand and lie fluidly about how a handcuffed man voluntarily gave them consent to search his house. The jail hallway echoes with the shouts of desperate men locked up for months or even years without formal charges. I beg a prosecutor to suspend a prison sentence so that a grandson caught with less than a gram of cocaine can continue caring for his ill grandfather. Sadly, these small events express our philosophy of criminal justice.

More precisely, that philosophy is articulated by what legally triggers these moments. When should we send armed men after our fellow citizens? Though the term “armed men” may sound harsh (a prosecutor once made an objection to my use of that term during a motion to suppress hearing, which the judge overruled despite characterizing my phrasing as “dramatic”), it feels even more so to the people pulled out of bed at 3 am by a SWAT team and locked up in a strange and dangerous place filled with strange and dangerous people, many of whom, in their eyes, are the people wearing uniforms. Whether the incarceration lasts an hour, a month, or twenty years is irrelevant at that point; what matters is that a person could be labeled a criminal with immediate and often permanent consequences.

The forceful and intrusive nature of an arrest or even a search makes it difficult to understand why supporters of drug laws justify them by claiming that most drug offenders do not receive the lengthy prison sentences contemplated by statute. The cry of “But we hardly ever enforce the specified penalties!” suggests at the very least that the law is poorly designed if so many guilty people get off lightly. The larger problem is that focusing on lengthy, post-conviction terms of imprisonment captures only a small fraction of the total enforcement activity involving drug laws.

**Being in Jail for Any Amount of Time**

is a fundamentally traumatic experience. Some people are strip searched. Some are beaten during the arrest or afterwards. A broken jaw is terrible, but even more so if you’re locked in a room with the person who broke it. The drug war reaches far beyond the millions serving prison sentences to the millions more who are sitting in jail waiting to get or make bond, or to have their probation revoked, or to go to trial after the case has been continued so many times by the state.

One of my clients was arrested in 2009 on 68 felony counts of “withholding information from a practitioner to obtain a prescription.” Bond was set at $200,000 because of the number of charges, a sum my client could never afford. The district attorney’s office refused to indict the case for a year and a half. That meant no opportunity to plead not guilty, no opportunity to investigate the charges, and certainly no day in court to fight his case.

So the case was indicted (13 of 68, at least), and we were finally able to get discovery and see what sort of evidence the state had—thirteen prescriptions from my client’s doctor for pain medications. Since the statute criminalizes withholding information from a practitioner about prescriptions from other doctors, I looked forward to being able to vindicate my client at trial as soon as his case was placed on the calendar.

But when it was called for trial, the assistant district attorney—an intelligent, capable young woman who in no way believes herself to be doing anything but striving to bring justice to dangerous people—announced that she would have to request a continuance because she had not served all her witnesses. I pointed out how my client had been in the county jail for over twenty months and desperately wanted to prove his innocence, but the judge granted the continuance as a matter of course. When the case next appeared on the trial calendar, I was determined to give my client his day in court, and subpoenaed all of the state’s witnesses myself to ensure that the prosecutor couldn’t use the same excuse again. This time she asked for a continuance because she wanted to re-indict the case; apparently the charges that were good enough to
keep my client locked up for so long weren't good enough to take to
trial. To no one's surprise, the continuance was granted. The judge
listened sympathetically to my objections regarding the timeliness
and propriety of the state's behavior, but noted “Well, it is their pre-
rogative.” As of today my client has been in jail for over two years
with no opportunity to defend against the charges.

Prosecutorial discretion, which is legally enshrined at numerous critical
phases of criminal proceedings, means giving prosecutors vast power with the
expectation that it will rarely be used to its fullest extent. Setting aside the historical
naïveté that would allow anyone to think that a grant of coercive authority will go
voluntarily unused for long, this results in a complete absence of meaningful checks
on prosecutorial conduct in practice. It doesn't matter whether it seems unreason-
able to keep a man in jail for two years with no formal charges; the prosecutor wanted
to do it, and the law allows it.

Continuances are similar to the common practice of dismissing a case on the morning of trial. One
day, the case is good enough to justify giving someone five years
in prison and another ten on probation; the next, the state doesn't
have enough evidence to proceed. It's even more pernicious when
the offer is straight probation time, for such an offer is almost always
worth it to avoid the serious risk of a jury trial—but once you're on
probation and bereft of all constitutional rights, they'll hardly need
anything at all to lock you up.

For example, I had a client on a ten-year probation sentence who
was accused of three counts of distribution of cocaine. On the stand,
a Georgia Bureau of Investigation agent admitted that he had been
“mistaken” about the evidence he claimed to have against my client,
but the judge didn't seem to mind, and my client went to prison for
eight and a half years. The Court of Appeals declined to review the
decision, as they do with almost all applications for discretionary re-
view of probation revocations. My client is spending over eight years
in prison based on a weak allegation that he engaged in consensual
drug transactions with adults who sought him out for that purpose,
and it won't even show up as a drug offense in prison statistics.

These situations would be cause for concern even if the charges
being investigated were rape or murder or burglary. But when
the crime being investigated is a man taking prescribed pain
medication, the hundreds of thousands of dollars in state time and
resources being brought to bear on this matter don't seem particularly well-invested.

How should these resources be invested? Almost all the big
cases we hear about involve violent or property crimes, since that's
what we naturally think of when we think of a crime—something
that forces harm on someone else. That narrative makes it difficult
to believe that half of federal prisoners are there for drug offenses
only. The temptation when confronted by another's bad fortune is
to attribute it to some fault or error, the better to ignore the chance
that such bad luck may strike oneself as well. Once the decision has been made to
label people who engage in a certain activ-
ity as criminals, it becomes entrenched in
our collective psyche—like Solzhenitsyn's
contemporaries, we believe they must have
done something wrong if we're all treating
them this way.

Who, then, is to be declared criminal?
We have a dismal record when it comes to
social engineering by laws and force. We
have enacted some truly terrible laws in
the United States, which despite repeal still
support some stubborn beliefs. In 1850,
the Georgia Supreme Court ruled that a
will purporting to free the decedent's slaves
was void, since manumission was prohib-
ited by law. A quarter of a century later, we
would begin federally prosecuting users and distributors of birth
control. We've arrested people for witchcraft and for riding in the
wrong train car, and taken children away from gay parents. Marital
rape was legal in some states until the 1990s, and women and blacks
haven't yet possessed full voting and property rights throughout the
country for even a full century.

**The drug war reaches far beyond the millions serving prison sentences to the
millions more who are sitting in jail waiting to get or make bond, or to have their
probation revoked, or to go to trial after the case has been continued so many
times by the state.**
Clinic a Stepping Stone for Many Young Prosecutors

By Eric Williamson

The REALITY OF burgeoning prosecutorial caseloads has turned into a significant career opportunity for Virginia Law students. Richard “Rick” Moore ’80, assistant commonwealth’s attorney for Orange County, directs the year-long Prosecution Clinic, placing students with participating state and federal prosecutors’ offices in Central Virginia—as he has done since taking over the program in 1998.

Moore co-instructs the classroom component (which provides important context to the field office and court experience) with adjunct professor Ron Huber, Assistant U.S. Attorney for the Western District of Virginia.

In many instances, particularly in the Commonwealth’s offices where in-court experience is more likely, students have tried cases, even managed entire court dockets, by the end of their first semester. All students must have a third-year practice certificate from the Virginia State Bar to participate.

Alumni of the clinic have gone on to become professional prosecutors for district attorney’s offices across the country, as well as for U.S. Attorney’s Offices, the Department of Justice, and the Judge Advocate General’s Corps.

As has become custom, Moore and Huber invited a panel of former students to speak during the fall—this time, all currently serving in Virginia as Assistant Commonwealth’s Attorneys. The panelists agreed it was their clinical experience that directly led to the jobs they have today.

“It was outstanding,” said Elliott Casey ’99, who now prosecutes for Albemarle County. “I wouldn’t have gotten the job that I got if I hadn’t worked for Ron [Huber, then an assistant commonwealth’s attorney] and the city of Charlottesville and had the opportunities that he gave me. I learned to practice law from Ron Huber.”

The clinic requires students to work at least one day per week, either in preparation of ongoing cases or by participating in court, but Casey said, “I did every day I possibly could.” Comparing third-year practice to the joy of driving a car, he advised: “You should wake up in the morning and just grab the keys and go.”

If enthusiasm is any measure, a show of hands indicated that the majority of the 30 students will pursue careers as prosecutors. The clinic started with only 12 students. Janet Webb, then an attorney with the Department of Justice in Washington, D.C., taught and ran the clinic for its first four years.

“Just getting the experience of what the job is like both helped me get the job and made me want to go do it,” said Ben Traster ’08 of his
The internship with the City of Richmond Commonwealth's Attorney's Office, which led to his current staff position in Arlington County. “Because I was in Richmond, it was a very busy office, so it just gives you a ton of credibility when go and you interview with someone and say, 'I know what it's like to be in court.'”

He and Casey said they don’t know of any other law school that has a program that entrusts students with as much responsibility. “I know Georgetown has a clinic where they’ll go into Superior Court,” Traster said, “but I don’t think they handle as many cases and have the opportunity to work as closely with the commonwealth’s attorneys.”

Traster was lucky; his search was geographically limited in order to accommodate his wife, Eastern District Assistant U.S. Attorney Kara Martin ’08 (also a clinic alum), and two jobs opened up simultaneously in nearby counties when he was looking.

Carrene Walker ’08, on the other hand, was prepared to travel. She capitalized on her experience in Goochland County to land a job in Pittsylvania County. “The prosecution clinic is like no other course in law school,” Walker said. “Maybe other clinical courses are similar, but the fact you actually get to try cases and learn what it’s like to be a prosecutor is invaluable. And honestly, you don’t learn how to be a lawyer in law school, but this is one class where you actually do really learn what it’s like to practice, so it’s great.”

Mario Lorello ’10, the newest state prosecutor on the panel, said about 100 people applied for the position he now holds in the very busy Virginia Beach district, but that the prosecutor’s office only interviewed four or five people. He was fortunate enough to be chosen.

It may have helped Lorello that he formerly interned under Casey, who is fond of instilling his enterprising work ethic in others. “I used to give Mario my entire docket,” Casey said.

Casey encouraged the class to pull a docket from a few weeks out and call the witnesses proactively. “When you go to court,” he said, “and you know all the people who are going to be there, and you’ve talked to the witnesses, at that point the prosecutor is going to look at you and go, ‘Well, why am I trying the case? You know what’s going on. Here, take it and you try it.’”

When polled, many of the students indicated they would delay their prosecutorial careers, likely starting with a law firm in order to pay off educational debts. But panelists warned against waiting too long and getting used to a more financially comfortable lifestyle.

“Beware of the golden handcuffs,” said Bryan Rhode ’04, reciting a well-worn admonition. “They are heavy and hold tight.”

Rhode, now a prosecutor for the city of Richmond, interned in Orange County, pursued additional education, and worked for Hunton & Williams after law school. But he said he remained focused on his goal of being a prosecutor with the support of his wife, Lynne C. Rhode ’04, an associate at Troutman Sanders.
ON JULY 11 A FEDERAL JUDGE threw out the conviction and death sentence of Northern Virginia man Justin Wolfe, thanks to the efforts of the Law School’s Innocence Project Clinic and partnering organizations.

The clinic worked closely with Wolfe’s pro bono attorneys at the Washington, D.C., law firm King & Spalding and the Virginia Capital Representation Resource Center to demonstrate that the prosecutors in Wolfe’s trial had suppressed evidence that would have exonerated Wolfe. With the July ruling, U.S. Judge Raymond A. Jackson ’73 agreed that the prosecutors’ conduct resulted in an unfair trial.

“We’re elated and gratified,” said Deirdre Enright ’92, director of investigation for the Innocence Project Clinic. “It’s rare to get relief in death penalty cases and rarer still to lay it at the feet of prosecutors.”

Justin Wolfe, who has been on death row since 2002, was convicted of murder for hire and sentenced to die in a case that received national attention and involved an extensive drug ring run by suburban middle-class youths in Northern Virginia.

Judge Jackson’s ruling followed an evidentiary hearing in November in Norfolk, Va., during which Wolfe’s legal team presented information gleaned from a review of prosecutors’ files for improperly withheld evidence. (Find related article online.)

“What the ruling says is that in this case there were multiple instances of the Prince William County Commonwealth’s Attorney’s office failing to fulfill its constitutional duty to disclose favorable evidence to Justin Wolfe, and that had that evidence been disclosed, it likely would have affected the jury’s verdict,” said Matthew Engle, legal director of the clinic.

Enright and Engle said students involved who participated in the clinic are thrilled about the ruling.

“One of them who is working in a firm this summer emailed back and said she had to close the door so she could do a little dance in her office,” Engle said.

“I think we all became incredibly invested in the outcome of this case due to the enormity of the stakes involved and the injustice an adverse decision would have represented,” said Allison Harnack, a rising third-year who worked on the case. “The ruling filled me with an indescribable sense of relief.”

The clinic first became involved in the case after the 4th U.S. Circuit Court of Appeals ruled in February 2010 that the district court hadn’t properly considered Wolfe’s claim of innocence. Jackson then scheduled a hearing to weigh claims that prosecutors withheld evidence that potentially would have helped Wolfe at trial and to consider his claim of innocence.

Students in the year-long clinic scrutinized police reports and interview records, located and interviewed many of the witnesses identified in the reports, met with the attorneys representing Wolfe, helped craft the strategy for the evidentiary hearing and drafted substantial portions of the post-hearing brief that was submitted to Judge Jackson. All 12 students in the class attended the four-day hearing in November 2010 after working on the case throughout the fall.

On Nov. 2, 2010, admitted shooter Owen Barber—who had testified in 2002 that Wolfe hired him to commit the murder—took the witness stand and recanted his story.

Yesterday’s ruling confirmed what students had suspected after examining the prosecutors’ documents.

“Reading the opinion is really gratifying for the clinic students, because all these documents that we spent months reading and synthesizing, and the alternate theories of this crime that we developed from these documents—the judge talks very specifically about all of it in his opinion, and finds that the prosecutors had an ethical duty to disclose these documents,” Enright said. “It’s just a great experience for the law students—they got to do it all, and get a result that’s going to save somebody’s life.”

Rising third-year law student Brett Blobaum, who also participated in the clinic, said that working on wrongful conviction cases makes it easy to become cynical about the justice system.
“But the decision proves that even if it comes far too late, the idea of justice might still be something more than just a purely academic exercise in America,” he said.

In his ruling, Jackson described the case against Wolfe as tenuous and said that by suppressing exculpatory evidence, the prosecutors involved in the case, Prince William County Commonwealth’s Attorney Paul Ebert and Assistant Commonwealth’s Attorney Richard Conway, “shielded [the Commonwealth’s] case from any potential challenges by the defense, thus depriving the jury of critical information” that could have exonerated Wolfe.

The judge further criticized Ebert for testifying that his reason for withholding information from defense counsel was because doing so would allow defendants to “fabricate a defense” around what they find.

The judge wrote, “Essentially, in an effort to ensure that no defense would be ‘fabricated,’ Ebert and Conway’s actions served to deprive Wolfe of any substantive defense in a case where his life would rest on the jury’s verdict. The Court finds these actions not only unconstitutional in regards to due process, but abhorrent to judicial process.”

Jackson said the prosecutors’ actions were contrary to the 1999 Virginia Code of Professional Responsibility, a finding that could have broader implications because Ebert has testified that he has put as many as 16 people on death row.

“This pretty explicit finding by the judge that he violated the rules of professional conduct is really quite striking,” Engle said. “Given Mr. Ebert’s testimony about his reasons for withholding evidence from defense lawyers, there is every reason to suspect that these problems go beyond Justin Wolfe’s case. This ruling suggests the need to scrutinize all of the cases prosecuted in Prince William County.”

Ebert, whose work has been honored by the Virginia Bar Association, recently announced he is running for re-election. He told the Washington Post that he saw no reason not to try Wolfe again.

“The evidence was clear and convincing to 12 people, and I see no reason it would not be clear and convincing to 12 people again,” he said.

The Virginia attorney general almost certainly will appeal yesterday’s ruling to the 4th U.S. Circuit Court of Appeals, Enright said, which means Wolfe may remain in prison until at least 2012.

“Justin will breathe a little easier, but he’ll likely stay on death row during the attorney general’s appeal,” Enright said. “But it’s a good opinion in that it makes a lot of factual findings and credibility determinations that are hard to reverse in an appellate court.”

If the 4th Circuit agrees with the ruling, the case will be sent back to Prince William County, and prosecutors there may have to retry him on all charges he was convicted for, including some drug charges.

“Other witnesses in this case with far more drug involvement have already served their time and gotten out,” Enright said. “It’s would be deeply unfair if only Justin Wolfe were to remain in prison, when his role in this drug conspiracy was comparatively minor.”

— Matthew Engle and Deirdre Enright, Innocence Project Clinic, University of Virginia School of Law

Abrams also co-authored an amicus brief in a United States Supreme Court case challenging a gender-based citizenship rule, *Flores-Villar v. United States*; moderated a panel on teaching verbal persuasion in the law school curriculum at the Southeastern Association of Law Schools’ annual conference in July; and presented a draft paper on married women’s state and national citizenship rights at the American Society of Legal History conference in November.


In June, Margo Bagley presented “Legal Challenges to Gene Patents” at the Second National Conference on Genetics, Ethics and the Law held at the Law School in June. In July she taught International Patent Law & Policy in the George Washington University Munich Summer Intellectual Property Program at the Max Planck Institute in Munich.

In November she presented “The International Patent System” to officials from the State Intellectual Property Office of China and regional administrative officials in an intensive training program at Cardozo Law School at Yeshiva University in New York.


At the end of June, Whitfield Broome completed eight years on the Virginia Board of Accountancy, during which time he served as chair (2009–10) and vice-chair (2008–09). Broome was appointed to an initial four-year term by Governor Mark Warner and reappointed to a second four-year term by Governor Tim Kaine. The Virginia Society of Certified Public Accountants recently posted a tribute to his service, and to the service of Steve Holton who also retired, saying “The two VSCPA members sat on the Board during a time of significant change to the CPA profession and served CPAs and the Commonwealth with a steady hand.

“It has been an incredibly satisfying experience for me,” Broome said. “It was my good fortune to be on the Board during a time of great progress, and I am pleased with the VBOA’s accomplishments.”

In April Brown-Nagin gave the keynote address, “Rethinking Accommodationism,” to the Law School Foundation Board of Trustees and Alumni Council.

In June she presented “Shifting Perspectives on Educational Equality in the Long Civil Rights Movement” to members of the D.C. Court of Appeals.

In September Brown-Nagin was featured author at the Decatur Book Festival for Courage to Dissent, and had an on-air interview on the Harrisonburg, Va., NPR affiliate, giving commentary on “Class Warfare” in U.S. politics.

In November she was a consultant for the National Center for Civil and Human Rights, in Atlanta, and appeared at the annual meeting of the American Society for Legal History in their program “Author Meets Reader, Courage to Dissent.”

In May ALBERT CHOI was elected to the board of directors of the American Law and Economics Association for a three-year term.

His paper (with George Triantis LL.M. ’86), “Strategic Vagueness in Contract Design: The Case of Corporate Acquisitions,” published in the Yale Law Journal, was selected by the Corporate Practice Commentator as one of the top 10 corporate and securities articles of 2010.

In November Choi is giving law and economics workshops at University of Texas Law School and will present at the Theoretical Law and Economics Conference at Washington University in St. Louis.

He is scheduled to conduct another law and economics workshop at Columbia Law School in March.

In September GEORGE COHEN presented his paper, “The Financial Crisis and the Forgotten Law of Contracts,” at a Law School faculty workshop. The article explores how courts could use a number of contract doctrines to address perhaps the biggest current problem resulting from the nation’s financial crisis: the huge number of foreclosures of residential mortgages that have occurred, are occurring, and are expected to continue for some time.


In September BRANDON GARRETT received the fifth annual Constitutional Commentary Award for his book, Convicting the Innocent: Where Criminal Prosecutions Go Wrong, from the Constitution Project at their annual celebration of Constitution Day. The award is given annually to the author or producer of an outstanding work that has improved the quality of public discourse through insightful, articulate analysis of a constitutional issue of the day.

Garrett’s recent work was cited by the Pennsylvania Supreme Court in Commonwealth v. Write in February; the Tennessee Supreme Court in Powers v. State; the Federal Court of Claims in Lyons v. U.S.; and the Sixth Circuit in In re Noling in June; and the New Jersey Supreme Court in its State of New Jersey v. Henderson decision in August.

Garrett’s article “Globalized Corporate Prosecutions” will be published by the Virginia Law Review this fall. A companion research resource on federal corporate convictions and plea agreements over the past decade will be available as well. Garrett says it was constructed with invaluable help of Jon Ashley of the Law School’s Arthur Morris Law Library, as a companion to the resource already available on corporate deferred and non-prosecution agreements.

“Eyewitnesses and Exclusion” will be published next spring by Vanderbilt Law Review. On the subject of research on eyewitness misidentifications, Garrett wrote a short piece for the New York Times online titled “Procedures that Defy Science.”

A multimedia online resource, co-produced with the Law School’s Innocence Project, titled “Getting it Right” was launched online in August. It features data from Garrett’s Convicting the Innocent book, video, interviews, research resources, and recommendations for criminal procedure reforms to prevent wrongful convictions. Also related to the book, Garrett wrote two op-eds, one in the Washington Post (May 13) entitled “After Osama bin Laden’s Death,
George Geis’s latest article, “Broadcast Contracting,” will be published by the *Northwestern University Law Review* in 2012. This project explores the legal treatment and economic implications of third party beneficiary rights in contract law.

In March Geis taught a short course in corporate finance at the University of Auckland, and in June he visited the University of Trento in Italy to run a short session on organizational economics and theories of the firm. Geis presented his research at both universities, as well as at recent conferences at the George Washington University Law School and the University of Florida.

Finally, Geis continues to direct the Law School’s Law & Business program and has participated in several student panels and activities in that context.

Michael Gilbert has a paper forthcoming in the *Journal of Legal Studies* entitled, “Does Law Matter? Theory and Evidence from Single Subject Adjudication.” He has another paper undergoing peer review titled, “Judicial Independence and Social Welfare.” It confronts longstanding and important questions: what is the socially optimal level of judicial independence, and relatedly, how should we select judges?

In the coming months Gilbert will write a follow-up article, tentatively titled “Independence in Legal Institutions,” that will generalize his argument to a host of legal decision makers for whom independence is an issue: judges, bureaucrats, prosecutors, auditors, and others.


In June Risa Goluboff presented “Showdown at the Liberty End Café: Louis Lusky, Shuffling Sam Thompson, and the Challenge to the Police as Peace-keeper” at the Summer Faculty Workshop; and in July she presented it to the faculty at the University of Hawaii Law School.

In August Goluboff presented, “Racial Subordination, Civil Rights Protest, and the New Free Speakers” at the new UVA Working Group on Racial Inequality, of which she is a founding member.

In November Goluboff participated in a conference on “From Civil War to Civil Rights” at the National Civil War Center at Tredegar, a new museum in Richmond.

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Civic Research Institute; “How Do Elderly Persons Who Have Been Abused and the APS Caseworkers Who Handle Their Cases View Law Enforcement and Criminal Prosecution and What Impact Do These Views Have on the Processing of These Cases?” in the Journal of Elder Abuse & Neglect (forthcoming 2011); and “Risk Factors Associated with the Abuse of Elderly Persons: The Importance of Differentiating by Type of Elder Maltreatment” in Violence & Victims [forthcoming 2011].

Also, with his colleague Shelly Jackson, Hafemeister recently completed a three-year long National Institute of Justice (NIJ) funded study on elder abuse, with a special focus on financial exploitation of the elderly, which resulted in a 600+ page final report that is posted on the NIJ web site, at https://www.ncjrs.gov/pdffiles1/nij/grants/233613.pdf. These findings have also served as the foundation for 15 manuscripts at this point, three of which have been accepted for publication, four of which are under review by various journals, another four of which are almost ready for submission, and another four of which are in preparation. In addition the duo has been asked by NIJ to generate a pair of spin-off mini-reports that the agency plans to disseminate nationally. The predecessor for this was a chapter that Hafemeister wrote in an essay forthcoming in the Journal of Elder Abuse: Violence & Neglect entitled “Financial Exploitation of the Elderly: A Consumer Context.”

Hafemeister has agreed to serve as a member of the initial board of advisors for the newly established law review Mental Health Law & Policy Journal. He has also agreed to serve beginning this year as a consultant on a National Institute of Justice grant entitled “Financial Exploitation of the Elderly in a Consumer Context.”

He will also serve as a content consultant to Red Line Editorial, Inc., which is publishing a textbook for middle school students addressing the Arizona shootings on January 8th that killed six people, including a nine-year-old girl (Christina Taylor Green) and the Chief U.S. District Court Judge for Arizona John Roll LL.M. ’90, and left 14 others injured, including U.S. Representative Gabrielle Giffords. In addition to an account of the shootings, which focuses on Giffords, the text explores the history of the alleged shooter, Jared Loughner, and the subsequent criminal proceedings involving him, during which he has been found to be incompetent to stand trial. Hafemeister recently reviewed and provided feedback on the first draft of this text.

Hafemeister served as an invited speaker at the 2011 Annual Spring Training Conference of the Virginia Mediation Network held at the Richmond Law School. In addition, he accepted this summer an invitation from a scholar in England associated with the Centre for American Legal Studies to contribute a chapter to a forthcoming collection entitled “Controversies in American Healthcare Law and Policy,” to be published by Ashgate Publishers in 2013. The working title of his chapter is “The Evolving Nature of the Professional Liability of Mental Health Providers.”

A number of his articles have received additional outside attention in the past year, some posted on websites such as HealthyParent.com; the Northern California Law Center; the Maricopa County (Phoenix) Courts, and Chicago Criminal Defense; and others cited in the Code of Medical Ethics of the American Medical Association.

TOBY HEYTENS ’00 has an essay forthcoming in the Cornell Law Review entitled “The Framework(s) of Legal Change.” In an earlier article, Heytens had identified and criticized a previously underappreciated method for limiting the disruptive effects of legal change: a “forfeiture” approach that subjects criminal defendants who failed to anticipate new rulings to a narrow form of appellate review that virtually guarantees they will lose. His forthcoming article expands the analysis in light of the Supreme Court’s recent decision in Davis v. United States, which suggests a different, “remedy-limiting” approach.

A. E. DICK HOWARD ’61 met with lawyers from Zimbabwe to review a draft constitution prepared by the Law Society of Zimbabwe. Several days of meeting were held at James Madison’s Montpelier and at the Law School. Participants included some of Zimbabwe’s leading lawyers, including the past and present presidents of the Law Society, as well as scholars and lawyers from South Africa, Nigeria, and Kenya. Special attention was paid to issues of executive power, the judiciary, human rights, and the rule of law generally.

At this year’s Fourth Circuit Judicial Conference, Howard organized and moderated a discussion of the Supreme Court’s most recent term. Panelists included Heather Gerken (Yale), Mike McConnell (Stanford), Neil Siegel (Duke), and Adrian Vermeule (Harvard).

In Richmond Howard delivered an endowed lecture, the Banner Lecture, at the Virginia Historical Society. His subject was
“The Constitution of Virginia: From Jefferson’s Day to Our Own Time.” Howard recounted the great moments, such as the adoption of the Virginia Declaration of Rights, and the more sobering episodes, including Virginia’s massive resistance to school desegregation. As a sequel to the lecture, Howard conducted a two-part seminar at the society, “The Idea of a Constitution.” In that seminar, he traced the development of Anglo-American ideas of constitutionalism, as well as perspectives from other countries and cultures. Howard also lectured on Virginia’s Constitution at a Virginia Bar Association meeting at Montpelier.

Howard organized the annual Supreme Court Roundup at the Law School, reviewing the Court’s most recent term. Howard gave an overview of the term and of the emerging Roberts’ Court. Four faculty members—Toby Heytens ’00, Leslie Kendrick ’06, David Martin, and George Ruthergerlen—discussed specific cases. Also, at the National Security Law Institute, sponsored by the Center for National Security law, Howard lectured on “Revolutions and Constitutions.” He paid particular attention to the uprisings in Egypt and elsewhere in the region and the kinds of constitutionalisms that might emerge.

Howard also traveled to England, where he met with the chairman of that country’s Magna Carta Trust, the librarian of Oxford’s Bodleian Library, and others planning for the 800th anniversary of Magna Carta in 2015.

In July Alex Johnson was a panelist at the Southeastern Association of Law Schools 2011 annual meeting. The topic and title for the panel was “Real Property and Real Poverty.” Julia Mahoney was a co-panelist, among others. The basis of Johnson’s presentation was his article, “Applying Bounded Rationality to the Origination of Mortgages: A Call for Increased Transaction Costs—What Would Coase Say?”

In October Johnson was keynote speaker at the Northeastern Region of the National Black Students Association in Boston at Northeastern University School of Law. The title of his talk was “The Evolution of the LSAT and its Effect on Minority Law Students.”

In November the Law School’s Center for the Study of Race and Law, of which Johnson is the director, co-sponsored a conference with the Virginia State Bar Conference on Diversity and various student organizations. The conference, “Eliminating Impediments in the Pipeline for Lawyers of Color,” featured several Law School alumnae, including Kim Keenan ’87, general counsel, National Association for the Advancement of Colored People; Virginia Supreme Court Justices Bernard Goodwyn ’86 and Cleo Powell ’82.

Johnson’s revised third edition of Understanding Modern Real Estate is now in publication with Lexis/Nexis.

In May Douglas Laycock spoke on “Guide to Restatement of the Law Third: Restitution and Unjust Enrichment,” at the annual meeting of the American Law Institute in San Francisco. In September he spoke on “Bona Fide Payees” at a Boston University conference on that new Restatement.

In October Laycock argued for the Church in Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission in the Supreme Court of the United States. He spoke about the case at Georgetown University in October and at the Federalist Society National Lawyers Convention, and to the UVA Department of Religious Studies, in November.

Laycock recently published The Free Exercise Clause, which is volume 2 of Religious Liberty, a collection of all his writings on religious liberty. He also published “Reviews of a Lifetime” in the Texas Law Review, responding to three reviews of volume 1, and “Government-Sponsored Religious Displays: Transparent Rationalizations and Expedient Post-Modernism” in the Case Western Reserve Law Review.

The Department of Homeland Security appointed David Martin as a member of an advisory task force asked to consider Secure Communities, DHS’s program for checking against immigration databases the fingerprints of arrested persons that are sent by state and local law enforcement authorities to the FBI. Secure Communities is becoming the primary means used by DHS to identify deportable noncitizens who are involved in criminal activity, but some localities have found it controversial because of its potential impact on community policing. Martin served on the working group that completed the final drafting for the Task Force, which adopted its 30-page report in September. The recommendations, which focused prominently on the treatment of persons arrested for minor traffic offenses, were then accepted by the Homeland Security Advisory Committee and transmitted to Secretary Janet Napolitano ’83.

In September Martin took part in the panel discussion held in Caplin Pavilion on “9/11 and the Law—10 Years Later.” He also participated in a debate with Ilya Schapiro of the Cato Institute, regarding the constitutionality of
SB 1070, the strict Arizona immigration enforcement law adopted in 2010. Martin argued that the law was mostly preempted by federal law, as the Ninth Circuit had ruled. The event was sponsored by the Federalist Society and drew over 100 students.

This fall GREG MITCHELL discussed the use of social science evidence in employment cases at the Littler Mendelson Class Action Summit and the American Employment Law Council annual meeting. He also published two papers with John Monahan and Larry Walker on expert evidence in Sociological Methods & Research, and published an essay on marriage regulations in the Michigan State University Law Review.

In June JOHN NORTON MOORE made a presentation to a symposium at The Hague Academy of International Law on “The Nicaragua Case 25 Years Later.” He presented a paper on “Jus ad Bellum Before the International Court of Justice” which examined the history of use of force decisions in the International Court. The paper was critical of a number of use-of-force decisions before the Court, including the Nicaragua Case, the Iran Platforms Case, and the Israeli Wall Case. The symposium was extremely well attended, including many of the judges of the International Court.

In September Moore gave a brief presentation “Will an Arab Fall Follow the Arab Spring?” at the “More Than the Score Pre-Game Lecture Series” (offered by the UVA Alumni Education Program).

Moore, the project director of the Center for Oceans Law and Policy's Commentary series on the United Nations Convention on the Law of the Sea, announced the arrival of volume VII, the final volume in the series. A paperback supplement for the series has gone to press and will be released this fall.

In addition to substantially revising the Communications Regulation casebook he co-authors with Glen Robinson, Tom Nachbar completed several papers on counterinsurgency and U.S. detention policy, one of which he presented a faculty workshop at Virginia in September. He also recently completed a chapter on the U.S. military’s role in international legal development for an upcoming ABA-sponsored book.

Nachbar continues to serve as a U.S. Army Reserve judge advocate, currently assigned to the Office of the Judge Advocate General, International and Operational Law Division. This summer, he became a civilian advisor for the U.S. Department of Defense, Office of Rule of Law and Detainee Policy.

JEFFREY O’CONNELL has written, with coauthors, two articles to be published shortly: “No Fault at 40,” to be published in pamphlet form; and “More on the Disputed Effects of Binding Early Offers in Medical Malpractice Cases,” (Joel Hibbard ’11 is one of the co-authors), and will appear in the Widener Law Review.

This spring BOB O’NEIL concluded a teaching career that began in the fall of 1956. O’Neil retired from full-time teaching in the spring of 2007 but continued to guide the First Amendment Clinic until this spring.

O’Neil has taken two part-time roles: general counsel of the American Association of University Professors (a role he also held in 1970–72 and 1990–92); and a senior fellow of the Association of Governing Boards of Colleges and Universities. He has just contributed two articles to the current issue of Trusteeship, the Association of Governing Boards’ magazine.
In October an event in the Law School’s Caplin Pavilion recognized O’Neil’s role as founding director of the Thomas Jefferson Center and, more recently as the founding president of the Virginia Coalition for Open Government.

In January O’Neil will receive the Virginia First Freedom Award from the First Freedom Center at a dinner in Richmond. In March, he will deliver the keynote address at the Freedom Forum for national Freedom of Information Day. In June O’Neil will help plan a panel on academic freedom issues during the annual conference of the National Association of University Attorneys in Chicago.

**SAIKRISHNA PRAKASH** has an article forthcoming in the *Columbia Law Review* entitled “The Indefensible Duty to Defend,” co-authored by Neal Devins. He has also submitted his book manuscript on the original conception of the presidency to various publishers, and is on a paper on the "Appointment of William Marbury" and when an appointment vests.

At the ASLME Health Law Professor’s Conference in Chicago in June **MIMI RILEY** presented “Electronic Health Records and Family History: Ethical, Legal and Social Issues in Family Data-Sharing,” and participated in a panel on “Public Attitudes Towards Genomic Data Sharing” at the Genetics Alliance Meeting in Washington, D.C.

In July Riley presented a talk entitled “Rights, Regulatory Systems and Regulation: How the Interplay of Different Concepts of Rights Within Different Regulatory Systems Affects Regulation of Biomedical Use of Animals” at a conference co-sponsored by the U.S. Institute of Medicine and the UK Home Office at the Kavli Center in Buckinghamshire, UK. She also had a piece published in the *FDLI Policy Forum*, “How Should Ethics Affect FDA Regulation of Genetically Engineered Animals?”

**DAN ORTIZ** is preparing an article on associational rights for New York University’s *Journal of Legislation & Public Policy*, one on the informational interest in campaign finance disclosure for the *Virginia Journal of Law & Politics*, and co-authoring one in Spanish on comparative administrative law for *El Derecho*, an Argentinian law journal. He is also writing a piece on employment discrimination for the Encyclopedia of Management. Ortiz is now past chair for the Law School Admission Council.

The Supreme Court Litigation Clinic, of which Ortiz is the director, is now working on several petitions for the Court to consider this year.


In September Schauer received the Law School’s Roger and Madeleine Traynor Faculty Achievement Award.

In October he was awarded the Marshall-Wythe Medallion at the College of William & Mary Law School. The medallion is the highest honor conferred by the law faculty; previous honorees include Supreme Court Justices William Brennan, Ruth Bader Ginsburg, Thurgood Marshall, Sandra Day O’Connor, and Lewis Powell; and Judges Guido Calabresi and Richard Posner.

Schauer conducted a seminar on “Stereotyping and Profiling” in the Department of Bioethics of the National Institutes of Health, and delivered papers entitled “On the Open Texture of Law” at law faculty workshops at Duke University and the University of Miami, “Is It (Politically) Risky...”
to Disobey the Law?” at Harvard Law School, and “The Ubiquity of Prevention” at conference on Prevention and the Criminal Law at Oxford University.

He spoke on “Legal Fictions Revisited” at the Colloquium on Law and Truth in Mexico City and in Spain at the University of Girona, and on “Academic Freedom” at the University of Arkansas.

**Rich Schragger** will be publishing “Reviving the Regulatory City” in the *Magill Law Journal* as part of a symposium on Justice and the City; and “Democracy and Debt” in the *Yale Law Journal*. Both will be out in early 2012.

**Bobbie Spellman** finished serving on the National Academy of Science Committee on Behavioral and Social Science Research to Improve Intelligence Analysis for National Security. Her committee published a report to improve intelligence analysis for National Security, “Intelligence Analysis for Tomorrow: Advances from the Behavioral and Social Sciences.”

The committee also published a book of individual chapters containing the scientific bases for the report in which appeared her chapter, “Individual Thinking,” in B. Fischhoff & C. Chauvin (Eds.), *Intelligence Analysis: Behavioral and Social Scientific Foundations* (pp. 117–141).


Finally, Spellman held a workshop on “Psychological Foundations of Evidence Law” at Temple University Law School. The workshop was based on a book under contract, *Psychology of the Law of Evidence*.

**Chris Sprigman** received a grant from Google to expand his experimental economics research into how legal rules affect motivations to create new scientific and artistic works. Also, along with his co-author Kal Raustiala, he finished a book, *The Knockoff Economy: How Imitation Sparks Innovation*, which will be published by Oxford University Press in 2012. Finally, Sprigman has joined the Freakonomics blog as a regular contributor, www.freakonomics.com/blog.

**Gil Siegal J.D. ’09** received a grant from the Israeli National Institute for Health Policy and Health Services Research to study “Priority to organ donor cards holders,” for 2011–13.


**RIP Verkerke’s “Collaborative Teaching Materials for Contracts” is forthcoming from CALI this fall/winter. The teaching materials, a work-in-progress, will include all of the elements that make up a conventional casebook. Students will read judicial opinions, statutory provisions, academic essays, and hypotheticals. They will puzzle over common law doctrines and carefully parse statutes. The class will try to develop theories that can predict and justify the patterns of judicial decisions they observe.**

**In December Paul Stephan ’77 will preside over the annual paper conference of the International Law in Domestic Courts Interest Group of the American Society of International Law. The Law School hosted that conference last December; this year it will take place at BYU. Stephan’s term as co-chair of the interest group will end on that occasion.**

During the first two weeks of January Stephan will teach a course on international law and the U.S. Supreme Court at the Interdisciplinary Center in Herzliya, Israel.

**In October James Stern ’09 spent a month in London as one of the American Inns of Court’s Temple Bar Scholars. The program was started 20 years ago by former Chief Justice Burger.**
Unlike a conventional casebook, Verkerke selects each element of the readings. Students start at the beginning of these materials, read each assignment in order, and finish at the end. All of the reading assignments are also self-contained. For example, when Verkerke assigns a statutory section or a portion of the Restatement, it will appear in the text at the point where the student should read it. Students can cover the entire set of materials without having to spend the semester hauling around hundreds of extra pages that the class will have no time to read or discuss. At the end of each section, students will find discussion questions that track very closely the questions that Verkerke asks during class. Finally, the pages themselves are formatted to make reading easier and to give the student plenty of space to take notes and mark up the text.

In the meantime, Verkerke will continue his work to realize fully his vision of transforming the production and use of law school reading materials.

Fabian Witt of Yale Law School, will be held on the book at the law school next February 27. Liz Magill ’95 will moderate the colloquium.

Next March and April, White will be a distinguished visitor in the law department of the University of Auckland, New Zealand. He is scheduled to give a public lecture on the comparative treatment of no-fault insurance for personal injuries in New Zealand and the United States, a faculty seminar on judicial biography, and a presentation to students contrasting unicameral and bicameral legislative bodies in former members of the British Empire.


In July George Yin participated in an international symposium on reform of the personal income tax (PIT) system in China. In attendance was a broad cross-section of Chinese tax policymakers and administrators, including representatives of China’s cabinet, Ministry of Finance, state tax administration, National People’s Congress, and local tax officials. As the lone U.S. representative at the symposium, Yin was joined by academics from China and tax experts representing Germany and the United Kingdom.

The Chinese PIT system is about 30 years old and roughly resembles the U.S. system at a similar age (prior to World War II). The symposium was held in anticipation of possible changes to the Chinese system as a result of the country’s rapid economic development and growing middle and upper classes. Yin delivered two lectures describing principles and practices that might be useful to enhance compliance and enforcement of China’s PIT. The Chinese PIT system is about 30 years old and roughly resembles the U.S. system at a similar age (prior to World War II). The symposium was held in anticipation of possible changes to the Chinese system as a result of the country’s rapid economic development and growing middle and upper classes. Yin delivered two lectures describing principles and practices that might be useful to enhance compliance and enforcement of China’s PIT. The Chinese PIT system is about 30 years old and roughly resembles the U.S. system at a similar age (prior to World War II). The symposium was held in anticipation of possible changes to the Chinese system as a result of the country’s rapid economic development and growing middle and upper classes. Yin delivered two lectures describing principles and practices that might be useful to enhance compliance and enforcement of China’s PIT. The Chinese PIT system is about 30 years old and roughly resembles the U.S. system at a similar age (prior to World War II). The symposium was held in anticipation of possible changes to the Chinese system as a result of the country’s rapid economic development and growing middle and upper classes. Yin delivered two lectures describing principles and practices that might be useful to enhance compliance and enforcement of China’s PIT.

In October Aspen Publishers published a new casebook on corporate tax authored by Yin and Karen Burke of the University of San Diego School of Law. The volume represents a true “labor of love,” and culminates work first undertaken by Yin shortly after passage of the Tax Reform Act of 1986. The book is a companion to Yin and Burke’s 2009 partnership tax casebook, also published by Aspen.

In December Yin will deliver a talk on the Federal Budget and Fiscal Policy to a tax conference sponsored by the University of Texas School of Law.

Yin’s current scholarship concerns the role of the staff of the Joint Committee on Taxation in the legislative process. Authorized in 1926, the nonpartisan staff analyzes the legal, economic, and budgetary implications of all tax legislation considered by Congress. The staff—which Yin headed during the mid-aughts while on leave from the Law School—has at times played a profound role in helping to shape the nation’s tax laws. Yin hopes that his research will help to explain how the staff gained this influential role, what its impact has been on the development of tax policy and law over the years, and how and why the staff’s role has changed. With bipartisan and bicameral cooperation currently so low within Congress, Yin welcomes the opportunity to examine how Congress at one time was willing to rely so heavily on the judgments of a nonpartisan staff of a Joint Committee.
1939
Retired Virginia Supreme Court Justice
W. CARRINGTON THOMPSON passed away in June at the age of 95. After years in government service, politics, and private practice, Thompson was named to the Commonwealth’s highest court in 1980. He stepped down in 1983. In 1982 Thompson was among the first group of justices to receive the Master of Law degree in the judicial process from the Law School.

1940
MORT CAPLIN has learned that the original Boris Chaliapin painting of his 1963 Time magazine cover is now part of the National Portrait Gallery’s collection. The portrait will be on display in the recent acquisitions exhibit which opens November 18. Mort believes this may be the first time an IRS Commissioner “was actually hung!”

Prior to 2001, subjects had to have been dead for at least ten years before the gallery would acquire non-presidential portraits. Mort is happy to report that the barrier no longer exists.

1942
GERARD “JEFF” PODESTA died on May 16 at the age of 94. He was born in Hoboken, N.J., and lived in Montclair, N.J., and Glen Ridge for most of his life. He attended the University of North Carolina and Princeton before graduating from the Law School. During World War II he served as lieutenant in the amphibious command. From 1947 until he retired in 1990, he practiced with Podesta, Myers and Crammond in Bloomingdale, where he specialized in land development, estates, and municipal matters.

Podesta excelled in sports, particularly tennis. He won seven consecutive university titles and was captain and top player on Princeton’s undefeated 1938 tennis team.

1948
ROBERT C. NUSBAUM was recently honored with the Eggleston-l’Anson Professionalism Award by the Norfolk & Portsmouth Bar Association. The Eggleston-l’Anson Award recognizes an attorney who has epitomized the highest standard of personal and professional reputation and conduct throughout his or her career, and is the association’s highest honor.

Nusbaum is with Williams Mullen in Norfolk, Va., where he is a partner in the business section.

Former U.S. Congressman (R-Va) and Virginia State Supreme Court Justice, RICHARD POFF, passed away June 28, in Tullahoma, Tenn. Poff served in the House of Representatives for 19 years and later for 16 years on the Virginia Supreme Court. In 1971 Poff “surprised official Washington … by withdrawing from consideration for a seat on the Supreme Court rather than submit to the harsh scrutiny he feared his anti-civil rights voting record would arouse,” according to a New York Times obituary.

Poff was said to be President Richard Nixon’s choice to fill the so-called “Southern” seat on the Court when Justice Hugo Black died. In a Virginia newspaper interview at that time, Poff expressed deep regret over his earlier segregationist record which dated back to the 1950s. Not wanting his prior record to affect the confirmation process, he asked the president to “drop him from consideration.” Nixon went on to nominate Lewis F. Powell.

MINERVA WILSON ANDREWS, of Charlottesville, and formerly of McLean, passed away September 4. She was 86 years old.

She was born in Rock Hill, S.C., and graduated from the University of South Carolina before attending the Law School, where she was one of the earliest women graduates. Wilson Andrews began her legal career as a trial attorney in the antitrust division of the U.S. Department of Justice in Washington, D.C. She joined Bauknight, Prichard, McCandish & Williams in 1963 (which became Boothe, Prichard & Dudley in 1972). In 1980 she was made partner. After a merger with McGuire, Woods, Battle and Boothe, she served in the McLean office until retiring in 1992.

In retirement she participated in many activities in her community in Charlottesville and worked on two books: Carolina-Virginia Recollections and Carolina-Virginia Genealogy.

1950
EDWARD M. SELFE passed away on November 30, 2010 at 89. He was born in St. Paul, Minn., and grew up in Chicago and Atlanta. He attended Presbyterian College in Clinton, S.C., where he played varsity tennis and graduated magna cum laude in 1943.

He served in the U.S. Army during World War II, where
he rose to the rank of captain and fought as a first lieutenant infantry platoon leader during the 90-day Battle of the Heurtgen Forest in Germany and in the ensuing Battle of the Bulge. For his valor in battle, he was decorated with the Silver and Bronze Stars and awarded the Purple Heart.

Selfe entered the Law School on the G.I. Bill in 1947, where he distinguished himself by graduating second in his class, serving on the Virginia Law Review, and being elected to Order of the Coif, Omicron Delta Kappa, and the Raven Society. He taught at the Law School for one year, then practiced law in New York with the Shearman & Sterling law firm. In 1952 he began a long and distinguished legal career in Birmingham with the predecessor to the Bradley Arant Boult Cummings law firm, with which he practiced as a partner in the fields of corporate and tax law, and with which he remained closely associated for over 58 years until his death. While a partner at Bradley Arant Boult Cummings, Selfe argued many landmark tax and business valuation cases, was recognized by his peers nationally by being elected as a Fellow of the American College of Tax Counsel, and served as an adjunct professor at the University of Alabama School of Law from 1968 to 1990, teaching business planning.

He was an avid skier for most of his adult life, and was a highly competitive tennis player until his late 80s. He was ranked nationally in his age division over the years, most recently second nationally, and competed this year in the national championships for the over-85 men’s singles division of the U.S. Tennis Association.

1957
HERBERT GLICKMAN retired as a superior court judge in New Jersey after 25 years on the bench. He is now working in mediation and arbitration of matrimonial cases with Greenbaum, Rowe, Smith & Davis in Iselin, N.J.

1960
K. KING BURNETT received the Maryland Bar Foundation’s H. Vernon Eney Endowment Fund Award in 2010. The award is the organization’s highest award and honors an individual who has demonstrated outstanding leadership in working to improve government and the administration of justice. Nominees exhibit four principal characteristics of Mr. Eney, which distinguished his career: excellence in the law; bar leadership; community leadership; and enormous capacity for work.

1964
J. SCOTT MERRITT writes that he had a stroke in December of 2007. “I can’t write well or talk well—you should talk to me!” He hopes to visit Charlottesville soon.

1965
TONY MEDLEY has achieved the status of Silver Life Master in the American Contract Bridge League. Medley is the author of three books, UCLA Basketball: The Real Story; Sweaty Palms: The Neglected Art of Being Interviewed, the first book ever written on the job interview for the interviewee; and The Complete Idiot’s Guide to Bridge. Medley is also a Motion Picture Association of America-accredited film critic. His critiques, columns, and interviews may be read at www.rottentomatoes.com and at www.tonymedley.com, and in with several newspapers. He lives in Marina del Rey, Calif.

WILLIAM R. BRUCE ’59, who is mostly retired from the law firm of Adams and Reese, now lives with his wife, Rita, in St. Marys on Georgia’s southeast coast. Bill, who is a past member of the Tennessee House and Senate, was honored during 40th anniversary ceremonies for the highly successful Tennessee Natural Areas Act, which he sponsored in the Senate in 1971.

He and Rita recently celebrated their 30th wedding anniversary with a trip that began with a safari in South Africa followed by a cruise from Cape Town to Singapore via many ports in Africa, Madagascar, various island groups in the Indian Ocean, Sri Lanka, Myanmar, Thailand, and Malaysia.

In addition to travel, Bill fills his time with boating, church activities, playing the piano for and leading two sing-along sessions at local facilities for the elderly, bicycling, and visiting family. His six children (who include one lawyer, two college professors, one CPA, one chemist and high school teacher, and one computer engineer), and 14 grandchildren are scattered across the country.

Presently, he is special counsel to Adams and Reese, in their Nashville office, is a fellow of the American, Tennessee, and Nashville Bar Foundations, and continues to be involved in limited Tennessee practice.
1966

JOHN W. BATES III received the 2011 William H. Ruffner Medal, the highest honor bestowed by Virginia Tech, in honor of his loyal and enthusiastic support of the university. He earned his bachelor’s of business administration at Tech in 1963 and comes from a family of Hokies.

After graduating from the Law School, Bates began a 43-year legal career that culminated in his position as managing partner with McGuire-Woods in Richmond.

BILL ECKHARDT has completed his 18th year teaching at the University of Missouri’s Kansas City School of Law. He has been awarded Outstanding Teacher awards four times. This year he received the Chancellor’s Award for Excellence in Community Engagement.

GUY O. FARMER II has been listed in Chambers USA 2011 and Florida Super Lawyers 2011 in the area of labor and employment law, Best Lawyers 2011 in labor and employment law, and Best Lawyers 2012 in employment and labor law/management. Farmer is with GrayRobinson in Jacksonville, where he is shareholder in the labor and employment group.

1967

Suzanne Wescoat, wife of JACK WESCOAT, died on August 8, after a long fight with breast cancer.

1968

PETER KILCULLEN had a great time at the 45th Law reunion in May. A week after the reunion he went scuba diving with his son in the Turks & Caicos. “Retirement is wonderful—as long as the stock market doesn’t crash! Holley and I still live in Old Town Alexandria after 29 years and really love it.” The Kilcullens had a big family vacation in August in Bald Head Island, N.C.

Associate Justice ROBERT L. BROWN of the Arkansas Supreme Court has announced his retirement, effective January 1, 2013. He has served in this position since 1991.

While on the Supreme Court, Brown has written more than 1,220 majority opinions, including the term-limits decision for congressmen and senators in 1994 (U.S. Term Limits v. Hill), which was affirmed by the United States Supreme Court, and four Lake View decisions on the adequacy and equality of the state’s public school funding system, beginning in 2002 (Lake View School District v. Huckabee).

EMIL “TOVI” ARTHUR KRATOVL, JR., passed away in Charlottesville on August 1, at 70. He was born in New Bedford, Mass., and attended St. Paul’s School in Concord, N.H. Following graduation from Williams College in 1962, and before attending the Law School, he served in the Vietnam War and was awarded a number of medals for his service and retired honorably as captain in the U.S. Marine Corps. He was a partner in the admiralty and maritime law firm of Haight, Gardner, Poor and Havens in New York City for most of his legal career.

For the last two decades of his life Tovi dealt stoically with the debilitating effects of Parkinson’s disease. He thrived in the company of friends and family, always interested in their news and events.

1969

ROBERT W. ASHMORE has been selected for inclusion in Best Lawyers 2012 in labor and employment law. He is a partner at Fisher & Phillips in Atlanta, Ga.

ERNST “FORD” BARRETT has been litigating a case, TCF National Bank v. Bernanke, challenging the constitutionality of the Durbin Amendment, a provision in the Dodd-Frank Financial Reform Legislation that limits the interchange fee paid by merchants who accept debit cards.

JERRY COUGHLAN has been named among the Top 50 lawyers in San Diego Super Lawyers 2011. He has been listed as a Top 50 lawyer every year since the launch of the publication in 2007 and has been listed among the Top 10 twice, in 2007 and 2010. Coughlan is a founding member of Coughlan, Semmer, Fitch...
& Pott in San Diego, Calif, where his practice focuses on trying and litigating civil and white-collar criminal cases.

On a personal note, Jerry was recently inducted into the Commanderie de Bordeaux, San Diego chapter, an international organization of hobbyists with a keen interest in Bordeaux wines.

**FREDERICK HODNETT** has been appointed as a civil marriage celebrant (§ 20–25 of the Code of Virginia). He is performing civil marriages for couples who qualify to obtain a Virginia marriage license.

**J. THEODORE JACKSON**, a partner with Rushton, Stakely, Johnston and Garrett in Montgomery, Ala., has been elected to the board of trustees of Samford University in Birmingham. Samford is the largest private institution of higher learning in Alabama, with an enrollment of over 4,700 students. Founded in 1841, the school is affiliated with the Alabama Baptist State Convention and offers 138 undergraduate majors, minors, and concentrations; and graduate programs in business, divinity, law, education, arts and sciences, nursing and pharmacy.

**DAVID WIECKING** departed this life July 22. Wiecking was the retired chief medical examiner for the Commonwealth of Virginia. Born in Washington, D.C., and raised in Northern Virginia, he graduated Johns Hopkins School of Medicine in 1960. Wiecking and his wife, Mary Jane, moved to Charlottesville so he could do his residency at UVA.

While completing his two years of surgical and three of pathology residencies, Wiecking attended and graduated from the Law School and passed the Virginia state bar. For 21 years he served as chief medical examiner for the state, heading one of the most respected forensic laboratories in the nation. His was personally involved in directing the lab in the nation’s first successful DNA-based prosecutions for capital crimes in Virginia’s South Side Strangler serial rape-murder case during 1987.

“...The case revolutionized forensic medicine. It was the first time in the country that DNA linked multiple rapes and murders. It was the first time someone was to be executed as a result. It also was the first time in Virginia that DNA indirectly cleared an innocent man—a mentally disabled man who had confessed to one of Spencer’s murders to avoid a death sentence and was serving time in prison,” according to the Richmond Times-Dispatch.

1970

**ELAINE R. JONES** is the recipient of the 2011 Thurgood Marshall Award given by the American Bar Association’s section of individual rights and responsibilities. The award was presented at a gala dinner of the association’s national conference in Toronto, Canada, in August. Jones served as president and later as director-counsel, emeritus of the NAACP Legal Defense and Educational Fund.

Jones was the first African-American woman to graduate from the Law School. Soon after graduating, she was the counsel of record in *Furman v. Georgia*, the U.S. Supreme Court case that in 1972 abolished the death penalty in 37 states. She has litigated many class action employment discrimination cases challenging race and gender discrimination in the workplace.

1971

In April **CAROL BAGLEY AMON** was named chief judge of the Federal District Court for the Eastern District of New York.

**JERRY A. DAVIS** has retired after 27 years as United States Magistrate Judge for the Northern District of Mississippi. In that district, judges have broad powers and preside over a wide range of cases in tandem with a district judge. Davis became known for cases involving sweeping reform of the Mississippi prison system and for his ability as a mediator.

1972

**EDWARD B. LOWRY** is listed in *Virginia Super Lawyers 2011*. His practice with MichieHamlett in Charlottesville focuses on statewide commercial litigation.

**MARK E. SULLIVAN** was recently cited as an expert in the division of military pensions in a trial court decision in Maryland and in an opinion of the Minnesota Court of Appeals. In April he was an instructor in military family law at the Naval Justice School in Newport, R.I. He also presented a program on military divorce issues at the Georgia Bar’s Family Law Institute at Amelia Island, Fla. He is on the drafting committee of the Uniform Deployed Parents Custody Act, which is being written for the Uniform Law Commission, an organization that proposes model laws for states to enact. Sullivan is a retired Army Reserve JAG colonel practicing family law in Raleigh, N.C. The second edition of his book, *The Military Divorce Handbook*, was released in August.

**RONALD R. TWEEL** is included in *Virginia Super Lawyers 2011*. He was also noted as Charlottesville Family Lawyer of the Year for 2011. Tweel is with MichieHamlett, where he focuses his practice on domestic relations.

**HOWARD E. GORDON** is the recipient of the 2011 Traver Scholar Award, created by Virginia Continuing Legal Education and the Virginia State Bar to honor those who embody the highest ideals and expertise in the practice of real estate law. Gordon is a partner with Williams Mullen in Norfolk, where he focuses on commercial and multi-family real estate, commercial leases, ground leases, land use planning and permits, and urban development.
1973

**FREDRICK R. TULLEY** is listed in *Chambers USA 2011* in litigation: securities and in *Best Lawyers 2012* in commercial litigation, banking & finance, and bankruptcy. He was also recognized in *Best Lawyers* as Baton Rouge Litigation Bankruptcy Lawyer of the Year. He is a partner with Taylor Porter, where his practice focuses on commercial litigation, securities litigation, professional malpractice, construction, antitrust, RICO, commercial bankruptcy, and insurance insolvency.

**JAMES T. O’REILLY** is of counsel with Sandler, Travis & Rosenberg in Washington, D.C., where he concentrates his practice in life sciences, including biotechnology, and Food and Drug Administration and Environmental Protection Agency regulatory matters.

He assists clients with compliance, product recalls, product approval, liability risk, inspections, and related issues. He is widely regarded as an expert on food law.

O’Reilly serves as chair of the ABA Committee on Government Information and Privacy and as co-chair of the FDA Committee.

**RICHARD VOIGT** has been recognized as one of Greater Hartford’s Top Attorneys by *Hartford Magazine*. He is with McCarter & English, where he is partner in the labor and employment law group. He represents employers in a wide range of matters, including wrongful discharge cases, employment discrimination cases, state and federal court injunction actions, breach of contract cases, trade secret/proprietary information cases, and wage-hour claims.

1974

**WHITTINGTON W. CLEMENT**, a partner at Hunton & Williams in Richmond, serves as chairman of the Virginia Chamber of Commerce and is the immediate past president of the Virginia Law Foundation.

1975

**GLENN R. CROSHAW** has been elected by the General Assembly of Virginia for an eight-year term as a judge of the Second Judicial Circuit Court for the City of Virginia Beach.

1976

**ROBERT BAUER** is recognized in the 2011 edition of *The National Law Journal*'s Most Influential Lawyers, one of only four listed in the area of government affairs. He recently stepped down from the position of White House Counsel and has returned to private practice at Perkins Coie, where he is a partner in the political law practice. He will serve as general counsel to President Obama’s reelection campaign, general counsel to the Democratic Committee, and personal lawyer to the President.

**DAVID A. BAKER ’76**, left, received the 2011 William M. Hoeveler Judicial Award, presented at the judicial luncheon of the annual Florida Bar Convention in Orlando in June. The award recognizes a judge who “exemplifies strength of character, service, and competence as a jurist, lawyer and public servant.” Baker is a U.S. Magistrate Judge for the Middle District of Florida. With David is **Hal Litchford ’78**.

**DON P. MARTIN** has been named in *Southwest Super Lawyers 2011* in business litigation and in *Chambers USA 2011* in litigation. He has also been selected for inclusion in *Best Lawyers 2012* in commercial litigation, legal malpractice law/defendants, litigation/banking & finance, and litigation/real estate. He is a partner with Quarles & Brady in Phoenix, Ariz.

In September **JOHN A. ECKSTEIN** was presented with the St. Thomas More Award, given by the Catholic Lawyers Guild of Colorado to individuals who exemplify the intellect, integrity, and moral courage of St. Thomas More in service to God, family, and profession.

Eckstein served as the chair of the Colorado Bar Association’s Professionalism Coordinating Council from 2007 to 2009. He was recently appointed by Colorado Chief Justice Michael Bender to a new commission on the profession. Eckstein practices corporate finance and securities law as a director and shareholder with Fairfield and Woods in Denver.
PEGGY HAINES is now at Lander & Rogers, an Australian firm with offices in Sydney and Melbourne. She has extensive experience with corporate, public offer, and public sector superannuation funds. She was previously with Freehills.

WILLIAM J. KEENAN, JR., has been appointed co-chair of the Connecticut Bar Association’s labor and employment retirement and welfare benefits subcommittee. He will assist with educational programs in the employee benefits field and will write or oversee articles for the labor and employment law section’s quarterly newsletter. Keenan is chair of the employee benefits practice group at Murtha Cullina in Hartford.

KEITH MORGAN remarried last November. His wife, Jane McDonald, is a partner at Weil, Gotshal & Manges in New York. Morgan continues to be general counsel of GE Capital.

W. JOSEPH OWEN III is listed in Virginia Super Lawyers 2011 in the area of general litigation. He represents individuals and businesses in civil and commercial litigation, criminal defense, personal injury, real estate, estate planning, corporate and construction law. He is a founding partner with Owen & Owens in Midlothian.

ANN MARGARET POINTER has been selected for inclusion in Best Lawyers 2012 in labor and employment law. She is a partner with Fisher & Phillips in Atlanta, Ga.

JOSEPH A. RIDEOUT was recently presented with the Diocese of Toledo’s Centenary Award for Outstanding Service for his service to St. John’s Jesuit High School. The award was presented during the solemn vespers service in June at Toledo Rosary Cathedral. Rideout is a board member and immediate past chairman of the board of trustees of St. John’s Jesuit High School.

He is with Shumaker, Loop & Kendrick, where he is a partner in the real estate practice group.

1977

PAUL K. CASEY was named Dealmaker of the Year for 2011 by American Lawyer for his role in helping to structure a landmark public-private partnership that raised hundreds of millions of dollars to improve and maintain low-income housing developments in New York City. These developments, built with state and city funds between 1950 and 1980, had gone nearly a decade without direct subsidies.

Casey and his team worked alongside the general counsel’s office for the New York City Housing Authority, which had been trying for years to find a way to subsidize the 21 developments, home to more than 45,000 people. The joint legal team determined that NYCHA could merit federal funding under provisions of the American Recovery and Reinvestment Act of 2009 if it structured a deal using public and private funds under HUD mixed-finance rules. The resulting transaction, one of the largest tax-credit bond deals in U.S. history, was completed in just six months to meet a federal deadline. Casey is with Ballard Spahr in Baltimore, Md., where he is a partner in the real estate and public finance departments, co-chair of the housing group, and member of the real estate finance and public finance transaction groups.

1978

EDMUND T. BAXA, JR., LL.M. ’80 has been selected as the recipient of the 2011 Judge J.C. Jake Stone Distinguished Service Award by the Legal Aid Society of the Orange County Bar Association for the pro bono contributions he has made throughout his career. Baxa is a partner with Foley & Lardner in Orlando, Fla., and chair of Foley’s national pro bono committee.

Baxa has served as guardian ad litem for dozens of abandoned and neglected children in dependency proceedings in juvenile court, handling more than 80 juvenile cases and donating more than 725 hours of legal services. He was a recipient of the Legal Aid Society Individual Award of Excellence in recognition of this work. He has also given counsel and support to the Sanford-Burnham Research Institute, which provides free legal services to nonprofit research institutions and universities to assist them in the development of treatments for orphan diseases.
Baxa has steadily encouraged his colleagues to increase their participation in pro bono and community service activities. At the start of his tenure, Foley ranked 119 in American Lawyer’s list of law firm pro bono practices; in the July 2010 the firm ranked 36.

**CONSTANCE A. HOWES** has been named to the Becker’s Hospital Review list of 291 Hospital and Health System Leaders to Know, which recognizes individuals who are guiding prominent American health care organizations through change and innovation. Howes has served as president and CEO of Women & Infants Hospital in Providence, RI, since 2002.

**ANNE L. KLEINDIENST** has joined Polsinelli Shughart in Phoenix, Ariz., where she is a shareholder. She will focus her practice in the areas of business and health care law. Kleindienst has represented businesses and health care providers, including hospital systems, behavioral health and long-term care facilities, and physicians groups in corporate and finance matters. She serves as general counsel to the Greater Phoenix Chamber of Commerce and as board member on the Arizona Investment Council. She was recently with Fennemore Craig.

**ELY A. LEICHTLING** has been recognized in Chambers USA 2011 in the area of labor and employment. He has also been selected for inclusion in Best Lawyers 2012 in employment law/mangement, labor law/management, and litigation/labor & employment. He is a partner with Quarles & Brady in Milwaukee, Wisc.

**DAVID LLEWELLYN** presented a talk, “the Circumcision Lobby” at Genital Autonomy—the Eleventh International Symposium on Circumcision, Genital Integrity, and Human Rights at the University of California, Berkeley in July 2010. Llewellyn’s law practice centers on cases involving circumcision malpractice/damage.

**1979**

**ANNE L. KLEINDIENST** has joined Polsinelli Shughart in Phoenix, Ariz., where she is a shareholder. She will focus her practice in the areas of business and health care law.

**ELY A. LEICHTLING** has been recognized in Chambers USA 2011 in the area of labor and employment. He has also been selected for inclusion in Best Lawyers 2012 in employment law/management, labor law/management, and litigation/labor & employment. He is a partner with Quarles & Brady in Milwaukee, Wisc.

**BLAKE D. MORANT ’78**, dean of Wake Forest Law School, began his legal career as a JAG officer with the XVIII Airborne Corps at Fort Bragg, N.C. In May Morant was invited to that same JAG office to give a professional development talk, where he met current Army JAG officers, Lieutenant Colonel Margaret Thomas ’00 and Major Yolanda McCray ’03. Both alumnae are also graduates of the U.S. Military Academy, West Point.
The Episcopal Church has named Stacy Sauls as its chief operating officer. The Right Reverend Sauls oversees the staff of the Episcopal Church Center in New York City, as well as at offices in Washington, D.C., Los Angeles, Seattle, and Puerto Rico. Prior to this post, Sauls was Bishop of Lexington for more than a decade. His episcopacy is recognized for his focused and creative work on mission and vision in the context of a smaller diocese in Eastern Kentucky, where 14 of the 100 poorest counties in the country are located.

Robert D. Seabolt has been named chief operating officer of Troutman Sanders. He will remain based in the firm’s Richmond office.

1981

Patricia Dondanville has joined Reed Smith in Chicago, as partner in the corporate & securities group. Her practice includes corporate finance and transactional matters with a focus on providing strategic legal counsel to energy industry clients. She is ranked with Chambers USA-America’s Leading Lawyers for Business in the area of energy and natural resources and is currently vice chair of the ABA section on public utility, communication, and transportation law. Dondanville will serve as the section’s chair-elect in 2012 and chair in 2013. She was previously with Schiff Hardin.

Professor of Law Geoff Gilbert LL.M., S.J.D. ’88 has been elected to his second term (2011–14) as head of the School of Law at the University of Essex, United Kingdom. He was elected a Bencher of the Middle Temple in 2009 and called in February 2010. He is editor-in-chief of the International Journal of Refugee Law.

Douglas A. Hastings has been named to the National Law Journal’s list of Most Influential Lawyers in the category of health care, one of only three to be named in this field. Honorees were recognized at the National Law Journal’s annual dinner on June 8 in New York City. A special report appeared in the March 29 issue of The National Law Journal, noting that Hastings is considered “the dean of the health care bar.” Hastings has considerable expertise in transactions and governance on behalf of hospitals, academic medical centers, health plans, and managed care organizations. He serves on the board of Health Care Services of the Institute of Medicine, which oversees the Institute’s research and publications regarding health care system payment and delivery. He is a member with Epstein Becker Green in Washington, D.C.

Thomas Heimbach’s firm changed its name to Flamm Walton. Heimbach is the managing partner of the Allentown, Pa., office.

George C. Howell III was recently named chair of the American College of Tax Counsel, a nonprofit professional association of tax lawyers recognized for excellence in tax practice and for contributions to the profession. Howell is partner at Hunton & Williams in Richmond, Va., where he heads the tax and ERISA group. He focuses his practice on the tax aspects of REITs, REMICs, securitizations, master limited partnerships, private investment funds, and other financial transactions. He is listed in Best Lawyers 2011 in the area of tax law.

1982

Alma Angotti has joined Navigant Consulting in Washington, D.C., as a director in its global investigations and compliance practice, where she will focus on anti-money laundering, anti-bribery and corruption projects. In July she resigned from the Financial Industry Regulatory Authority (FINRA), where as senior special counsel she had led FINRA’s enforcement efforts and had been a key figure in designing and conducting AML training courses for the self-regulatory organization’s staff and industry officials.

Blaine A. Lucas has been listed in Pennsylvania Super Lawyers 2011 in the area of government/cities/municipalities. He was also named as one of the Top 50 Pittsburgh Super Lawyers for 2011. He is with Babst Calland, where he is a shareholder in the public sector services and business services groups. He represents public and private clients on a variety of matters, with particular emphasis on land use and land development issues.

Michael Houghton has been elected president of the National Conference of Commissioners on Uniform State Laws (the Uniform Law Commission) for a two-year term. The commission researches, drafts, and promotes the enactment of uniform state laws. Houghton is listed in Best Lawyers 2011 in the areas of administrative law, government relations law, and banking law. He is a partner with Morris, Nichols, Arsht & Tunnell in Wilmington, Del., where he focuses his practice in the areas of commercial law counseling and unclaimed property.

Jeffrey Levinger has been recognized in D Magazine’s Best Lawyers in Dallas 2011 for appellate law. His appellate experience covers virtually every area of substantive law, from legal malpractice to intellectual property to products liability. Since 2009 he has served as chair of the State Bar of Texas committee on pattern jury charges—malpractice, premises, and products. He is a founding partner of Hankinson Levinger.

Former FEC chairman and general counsel to John McCain’s presidential campaign, Trevor Potter, found himself
CLEO E. POWELL ’82 was elected to the Virginia Supreme Court by the General Assembly for a 12-year term. She is the first African-American woman to be elected to this position. She previously served on the Virginia Court of Appeals and was the first African-American woman to serve in that position as well.

In early August, Thatcher A. Stone won a decision in the U.S. Court of Appeals for the Ninth Circuit that could change federal law for airline passengers. Stone convinced the Ninth Circuit that the Airline Deregulation Act of 1978 did not preempt state law claims for breach of contract by passengers in privity with an airline, including claims for breach of implied covenants of good faith and fair dealing. The decision in Ginsberg v. Northwest has been covered in the news and legal press because it expands passenger rights and underscores the airline industry’s tension with the flying public, says Thatcher, a longtime aviation lawyer.

The Honorable Kent C. Sullivan has joined Sutherland Asbill & Brennan as partner in the litigation practice group in Houston and Austin, Tex. Sullivan previously served as a justice for the Texas Court of Appeals in Houston, as first assistant attorney general, and as a district judge. He was a trial lawyer in private practice for more than 20 years.

Sullivan has served multiple terms on the Supreme Court Advisory Committee that is appointed by the Texas Supreme Court to provide advice and research on proposed changes to the Texas Rules of Appellate Procedure, the Texas Rules of Civil Procedure, and the Texas Rules of Evidence. He has also served multiple terms on the Texas Pattern Jury Charge Committee, which is responsible for the formulation of standardized jury instructions and questions for use in trials throughout the state.

Raymond G. Truitt has been selected for inclusion in Best Lawyers 2012 in real estate law. He is a partner in the real estate department of Ballard Spahr in Baltimore, Md., where he focuses his practice in commercial real estate financing, leasing, development, and restructuring.

In 2011, Avery “Sandy” Waterman was named to Multi-Million Dollar Advocates Forum, the Best Lawyers in America (medical malpractice and personal injury) for the fifth time, and Virginia Super Lawyers for the third time. Waterman practices with Patten, Wornom, Hatten & Diamonstein in Newport News.

Win Dayton just finished his second year as deputy principal officer at the U.S. Consulate General in Istanbul, Turkey. He writes, “Highlights of the past year included a visit by fellow North Grounds RFC infidel and classmate, Bob Latham, and his daughter, Kira; summiting 16,850-foot Mount Ararat; and swimming the Bosphorus.”

James P. Cox III is listed in Virginia Super Lawyers 2011 in the areas of estate planning and probate and real estate and in Best Lawyers 2011 in trusts and estates and real estate law. He is chair and member of the council and legislative committee of the wills, trusts and estates section of the Virginia Bar Association and is the current chair of the real estate committee of the Charlottesville Albemarle Bar Association. Cox is with MichieHamlett in Charlottesville.

J.B. Ruhl has joined the faculty at Vanderbilt University Law School as the David Daniels Allen Distinguished Chair in Law. He will continue his research and teaching in the fields of environmental law and land use law.

James Paul Cellar was appointed as a circuit judge for the Eleventh Judicial Circuit of the Virginia State Courts on July 1. Cella previously served as a general district court judge.

Paul Cellar, just finished his second year as deputy principal officer at the U.S. Consulate General in Istanbul, Turkey. He writes, “Highlights of the past year included a visit by fellow North Grounds RFC infidel and classmate, Bob Latham, and his daughter, Kira; summiting 16,850-foot Mount Ararat; and swimming the Bosphorus.”

Lisa Friel has left the Manhattan District Attorney’s Office after 28 years to enter the private sector. Friel spent 25 years in the sex crimes unit and served the last ten years as chief, and now aims to use her experience to make a
difference in the private sector. She has joined T & M Protection Resources, a consulting and investigative firm, where she will be heading a new division that will provide sexual assault and sexual misconduct education, training, and investigative services to a variety of private entities, including colleges and universities, sports teams and leagues, and private businesses.

**John T. McCormick** published his first book, *Dad, Tell Me a Story: How to Revive the Tradition of Storytelling with Your Children*, with Nicasio Press. The book contains a collection of stories that McCormick created and illustrated with his two sons, William and Connor. The book and the companion Web site, dadtellmeastory.com, also offer guidance to parents on how to make up stories with their children, while offering parenting insights reflecting the wonder and joy of raising kids. McCormick is an attorney in Washington, D.C., where he lives with his wife, Danna, and the boys. (See In Print.)

**Elaine Metlin** received the National Association of Women Judges’ 2011 Florence K. Murray Award in October. The award is presented annually to a woman who is not a judge and who has influenced women to pursue legal careers, opened doors for women attorneys, or advanced opportunities for women within the legal profession.

Metlin is a partner in Dickstein Shapiro’s business litigation and white collar practices in Washington, D.C. She was named head of the firm’s women’s leadership initiative in 2006 and was a founding member of the District of Columbia Chapter of Women’s Leadership and Mentoring Alliance, a nonprofit organization whose mission is to cultivate networking, mentoring, and career development opportunities for women across industries. She has counseled victims of rape and abuse and spent hundreds of pro bono hours seeking to protect women’s reproductive rights. She was a key figure in drafting Dickstein Shapiro’s policy on alternative work arrangements, where women could work on a schedule reduced by as much as 50 percent and still be on a partnership track.

Metlin served as a role model herself when she entered the Law School as a single mother of a two-year-old daughter in 1980.

**Owen Pell** received an honorary doctor of laws degree from the State University of New York and delivered the commencement address at Binghamton University on May 22.

His speech, on mentoring, can be found on YouTube at www.youtube.com/...atch?v=K8s6BRKm6A.

Pell is a partner in the commercial litigation group at White & Case in New York.

**1984**

**Bill Chapman** was confirmed by the Washington State Senate to serve as chairman of the Washington Recreation and Conservation Funding Board. The RCFB awards roughly $100 million biannually in 11 different grant programs for parks, trails, and wildlife habitat. Chapman was nominated to the position by Governor Gregoire.

**Thomas G. McNeill** has been named among the Leaders in Their Fields by Chambers USA 2011 in the area of environmental law. Donovan is with Norris McLaughlin & Marcus in Bridgewater, where she is a member and co-chair of the environmental law group. She focuses her practice on environmental law and complex litigation with emphasis on the defense of environmental property damage and toxic tort claims. She also has considerable experience working on insurance coverage matters.

**1985**

**Martha N. Donovan** is included in New Jersey Super Lawyers 2011 and Chambers USA 2011 in the area of environmental law. Donovan is with Norris McLaughlin & Marcus in Bridgewater, where she is a member and co-chair of the environmental law group. She focuses her practice on environmental law and complex litigation with emphasis on the defense of environmental property damage and toxic tort claims. She also has considerable experience working on insurance coverage matters.

Mark Kmetz has been named director of the Massachusetts Division of Professional Licensure, an agency that licenses family owned business groups. He works with clients on general business and corporate matters, including entity formation, acquisition or sale of companies, and corporate financings.

Prior to practicing law, Ramig served on the Washington, D.C., staff of U.S. Senator Mark O. Hatfield and on the White House staff in the Carter administration’s Office of Public Liaison. He also served on the staff of Donald Anderson, a member of the British Parliament.
and regulates trades and professions to ensure consumer protection and maintain a level playing field for licensees in the commonwealth. The agency oversees 31 boards and some 50 trades and professions, from cosmetologists to psychologists to electricians. Kmetz most recently worked at Public Consulting Group, a Boston-based consulting company that offers products and services to government clients nationwide in the areas of health care, education, and information technology, managing litigation and arbitration for the company. Previously he worked in the Massachusetts Attorney General’s office, directing tobacco enforcement initiatives, assisting in the management of the Public Protection Bureau, and pursuing central artery/tunnel cost recovery.

KEVIN A. OHLSON has been nominated by President Barack Obama to serve as a judge on the U.S. Court of Appeals for the Armed Forces. Ohlson is currently the chief of the professional misconduct review unit in the Department of Justice. From 2009 to January 2011, he was chief of staff and counsel to U.S. Attorney General Eric Holder.

CHRISTINE THOMSON has been included in the 2011 Influential Women of Virginia, sponsored by Virginia Lawyers Weekly. The honor recognizes the outstanding contributions of women in all fields, including law, business, health care, arts, and education. She, along with other honorees, were celebrated at a luncheon on May 19 in Richmond, and a profile noting her achievements was included in VLW in May.

Thomson is with Michele Hamlett in Charlottesville, where she focuses on medical malpractice and medical device cases. She also represents plaintiffs in other personal injury cases with extensive medical damages.

1986

NORMAN CHERNER was promoted and transferred from Lovingston, Va., to Inwood W.V., where he manages a Rite Aid Pharmacy.

EDWARD M. ROGERS has joined Reed Smith in Washington, D.C., as partner in the real estate group. He has more than 20 years of experience in real estate development and commercial finance, with a focus on large-scale, mixed-use projects. Rogers was named among the top real estate lawyers in the District of Columbia in Chambers USA 2011. He was previously with Arent Fox.

1987

JOHN BRIDGELAND is the author of the recently published book, Heart of the Nation: 9/11 and America’s Civic Spirit. The tenth anniversary of 9/11 reminded Americans of their volunteering spirit and willingness to serve and be part of something larger than themselves. Bridgeland chronicles the many ways Americans pulled together in that time of crisis and how collective effort for the common good is key to the nation’s spirit. Bridgeland is former director of the White House Domestic Policy Council under President George W. Bush and is a current member of the White House Council for Community Solutions under President Barack Obama.

STEPHEN FOX is included in the D Magazine Best Lawyers in Dallas list for 2011 in the area of labor and employment law. He has also been selected for inclusion in Best Lawyers 2012 in labor and employment litigation, employment law/management and labor law/management. Fox is a principal with Fish & Richardson, where he is head of the trade secret theft, employment, and employee mobility practice. He led a team that secured the largest employment law verdict in Texas in 2010.

ROBERT W. LONG was recently a guest host on CNBC Worldwide Exchange. Long is the CEO of Conversus Asset Management, the largest publicly traded fund of private equity funds. His office is in Charlotte, N.C. Find the clip at: http://video.cnbc.com/allergy/?video=1827468683

MICHIE A. MASUCCI is listed in Chambers USA 2011 in the area of health care/New York. She is a partner in the Long Island and New York City offices of Nixon Peabody, where she heads the health services practice. Masucci leads a team of more than 25 attorneys who advise clients in the health care field on issues including regulatory requirement and compliance.

At the end of the last academic year DAYNA MATTHEW stepped down after having served as both associate dean and vice dean of the Colorado Law School. Matthew is taking a year’s sabbatical to complete a book project and work on a public health law project with the National University of Rwanda Law School in Butare, Rwanda.

TOM WALLS serves on the staff of Senator Mark Warner (D-VA) as chief counsel. Following an earlier stint as a Senate staffer, Tom joined the Washington, D.C., office of McGuireWoods in 2001. At McGuireWoods he was a partner and founder of the firm’s political law group while also serving as senior vice president for federal public affairs at McGuireWoods Consulting. Tom and Molly Fields Walls celebrated their 21st wedding anniversary this year. They live in Arlington, Va., and have a daughter, Nora (16) and son, Bennett (19), who is a sophomore at Oberlin College.
Steve Snyder ’88 addresses law students in Lagos, Nigeria.

Global Adapt: Cross-cultural Awareness

STEVE SNYDER ’88 grew up all over the world. He spent much of his childhood in Liberia, West Africa, before living in the Caribbean during his teen years. Before his missionary family settled in South Carolina, Snyder had attended 10 schools and lived in six U.S. states. He appreciates better than most the challenges and rewards of growing up in more than one culture.

Nine years ago he was invited to speak at an event in Europe on the topic of transitioning through multiple cultures. That successful experience has led to many engagements at retreats, conferences, and other events on five continents, and led him to found a nonprofit with 501(c)(3) status called Global Adapt.

Snyder spends five or six weeks a year speaking to students, educators, and international business personnel at far-flung sites about cross-cultural issues. He also makes presentations on effective communication and the human relational aspects of a successful law practice, often talking about lawyer-client relationships. “People on all sides can be abusive,” he says. “When you confront an issue or a person firmly and leave room enough for the person to keep his dignity intact, then you have a chance to correct the problem and at the same time win a friend and ally. You can win and still treat the opposing side with respect. Let them save face.”

This past spring Snyder spoke to more than 4,500 students on all four campuses of the Nigerian Law School—Abuja, Lagos, Kano, and Enugu. All lawyers admitted to practice in Nigeria must graduate from the school. In a country known for widespread corruption, many citizens strive for change. The young law students paid attention as Snyder delivered a message about practicing law with honor and integrity.

“If a judge finds out that you lied about something,” he tells them, “the word will get out and you will lose respect.” Doing the right thing has real rewards, too, he says. “Treat the small clients well, and the word will get around. They’ll bring other clients to you.”

In Lagos, one law student raised a question that involved trained physicians and African witch doctors. Some of the students seemed embarrassed that the question had been asked, and others seemed to doubt that a foreigner could handle it. The response afterward was that Snyder had handled the question well, probably because he grew up in West Africa. He has been invited to return to all four campuses next year.

Steve Snyder practices law full-time with Davis & Snyder in Greenville, S.C., where he represents physicians and hospitals in medical malpractice litigation and matters involving hospital risk management.

—BY REBECCA BARNES
**1988**

Foreign Minister of Indonesia **N. HASSAN WIRAJUDA S.J.D.** has been awarded the Medal of Honor (the Bintang Mahaputera Adipradana) by Indonesia’s President Susilo Bambang Yudhoyono. Awarded for his outstanding contributions to Indonesia’s foreign policy and diplomacy, the medal was presented on August 12.

Wirajuda served as a career diplomat, then Minister for Foreign Affairs of the Republic of Indonesia from 2001 to 2009 under two different presidents. He is currently a member of Indonesia’s President Advisory Council for Foreign Relations.

**1989**

**KEITH H. JOHNSON** has been selected for inclusion in *Best Lawyers 2012* in the areas of environmental law and litigation/environmental. He is a partner with Poyner Spruill in Raleigh, N.C., where he is co-chair of the land use, utilities, government, and environmental section and the sustainability practice group. His practice focuses on the development and redevelopment of property and the environmental, utility, and land use issues that arise from development projects.

**CARLTON W. REEVES** was invested as a federal judge on the U.S. District Court for the Southern District of Mississippi on April 15. Reeves was nominated for the federal judiciary by President Barack Obama and was unanimously confirmed by the U.S. Senate. The investiture ceremony was held on the campus of Jackson State University, where Reeves graduated in 1986 with a B.A. in political science.

Reeves served in the U.S. Attorney’s Office for the Southern District of Mississippi as Assistant U.S. Attorney and chief of the Civil Division, and nationally in the Civil Chiefs Working Group in the Department of Justice. Prior to his appointment to the federal bench, Reeves practiced law with Pigott Reeves Johnson in Jackson, Miss., where the focus of his practice was state and federal litigation.

**CHRIS SCHUYLER** has joined White and Williams as counsel in the directors and officers practice group in Westchester County, N.Y. His practice focuses primarily on business, transactional and finance issues for corporate and insurance industry clients, and regulatory counseling for insurers, reinsurers, and insurance brokers.

**STEFANIA SHAMET** has been chosen to receive the 2011 Edward T. “Red” Heinen Wetlands Award, the Environmental Protection Agency’s most prestigious national award recognizing superior work to protect wetlands. The award is given to the person from EPA’s nationwide wetlands program who exemplifies the highest standards and personal dedication to wetlands protection. Shamet is an attorney in EPA’s mid-Atlantic regional office in Philadelphia, Pa., where she provides counseling and enforcement representation for the region’s water pollution control program, including the Clean Water Act, the Safe Drinking Water Act, and the National Environmental Policy Act.

**LISA STENSON DESAMOURS** is an assistant general counsel at MetLife in New York City, providing strategic advice and negotiating transactions for the company’s global corporate real estate portfolio in over 60 countries and enterprise-wide vendor sourcing operations. In October 2010, she was honored for ten years of service on the board of directors of Harbor Science and Arts Charter School. She was appointed chair of the legal committee of The Girl Friends, a national civic women’s organization.

**JAMES WALL** has been named in *North Carolina Super Lawyers 2011*. He is with Wall Esleeck Babcock in Winston-Salem, N.C., where he focuses his practice on corporate law and health care.

**1990**

Carolyn and **JAMES BARKER** welcomed their sixth child, Meredith Stewart, in April. She joins sisters, Vivian (11), Eliza (9), Bridget (5), and brothers, James (7) and Sam (4). James practices law at Latham & Watkins in Washington, D.C.

**ROBERT CARY** has been named among National Law Journal’s 2011 Most Influential Lawyers, one of only six listed in the area of white-collar criminal defense. He has defended clients against a wide range of alleged violations of criminal law. He represented the late U.S. Senator Ted Stevens, who was exonerated when it was discovered that the prosecution had hidden evidence from the defense that contradicted the prosecution’s principal theory. *American Lawyer* noted that work on the case was laudable, “resulting in a heightened scrutiny of prosecutors that will affect the Justice Department for years to come.” Cary is a partner with Williams & Connolly in Washington, D.C.

**BRYANT “TREY” ROBINSON** has been appointed to the board of directors for the Jack and Jill of America Foundation, an international organization that supports educational opportunity and civic responsibility for African-American youth, and the Alpha Foundation of Howard County, Md., which focuses on quality education for local African-American youth through intervention and encouragement of leadership. Both organizations are nonprofits. Robinson is a partner with Duane Morris in Washington, D.C., where he focuses on corporate law. He has served as general counsel for companies and nonprofit organizations.
SHARON (AIZER) WESTERGREEN ’90 moved to northwest Washington State in August 2009 and began serving as a deputy public defender there. Less than a year later, she writes that she “met and fell for a local lad.” Sharon and Ed married in Whistler, B.C., in March. They reside in the forest that Ed owns and manages, and Sharon continues to serve in the felony department of the Office of the Whatcom County Public Defender. She continues to pursue dog sports as her main hobby, and goes to Canada for fun at every opportunity. Sharon has dropped “Aizer” altogether and is now Sharon Westergreen.

D’WANA TERRY is special counsel to the bureau chief of the Federal Communications Commission’s consumer and governmental affairs bureau in Washington, D.C. She advises in the creation of regulatory policy from the perspective of the FCC on issues ranging from cyber security to green initiatives, drawing on more than 16 years of experience with the FCC, including 13 with the wireless telecommunications bureau and almost four with the consumer and governmental affairs bureau.

FELICIA A. WASHINGTON received the 2011 North Carolina Bar Association Citizen Lawyer Award and was honored at the NCBA annual meeting in June. Washington has provided volunteer leadership and community service to a wide range of organizations, including the Urban League, Johnston YMCA, the Thurgood Marshall Fund Dinner Committee, the North Carolina Medical Board, and the Levine Museum of the New South. She served on the mayor’s international cabinet, which supports the local international community, and as an NCBA delegate to the ABA’s House of Delegates. She currently serves on the Mecklenburg County Bar’s special committee on diversity.

Washington is a partner with K&L Gates in Charlotte, where she focuses her practice on labor and employment law.

1991

CHARLES DURANT was promoted to group general counsel for the defense solutions group within Science Applications International in Northern Virginia.

1992

MATTHEW J. CHOLEWA has joined Stewart Title Guaranty Company as vice president and agency services manager/underwriting counsel in Fairfield, Conn., and also serves as the Connecticut and Rhode Island District Manager for Asset Preservation, Incorporated, a Stewart subsidiary in the 1031 Tax Deferred Exchange Qualified Intermediary industry. He lives in Wethersfield with his wife, Carolyn A. Ikari ’93, and their three children, Benjamin (11), Lauren (9), and Kendall (8).

JIM CZABAN is chair of Wiley Rein’s food & drug practice in Washington, D.C., where he represents pharmaceutical, biotechnology, and food clients in FDA regulatory matters, pharmaceutical patent litigation, and corporate transactions. In June he received the Burton Award for Legal Achievement, presented at the Library of Congress for his article titled “Panacea or Poison Pill? Making Sense of the New Biosimilars Law.” His chapter on the new
A drug approval process will be published this winter in the third edition of the Food & Drug Law Institute’s treatise, Food and Drug Law and Regulation.

Craig Enoch LL.M. recently announced the formation of Enoch Kever, headquartered in Austin. Before returning to private practice, Enoch retired as a justice on the Texas Supreme Court. He also served as chief justice of Texas’ Fifth District Court of Appeals and presiding judge of Texas’ 101st District Court. While at the court of appeals, he completed his masters in judicial process at the Law School. After leaving the Texas judiciary, Enoch established specialized appellate and government enforcement and regulated industries litigation practice groups for a major regional law firm headquartered in Dallas.

BERT GOOLSBY LL.M. has published two novels. Familiar Shadows is a coming-of-age story set in the Deep South during World War II, and The Trials of Lawyer Pratt is a humorous look at the trials and tribulations of a young lawyer in the South in the 1960s. Both books are available in printed and electronic form. (See In Print.)

RICHARD LITTON is president of Harbor Group International, headquartered in Norfolk. With close to 700 employees, Harbor Group owns and operates a $3.5 billion portfolio of commercial real estate investments in the United States, Canada, and the United Kingdom. The firm also maintains corporate offices in Manhattan and Tel Aviv.

Litton also serves on UVA’s National Committee on University Resources (NCOUR), the volunteer committee for the University’s ongoing $3 billion Capital Campaign, and was recently elected to serve a three-year term on the board of trustees of the Virginia Athletics Foundation. He also is a member of the board of directors of Fulton Bank - Southern Division and the board of directors of the Children’s Health Foundation for the Norfolk children’s hospital.

JEFREY NANESS writes that his two boys, Jonathan (9) and Michael (12), are growing up and that his labor relations and employment practice on behalf of management keeps him busy.

Law Alumni Weekend 2011

REUNION 2011

212 magic tricks performed at the Saturday barbeque
22 paper lanterns hung in the Caplin Tent

650+: Number of ham biscuits consumed at the Saturday morning breakfast
350+: Number of mimosas poured by the Student Alumni Relations Committee at the Saturday morning breakfast

Join the fun @ Reunion 2012: MAY 4–6
KEVIN O’REAL is at Notre Dame Law School, teaching a deposition skills course and serving as assistant director of the career development office. Prior to joining Notre Dame, he served as VP and general counsel of AM General, manufacturer of the Humvee and HUMMER line of vehicles. He and his wife, Missy, and family live in South Bend, Ind.

AMY ELIZABETH STEWART launched her own firm, an insurance coverage litigation boutique based in Dallas, Tex., in 2009. She represents businesses in litigation with their insurance companies. As the firm celebrates its second anniversary, Stewart is excited to be adding a new associate. Stewart was recently named a Dallas Business Journal Women in Business Awards Honoree. Stewart advocates for women in the legal profession, convinced that women can achieve success without having to compromise who they are. She has served on the board of directors for the nonprofit Empowering Women as Leaders for the past three years. She also works with a group of female lawyers in North Texas called Attorneys Serving the Community.

1993

MARISA BRYCE is CEO of ConversePoint, a Chicago-based company that recently announced plans to develop and bring to market a communications platform for the health care industry that will save clinicians time, improve accountability measurements for critical events, and save hospitals millions of dollars in productivity costs. Bryce co-founded the company.

PHIL DE CAMARA is a financial advisor with Merrill Lynch in Princeton, N.J. Previously Phil served in an executive role developing and managing investment products for the retirement services business of Bank of America Merrill Lynch. Phil and his wife, Jen ’95, reside in Yardley, Pa., with their daughter.

BILL LOVE retired as chief counsel in the global legal department at NYSE Euronext in New York City. He plans to live in Charlottesville.

THOMAS C. MCTHENIA, JR., has joined Gray Robinson as shareholder in Orlando, Fla., where he focuses his practice on intellectual property and technology law. He was recently with Lowndes, Drosdick, Doster, Kantor & Reed.

1995

ROBERT J. SCHMIDT, JR., is listed in Chambers USA 2011 in the area of natural resources and environment and in Best Lawyers 2011 in the areas of environmental law, water law, and litigation/environmental. He represents clients in all major environmental programs, including the Clean Air Act, Clean Water Act, Superfund, solid and hazardous waste, emergency planning, and agricultural issues, and has extensive experience negotiating with both state and federal environmental agencies on regulatory and enforcement issues. He is with Porter Wright in Columbus, Ohio.

H. ROBERT YATES III is included in Best Lawyers 2012 in the area of commercial litigation, litigation/construction, and personal injury litigation/defendants. He is with LeClairRyan in Charlotte, where he represents clients in all forms of civil trial practice, with an emphasis in tort defense, transportation cases premises liability, and construction law.

DANA YOUNG, freshman legislator in the Florida House of Representatives representing the Tampa district, had a busy year. She successfully sponsored a bill to make the state’s ports more competitive, helping to lead the state’s economic recovery. A sixth-generation Floridian and former Fowler White Boggs land use lawyer, she guided House Bill 283 into law, just one vote shy of unanimous. The bill gets rid of duplicate security procedures, removing a layer of state bureaucracy and costly extra credentials, making Florida ports more competitive. Young was awarded a “Champions for Business” award from the Associated Industries of Florida, a lobbying group, in August.

TREY COX and his wife announce the birth of their third daughter, Vivian Louise, in January. He reports that his friend and classmate, Chris Akin, joined him as partner at Lynn Tilotsen Pinker & Cox in Dallas, Tex. Cox published two books this year: Winning the Jury’s Attention, published by the American Bar Association, and How to Recover Attorneys’ Fees in Texas, published by Texas Lawyer. (See In Print.)

ANDREA J. CUMMINGS has joined Alston & Bird in Dallas, Tex., where she is a partner in the real estate finance and investment group. Her practice focuses primarily on commercial real estate finance. She was previously with Sidley Austin in Chicago.

MAUREEN REILLY lives in Media, Pa., with her husband, Doug Fischer, and their children, Ben (11) and Maddi (9). In January 2010 Reilly was promoted to assistant general counsel at SunGard Data Systems, where she is responsible for employment law matters. She also serves on the executive board for ASCEND, a local organization providing support to families affected by Asperger’s syndrome and high-functioning autism in the greater Philadelphia area.

1996

DAMIAN CAPOZZOLA and his wife, Renee, recently celebrated Damian’s 40th birthday scuba diving in Thailand. Capozzola is a partner in Crowell & Moring’s Los Angeles office. Now in his 15th year of litigation practice, he has handled significant litigation matters across a broad spectrum of industries and has represented some of the world’s largest defense contractors, food manufacturers and
wholesalers, and telecommunications companies.

**WILLIAM J. CURTIN III** has been named Dealmaker of the Year for 2011 by *American Lawyer* for his work as lead lawyer representing Ford Motor Company in the sale of Volvo Car Corporation to Zhejiang Geely Holding Co., a private Chinese company, last year. It was the first takeover of a global car manufacturer by a Chinese company. He is a partner with Hogan Lovells in New York.

**JEFF LEHRER** was recently named co-chair of DLA Piper’s U.S. emerging growth and venture capital group, a position that offers him broad exposure to the firm’s national and international emerging growth and venture initiatives. DLA Piper has been ranked the number one corporate law firm for the number of private equity and venture capital deals negotiated and closed globally in 2010 according to the Dow Jones’ Private Equity Analyst.

**JON R. MOONEY** has joined Winstead in Charlotte, N.C., as shareholder in the finance and banking practice group. He was previously associate general counsel at Bank of America, serving in various leadership roles in the global commercial bank.

**DEBORAH SALZMAN** has been living in Los Angeles since graduating. In March of 2010 she was sworn in as a U.S. bankruptcy judge for the Central District of California. She writes, “It’s an incredibly rewarding, interesting (and busy!) job. This summer (2011) I’m thrilled that a current UVA Law student, Elizabeth Tuan ’13, is one of my student externs. I hope to work with more UVA Law students in the future!”

**Colonel TRISTAN SIEGEL** is currently deployed to Afghanistan as a U.S. Department of State diplomat and senior advisor embedded with the U.S. Marines in Marjah (Helmand Province). In this diplomatic capacity, he meets on a daily basis with the district governor, deputy governor, chief of police, chief prosecutor, and district community council members to advise, assist, and mentor those subnational governance actors and to promote the rule of law in an emerging stable democracy.

During the past year, Tristan completed military assignments in Korea and Hawaii. He also earned a second master’s degree from the Army War College. In addition, in September, he married Major Jennifer Siegel (nee McKenna). Bride and groom are both attorneys, Army Reserve officers, Iraq combat veterans, and federal civilian employees with top secret security clearances, which can make for some interesting conversations over the dinner table. Between the two of them, they have four federal jobs, military and civilian. Tristan enjoys the balance afforded by his three careers as a soldier-attorney-diplomat and the opportunity to bounce between disparate assignments in the U.S. and overseas. Besides tours of duty in the garden spots of Iraq and Afghanistan, Tristan has served in military assignments in Korea, Germany, Japan, and Belgium during the course of his 27 years in the Army so far. Remember the little baby that Tristan used to bring to law school picnics? She’s now in college.

**JENA BRIDGES WATSON** and her husband, Eric Watson, welcomed John Holt Colquitt Watson into their family on June 15, 2010. He joined his big sister, Julia (3). Jena is a partner with Akin Gump Strauss Hauer & Feld in Washington, D.C.

**John Chiocca ’98** and his wife and law partner, Rochelle Birnbaum Chiocca, were admitted to the bar of the Supreme Court of the United States on May 16. They were sworn in in the presence of seven of the Supreme Court Justices in Washington, D.C. Accompanying them for the admission ceremony was their eldest child, 11-year-old Julia, and John’s father-in-law, Elliott Birnbaum. Chiocca & Chiocca, is located in West Palm Beach, Fla.

**CONNIE PENDLETON** lives in Washington, D.C., where she is a partner and deputy chair of the media law practice at Davis Wright Tremaine representing clients in First Amendment and other matters. She is listed in *Best Lawyers* in media law in 2010–12. Connie and her husband, Jason Gross, and their 2½-year-old son, Sam, welcomed their latest arrival—James Morrow Pendleton Gross—on February 9.

**JASON M. SNEED** announces the opening of SNEED, an intellectual boutique firm based in Davidson, N.C., serving clients across the country and worldwide in the protection and enforcement of their trademark, trade dress and copyright rights, with a particular emphasis on trademark portfolio management and brand licensing, enforcement,
and litigation.

Before launching SNEED, Jason was a partner and the group leader in the Charlotte trademark & copyright group of Alston & Bird, where he had practiced for over a decade. He continues to be active in leadership in the International Trademark Association, and is on the project team for the 2012 annual meeting. He has served on the steering committee of the Charlotte chapter of the Federalist Society for Law and Public Policy since 2005. He and his wife, Charity, and their three children, Tara, Henry, and Andrew, are excited about the new venture, and invite you to visit SNEED at www.sneedlegal.com.

CORY WAY has been appointed dean of Kirkland House, Harvard College, and lecturer in Harvard’s faculty of arts and sciences. For the past year, Cory has served as a fellow at Harvard Law School. Before moving to Cambridge, Cory was in private practice, where he won political asylum for a Rwanda genocide survivor whose entire family had been murdered; his work on this novel case earned a pro bono award from the Washington Lawyers’ Committee for Civil Rights.

1998

PETER BOWDEN, a managing director in the investment banking division of Morgan Stanley in Houston, Tex., was recently named head of midstream/MLPs. In that capacity, Bowden oversees an effort that completed over 50 financings and M & A advisory assignments on behalf of its clients over the past 12 months.

MITCHELL W. TARASCHI has been named to the New Jersey Law Journal 2011 40 Under 40 list, a selection of top attorneys under age 40 identified and evaluated on the basis of achievement in their careers, and through recognition by professional organizations. Membership and leadership roles in the bar and work in charitable and volunteer activities are included in the review. Taraschi is a partner with Connell Foley in Roseland, where he is a member of the business litigation and construction law practice groups.

1999

SHANE BARTEE and his wife, Susanna, announce the birth of their sixth child, Adam O’Neal, born June 8. In June Shane retired from the U.S. Army after 21 years of active duty. He now practices law for the Environmental Protection Agency, Region 7, in Kansas City, Kan.

2000

STEPHANIE L. CHANDLER has been named a 2011 Rising Star in Texas Monthly. Chandler is a partner in the San Antonio office of Jackson Walker, where she focuses on securities transactions, reporting and compliance, mergers and acquisitions, technology licensing and commercialization, and general corporate matters.

KATRINA L. REINHARDT recently relocated to Shanghai, China, to take a new position with Dow Corning Corporation. Her new role is governance and compliance director for greater China. Reinhardt practiced with Schwabe, Williamson & Wyatt until 2004, when she accepted an in-house counsel position with Dow Corning in Midland, Mich.

RYAN CLINTON has been named a 2011 Rising Star in Texas Monthly, the seventh time he has been selected. Clinton is a former assistant solicitor general for the Texas Attorney General’s office, and has handled a wide range of appellate matters in both state and federal courts. He has presented oral arguments before the Supreme Court of Texas and appellate courts in Texas and Louisiana and has handled briefs before the U.S. Supreme Court. Clinton often speaks on appellate matters at continuing legal education seminars and has served in the Austin chapter of the American Inns of Court. He practices at Hankinson Levinger in Dallas.

KANDICE J. GIURINTANO has been appointed chair of the Pennsylvania Bar Association appellate advocacy committee for 2011–12. Her term began in May. The committee’s goal is to promote, support, and improve post-trial and appellate advocacy through seminars, a newsletter, interactions with the courts, and national and state organizations. Giurintano is with McNees Wallace & Nurick in Harrisburg, where she co-chairs the appellate & post-trial practice group and is part of the litigation and transportation, distribution, and logistics practice groups. She focuses her practice on the representation of corporate clients in business disputes.

ROBERT D. PROBASCO continues to serve on the board of directors of Mental Heath America of Greater Dallas, a position he has held since 2009. He is with Thompson & Knight, as a partner in the tax practice group, where he focuses his practice on IRS audits and appeals and tax litigation.
Andy Wright and Caprice Roberts celebrated the arrival of their son, Garrett Robert Wright, on April 15. In January, Andy began serving at the White House as associate counsel to the President. Andy, Caprice, and Garrett live in the Bloomingdale neighborhood of Washington, D.C.

2001

Joseph A. Bailey III has been appointed counsel in Drinker Biddle & Reath’s insurance practice group in Washington, D.C. He represents insurers in a wide variety of litigation and counseling matters, with a particular emphasis on coverage disputes involving directors’ and officers’ liability and fiduciary liability insurance policies. Bailey is a member of the Professional Liability Underwriting Society. He was previously with Hogan & Hartson.

Cordel L. Faulk has been appointed a voting member of the Virginia Tech board of visitors. He earned his bachelor’s in political science from Virginia Tech in 1998. While enrolled there he participated in the honors program, and since has served as an instructor and advisor to that program. He has been director of admissions for the Law School since 2009.

2002

Meredith Caskey Parker and her husband, Andrew, welcomed their second child, Mason Andrew, on July 21. Mason joins two-year-old sister, Olivia Catherine. The family resides in Fairfax, Va.

2003

William L. Newton has been promoted to counsel at Hunton & Williams in Richmond, where he focuses on domestic and international energy projects. He has helped shape the firm’s global energy and infrastructure practice, which provides finance, development, and infrastructure counsel through all steps of a project.

Nathan T. Danielson has joined Bose McKinney & Evans in Indianapolis, Ind., where he is a member of the bankruptcy and creditors’ rights group. He represents banks, insurance companies, and other commercial and financial institutions in dealing with problem loans.
BRIAN M. FELDMAN has joined Harter Secrest & Emery in Rochester, N.Y., as counsel in the trial practice group. He was previously senior litigation counsel in the civil frauds unit of the U.S. Attorney’s Office for the Southern District of New York in Manhattan. He resides in Pittsford.

STACEY ROSE HARRIS and Daniel Harris welcomed a baby girl, Avery Laina, in June.

JOANNA NELSON is counsel with Liskow & Lewis in Houston, Tex., where she is a member of the maritime, oilfield, and insurance group. Her practice focuses on insurance and reinsurance matters. She was previously with Cozen O’Connor’s global insurance group, where she represented clients in insurance litigation.

In April 2011 YOSHIKAZU NOMA LL.M. was appointed as an instructor at the Legal Training and Research Institute of the Supreme Court of Japan for a term of three years. While he is still engaged in private practice at TM Associates, a Tokyo-based law firm, he lectures on civil litigation practice skills and mediation skills, as well as professional responsibility at the Institute.

ALISON PERINE and Will Olson ’01 welcomed their son, Michael Edward Olson, on January 7. He was 7 lbs. 6 oz. and 19½ inches long at birth. Alison is a special agent with the Washington field office of the FBI. Will is a trial attorney with the Department of Justice, civil frauds section. They reside in Alexandria, Va.

ALI SARAFAZADE is the director of the corporations division, Office of the Vermont Secretary of State. The corporations division is responsible for all corporate and Uniform Commercial Code filings in Vermont. The office also takes an active role in assisting startup businesses in maneuvering through complex state filing requirements. Sarafzade is excited about managing a larger staff and budget with new and exciting programs in development, and he invites anyone interested in government/public service jobs to feel free to contact him for general career guidance.

On March 2 Porter and ANNA TILTON DANIEL welcomed their son, Joshua Rushmore, to the family, which resides in Arlington, Va.

2004

JARED BERG has joined Sherman & Howard in Denver, Colo., as an associate in the construction litigation practice. He returned to the firm after having worked there as an associate from 2004 to 2007.

GEOFFREY GRINDELAND is a principal at Mills Meyers Swartling in Seattle. Geoff is a civil litigator whose practice emphasizes aviation law, insurance coverage, and representation of municipalities and police officers. Prior to law school, Geoff graduated with merit from the U.S. Naval Academy and served 11 years as a Navy pilot, flying both helicopters and turboprop airplanes. He has chaired the King County Bar Association’s aviation section and currently serves on the board of directors for Helpline House, a nonprofit social service organization on Bainbridge Island. He particularly enjoys cases that involve scientific, engineering, or other technical issues.

2005

SARAH L. HARTLEY has joined Brownstein Hyatt Farber Schreck in Denver, Colo., as an associate in the litigation group. Her practice will focus on general commercial litigation and intellectual property and technology. Before joining Brownstein, she was with Quinn Emanuel Urquhart & Sullivan in New York.

SCOTT P. HORTON presented “Workplace Harassment & Bullying in the Workplace” at the New York State Public Employer’s Labor Relations Association training conference in Saratoga Springs in July. He was recently named to the ProZoo Board for the Buffalo Zoo, which organizes several major fundraisers each year and supports the board of trustees. He is with Jaeckle Fleischmann & Mugel in Buffalo, where he is an associate in the labor & employment and e-discovery & records management practice groups.

MATT QUATRARA moved from Charlottesville’s Commonwealth’s Attorney Office to Albemarle County Commonwealth’s Attorney Office. Quatrara practiced with McGuireWoods in the areas of labor and employment law and general litigation prior to joining the Charlottesville CAO.
The rock group, GAYNGS, couldn’t play on after being stranded, sans equipment, by their tour bus company.

The group needed a revised invoice and rental contract before the balance would be paid. In the middle of the night, voicemails escalated to the point that Curtsinger upped the ante, leaving a message that the tour bus, still loaded with all Gayngs’ equipment, had headed back to Nashville. Vernon attempted to get the bus turned around by calling and trying to meet the bus in another city, but to no avail. Gayngs forfeited the $15,000 performance fee.

The complaint brought by O’Rear and Vlahos charged the tour bus company of engaging in “willful, wanton, malicious and oppressive actions” that led to the band members losing money in fees and travel costs, and suffering damage to their reputations when they were forced to break their engagement. Using emails, voicemails, and testimony, they convinced the jury that the band should be awarded damages.

“Other than the behavior of the defendants, one unusual thing about the trial is that the case actually went to the jury,” says O’Rear. “These days, businesses try to avoid the risk of an adverse jury verdict. Gayngs is an important, influential band with enormous potential, and the jury recognized that they were wrongfully denied a once-in-a-lifetime chance to play on a big stage at a major festival.”

O’Rear and Vlahos based a portion of their case on the band’s lost opportunity to play in what many regard as one of the four most important music festivals in the U.S. Bands that impress the Austin crowd stand a good chance to be invited to other festivals. After the jury returned its verdict in favor of the band on all counts, the court entered final judgment in the amount of $270,700 in damages, attorneys’ fees, discretionary costs, and interest.

O’Rear has previous experience representing music publishing and recording companies and protecting intellectual property rights. He also has a behind-the-scenes perspective on the music scene, having worked as a music critic and on Music Row in Nashville before attending the Law School. He is a voting member of the Recording Academy, which awards the GRAMMYS.

O’Rear considers himself fortunate to have experienced a jury trial early in his career. “The classes and professors at the Law School,” he notes, “prepared me for every issue that popped up during the case.”

—BY REBECCA BARNES

The Night the Luxury Bus Disappeared

THE SOFT-ROCK INDIE GROUP GAYNGS, FRONTED BY MEMBERS of the bands Bon Iver and The Rosebuds, rode into Austin, Texas, on October 8, 2010, to perform at the Austin City Limits Festival. It was to be the grand finale of a tour promoting their first LP, “Relayed,” but they never made it to the stage.

In a heated dispute over an unpaid bill, the driver of their luxury tour bus left town in the middle of the night and headed for Nashville with all of the band’s gear and musical equipment. They had no choice but to cancel, at the last minute, the gig they were scheduled to play for thousands of fans.

Soon after the devastating event, the band’s attorneys, Howell O’Rear ‘07 and Chris Vlahos of Riley Warnock & Jacobson filed a complaint in Nashville alleging breach of contract and other tort claims against C.J. Curtsinger and his company, CJ Starbuses. The tour bus company is well known; it proclaims itself “Keeper of the Stars” on its Web site and counts the Allman Brothers, John Mellencamp, and Three Dog Night among its clients.

The band rented a bus and trailer from September 27 to October 10, but the owner demanded that the rental period cover extra days to drop off the band and return to Nashville. The bus company sent a contract with incorrect dates and charges, and a new contract was requested by Gayngs’ manager, Nate Vernon. There was an oral agreement between the band and the bus company in this interim period, and the band paid a sum of $2,939.44. A corrected contract never arrived.

The night before the festival, Curtsinger left a voicemail demanding that the rest of the rental fee be paid. The band’s manager replied that...
NILLA WATKINS recently graduated from a two-year program at the Maggie Flanigan Studio in New York, where she studied the Meisner acting technique. She recently read for, and got, the part of Clara Wings (the devil’s attorney) in Applaud the Devil, Praise the Lord, an off-off-Broadway production. She was formerly with Sullivan & Cromwell in mergers and acquisitions.

2006

TIFFANY M. GRAVES was named the 2010–11 Outstanding Young Lawyer by the Mississippi Bar Young Lawyers Division. The award was presented at the annual assembly of the Young Lawyers Division in Destin, Fla., in July. Graves is with Corlew Munford & Smith in Jackson, Miss., where she focuses her practice on litigation.

PATRICIO P. PANTIN LL.M. has joined Baker & McKenzie in Buenos Aires. He focuses his practice in complex commercial litigation, arbitration, debt restructuring, and maritime law.

MICHAEL TOTH has authored Founding Federalist: The Life of Oliver Ellsworth, published by Intercollegiate Studies Institute in July.

The book, part of the Lives of the Founders series, tells how Oliver Ellsworth, an important but little-known figure at the Constitutional Convention, was one of the key framers. “I came across the idea for writing the book while a 3L,” says Toth. “Professors Cushman, Hylton, and Harrison were all crucial in helping me with my research.” Toth has served as an officer in the U.S. Marine Corps and on the staff of White House budget director Mitchell E. Daniels, Jr. He is clerking for U.S. District Court Judge Ursula Ungaro and lives in Miami, Fla. (See In Print.)

2007

ALAN C. KINGSLY is an associate with Weltman, Weinberg & Reis Co. in Fort Lauderdale, Fla., where he will focus on foreclosure services in the real estate default group. Kingsley brought nearly four years of creditors’ rights experience with him, having handled contested and uncontested foreclosure matters and collections work.

ALEXANDER B. PATTERSON is chief marketing officer and in-house counsel at Tough Mudder: Probably the Toughest Event on the Planet. From the Web site: “Tough Mudder is not your average lame-ass mud run or spirit-crushing ‘endurance’ road race. Our 10–12 mile obstacle courses are designed by British Special Forces to test all around strength, stamina, mental grit, and camaraderie. Forget finish times. Simply completing a Tough Mudder is a badge of honor. Tough Mudder has raised over one million dollars for the Wounded Warrior Project. www.toughmudder.com.

MATTHEW E. PINKHAM recently joined Reed Smith as an associate in Chicago, Ill., where he is a member of the corporate & securities group. Prior to joining Reed Smith, he worked with a sports management agency representing college football coaches and sports broadcasters.

2008

KATE SKAGERBERG is an associate with Beck, Redden & Secrest in Houston, Tex. She previously served as assistant district attorney for Harris County, Tex.

2009

NATHAN BRYANT has been selected to join the U.S. Department of Homeland Security General Counsel’s Honors Program for 2011.

A note published by CRAIG SMITH in the Virginia Law Review in November 2010 was cited three times in a decision by the U.S. Court of Appeals for the Ninth Circuit. “Taking ‘Due Account’ of the APA’s Prejudicial-Error Rule” was cited with approval in Judge Consuelo M. Callahan’s opinion and twice in Judge Sandra S. Ikuta’s dissent.

In his opinion for California Wilderness Coalition v. U.S. Department of Energy, Judge Callahan wrote that Smith’s analysis of cases applying the Administrative Procedure Act’s harmless error rule was in accord with recent Supreme Court analysis of the rule. Dissenting Judge Ikuta had quoted Smith’s note in her statement.

Both opinions drew support from cases discussed by Smith.

Smith is an associate with Wiley Rein in Washington, D.C., where he counsels and represents government contractors and subcontractors on a range of issues, including bid protests, contract claims, and government investigations.

2011

CHRISTINA ZAROULIS married John Bennett Milnor on November 13, 2010. Christina Z. Milnor is an associate in the litigation/controversy department at WilmerHale in Washington, D.C.

CHRISTOPHER E. CHEEK has joined Carlton Fields in Miami, Fla., as an associate in the business litigation and trade regulation practice group. He was a 2009–10 summer associate working in the firm’s Tampa and Miami offices.

Christopher Corts has joined Carlton Fields in Miami, Fla., as an associate in the appellate practice and trial support group. He was a 2010 summer associate with the firm.
IN MEMORIAM

Herbert B. Chermside, Jr. ’38
Richmond, Va.
June 29, 2011

Richard B. Persinger ’39
Dobbs Ferry, N.Y.
April 28, 2011

William Carrington Thompson ’39
Chatham, Va.
June 11, 2011

Martin M. Goodman ’41
Providence, R.I.
July 1, 2011

Joseph M. Winston, Jr. ’41
Williamsburg, Va.
April 7, 2011

Gerard B. Podesta ’42
West Orange, N.J.
May 16, 2011

Rayner V. Snead ’42
Washington, Va.
May 17, 2011

Henry C. Ikenberry, Jr. ’47
Washington, D.C.
June 1, 2011

Minerva W. Andrews ’48
Charlottesville, Va.
September 4, 2011

William B. Eley ’48
Norfolk, Va.
September 1, 2011

Robert S. Glenn ’48
Savannah, Ga.
June 2, 2011

Richard H. Poff ’48
Richmond, Va.
June 28, 2011

Hamilton Carothers ’49
Charlottesville, Va.
April 19, 2011

Curtin R. Coleman ’49
Earlville, Va.
July 27, 2011

John C. Eddy ’49
West Des Moines, Iowa
September 5, 2011

Leigh Carrington Rhett ’49
Richmond, Va.
March 17, 2011

Alexander P. Tait ’49
Wilmington, Del.
August 8, 2011

Cecile M. Turner ’49
Eastville, Va.
October 1, 2011

Berry D. Willis, Jr. ’49
Norfolk, Va.
July 4, 2011

Eugene Carlson ’50
Pittsboro, N.C.
October 30, 2010

Richard F. Hall, Jr. ’50
Accomac, Va.
September 25, 2011

Thurman Hill, Jr. ’50
Springfield, Va.
March 4, 2011

Thomas N. Parker, Jr. ’50
Hot Springs, Va.
April 26, 2011

Carl L. Wedekind, Jr. ’50
Louisville, KY
July 2, 2011

Harry Balfe II ’51
Totowa, N.J.
January 24, 2011

Benjamin Collins Flannagan IV ’51
Richmond, Va.
March 9, 2011

Samuel F. Fowler, Jr. ’53
Knoxville, Tenn.
May 5, 2011

Robert D. Osterholm ’53
Omaha, Neb.
June 18, 2011

G. Woody Stafford ’53
Colonial Heights, Va.
October 7, 2011

Wallace M. Davies ’55
Signal Mountain, Tenn.
March 25, 2011

Charles M. Lobban ’56
Alderson, W.Va.
May 23, 2011

M. Scott Brodie ’57
Charlottesville, Va.
March 21, 2011

Mandeville A. Frost ’62
Rhonebeck, N.Y.
October 13, 2011

Joseph R. Huddleston ’62
Bowling Green, KY
July 11, 2011

Philip Carleton Learned ’60
Elmira, N.Y.
August 5, 2011

Richard C. Salladin ’58
Ivins, Utah
June 9, 2011

Thomas L. Snyder ’58
Pittsburgh, Pa.
October 4, 2011

Russell V. Palmore, Jr. ’73
Richmond, Va.
April 7, 2011

Michael J. Manzo ’76
Pittsburgh, Pa.
May 30, 2011

Guilford Dudley Acker, Jr. ’77
Flagstaff, Ariz.
June 12, 2011

Edward o. McCue iii ’55
Charlottesville, Va.
March 21, 2011

Charles M. Lobban ’56
Alderson, W.Va.
May 23, 2011

Harold G. Hollans ’63
Macon, Ga.
August 5, 2011

Charlottesville, Va.
March 21, 2011

Thomas M. Salsburg ’62
West Orange, N.J.
June 11, 2011

Richard F. McCready, Jr. ’66
Winchester, Ky.
August 22, 2011

Wanda Hagan Golson ’83
Tampa, Fla.
October 17, 2010

Jeffrey J. Horner ’83
Houston, TX
March 24, 2011

Frank H. Featherston ’82
Charlottesville, Va.
May 27, 2011

Wanda Hagan Golson ’83
Tampa, Fla.
October 17, 2010

Arthurl. McGrady ’67
Waynesboro, Va.
April 30, 2011

George Norris Watson ’57
Wilmington, N.C.
July 2, 2011

Vernon Alfred Etheridge, Jr.
San Diego, Calif.
September 14, 2011

Philip Carleton Learned ’60
Elmira, N.Y.
August 5, 2011

Richard C. Salladin ’58
Ivins, Utah
June 9, 2011

Thomas L. Snyder ’58
Pittsburgh, Pa.
October 4, 2011

Russell V. Palmore, Jr. ’73
Richmond, Va.
April 7, 2011

Michael J. Manzo ’76
Pittsburgh, Pa.
May 30, 2011

Guilford Dudley Acker, Jr. ’77
Flagstaff, Ariz.
June 12, 2011

Clarence McCartha Glenn, Jr. ’79
Mount Pleasant, S.C.
April 7, 2011

Martha B. McGarry ’80
Chevy Chase, Md.
May 30, 2011

Frank H. Featherston ’82
Charlottesville, Va.
May 27, 2011

Wanda Hagan Golson ’83
Tampa, Fla.
October 17, 2010

Jeffrey J. Horner ’83
Houston, TX
March 24, 2011

Charles W. Chapman ’92
Edwardsville, Ill.
May 15, 2011

Annika Kyrolainen Abrahamsson ’95
Richmond, Va.
November 12, 2008
Non-Fiction

Snapshots! College Memories and Beyond
Edwin M. Baranowski ’71 with Christine Waterbury Dearnaley
Amazon.com/CreateSpace

For an aging boomer (for anyone, in fact), a great sense of humor might be the most valuable asset of all. Snapshots! provides evidence for that idea. In the words of one appreciative reader, “Seek prompt professional attention if you can read this through and not laugh out loud.” The author notes that his book is based on actual events, though some are made up, some are embellished, and some have emerged from, he confesses, a “faulty recollection.” He introduces readers to his early growing up, his Catholic education, and the decadent years at Hamilton College.

While you probably won’t find the answers to life’s big questions in Snapshots! who knows? Baranowski’s 87-year-old father is reading the book for the third time looking for “secret messages.” Snapshots! is chockfull of adolescent fantasies and fraternity pranks and rituals. Mixers with women from Vassar, Skidmore, and Wells, drinking binges, and testosterone-fueled contests worked out in fire extinguisher fights and bare-knuckled skirmishes with bouncers. Through it all, Baranowski’s Chi Psi fraternity bros, including Crab, Crude, Gargoyle, and Lunch, stuck together for better or worse.

By the time he made it to law school, Baranowski realized only hard work would ensure his survival. His first job was with Morrison & Kendall in New York, where the nicknaming tradition continued: “Old Skinhead” for a senior partner, “Chuckles” for a junior member. The sheer joy of reminiscing comes through on every page of Snapshots! The author would be the first to tell readers that putting it together “beats writing briefs.”

While writing his book, Baranowski reconnected with college friends he’d lost track of, including “Pristine Christine,” the co-author of Snapshots! Edwin Baranowski is with Porter Wright Morris & Arthur in Columbus, Ohio, where he specializes in patents relating to infrastructure technologies.

How to Recover Attorneys’ Fees in Texas
Trey Cox ’95 and Jason Dennis
Texas Lawyer

How to Recover Attorneys’ Fees in Texas is a comprehensive, step-by-step guide to help attorneys win and defeat attorneys’ fees claims at trial. In today’s legal landscape, the ability to recover attorneys’ fees may be the deciding factor in whether or not to file a lawsuit. It almost always plays a critical role in the decision to settle or try a case.

This indispensable volume includes the legal basis and requirements to recover attorneys’ fees, all the important steps to follow for both the pre-filing and pleading stages, and tips for the most effective ways to assemble evidence. Thorough explanations are also included for proving fees at trial and what discovery is needed. “Their advice on how to record and bill time should be required reading for every young lawyer,” notes an attorney in his review. How to Recover Attorneys’ Fees in Texas also has lots of practical examples and helpful forms and checklists.

A former state district judge, describing the task of recovering attorneys’ fees as damages in Texas as “a procedural minefield,” writes, “Trey and Jason have put together the definitive text laying out the process and best practices for recovering attorneys’ fees in Texas.”

Trey Cox is a partner at Lynn Tillotson & Cox, a litigation boutique in Dallas.

Winning the Jury’s Attention: Presenting Evidence from Voir Dire to Closing
Trey Cox ’95
First Chair Press (American Bar Association)

Trial lawyers don’t automatically receive the undivided attention of a jury; they must work for it. It’s crucial to choose the right message, present it in the best way possible, and do so within the right amount of time.

Trey Cox, an experienced and successful trial lawyer, knows how to communicate effectively with a jury. In Winning the Jury’s Attention: Presenting Evidence from Voir
Dire to Closing, he reveals seven key principles that lead to a courtroom win:

The Personal Credibility Principle: credibility can be earned through demonstration of competence, accuracy, leadership and efficiency.
The Signaling Principle: people learn best when material is presented clearly and simply.
The Multimedia Principle: people learn better from words and pictures than from words alone.
The Coherence Principle: people learn better when extraneous material is excluded.
The Stickiness Principle: people hold on to statements and ideas that are “sticky.”
The Jolt Principle: people who are jolted periodically listen with rapt attention.

Cox shows how implementing these techniques through each phrase of a trial will help lawyers connect with the jury and influence how each juror takes in and processes the information presented. He also examines courtroom-tested techniques recommended as part of preparation for trial. “This book is something that shouldn’t exist,” writes a general counsel, “a fun-to-read, comprehensive, and useful text on a subject that can be as dry and dusty as any in the legal profession.”

**Business Liability Insurance Answer Book 2011–2112**
Devin C. Dolive ’02, Betsy P. Collins, and Jodi D. Taylor
Practicing Law Institute

Being held personally liable for a business-related decision can be a nightmare for any company executive or employee. In the recent economic downturn, the number of cases being brought against businesses and the people who run them has surged. Business Liability Insurance Answer Book 2011–2112 is a convenient reference guide that provides answers to many insurance issues common to business owners and managers. It can be used by non-lawyers and business professionals in risk management planning, and will also be of interest to lawyers and other legal professionals.

The book is organized in Q & A format with answers to common insurance issues that plague all kinds of businesses. The straightforward format is practical, direct, and user-friendly. More than 50 practice tips and helpful notes are also included.

Devin Dolive and his co-authors/editors explain many of the kinds of issues being litigated and the different kinds of liability insurance available to protect against lawsuits and cover losses in the event of a successful recovery. Liability areas defined and explained in detail include commercial general; professional; directors’ and officers’; fiduciary; employed persons; excess insurance; and fidelity insurance liability. Who are the potential targets of litigation? What is a hammer clause? Such questions and many more are answered clearly and concisely.

Devin Dolive is an attorney with Burr Forman in Birmingham, Ala. His practice includes commercial litigation and labor and employment matters and representation of both insurers and insureds in insurance coverage disputes.

**Law and Behavioral Biology: A Study in Behavioral Biology, Neuroscience, and the Law**
Edwin Scott Fruehwald LL.M. ’94, S.J.D. ’01
Vandeplas

In Law and Human Behavior: A Study in Behavioral Biology, Neuroscience, and the Law, Edwin Scott Fruehwald reveals how the fields of behavioral biology and neuroscience will be the next frontiers for legal thought. In the near future, he explains, these two areas will become as important in legal analysis as economics has been for the past several decades.

Fruehwald believes there was a nascent legal system on the savannah, where innate rules of behavior were enforced by devices such as reputation and ostracism. In this book, he presents the principals of behavioral biology and neuroscience, then applies the principles to different legal topics. He delves into topics including the biological basis of rights, the ways behavioral biology can be used to critique postmodern legal thought, reciprocal altruism as the basis for contract, and how behavioral biology can be used to analyze constitutional cases. He also shows why it is important to base law on a correct view of human nature.

Edwin Scott Fruehwald has taught at the law schools of the University of Alabama, Roger Williams University, and Hofstra University.
A Distinct Judicial Power: The Origins of an Independent Judiciary, 1606–1787
Scott Douglas Gerber ’86
Oxford University Press

A Distinct Judicial Power presents the first detailed analysis of the origins of judicial independence in the United States.

In the first part of the book, Gerber traces the intellectual origins of judicial power from Aristotle’s theory of a mixed constitution to John Adams’s modifications of Montesquieu. He also describes the debates during the framing and ratification of the Constitution regarding the independence of the federal judiciary.

The main section of the text consists of 13 chapters that chronicle how the colonies and the subsequent 13 original states treated their judiciaries. The author draws upon a wealth of resources, including charters, statutes, and instructions that relate to judicial power between 1606 and 1787 (and sometimes beyond).

In his conclusion, Gerber delves into the influence colonial and early state history had on the federal model and how early experiences and political theories led to Article III of the Constitution. He explores how the principle of judicial independence prepared the way for the doctrine of judicial review and laid the groundwork for the protection of individual rights.

“Historians, constitutional scholars, and the public at large will profit by reading this thoroughly researched and clearly presented book,” writes Richard Epstein, Tisch Professor of Law at NYU School of Law. Gordon Wood of Brown University describes A Distinct Judicial Power as “a deeply researched study of a much neglected subject.”

Scott Gerber is a professor of law at Ohio Northern University.

Dad, Tell Me a Story: How to Revive the Tradition of Storytelling with Your Children
John T. McCormick ’83 with William and Connor McCormick
Nicasio Press

Dad, Tell Me a Story is a book for parents who want to bring the traditional art of storytelling into their home. John McCormick shows how he and his two sons created stories that made bedtime a part of the day they all looked forward to; stories filled with dragons, pirates, squirrels, bats, and bulldogs. Sometimes the most elaborate stories would begin with a familiar backyard creature or a family pet. At the beginning no one really knows where the story will end, which is of course part of the fun!

For a reader new to this kind of creative activity, it can seem a bit daunting. What if I get stuck and can’t figure out where the story’s headed? It’s okay, McCormick explains, to stop and ask your child, “Guess what happened next?” They’ll probably have an idea of their own, and will enjoy having a role in the story’s creation.

Dad, Tell Me a Story includes 25 engaging tales—animal stories, adventures and folk tales, cultural and historical stories, and stories about growing up—and is illustrated throughout with delightful full-color illustrations. McCormick includes many storytelling tips and examples of plots, themes, beginnings, and endings. He also shares insights into the wonder of raising children. Appropriate for children ages 5 to 11 (and parents of all ages).


Pattern Jury Instructions for Federal Criminal Cases District of South Carolina
Eric Wm. Ruschky ’73
South Carolina Bar

There are no pattern jury instructions established and approved in the Fourth Circuit for use in criminal cases. Eric Ruschky helps fill that void in this volume by setting out pattern instructions that are annotated primarily by reference to Fourth Circuit and Supreme Court cases. Authority from other circuits is noted only when there is no Fourth Circuit or Supreme Court authority on point.

Pattern Jury Instructions for Federal Criminal Cases is organized in six sections that reflect the order in which jury instructions are usually given. The section on preliminary matters addresses burden of proof, presumption of innocence, direct and circumstantial evidence, note taking by jurors, and other topics. The specific criminal statutes section provides pattern charges for most federal crimes separated into crimes under Title 18 and other titles. Elements of the offense are included for each crime. A section of definitions explains terms commonly used throughout the criminal code. The defenses section provides jury
Founding Federalist: The Life of Oliver Ellsworth
Michael C. Toth ’06
Intercollegiate Studies Institute

A good biography takes a reader on a great discovery, particularly when it focuses on a little-known figure who left an indelible mark on history. Founding Federalist: The Life of Oliver Ellsworth is such a book.

Oliver Ellsworth was a Founding Father of American democracy who made enduring contributions to the republic. He was one of five men selected to write the first draft of the Constitution, and he played a key role in negotiating the provisions of the Constitution that established equal apportionment of representatives in the Senate and apportionment based on population in the House of Representatives.

“Proportional representation in the House was ‘comfortable to the national principle,’” Toth writes, quoting Ellsworth, “while an ‘equality of voices’ in the Senate ‘was comfortable to the federal principle.’” The author explains that such a compromise appealed to Ellsworth’s instincts as a lawyer to close a deal.

Ellsworth was a sponsor of the Judiciary Act of 1789. He came up with a bill that established federal district and circuit courts, the types of cases each would hear, and their relationship to state courts. Toth draws on his own legal background to describe how Ellsworth approached this daunting task. Ellsworth went on to become the third Chief Justice to the Supreme Court.

Toth’s clear and comprehensive biography, the fifth in a series on the Lives of the Founders, brings Ellsworth’s contributions to light and brings him to life in quotes from his contemporaries, historians, and quotes from Ellsworth’s own writings. “Clearly and gracefully written,” notes a reviewer from The Washington Examiner. “Clear prose and an eagle eye for legal argument,” notes another.

Michael Toth has served as an officer in the United State Marine Corps and a staffer for White House budget director Mitchell E. Daniels, Jr. He is clerking for U.S. District Court Judge Ursula Ungaro in Miami, Fla.

The Commandments We Keep: A Catholic Guide to Living a Moral Life
Peter J. Vaghi ’74
Ave Maria Press

The Commandments We Keep is Monsignor Peter Vaghi’s third book in the Pillars of Faith series. In this volume he shows how the Ten Commandments can lead the way to gaining a closer relationship to Christ.

Vaghi explains how the commandments can be used to deepen understanding of Jesus and how they can be a touchstone for daily examination of conscience. He describes the practical and pastoral implications of each commandment and includes questions for reflection and a prayer to nurture the idea that the faithful can actually embody the spirit of the commandments in daily life.

The book concludes with a guide to confession and examination of conscience and a reference section for further study. The Commandments We Keep can be used as an aid and guidebook for groups to explore their faith.

Archbishop of New York Timothy Dolan writes that Vaghi’s exploration of the Ten Commandments “combines the realism of a pastor with the precision of a theologian to ‘bring them down the mountain’ for us today.”

Vaghi is pastor of the Church of the Little Flower in Bethesda, Md. He practiced law for a number of years and is still a member of the Virginia State Bar and the D.C. bar. He continues to offer Catholic counsel to the profession.
Fiction

Hell's Corner
David Baldacci '86
Grand Central Publishing

In this latest thriller in the Camel Club series, the President of the United States asks Oliver Stone to lead one last high-risk mission.

The night before Stone is to set off on his assignment, he walks through Lafayette Park. There are four people there who seem out of place, and Stone's sixth sense tells him something is very wrong. Just then, a bomb explodes in the park, in what seems to be a terrorist attack against the President and the British Prime Minister, who had been attending a state dinner at the White House that night.

British MI-6 agent Mary Chapman joins Stone in the hunt for the bombers, who quickly prove to be extremely capable, elusive, and deadly. Stone turns to members of the Camel Club, even though he knows the alliance could be risky.

Stone has attempted unsuccessfully to exit this shadowy world of politics and intelligence many times before. There are two things he knows for certain: There is no one he can really trust, and more often than not, things aren't what they seem. He can only rely on his cunning, his instincts, and his considerable experience. He's one of the best at this lethal game; even so, this could be his—and the Camel Club's—last stand.

“Baldacci keeps peeling back layers of Stone's psyche,” says Booklist, “revealing him to be a man full of unresolved conflicts and a potentially self-destructive amount of guilt over his past actions. Another winner.”

David Baldacci and his wife, Michelle, have founded the Wish You Well Foundation, which works to promote literacy. Visit his Web site at www.DavidBaldacci.com.

The Sixth Man
David Baldacci '86
Grand Central Publishing

Former Secret Service agents Sean King and Michelle Maxwell take on their most challenging case yet in The Sixth Man.

Alleged serial killer Edgar Roy awaits his trial in a federal supermax prison, almost certain of conviction. Roy's attorney, Ted Bergin, a beloved mentor to Sean King, calls King and Michelle Maxwell in to help handle the case. On their way to meet Bergin they find him slumped over in his car, emergency lights flashing. He'd been murdered along the rural road that leads to the prison in which Roy is incarcerated.

Who murdered Bergin, and why? As King and Maxwell pursue the answers they try to unearth Edgar Roy's past, which leads to a series of multiple obstacles, dead ends, and hidden threats.

Along the way they discover the existence of an information processor that works with such lightning speed that it is certain to change the landscape of national security—information some would kill for to protect. They also discover The Analyst, a brilliant but disturbed man who is at the center of it all.

In The Sixth Man, King and Maxwell find themselves up against powerful enemies and ultimately engage in a terrifying confrontation. “A lean, relentlessly paced thriller,” notes the Richmond Times-Dispatch.

Mr. Justice
Scott Douglas Gerber '86
Sunbury Press

When the first African-American is elected president of the United States, it's a milestone in history and a day of jubilation for many. But soon an unsettling mood creeps into the nation's capital. Trouble is brewing. The Ku Klux Klan, long dormant and laying low, rises like a ghostly army and begins to gather in protest.

The president's greatest political rival asks the Supreme Court to reconsider a racially charged decision, heating up an already toxic atmosphere. The rival has a dark secret that only the nation's highest court will be able to reveal. Meanwhile a law professor nominated by the president to a position on the bench is headed for the knockdown fight of his life. Who will prevail? The dark side of politics and the undercurrent of racial hatred that fuels the KKK set the stage for Gerber's third legal thriller.

Scott Gerber is a professor of law at Ohio
Northern University and senior research scholar in law and politics at the Social Philosophy and Policy Center.

**Familiar Shadows**
Bert Goolsby LL.M. ’92
Publishing by Rebecca J. Vickery

This coming-of-age story, a sequel to the author’s first novel, *Her Own Law*, is set in the Deep South as World War II comes to a close. Twelve-year-old Luke McLendon and his best friend, Will Sheffield, fall head-over-heels in love with the same girl, a beautiful orphan named Lydia Powell. When Luke’s aunt Tweve is given temporary custody of Lydia, Luke’s summer, usually filled with a familiar routine of baseball, lazy afternoons at the pond, and playing cops and robbers, suddenly gets complicated. Luke does a lot of growing up that summer, with some painful early lessons in love and loss.

Goolsby conveys the atmosphere of a small Southern town in the summer of 1945 through evocative details—sweet ice tea and berry cobbler, the press of damp, humid air—set against the constant tension and troubling presence of segregation in a way that carries you there.

Bert Goolsby is a former chief deputy attorney general of South Carolina and judge on the South Carolina Court of Appeals. He is the author of three short-story collections and three other novels: *Her Own Law*, *Harper’s Joy*, and *The Trials of Lawyer Pratt*. He lives in Columbia, S.C.

**The Trials of Lawyer Pratt**
Bert Goolsby LL.M. ’92
Publishing by Rebecca J. Vickery

*The Trials of Lawyer Pratt* is set in the South in the 1960s, when Billy Joe Pratt takes on the defense of Siggy Youmans, a bottle washer accused of murder and arrested holding the murder weapon. The defendant asserts his innocence, but his own mother says he can’t be trusted, that he’s never been known tell the truth. “Iff’n his lips are a’movin’ he’s a’lyin’,” she says.

Billy Joe Pratt isn’t the kind of lawyer you go looking for on a good day, much less when the odds are stacked against you. In fact, some of his colleagues question the validity of his credentials. He is young and rather lazy, and his secretary, Dixie, described as “float-qualified beautiful,” is more diligent about painting her nails than keeping up her office skills. But despite his sketchy resume and reputation, as the story unfolds Pratt throws himself into the case.

In *The Trials of Lawyer Pratt* serious crimes and courtroom drama play against a cast of interesting, quirky characters and the kind of colorful dialog that could only go on in a Southern town in the 1960s.

**A Conflict of Interest**
Adam Mitzner ’89
Simon & Schuster

At 35, Alex Miller is the youngest partner in a prominent law firm in New York. He appears to have it all. He’s a criminal defense attorney already building a reputation as one of the best in his field. He has a wonderful wife, who understands the long hours and the stress involved in high-stakes cases, and a beautiful young daughter.

At his father’s funeral Alex meets a man who’s been a mysterious figure in the Miller family history. He was his father’s best friend at the beginning and end of his father’s adult life, but that fact seemed of little relevance to Alex. Mitzner describes a scene at the funeral that marks the beginning of a relationship between Michael Ohlig and Alex Miller that would soon dominate their lives:

“Three times Ohlig poured a shovel full of dirt on my father’s casket, fulfilling the ritualistic last act of a Jewish burial. Each motion was deliberate, as if his movements were intentionally drawn out to prolong his time to say good-bye. But it was the powerful way he approached the shovel, and the force with which he yanked it from the dirt, that most caught my eye, stating unequivocally that he was not someone to challenge.”

Ohlig asks Alex to represent him in a high-profile criminal investigation involving an alleged brokerage scam that lost hundreds of millions of dollars for investors. He’s wealthy almost beyond imagining, but he insists he is innocent, and Alex, despite his experience in such cases, believes him.

As the case unfolds, Alex finds himself in for much more than he bargained for.

The facts of the case involve shocking secrets that challenge everything the young lawyer believes in—about the law, his family, and himself. In a desperate search for the truth, Alex has to deal with revelations about deception in his past that put his promising future in jeopardy.

The author combines the insights of an experienced litigator with the imaginative mind of a novelist to render a debut novel that has been compared to Scott Turow’s *Presumed Innocence*. “Psychological and legal suspense at its finest,” notes a review in the *New York Times*. “A terrific read!”

Mitzner is head of the litigation department of Pavia & Harcourt in New York City.
Of Strip Searches and Immigration Stops

BARBARA ARMACOST ‘89

ON OCTOBER 12, 2011, the Supreme Court heard oral arguments in Florence v. Board of Chosen Freeholders of County of Burlington. The case arose out of the events of March 3, 2005, when April Florence was driving her husband, Albert, and their three children to her mother’s house for a family celebration and was pulled over by state police in Burlington County, New Jersey. During the stop, police confirmed that Albert Florence was wanted on an outstanding arrest warrant in Essex County. They arrested him, took him to the police station for booking and then to the Burlington County Detention Center (BCDC) to await transfer to Essex County. The normal intake process at the BCDC requires inmates to strip naked, apply delousing soap, and shower while being supervised by guards who visually observe the undressing to make sure inmates are not armed. As Albert Florence described the process, guards stood an arm’s length away and directed him to stick out his tongue, raise his arms, turn in all directions, and lift his genitals. After six days in jail, Florence was transferred to Essex County Correctional Facility (ECCF), one of the largest jails in New Jersey. Intake procedures at ECCF require inmates to enter the shower area, strip, and shower under supervision of jail employees. Florence alleges that in addition to stripping and showering, he was required to open his mouth, lift his genitals, turn around with his back to jail officials, squat, and cough. Approximately 24 hours later, an Essex County Judge dismissed the charges (the arrest warrant had been withdrawn but not removed from the computer file) and ordered Florence’s immediate release.

A little over 1,000 miles away, police officers in Alabama have just begun enforcing a tough new immigration law, most of which has been upheld against constitutional challenge by a federal court of appeals. One provision requires police to investigate the immigration status of any individual who has been lawfully stopped, detained, or arrested and whom officials have “reasonable suspicion” may be an illegal alien (similar provisions have been enacted in Arizona, South Carolina, Georgia, and Utah). Supporters of such immigration policing provisions argue that permitting state and local officers to investigate the immigration status of individuals stopped for other offenses is a badly-needed “force multiplier,” swelling the ranks of federal agents by nearly 800,000 state and local police officers across the country. In addition, it brings into the range of immigration enforcement the thousands of individuals who are stopped daily by state and local police in routine law enforcement encounters. As supporters are fond of pointing out, two of the 9/11 hijackers were stopped for traffic violations during the week prior to the World Trade Center bombing and, if local officials had been authorized or required to investigate their immigration status, the officers would have discovered that both had overstayed their visas.

At this point, dear reader, you are probably asking, “What do strip searches in prison and immigration enforcement by state and local police have in common?” The answer is that both implicate an important (and sometimes troubling) feature of the criminal justice system, which is well-known to criminal justice scholars and practitioners but less known to those unfamiliar with criminal procedure: Fourth Amendment rules for conducting searches and seizures of criminal suspects make no distinction between serious crimes and minor crimes when it comes to the actions police can take in investigating these crimes. Let me explain. At first glance the actions taken by prison officials in the Albert Florence case, though uncomfortable and intrusive, seem justified. BCDC houses some 450 male inmates who have committed all manner of crimes. ECCF, where Florence was eventually moved, is the largest and one of the most dangerous county jails in the state, with a daily average of over 1,900 inmates (including some 1,000 gang members). It is located in a large urban area with a high crime rate and tends to house individuals charged with violent crimes or drug related offenses than other county jails. Prison officials can’t be expected to introduce potentially dangerous inmates into the general prison population without making sure they are not hiding weapons or contraband on their persons or in their clothing and without the opportunity to look for gang tattoos. Under these circumstances the strip search of Albert Florence looks justified.

But the case is easy only if we assume that Albert Florence belonged in jail in the first place. Recall that Florence was arrested on an outstanding bench warrant. This might sound serious, but the
The arrest warrant resulted from a civil contempt order for failure to pay a fine in connection with an earlier offense. (In fact, Florence paid the fine in full within a week after the arrest warrant was issued but the warrant was not removed from the police computer system.) Thus, the real question is not whether prison officials should be permitted to strip search inmates who will be placed in the general prison population. Arguably they should. Rather, the question is whether persons who commit minor offenses (such as traffic violations or fine-only misdemeanors) should be subject to arrest and detention in the first place. Arguably they should not. But Fourth Amendment law, as currently construed, applies the same rules for arrests and searches in connection with minor offenses as it does for serious offenses such as murder, drug dealing, or armed robbery.

The most decisive holding on this point is the 2001 case, *Atwater v. Lago Vista*, in which Ms. Atwater was arrested for failing to wear her seatbelt, an offense punishable by a fine. Under then-current Fourth Amendment law, the arrest triggered an automatic search of her person and the passenger compartment of her automobile. She was then taken to the police station, booked, made to remove her shoes, jewelry, and eyeglasses and to empty her pockets, photographed, and placed in a jail cell. In her suit against the police department, Ms. Atwater argued that police should not have been permitted to arrest and jail her for an offense that could not result in jail time even if she had been convicted of the offense. The Supreme Court rejected this argument, upholding warrantless arrests for any criminal offense, regardless of how minor. The implications of this holding are dramatic. *Atwater* means that individuals who are stopped for minor, fine-only traffic violations can be removed from their cars, arrested, searched for weapons and contraband, booked, photographed and placed in a jail cell for up to 48 hours before being brought before a magistrate. In addition, under some circumstances their cars can be searched on the spot or impounded and searched at the police station.

It is *Atwater* that makes Albert Florence's case hard. Although the officer who arrested Florence had an (expired) warrant, police actually needed no warrant to arrest Mr. Florence. They could simply have waited for him to commit a traffic offense. *Atwater* permits warrantless arrests (and temporary detentions) for any criminal offense, including the most minor traffic violation such as failing to put on a turn signal or failing to pay attention to the road. In other words, anyone who is stopped and arrested on a minor, fine-only crime could be required (consistent with the Fourth Amendment) to undergo the strip-search procedures routinely used by detention facilities such as Burlington County and Essex County. This brings us to the connection between Mr. Florence's case and the newly-enacted Alabama immigration law.

Recall that the Alabama immigration statute—and similar provisions in at least four other states—provides that police officers who make a “lawful stop, detention, or arrest” are required to investigate the immigration status of any person they have “reasonable suspicion” may be an illegal alien. In response to the concern that such provisions lead to racial profiling or harassment of law-abiding immigrants, supporters argue that immigration investigations are strictly limited to those who are suspected of breaking some other criminal law, which is the primary reason for the stop, detention, or arrest. This might be persuasive until one realizes that the most common category of police stop is a traffic stop and that most traffic offenses, while nominally criminal, regulate the kinds of conduct we all engage in from time to time. In addition, traffic laws are routinely under-enforced. For example, many of us assume we can go five or even ten miles over the speed limit without being ticketed, although police could (and sometimes do) ticket drivers for these infractions. Laws that are under-enforced invite police officers to pick and choose who they stop based on other considerations and it is a well-known police strategy to use minor traffic offenses as pretexts to investigate drug crimes. An officer who suspects drug activity can simply follow the suspect's car until the driver speeds, fails to signal, or rolls through a stop sign. The officer can then look for evidence of the drug offense in “plain view” inside the car or arrest the suspect for the traffic offense and get an automatic search of the arrestee's person and, in some circumstances, a search of part, or all, of the automobile. Evidence found during these post-arrest searches is admissible in a criminal trial.

The claim that immigration policing will be directed only at criminal aliens is related to another important—but ultimately false—assumption. Provisions like the one in Alabama have been read by supporters as if the primary stop, detention, or arrest will be viewed by police as independent from the mandate to enforce the immigration laws and thus will not lead to ethnic profiling. In other words, police officers will decide whether to stop, detain, or arrest suspects under “other state laws” without any consideration of their ethnicity or their illegal status. There is no reason to be confident this will be any truer in the immigration context than it is in policing ordinary street crime. Even in the case of serious crimes such as drug dealing, non-white suspects are more likely to be investigated, arrested, and prosecuted and, in some cases, sentenced more harshly than other populations. Such targeting is even more probable in the context of ordinary street stops and arrests.

Consider the following scenario: an Alabama police officer clocks a driver going 45 mph in a 40 mph zone. Speed limits, like many traffic laws and other low level criminal offenses, are routinely under-enforced, so the decision whether to stop a speeding automobile will necessarily depend upon other factors, which may or may not be related to road safety. For example, the police officer may not have reached her
“quota” of traffic tickets or the automobile is a make and model often used by drug dealers. Suppose that at the same time the officer clocks the vehicle’s speed she also notices that there are five men in the car, all Hispanic. The officer now has an additional reason to stop the speeding driver. She suspects that the car packed with Hispanic men is on its way to a site where illegal immigrants hire themselves out as construction day laborers. This may not add up to reasonable suspicion but it doesn’t matter because the officer already has probable cause to stop the driver for speeding. Once the automobile is stopped the officer can ask the occupants for identification and, finding none, may have “reasonable suspicion” to believe they are in the country illegally. This then obligates the officer to detain the men in order to verify their immigration status under Alabama law.

The relevant point is that the decision to stop, detain, or arrest in enforcement of “some other law” is not hermetically sealed from the decision to investigate a suspect’s immigration status. Alabama police officers will have strong incentives to stop any foreign-looking driver who is violating state traffic laws. Moreover, an officer who did so would not (at least not necessarily) be acting in bad faith. Faced with this combination of facts—a speeding car filled with Hispanic-looking men in an area where large numbers of illegal Hispanic aliens reside—the officer could plausibly believe she is required to stop the vehicle. Indeed, in a recent press report one of the primary drafters of a similar provision in Arizona suggested that this precise set of facts might, itself, be enough to prompt a stop.

Moreover, it is well documented that police officers routinely use stops and arrests for minor traffic violations in precisely this way: as a pretext for investigating other, unrelated criminal conduct. They do so because it is easy to justify a traffic stop and much harder to defend a stop based on probable cause or reasonable suspicion of criminal activity. The Alabama immigration law creates similar incentives both to use traffic offenses as a tool for investigating suspected violations of state and federal immigration law and to use suspected immigration offenses as a tool for investigating other criminal activity. And each of these circumstances poses the danger of racial profiling. Defenders of these laws argue that police cannot stop or arrest for the purpose of checking immigration status. It is a short step, however, from stopping a speeding car and secondarily verifying immigration status to waiting for a foreign-looking driver to commit a traffic offense in order to check his immigration status. And no one but the officer knows which came first—knowledge of the traffic offense or knowledge that the driver or passengers looked ethnically foreign. This means that police officers can pursue immigration violators by targeting foreign-looking drivers for traffic stops, an explicit example of racial profiling that the Alabama law’s supporters claim won’t happen.

One response to this scenario is, “So what?” If using traffic laws helps us catch immigration offenders who may be criminals or terrorists, why shouldn’t we? The first response is that most immigrants—legal or illegal—are neither criminals nor terrorists. Indeed, some data suggests that illegal immigrants are actually less likely to commit crimes. Moreover, even if illegal aliens did commit more crimes than other populations, police chiefs around the country (the majority of whom oppose state immigration enforcement) claim that such enforcement would not reduce crime. They argue that effective investigation and prevention of crime requires cooperation by members of the community who are a primary source of information about criminal activity in their area. If police become immigration enforcers in immigrant communities, where families and social groups include both legal and illegal immigrants, they lose their best sources of “intelligence” for fighting crime, including gang-related crime. In addition, while some defenders of state and local immigration laws consider it a victory when immigrants pack up and move out of the jurisdiction—what Arizona calls “enforcement by attrition”—it is not at all clear that such flight will actually reduce the illegal population nationally. And it will surely not do so without destructive (and perhaps irreversible) effects on our economy and the social fabric of our communities. In addition, we also need to ask hard questions about whether the strategy of “enforcement by attrition” is morally defensible and socially desirable.

So, what does the strip search of Mr. Florence have in common with state immigration enforcement? They each raise the question whether it makes sense for Fourth Amendment law to treat investigation of minor crimes such as traffic offenses the same way it treats investigations of serious crimes such as murder, rape, assault, burglary, and robbery. Doing so permits strip searches of detainees like Mr. Florence. It also encourages police in states with immigration policing provisions to use traffic violations to target foreign-looking individuals who may or may not be illegal immigrants and are probably not criminals or terrorists.

Let me end by saying that I hope I have engaged in a bit of “Stuntzian” analysis by identifying two, seemingly disparate phenomena and showing how comparing them illuminates a broader point about the law. If I have succeeded at all in that endeavor, I owe a huge debt to my friend and mentor Bill Stuntz, who was an illuminator-of-counterintuitive-insights extraordinaire and to whom the Law School has dedicated this issue. Thanks Bill, and I miss you! ■

Professor Armacost teaches civil rights litigation, criminal investigation, torts, legislation, and First Amendment (religion clauses) at the Law School. This essay is part of a larger project entitled, “Immigration Policing: Federalizing the Local” (forthcoming 2012).
“I would rather be exposed to the inconveniences attending too much liberty than to those attending too small a degree of it.” —THOMAS JEFFERSON

UPCOMING ALUMNI EVENTS

January 26
Charlotteville Reception
Farmington Country Club

February 15
Atlanta Reception, Picasso to Warhol Exhibit
The High Museum

February 21
Houston Reception
Vinson & Elkins

February 22
Dallas Luncheon
Belo Mansion

February 29
NYC Luncheon
Vale Club

March 29
Denver Reception
The Brown Palace Hotel

April 4
Northern Virginia Reception
Top of the Town, Arlington

May 4—May 6
Law Alumni Weekend
Charlottesville

June 14
Richmond Reception
Berkeley Hotel

June 20
D.C. Luncheon
Mayflower Hotel

ART IN THIS ISSUE
Inmates of the Albemarle-Charlottesville Regional Jail participating in its “Beyond the Bars” program provided the artwork that appears on the cover and throughout this issue of UVA Lawyer. The program teaches inmates new and creative ways of self-expression so that they can better understand themselves and their responsibilities to others. For more information, go to http://beyond-bars.com.

All artists, except for those indicated, wish to remain anonymous.