

# TOBY J. HEYTENS

## EMPLOYMENT

**University of Virginia School of Law.** *Associate Professor* Fall 2006 - present  
Teaching areas: Civil Procedure; Civil Rights Litigation; Criminal Procedure; Federal Courts

**Cornell Law School.** *Visiting Assistant Professor* Spring 2005  
Subjects taught: Federal Courts

**O'Melveny & Myers LLP,** Washington, DC. *Associate* (2003-2005), *Counsel* (2006)  
Appellate litigation practice, including civil, civil rights, and criminal matters. Representations included:

- Principal author of *amicus* filing in *FAIR v. Rumsfeld* that was one of two briefs recognized in the *Green Bag's* 2005 Almanac of Exemplary Legal Writing.
- Successfully briefed and argued appeal on behalf of indigent criminal defendant to the Maryland Court of Special Appeals.

**The Honorable Ruth Bader Ginsburg,** Supreme Court of the United States. *Law Clerk* October Term 2002

**Office of the Solicitor General of the United States.** *Bristow Fellow* 2001-02

**The Honorable Edward R. Becker,** United States Court of Appeals for the Third Circuit. *Law Clerk* 2000-01

## EDUCATION

**University of Virginia School of Law,** Charlottesville, VA. J.D. 2000

**Honors:** Highest academic average at graduation  
Law School Alumni Association Award for Academic Excellence (highest academic average after five semesters)  
Jackson & Walker Award (highest academic average after four semesters)  
Carl M. Franklin Prize for the First Year Student with the Highest GPA  
Order of the Coif  
Roger & Madeleine Traynor Prize (one of two for best written work by a graduating student)  
Law School Alumni Association Best Note Award  
*Finalist*, Ross Student Writing Competition of the American Bar Association  
Bracewell & Patterson Outstanding First Year Oral Argument Award

**Activities:** *Articles Development Editor*, Virginia Law Review  
*Member*, National Moot Court Team  
*Summer Law Clerk*, ACLU National Prison Project  
*Summer Law Clerk*, The Thomas Jefferson Center for the Protection of Free Expression

**Macalester College,** St. Paul, MN. B.A., in History & Communication Studies, 1997

**Honors:** Phi Beta Kappa  
W. Scott Nobles Prize in Communication Studies  
Lowell Thomas Prize for Public Speaking

**Activities:** *Founder, Captain, & Two-time All-American*, Mock Trial Team  
*President*, Macalester Model United Nations  
*Program Coordinator*, Friendship Tutoring Program

**University of Oslo,** International Summer School. Summer 1996

## **PUBLICATIONS AND WORKS IN PROGRESS**

*Managing Transitional Moments in Criminal Cases*, 115 Yale L.J. 922 (2006)

Analyzes and critiques the use of forfeiture rules to control the retrospectively disruptive impacts of legal change in the context of direct review of federal criminal convictions. Argues that the flaws with the forfeiture approach call for reconsideration of the non-retroactivity technique favored during the Warren era, and suggests that Congress could initiate the shift if courts resist doing so.

*School Choice and State Constitutions*, 86 Va. L. Rev. 117 (2000)

Traces the history of the “Blaine Amendments” contained in the constitutions of approximately 30 States. Argues that the Blaine Amendments will likely be used by state courts to block voucher programs that include religious schools, but contends that employing them in such a manner would violate the Equal Protection Clause.

## **PRINCIPAL TEACHING AND RESEARCH INTERESTS**

Federal Courts

Criminal Procedure

Habeas Corpus and Post-Conviction Litigation

Civil Rights Litigation (including 42 U.S.C. § 1983)

Civil Procedure

Remedies

Law & Religion

## **PRESENTATIONS, PANELS, AND OTHER LAW SCHOOL COMMUNITY EVENTS**

*Managing Transitional Moments in Criminal Cases*. Presented at Cornell Law School. June 23, 2005.

The Solomon Amendment: Constitutionality, Policy, and Its Current State in the Courts. Featured speaker at event sponsored by Societas, A Law Society for the College of Arts and Sciences. Cornell University. April 26, 2005.

The (Un)Constitutionality of the Solomon Amendment. Moderator of panel discussion sponsored by LAMDA, the Federalist Society, and the Military Recruiting Task Force. Cornell Law School. April 26, 2005.

Forum on Military Recruiting. Panelist. Cornell Law School. February 28, 2005.

## **ADMITTED TO PRACTICE**

Maryland; Washington, DC