

Summer 1998

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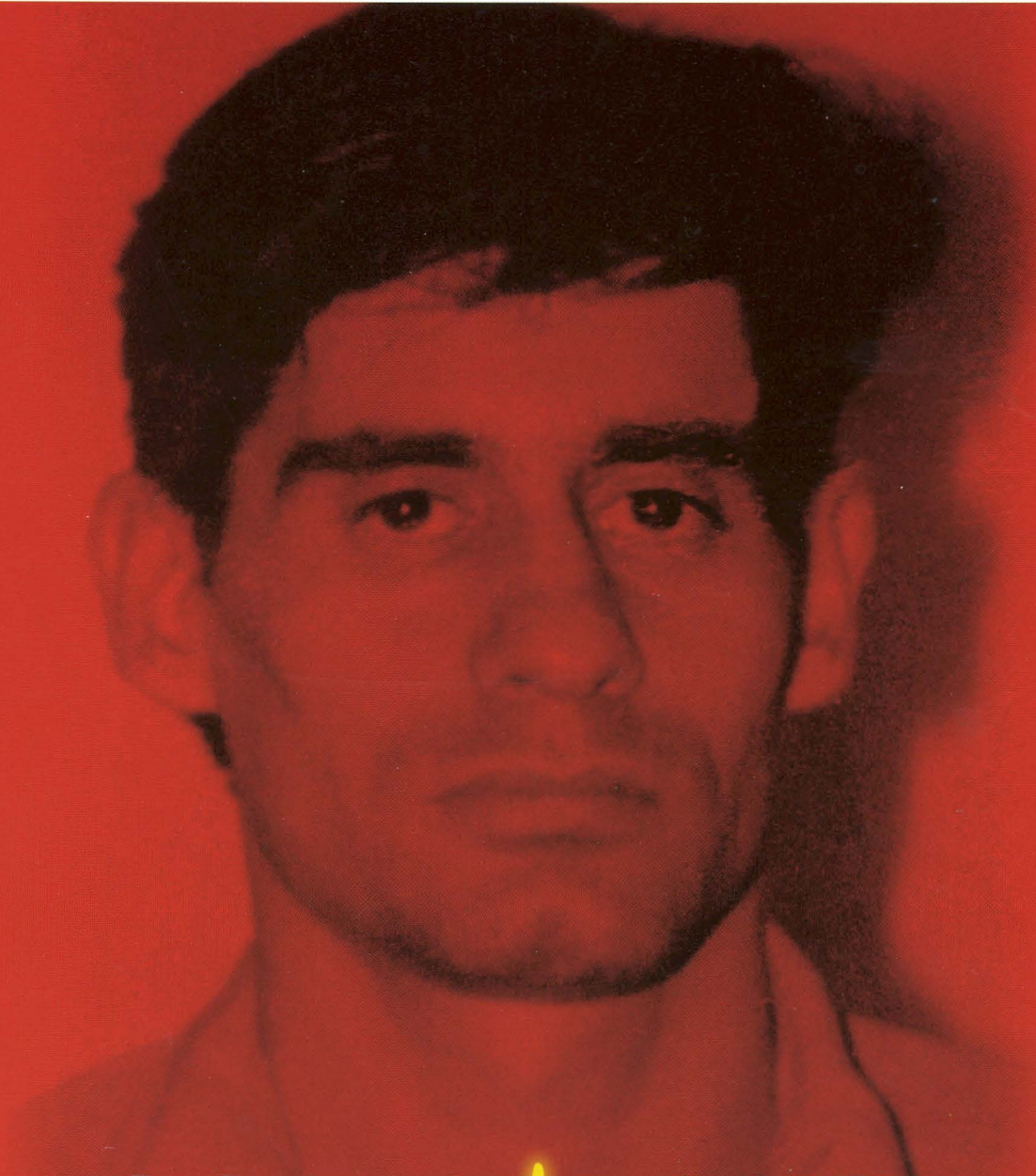
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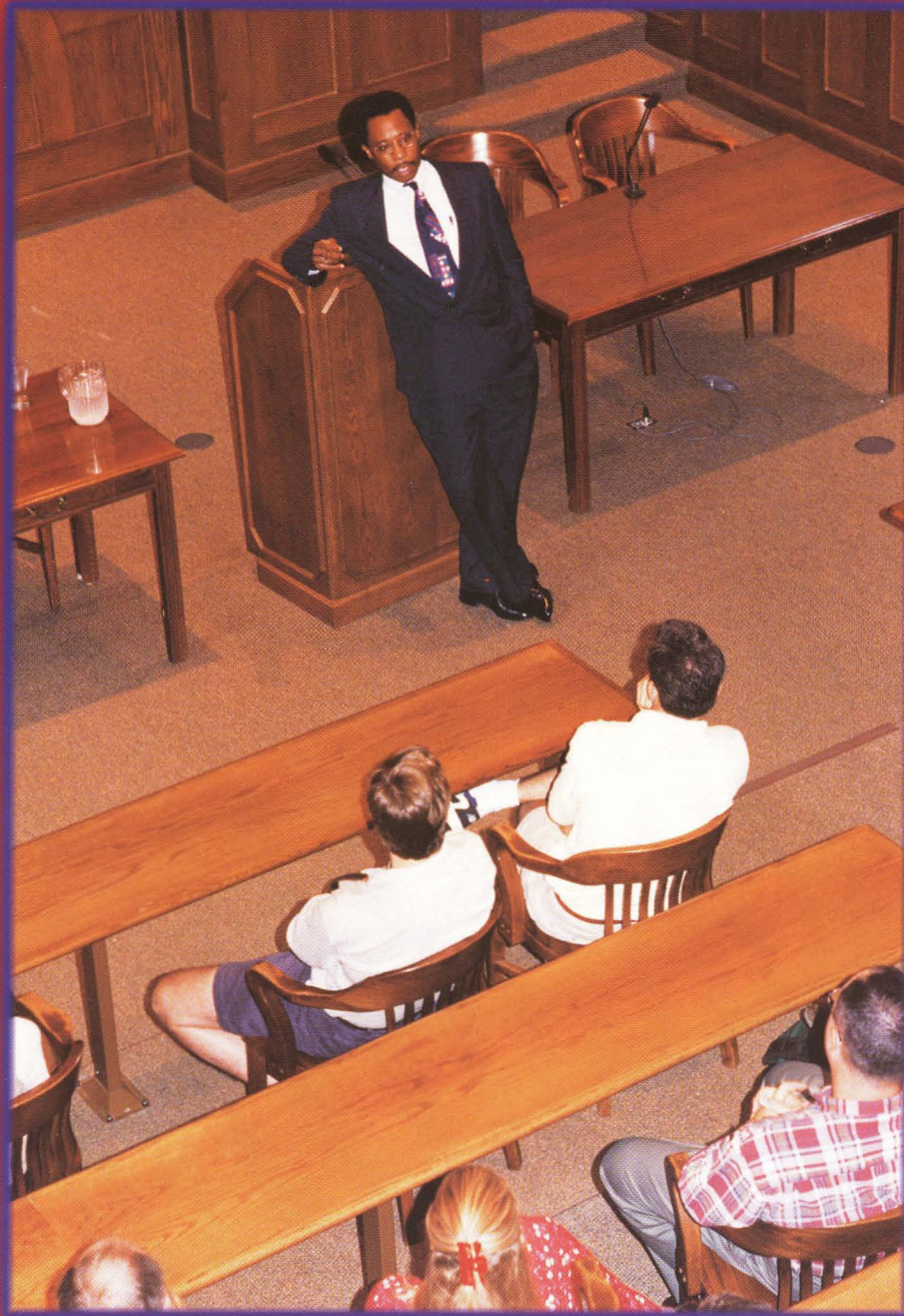
RICHMOND LAW



COUNT DOWN TO AN EXECUTION

Law faculty voices heard in debate over Virginia's Breard case

1998 graduate Tracy Thorne • Faculty essays by Sands, Douglass, Smolla



WORDS FROM THE BENCH

The Hon. Leroy R. Hassell of the Virginia Supreme Court speaks to summer school students on the topic, "Law School and Beyond." Justice Hassell's generous gift of time and experience is typical of the outstanding support the law school receives from the judiciary and bar.

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KEY TO ABBREVIATIONS

School of Arts
and Sciences AThe E. Claiborne Robins
School of Business BSchool of
Continuing Studies CGraduate School
of Arts and Sciences GThe Richard S. Reynolds
Graduate School of
The E. Claiborne Robins
School of Business GB

Honorary degree H

Jepson School
of Leadership Studies JUniversity of Richmond
School of Law L

Richmond College R

Westhampton College W

CONTENTS

Summer 1998

F E A T U R E S

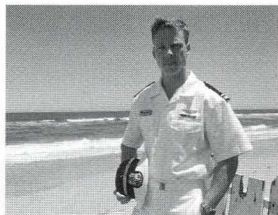
7

Countdown to ExecutionLaw faculty voices heard in debate
over Virginia's Breard case

By Rob Walker

"We were able to bring the
perspectives of several experts
immediately to bear on a real
problem." — Dean John Pagan

14

**A Counselor and a Gentleman**Tracy Thorne, L'98, challenged the
government's policy on gays in the military

By Kimberley Bolger

D E P A R T M E N T S

2

For the Record

News and events in the law school

5

Discourse

Leading lectures, debates, research

10

Faculty Briefs

The Breard Case: From Virginia to The Hague

by Philippe Sands

13

The Breard Case and the Virtues of Forbearance

by John G. Douglass

19

Don't Ask, Don't Tell: A Policy Failure and Constitutional Challenge

by Rodney A. Smolla

21

Nota Bene

Alumni recognition and alumni events

23

Partnership

Participation in philanthropy supporting the law school

24

Class Actions

Class news and alumni profiles

Cover photo courtesy of
AP/Wide World Photos;
illustration by Susan Sawyer

Photo opposite by
Thomas Kojcsich

Pay attention to individuals, says Judge Arnold

How to be an "upright person" was the theme of the Hon. Richard S. Arnold of the U.S. Court of Appeals for the Eighth Circuit as he addressed the 160 graduates of the University of Richmond School of Law on May 9.

The term comes from the preamble to the Model Rules of Professional Conduct, Arnold said, in a reference to "a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an upright person while earning a satisfactory living."

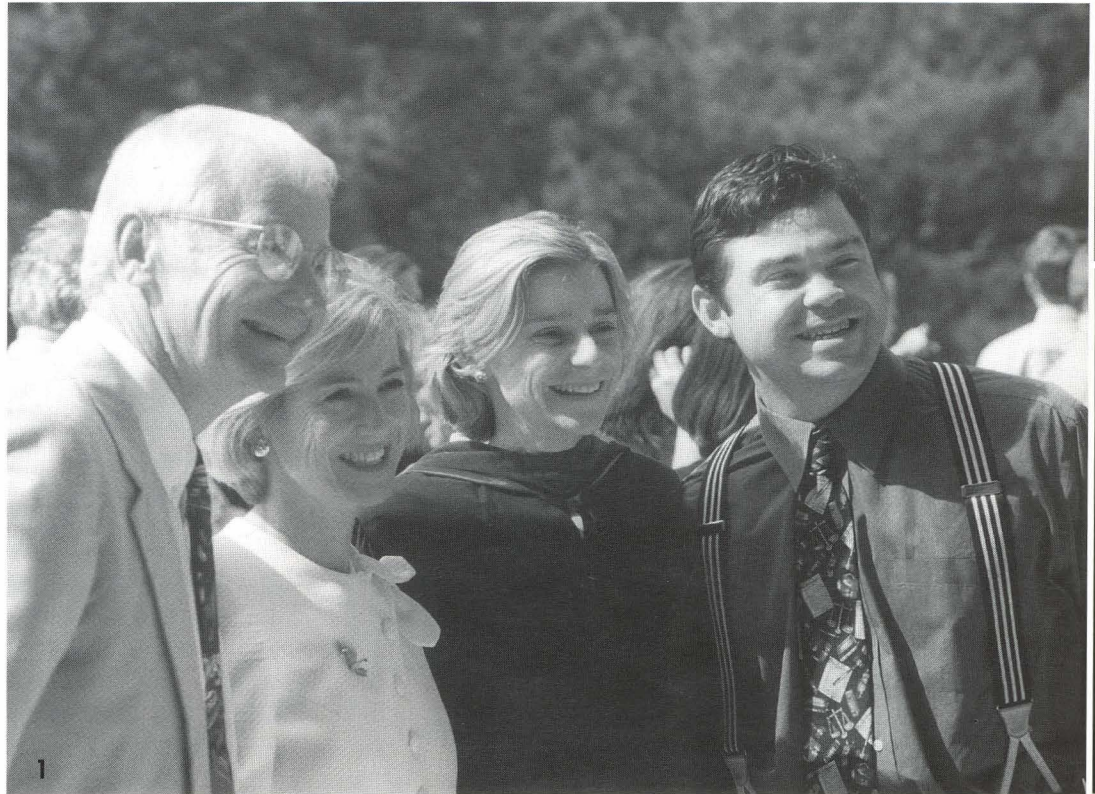
That means, he said, that lawyers "are not truly fulfilling the ideals of their own calling unless they keep ever before them the goal of being a moral person."

To do that, he suggested to graduates "that you look inside yourself. What goes on inside yourself is the most important thing about your life. Every problem begins with an individual, and every solution begins with an individual."

Furthermore, "we just don't pay enough attention to other people," he said. "We treat them as if they were objects, not human beings."

"Try thinking of everyone you meet as an individual A brief word, maybe even a sentence, doesn't take much time, though it does take some effort. Better still, just listen. People have something to say."

"I am persuaded that we in fact will do better jobs, will be more useful to clients, will succeed in advancing the administration of justice, if we make this sort of effort to pay closer atten-



tion to ourselves and to what we do each day. . . . I challenge you to try it."

A native of Arkansas, Judge Arnold clerked for Supreme Court Justice William Brennan in 1960-61 after earning his law degree from Harvard. He served as legislative secretary for Arkansas Gov. Dale Bumpers from 1973 to 1974, then as legislative assistant after Bumpers won a Senate seat.

President Jimmy Carter appointed Arnold to the U.S. District Court for the Eastern and Western Districts of Arkansas in 1978 and elevated him to the U.S. Court of Appeals for the Eighth Circuit in 1980. Judge Arnold served as chief judge of the circuit court from 1992 until April 1998, and continues to

serve as an active member of the bench.

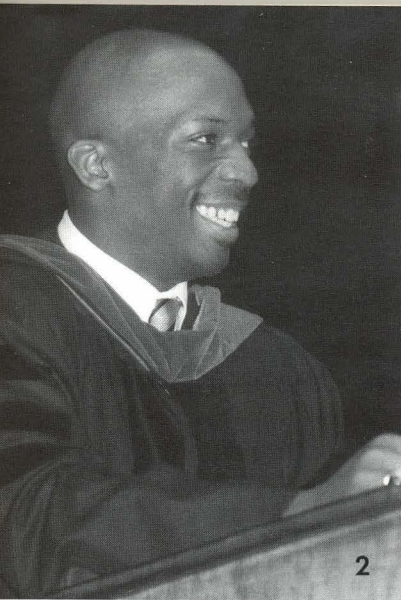
The faculty speaker also addressed personal values and the professional role of lawyers. Visiting Professor Graham B. Strong presented two metaphors for the transition from law school to the legal profession.

In the first, he described "Flatland," an imaginary place existing in only two dimensions, where a three-dimensional event is a complete mystery. Similarly, law students try to fit the cases they study into "Flatlaw" — the law in two dimensions — and when they step out into the "living law, the law in motion," things will be different.

In the second metaphor, Strong said graduates will find they are like the Phantom of the Opera: "You take on a profes-

sional role and you wear it like a mask that covers half your face." It is like a mask because "it affects in important ways how others see you and it may also affect how you see the world." And it is half a mask, he said, because the role of the lawyer "does not shield you from personal, moral responsibility for the consequences of your actions."

The mask doesn't fit at first because personal values are never a perfect match for the demands of the professional role, but over time it does, for one of two reasons: "Either you have changed the mask, or the mask has changed you and your face has grown to fit it." That happens "because of the pressure that comes with the enormous expectations associated with the role of lawyer."

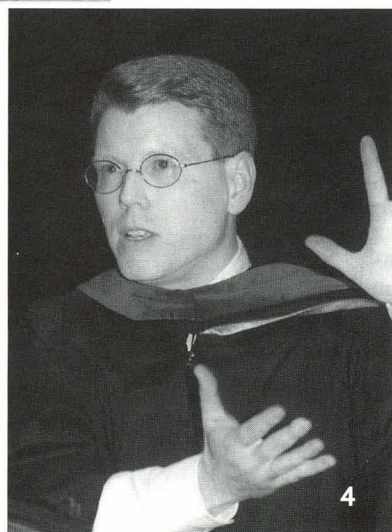


1 Julie Young, L'98, with her father, Larry Young; sister, Lisa Gseller; and brother, Jay Young

2 Student speaker Wendell L. Taylor, L'98

3 Keynote speaker Judge Richard S. Arnold

4 Faculty speaker Graham B. Strong



Photos by Thomas Kojetsch

"You can define your role to make it consistent with your personal moral values or, inevitably, your role will define you."

~ Graham B. Strong

Strong asked graduates to remember that they have a choice. "You can define your role to make it consistent with your personal moral values or, inevitably, your role will define you."

Student speaker Wendell L. Taylor, president of the Student Bar Association, presented the "Spider High Class of 1998 Senior Superlatives, law-school style."

His light-hearted list noted personalities known to the class: "most likely to become a politician," "most likely to go to court barefoot," "most likely to benefit from stress management classes," "class couple," and "class flirt."

Then he considered the category, "most likely to succeed," looking at examples of his classmates' outstanding achievements in law school and con-

AWARDS AT COMMENCEMENT

The Virginia Trial Lawyers Association, Student Trial Advocate Award

Emily Elizabeth Kokie

The International Academy of Trial Lawyers, Student Advocacy Award

Matthew James DeVries

The Family Law Award
Patricia Eileen Smith

National Association of Women Lawyers Award

Cheryl L. Conner

The T.C. Williams School of Law Scholarship Award

Jennifer Lynn Hawkins

Cudlipp Medal

Matthew Midkiff Farley

J. Westwood Smithers Medal

Matthew Midkiff Farley

Nina R. Kestin Service Award

Donna Ruth Harwell

Charles T. Norman Award

Wendell Landrè Taylor

PUBLIC INTEREST LAW ASSOCIATION PRO BONO AWARDS

Matthew Hung Crow

John Christopher Noshier

Patricia Eileen Smith

THE AMERICAN BAR ASSOCIATION/THE BUREAU OF NATIONAL AFFAIRS INC. AWARD FOR EXCELLENCE

Anna Green Rich

Kristine Marie Sims

Melissa Carol Wolf

ORDER OF THE BARRISTER

Solette Tiscornia Anderson

Ann Meredith Barton

Charles Kingsley Bucknor Jr.

Matthew James DeVries

Stephen M. Faraci

Emily Elizabeth Kokie

Michael Patrick Murphy

Michael E. Parham II

Leslie Beth Salter

Tracy William James Thorne

MCNEILL LAW SOCIETY

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Jeffrey Alan Barnes

Michael Joseph Begland

Megan Ann Conway

Stephen M. Faraci

Matthew Midkiff Farley

Benjamin Harvey Garrison

Katja Kristanja Hamel

Robin Renée Jamerson

Meegan Courtney Lawson

Susan Carter Lovett

Bethany Gayle Lukitsch Hicks

George Franklin Marable III

Michael Christopher McCann

Perry Watson Miles IV

Michael Patrick Murphy

Edward Peter Noonan

Marc Lloyd Penchansky

Kathleen Colie Reed

Mufeed Wadie Said

William Lake Taylor Jr.

Stephanie Renee Uzel

John Michael Vandenhoff

cluding that each graduate must define success "from within."

"Who among us is most likely to succeed? We all are, because we're all capable of defining success in our own terms . . . Know yourself, set your goals and strive to make yourselves proud," he said.

Bringing greetings from the law school alumni association, Kenneth J. Alcott, R'77 and L'83, urged the newest alumni to stay

involved. "We need your help and your ideas, your energy and your spirit in continuing to work to make this law school an even better place for future classes of graduates," he said.

Finally, Dean John R. Pagan recognized Dr. Richard L. Morrill, retiring University of Richmond president, for the advancement of the law school under his tenure.

~ Dorothy Wagener

CLERKSHIPS FOR 1998-99

Jeannie Anderson

Court Legal Research Assistance Project, Office of the Executive Secretary, Supreme Court of Virginia Richmond

Solette Tiscornia Anderson

Staff attorney, Supreme Court of Virginia Richmond

Megan Ann Conway

Hon. James R. Spencer, Judge, U.S. District Court for the Eastern District of Virginia Richmond

Matthew J. DeVries

Hon. Johanna L. Fitzpatrick, Chief Judge, Court of Appeals of Virginia Fairfax, Va.

Karen L. Duncan

4th Judicial Circuit City of Norfolk, Va.

Meegan Courtney Lawson

13th Judicial Circuit, Civil Division Richmond

Peter David Houtz

31st Judicial Circuit, Prince William County Manassas, Va.

Randall Garnet Johnson Jr.

Hon. James W. Benton Jr., Judge, Court of Appeals of Virginia Richmond

Robin Jamerson Kegley

Hon. Glen E. Conrad, Magistrate Judge, U.S. District Court for the Western District of Virginia Roanoke, Va.

Alice Coles McBrayer

Hon. Richard S. Bray, Judge, Court of Appeals of Virginia Chesapeake, Va.

Michael C. McCann

Hon. A. Christian Compton, Judge, Supreme Court of Virginia Richmond

Perry W. Miles IV

Hon. Elizabeth B. Lacy, Justice, Supreme Court of Virginia Richmond

Edward P. Noonan

Staff attorney, Supreme Court of Virginia Richmond

Laura Ann Piper

14th Judicial Circuit Henrico County, Va.

Kathleen Colie Reed

Hon. William R. Shelton, Judge, 12th Judicial Circuit Chesterfield, Va.

Sidney J. Rosenbaum

Hon. Jackson L. Kiser, Judge, U.S. District Court for the Western District of Virginia Danville, Va.

Eugenia Vroustouris

Hon. Dennis J. Smith, Judge, 19th Judicial Circuit Fairfax County, Va.

Marc W. West

14th Judicial Circuit Henrico County, Va.

Julie A. Young

Hon. Harry L. Carrico, Chief Justice, Supreme Court of Virginia Richmond

Visiting legal scholars will share their expertise

Law school students will have the opportunity to study under five visiting professors during 1998-99, three of those during the fall semester.

One of the fall visitors is Hamid G. Gharavi, first in a series of visiting international professors. An Iranian by birth, he currently practices at Skadden, Arps, Slate, Meagher & Flom, LLP, New York, as an associate in their international arbitration and litigation practice group (a previous article on Gharavi appeared in the Winter 1998 issue of *Richmond Law*). He will teach two courses, International Arbitration and Introduction to Civil Law.

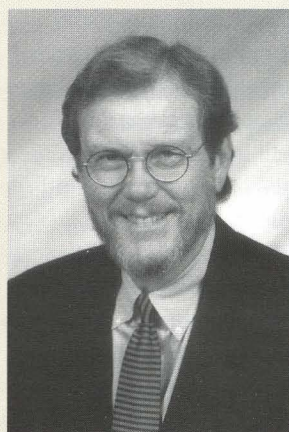
W. Dent Gitchel will teach Evidence as well as Advanced Trial Practice. He has taught at the University of Arkansas at Little Rock since 1984, where he holds the Arkansas Bar Foundation Chair. In 1994 he took a

leave of absence to serve as chief legal counsel to the governor of Arkansas, and in 1990 he served as a special associate justice on the Arkansas Supreme Court.

Gitchel's publications include a book, *Admissibility of Evidence*, and a number of articles, journal columns and other professional works. He is a frequent lecturer in continuing education programs and partici-



Gharavi



Gitchel



Tussey

Photo by Thomas Kofjstch

The Class of 2001 boasts higher percentage of women

Although many characteristics of the Class of 2001 are similar to those of the previous year, there is one startling change, according to director of admissions Michelle L. Rahman.

Fifty-four percent of the new class is female, a significant jump from the 41 percent last year.

"This year we had a higher yield for women than for men," says Rahman. "Although we accepted just three more women than men, we had only 28 percent of those men actually enrolling, compared to 32 percent of the women accepted.

"I don't know yet if this is indicative of a trend, as the national data have not all been released."

Meanwhile, the trend toward more students from out of state continues with 41 percent this year. That percentage has increased from 28 percent five years ago with the biggest jump from 30 to 40 percent in 1997, she says.

Also up is the number of students — four — attending the University of Richmond School of Law through the exchange program with the University of Paris at Nanterre, now in its fourth year.

The median LSAT was 156, placing the class in the 71st percentile of all those who took the test during the past three years. The median grade point average of the entering class was 3.07.

pates as a faculty member in National Institute for Trial Advocacy continuing education programs. Before his professorship, he was in private practice for 15 years.

Computer Law and Intellectual Property will be taught by Deborah Tussey of Charlottesville, Va. A graduate of Harvard Law School and the University of Virginia School of Law, she worked at The Michie Company in Charlottesville from 1978 to 1997. As editor-in-chief of primary law publications in print and electronic media, she led the mergers of a number of products acquired from other

publishers and directed the first Michie process improvement team.

Bringing distinguished visiting legal scholars to the school benefits both students and faculty, says Dean John R. Pagan. And it "underscores our commitment to creating a vital legal curriculum and to establishing a rich environment for scholarship."

On campus during the spring will be Frank E. Kulbaski III, and Yasuhei Taniguchi as Visiting Tyler Haynes Professor of Global Law and Business.

Allen Chair scholars discuss international environmental law

Four of the world's leading experts on environmental law joined the law school community this spring to discuss "Resolving International Environmental Disputes in the 1990s and Beyond" through the George E. Allen Chair in Law.

In addition to the public address, the speakers taught classes and led faculty colloquies, and interacted informally with students and faculty.

Scholar series coordinator Professor Joel B. Eisen says that this year's theme of resolving international environmental disputes is "recognition that our legal profession has globalized, that law is now international, and that international environmental law in particular is achieving prominence."

The first topic addressed was "Dispute Resolution Under NAFTA's Environmental Side Agreement," by Beatriz Bugada. She teaches international, regional and Mexican environmental law at Universidad Iberoamericana in Mexico City and has served as legal adviser for the Commission on Environmental Cooperation.

The commission, formed along with NAFTA as part of a side agreement on environmental cooperation, "serves as a forum," Bugada explained,

"The environment has become as important an international issue as human rights."

—Ben Boer

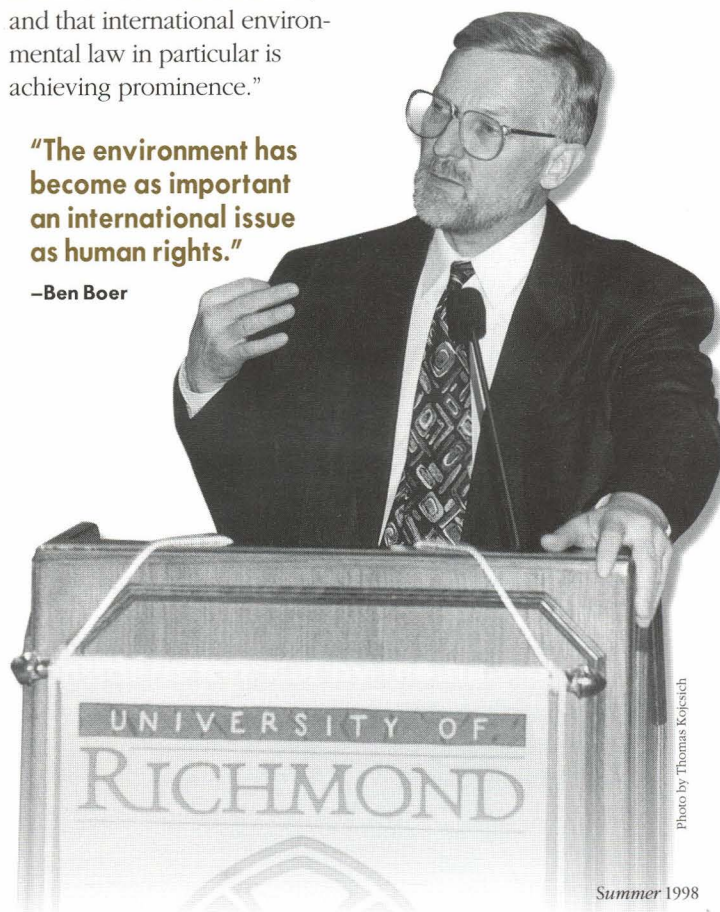


Photo by Thomas Kofesch

DISCOURSE

"for the discussion of environmental matters among the three NAFTA members: the U.S., Canada and Mexico."

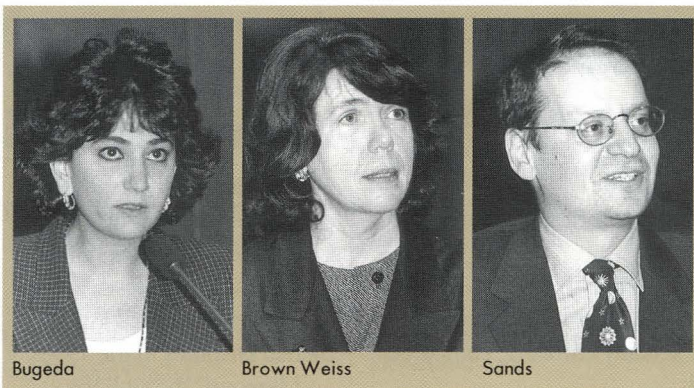
The commission's most important function is enforcement, according to Bugada. The commission responds to complaints from ordinary citizens, corporations and others who feel that one or more of the NAFTA countries is not complying with their obligations under the agreement.

"The mechanisms created under NAFTA constitute an important force to make the trade flow compatible with environmental concerns," said Bugada, making NAFTA, according to some, "the greenest trade agreement in history."

"Ensuring Compliance with International Environmental Agreements" was discussed by Edith Brown Weiss, professor of law at Georgetown University Law Center. Those agreements, Brown Weiss pointed out, now number over 900.

"We have gotten good at negotiating international agreements," she said, "but are much less skilled at implementing them and complying with them."

Despite a widespread assumption that almost all countries comply with the environmental agreements they sign, Brown Weiss pointed out that compliance varies significantly, depending upon a country's original reason for signing.



Bugada

Brown Weiss

Sands

Photos by Thomas Kojestich

Brown Weiss suggests three basic strategies: sanctions, incentives, and sunshine models, which involve shedding as much light as possible on exactly what a country is doing in terms of compliance or non-compliance. "The precise mix," says Brown Weiss, "depends on the country you're dealing with."

Sharing "experiences from Down Under" was Ben Boer, who discussed implementing international environmental law in the Asia Pacific region.

Boer has taught environmental law since 1979 and is the director of the Australian Centre for Environmental Law at the University of Sydney.

"The environment has become as important an international issue as human rights," Boer feels. "The world community has begun to realize humanity is facing an ecological crisis of unbounded proportions, in terms of pollution, overpopulation, and overconsumption of natural resources — and we in the developed countries are most guilty."

Boer said that nowhere are environmental problems more acute than in the Asian and South Pacific regions. He cited the problem of environmental refugees, of which there are globally now 25 million.

The problem will increase, Boer said, with the effects of global warming. In fact, he warned, whole countries, such as the Marshall Islands, will inevitably completely disappear. Population pressure is also affecting migration in his region.

Boer sees international cooperation as crucial at this stage. "The task is to ensure that the laws governing human behavior are in accordance with the natural laws that govern our ecosystems."

Concluding the 1998 Allen Chair series was Philippe Sands, reader in international law at the University of London. His topic was the resolution of international environmental disputes through litigation and other alternatives.

Up to the 1970s, Sands pointed out, the settling of world disputes was still pretty much a matter of war or peace; there were no international courts to resolve environmental disputes.

Sands credited the United Nations with the creation of a climate in which environmental issues could be addressed internationally. In the last four decades, Sands observed, much new regional and global legislation has been adopted on such matters as ozone, climate change, oil pollution, wetlands, endangered species, trans-boundary air pollution, and marine life.

Sands mentioned the roles of the Intra-American Court of Human Rights, the GATT panels, and the International Court of Justice on legal questions and environmental issues from nuclear weapons to dolphins.

The key to international environmental laws and enforcement, Sands said, "is the integration of environmental concerns with economic concerns."

The lecture series was sponsored by the George E. Allen Chair in Law, which brings visiting scholars to campus each year to share their views on timely legal issues. The chair was established to honor the late George E. Allen by his sons, the late George E. Allen Jr., L'36; Ashby B. Allen, R'43; and Wilbur Allen.

~Barbara Fitzgerald



Law faculty voices heard in debate over Virginia's Breard case

COUNT DOWN TO AN EXECUTION

In April 1998, Angel Francisco Breard awaited execution in a Virginia prison for brutally murdering an Arlington woman six years earlier.

Breard had confessed to the crime, albeit with the explanation that he had acted under the influence of a curse placed on him by his ex-wife's father. He went to trial in Circuit Court in that Northern Virginia city, and despite claims that he was insane, Breard was found guilty and sentenced to death.

Given those simple facts, Breard's case was a tragic one containing unusual circumstances that warranted careful consideration. But by the time Breard was put to death on April 14, his case had taken on international implications.

BY ROB WALKER



PHILIPPE SANDS, VISITING SCHOLAR, PROVIDED THE INSTITUTIONAL CONTEXT FOR ARGUING CASES BEFORE THE WORLD COURT.



FACULTY MEMBER LESLIE KELLEHER WORKED WITH COUNSEL FOR THE PARAGUAYAN GOVERNMENT.

Last-ditch efforts to halt the execution made the front pages of newspapers, as well as television news programs around the world. Such powerful players as U.S. Sen. Jesse Helms (R-NC), chairman of the Senate Foreign Relations Committee, and Secretary of State Madeleine Albright, as well as the human rights group Amnesty International, entered the fray, and an international court appointed by the United Nations agreed to expedited hearings in the case.

There were jurisdictional issues involving state, U.S. and international courts. And there were legal and moral issues as broad as the propriety of the death penalty, and as narrow as a reading of Article 36 of the Vienna Convention, an accord signed by the United States in 1963.

Amid this flurry of legal and media activity, students and faculty at the University of Richmond School of Law, and alumni and others from the Richmond area, were given front-row seats for what became a complex and potentially far-reaching controversy that promises to continue long after the injection of a lethal substance into Breard's veins ended his life.

"There were reporters in and out of here" up to the time of the execution, seeking expert opinions, says Kristine Marzolf, associate dean of the law school. "There were all kinds of ramifications to the case. It was fascinating to sit here and listen to these discussions."

The law school's connections to the Breard case stemmed from the fact that he committed murder in Virginia, so his case wound through the Commonwealth's court system on its way to the U.S. Supreme Court in Washington and the International Court of Justice in The Hague, Netherlands.

What might have been a modestly interesting trial resting on a confession and an insanity defense turned into an international tug-of-war because of the way Virginia authorities handled Breard, who was born in Argentina and who held Paraguayan citizenship.

Under Article 36 of the Vienna Convention, aliens arrested in foreign countries must be told they have the right to contact the consul that represents their nation so they may be assisted in preparing a defense.

Aggravating the situation was the fact that Breard, against his lawyer's advice, declined a plea offer that would have spared his life. In their appeal, his law-

yers and those representing Paraguay contended that with the assistance he would have been given by Paraguay, Breard would have accepted the deal. Had he done so, he would be alive today.

Virginia officials conceded they did not notify Breard or the Paraguayan consul of his arrest, though the state court did appoint lawyers for him; and the issue of the Vienna Convention was never raised in the state court trial.

On appeal, Breard and Paraguay argued his rights had been violated as a result of the failure to advise him, and they went to the U.S. and the international courts seeking a stay of execution.

As Breard's case landed before the international court, and as his lawyers sought relief from federal appeals courts and Virginia Gov. Jim Gilmore, Philippe Sands, a professor at London University, was on campus as a 1998 Allen Chair Visiting Scholar. Sands is an expert on international law who has practiced before the international court.

On the law school faculty was Leslie Kelleher, associate professor, who came to the law school recently from private practice with the New York firm Debevoise and Plimpton. Debevoise and Plimpton had been hired by the Paraguayan government to represent it in legal action against Virginia officials in the U.S. Federal Court. Her old firm contacted Kelleher and asked her to work with them on the case in the Federal Court. The Richmond firm of McGuire, Woods, Battle & Boothe was counsel of record.

"This was a major case," Kelleher says, "maybe the first time a foreign government had sued state officials in a federal court."

Amnesty International also contends it is the first U.S. death penalty case to come before the international court.

And downtown, in the offices of the Richmond firm Hunton & Williams, was veteran litigation lawyer Robert F. Brooks, L'64. Brooks was still working through disturbing memories of the execution of a young Mexican he had represented recently by court appointment in a case with striking, painful parallels.

With all these resources available and such a fascinating case developing nearby, Sands put together programs for students, faculty, the media and the public. Brooks joined the discussion with his unique perspective, and other faculty were on hand to offer opinions and expertise.

"Philippe went into the logistics, the procedural issues that come with making presentations before the international court," says Kelleher. "This was a very good vehicle for that kind of discussion."

Brooks discussed his case, that of Mario Murphy, in which Article 36 of the Vienna Convention was raised in 1997 in a death penalty appeal that went unsuccessfully to the U.S. Supreme Court.

His case drew less attention, Brooks says, because Mexico, unlike Paraguay, was not a signatory to the Vienna accord and had little standing in the international court.

Still, he wrote Secretary Albright at that time, pointing out the possible implications such cases could have on Americans traveling abroad. Twenty lawyers from across the country joined him in expressing those concerns, Brooks says. They have identified about 60 similar cases across the country where foreigners are on death row despite not being notified of their rights under the Vienna Convention.

Such a gathering of knowledge and practical experience in so real a context "really shows students and everyone else that what we are dealing with are not just theoretical discussions," says Paul Zwier, professor of law. "This was an opportunity to show that academic discussions do have relevance beyond."

Speaking specifically of Kelleher, he says, "This was a great example of a faculty member working not just in an academic sense but also in the real world to bring about good advocacy and to encourage clear thinking on these issues."

Prompted by the discussions, Zwier and 11 other law school faculty wrote a letter to Gov. Gilmore asking that he consider staying Breard's execution. They pointed out the international questions the case raised and its implications, which include putting Americans at risk abroad.

Acting on an expedited basis, with the execution date approaching, the international court heard the case in April in a courtroom set up with phone links to accommodate media in the United States, South America and elsewhere.

Its ruling was unanimous, with the U.S. judge on the court voting with the 14 other judges.

Secretary Albright made a last-minute appeal to Gov. Gilmore for a stay of execution but Breard was executed as scheduled.

Gilmore, former attorney general of Virginia, said he did not grant the stay because to do so "would

transfer responsibility from the courts of the United States and the Commonwealth to the international court." He also cited Breard's confession to a particularly heinous crime.

Issues arising from the case remain before the international court, and questions of that court's authority relative to U.S. and state courts remain subject to debate.

Brooks says he continues to do interviews with media from across the country and from other countries on the issues raised here.

The State Department apologized to Paraguay for the Virginia authorities' failure to notify Breard of his rights.

Virginia Attorney General Mark Earley has since told all state law enforcement agencies to notify foreign nationals they arrest of their rights. The U.S. Justice Department also outlined in submissions to the Supreme Court changes in policies regarding the arrest of foreign nationals that have come about as a result of the case.

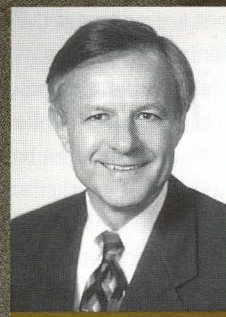
The Breard case and the activity on campus that developed around it "underscore the importance of our globalization program," says Dean John R. Pagan. Since his arrival as dean a year ago, Pagan has set as a priority preparing students here for work on international stages where different cultures and legal systems pose unusual challenges.

"We were able to bring the perspectives of several experts immediately to bear on a real problem," Pagan says. "Sands had argued cases in the World Court and he was able to give us an institutional context. Robert Brooks had litigated the same questions in another case recently, Leslie Kelleher was a lawyer in the case, and we had other people with intimate knowledge of the issues."

Pagan sat in on the discussion for students, media and the public, as well as on the faculty workshop.

"I found it absolutely fascinating to be surrounded by colleagues who were thoroughly familiar with a case that was receiving front-page coverage around the world," he says. "The experience was really exciting for the faculty and students. It certainly was for me."

A frequent contributor to Richmond Law, free-lance writer Walker covered the courts and law-related issues for the Richmond Times-Dispatch for five years.



A LUMNUS

ROBERT BROOKS,
U'64, REPRESENTED
MEXICAN MARIO
MURPHY IN A
SIMILAR CASE
IN 1997.

The Breard Case: From Virginia to The Hague

By Philippe Sands

THE EXECUTION of Angel Breard, a Paraguayan national, by the state of Virginia on the evening of Tuesday, April 15, poses great dangers to the international rule of law and to the protection of the interests of travelers worldwide. The death penalty was carried out in the face of widespread calls for its stay, including an Order for Provisional Measures from the International Court of Justice calling on the United States to “take all measures at its disposal” to ensure that Breard was not executed pending its final decision in this case.¹

The United States, Paraguay and more than 100 other nations are parties to the 1963 Vienna Convention, which provides a detailed procedural mechanism to be followed whenever a foreign national is detained by another state party to the convention. Authorities of the receiving state — in this case the United States — are obliged to inform “without delay” the national of his or her right to consular assistance and to have the consul advised of his detention.² If the national so requests, the authorities must “without delay” inform the consular officials of the sending state.

The 1963 Convention does not state what consequences flow from a violation of these obligations. The U.S. has admitted that in Breard’s case it vio-

lated this provision, and has offered an apology and undertaken to take steps to ensure that similar lapses do not occur again.³ But the United States was not willing to suspend execution in the face of the request from the International Court of Justice that it do so. Indeed, in its opinion on the point the U.S. Supreme Court seems to have concluded that there was no basis in federal law upon which it could give effect to the International Court’s order. From the perspective of the maintenance of the international rule of law, this is a deeply troubling conclusion.

I FOUND MYSELF IN Richmond, the capital of the Commonwealth of Virginia, as Allen Chair Visiting Scholar at the University of Richmond School of Law, while the hearings in the Breard case were taking place before the International Court. On the day of the hearings — Tuesday, April 7 — I met with one seminar group of Professor Eisen’s JD students, among whom there was a significant majority in favor both of the death penalty and its implementation in this case irrespective of what the International Court might say.

By the end of the two-hour seminar there had been a notable shift of views. The group unanimously favored the United States’ giving effect to any order

the International Court might indicate. What had persuaded the majority to shift its views? It was not, evidently, the finer points of legal detail. Rather, the determining factor appeared to be the more prosaic prospect that any one of them might, at some point in the future, find him- or herself in an obscure part of the world in need of urgent access to a U.S. consular official, and that access might be denied.

I was still in Richmond on the Thursday when the court handed down its order, indicating provisional measures to the effect that the United States should not execute Angel Breard pending the final decision by the court in the proceedings instituted against the United States. To a European outsider visiting the Commonwealth of Virginia it seemed inconceivable that some legal means could not be found, either at the state or federal level, to ensure that effect be given to the order of the International Court, all the more so where it had been obtained unanimously, speedily and without ambiguity.

After all, the United States more than any other country professed its commitment to the rule of law, and particularly to the observance of procedural rules obviously intended to protect the rights of individuals. One could but imagine what might follow if an American citizen abroad were not given access to a consular official and were subjected to a fate similar to Mr. Breard’s.

In these circumstances one would have thought that even if the governor could not find the wherewithal to postpone the execution (if only to ensure maximum protection for traveling Virginians) then the higher federal courts or, certainly, the U.S. Supreme Court would do so. In fact my rather naive (as it turned out) view was not shared by most of the faculty of the University of Richmond School of Law, the governor of the Commonwealth of Virginia, the state courts of the Commonwealth of Virginia, or the United States Supreme Court.

By the following Tuesday — April 14 — I was back in London. That evening by 6 votes to 3 the U.S. Supreme Court denied Breard’s petition for an original writ of habeas corpus, motions for leave to file a bill of complaint, petitions for certiorari, and applications filed by Breard and Paraguay for a stay of execution. The governor of Virginia refused a stay of execution, and later that evening Breard was executed.

Why did I find the decision not to postpone the execution of a self-confessed rapist and murderer so problematic? Why were I and so many others committed to the international rule of law so shocked by the news on BBC radio the morning of Wednesday, April 15? On reflection there seem to be a number of reasons.

The action of the United States was contemptuous of the principal judicial organ of the United Nations and, less directly, of the authority of the international judiciary more generally. It sent a bright green light to those other states which

may be minded to ignore the international rule of law, as articulated in decisions of international courts. And it indicated — particularly in the form of the opinion of the U.S. Supreme Court — an almost incomprehensible inability (or perhaps unwillingness) at the very pinnacle of the legal establishment in the United States to take international law seriously.

So blatant a disregard by the United States of the International Court's unanimous order could but undermine the authority of international justice and "the fundamental objective of every legal system, the effectiveness of judicial protection."⁴ That it did so in part for the reasons articulated in the Supreme court's opinion (see below) was, for me, all the more problematic.

In this regard it matters not an iota whether provisional measures indicated by the International Court were or were not legally binding *per se* (the legal effect of the Court's order of provisional measures remains controversial). What mattered was that the United States had countenanced an action that struck at the very basis for provisional measures, namely the preservation of a situation pending resolution of the dispute on the merits. That it had done so where human life was at stake increased the possibility for others to act equally outrageously.

One was bound to compare President Clinton's approach with that of President Carter who, following Iran's failure to comply with the International Court's order on provisional measures in the hostages case,⁵ justifiably accused Iran of show-

ing "contempt, not only for international law, but for the entire international structure for securing the peaceful resolution of differences among nations."⁶

THE SUPREME COURT gave two reasons to reject the argument that the claims by Breard and Paraguay under Article 36 of the 1963 Vienna Convention could be heard in the federal courts. It began by noting that it "should give respectful consideration to the interpretation of an international treaty rendered by an international court with jurisdiction to interpret," but then patently failed to do so.⁷ The first reason it gave was that "it has been recognised in international law that, absent a clear and express statement to the contrary, the procedural rules of the forum State govern the implementation of the treaty in that State."⁸

The Supreme Court referred to no international authority for this proposition, citing only to three of its own decisions, as well as Article 36(2) of the Vienna Convention which, as indicated below, hardly provides support for the proposition upon which the court wishes to rely. On the basis of these limited "authorities" the Supreme Court found that

"[i]t is the rule in this country that assertions of error in criminal proceedings must first be raised in state courts in order to form the basis for relief in habeas. [...] Claims not so raised are defaulted. [...] By not asserting his Vienna Convention claim in state court, Breard failed to exercise his rights under the Vienna Convention in conformity with the laws of the

IN FOLLOWING THE PATH IT CHOSE, THE SUPREME COURT HAS DONE A MAJOR DISSERVICE TO ITSELF, TO AMERICAN INTERESTS ABROAD, AND TO THE AUTHORITY OF ITS JUDICIAL COLLEAGUES AT THE INTERNATIONAL LEVEL."

~Professor Philippe Sands

United States and the Commonwealth of Virginia. Having failed to do so, he cannot raise a claim of violation of those rights now on federal habeas review."

Quite how this can be compatible with Article 36(2) of the Vienna Convention — which provides that the laws and regulations of the receiving State "must *enable full effect* to be given to the purposes for which the rights accorded under [Article 36] are intended" (emphasis added) — is unclear. The argument of the Supreme Court suggests an almost deliberate blurring of the distinction between, on the one hand, the entitlement of a state to determine for itself the manner in which a norm is implemented domestically with, on the other hand, the state's international legal obligation to give full domestic effect to an international norm.

The reasoning of the majority claims that a procedural norm establishing substantive rights — in this case an individual's right to be informed of his entitlement under the Vienna Convention to contact a consular official — can be gutted altogether by limiting the circumstances in which that individual can invoke the right or challenge its violation.

The Supreme Court's reasoning might be plausible if Article 36(1) only established rights for the individual. But it does not purport to do that. It unambiguously imposes an obligation on the state to inform the individual of his rights. That is and must be a continuing obligation if it is to have any meaningful consequence. What flows from the Supreme Court's approach is that the substantive content of the international law rule is irrelevant: it will always be subjected to the overriding right of the state to determine how that rule is to be implemented and when it may be invoked.

In these circumstances one may as well dispense with the substantive international rule altogether: according to the Supreme Court, states are free to determine how to implement such rules even if it means that no effect can be given to those requirements where the individual's failure to invoke them may be attributable to a wrong occasioned by the state. If the majority in the Supreme Court is right then many other international legal rights would fall into practical desuetude if they have been inadequately implemented domestically or

FACULTY BRIEFS

where domestic rules of civil or criminal procedure limit the circumstances in which the violation may be alleged.

The Supreme Court's second reason was that the ability of Breard and Paraguay to rely upon his Article 36(1) rights was barred by subsequent legislation: although the 1963 Vienna Convention had been in "continuous effect" since 1969 the United States Congress had, in 1996, enacted the Antiterrorism and Effective Death Penalty Act, which limited the circumstances in which Vienna Convention rights may be alleged.

Specifically, the 1996 Act provided *inter alia* that a habeas petitioner alleging that he was being held in violation of "treaties of the United States" would generally not be afforded an evidentiary hearing if he had "failed to develop the factual basis of [the] claim in State Court proceedings."⁹ By operation of this rule Breard was prevented from establishing that the violation of his Vienna Convention rights had prejudiced him: the subsequently enacted federal law limits the exercise of rights under the international convention.

This of course opens up the possibility that substantive obligations imposed upon a state by an international convention may be curtailed or otherwise circumvented by the subsequent adoption of domestic legislation establishing procedural bars to the invoking of international rights. This approach barely leaves room for the relevance of treaties, not to mention their "supremacy" within the scheme envisaged by the U.S. Constitution.

Reading the opinion of the Supreme Court one is left with the impression that it was more concerned with limiting its role as court of final appeal in death penalty cases and protecting the rights of the states than with the meaning and effect of the obligations and right flowing from Article 36(1) of the Vienna Convention, in particular the practical consequences of the international obligations of the United States. In fact the opinion of the Supreme Court had almost nothing to say about the nature or extent of any obligations and rights established by Article 36(1). In passing it is merely noted that the Vienna Convention "arguably confers on an individual the right to consular assistance following arrest."¹⁰

IN CERTAIN RESPECTS the case is a simple one. Article 36(1) unambiguously establishes obligations upon parties to the 1963 Vienna Convention to inform individuals of their right to communicate with and have access to consular officials of their home state when they get into trouble abroad.

The idea that Article 36(1) rights may be violated with impunity or be without practical or remedial consequence — apart from an admission of wrongfulness, an apology and the various measures subsequently taken by the United States, beyond which it considered "[n]othing more is required"¹¹ — will be of considerable concern to anyone who travels or has commercial interests abroad.

In following the path it chose, the Supreme Court has done a major disservice to itself, to American interests abroad, and to the authority of its judi-

cial colleagues at the international level. If the approach of the Supreme Court is right, then nations remain free to implement their international obligations more or less as they wish by limiting the circumstances in which those international obligations — or their violation — can be invoked.

As a matter of domestic law that may be acceptable. But the United States remains a member of the international community, bound by the 1963 Vienna Convention and ultimately the International Court's interpretation and application of it. One would have hoped that the Supreme Court might have taken some account of the International Court's order as indicating provisional views of what the Article 36(1) rights entailed, and what might be needed to avoid a subsequent violation of the United States by those rights.

If and when the merits of the Breard case are addressed by the International Court, it will apply the "fundamental rule of international law" that "interna-

tional law prevails over domestic law"¹² and that a state cannot plead as a defense the inadequacy of its domestic law.¹³

Assuming that Article 36(1) of the Vienna Convention creates enforceable individual rights to which real remedies attach (a matter which cannot be entirely free from doubt in the absence of clear international judicial authority) then the United States may be doubly responsible under international law: for failing to inform Mr. Breard of his rights when he was first arrested, and then of not allowing him to challenge that failure in state or federal courts. It remains to be seen what consequences might flow from that conclusion and what impact, ultimately, that might have in the Commonwealth of Virginia and elsewhere in the United States.

Philippe Sands is a reader in International Law, University of London (School of Oriental and African Studies); and Global Professor of Law, New York University School of Law. In April he was a visiting scholar in the 1998 George E. Allen Chair in Law lecture series.

Endnotes

¹ International Court of Justice, *Case concerning the Application of the Vienna Convention on Consular Relations (Paraguay v United States of America)*, order indicating Provisional Measures, 9 April 1998, www.icj-cij.org/idoctet/ipaus/ipausorder/ipausorder090498.html

² Article 36 provides:

"1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:
(a) consular officials shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph; [...]"

³ See statement of Ms. Catherine Brown, *Case concerning the Application of the Vienna Convention on Consular Relations (Paraguay v United States of America)*, Verbatim Record (uncorrected), CR98/7, 7 April 1998, www.icj-cij.org/idoctet/ipaus/ipauscr980407/ipauscr980407.html, at para. 2.27.

⁴ See European Court of Justice, Advocate General Tesouro, in *Case C-213/89, R v Secretary of State for Transport, ex parte Factortame Ltd. (No. 2)* 1991 1 AC 306, 360, cited in Laurence Collins, *Essays in International Litigation and the Conflict of Laws* (Clarendon Press, 1994), at p. 7.

⁵ *Case concerning United States Diplomatic and Consular Staff in Tebran (United States of America v Iran)* Provisional Measures, Order of 15 December 1979, ICJ REPORTS 1979, p. 7.

⁶ *Washington Post*, 22 December 1979, First Section, A16 (LEXIS cite).

⁷ Angel Francisco Breard 97-8214 (A-732) v Fred W. Greene, Warden; the Republic of Paraguay et al., 97-1390 (A-738) v James S. Gilmore, Governor of Virginia, et al.; In Re Angel Francisco Breard 97-8660 (A-767); Republic of Paraguay et al., No. 125 Orig. (A-771) v James Gilmore III, Governor of Virginia et al., Supreme Court of the United States, Opinion of 14 April 1998, 1998 U.S. LEXIS 2465.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Supra*, note [3].

¹² See ICJ, *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, Advisory Opinion, ICJ REPORTS 1988, p. 12, 34.

¹³ See R. Jennings and A. Watts, *Oppenheim's International Law*, 9th edition (Longman, 1992), m Vol. 1, pp. 84-5.

The Breard Case and the Virtues of Forbearance

By John G. Douglass

AT A TIME when the scheduled execution of Angel Francisco Breard made Virginia the focus of a groundbreaking controversy over the reach of international law into the domestic criminal process of the United States, law students and faculty at the University of Richmond had the unique opportunity to consider the case along with Philippe Sands, then a Visiting Allen Chair Professor at the University. Professor Sands is remarkable not only because of his impressive reputation as a scholar in international law, but also because of his experience as a practitioner before the International Court of Justice which was, at that very moment, wrestling with the Breard case.¹

Like Professor Sands, I was troubled at Virginia's execution of Breard in the face of the ICJ's Order for Provisional measures. At least symbolically, the episode undermines future efforts by the United States to convince other nations to take international law seriously. If the United States will not — or cannot, under our federal system — defer a state's irreversible action in a matter of life or death for a period of months at the request of an international tribunal interpreting a treaty to which the United States is a party, then we will be hard pressed to ask other nations to pay any heed to ICJ directives of lesser moment.

But I do not share in many of Professor Sands' broader concerns about the Supreme Court's ruling. Professor Sands argues that, under the Court's ruling, nations "are free to determine how to implement [substantive protections of international law]" and that such pro-

tections "can be gutted altogether by limiting the [procedural] circumstances in which [an] individual can invoke the right."

I believe the Court's ruling is considerably narrower. The Court claimed no power to impose special procedural limits on the implementation of international treaty rights. Instead, the Court ruled that such treaty rights are of equal dignity to rights guaranteed under our Constitution or by federal statute. They may be invoked, procedurally, in the same manner and subject to the same limitations under which a defendant might invoke, for example, claims under the Fourth or Fifth Amendments.

Such a concept carries its own, rather sensible, limits. Nations should be no more restrictive — procedurally — in enforcing treaty rights than they are in enforcing the rights of their own citizens under domestic law. To do less would, as Professor Sands points out, "gut" the force of international law.

But to expect more, it seems to me, is a political impossibility. It seems highly unlikely that Paraguay or any other signatory to the Vienna Convention believed that it had ceded authority to an international tribunal on otherwise routine matters of criminal procedure. It is possible, of course, that nations collectively might agree to create "international rules of criminal procedure." But it does not appear to me that the Vienna Convention established any such rules.

Instead, it requires only that "full effect ... be given to the purposes for which the [treaty] rights ... are intended." The courts of Virginia and the United States did exactly that. Unfortunately for Breard, he attempted to invoke those rights, belatedly, in a case

where the "full effect" of such rights was essentially nil. A conversation with consular officials would have made no difference.

"On the merits," then, I find little reason to fault the Court's decision. What is most troubling to me, however, is that the international conflict engendered by the Breard episode was so avoidable. As three Supreme Court justices pointed out, the Court had discretion to stay Breard's execution irrespective of the ICJ order, simply to allow the normal time for considering the pending petitions for certiorari.

Gov. Jim Gilmore possessed the power to forbear from execution, even if only for a few months, simply as a matter of deference to the ICJ or to the secretary of state and the president. He could easily have done so while still maintaining that he had power to do otherwise. Even a brief delay might have given the ICJ time to consider the merits and do what international tribunals ought to do: fashion an opinion designed to promote treaty compliance without intruding too deeply into the domestic legal process.²

Instead, as Professor Sands rightly concludes, Virginia's rush to irreversible action has thrown down a gauntlet which the ICJ is unlikely to ignore. Paraguay's case is still pending against the United States and Virginia's haste has diminished the prospect of a "diplomatic" resolution. If, as Professor Sands suggests, the ICJ ultimately rules that "international law prevails over domestic law," and that the Vienna Convention creates "enforceable individual

rights to which real remedies attach," then we may be headed for an unfortunate showdown with an unpredictable ending.

Perhaps the ICJ will prove to be a paper tiger. Though it seems unlikely in the current political climate, perhaps Congress might view our international obligations seriously enough to implement the treaty with legislation that might expand the power of federal courts to review state action in cases of alleged treaty violations.

Neither result would benefit Virginians, who would like to preserve local control over the administration of criminal justice, but must compete in a global economy which will become increasingly dependent upon the enforceability of international law. That dilemma may well arise during future international "trade missions" when Virginia's governor sits across the table from his counterpart in, just for example, Paraguay.

Sometimes power is preserved most effectively through forbearance. John Marshall proved that maxim almost 200 years ago when, by declining to exercise powers Congress had attempted to give the Court, he preserved for the long run the Court's fundamental powers of judicial review.³ Gov. Gilmore would have done well to heed that advice. It remains to be seen whether the ICJ will follow Marshall's example.

John G. Douglass, an assistant professor of law at the University of Richmond School of Law, teaches criminal law and procedure. Previously he was chief of the criminal section in the U.S. Attorney's Office in Richmond.

Endnotes

¹ Breard never claimed that he was affirmatively denied access to the Paraguayan consul. He complained only that arresting authorities violated the Vienna Convention by failing to *inform* him of his right to contact the consulate. Apparently, neither Breard — who had been living in the United States for about six years before he raped and murdered one of his Arlington County neighbors — nor his trial counsel gave any thought to contacting the consulate before his conviction or during the process of direct appeal to the Supreme Court of Virginia. The matter was first raised when he filed a petition for habeas corpus in federal court. See *Breard v. Netherland*, 949 F. Supp. 1255 (E.D. Va. 1996), *aff'd sub nom* *Breard v. Pruett*, 134 F.3d 615 (4th Cir. 1998). The Federal District Court rejected the claim, finding that it was procedurally defaulted when Breard failed to raise it in state court and, further, that Breard failed to show any cause or prejudice for the default.

² For example, the ICJ might rule, and still could rule, (1) that signatory nations may follow their own rules of criminal procedure as long as they "give full effect" to the "purpose" of the Convention, and (2) that the treaty violation in Breard's case had no effect on his conviction or sentence, so that the purposes of the convention were not frustrated in his case.

³ *Marbury v. Madison*, 1 Cranch 137, 2 L. Ed. 60 (1803).

A COUNSELOR AND A GENTLEMAN

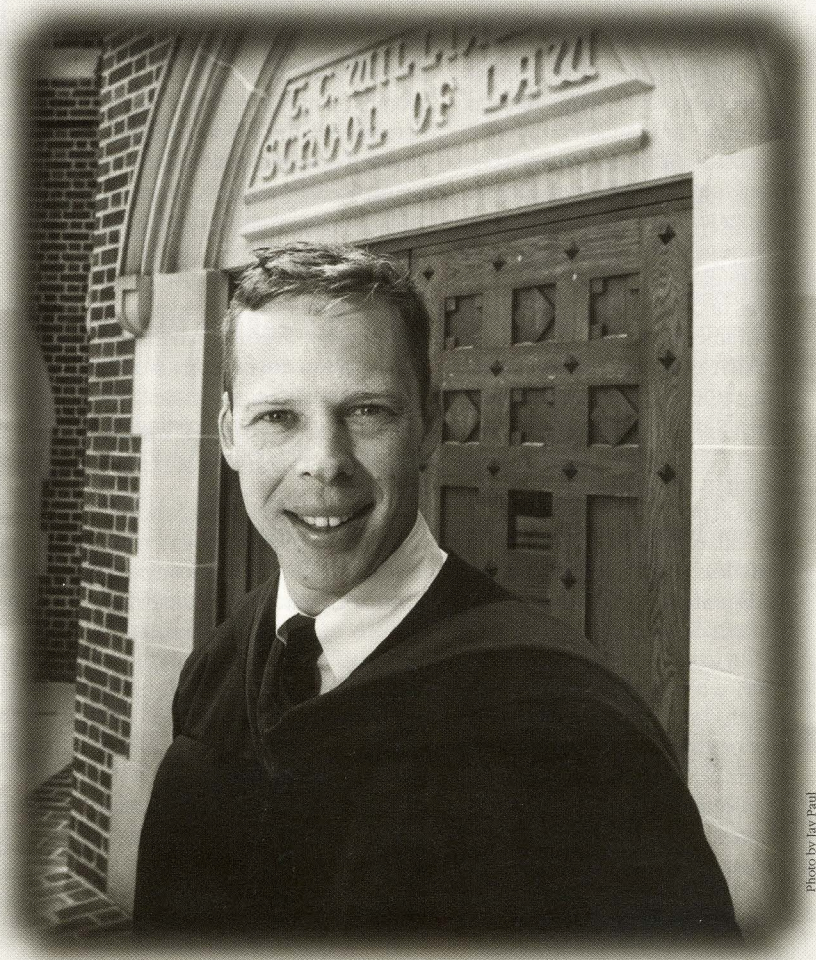
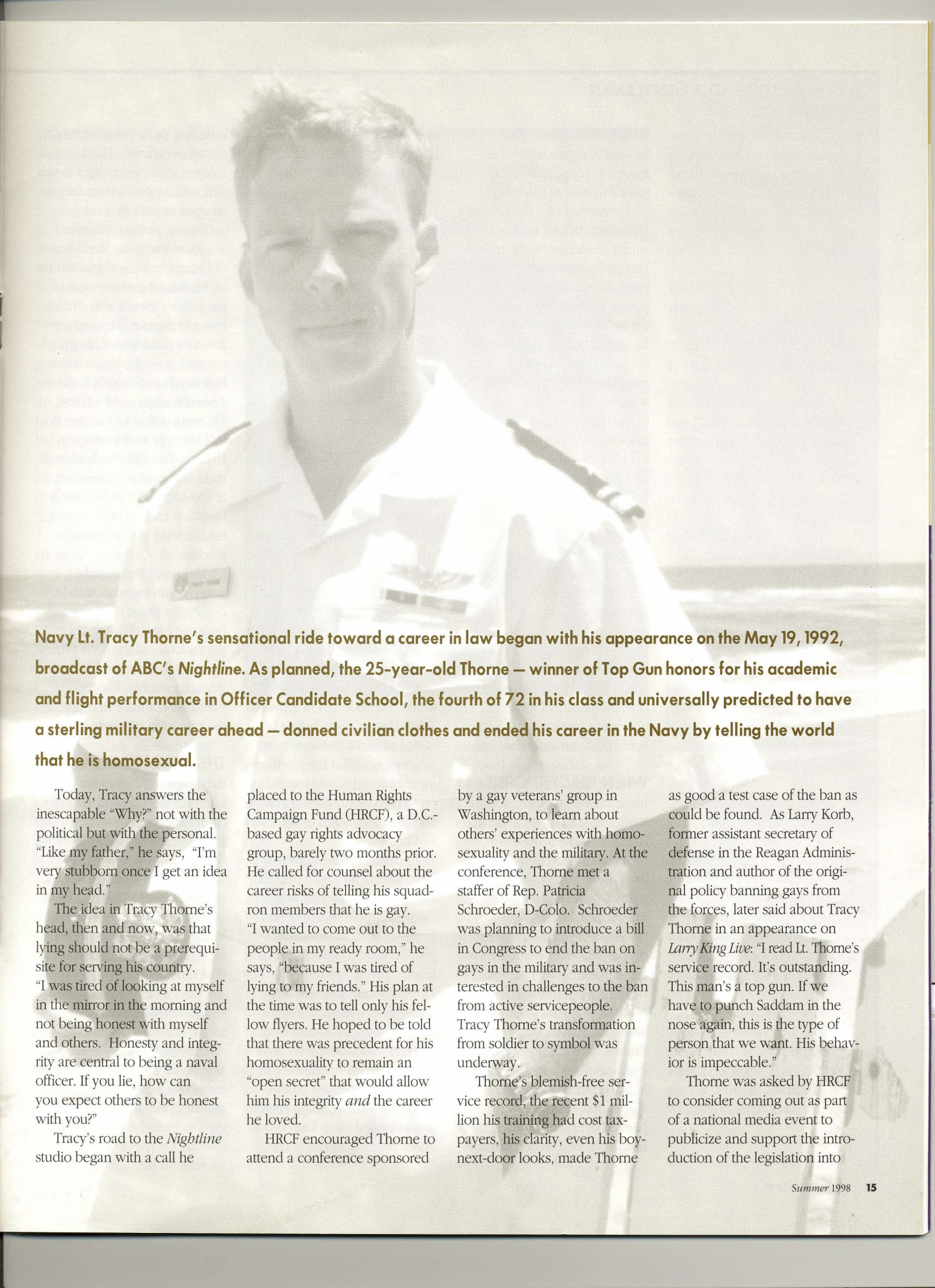


Photo by Jay Faut

Tracy Thorne may be the first attorney in the Class of '98 to have his case heard before the United States Supreme Court.

He'd rather be in the cockpit of an A-6 Intruder.

BY KIMBERLEY BOLGER



Navy Lt. Tracy Thorne's sensational ride toward a career in law began with his appearance on the May 19, 1992, broadcast of ABC's *Nightline*. As planned, the 25-year-old Thorne — winner of *Top Gun* honors for his academic and flight performance in Officer Candidate School, the fourth of 72 in his class and universally predicted to have a sterling military career ahead — donned civilian clothes and ended his career in the Navy by telling the world that he is homosexual.

Today, Tracy answers the inescapable "Why?" not with the political but with the personal. "Like my father," he says, "I'm very stubborn once I get an idea in my head."

The idea in Tracy Thorne's head, then and now, was that lying should not be a prerequisite for serving his country. "I was tired of looking at myself in the mirror in the morning and not being honest with myself and others. Honesty and integrity are central to being a naval officer. If you lie, how can you expect others to be honest with you?"

Tracy's road to the *Nightline* studio began with a call he

placed to the Human Rights Campaign Fund (HRCF), a D.C.-based gay rights advocacy group, barely two months prior. He called for counsel about the career risks of telling his squadron members that he is gay.

"I wanted to come out to the people in my ready room," he says, "because I was tired of lying to my friends." His plan at the time was to tell only his fellow flyers. He hoped to be told that there was precedent for his homosexuality to remain an "open secret" that would allow him his integrity *and* the career he loved.

HRCF encouraged Thorne to attend a conference sponsored

by a gay veterans' group in Washington, to learn about others' experiences with homosexuality and the military. At the conference, Thorne met a staffer of Rep. Patricia Schroeder, D-Colo. Schroeder was planning to introduce a bill in Congress to end the ban on gays in the military and was interested in challenges to the ban from active servicepeople. Tracy Thorne's transformation from soldier to symbol was underway.

Thorne's blemish-free service record, the recent \$1 million his training had cost taxpayers, his clarity, even his boy-next-door looks, made Thorne

as good a test case of the ban as could be found. As Larry Korb, former assistant secretary of defense in the Reagan Administration and author of the original policy banning gays from the forces, later said about Tracy Thorne in an appearance on *Larry King Live*: "I read Lt. Thorne's service record. It's outstanding. This man's a top gun. If we have to punch Saddam in the nose again, this is the type of person that we want. His behavior is impeccable."

Thorne was asked by HRCF to consider coming out as part of a national media event to publicize and support the introduction of the legislation into

“I’M THE SAME TRACY THORNE I WAS BEFORE I CAME OUT. I CAN PUT BOMBS ON TARGET ON TIME. LET ME SERVE ON MY MERITS AND DON’T BASE POLICY ON STEREOTYPES AND MISCONCEPTIONS THAT ARE ROOTED IN HATRED AND BIGOTRY.”

- Tracy Thorne, L’98

Congress, planned for six months to a year hence. He agreed to consider it and returned to base in Norfolk, Va.

Simultaneously, Bill Clinton’s campaign rhetoric featured strong challenges to the military ban on homosexuals. “There have always been homosexual people in the military, and I think the ban should be gone,” he said in New Hampshire. In the belief that this would be an early agenda item if Clinton were elected, the introduction of the bill was moved up dramatically. Thorne was asked to decide in a matter of days whether he would be willing to endanger his career, embroil himself in a lengthy legal battle and rally the support of his family.

He said yes.

“I really believed in the legislation and in Clinton,” Thorne says. “I believed the ban would be lifted and I would be reinstated.” He pauses. “In retrospect, I would say that everyone, the president included, was naive about what Clinton could do as an individual.”

WHEN TRACY THORNE told his mother he was gay, the first thing she said was that she still loved him. The second was, “Well, it’s a good thing they can’t throw you out of the military for that any more.” Mrs. Thorne couldn’t have been more wrong.

Despite support and acceptance from many in his squadron when he returned from the *Nightline* appearance, the Navy immediately removed Tracy Thorne from the ready room and began discharge proceedings. His security clearance was suspended, his name was painted over on the attack jet he had flown and, as one member

of his squadron put it, it was as if Thorne had “disappeared.”

In the year it took to discharge Thorne, the Navy sought to isolate and discourage him. His first post-*Nightline* assignment was to organize a chili cook-off for the base admiral. Next, he was assigned to help the base game warden stage a deer hunt. Finally, the million-dollar bombardier navigator was closed in a room to operate a photocopy machine for six months. “They were clearly hoping I would quit,” Thorne remarks.

On a CNN interview in January 1993, Thorne argued that it is the military’s treatment of gays, and not their presence alone, that creates divisions and tension. “Homosexuals who are performing well in their jobs are not breaking down morale and good order. What breaks down morale and good order is when admirals say that gays are no good, that they can’t do the job, they’re effeminate, they’re weak.” He added, “I’m the same Tracy Thorne I was before I came out. I can put bombs on target on time. Let me serve on my merits and don’t base policy on stereotypes and misconceptions that are rooted in hatred and bigotry.”

In numerous television and radio interviews that followed, Thorne proved an able advocate: composed, heartfelt and informed. In response to an angry and scattered on-air attack from a retired Navy admiral, Thorne responded, “Sir, ask yourself one question. How many homosexuals died at Midway?” A trenchant query, given the then-recent revelation that once military deployment began in the Gulf War, the Pentagon instituted “stop loss” procedures, freezing all discharges

including those on grounds of sexual orientation. Homosexual soldiers were sent to fight in the Gulf and, upon their return, discharged as unfit to serve.

Thorne and his attorneys sought to make his Naval Board of Inquiry hearing a referendum on his record and his value to the military, thus a true challenge to the ban. Testimony was given by members of his squadron and, notably, by his father, Roscoe Thorne (see “A Father’s Testimony,” page 18.) Tracy Thorne testified on his own behalf for over 30 minutes, concluding, “You are the leaders of men. If you allow yourselves not to question a policy that is based on ancient hatreds, you are allowing yourselves to be machines.”

The result was a rubber-stamp recommendation to honorably discharge Lt. Thorne from the Navy. Thorne hoped the secretary of the Navy would reject the recommendation; when he did not, Thorne vowed to continue his fight all the way to the Supreme Court.

THE CHAIN OF EVENTS over the next two years included Clinton’s election and Thorne’s court-ordered reinstatement and assignment to Naval Air Systems Command in Washington, D.C., where he was awarded a Navy Achievement Medal for increasing the productivity of his unit. Tracy Thorne was discharged from the Navy a second and final time on March 6, 1995. Navy Secretary John Dalton signed both his medal authorization and his discharge.

A negative appellate decision about another Navy flier’s case convinced Thorne and his attorneys that the time was not right to press his case forward. Civilian Thorne decided to get on with his life.

TRACY THORNE IS an unlikely social crusader. The son of a surgeon, he and a brother and sister were raised in comfort in Florida. On a recent trip back to his boyhood home in Tampa he was struck by the "perfect boy's life" he had lived, surrounded by friends, running home to waterski after school.

His love of airplanes began in a city park near his grandmother's house, at the display of an Air Force jet from the Korean War, mounted on a pedestal. He overcame his father's resistance and got his pilot's license at 18. At Vanderbilt University, he was a good student and president of his fraternity.

When Tracy told his family about the *Nightline* plan, they were frightened. "They were afraid that someone would try to harm me physically. They told me it was too soon to try it, that I should let others test it first."

About his decision to persist, Thorne says, "I don't want to convey that it was a very difficult process. My decision was clear to me. There seemed to be no looking back." The history of civil rights struggle in America is seeded with these matter-of-fact braveries: black children in Little Rock, Ark., in 1957 walk into classrooms in white schools. Goodman, Schwerner and Chaney register blacks to vote in Mississippi in 1964. Rosa Parks remains seated on her bus ride home.

When asked, Thorne will tell you that the response to him and his decision has been overwhelmingly positive. He will report that he has received one piece of hate mail to 1,400 mis-



sives of support. When he arrived back in Norfolk after *Nightline*, there were 32 kind messages blinking on his answering machine. He saved the tape.

You must review transcripts from the call-in talk shows he participated in to experience the ire and paranoia he also fielded. An episode of *Larry King Live* began with a retired Marine colonel insisting that Thorne must be sexually obsessive. Next came callers, emboldened by anonymity: "He is not a lieutenant. He is not an officer. He is an aberration." Then, a threat from Napa, Calif., that, "If you were in ground forces, the

minute action started, the back of your head would be gone."

A conversation with Tracy Thorne leads to the inevitable question: if he had it to do all over, would he do it again? His answer is "yes" — without hesitation. He adds that he would be more careful about involving other servicemen who wanted to support him. He deeply regrets that testifying on his behalf has badly damaged the careers of several friends in his squadron.

The other pressing question that talking with Tracy Thorne provokes is the one you ask yourself: would I, with the certainty of losing something I

loved, maybe forever, and the possibility of becoming the object of hatred and violence, stand up for what I believe? It's more difficult for most of us to answer that question than it was for Tracy Thorne.

THORNE'S INTEREST in law sprang in part from the inanities he saw during his discharge. "I saw the hysteria . . . how easy it was for people to get away from the facts. It was a circus." He shakes his head. "I mean, at one point you had front-page coverage of U.S. senators from the Armed Services Committee, boarding battleships with tape measures for the sole purpose of measuring the distance between the urinals on board."

In contrast, Thorne's work with his attorneys and his courtroom impressions were of an ordered environment, where facts are weighed and conclusions informed. "I thought it was a way I could achieve a higher social good," he says. And does he still think so? Yes, he says. "Law school disciplined my mind. Law is a very different thought process than I practiced in the military."

Asked about plans for his future, Thorne says, simply, "I want to live a life, be a productive part of my community, to have people look at me and say, 'he's a great lawyer,' not, 'he's a homosexual.'" And he shuns a political career. "I'm not very good at saying all the things people want to hear." He laughs.

He speaks warmly of the three years he spent at Richmond Law. He and his partner, Michael Begland, who just began his career at Hunton & Williams in Richmond, attended

the law school and graduated in the Class of '98. Both say they had "nothing but a positive experience here." The best part, they agree, is that they were treated exactly the same as everyone else.

While at Richmond, Thorne was inspired to pursue his case again. Two of his law professors, John Douglass and Gary Leedes, helped him to write an appeal, which was denied in April. Now his original attorneys are filing a petition for certiorari to the U.S. Supreme Court. If it is unsuccessful, Thorne says, "I know eventually it will be won. When that happens, even if I'm 60 years old, I'm going to go down to the Navy recruiting office and tell them I want back in. I won't expect to fly, but I want to be part of the Navy."

Thorne's father wanted to testify on his behalf again at his second Board of Inquiry hearing, but was killed in a plane crash two weeks earlier. Before he died, though, he knew of and strongly supported Tracy's plan to go to law school. "He liked the idea of my having a profession where I could be independent. He told me, 'No matter what happens, you can always hang out a shingle and make a living.'"

It was the loving counsel of a father who had witnessed his son's loss and wished never to see it again.

It is telling that Thorne does not aspire to the safety of that practice his father envisioned, but to a career as an attorney in public service.

A FATHER'S TESTIMONY

Excerpts from testimony given by Dr. Roscoe Thorne at the Naval Board of Inquiry hearing to determine whether to discharge his son, Tracy Thorne, for being homosexual.

My name is Roscoe Thorne and I'm a surgeon. It was 25 years ago that my wife went into the delivery room and I, a young physician, waited outside. The doctor came out and handed me a baby boy. I took him and held him in my hands, and I thought he was just fine. But until I heard my son testify here, I didn't realize what a great man was given to me 25 years ago.

Today you are here worrying about a 25-year-old man who has already proven himself beyond a shadow of a doubt as a leader, as a commander, as a superb individual. I'm happy to say I'm his father and I wish I could be like him.

I want to talk a little bit about myself. I was born in the Deep South – Jackson, Miss. After high school, in 1950, I joined the 31st Infantry Division, the Dixie Division – 16,000 white-faced men. There were a few Italians, a few Jews, a few Spaniards, but there weren't any black faces. When my term of enlistment was up, I enrolled in the University of Mississippi. At "Ole Miss" in 1953

we had a cross section of the population – Greeks, Jews, Irishmen, Catholics – but there wasn't a black face there.

I graduated from the University of Mississippi with a pharmacy degree, and I went to practice in a corner drugstore in Jackson down the street from the Baptist Hospital. One afternoon I looked over and saw a young nurse sitting at the soda fountain. She was a registered nurse and had on a pretty white uniform, but she was a black person. My boss nudged me and said, "Roscoe, go over there and run her off."

I was 25 years old – Tracy's age – but I had been prejudiced by my family, by my school, by my United States Army, and by my college. And so I went over and I said, "You're going to have to leave. We don't want you in here." And this young nurse looked at me – she was about my age – and tears ran down her cheeks and she left. I felt so bad. I wonder where she is today. I know she'd remember that I chased her out of the drugstore.

In 1959 I went to medical school in Miami. I dissected bodies in anatomy class, and whether they were black or Oriental or Anglo-Saxon, inside they all looked the same. When they got sick and you gave them medicine, they all pretty much reacted the same way. Then I interned at Tampa General, a segregated hospital. We liked to think that we gave everyone the same treatment, but we didn't.

In 1964, when I was in private practice, the government said that we were going to have to desegregate our hospitals. We thought, how in the world can we do that? Well, the government insisted. So we put all of these blacks, Italians, Poles, Germans, Jews, Hispanics, the homosexuals, the bisexuals, the heterosexuals together and we treated them. And things were better for it, and they still are today.

Now, I've been around long enough to know what kind of meeting this hearing is. And I want you officers to know that if you allow anything to interfere with this young man's ability to serve his country as he so ably has proven he can – then I want each of you, when you go home tonight, to find a good friend, sit down with that friend, and tell him or her what you allowed to happen today.

You tell that friend that you've allowed something to happen that, deep down, you don't feel is real good, and you feel bad about it. If you tell it to one person you trust, you'll feel better, and that person will have heard the truth. If one person hears the truth, then you've got a victory, and that's what America is all about.

Don't Ask, Don't Tell: A Policy Failure and Constitutional Challenge

By Rodney A. Smolla

IN APRIL 1998 the United States Court of Appeals for the Fourth Circuit summarily affirmed the dismissal of a challenge brought by Tracy Thorne, a graduate of the University of Richmond School of Law, to the Department of Defense's controversial "don't ask, don't tell" policy governing gays in the military.¹ Thorne had little chance in the Fourth Circuit, which had already sustained the policy in a 1996 en banc decision.² Challenges to "don't ask, don't tell" have failed throughout the country, and so far the Supreme Court has not been willing to accept a case for review.³

Shortly after President Clinton's election in 1992, he announced an intention to fully integrate gay and lesbian persons into the American military. But Gen. Colin Powell let it be known that he was opposed to this policy, and ultimately "don't ask, don't tell" was conceived and implemented as a compromise position. The "don't ask, don't tell" policy dropped the military's former position that "homosexuality is incompatible with military service." Under the "don't ask, don't tell" regime the military no longer asks new recruits questions about their sexual orientation.

Regulations implementing the new policy stipulate that sexual orientation is considered a personal and private matter, and does not bar entry into service or continued service, un-

less manifested by homosexual conduct.⁴ Yet the policy continues to require discharge of any service member who engages in or intends to engage in homosexual acts,⁵ or who makes a statement that he or she is homosexual and fails to rebut the presumption, raised by that statement, that he or she has a propensity to engage in homosexual acts,⁶ or who has married or attempted to marry a person of the same sex.⁷

Four themes have dominated judicial analysis of "don't ask, don't tell." First, courts have been unwilling to second-guess Congress and the executive branch on matters of military policy.⁸ Second, courts have been unwilling to recognize a constitutional right of privacy sufficiently expansive to encompass the freedom of adults to engage in private consensual homosexual conduct.⁹

Third, courts have been unwilling to treat homosexuals as a "suspect class" or "quasi-suspect class," which would make discrimination against them subject to higher standards of judicial scrutiny under the Equal Protection Clause.¹⁰ And fourth, courts have been unpersuaded that the "don't tell" prong of the policy violates the First Amendment free speech rights of service personnel.¹¹ Applying by default the highly-deferential "rational basis" standard of review, courts — with some notably eloquent dissenting judicial voices¹² — have refused to overturn the policy.

I believe that "don't ask, don't tell" is misguided social policy, and that it is time for the United States Supreme Court to step forward with the moral leadership and doctrinal ingenuity to strike it down.

There is little doubt that "don't ask, don't tell" has hurt gays and lesbians more than it has helped them. The Pentagon reports an increase of 67 percent in the dismissals of gays from the services.¹³ Perversely, a policy intended to be ameliorative appears to have actually increased gay-baiting. A gay person harassed by others because of his or her sexual orientation must stand mute and take it, for fear that reporting the harassment will be treated as a form of "telling" triggering the policy.¹⁴ Indeed, very little of the "telling" that has formed the predicate for enforcement of the policy appears to have been truly voluntary on the part of the "teller."¹⁵

The First Amendment challenges to "don't ask, don't tell" have failed because courts have interpreted the policy as not penalizing any act of speech. The service person's *telling* of his or her homosexuality is not what precipitates disciplinary action, the courts have reasoned. Rather the statements made by the service person are merely used as presumptive *evidence of conduct* that the military has the right to proscribe. Because the First Amendment generally does not prohibit the mere *evidentiary*

use of speech to establish the elements of a crime, courts have not been persuaded that "don't ask, don't tell" violates freedom of speech.¹⁶

But this only begs the underlying question of whether homosexual conduct between consenting adults in private ought to be protected as part of a constitutional right of privacy, and whether discrimination against gays and lesbians ought to be treated as similar to race discrimination — or at the very least, gender discrimination — and thus subjected to higher levels of judicial scrutiny. Only the Supreme Court can ultimately make the bold jurisprudential moves that would bring about these changes.

In *Bowers v. Hardwick*,¹⁷ the landmark 1986 decision upholding Georgia's sodomy law, the Supreme Court missed the opportunity to strike a blow against centuries of prejudice and discrimination against gays and lesbians. The time has now come to repudiate *Bowers*. In 1996 the Supreme Court in *Romer v. Evans*¹⁸ took the first step in this direction, holding unconstitutional a Colorado law that prohibited local governments from passing civil rights legislation protecting gays and lesbians.

Romer did not confront *Bowers* directly, instead holding that the Colorado law lacked even the minimal rationality required under "rational basis" equal protection review. But if *Romer* was vague on a

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— Professor Rodney A. Smolla

FACULTY BRIEFS

doctrinal level, it appeared both more resolute and resonant in its moral principle. The Court stated:

It is not within our constitutional tradition to enact laws of this sort. Central both to the idea of the rule of law and to our own Constitution's guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance. "Equal protection of the laws is not achieved through indiscriminate imposition of inequalities." Respect for this principle explains why laws singling out a certain class of citizens for disfavored legal status or general hardships are rare. . . .

A second and related point is that laws of the kind now before us raise the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected. "[I]f the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a legitimate

governmental interest." Even laws enacted for broad and ambitious purposes often can be explained by reference to legitimate public policies which justify the incidental disadvantages they impose on certain persons. Amendment 2, however, in making a general announcement that gays and lesbians shall not have any particular protections from the law, inflicts on them immediate, continuing, and real injuries that outrun and belie any legitimate justifications that may be claimed for it.¹⁹

The United States military helped lead the push for racial equality. It has the chance to lead again. If it does not, the Supreme Court should force it to do so. It is time for gay and lesbian citizens to be brought within the unabridged protection of the United States Constitution, to share without discrimination in the full promise of American life.

Rodney A. Smolla has been appointed as the first full-time holder of the George E. Allen Chair in Law at the University of Richmond School of Law. A leading scholar on constitutional law and the First Amendment, he is the author of seven books and numerous articles.

Endnotes

- ¹ Thorne v. United States Department of Defense, 1998 WL 163632 (4th Cir. 1998) (per curiam) (unpublished opinion).
- ² Thomasson v. Perry, 80 F.3d 915 (4th Cir.) (en banc), cert. denied, 117 S.Ct. 358 (1996).
- ³ See Holmes v. California Army National Guard, 124 F.3d 1126 (9th Cir. 1997); Richenberg v. Perry, 97 F.3d 256 (8th Cir. 1996); Able v. United States, 88 F.3d 1280 (2d Cir. 1996); Thomasson v. Perry, 80 F.3d 915 (4th Cir.) (en banc), cert. denied, 117 S.Ct. 358 (1996).
- ⁴ DOD Directive 1332.30 at 2-1(C).
- ⁵ See 10 U.S.C. § 654(b)(1); DOD Directive 1332.30 at 2-2(C)(1)(a).
- ⁶ See 10 U.S.C. § 654(b)(2); DOD Directive 1332.30 at 2-2(C)(1)(b).
- ⁷ See 10 U.S.C. § 654(b)(3); DOD Directive 1332.20 at 2-2(C)(1)(c).
- ⁸ See Holmes v. California Army National Guard, 124 F.3d 1126, 1133 (9th Cir. 1997).
- ⁹ See Thomasson v. Perry, 80 F.3d 915, 928 (4th Cir.) (en banc), cert. denied, 117 S.Ct. 358 (1996).
- ¹⁰ *Id.*
- ¹¹ *Id.* See also, Pruitt v. Cheney, 963 F.2d 1160, 1163-64 (9th Cir. 1991), cert. denied, 506 U.S. 1020 (1992); Schowengerdt v. United States, 944 F.2d 483, 489 (9th Cir. 1991), cert. denied, 503 U.S. 951 (1992).
- ¹² See Thomasson v. Perry, 80 F.3d 915, 949 (4th Cir.) (Hall, J., dissenting) (Judge Hall's dissenting en banc opinion was joined by Judges Ervin, Michael, and Motz); Holmes v. California Army National Guard, 124 F.3d 1126, 1137 (9th Cir. 1997) (Reinhardt, J., dissenting).
- ¹³ See Garry Wills, "Military Not Blazing Trail with Gay Policies," *Albany Times Union*, May 1, 1998, at A15.
- ¹⁴ *Id.*
- ¹⁵ *Id.*
- ¹⁶ See Wisconsin v. Mitchell, 508 U.S. 476, 489 (1993); Dawson v. Delaware, 503 U.S. 159, 165 (1992).
- ¹⁷ 478 U.S. 186 (1986).
- ¹⁸ 517 U.S. 620 (1996).
- ¹⁹ *Id.* At 633-344 (internal citations omitted).

Troy appointed to professorship

Anthony F. Troy, L'66, has been named the Conard B. Mattox Distinguished Adjunct Professor of Law at the University of Richmond School of Law. Troy will teach a new upper-level elective course, Law, Politics and Public Policy, at the law school this fall.

"Troy brings to the law school his distinguished record of public service in both private practice and the public sector," says W. Clark Williams Jr., associate dean of the law school and professor of law. "His rich variety of professional experiences will add immeasurably to the depth and quality of the course he will be teaching."

After graduating from the law school, Troy became an assistant attorney general of Virginia. In 1972 he joined the Washington, D.C., firm of Colston & Shapiro, returning to Virginia in 1974 when he was named deputy attorney general. He became chief deputy attorney general the following year and was named attorney general in 1977.

Troy joined Mays & Valentine in 1978. Now a partner and chair of the firm's legislative team, he is active as a lobbyist in the Virginia General Assembly. He specializes in both civil and criminal litigation and has argued cases in state and fed-

FACULTY ACCO

The Board of Trustees of the University of Richmond recently granted tenure to **Dr. Azizah Y. al-Hibri**, **Mary L. Heen** and professor **Rodney A. Smolla**, holder of the George E. Allen Chair in Law. Heen and al-Hibri also were promoted to the rank of professor. **Kelly Bartges** was promoted to the rank of associate clinical professor of law.

Heen's contribution on the child tax credit was included in the book, *The Taxpayer Relief Act of 1997*, a joint publication of the ABA Section of Taxation and the American Law Institute-American Bar Association Committee on Continuing Professional Education.

Professor **Ron Bacigal** recently published a second edition of *The Admissibility of Evidence in Virginia* and *The Trial of Capital Murder Cases in Virginia*. He also published the third edition of *Virginia Jury Instructions* with Professor **Michael J. Herbert**.

At the invitation of the U.S. Embassy in Bratislava, Professor **John Paul Jones** traveled in April to the Slovak Republic for

a week of discussions with Slovakian legal experts on constitutional problems associated with the republics' five-year-old constitution. He also lectured on constitutional law at Comenius University in Bratislava and at J.P. Safarik University in Kosice. In addition, in May 1997 Jones advised the Republic of the Ukraine in drafting its new Judiciary Act and in August 1997 advised the Constitutional Court of the Federation of Bosnia Hercegovina and the Srpska Republic in drafting its rules of procedure.

Jones also spent a week in Tirana, Albania, in May 1998 chairing a conference on separation of powers for the American Bar Association's Central and East European Law Initiative. Also for the ABA initiative, he chaired a week-long workshop in Washington, D.C., in March on constitutional construction for members of the Constitutional Commission of the Parliament of Albania.

The Virginia Bar Association conferred on Professor **Robert E. Shepherd Jr.** the Pro Bono



Photo by Thomas Kofcsich

Conard Mattox and Anthony Troy

eral courts, including the United States Supreme Court. He has written numerous articles for practicing lawyers in the fields of antitrust, environmental regulation, evidence and legal ethics.

Troy plays an active role in professional organizations, including the Virginia State Bar,

the District of Columbia Bar and the Council for the Future of the National Judicial College. A fellow in the Virginia Law Foundation and the American Bar Association, he is listed in *The Best Lawyers in America*.

The professorship is a result of a gift from Conard B. Mattox Jr., R'49, G'49 and L'51. The first three-time graduate of the University, Mattox was the city attorney of Richmond from 1964 until his retirement in 1981. Mattox is a former recipient of an Alumni of the University of Richmond Award for Distinguished Service.

ACCOMPLISHMENTS

Publico Award for outstanding service to the community, particularly in the fields of juvenile justice and youth advocacy.

Visiting Professor **Graham Strong** published "The Lawyer's Left Hand: Nonanalytical Thought in the Practice of Law," 69 *University of Colorado Law Review* 759 (1998).

Professor **Azizah Y. Al-Hibri** published "Islam, Law and Custom: Redefining Muslim Women's Rights," 12 *American University Journal of International Law and Policy* 1 (1997) and "Faith and the Attorney-Client Relationship: A Muslim Perspective," 66 *Fordham Law Review* 1131 (1998).

Essays on Legal History in Nineteenth Century Virginia, by **Dr. W. Hamilton Bryson**, professor of law, was recently published by the William S. Hein Co.

Professor **Paul J. Zwier** addressed a conference of international lawyers from London, Paris, Frankfurt, Tokyo, Hong Kong, Taipei and New Delhi on "Counseling the Business Client" in Cancun this spring. This summer he conducted trial advocacy

training for the National Institute for Trial Advocacy at its national and regional public programs.

Recent publications of Professor **Michael Allan Wolf** include "Village of Euclid v. Ambler Realty Co.: A Romance," 1997 *Journal of Supreme Court History*, vol. II, at 88; and "Uncommon Regulation: The Public Trust Doctrine and the Gulf of Mexico," 62 *Esthetics* 102 (1995, with White and Savage). Last February Dr. Wolf presented a paper at a Fordham University School of Law on "Toxic Waste in the 90s: Who's Getting Hurt?"

A panel of land-use and environmental experts selected by the Land Use and Environment Law Review named as one of the 30 best articles published in 1997 Wolf's article, "Fruits of the 'Impenetrable Jungle': Navigating the Boundary Between Land-Use Planning and Environmental Law," 50 *Washington University Journal of Urban and Contemporary Law* 5 (1996).

NOTA BENE

Alumni named to the bench

Congratulations to the Richmond Law alumni who attained judgeships in Virginia this year.

Circuit court

Hon. Frederick H. Creekmore Sr., R'60 and L'63

Chesapeake Circuit Court

Hon. Charles J. Strauss, L'77

22nd Judicial Circuit
Chatham

General district court

Hon. Becky J. Moore, L'85

18th Judicial District
General District Court
Alexandria

Hon. Roger L. Morton, L'69

16th Judicial District
Culpeper Combined Court

Hon. Beverly W. Snukals, L'81

13th Judicial District
General District Court
Richmond

Hon. M. Lee Stilwell Jr., L'72

22nd Judicial District
General District Court
Danville

Hon. Charles H. Warren, L'74

10th Judicial District
General District Court
Boydton

Juvenile and domestic relations district court

Hon. Joel P. Crowe, L'76

3rd Judicial District
Juvenile and Domestic
Relations District Court
Portsmouth

Hon. Larry E. Gilman, L'75

15th Judicial District
Juvenile and Domestic
Relations District Court
Hanover

Hon. William O. Hawkins, L'81

4th Judicial District
Juvenile and Domestic Relations District Court
Virginia Beach

Hon. Bruce H. Kushner, R'69 and L'73

1st Judicial District
Juvenile and Domestic Relations District Court
Chesapeake

Hon. Joseph P. Massey, L'77

4th Judicial District
Juvenile and Domestic Relations District Court
Norfolk

Hon. Burke F. McCahill, L'76

20th Judicial District
Juvenile and Domestic Relations District Court
Leesburg

Hon. Charles P. Tench, L'87

7th Judicial District
Juvenile and Domestic Relations District Court
Newport News

Hon. George D. Varoutsos, R'70 and L'73

17th Judicial District
Juvenile and Domestic Relations District Court
Arlington

Hon. Sharon B. Will, L'85

14th Judicial District
Juvenile and Domestic Relations District Court
Richmond

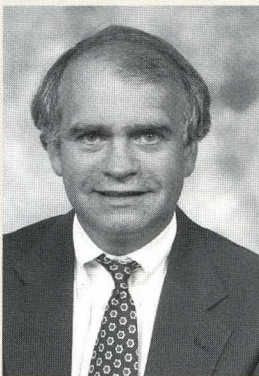
LAW NOTABLES

The following alumni received awards during Commencement exercises in May:

**ALUMNI OF THE UNIVERSITY OF RICHMOND
AWARD FOR DISTINGUISHED SERVICE**

Richard Cullen, L'77, is a partner in the Richmond law firm of McGuire, Woods, Battle & Boothe. He was appointed in June 1997 by Gov. George Allen as Virginia's 39th attorney general to fill the vacancy left following the resignation of James S. Gilmore III, who left to campaign for governor. Cullen served until January 1998, then returned to McGuire, Woods.

An active voice in state government, Cullen also was appointed to the Juvenile Criminal Commission, the Virginia Criminal Sentencing Commission and as co-chair of the Governor's Commission on Parole Abolition and Sentencing Reform. At the national level, he served as special counsel to the Senate Iran-Contra investigation in 1987 and in 1991 President George Bush appointed him U.S. Attorney for the Eastern District of Virginia, a post he held until 1993.



RICHARD CULLEN



CHARLES TRIBBLE

**DISTINGUISHED ALUMNI AWARD,
SCHOOL OF CONTINUING STUDIES**

Charles K. Tribble, C'68 and L'71, is the manager of tax services for Financial Managers and Consultants LLP in Richmond. In 1972 Tribble became assistant attorney general for the Commonwealth of Virginia in the finance and tax group. From 1975 to 1984 he was auditor of public accounts for Virginia. He then joined Virginia Power, where he worked as assistant controller until 1996.

An active volunteer in professional and civic organizations, Tribble has been chair of the tax policy committee of the Virginia Chamber of Commerce, has been a member of the Kiwanis Club of Richmond for more than 20 years and is active in Ginter Park Baptist Church.



MARY-ELLEN KENDALL



SALLY WOOD

**1998 DISTINGUISHED FACULTY AWARD,
SCHOOL OF CONTINUING STUDIES**

Mary-Ellen Alexander Kendall, L'85 and GB'85, has been an adjunct faculty member of the University of Richmond School of Continuing Studies for 10 years, during which time she has played an integral role in development of the Paralegal Studies program.

She is an environmental technical services administrator with the Department of Environmental Quality, where she administers five programs related to storage tanks, hazardous and solid wastes. She also has been appointed to the Underground Storage Tank Fraud Task Force by the Environmental Protection Agency.

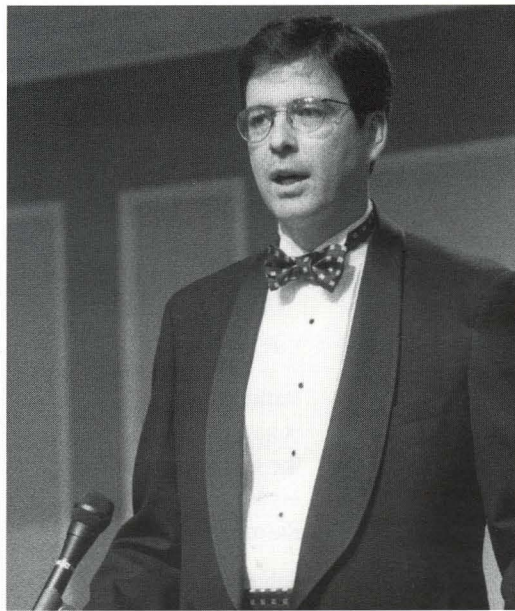
Before joining DEQ, Kendall was corporate real estate counsel with Reynolds Metals Co. She is founder and co-chair of the board of directors of the Goochland County Citizens Enterprise, editor of the quarterly *Environmental Law News*, and secretary of the Environmental Law Section of the Virginia State Bar.

**DISTINGUISHED ALUMNA AWARD, WESTHAMPTON
COLLEGE ALUMNAE ASSOCIATION**

Sally Yates Wood, B'65, G'70 and L'80, is a retired attorney with the U.S. Department of Agriculture. She was a teacher before entering law school in the late 1970s.

At the University of Richmond she has served as president of the Westhampton College Alumnae Association, as a class fund chair and as a member of the annual fund steering committee and her class reunion committee. Most recently Wood led the Westhampton College alumnae campaign for the Jepson Alumni Center. She is active in the community, including serving as a senior warden at Grace and Holy Trinity Episcopal Church in Richmond.

Speaker James B. Comey Jr.



Louis A. Mezzullo, L'76, and James V. Meath, L'79



1870 Society members gather for annual dinner

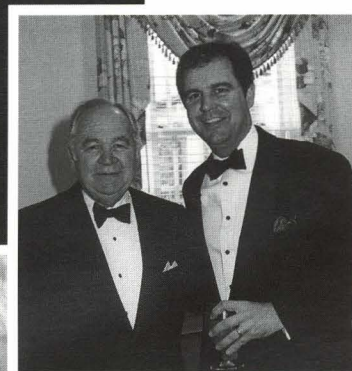
James B. Comey Jr., chief of the Richmond criminal division for the U.S. Attorney for the Eastern District of Virginia, spoke at the third annual 1870 Society Dinner for alumni and friends of the University of Richmond School of Law.

Comey was most recently a partner at McGuire, Woods, Battle & Boothe, LLP, specializing in criminal defense and commercial litigation. He also has served as deputy special counsel for the U.S. Senate special committee to investigate Whitewater and related matters.

The 1870 Society is named for the date of the founding of the T.C. Williams School of Law as a department of Richmond College. Members of the society give \$1,000 or more to the law school. This year's 1870 Dinner was held in April at the University's Jepson Alumni Center.



Mrs. George E. Allen Jr. and her son, George "Ted" Allen III, with Ralph E. Mirarchi, L'65



Homer Eliades and his son, Peter D. Eliades, L'84

Jean Baskerville Alcott, B'77, and Kenneth J. Alcott, B'77 and L'83, with the Hon. Edgar L. Turlington Jr., R'54 and L'59



Photos by Thomas Kojfisch

CLASS Actions

'50s

The Hon. James B. Wilkinson, L'52, was named secretary of the Scottish Rite Childhood Language Center at Richmond Inc. for 1998.

'60s

J. Edward Betts, L'65, was elected to a three-year term as a member of the Virginia Bar Association's executive committee. He is a partner in the firm of Christian & Barton.

E. Olen Culler, R'64 and L'67, of Richmond, was named vice president of the Henrico County Bar Association board of directors.

Mike Rigsby, L'69, of Richmond, was named a trustee of Commonwealth Catholic Charities. He works for the Virginia Bar Association.

'70s

John S. Barr, L'70, joined the Richmond law firm of McGuire Woods Battle & Boothe as a partner. He was formerly a principal in the firm of Maloney, Barr & Huennekens. He specializes in labor and employment litigation, construction law and securities defense litigation and enforcement.

Charles K. Tribble, C'68 and L'71, see p. 22.

Edward D. Barnes, L'72, has been elected the 1998-99 president of both the Richmond Family Law Bar Association and the Chesterfield-Colonial Heights Bar Association.

Richard Kay Jr., L'74, is assistant general counsel with Circuit City Stores Inc. in Richmond.

Gary Kendall, L'76, of Charlottesville, Va., received the Presidential Award of Merit from the American Board of Trial Lawyers for his distinguished service and out-

standing leadership. He is a vice president with the Charlottesville firm of Michie, Hamlett, Lowry, Rasmussen & Tweel.

John G. Mizell Jr., R'70 and L'76, of Richmond, was named president of the Henrico County Bar Association board of directors.

R. Gaines Tavenner, L'76, has joined the firm of Christian & Barton LLP. He will practice in the firm's corporate department, concentrating his practice on banking law and commercial lending. He was formerly senior counsel for commercial transactions with Signet Banking Corp. for 13 years.

Brad L. Waterman, L'76, is a sole practitioner in Washington, D.C. He specializes in civil and criminal federal tax controversies and for three years was chair of the Washington, D.C., Bar Tax Audits and Litigation Committee.

John W. Anderson, R'73 and L'77, merged his law firm of Christian, Markham & Anderson with the firm of Spotts, Smith, Fain & Buis. He is a shareholder and director and specializes in corporate and real estate law and business transactions.

Richard Cullen, L'77, is the 1998 secretary for the Virginia Bar Association. See p. 22.

Eric W. Gutttag, L'77, has become a member of the firm of Smith, Brandenburg, Freese, & Knochelmann in Cincinnati. He was formerly a senior counsel in patents at Procter & Gamble.

William Davenport, L'78, of Midlothian, Va., was elected third vice president of the Virginia Association of Local Elected Constitutional Officers. He is a Chesterfield County commonwealth's attorney.

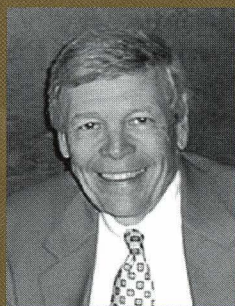
John C. Shea, L'78, was inducted into the American Board of Trial Advocates. He is with the Richmond law firm of Marks & Harrison.

Robin Starr, L'79, executive director of the Richmond SPCA, was profiled in the *Richmond Times-Dispatch* on Jan. 6, 1998. She formerly practiced law for 18 years and was a partner with the law firm of Williams, Mullen, Christian & Dobbins.

M. Rudolph West, R'75 and L'79, of Richmond, was elected secretary of Ethyl Corp. on Jan. 1, 1998. He continues as legal counsel in the firm's law department.

'80s

John D. Epps, L'80, was elected president of the Virginia Association of Defense Attorneys. He is with the Richmond law firm of Hunton & Williams.



ALUMNI PROFILE

IN THE PUBLIC EYE SINCE THE LT. CALLEY CASE

Roseleen P. Rick, L'80, of Powhatan, Va., was elected a partner in the Richmond-based law firm of Mays & Valentine.

John P. Rowley III, L'80, is a partner with the firm of Holland & Knight. A former assistant U.S. attorney for the Eastern District of Virginia, his practice will focus in the areas of commercial litigation and white-collar crime.

Sally Yates Wood, B'65, G'70 and L'80. See p. 22.

Beverly Warner Snukals, L'81, with the Richmond law firm of Mezzullo & McCandlish, is co-vice chairman of the board of directors of the Virginia chapter of the National Multiple Sclerosis Society.

Ralph L. Whitt Jr., L'81, is a partner with Williams, Lynch & Whitt. He was formerly a partner at Sands, Anderson, Marks & Miller.

In the turbulent year 1971, Capt. Aubrey M. Daniel III, prosecutor with the Judge Advocate General's Corps, fired off a letter to his boss, Commander-in-Chief Richard M. Nixon, charging the president with subjecting the military judicial system to political influence.

Daniel's letter, arising from the extraordinary court-martial of

Lt. William L. Calley Jr., stirred the already roiling American conscience that was so troubled by events in Vietnam.

Daniel, then 29, had let the Calley prosecution through the longest court-martial in United States history.

Calley had been convicted of the premeditated murder of 22 South Vietnamese civilians and sentenced to life when Nixon stepped in, releasing him into house arrest from the stockade and promising to review the case personally. Calley actually served only three-and-a-half years, and no one else would be convicted in connection to the massacre of more than 300 people at My Lai.

Daniel's work on that case would bring him to the attention of another lawyer known for his aggressive style as well as for his record for success.

One day after the Calley verdict, Daniel answered the phone at Fort Benning, Ga., to be greeted by Edward Bennett Williams, calling from Washington with a job offer.

"He said he thought I'd like it up in Washington," Daniel says. "He was already a living legend, the kind of lawyer I wanted to be. I was the 26th lawyer" to join the firm Williams & Connolly, whose name has been atop Daniel's letterhead ever since.

Born in Monck's Corner, S.C., Daniel grew up there and in Orange, Va., before going to the University of Virginia for his undergraduate degree. He earned his J.D. degree from the T.C. Williams School of Law in 1966.

From 1966 to 1971, he served as an Army defense counsel and prosecutor, where he found himself opposite F. Lee Bailey in the Calley case.

While he has not always been in the middle of such public matters since, Daniel has been involved in cases of significance and notoriety.

In 1979, he won an acquittal in a federal prosecution that had brought down figures no less than former Maryland Gov. Marvin Mandel and former Vice President Spiro Agnew.

He headed legal teams on behalf of corporate giants General Motors and International Harvester. He represented the tabloid the *National Enquirer* in libel actions brought by Frank Sinatra, among others. He negotiated a settlement between the *Enquirer* and entertainer Carol Burnett in a widely publicized case.

More recently, Daniel has defended Archer Daniels Midland Co. in an array of complex civil and criminal actions arising from antitrust violations.

"I've been spending less and less time in the courtroom and more time litigating and managing large, very complex matters, but that's the way it is for lawyers today," he says. "Still, I've had a most interesting career."

Daniel was a member of Williams & Connolly's executive committee when Edward Bennett Williams died, which was a challenging experience made more difficult by the loss of "a dynamic, hard-working genius" whose long battle against cancer presented "an incredible example," Daniel says.

Still, it is the Calley case that comes back to him several times each year, Daniel says. Recently, it was included in a "cases of the century" series featured on Court TV, and as one of 10 memorable closing arguments over the last century in a book, *Ladies and Gentlemen of the Jury*.

"At the time, I felt the whole military justice system would be on trial and we had an obligation to see that we conducted the prosecution in a way so as to bring credit to the system," he says. "I was impressed with the process and with the judges and the jurors."

His T.C. Williams education served him well then as it has through his career, Daniel says. "I seem always to have been capable of rising to the occasion. My education enabled me to be the lawyer I have been."

—Rob Walker

CLASS ACTIONS

Glenn Blazek, R'79 and L'82, was named on-site administrator of the Reporting Academy of Virginia School of Professional Studies. He oversees the operations of the Richmond campus.

Virginia S. Duvall, L'82, of Midlothian, Va., received the 1997 Woman of Achievement Award from the Metropolitan Richmond Women's Bar Association. She is an assistant commonwealth's attorney in Chesterfield County, Va.

Jeffrey L. Everhart, L'82, and his wife, Suzanne, have a son, Ryan Lee, who was born Feb. 25, 1998.

Tom Louthan, L'83, received the Distinguished Eagle Scout Award, which is given to Eagle Scouts who, "after 25 years, have distinguished themselves in their work and who have shared their talents with their community on a voluntary basis." The award was presented during the dedication of the Shenandoah Area Council Scout Museum and Training Center. One of six in the history of Winchester Scouts to receive the honor, he is a substitute judge in the 26th Judicial District of Virginia.

Michael D. Ward, L'83, is president of the Virginia Society of Association Executives. He works at the Virginia Petroleum Council in Richmond.

T. Daniel Christenbury, L'84 and G'85, joined the firm of Schnader Harrison Segal & Lewis in Philadelphia as a partner. His patent practice will focus in mechanical, chemical engineering and biotechnology representation.

Judith W. Jagdmann, L'84, has been named Virginia's deputy attorney general in charge of the civil litigation division. She oversees the management of the employment law, real estate, insurance, utilities, antitrust, consumer and trial sections of Virginia's attorney general's office.

Donna DiServio Lange, L'84, of Richmond, was promoted to vice president, professional services division, at the Reciprocal Group.

Patricia A.L. Nunley, L'84, of Richmond, was named assistant counsel with the Federal Reserve Bank.

Thomas M. DiBiagio, L'85, works at the U.S. Department of Justice in Baltimore as an assistant U.S. attorney.

Richard Tyler McGrath, L'85, was named president of the Scottish Rite Childhood Language Center at Richmond Inc. for 1998.

Hon. Becky J. Moore, L'85, is a General District Court judge in Alexandria, Va. A former defense lawyer, she was the first woman to serve outside the juvenile and domestic relations courts.

Hon. Sharon Breeden Will, L'85, is a judge in the Henrico County, Va., Juvenile and Domestic Relations Court. She is a former deputy commonwealth's attorney for Henrico.

Kimberly A. Pinchbeck, B'85, L'88 and G'88, and Bert Smith were married on Oct. 25, 1997.

Paul D. Georgiadis, L'86, an attorney in Richmond, was named president-elect of the Henrico County Bar Association.

Deanna C. Sampson, L'87, of Richmond, is executive director of Williamsburg Land Conservancy. She formerly was program director of the Virginia Conservation Network.

Edward S. Whitlock III, R'83 and L'87, of Richmond, was named treasurer of the Henrico County Bar Association.

William J. Benos, L'88, of Midlothian, Va., was elected a trustee of the Virginia chapter of the National Multiple Sclerosis Society.

Claudia T. Farr, L'89, of Powhatan, Va., was named executive vice president of the board of directors of the Children's Home Society of Virginia.

David A. Garrison, L'89, and his wife, Maureen, have a daughter, Marlo Lisa Garrison, born March 11, 1998.



T. Michael Blanks Jr., L'90, joined the Richmond firm of Barnes & Batzli. His practice will concentrate in family law and related areas, estate planning and selective civil litigation.

Peter V. Chiusano, L'90, is a member of Willcox & Savage in Norfolk, Va. He became associated with the firm in 1990 and has provided counsel to secured and unsecured creditors in bankruptcy liquidation and reorganization proceedings as a member of the firm's bankruptcy and creditors' rights group.

Steven Adkins, L'91, works at Adduci, Mastriani & Schaumberg in Washington, D.C. He and his wife, **Alison Kohlepp Adkins, L'91**, live in Annapolis, Md.

Keith B. Marcus, L'91, of Richmond, joined the law firm of Bremner, Janus & Cook. He practices criminal law and personal injury law.

Nancy Reaves, L'91, is a trial attorney with Spence & Whitlow in Norfolk, Va. She participated in the National Institute of Trial Advocacy Program in Wausau, Wis., in June. She and her husband, Philippe Nadeau, have a daughter, Alicamanda "Allie," born June 10, 1997.

Diane S. Rosenberg, L'91, opened the law firm of Rosenberg & Parker in Bethesda, Md.

William T. Fitzhugh, L'92, is a partner in the Chesterfield, Va., law firm of Beddow, Marley, Trexler & Fitzhugh.

Suresh Krishnan, L'92, has been named managing director and general counsel of Gerhling Global Financial Products Inc., the Gerhling Group's international center for finite risk and financial products in New York.



Photo by Thomas Kojisch

ALUMNI PROFILE

ARGUING
CRIMINAL
APPEALS

Todd J. Preti, L'92, has become a member of Payne, Gates, Farthing and Radd. With the firm since 1992, his practice has focused on estate planning and administration, commercial and residential real estate and corporate law.

Scott L. Duma, L'93, is vice president and general counsel of XcelleNet Inc., a provider of systems management technology solutions for remote users. He and his wife, Anne, live in Atlanta and have a son, William Alexander, born Feb. 25, 1997.

Abigail Hughes Marsh, L'93, is an assistant state's attorney with the Wicomico County state's attorney's office in Salisbury, Md. She and her husband, Stephen, have a daughter, Keegan Mulcahy, born June 18, 1997.

Anne D. McDougall, L'93, of Glen Allen, Va., was promoted to senior vice president, business development, with the Reciprocal Group.

Ronald N. Regnery, L'93, works as an associate with the Richmond law firm of Christian & Barton. He practices in the firm's litigation department and concentrates on employment law. He was formerly with the Virginia attorney general's office.

After the typical week spent arguing as many as six criminal appeals in as many as three different Virginia locations, Marla Graff Decker, L'83, sometimes relaxes by putting in a 12-hour overnight shift with Henrico County's Tuckahoe Volunteer Rescue Squad. Decker's dual life as a Virginia

assistant attorney general and as a committed rescue squad volunteer may seem something of an anomaly, but once you get to know Decker it makes perfect sense.

Growing up in Bayside, N.Y., she was raised by a father who worked his way through the ranks of the police department, and a mother who was a registered nurse and homemaker. She knew at an early age that she wanted to be involved in the criminal justice system and she also knew that she wanted to be involved in the community. After 15 years in both the Virginia AG's office and on the rescue squad (where she met her husband, Richard H. "Chip" Decker III, vice president of Lifeline Ambulance), it's safe to say Decker has accomplished both of these goals.

"Growing up in a law enforcement family gave me a great deal of respect for the criminal justice system," she says. "... You grow up with sort of an expectation that you want what you do to make a difference and you want what you do to be right. [As an assistant attorney general] I like to consider myself as a motivating force in the system. I hope I'm the one who provides the court with the information necessary to make the right decision."

Decker became an assistant attorney general upon graduating from the University of Richmond School of Law in 1983, working under then Attorney General Gerald L. Baliles in the Opinion Section of the AG's office. In 1984, she moved into the office's Criminal Litigation Section, where she was the recipient of the Attorney General's 1987 Meritorious Service Award under Mary Sue Terry, and where she continues to work today, mostly arguing direct appeals of criminal convictions.

"My job is challenging because every case is different," she says. "I feel like I'm in a position to be — certainly most of the time — on the side of good rather than evil." When not arguing a case in the courtroom, Decker has helped draft criminal legislation, occasionally advises members of the governor's office, teaches Fourth Amendment law at regional police academies and serves as a representative for the attorney general at executions.

She also served as a Gilmore staff member on Gov. George Allen's Commission on Juvenile Justice Reform, is currently involved with Attorney General Mark Earley's Task Force on Gang and Youth Violence and has helped plan the curriculum for Gov. Allen's Class Action program which teaches elementary and high school students about Virginia criminal law.

Off the job, Decker has taught appellate advocacy at Richmond Law as part of its required Lawyering Skills program for the past three years. "I enjoy teaching and being back in the law school," she says. "The interaction with students keeps me on my toes."

Although she has served under a number of attorneys general, some of whom went on to become Virginia governors, Decker has no political aspirations herself. For now, she is content to continue pursuing her career as an assistant attorney general. "To me it doesn't ever get boring," she says. "I still get excited about each new case. ... I feel like I'm in a position to make a difference."

— Jessica Ronky Haddad, AW'93

CLASS ACTIONS

Carter Marshall Reid, L'93, is an assistant general counsel at Dominion Resources in Richmond. She and her husband, Joseph, have a daughter, Katherine Carter, born Nov. 22, 1997.

Margaret Smither, L'93, of Mechanicsville, Va., was named vice chair of the board of directors of Commonwealth Catholic Charities. She works at Fort James Corp.

Jeremy Sohn, L'93, is a partner with the firm of Herndon, Morton, Herndon & Yeager in Wheeling, W.Va.

Haywood A. Thornton, L'93, of Richmond, joined the law firm of Mays & Valentine. He practices general corporate law.

Tracey Randall Dunlap, W'91 and L'94, is an associate in general practice at Jackson, Pickus & Associates in Richmond.

Sheryl L. Herndon, L'94, is an assistant commonwealth's attorney for Henrico County, Va.

Julie Schucht Whitlock, L'94, of Richmond, joined the law firm of Thompson & McMullan.

Karen E. Dunivan, L'95, of Norfolk, Va., joined the law firm of Thompson & McMullan.

Sandra L. Haley, L'95, and her husband, Mike, have a son, Ethan Michael, who was born Aug. 18, 1997, in Eden, N.C.

John Becker Mumford Jr., L'95, is an attorney at Crews & Hancock in Richmond. He and his wife, Heather, have a daughter, Ellis Dade, who was born in March.

Patricia Phillips Shields, L'95, has become associated with the firm of Richmond and Fishburne, where she will work in the area of civil litigation.

Bonnie Atwood, L'96, joined David Bailey Associates, a Richmond firm that provides inter-governmental relations services to associations and businesses.

Sheryl Herndon, L'96, of Richmond, joined the office of commonwealth's attorney for Henrico County as an assistant commonwealth's attorney.

Allison Dinwiddie Manning, L'96, works at Siddall, Matus, & Caughter Advertising and Public Relations in Richmond. She married Dr. Matthew Manning on Sept. 20, 1997.

Philip J. Markert Jr., L'96, is an associate with the firm of Black, Noland & Read in Staunton, Va.

Kristine Dalaker, W'92 and L'97, was named an associate with the Richmond law firm of Mezzullo & McCandlish. She practices in the real estate section of the firm's corporate department.

Rhonda L. Earhart, L'97, has opened her own law practice in Richmond.

Raelenne J. Haeberle, L'97, joined the law firm of Hirschler, Fleischer, Weiberg, Cox & Allen as an associate. She specializes in the areas of commercial litigation, employment law and bankruptcy law.

Dana C. Makielski, L'97, is an associate at the Richmond law firm of Williams, Mullen, Christian & Dobbins.

Robert W. Partin, L'97, of Chester, Va., was named an associate with the law firm of Mezzullo & McCandlish. He specializes in litigation.

Donald J. Richardson, L'97, of Richmond, is an associate at the law firm of Williams, Mullen, Christian & Dobbins.

Neil E. Richman, L'97, of Richmond, is an associate with the law firm of Hirschler, Fleischer, Weiberg, Cox & Allen. He specializes in securities, financing and general corporate law.

Russell E. Nance, L'97, earned his LL.M. in taxation from New York University School of Law in May. He is joining the tax department of the New York office of Skadden, Arps, Slate, Meagher & Flom.

In Memoriam

William L. Carleton, L'28

May 22, 1998

The Hon. Samuel Thomas Binns Jr., L'34

June 22, 1997

George William Sadler, R'43 and L'48

June 23, 1998

Daniel D. Wilson, L'48

Sept. 3, 1997

Lawrence J. Redding III, L'52

May 31, 1998

Richard R. Ryder, L'52

June 23, 1998

Jack R. Clanton, L'53

Feb. 23, 1997

Milton O. Gross, L'54

May 15, 1998

Raymond A. Carpenter Jr., L'71

March 6, 1998

MARK YOUR CALENDAR

Fall term classes begin Aug. 24

Inaugural Lecture of Allen Professor Rodney Smolla:
"Paparazzi, Privacy and Celebrity:
The First Amendment and Tabloid Culture" Sept. 11

Fall Gathering Sept. 11

Law School Association Annual General Meeting Sept. 12

Reunions
Classes of '48, '53, '58, '63, '68, '73, '78, '83, '88, '93 Sept. 12

Emroch Lecture by Judge Susan Webber
Wright, chief judge of the U.S. District
Court for the Eastern District of Arkansas Nov. 12

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Dr. William T. Muse, dean of the law school from

1947 through 1972, researched

cases in the stacks of

the library. In 1998,

third-year law stu-

dent Nova Reece

does the same re-

search on her laptop

just outside the law

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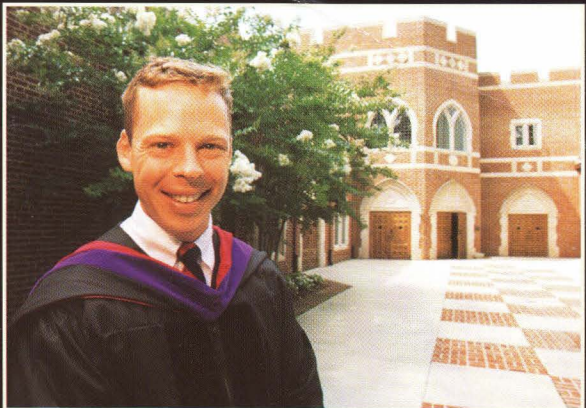


Photo by Jay Paul

A COUNSELOR AND A GENTLEMAN

Tracy Thorne may be the first attorney in the Class of '98 to have his case heard before the United States Supreme Court. He'd rather be in the cockpit of an A-6 Intruder. See article on p. 14.