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CRACKING DOWN ON EXPORTED CORRUPTION
The challenges facing legal education

Dear Alumni and Friends,

Having just returned from another dean’s conference in January, I am struck by the challenges currently facing legal education. Law school applications have declined 40 percent over the last three years. And the number of first-year law students nationwide is the smallest it has been since 1977, when there were half as many college graduates and the United States had 100 million fewer people.

Some of the decline in interest in law school reflects an appropriate market correction in response to discouraging employment data and concerns about taking on too much student debt. Law school is no longer a safe refuge for the college graduate with no other plan.

That said, reports of the demise of the legal profession are greatly exaggerated. Law is the foundation of our democracy and continues to play a critical role in our political, economic, and social lives. There is still a demand for well-educated, creative, legal thinkers and problem-solvers. And there is still demand for the kind of lawyers that Richmond Law creates — lawyers who combine intellectual sophistication with emotional intelligence and the skills to succeed in the world of legal practice.

This is not to minimize the challenges facing our system of legal education. The last 20 years have brought wonderful innovations to legal education, including clinics, full-time legal writing faculty, career development professionals, and opportunities for international experiences. But these innovations have come at a cost.

Most students borrow the cost of their legal education. This is a sensible way to finance an investment that will likely pay returns over a 30- to 40-year career, but it means students graduate with an average law school loan debt of $110,000. While there are income-based loan repayment options that make the loan payments manageable regardless of salary, it is nonetheless intimidating for our students to graduate with the equivalent of a home mortgage.

At Richmond Law, over half of our students receive financial aid, and every student who takes an unpaid government or public interest position for the summer is eligible to receive a summer stipend. These scholarships and stipends are made possible by the generous support of our alumni, who share our commitment to quality legal education.

I am deeply grateful for your support and the many models of professional excellence you provide. You inspire our students, and you inspire me. And whenever I hear disparaging remarks about lawyers or the legal profession, I find myself wanting to point to our outstanding alumni, who are doing justice and changing the world. Law school isn’t right for everyone, but it continues to provide a path for many to lead a life of purpose and service, and I am proud to be a part of it here at Richmond Law.

With best wishes to all,

Wendy Perdue
Dean
Bridge to Practice

Like most new graduates, Marium Durrani, L’13, took the bar exam in July but had to wait until the fall to be sworn in. She wanted to use this time to gain traction in her field of choice, but some employers don’t hire before admittance to the bar and temporary positions with nonprofit and government organizations are few and far between.

Thanks to a Bridge to Practice Fellowship from the University of Richmond School of Law, Durrani spent her time working as an aide for the U.S. House of Representatives Judiciary Committee. She assisted counsel with everything from legal research and drafting memos to preparing documents for hearings and meeting with advocacy groups.

While these fellowships often give graduates a foot in the door for a permanent position, Durrani also used the experience to explore her career options in policy work. She’s now a staff attorney with Karamah, a human rights nonprofit in Washington, D.C.

“Being on the Judiciary Committee, I was exposed to a wide variety of issues,” she says. “It was a great opportunity for me to figure out what direction I want to go.”
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Professional Plaintiffs

Congress thought it fixed the problem of professional plaintiffs in 1995, but some plaintiffs’ attorneys have taken their old tactics to a new venue.

*By Jessica Erickson*

Think Like a Lawyer, Write Like a Writer

Richmond Law has revamped its legal writing program to better prepare students for the writing they’ll do as lawyers.

*By Matthew Dewald*
Glass ceiling be damned

Women’s Forum marks 90 years since Richmond Law’s first female graduate

Ninety years have passed since the first woman graduated from Richmond Law, a milestone the school marked by hosting its first-ever Women’s Forum in the fall.

This magazine wrote last issue about how courage clashed with convention as women broke barrier after barrier in the legal profession, a path of progress that was neither easy nor smooth. (Our first female graduate sued the University for defamation shortly after graduation, after all.)

But one glance around the October gathering made it clear how integral women are to Richmond Law and the legal profession today. The women filling the room were judges, litigators, regulators, and policymakers serving around Virginia and the country.

The forum celebrated this heritage while also focusing on some of the ever-present challenges for women today. The schedule was packed with a panel of alumnae through the decades, a personal branding session, and the opportunity to earn continuing legal education credits.

Laura Bellows, the immediate past president of the American Bar Association, delivered a wide-ranging keynote address on demonstrating power, lingering pay discrimination issues, and the struggle to achieve leadership at firms, in legislatures, and in courtrooms around the country.

Speakers and panelists also spoke about the sense of shared duty to continue to advance opportunities for women in the legal profession, particularly the importance of mentoring.

“Our legacy should be that we helped others along the way,” said Judy Jagdmann, L’84, a panelist and one of three judges at the Virginia State Corporation Commission. Jagdmann also served as Virginia’s attorney general from 2005–06.

View photos from the forum and watch videos of the keynote address and panelists online at law.richmond.edu/womensforum.
As the provost further noted, Sachs’ students have gone in recent years to a power plant to see how environmental statutes apply to a major industrial facility; to the Supreme Court to witness oral arguments on an environmental regulation case; and to the James River to see how law shapes water quality and land protection on the ground. He also bridges the gap between theory and practice by regularly hosting guest speakers in his classes.

Listen carefully
Practicing law is mostly about telling stories, but listening is the key to doing it effectively.

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Practicing law is mostly about telling stories, but listening is the key to doing it effectively.

That’s according to Anna Deavere Smith, the actress, playwright, and NYU professor who visited Richmond Law to present “The Art of Listening” at the annual Emroch Lecture. Smith says humans are hard-wired to seek order from disarray and find answers quickly. But she adds that, in the rush to judgment, people lose an extraordinary opportunity to understand and learn more, to identify the important questions, an important skill for lawyers, who are on the line to tell their clients’ stories in court.

She proved listening is a lot harder than it seems. Smith had the audience pair off and respond to one of three questions. Later, she had several pairs retell each other’s stories using first-person pronouns and the body language, habits, and tones of their partners.

Smith is best known for crafting one-woman, multi-character plays that explore social issues such as the race riots in Los Angeles and struggles with healthcare. Last year, she received the Dorothy and Lillian Gish Prize, one of the most prestigious awards in the arts. In July 2013, President Obama honored her, along with University President Edward L. Ayers, with the National Humanities Medal.

J.P. Jones retires
Professor J.P. Jones, a member of Richmond Law’s faculty for more than three decades, retired in December.

Jones joined Richmond Law in 1982 after a two-decade career in the Navy during which he was a flight officer and an intelligence officer.

As a legal scholar and professor, he has focused on constitutional law, administrative law, maritime law, and military law. He has written more than three dozen articles and book chapters on these subjects, and his scholarship has appeared in the American Journal of Legal History and Tulane Law Review, among other venues.

He sits on the advisory boards of the National Institute of Military Justice and the Charleston Maritime Law Institute, and has acted as a consultant to the World Bank; constitutional adviser to Albania, Lithuania, Macedonia, and Ukraine; and visiting scholar at the U.S. Central Intelligence Agency. He has served as editor or associate editor of the Journal of Maritime Law and Commerce since 1995. In 1987 and again in 2008, he received the University’s Distinguished Educator Award.

‘A rock star’
In bestowing the University’s 2013 Distinguished Educator Award on Noah Sachs, the University provost quoted colleagues who often call him “a rock star,” adding, “Perhaps that’s because Sachs, director of the Merhige Center in Environmental Law, so often takes his students on tour.”
A fairer death penalty

Virginia’s administration of the death penalty needs improvement.

That’s the conclusion of John Douglass, who spent the last two years leading a team to evaluate Virginia’s death penalty procedures for the American Bar Association. In September, the team issued its report, which focused on ways to minimize error and make the process fairer and more transparent — from the quality of forensic laboratories, to funding for defense counsel, to the handling of death sentence appeals. But that’s just the beginning; it’s up to those in power to effect change in the criminal justice process.

Douglass, a professor of law and former Richmond Law dean, said the assessment was a chance to observe where Virginia complies or falls short of ABA best practices and make recommendations for change.

“If the voices aren’t raised, nothing happens,” he said. “Like so many things in the world of policy, you study, you recommend, others study, they recommend, we debate, and hopefully those who have the power to make law take that into account.”

For example, Douglass’ team recommends improvements in interrogation and identification procedures, something for which the Virginia Department of Criminal Justice Services has already created model policies. They recommend more fully implementing these policies, but it’s up to local police agencies or state legislation to require those changes.

The report also found that Virginia is more restrictive and faster in its post-trial process than other states. According to the assessment report, “in most respects, the state habeas process in Virginia emphasizes finality of convictions and death sentences over fairness.”

As a result, the report calls for increased transparency and time in the process; “the basic idea [is] that more complete and earlier access to facts makes the system more reliable and fair,” Douglass said.

The overall reaction has been “interested and cautiously positive,” he said, and some improvements, such as changes to jury instructions, are already in the works. But legislative progress is hard to predict and could extend beyond the 2014 General Assembly session — and the new governor and attorney general will need to weigh in as well.

The purpose of the report was not to argue for or against capital punishment,
but rather to prevent wrongful convictions. But in the last decade, several states have eliminated the death penalty because of concerns over error and rising costs — issues that Douglass and the panel seek to address.

“I think we are recognizing how difficult and expensive it is to address areas that have led to error,” Douglass said. “Even to do it better exacts such a cost in time and resources that it has led states to rethink their death penalty. [But] that was not the purpose of this report and certainly not the agenda of the committee; whether it leads in that direction is up to other folks.”

‘Best value’
Graduates of Richmond Law “have excellent chances of passing the bar and getting a legal job without taking on a ton of debt,” says The National Jurist, which in October ranked Richmond Law among the nation’s top 20 private law schools on its “Best Value” list.

A veteran’s voice
When Greg Collins, L’15, entered the School of Law, he immediately connected with two other military veterans in his class. Though they came from three different branches — Air Force, Navy, and Collins from the Marines — they shared common ground.

“When you enter society [after deployment], you’re confident, but you also feel somewhat different,” he said.

Collins is working to build community among Richmond-area veterans with the help of resources he receives as a Tillman Military Scholar. The Pat Tillman Foundation awards 60 scholarships annually to active and veteran service members and their spouses and provides additional resources for community service and transition to civilian life.

Collins’ efforts take many forms: a running club, tailgating at Spider football games, connecting with soldiers in long-term care at a local VA medical center, and bridging generation gaps between younger and older veterans.

“I knew coming to Richmond Law that I wanted to be active in the veterans work here because Richmond has a large community,” he said. “The Tillman Scholars program really empowered me to figure out what I could do to help organize things.”

For every efficiency that tablets offer for the lawyers who carry them, they seemingly raise a question, whether about security, privacy, or utility.

With the help of a grant, Richmond Law has launched a pilot program to begin educating students about the implications of their use. Faculty and students participating in legal clinics this spring are using iPads in their work for everything from getting clients’ digital signatures on documents at off-campus locations to recording client interviews for review by faculty.

“New ABA rules say that attorneys must be conversant in these new technologies,” said Adrienne Volenik, clinical professor and director of the Education Rights Clinic, one of three clinics whose students are using the devices. “What are the ways we can use this technology to be effective and efficient while still protecting privacy? We’re only beginning to scratch the surface.”

Funding for the grant expires at the end of the academic year, but Dean Wendy Perdue hopes alumni will step in to help continue the program. “Innovative programs such as this are crucial for getting our students practice-ready,” she said. “They are learning firsthand how law is practiced in the 21st century.”
With the stroke of a pen on New Year’s Eve, Associate Justice Sonia Sotomayor of the Supreme Court of the United States cast the bright light of public scrutiny on a group of nuns whose mission is to care for the elderly poor.

Justice Sotomayor granted emergency injunctive relief to the Little Sisters of the Poor while the courts consider the sisters’ and others’ challenges to federal regulations under the Affordable Care Act that require employers to arrange and pay for contraceptive coverage for female employees.

“The speed of the transformation in attention” to the case since then “has been astounding,” wrote Kevin C. Walsh, associate professor at Richmond Law and an early and continuing counselor to the sisters.

For Walsh, co-counsel in the case with lawyers from the Becket Fund for Religious Liberty and Locke Lord LLP, the national attention has brought numerous media requests and the need to state clearly the sisters’ position in response to reporting and punditry ranging from serious to silly across the media spectrum. From Fox News to National Public Radio to The Daily Show with Jon Stewart, experts and would-be experts have weighed in.

Walsh, who has written blog posts and given interviews on the case, says that in the media-connected world in which lawyers practice today, they must recognize their cases will be aired in the public arena as well as in court. “You want the filings to speak for themselves but they are often written in legal terms, and we need to make them clear in plain English,” he said. “Part of my
goal in talking to the media is to clarify for the general public. If I see things misreported, it helps to have some commentary out there to clarify.”

Walsh also recognizes that his work on the case may present opportunities for his students and the law school for years to come. “Our students benefit from having professors who are actively practicing in cases that matter, especially cases we may end up teaching,” he said. “We’re training lawyers here, and practice helps that.”

Walsh came to the case through a colleague in Richmond’s St. Thomas More Society, a group of Catholic lawyers in the Richmond area. The group seeks to educate and support Catholic lawyers on the intersection of the Catholic faith, law, and public policy. Walsh, who has taught courses on First Amendment law and religion and the Constitution, has previously filed amicus curiae briefs in a variety of First Amendment cases. He co-authored an amicus brief on behalf of U.S. Sen. Orrin Hatch and other sponsors of the Religious Freedom Restoration Act in the Hobby Lobby case, a religious liberty challenge to the contraceptives mandate brought by a for-profit business. The case is pending before the Supreme Court.

“Our students benefit from having professors who are actively practicing in cases that matter, especially cases we may end up teaching. We’re training lawyers here, and practice helps that.”

A lawyer from the St. Thomas More Society asked Walsh to talk with the Little Sisters of the Poor, who needed advice about how the regulations would affect nonexempt religious nonprofits like them. When the administration issued rules offering an accommodation to groups like the sisters, rules that the Little Sisters felt did not adequately address their need for an exemption, he realized the Little Sisters needed to file suit.

“I’ve participated in large-scale litigation as part of a team before, and this was obviously something I could no longer do on my own,” Walsh said, so he sought help, and the sisters ended up retaining the Becket Fund. They joined forces with lawyers from Locke Lord LLP, who represent the Christian Brothers Employee Benefits Trust (the Little Sisters’ benefits plan) and Christian Brothers Services (a plan administrator). Walsh continues to work on the case, primarily assisting with briefs. He and the Becket Fund are representing the Little Sisters pro bono.

Walsh, who clerked for Justice Antonin Scalia and has some insight into the workings of the court, said the one certainty now is, “We don’t really know what’s going to happen.” The Little Sisters’ case is one of 19 proceeding under the protection of injunctions, “and we hope it will continue. It’s an unusual situation. It’s a big team effort now. It’s a great experience, working with these lawyers and these clients.”
Congress thought it fixed the problem of professional plaintiffs in 1995, but some plaintiffs’ attorneys have taken their old tactics to a new venue.

By Jessica Erickson • Illustrations by Jamie Douglas
Corporate law professors don’t usually spend their time investigating potential bad guys. We might investigate stock prices and merger data, but tracking down wrongdoers is usually outside our job description. Yet, over the past few years, I have spent a tremendous amount of time digging through marriage records, death notices, and business registration statements, all in an effort to track down professional plaintiffs in corporate litigation.

This digging uncovered situations that frankly shocked me. I found one attorney who filed serial shareholder lawsuits using his preschool-age grandchildren as plaintiffs. I found another plaintiff who filed approximately two dozen shareholder suits despite being “appallingly ignorant of the many [lawsuits] that have been filed in his name.” I even found allegations that shareholders are being paid to lend their names to these lawsuits.

How are these abuses still happening? After all, professional plaintiffs are not a new phenomenon in corporate law. Back in the 1980s and 90s, corporate America claimed to be under siege by these plaintiffs. These plaintiffs were filing securities class actions within days, or even hours, of a drop in a company’s stock price.

The plaintiffs who most provoked the public’s ire during this period were repeat plaintiffs who filed dozens or even hundreds of federal securities class actions. These plaintiffs typically owned a small number of shares in a large number of public companies, putting them in a prime position to file lawsuits against a wide range of companies. As one judge wryly described them, these plaintiffs were “the unluckiest and most victimized investors in the history of the securities business.”

Compounding the problem, many people suspected that some of these repeat plaintiffs were being paid to lend their names to these lawsuits, suspicions that turned out to be correct. The Department of Justice eventually brought criminal charges against the largest plaintiffs’ firm in the country, Milberg Weiss LLP, and four of the firm’s attorneys, charging them with paying their shareholders illegal kickbacks to participate in the firm’s lawsuits. Milberg Weiss agreed to pay $75 million dollars to settle these charges, and partners at the firm went to prison.

Other plaintiffs during this time period raised different, but equally disturbing, questions. Some lawyers, for example, used their spouses, parents, siblings, and other close relatives as plaintiffs in securities class actions. Some lawyers themselves served as plaintiffs. And still others set up dummy corporations to use as plaintiffs in their lawsuits.

These plaintiffs all raised a common concern. Shareholder plaintiffs are supposed to monitor class counsel, ensuring that litigation decisions reflect the best interests of the class. Plaintiffs with a conflict of interest in the litigation — whether the promise of a private payment or the hope of sharing in an attorney relative’s largess — may be tempted to put their own interests ahead of the interests of the class. Such conflicts could make it difficult, if not impossible, for the named plaintiffs to protect the interests of the class.

The problems with these professional plaintiffs got Congress’ attention. In 1995, Congress passed the Private Securities Litigation Reform Act. The PSLRA did not apply to shareholder suits filed under state law, including shareholder derivative suits and acquisition class actions, but it did place strict limitations on securities class actions filed under federal law.

In the wake of the PSLRA, concerns about professional plaintiffs largely faded. Courts stopped talking about them. Scholars stopped talking about them. It was “mission accomplished” in the world of shareholder litigation.

That’s where my research comes in. I started digging into the world of professional plaintiffs and discovered that they had not disappeared at all. Instead, they simply moved from shareholder lawsuits filed under federal law — i.e., lawsuits covered by the PSLRA — into shareholder lawsuits filed under state law. In other words, many plaintiffs’ attorneys just took their old tactics to a new venue. And, in a few instances, the problems remain on the federal side as well, with lawyers exploiting loopholes in the PSLRA.

The evidence I found was astonishing. Take, for example, a lawyer who is a named partner at a well-known plaintiffs’ law firm in New York and Los Angeles. Since 2000, this lawyer and members of his family have served as plaintiffs in more than thirty shareholder lawsuits. His wife has filed 15 shareholder suits. His son, who is also a partner at his law firm, has filed another eight. His son-in-law, daughter-in-law, and grandchildren have all served as plaintiffs in these suits. For this lawyer, litigation is a family affair.

The lawsuits filed by the grandchildren raise particular concerns. At least some of their suits were filed when the children were younger than 5 years old. They also owned only 100 shares of stock in the defendant corporations, revealing a miniscule financial interest in the outcome of the suit.

This lawyer is not alone. I uncovered a somewhat similar pattern involving a lawyer from Pennsylvania who...
Litigation as a Family Affair

- Lawyer
- Wife
- Father-in-law
- Mother-in-law
- Daughter-in-law
- Son
- Daughter
- Son-in-law
- Grandchild

Orange square = involved
White square = not involved
Professional Plaintiffs

routinely represents shareholders in securities class actions as well as state fiduciary duty suits. This lawyer has himself served as a plaintiff in shareholder lawsuits. His wife has served as a plaintiff in at least five lawsuits. Both of his children have served as plaintiffs in shareholder suits, as has a family foundation. Overall, I discovered that plaintiffs’ lawyers or their family members have served as plaintiffs in at least 100 lawsuits since 2002.

Should we care? After all, some might argue that plaintiffs’ attorneys control these suits anyway and therefore that plaintiffs, professional or not, simply do not matter much. But plaintiffs do matter. They are supposed to serve as an independent check on class action litigation, ensuring that the lawsuit is in the best interests of absent class members. It is difficult, if not impossible, for shareholders to perform this role when the attorney is one’s spouse or close family member.

And the problems I found did not stop there. Just as in the pre-PSLRA period, plaintiffs may be setting up dummy corporations to serve as plaintiffs. The first thing to recognize about this strategy is how remarkably easy it would be to accomplish. Shareholders who want to avoid scrutiny as repeat plaintiffs can set up multiple companies and divide their investments among them. In most cases, institutional plaintiffs never have to disclose their ownership, making it difficult to uncover this subterfuge.

In a few cases, however, these schemes have been uncovered. Take a 2008 case from the Delaware Court of Chancery. The case was a typical acquisition class action arising out of the sale of SS & C Technologies, Inc., brought by an institutional plaintiff called Paulena Partners. As a result of a fluke in the litigation, the defendants discovered that the manager of Paulena Partners also managed several different partnerships. (See above.) Each of these partnerships owned a few shares of stock in between 60 and 80 different public companies, giving them a miniscule interest in hundreds of different companies. All told, these partnerships filed more than 30 shareholder lawsuits, prompting the court to opine that the purpose of these partnerships may well have been to spawn litigation.

It is impossible to know whether other institutions look similar to Paulena Partners. Through my research, however, I discovered that very little information is available about some of the institutions that file shareholder lawsuits. Most disclose nothing about themselves in the court records. Many have no Internet presence whatsoever. In an era when Google can give us information about almost anything, some of these entities appear to
be invisible — except, that is, in the courtroom.

The more I dug into the cases, the more problems I found. Remember the allegations that the law firm of Milberg Weiss used to pay shareholders to serve as plaintiffs in its lawsuits, allegations that landed some of its partners in jail? It turns out that there are much more recent cases involving the same type of allegations, albeit involving different law firms.

In one recent case, for example, there were allegations that a shareholder had been paid “hundreds of thousands of dollars” for serving as a plaintiff. In another case, a dispute between three attorneys led to allegations that one of them had “paid [an individual] with the goal of inducing him to serve as a plaintiff.”

Whether these allegations are true remains unknown. In both instances, the law firms accused of making the payments denied the allegations. But in neither instance did the court investigate these allegations. Instead, both cases were dismissed on other grounds, and the allegations, disturbing as they were, simply disappeared from scrutiny.

My research uncovered a seemingly endless permutation of problems with shareholder plaintiffs. In one case, the shareholder plaintiff died, but the case continued for nearly a year until the attorneys informed the court. In another case, a shareholder was allegedly used as the named plaintiff in the lawsuit entirely without her knowledge.

Why aren’t courts doing anything in response? In some instances, they don’t have any idea that these problems are occurring. Plaintiffs have to disclose remarkably little about themselves in court documents. Defense lawyers are focused on closing the transaction, not on researching the plaintiff. And, frankly, both courts and defense lawyers may be naïve about the identity of shareholder plaintiffs. They might suspect that plaintiffs own only a few shares of stock in the target corporation or may not know much about the underlying litigation, but they may not suspect more serious problems.

Indeed, my own research shows how difficult it can be to track down these professional plaintiffs. It is hard to find dummy corporations or dead plaintiffs. It is hard even to confirm that certain plaintiffs are related to their attorneys. They may share the last name, but it takes a strike of luck to find the evidence necessary to establish a family connection.

We shouldn’t, however, excuse the courts entirely. In some cases, courts discovered problems with the plaintiffs and simply ignored them. In others, they dismissed individual cases or imposed minor sanctions but did not take more systematic action. Given the difficulty in uncovering these problems in the first place, this lax approach does little to deter the use of professional plaintiffs more broadly.

Nor is there an easy solution to this problem. Ideally, we want judges to know about professional plaintiffs and be willing to take the necessary steps to stop them. As hard as it is to change the practices of attorneys, it is even harder to change the practices of judges. And even if judges in Delaware, for example, crack down on professional plaintiffs, attorneys can simply take their cases to other jurisdictions. In other words, professional plaintiffs are a tough nut to crack.

One possible solution may be to require greater disclosure about plaintiffs at the very start of litigation. In such certifications, the plaintiff could be required to disclose any business, financial, or familial relationships with the plaintiffs’ counsel. The certification would also include a statement that the plaintiff will not accept any payment for serving as a representative party other than their pro rata share of the recovery unless approved by the court.

This certification could also identify all shareholder lawsuits filed by the named plaintiff over the past several years. This requirement reflects the fact that shareholders may not be effective monitors if they are participating in a significant number of lawsuits. It also recognizes that attorneys will be less likely to push the envelope if they have to justify their litigation decisions to a broader group of shareholders.

My point in making these recommendations is not to cast suspicion on all plaintiffs who file shareholder lawsuits. There are many plaintiffs who care deeply about their lawsuits. In conducting my research, I spoke to some of these plaintiffs, and they impressed me with their knowledge and commitment to their lawsuits. But, while some repeat plaintiffs are active monitors of shareholder interests, others may not be. The concern is that we do not have an effective mechanism to distinguish between the two.

In the end, we failed to accomplish our goal of eliminating professional plaintiffs more than 20 years ago. The time has come to solve this problem once and for all. ■

Professor Jessica Erickson specializes in corporate law and litigation at Richmond Law. This article derives from a publication, “The New Professional Plaintiffs in Shareholder Litigation,” in the Florida Law Review in 2013.
CRACKING DOWN ON EXPORTED CORRUPTION

By Andy Spalding
The newspapers are lately filled with scintillating stories of global anti-corruption movements. In Brazil, citizens protest in the streets demanding reforms, with some success. In India, a new anti-corruption political party is gaining adherents and upsetting traditional political alliances. In China, the Communist Party has initiated what may be the first credible anti-corruption effort since the founding of the People’s Republic in 1949.

And the United States now finds itself embroiled in each of these corruption stories, though not in the way we might prefer. America’s most (in)famous retail company, Wal-Mart, is under investigation for systematically bribing government officials across the developing world. Though the investigation started in Mexico, it has since spread to China, Brazil, India, and other unnamed countries. Because criminal penalties can be as high as three times the profits that the bribes made possible — not three times the bribe, but three times the profits — the settlement will likely be staggering.

But is it fair to single out any single corporation — even Wal-Mart — for a practice we all know to be pervasive? Why should Wal-Mart be penalized for doing business in Mexico or China in the manner of their Mexican and Chinese competitors? And what happens when those Chinese competitors go overseas — to Central America, or Central Asia, or Africa — and pay bribes of their own? What impact does U.S. enforcement then have, both on U.S. companies and on the countries in which they do business?

There was a time, not too long ago, when we didn’t have to ask these questions. Historically, we all assumed that the bribing of government officials was properly punished under the laws of the country in which the bribe occurred. And indeed, virtually every country in the world had, and still has, a domestic bribery prohibition on the books. Whether they chose to enforce it, or not, was entirely up to them.

But revelations in the mid-1970s of widespread overseas bribery by U.S. corporations exposed the limitations of this assumption. Concluding that countries should take responsibility for punishing their own corporations’ bribery regardless of where it occurs, the U.S. enacted the Foreign Corrupt Practices Act of 1977. This statute criminalized paying “anything of value” to a “foreign official” for “obtaining or retaining business” and established liability for both natural and legal persons. Because it was at the time the only such statute in the world, U.S. companies soon objected that the FCPA put them at a competitive disadvantage. Corporations from other countries could not only bribe without fear of penalty but often actually deduct the payments from their taxable incomes.

A decade of intensive international lobbying ultimately produced, in 1997, the Organization for Economic Cooperation and Development’s Convention Against Bribery. Finding that “all countries share a responsibility to combat bribery in international business transactions,” the convention requires member states to prohibit the giving of “any undue pecuniary or other advantage” to a foreign public official to “obtain or retain business or other improper advantage in the conduct of international business.” OECD membership included what were, at that time, the world’s principal exporters of capital: the major economies of North America and Western Europe, as well as Japan and Australia. The Convention was thus assumed to bring the overwhelming majority of corporations engaged in international business within the jurisdiction of bribery prohibitions. To borrow an often-used metaphor, it “leveled the playing field.”

But then the world changed. The late 1990s and early 2000s saw the rise of new economic powers that produced their own multinational corporations and thus became significant exporters of capital. Chief among these were, and are, the so-called BRICs (an acronym not coined until 2001): Brazil, Russia, India, and China. Importantly, none of these countries then belonged, or now belongs, to the OECD.

With the exception of India, the last few years have seen the BRICs take significant steps to address extraterritorial bribery. In May 2011, as part of a longer-term effort to achieve full membership in the

**Why should Wal-Mart be penalized for doing business in Mexico or China in the manner of their Mexican and Chinese competitors?**

Wal-Mart faces scrutiny for alleged bribery in ventures in India (top left) and Mexico (bottom left). Protestors have recently been especially vocal in Russia (top right) and Brazil (bottom right) in airing frustration with public and corporate corruption.
OECD, Russia became a party to the convention and enacted a statute that substantially conforms to the convention’s terms. Similarly, in August 2013, Brazil took the final steps to amend its extraterritorial bribery prohibition. Although Brazil was among the original parties to the OECD convention, its original implementing statute did not create liability for legal persons. The 2013 amendments, included in the omnibus Clean Company Act, create civil and administrative liability for companies that bribe overseas and take further steps to improve Brazil’s anti-bribery enforcement.

But potentially the most significant measure among the BRICs was China’s amendment to its criminal statutes. Enacted in 2011, China’s new prohibition of overseas bribery reads in full: “Whoever, for the purpose of seeking illegitimate commercial benefit, gives property to any foreign public official or official of an international public organization, shall be punished.” As statutes go, that’s rather brief.

And so it’s hard to tell how serious China is about reducing overseas bribery. Unlike Brazil and Russia, China has conspicuously declined to follow the OECD template. In its brevity, the Chinese amendment fails to address the myriad issues of intent, liability, and jurisdiction that have been the basis of ongoing OECD deliberations since the convention’s creation. In contrast to its fellow BRICs, China has to some degree resisted OECD pressure, signaling to the world a commitment to forging its own path.

And of course, enactment is of scant effect without enforcement. Just as the U.S. took 25 years to begin enforcing the FCPA, China is certainly entitled to a similar grace period. However, the unique histories, political ideologies, and present legal and economic circumstances of these two countries raise the possibility that they will continue to evince opposing approaches to the actual enforcement of these laws.

On the broad ideological spectrum of political economy — a radical commitment to small government and economic liberty lying at one pole and the dominant state presence of 20th-century Soviet-style communism lying at the other — the U.S. and China originally occupied opposite extremes. At their respective revolutions, the United States sought to embody the principles of natural rights and limited government, while China sought to build a Soviet-style planned economy. But for each country, a series of political and economic crises drew it away from the extremes and toward the center. In the U.S., the Civil War, the Great Depression, the Civil Rights movement, Watergate, and the accounting scandals of the 1990s successively enlarged the power of the federal government and expanded federal regulation of commercial affairs. On the opposite side of the spectrum and the globe, China experienced economic stagnation, the failed reforms of the Great Leap Forward and the Cultural Revolution, and finally, the death of Mao. China then undertook to promote economic development by limiting the government’s role in economic regulation, just as the role of the U.S. federal government had expanded.

Today, in the specific sphere of international business, these two nations have not merely met in the middle of that ideological spectrum; rather, they have passed each other. With respect to various areas of what may generally be called extraterritorial business law — areas such as anti-bribery law, employment anti-discrimination laws, economic and trade sanctions for human rights abuses, and the taxation of extraterritorial corporate profits — the U.S. federal legal regime may be the most demanding in the world. Ironically, the U.S. may have come to represent the uniquely aggressive use of the state’s coercive power to direct corporate conduct toward social goals that are not narrowly related to the market. Meanwhile, China has sought to reduce such restraints in the name of maximizing economic growth to forestall social unrest and preserve the Communist Party’s power. In the U.S., the liberal ideals of Adam Smith and Thomas Jefferson have thus been largely supplanted by the presidential administrations of two Roosevelts and Jimmy Carter; while the revolutionary communism of Marx, Lenin, and Mao have been displaced in China by the pragmatic reforms of Deng Xiaoping and his successors.

These contrasting paradigms, and their differing approaches to extraterritorial bribery prohibitions, will tend to produce unexpected and troubling results for the global anti-corruption movement. Empirical studies have demonstrated that anti-bribery enforcement causes corporations subject to its jurisdiction to do less business in bribery-prone markets. Similarly, the U.S. government once publicly embraced the view that FCPA enforcement leads to a dramatic decline in business to U.S. firms. In congressional testimony in the late 1990s, aiming to persuade Congress to join the OECD Convention, representatives of the SEC, Department of Commerce, and even President Bill Clinton all endorsed the view that FCPA enforcement led to $30 billion of losses annually for U.S. businesses. Various recent surveys of multinational corporations, too, confirm a similar tendency.
Though we do not yet have empirical evidence of the impact on overall rates of bribery in host countries, a simple model can illustrate. Imagine a host country that issues a fixed number of requests for proposals, and companies from two jurisdictions are submitting bids. The first jurisdiction (Jurisdiction A) enforces an extraterritorial anti-bribery law, while the second jurisdiction (Jurisdiction B) does not. Further imagine that Jurisdiction A’s level of enforcement is sufficient to deter bribery among firms from that jurisdiction in roughly half of their dealings. When firms from Jurisdiction A win a contract, they will pay bribes in half of the transactions performed under that contract (customs, visas, permits, inspections, etc.). Because Jurisdiction B does not enforce a bribery prohibition, its firms bribe nearly all of the time. Now imagine a second moment in time in which Jurisdiction A has ramped up enforcement but Jurisdiction B still does not enforce. Jurisdiction A companies will sometimes lose contracts they might otherwise have won, and those contracts will go to companies from Jurisdiction B. As a result, a contract that would have involved bribery in 50 percent of its transactions will now involve bribery in nearly all of its transactions. Rates of bribery in the host country have thus increased as a direct result of Jurisdiction A’s increased anti-bribery enforcement.

Among the major capital exporters, only the U.S., U.K., and Germany might presently be counted among the A jurisdictions. But most of the other major capital exporters are parties to the OECD Convention; thus subject to the OECD’s various legal, economic, and diplomatic pressures, they will likely enforce in the foreseeable future. China may stand alone as a capital-exporter that is neither an OECD convention party nor aspiring to be. Whether the “playing field” will ever become truly level — and produce real reductions in bribery around the world — thus remains to be seen.

But don’t tell that to Wal-Mart. You don’t need to. It already knows it, and all too well.

President Xi Jinping, speaking in Des Moines, Iowa, has promised to strengthen China’s anti-corruption efforts. “The unhealthy influence of the corruption problem is malignant and needs to be solved quickly,” he said in a January speech, according to state broadcaster CCTV.

RICHMOND LAW REVAMPS ITS LEGAL WRITING PROGRAM

By Matthew Dewald
“IRAC.” RING A BELL? Maybe this will jog your law school memories: Issue, rule, analysis, conclusion.

The well-worn format, or some variation of it, has for decades been standard operating procedure for teaching legal writing at law schools across the country, and it has served very specific purposes for lawyers-in-training well. But chances are, as today’s students begin practicing law more than a decade into the 21st century, they will be writing a lot that does not lend itself to the format. Emails to clients. Executive summaries to colleagues. Marketing copy for websites. And who-knows-what-else coming down the road in the next 20 years.

In other words, as technology and communication practices evolve, legal practice evolves along with them. And so, consequently, must legal education evolve.

“The big memo — which is what all of us learned when we were in school — was very common when we graduated, but it’s not as common now,” said Rachel Suddarth, one of five faculty members who make up a new team charged with revamping Richmond Law’s writing curriculum. “We’re trying, very intentionally, to give students writing assignments that will mirror the documents they will need to draft in today’s legal practice.”

The changes to Richmond Law’s legal writing program, which have begun rolling out to 1Ls this year, have their roots in a listening tour Dean Wendy Perdue conducted three years ago during her first summer at Richmond Law. In conversations with alumni and non-alumni legal professionals, she repeatedly asked what they saw as the most important skills a law school should teach. Answers predictably varied, “but the one thing that every single group highlighted was the critical importance of writing,” she said. “I thought I might hear about technology or new curricular areas, but instead it was back-to-basics. It brought writing to the fore and helped to galvanize our focus on this area.”

As she and the faculty started to take a closer look at the writing program in the months that followed, they kept coming back to what they had heard from practicing alumni and professionals: Do more of the writing that lawyers in today’s world typically do. And the more that faculty researched models for achieving that simple yet important goal, the more they realized that a model for doing it simply didn’t exist. They would have to create it.

And so they did. “We joke about “The Richmond Method,”’ Perdue said. “There may be a book in their future laying out the approach they’re using.”

Perdue’s “they” are a new team of five faculty hired to create and implement the new curriculum: Christopher Corts, Tamar Schwartz Eisen, Laura Khatcheressian, Doron Samuel-Siegel, L’01, and Rachel Suddarth. Together, they spent the summer brainstorming, designing, and collaborating with colleagues across the school to reorient the legal writing program. All of them are full-time — a switch away from a model that relied on adjuncts, as had been the practice at Richmond and used to be common at many law schools. The structural change was a significant investment, but it was a strategic decision worth making, said Perdue.

“There has been a move in the marketplace toward a more client-centered legal approach. People are much more sensitive to the need to provide outstanding client service.”

“We had a wonderful group of adjuncts,” she said. “Very, very dedicated. But they were all part-time teachers with other, demanding full-time jobs. It limits what you can do structurally, pedagogically” with a writing program.

Adjuncts remain, she said, “a very valuable resource. Some of our alumni get a little nervous when they ask whether we’ve moved away from adjuncts generally. The answer is no, we have not. They do a fabulous job. We have a number of adjuncts teaching in content areas that are their areas of practice expertise, which is their highest and best use.”

But in the context of a writing program, the benefits of having full-time faculty are significant, said Khatcheressian. “The biggest difference is the level of access students have to their professor. This is especially important with writing projects. It allows us to provide extensive feedback so that students can revise effectively.”

The faculty are leveraging that access not only with students but also with one another and colleagues throughout the school to refocus the legal writing curriculum on two core communication principles: audience and purpose. For communication professionals, the principles are Writing 101, but the terms don’t often get significant attention in traditional legal writing programs.
“I honestly do not recall talking about audience and purpose during my entire three years in law school,” said Corts. “There has been a move in the marketplace toward a more client-centered legal approach. People are much more sensitive to the need to provide outstanding client service. Audience and purpose provide a beautiful conceptual framework for making that concrete in writing so that students learn to put whoever they’re writing for front and center.”

The two-semester course, which every student takes during the first year of law school, stresses being aware of and responsive to the variety of communication goals that students will need to achieve when they begin interning and practicing law.

“The goal is to make them more precise and more consistent editors of their own work. It’s a competitive marketplace.”

“In a given day of practice, our students may find themselves writing persuasively for a judicial audience,” observed Samuel-Siegel. “They may communicate with court clerks and administrative officials, convey advice to lay clients, and describe research findings to senior colleagues. Others may draft marketing materials or provide legislative updates to broad client constituencies. They need the ability and the agility to respond to the needs of any given audience.”

So what, in real terms, does such a program look like? For starters, there is a much stronger emphasis on the writing process, and particularly on the close link between writing and research. Writing faculty collaborated closely with the legal research faculty, who are involved in everything from course development to co-teaching students. “The students see us in each other’s classes, they see us in conferences, and so they have a sense that it’s a much more integrated program,” said Timothy Coggins, associate dean for library and information services, who partners with Samuel-Siegel. “Students understand better why they are researching specific subjects for me because they know they’re going to use what they find in research for her.”

There is also a strong emphasis on seeing writing through readers’ eyes. A specific assessment technique that the group uses during individual conferences drives this home. Rather than collecting assignments and handing them back later marked up with red ink, each writing faculty member sits down one-on-one with students and does a first read of a draft right in front of them.

“When students hear their work read out loud by someone else, they frequently recognize on their own that it does not sound quite right,” said Eisen. “I’ve had students say, ‘I see you’re struggling with that, so I guess I didn’t make myself clear.’”

Over time, the students learn to anticipate how readers will respond, making them stronger editors of their own work. Developing that awareness — anticipating how readers are likely to perceive a piece of writing, whether a traditional brief or a short email — moves students more quickly to understanding that, to be effective, their legal writing must ultimately be audience-based.

“The goal,” said Corts, “is to make them more precise and more consistent editors of their own work. It’s a competitive marketplace. If they can go into a job as an intern or an entry-level attorney and be able to not only write well but to diagnose ways to strengthen colleagues’ work, they will be at a tremendous advantage.”

As the writing faculty continue to refine the curriculum, and as this year’s 1Ls move into their second and third years, the impact of the new approach to legal writing instruction will become more evident in the upper-level courses, said Perdue. “The faculty was excited about the idea that we’d have a consistent vocabulary and way of talking about writing that would allow us to build more effectively in the upper class,” she said.

“Lawyers are in the communication business, and a great deal of that communication is in writing. We’re focused on this because we know this is critical for our students. The charge I put to the committee was to tell me what the best legal writing curriculum in the country would look like. Let’s aspire to that. That’s been the driving vision, and it is what we are creating.”
Ron Bacigal and Mary Kelly Tate co-wrote the fourth edition of *Criminal Law and Procedure: An Overview*.


Carol Brown was a panelist at a symposium at the Touro Law Center marking the 40th anniversary of the 1973 publication of *The Taking Issue*, which examines governmental authority to regulate the use of privately owned land without compensating its owner.

Tara Casey served on the Access to Justice Planning Committee of the Supreme Court of Virginia. She was also named to *Virginia Business Magazine*’s Legal Elite in the category of Legal Services/Pro Bono.

The University of Minnesota’s Center for Advanced Studies in Child Welfare published Dale Cecka’s article “Parents with Mental Disabilities: The Legal Landscape” in the Fall 2013 issue of its journal *CW360°*.

The *Richmond Times-Dispatch* quoted Hank Chambers in a piece weighing the likelihood that Bob McDonnell, Virginia’s former governor, would face indictment in a gift-giving scandal. McDonnell was subsequently indicted. In an interview with Richmond’s NBC12, Chambers described Virginia’s financial disclosure rules for politicians as “Swiss cheese,” adding, “The idea that one can give a significant gift to a member of the governor’s family and have that not get reported at all is a little odd.”

John Douglass chaired the Virginia Death Penalty Assessment Team, which issued a report in early September that recommended a dozen steps for improving fairness and accuracy in Virginia’s death penalty prosecutions. “We wanted to make suggestions that we felt politically, judicially, legally were attainable,” he said during the press conference announcing the report’s release, according to the *Richmond Times-Dispatch*.

Joel Eisen took part in a conference at UCLA Law in November on clean energy and innovation. The articles from the conference will be published by *UCLA Law Review*. Also in November, he was the keynote speaker at an interdisciplinary workshop at the University of Delaware. The workshop was part of a National Science Foundation award seeking to establish a research agenda on water sustainability and climate. He was invited to present at the University of Texas’ 2014 Austin Electricity Conference, which will focus on “Innovation and New Models for the Delivery of Electric Service,” and was an invited panelist discussing the Smart Grid during conferences at Northwestern, University of San Diego, and Seoul National University in South Korea.

David Epstein was a panelist at the Fourth Circuit’s Symposium on Consumer Bankruptcy Practice at Georgetown Law in December. The *Richmond Times-Dispatch* recently quoted him in an article examining the potential impact of student loan debt on the housing market. “It’s hard to afford a home when you leave school with significant financial obligations,” he said.

Jessica Erickson helped organize and presented a paper at the inaugural Corporate Litigation Conference at the University of Illinois.

Bill Fisher’s paper “Predicting a Heart Attack: The Fundamental Opacity of Extreme Liquidity Risk” was listed on SSRN.com’s top 10 downloads list for the category “Law & Finance: Empirical.”
The Media Institute published “Big Media in Copyright Litigation” by Jim Gibson, for which he and colleague Chris Cotropia examined approximately 1,000 copyright cases filed over a four-year period. His preliminary conclusion? “Most of the action in everyday copyright cases involves not major media companies, but small firms. ... The courtroom is where Big Media collects the spoils rather than fights the war.” The Media Institute also published his commentary “Google Books: Game, Set, But Not Match.” He appeared on NBC12 in Richmond in the report “On Your Side Alert: Should You Tell Stores Your ZIP Code?” (Short answer: It depends on how protective of your privacy you are.)

Chiara Giorgetti gave two courses and a faculty seminar at Bocconi University in Milan, Italy, over the fall break. In May, she will be a panelist at the European Society of International Law Research Forum in Amsterdam. She was elected a member of the academic council of the Institute for Transnational Arbitration and became co-chair of the American branch of the International Law Association’s Committee on Disputes Involving States. She also gave a presentation on her research on Somalia to the World Bank’s legal department and its Center on Conflict, Security, and Development.

In October, Meredith Harbach presented “Childcare Market Failure” at the Wake Forest Law Faculty Workshop. She was featured in the documentary film Political Bodies, which explores the 2012 Virginia General Assembly and abortion politics. Virginia Business turned to Mary Heen for expertise for its story on how tax law treats charitable donations involving naming rights.

“It didn’t have to be this way,” Azizah al-Hibri wrote in an Aug. 20 opinion piece in Miami Herald called “On Torture: No Time Like the Present to Own Up to Our Past.” In September, The Huffington Post published on its religion blog her article “Christian Minorities: Our Trust Betrayed,” which analyzes the responsibility of Muslim leaders to speak out against religious violence.

Truthout.org, an online publication, published a series of weekly essays on the National Labor Relations Act co-written by Ann Hodges. Four of the articles were nominated for National Press Foundation awards. She was quoted in multiple media outlets discussing strikes by fast-food workers, credit card offers by churches, and worker safety.

J.P. Jones reviewed The Oath: The Obama White House and the Supreme Court by Jeffrey Toobin in the Spring 2013 edition of NAACA News, the newsletter of the National Association of Appellate Court Attorneys. In October, he moderated an on-campus debate between Benjamin Wittes, a fellow at the Brookings Institution, and Conor Friedersdorf, staff writer for The Atlantic, about the lethal use of drones in armed conflict.

Corinna Lain presented her paper “Constitutional Courts, Political Reality, and Upside-Down Judicial Review” at Universidade Federal do Rio de Janeiro’s international conference on institutional theory.


Kristen Osenga presented “The Patent System as a Complex Adaptive System” at the Mid-Atlantic Patent Works-in-Progress colloquium at American University’s Washington College of Law. In August, she will present a paper at the annual IP Scholars Conference at Cardozo School of Law at Yeshiva University, and next spring she will be presenting a paper at PatCon, the annual patent law conference at the University of San Diego School of Law. She also completed her first half-iron distance triathlon (1.2-mile swim, 58-mile bike, 13.1-mile run).
Wendy Perdue discussed sustainable communities as a panelist at the Environmental Law and Public Health Conference at the University of Michigan.

Kimberly Robinson spoke at the Poverty Law: Cases, Teaching and Scholarship conference at American University. In November, she moderated a panel during The Civil Rights Act at 50 symposium at the University of Chicago. On Richmond’s campus, she discussed education issues on a panel that included U.S. Secretary of Education Arne Duncan and U.S. Rep. Eric Cantor.

Mary Kelly Tate reviewed Grave Injustice: Unearthing Wrongful Executions by Richard A. Stack in the August issue of The Champion, the journal of the National Association of Criminal Defense Lawyers. The book, she wrote, is “a highly readable study for anybody interested in a thoughtful, but critical examination of the death penalty in modern America.”


The Washington Post turned to Kevin Walsh for comments about the former Virginia attorney general’s defense of the commonwealth’s antisodomy laws. “Walsh also thinks Cuccinelli is getting a bad rap for taking the case to the Supreme Court,” The Post wrote. “It’s really not about Ken Cuccinelli; it’s his job to defend the states’ laws.” Walsh is also co-counsel for the plaintiffs in Little Sisters of the Poor Home for the Aged v. Sebelius, a class action filed in Colorado.

“Are law students getting the training they need to use technology effectively when they begin practice?” asked Andrew Winston in his article “Richmond Law’s Technology Boot Camp,” which Virginia Lawyer published in October.

When home-sweet-home bursts like a bubble

Carol N. Brown

Carol Brown has to look no further than the headlines as she prepares for class. Her field, which encompasses real estate law, land use planning, property, and housing law, has been in the news since the real estate bubble burst and the global recession took hold. Issues like foreclosures, adverse possession (squatting), landlord-tenant laws, and lending practices have been hot topics.

“Properties become vacant, and that affects the value of neighboring properties,” she said. “That reduces tax revenues, which fund schools and services. There are a lot of negative impacts that ripple through the economy.”

A native of Greensboro, N.C., Brown received her undergraduate degree from Duke University and her J.D. and LL.M. from Duke in 1995. She clerked for a U.S. District Court judge in Alabama and worked at McGuire Woods Battle and Bothe (now McGuire Woods) in Richmond and with Sirote and Permute in Birmingham before deciding to teach.

“I found that what I really enjoyed was writing and research,” Brown said, and teaching made room for that. She taught at the law schools of the University of Alabama and the University of North Carolina before joining the faculty at Richmond in 2012. She acknowledges the influence on her career path of some great teachers with whom she stays in touch. “I look forward to building lasting relationships with students that will enrich us all and improve the profession,” she said.

She has published six books. Her next book is Experiencing Housing Law, written with Serena M. Williams. It will be published by West Publishing.

The real estate collapse has presented opportunities, Brown said. “It has given us some space to think about our relationships with property. For too many people, residential real estate had become an investment first, where it should be seen first as shelter [and] home. And for many in today’s mobile society, home ownership may not be the best choice of lifestyle or investment.”

“We’re beginning to see recovery and we need to go forward thoughtfully, prudently.”

—Rob Walker
Student helps found LGBT bar association
October marked the arrival of Virginia’s first bar association devoted to the equality of lesbian, gay, bisexual, and transgender individuals. Among those organizing the new group was Ashley Moore, L’14.

Moore’s involvement began when, during an LGBT family law conference, she learned that no association for LGBT lawyers existed in Virginia despite thriving groups in other cities and states. “The last panel for the day talked about what it’s like to be out and practicing,” Moore said. “The two attorneys there talked about how there really isn’t any sort of association for LGBT attorneys, and I sort of volunteered myself to work with several people trying to put something together.”

Six months and several meetings and conversations later, the organization has evolved from an idea into the Virginia Equality Bar Association (VEBA), an independent and nonpartisan association of LGBT legal professionals seeking equality for LGBT individuals and opposing discrimination based on sexual orientation or gender identity.

The association announced its debut on Oct. 11, the 25th anniversary of National Coming Out Day, a day on which people across America celebrate coming out as lesbian, gay, bisexual, or transgender, or as an ally.

Moore, who is president of the law school’s Equality Alliance chapter, was the only student among 20 legal professionals instrumental in founding VEBA. “I hope that it really becomes an active and dynamic part of the community — both the legal community and the LGBT community — and part of state conversations on equality,” Moore says.

Tough under fire
Third-year law student and U.S. Marine Corps 2nd Lt. Kevin McCann received the Commandant’s Trophy, which is awarded to officer candidates with the highest GPA in the platoon leader’s course. McCann enlisted in the Marine Corps Reserves in 2007. A native of St. Petersburg, Fla., he deployed with his reserve unit to Afghanistan, where his squad was hit with more than 50 percent combat losses. McCann received a Purple Heart and a Combat Action Ribbon during the deployment.

Scholarship hub
Whether you’re looking for the latest legal research on Snapchat and sexting or more run-of-the-mill topics like land use and free speech, there’s now a way to benefit from the collective scholarship of Richmond Law’s current students.

In November, the law library launched an online repository for law review and journal articles authored or co-authored by Richmond Law students. You can see what they’ve been researching and publishing at scholarship.richmond.edu/law-student-publications.
Recognizing significant alumni accomplishments

Reviewing the law
Figuring out whom Virginia voters had elected attorney general this fall proved much more complicated than usual. For starters, Mark Herring, L’90, led his opponent by only 165 votes of 2.2 million cast in the days after the election.

The State Board of Elections certified him as the winner a few weeks later, but such a razor-thin margin of victory triggered an automatic statewide recount. By Dec. 18, the recount had widened Herring’s victory to 907 votes, prompting his opponent to concede.

Glenice Coombs, publications coordinator for the University of Richmond Law Review, followed the race with interest because she remembered Herring as a student. “It’s the Mark Herrings of the world that keep me coming back every day,” Coombs said. “Mark was a great guy. He was diligent. He was focused. He was fair.”

Last spring, Herring surprised Coombs when he dropped by, with a smile on his face, to visit her at the law review offices.

As a student, Herring was senior notes and comments editor for Richmond Law Review. He reviewed and selected student pieces for publication, a job Coombs estimates added 40–60 hours a week on top of his coursework. Herring also had a wife back in Leesburg. “I remember him so well because of his dedication to his family,” Coombs said. “He still had the responsibility that he had on law review and made it work.”

Herring took office Jan. 11. After the election, he tapped Shannon L. Taylor, L’95, as one of five co-chairs of his transition team.

Pinch hitters
Herring isn’t the first Virginia attorney general to hail from Richmond Law. We found at least four attorneys general from the past 50 years named to fill unexpired terms of elected AGs who resigned to seek higher office:

- Frederick Thomas Gray, R’48 and L’50, 1961–62
- Anthony Troy, L’66, 1977–78
- Richard Cullen, L’77, 1997–98
- Judy Jadgmann, L’84, 2005–06

Mary Sue Terry — who was elected attorney general in 1985 and again in 1989 — received her undergraduate degree from Richmond.
Nota Bene
Pat Doherty nearly burned his old papers from his years on the bench.

“I had about 18 feet of notes,” said Doherty, L’72. “It had been my intention to have the notes taken out to a furnace to get rid of them.”

But someone at the Supreme Court of Virginia read about his intention in The Roanoke Times and called to save the papers he had accumulated after 18 years on the circuit courts of Roanoke and Salem, Va. The Supreme Court recommended they be housed at the University of Richmond.

Last fall, 14 boxes arrived at the William T. Muse Law Library. They included his handwritten notes from trials over which he presided and originals of many of his 390 opinions. Around two dozen hardbound volumes held the key to where his note-taking habits started: law school.

Doherty studied at Richmond Law during the era when Dean Muse — yep, the one the library’s named for — required students to take notes in specially ordered hardbound books. And as a law student, Doherty picked up his meticulous habits.

“We were all afraid that we weren’t going to graduate, so we studied really hard,” Doherty said. “At the time I wrote very, very fast. And I had shorthand notes. I would put a triangle for delta meaning defendant and a pi sign for plaintiff, K for contracts, which is something Dean Muse told us to do.”

Muse also called students in to inspect their notebooks and tell them whether they were doing it right. Doherty’s early habits became a boon to him as a prosecutor and later as a judge.

“When I took the bench, I started writing down pretty much what the witness said and some of the lawyers’ arguments,” Doherty said.

His notes were so good and extensive that his longtime assistant Bonnie Hager told The Roanoke Times that lawyers came by at least two or three times a week to use them.

“They’re not a transcript by any stretch of the imagination,” Doherty said. “But they’re pretty good.”

Alumni events

MARCH
• Alumni reception in Virginia Beach
• Cupcake tasting in Richmond
• Alumni reception in Charlottesville
• Professionalism and Ethics Symposium

APRIL
• Richmond Flying Squirrels game
• Golf tournament
• Norfolk Tides game

MAY
• Estate Planning Seminar
• Juvenile Law and Education Conference

Visit law.richmond.edu/alumni for details and more events as they’re scheduled.

See you at Reunion! May 30–June 1
We’re celebrating class years ending in fours and nines. Come back to Richmond to enjoy catching up with classmates, the kickoff party at the School of Law, and the annual reunion dinner at the Virginia Museum of Fine Arts.
We want to hear from you. Send us your note via the “Submit a Class Note” link at lawmagazine.richmond.edu, email us at lawalumni@richmond.edu, or contact us by mail at Law Alumni, University of Richmond School of Law, University of Richmond, VA 23173, or at 804-289-8028.

1960s

S.D. Roberts Moore, L’61 and trustee, an attorney at Gentry Locke Rakes & Moore in Roanoke, Va., has been named to the 2014 edition of The Best Lawyers in America in the area of personal injury law.

Ebb H. Williams, R’61 and L’64, was named to the 2013 edition of Virginia Super Lawyers in the general personal injury plaintiff category.

Anthony Troy, L’66, is vice chair of the Virginia Intermont College board of trustees. He has been a trustee since 2007 and is an attorney at Eckert Seamans Cherin & Mellott in Richmond.

Archie Yeatts III, R’64 and L’67, and Elaine Johnson Yeatts, W’64, C’89, and trustee emerita stay busy with their two daughters and grandchildren.

1970s

Larry Elder, L’75, retired Oct. 1 after 22 years on the Virginia Court of Appeals. He began his career in public service as the commonwealth’s attorney for Dinwiddie County, Va., and then served as a juvenile and domestic relations district court judge in Petersburg, Va., before being elected to the Court of Appeals by the Virginia General Assembly in 1991. He and his wife live in Ford, Va.

The publishers of Virginia Lawyers Weekly named Gary W. Kendall, L’76, to their 2013 “Leaders in the Law” class. He is a personal injury attorney and senior partner with MichieHamlett Attorneys at Law in Charlottesville, Va.

Bruce C. Stockburger, L’76, an attorney at Gentry Locke Rakes & Moore in Roanoke, Va., has been named to the 2014 edition of The Best Lawyers in America in the areas of tax law, trusts and estates, and leverage buyouts and private equity law. He also received recognition as a “2014 Roanoke Lawyer of the Year” from Best Lawyers and was listed in the Super Lawyers Business Edition US for business and corporate law.

Ted Chandler, L’77, and Laura Lee Hankins Chandler, W’74, hiked the Haute (high) Route through the Alps, hiking from Chamonix, France, to Zermatt, Switzerland last summer. The 12-day hike took them in the valleys and over the passes, and was between 6,000 and 10,000 vertical feet. The local mountain inns were a welcome resting place at the end of the 6–10 hours of daily hiking.

Steve Stone, L’77, is a principal in the litigation practice group at Offit Kurman in Tyson’s Corner, Va.

Virginia circuit court judge Pamela Baskervill, L’78, spoke at the May 2013 commencement exercises of her under-graduate alma mater, Mary Baldwin College, in Staunton, Va.

Burton F. Dodd, L’78, a partner in the Atlanta office of Fisher & Phillips, has been named to the 2014 edition of The Best Lawyers in America. Dodd’s specialty is employment and labor law.

Tom Klein, L’78, is senior vice president and southeast regional manager of WFG National Title Insurance Co. in Richmond.

At the Fall Gathering, from left, Brian Frame, L’16, Britney McPherson, L’14, Dottie Williams, Stuart Williams, R’42 and L’48, Charles Calton, L’16, Bob Garian, R’55 and L’58, Jason Poole, L’15, and Martha Garian.
John Midgett, L’78, is president of the Norfolk-Tidewater chapter of the Society of Financial Service Professionals. He is an attorney at Midgett & Preti in Virginia Beach, Va. He has also been president of the Hampton Roads Estate Planning Council, the Hampton Roads Gift Planning Council, the local chapter of the International Association of Financial Planners, and the Trusts and Estates Section of the Virginia State Bar.

Keith Phillips, L’79, is a federal bankruptcy judge in Richmond for the Eastern District of Virginia. He had been a principal of the Phillips & Fleckenstein law firm in Richmond.

1980s

Edward L. Weiner, L’80, a personal injury attorney with Weiner Spivey & Miller, is president of the Fairfax (Va.) Bar Association. He was also appointed to a three-year term on the Virginia State Bar’s Carrico Professionalism Faculty.

Mary G. Commander, L’81, is a member of the board of governors of the Family Law Section of the Virginia State Bar and has also been selected as a Fellow of the American Bar Association.

Marion S. Cooper, L’81, joined MercerTrigiani’s Alexandria, Va. office, where she represents common interest communities and provides counsel on governance and administration.

Steve Farrar, L’82, is secretary-treasurer of the Federation of Defense and Corporate Counsel and has been elected to serve as its president in 2016–17. He is a trial lawyer and partner at Smith Moore Leatherwood in Greenville, S.C.

Bristol, Va. attorney Kurt J. Pomereneke, L’82, was elected by the Virginia General Assembly to serve a six-year term as a juvenile and domestic relations court judge in Bristol and the counties of Smyth and Washington.

Georgia K. Sutton, L’82, was elected by the Virginia General Assembly to serve a six-year term as a juvenile and domestic relations court judge in the 15th Judicial District, which includes Fredericksburg, Va.

Marla Graff Decker, L’83, was elected to the Virginia Court of Appeals.

Petersburg’s Circuit Court judges appointed Ray P. Lupold III, L’83, to serve a temporary term on the general district court in Petersburg, Va. In January, the General Assembly elected him to a full term.

Brad Peaseley, L’83, operates the firm of Peaseley & Derryberry, with offices in Richmond and Nashville.

Ben Emerson, R’73 and L’84, is managing partner at Sands Anderson in Richmond. Ben is involved with the Society of Colonial Wars. His wife is Nancy Bendall Emerson, W’73. Their son Benjamin has a doctorate in aerospace engineering and is a research engineer at the Guggenheim School of Aerospace Engineering at Georgia Tech in Atlanta.

Legal Leader

A recent analysis of Virginia’s Super Lawyers showed that 22 percent hail from Richmond Law, the second-highest percent statewide.

Charles Ricketts III, L’78, was elected a judge of Virginia’s 25th Judicial Circuit by the Virginia General Assembly. Prior to this appointment he served eight years as a juvenile and domestic relations district court judge.

Thomas Bondurant Jr., L’79, was named a “2014 Best Lawyer in America” for corporate compliance law, criminal defense, and white-collar law by U.S. News and World Report and Best Lawyers. Bondurant was also listed in the Super Lawyers Business Edition US. He is an attorney at Gentry Locke Rakes & Moore.

At the Fall Gathering, from left, Ron Bacigal, Margaret Bacigal, L’79, Sharon England, L’96, and Randa Zakhour, L’10, Mary Katherine McGertrick, L’01, Christine Mehfoud, L’01, Julie Eckstein, L’01, and Connell Mullins, L’01.
Rob Spicer, L’84, and Becky Brabham Spicer, W’81, live in Richmond and have two grown daughters.

Paul Black, L’85, was named a federal bankruptcy judge for the Western District of Virginia in Roanoke, Va. His term lasts 14 years. He was co-chair of the bankruptcy and creditors’ rights practice group at Spilman Thomas & Battle in Roanoke.

Matthew Broughton, L’85, was named a “2014 Best Lawyer in America” by U.S. News and World Report and Best Lawyers for personal injury litigation and products liability litigation. The publishers of Virginia Lawyers Weekly also named Broughton to their 2013 “Leaders in the Law” class. He is a partner and senior litigator at Gentry Locke Rakes & Moore in Roanoke, Va.

Katherine Baldwin Burnett, L’85, is counsel to Virginia’s Judicial Inquiry and Review Commission. Prior to this appointment, she was a senior assistant attorney general and director of its capital litigation unit in Richmond.

Elizabeth Ireland, L’85, received an Outstanding Victim Services Professional award from Maryland Gov. Martin O’Malley last year. Ireland is a former prosecutor for Wicomico County, Md, and in 2011 became the first staff attorney at Life Crisis Center, an agency serving victims of domestic violence.

Paul Black, L’85, (left) with U.S. District Judge Michael Urbanski after being sworn in as a judge of the U.S. Bankruptcy Court for the Western District of Virginia

ALUMNI PROFILE

The Congressional Watchdog

Thomas H. Armstrong, L’78

There’s no such thing as a free lunch, and no one knows that better than Tom Armstrong. For almost 36 years, he’s worked at the U.S. Government Accountability Office, where he now serves as the agency’s deputy general counsel.

“I’m very fortunate,” Armstrong says. “I don’t think there are many people so lucky to have found their niche so early in their career.”

He started there as a summer intern at the agency after his 2L year, and by the time he was leaving to head back to Richmond, he had already submitted a job application.

“Although it may be an esoteric area of law, it has its tentacles throughout government,” Armstrong says. “It covers just about anything a federal official can do with public money.”

And food tends to be one of the biggest flashpoints.

“I can’t tell you what an emotional issue food is in appropriations law,” Armstrong says. “Once we issued a decision, and somebody at the Army Corps of Engineers referred to us as the donut police. They were mocking us, but I’m kind of proud of that.”

Many years later, Armstrong remains fascinated with the GAO’s work — a mix of legal and policy work and writing — that defines the congressional agency’s role examining the receipt and payment of public funds.

He has authored countless decisions on federal appropriations law and contributed to the Principles of Federal Appropriations Law, more commonly called the Red Book, the reference used by agency personnel throughout the government. Today, he helps manage the 152 GAO staff attorneys in the Office of the General Counsel.

In Washington, there hasn’t been a dull moment when it comes to speculation about whether and when the Congress might avoid the latest fiscal crisis.

“I think it’s safe to say that we live in unusual times,” Armstrong says. “The financial challenges are pretty obvious right now. The GAO has been very vocal in advising that we have to confront the public debt. Congress does have some hard choices to make there.”

The unrest in Congress doesn’t bother him, though. As Armstrong sees it, the current Congress reflects the views of the electorate and the lack of consensus among Americans about how the government should address debt and spending issues.

“One of the advantages to having been around 35 years is that you do see the cyclical nature of things,” Armstrong says. “There have been times in the past when disharmony and discord in the public debate were reflected in the public leaders.”

—Paul Brockwell Jr.
Joseph Corish, R’82 and L’86, is a shareholder at Bean, Kinney & Korman. He was included in The Best Lawyers in America 2014 in the area of banking and finance law. In addition to practicing law, he also presents seminars on lending, bankruptcy, real estate, and government contracting issues.

Victor Narro, L’91, taught a class last fall titled Community Lawyers: Low-wage Worker Organizing at the UCLA School of Law. Narro is a project director at the UCLA Downtown Labor Center.

Mary Burkey Owens, L’86, a partner at Owen & Owens in Richmond, was named to the 2013 Virginia Super Lawyers in the family law, collaborative law, and estate planning and probate categories. She also was named one of the “Top 50 Women Super Lawyers” in Virginia and listed in the 2014 edition of The Best Lawyers in America for collaborative law.

Joseph “Jay” Spruill III, L’88, is a partner at LeClairRyan in the firm’s community banking practice area and banking industry teams in Richmond.

Mary Burkey Owens, L’86, a partner at Owen & Owens in Richmond, was named to the 2013 Virginia Super Lawyers in the family law, collaborative law, and estate planning and probate categories. She also was named one of the “Top 50 Women Super Lawyers” in Virginia and listed in the 2014 edition of The Best Lawyers in America for collaborative law.

At the Richmond Law Women’s Forum, from left, Cretia Carrico, W’76 and L’78, Sandy Bowen, L’78, Dean Wendy Perdue, Beth Kaufman, L’78, Sara Wilson, L’78, Christine Mehfoud, L’01, Barbara Picard, L’82, Devon Cushman, L’03, and Vanessa Jones, L’01.

1990s

Pete Fuscaldo, L’91, managing partner at Leech Tishman, has been named for a fourth time to the 2014 edition of The Best Lawyers in America in the areas of corporate law and tax law. Fuscaldo lives in Pittsburgh, Pa.

Laura Colombell Marshall, L’94, was selected to the Leadership Metro Richmond Class of 2014. She is a partner at Hunton & Williams in the firm’s white-collar defense and internal investigations team.

Frank Stubbs III, L’93, is an adjunct professor at the University of North Florida. He teaches healthcare human resources management and healthcare marketing.

Jeffrey Gregor, L’00, is general counsel and executive vice president of Capital Square Realty Advisors in Richmond.

Jeffrey T. Selser, L’98, is among the Verrill Dana attorneys included in the 2013 edition of New England Super Lawyers in the categories of real estate law, land use/zoning, and energy and natural resources.

2000s

Jeffrey Gregor, L’00, is general counsel and executive vice president of Capital Square Realty Advisors in Richmond.

Courtney Moates Paulk, L’00, a partner at Hirschler Fleischer, became the 78th person to complete the triple crown of open water swimming when she finished her 20.2-mile swim across the Catalina Channel in Southern California. She is the 78th person in the world to accomplish this feat, which required swimming 21 miles across the English Channel and 28.5 miles around the island of Manhattan. Paulk writes about her adventures at swimandtonic.wordpress.com.

The Daily Record, a Maryland-based legal journal, named Sam Abed, L’01, to its 2013 list of top professionals under 40. Abed works with the Maryland Department of Juvenile Services.

David Freedman, L’01, was named to the Central Penn Business Journal’s “Forty Under 40” list, which recognizes commitment to professional excellence, business growth, and community involvement. Last issue erroneously
The view from all sides

Mary Malveaux, L’93

Mary Malveaux has seen the courtroom from every angle. She started her career as an assistant commonwealth’s attorney for Henrico County, handling mostly misdemeanor and felony trials. Then she moved into private practice, tackling insurance defense and civil litigation — with a dash of criminal law — for Brenner, Evans & Millman, P.C., in Richmond.

“I enjoy trial work, and always have,” she said. “You’re usually learning something new, which is interesting. It’s the strategy of figuring out things and putting them together.”

Malveaux still enjoys trial work, but now she does so from the bench of the Henrico County General District Court. In 2011, she became the county’s first female African-American judge and handles caseloads that include everything from traffic violations and misdemeanor charges to minor civil suits.

Her early career, she says, was a great way to learn to try cases, and Malveaux believes serving as a judge provides a new way of seeing the practice of law.

“Virginia probably does it best,” she said about the process she went through before being elected by the General Assembly. It isn’t an easy one. She interviewed with various local and state bar associations and also sat down with the state legislators who ultimately decide on appointments. At that stage, the decision is subject to any number of delays in the legislative process.

But two years after her appointment began, Malveaux sees her experience on the other side of the bench as adding value to her current work. “I hope it brings a sense of balance,” she says. “It’s always good to be able to see things from different angles strategically. But also having been there, I think, gives me another layer of understanding and perspective.”

The bench also provides Malveaux with opportunities to learn. Cases both large and small, she says, all offer a chance to continue adding to her experience. It’s just a matter of paying attention.

“Law is amorphous,” she said. “Things change. I go back and re-read different statutes and find things I either didn’t realize or don’t remember. There are always things to learn.

“Someone once said, if you go a day and you aren’t learning, you’re not doing something right.”

—Kim Catley
James Van Horn Jr., L’03 and GB’03, is a partner at Hirschler Fleischer in Richmond.

Kathleen Faulkham Centolella, L’04, has been named a Rising Star by New York Super Lawyers–Upstate Edition. She is an attorney at Bousquet Holstein in Syracuse, N.Y.

Brian Teague, L’04, founder of Patent Law of Virginia was named a Rising Star in the 2013 edition of Virginia Super Lawyers.

Robert J. Proutt Jr., L’05, is a partner at Christian & Barton in Richmond, where he focuses on commercial real estate transactions, natural resource restoration, and mitigation banking.

Erin Torrey Ranney, ’02 and L’05, and her husband, Paul, L’05, welcomed a baby girl, Kaitlyn, in September. The family lives in Chesterfield County, Va.

Kimberly Skiba, L’06, a partner at Owen & Owens in Richmond, was named to the 2013 Virginia Super Lawyers as a Rising Star for the third consecutive year. She was listed in the family law and estate planning and probate categories.

Hunter Jamerson, L’08, was recognized as a Rising Star in the 2013 edition of Virginia Super Lawyers. He is an attorney and lobbyist at Macaulay & Burch in Richmond.

Chivonne Thomas Jones, L’09, and her husband, Jessie, welcomed their first child, Aria, in May.

Danielle LaCoe, L’09, married Michael Vranian on June 16, 2012. The couple lives in Baltimore, Md.

Matt Long, L’09, is a partner at Ayers & Stolte in Richmond.

2010s

Rhiannon Hartman, L’10, is an associate attorney at the Heritage Law Group, where she specializes in elder law and estate planning. She and her husband welcomed a daughter, Stella, in June.


Qasim Rashid, L’12, was interviewed by Lauren Green of Fox News. He appeared on Green’s “Spirited Debate” segment and spoke about his self-published book The Wrong Kind of Muslim.

Brianne Mullen, L’13, is executive director of the Partnership for Smarter Growth in Richmond.


In Memoriam

Stuart L. Williams Sr., R’42 and L’48
Jan. 29, 2014

George R. Douglas Jr., L’51
April 29, 2012

Richard D. “Rick” Mattox, L’54
Sept. 24, 2013

William Earle White Jr., L’56
May 9, 2013

Charles H. Beale Jr., L’57
June 3, 2011

Herbert I.L. Feild, L’57
May 25, 2013

R. Kenneth Wheeler, R’57 and L’64
June 22, 2013

William E. “Bill” Anderson, L’59
June 20, 2013

Cassell D. Basnight, L’62
Nov. 13, 2013

José R. Dávila Jr., L’63
July 16, 2013

C. John Renick, L’63
Aug. 15, 2013

Robert F. “Bob” Haley II, L’67
June 26, 2013

Robert S. Ganey, L’73
May 28, 2013

Randi W. Sinclair, L’74
April 22, 2013

Patsy Lake Monhollon, L’82
July 23, 2013

Jill Lallier Ward, L’83
July 3, 2013

Robert Jeffrey Duffett, L’91
Aug. 11, 2013

Myron Berman, L’93
April 5, 2011

Richard R. Fuller Jr., L’00
May 31, 2013

Benjamin Adelbert Thorp IV, L’00
Jan. 29, 2014

Timothy L. Gorzycki, L’01
Sept. 17, 2012
The Student Bar Association presents the

Fifth annual University of Richmond School of Law

Golf Tournament

Saturday, April 19
Shotgun start, 10 a.m.
Independence Golf Club
600 Founders Bridge Blvd.
Midlothian, Va.

Nongolfers are also welcome to enjoy a cornhole tournament and golf clinic, and to join the golfers for lunch after the tournament.

For details and registration information, visit law.richmond.edu.