Supreme Court justice honors Judge Merhige

Stephen D. Breyer speaks of judicial courage and independence at Moot Courtroom dedication
Highlighting excellence

It is hard to believe how quickly time has passed since arriving at the University of Richmond in July to begin this great adventure. The fall was filled with conferences, events, and celebrations, many of which are described in the pages that follow.

Justice Breyer was our keynote speaker at the dedication of The Honorable Robert R. Merhige Jr. Moot Courtroom. It was a beautiful day and a perfect occasion to celebrate not only the legacy of Judge Merhige, but also the impressive renovations throughout the law school and the generosity of the many alumni who made those renovations possible. Fall Gathering provided another opportunity for alumni to reconnect with each other and with the School of Law, and I felt particularly fortunate to have met many of you. Thank you for your warm welcome into this wonderful community.

Other events and conferences have highlighted the excellence of our faculty. On Nov. 1, Professor Jack Preis argued his pro bono case—a prisoner appeal on a Bivens claim—in the United States Supreme Court, with a crowd of students and fellow faculty on hand for moral support. Also in November, our annual Allen Chair Symposium explored the procedural side of the pending healthcare litigation. Organized by professors Carl Tobias and Kevin Walsh, the conference was important, timely, and covered extensively by the press. Three days after the conference, the Supreme Court granted certiorari in several of the healthcare cases, and is specifically focusing on one of the issues featured in the conference—the Anti-Injunction Act.

The excellence of the faculty is mirrored in the excellence of our academic program and our alumni. One of the articles in this issue of the magazine highlights the extraordinary success our graduates have had in the field of criminal law. As much as any field, criminal law requires lawyers with outstanding foundational skills in oral and written communications, legal analysis, advocacy, negotiation, and the ability to work across disciplines. That our graduates have been so successful in this area is a testament to the quality of the legal education at the University of Richmond, which continues to impress me every day. We are a place that truly integrates theory and practice. I’m proud to be a part of that tradition and the outstanding lawyers it produces.

Looking back, the past six months have confirmed for me the reality of what I was repeatedly told about the University of Richmond School of Law when I arrived: It is a unique place. It is dominated by a culture that combines a commitment to excellence and intellectual rigor with an equally strong commitment to mutual support and collaboration. It educates exceptional lawyers who are leaders within their communities and within the profession.

These are challenging times for lawyers and for legal education, but there is no place I’d rather be to take on these challenges than here at the University of Richmond.

Best wishes wherever this may find you. If we haven’t yet met, I hope to do so soon.

Wendy Perdue
A View from All Sides

Lindsey Vann, L’12, who aspires to work in capital defense, knew a summer with the Virginia Capital Representation Resource Center in Charlottesville, Va., would give her a firsthand look at her future in the field. There was just one problem—the internship was unpaid.

That’s where the School of Law’s Summer Stipend Program came into play. The program, which began in 1994, supports students pursuing public interest summer placements. In 2011, 116 students received more than $200,000.

“You can learn as much about theory and the letter of law as you want, but until you go out and investigate for yourself, you have no idea all that goes into writing a petition,” she says. “[Now] I have practical experience and a better understanding of how the real world works.”

Combined with her education at the University of Richmond and an earlier funded internship with a federal public defenders office, Lindsey was well prepared to obtain her top-choice clerkship with Judge James R. Spencer of the Eastern District Court of Virginia.

The position is “a direct correlation” to her internships, and will be a good foundation for her career aspirations. “Understanding the judge’s thought process will make me better able to write persuasive pleadings,” she says. “I’ll have seen how it works from his side, rather than just the side of a law student or a lawyer.”

By giving to the University of Richmond School of Law’s Annual Fund, you can ensure that students like Lindsey can pursue a comprehensive legal education. These opportunities to experience the legal profession firsthand would not be possible without the generosity of alumni and friends. Your gift is an investment in the law school’s future.

Every gift matters.
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Most law school applicants nervously check their mailboxes for weeks in anticipation of receiving an acceptance or rejection letter. Applicants to the University of Richmond School of Law, however, learn of their fate with a personal phone call from Associate Dean for Admissions Michelle L. Rahman.

For Patrick Silverstein, L'13, that phone call was the reason he chose to attend Richmond over schools such as Georgetown and Wake Forest, where he also was accepted. “What [that] phone call meant to me, and it is something I will never forget, is that Richmond was a place looking for me and valued me as a person,” he said. “That was what I found here that I did not find anywhere else. That phone call was made by [Dean Rahman] but it represented the collected voices of an institution I knew I would be honored to be affiliated with.”

This kind of personal touch is a hallmark of the School of Law’s admissions office, a legacy that was started in 1951 by former Dean for Admissions Jean Tarpley during her 39-year tenure. “Jean fostered the idea that each student was an individual and we carry that forward,” Rahman said. “In this office, nobody ever forgets that—each application is important.”

Getting to know an applicant is what makes her job so rewarding, said Rahman, who has worked in admissions for 26 years. “Yes, admissions is a science, but it is the art part that makes admissions exciting and fun. It’s really about finding out more than just what a student puts on a piece of paper.”

Perhaps that’s why so far this year Richmond is among only three schools where applications have increased more than 40 percent, while nationally, applications are down nearly 20 percent.

Rosanne Ibanez, L'12, said her experiences with admissions provided her with an accurate glimpse into the law school’s collegial atmosphere. “They set the bar for what the rest of our expectations are for faculty interactions, the dean’s office, and career services,” she said. “I haven’t been disappointed yet.”

Antonio “Tony” Jackson, L'93, still maintains a close relationship with Rahman. He entered law school at age 37, leaving a career in government and nonprofit work. “She is personal and warm and caring, and at the same time, she has an approach to admissions that is holistic and individualistic,” Jackson said.

Rahman believes in being honest with applicants and does not subscribe to what she calls the “Gucci theory” of law school admissions—where making something seem elite and unobtainable makes its more coveted. “We have taken the other approach,” she said. “If this isn’t the right place for you, we will suggest another place that is right.”

This honesty and accessibility pay big dividends. “I can’t even count the number of hugs I’ve given over 25 years and I think that’s different from other schools,” Rahman said. “That is a part of who we are.”
Symposium addresses healthcare law litigation

Healthcare law litigation was the subject of the Allen Chair Symposium on Nov. 11, “Everything But the Merits: Analyzing the Procedural Aspects of the Healthcare Litigation,” that brought together experts from state government and academia to analyze the unique challenges to the constitutionality of President Obama’s Patient Protection and Affordable Care Act (ACA).

The symposium was produced by the University of Richmond Law Review, with assistance from professors Carl Tobias, Kevin Walsh, and symposium editor Aminah Qureshi, ’12. “There has been a lot of debate on the constitutionality of the national health care mandate,” said Walsh, who has written several amicus briefs on the Virginia and Florida challenges to the ACA, “but the litigation over the healthcare legislation has raised crucial procedural questions that this symposium addresses.”

Symposium topics included the role of states as litigants, the distinction between facial and applied challenges, and severability. The symposium featured the solicitor general of Virginia, E. Duncan Getchell Jr., and the acting solicitor general of Maryland, William Brockman.

“These are fascinating times to watch the states. ... The question of federalism depends on the agenda,” said Professor William P. Marshall of the University of North Carolina School of Law. “Washington isn’t going to protect state power.”

Three days after the symposium, the U.S. Supreme Court agreed to hear a challenge to the constitutionality of the ACA; several of the procedural issues addressed in the symposium could play a prominent role in the court’s analysis.

The papers from the symposium will be published in the spring edition of the University of Richmond Law Review.

Panel discusses voting rights and redistricting

The School of Law hosted a panel of elected officials and election experts on Oct. 24, as Virginia prepared for local elections and the 2012 national elections.

Discussions ranged from voting rights and access to redistricting, with speakers Kent Willis, executive director of the American Civil Liberties Union of Virginia; J. Gerald Hebert, executive director and director of litigation at the Campaign Legal Center in Washington, D.C.; Del. Jennifer McClellan, ’94, a member of the Virginia House of Delegates since 2005, and assistant general counsel, Mid-Atlantic South, for Verizon Communications; John “Jack” Hardin Young of Sandler, Reiff, Young and Lamb in Washington, an electoral recount and dispute resolution lawyer; and Donald Palmer, secretary of the Virginia State Board of Elections. Professor John Pagan,

William Brockman, acting solicitor general of Maryland (from left), William P. Marshall of the University of North Carolina School of Law, and E. Duncan Getchell Jr., solicitor general of Virginia, discussed healthcare law litigation.

IP Clinic achieves notable results

The Intellectual Property and Transactional Law Clinic continues to achieve notable results. In spring and summer 2011, students helped start 10 new businesses, obtained IRS determination of 501(c) (3) status for a nonprofit, performed intellectual property due diligence for a prospective venture capital acquisition, and wrote employment agreements for a public charity to accommodate employee healthcare regulations.

In the first part of the year, students in the clinic handled 129 separate legal matters, said Clinic Director John Carroll. “The work ethic of this group of students was remarkable,” Carroll said, and based on the number of hours that were provided, the students generated $341,300 in legal services in the first part of 2011. Clients included the owner of a jazz festival who needed trademark advice, an immigrant seeking to start a bakery, and a biotechnology company that needed help with branding a new product.

Since the clinic was formed in January 2010, Carroll said, the students have handled 283 legal matters, and contributed more than $750,000 in legal services to the community.
For the Record

NEWS

UR Downtown sets expansion

UR Downtown has expanded its footprint through the renovation of the lower level. UR Downtown, at the corner of Seventh and Broad streets, is home to the Harry L. Carrico Center for Pro Bono Service, the Jeanette Lipman Family Law Clinic, The Bonner Center for Civic Engagement’s Richmond Families Initiative, and Partners in the Arts. It opened in March 2009.

The externally funded expansion, featuring a multipurpose room, new offices, and lockers for students, offers UR Downtown the space to grow. All University departments and offices, as well as local nonprofits, may reserve the space for programs.

And construction will soon begin on a new café, Richmond on Broad, which is expected to open in late spring.

“With the completion of the lower level and Richmond on Broad, UR Downtown will not only be a hub for University of Richmond community engagement activities in the city,” said Tara Casey, director of the Carrico Center, “it will be an epicenter, linking students and faculty with community partners and clients.”

Del. Jennifer McClellan, Donald Palmer (center), and Kent Willis were among the panelists on election issues at a program Oct. 24.

Willis noted that Virginia’s felony disenfranchisement law, which he said had origins in Jim Crow laws to suppress the African American vote, is probably the worst in the nation. “Three hundred thousand are unable to vote because of this,” he said. His pie-in-the-sky dream is for all to be able to register and vote on the same day.

Hebert, Young, and McClellan talked about redistricting, and provided illuminating sound bites. “Corruption is great for reform,” Hebert said. “Redistricting has become a political game,” Young said. And according to McClellan, who just lost half of Richmond’s Fan District in redistricting, “The most selfish time every 10 years is redistricting.”

The discussion was sponsored by the American Constitution Society, the Black Law Students Association, Metro Richmond Area Young Democrats, and BarBri.

‘Minority 40 Under 40’ names Amandeep Sidhu

Amandeep Sidhu, L’05, has been named to The National Law Journal’s 2011 “Minority 40 Under 40” list. Sidhu, who began working at McDermott Will & Emery in Washington, D.C., in 2007, has built a reputation as a strong litigator with a commitment to pro bono work.

As a founding member of the Sikh Coalition, which advocates for Sikhs whose human or civil rights are violated, he has represented three Sikh men who were barred from the Army because their turbans and unshaved beards did not meet its uniformity requirements.

“Based on the fact that Sikhs serve in a number of nations around the world and are able to meet all the uniformity and safety requirements ultimately proves that any Sikh candidate would be able to meet the Army’s requirements,” Sidhu told The National Law Journal. Sidhu was able to successfully demonstrate the men were able to meet requirements by using Army-issued cloth for turbans and demonstrating that their beards did not affect their performance in the field.

“Thanks … for providing the foundation at University of Richmond that has allowed me to grow as an attorney in the 6-plus years since I graduated,” he said. “I am forever grateful for all of the opportunities and support I have had (and continue to receive) from my UR Law family.”
Shariah law explored at a town hall meeting

"Islam, Shariah, and Religious Freedom in the U.S." was explored in a town hall meeting Oct. 20 at the law school.

Participants were Dr. Azizah al-Hibri, professor of law and founder of Karamah: Muslim Women Lawyers for Human Rights; Tommy P. Baer, partner at Canfield, Baer & Heller and former president of B’nai B’rith International; and Randolph Bell, president of First Freedom Center and former ambassador at large and special envoy for Holocaust issues.

It was an evening of insight about what Shariah is and how it is practiced in the United States; the recent wave of anti-Shariah sentiment marked by moves by several states to outlaw it; constitutional issues surrounding a potential ban of Shariah, and the effects such a ban could have on religious freedom in America.

To al-Hibri, what some would call Shariah law is “patriarchal tradition, and not religious law.” Some of those depictions scare people in the United States. Shariah, she said, in Arabic means path, and is a set of laws to bring order into society. “It is intended to make human life moral.”

Baer, who commented that he does know something about discrimination, said the one constant in the U.S. has been freedom of religion. But religion can’t be the basis of public policy, and religious laws cannot be binding in the courts of the land, he said. Baer also noted the similarities of Shariah and Halacha, the collective body of Jewish law.

Most of the questions during the evening were directed to al-Hibri. One woman asked her to explain “honor killing.” In a word, al-Hibri said, “crime.”

“There is a lot of work that needs to be done to correct misinformation,” al-Hibri said.

The event was sponsored by the Muslim Law Students Association, Karamah, and the First Freedom Center.

Austin E. Owen Lecture explores public sector employment

“Public Sector Employment in Times of Crisis,” sponsored by the University of Richmond School of Law Austin E. Owen

For the Record

Technology, science issues in family law


The symposium topic was the impact of 21st century science and technology on the family, and it included such sessions as the status of embryos, the future of regulating in-vitro fertilization, electronic evidence, and ethical management of electronic and Internet evidence.

A particularly provocative program focused on the impact of cybersex addictions on the family. In a cybersex addiction, distrust and betrayal are huge issues, said Jennifer P. Schneider, M.D., Ph.D., of Tucson. “Real-life people can never measure up to the fantasy.”

The National Center for Family Law is an academic and public service unit of the School of Law, committed to serving the best interests of families and children. Professor Adrienne Volenik is acting director, and Edward D. Barnes, L’72, is founding chair. Barnes is founder and president of Barnes & Diehl.
Alumni serving across Virginia

Three School of Law alumni were newly elected to the Virginia Senate and to commonwealth’s attorney positions in November. They join a number of alumni already serving in Virginia.

Tom Garrett, ’95 and L’03, a Republican, won the 22nd District Virginia Senate seat. Garrett has served as the Louisa County commonwealth’s attorney since 2007.

Julia Hutt Sichol, L’00, an independent, was elected commonwealth’s attorney for Westmoreland County. Sichol spent the last five years as a prosecutor in Chesterfield County, and prior to that, worked as a public defender in Petersburg.

Shannon L. Taylor, L’95, a Democrat, was elected Henrico County commonwealth’s attorney. She served in the Richmond city prosecutor’s office for 12 years.

Alumni already serving in the Virginia Senate include Mark R. Herring, L’90, and Richard H. Stuart, L’91. Alumni in the House of Delegates include David B. Albo, L’88; Johnny S. Joannou, L’69; Joseph P. Johnson Jr., L’60; Lynwood W. Lewis Jr., L’88; G. Manoli Loupassi, L’92; and Christopher K. Peace, L’02.

Commonwealth’s attorneys in Virginia include Randy C. Krantz, L’90, of Bedford City/Bedford County, and Patricia T. Watson, L’90, of Greensville/Emporia.

For the Record

Lecture, the Labor Law Group, and the American Constitution Society for Law and Policy, opened the law school’s fall programs on Sept. 9.

Professor Ann C. Hodges, the conference organizer, said the goal was to bring together experts on the issues relating to public employment that have been the focus of political debate. Among about 100 attendees at the Westin Hotel were lawyers, academics, government officials, union officers, and law students. (The conference was moved to accommodate President Obama’s appearance on campus.)

Speakers addressed public employee compensation, the role of teachers in public education reform, public sector collective bargaining—both existing models and recent changes—job security and termination of public employees, and the constitutional framework of public employment.

Barbara Quindel, of Hawks Quindel, S.C., in Milwaukee, said the pent-up anger and frustration of how public employees were treated in Wisconsin in spring 2011 has “taken a toll on the morale of public employees.”

Alice O’Brien, general counsel of the National Education Association, said there is a huge teacher turnover rate in underperforming schools, and that there has been a sweeping move to change teacher tenure rules.

“Changing laws doesn’t improve

During the $2.5 million renovation of the law school, mostly accomplished over the summer, the clinic area located next to Down Under was redesigned to add space and light, and create a modern law office environment.
maceutical manufacturers and generic

drug manufacturers have resulted in

settlements. Anticompetitive concerns

arise when these settlements maintain

the patent holder’s exclusivity even when

the patent is not actually infringed or the

patent is invalid. These concerns increase

when the settlements include “reverse-

payments” to the generic company to
delay its entry into the market.

Carrier contends that is a primary cul-
prit in high drug prices, and explored the

harm presented by these agreements.

“Forty to 45 percent of patents issued are
invalid,” Carrier said. “Infringers are paid
not to enter the markets … and courts
recently have upheld this behavior.”

Crane urges exploring pro-competi-
tion, pro-patent, and pro-settlement poli-
cies, and formulating rules leading to the
lowest net social cost. “What are the driv-
ers that will fuel pharmacy drug innova-
tion?” he asked. “There is a lethargic pace
of pharmaceutical innovations. Most
generics just stay out of the market.”

The Evil Twins did find a point of
agreement: That the 180-day period of
marketing exclusivity contained in the
Hatch-Waxman Act creates bottlenecks
and should be changed.

The School of Law’s $2.5 million renovation project made Down Under a more inviting space for students to gather.

Women’s rights and religion focus of series

A panel discussion on Sept. 22 in the
Moot Courtroom kicked off a series of four public programs addressing religion and women’s rights. The question “Does Religion Infringe Upon the Rights of Women?” was examined by Henry L. Chambers Jr., professor of law; Joanne B. Ciulla, professor of leadership and ethics; Mimi Hanaoka, assistant professor of religious studies; and Ailya Sherbano Vajid, program fellow, Karamah: Muslim Women Lawyers for Human Rights.

“The discussion set the tone as panelists with a pluralistic variety of viewpoints illustrate how charged issues can be addressed in informed ways without reliance on stereotypes or generalizations,” said Randolph Bell, president of the First Freedom Center.

The center, the University, and
Virginia Commonwealth University are forum sponsors. The second in the series, “Does Religious Conservatism Diminish or Elevate Women?” was held Oct. 27, also in the Moot Courtroom.

Subsequent discussions will con-
sider the requirement of modest dress in some religious communities, and religion’s role in women’s access to healthcare.
Justice Breyer shares insights on making democracy work at Merhige courtroom dedication

By Rob Walker

Supreme Court Justice Stephen G. Breyer offered high praise for judges who labor in the trenches in the nation’s quest for justice. “It’s one thing to be in Washington writing words on paper, but it’s quite another to be on the bench and to have to carry those orders out in the community” where they may be far from popular.

Speaking before a full house at the School of Law Oct. 6, Breyer and others referred specifically to the late U.S. District Judge Robert R. Merhige Jr., L’42 and H’76, who was honored that day with the dedication of The Honorable Robert R. Merhige Jr. Moot Courtroom.

“Our courtroom now takes on even greater significance in being named for Judge Merhige, who so epitomized the values of judicial courage and independence,” said Dean Wendy Perdue.

Despite being publicly reviled, personally scorned, and threatened with physical harm, Merhige, who served as a judge for the Eastern District of Virginia 1967–1998, demonstrated his devotion to the Constitution by enforcing the law of the land and desegregating schools in Virginia, said University President Edward L. Ayers. “Over time, he was revered for his courage and strength of character.”

In remarks drawn from his new book, Making Our Democracy Work, a Judge’s View, Breyer pointed out that while Congress and the president have power over “the purse and sword,” it is the courts that must ensure that “every right, obligation, or limit applies with equal force to the least popular person in the United States as well as to the most popular.” And only the Supreme Court, whose justices are not subject to popular election, can declare laws passed by Congress and signed by the president to be unconstitutional.

In some cases, the court’s decisions have run into popular or political opposition, and even been ignored. Breyer pointed to President Andrew Jackson’s decision to seize land from the Cherokee despite the court’s ruling that by treaty, the land belonged to the Native Americans. The expulsion of the Cherokee along “The Trail of Tears” “did not bode well for the power of the court,” he said.

Over time, custom, habit, history, education, and loyalty to the rule of law have led Americans to believe in and to obey the court’s rulings even where they may disagree. Breyer cited as an example the 1957 desegregation of schools in Little Rock, Ark., where Gov. Orval Faubus defied court orders to integrate. President Dwight D. Eisenhower responded with troops to enforce the law and make clear that the nation would follow the court’s orders. “It was a great day for the law, a great day for equality, a great day for the United States.”
Breyer also discussed recent court decisions *Bush v. Gore*, which settled the 2000 presidential election, and rulings in favor of detainees at Guantanamo, which set limits on presidential power even in wartime. In both cases, the rulings faced popular and political dissent, but the nation stuck by the decisions.

“Turn on the television set and see what happens when people choose to resolve their differences with guns and bricks instead of in the courts,” Breyer said.

Breyer’s appearance and the dedication highlighted the first major renovation of the courtroom since it opened in 1992.

Speaking on behalf of the Merhige family, Mark Merhige, the younger of the judge’s sons, said, “Next to sitting on the bench, the classroom was his favorite place to be—and the Moot Courtroom was his classroom.”

Earlier in the day, Breyer addressed about 130 alumni and invited guests at a luncheon in the Jepson Alumni Center. He told engaging stories about the court and his colleagues and how the institution works. Today’s lawyers, he said, will be practicing in an arena well beyond the scope of the laws of one country. “It has to do with the way the world is. Our jobs, I think, as law professors and members of the bar, is to train those lawyers of the future.”

After the luncheon, Breyer spoke informally with the School of Law’s John Marshall Scholars and answered questions about what he does. His job, he told the students, is first “to decide what to decide, and second, then to decide what to decide.” He relies on law clerks to find the needles in a haystack. And he offered advice applicable in any profession. While in conference with the other justices, Breyer said, “No one speaks twice until everyone has spoken once. That is a very, very good rule.”

Rob Walker is a Richmond-based writer and editor.
The renovated courtroom

Robert Shepherd, project manager with the office of the University architect, said the Moot Courtroom work took place over about five months. Projects included audiovisual upgrades, carpet replacement, furniture reupholstering, and table refinishing and replacement.

In addition, the courtroom now includes trial presentation software that enables students to show exhibits on monitors located behind the bench, at the witness stand, in the jury boxes, and on the walls for the gallery to see.

“All of the upgrades make the Moot Courtroom more attractive and functional and allow students to learn how to integrate technology seamlessly into their courtroom presentations,” said Dean Wendy Perdue.

Robert R. Merhige Jr. enrolled at the School of Law almost as a lucky coincidence. Just out of college in the late ’30s, the cash-strapped young man landed a part-time coaching job at St. Christopher’s School in Richmond. He thought it was convenient to The College of William & Mary, where he planned to study. When he discovered his error in geography, he quickly found his way to the University of Richmond School of Law just down the road, and knocked on the door. Dean M. Ray Doubles welcomed him, beginning a relationship of enduring value to Merhige and to the law school.

A great storyteller, Merhige liked to recall the days when he lived on stale rolls and peanut butter, worked as a janitor in the library, and fell passionately in love with the law. His relationship with Doubles evolved into a great friendship. Doubles encouraged Merhige to return to Richmond to practice law after Merhige served in the Army Air Corps in World War II. Merhige later established a scholarship at the law school in Doubles’ honor.

During his high-energy career as a defense lawyer and his 31 years as a judge for the Eastern District of Virginia, Merhige frequently took time to return to the law school. He taught a trial advocacy class that drew standing-room-only crowds. The Robert R. Merhige Jr. Center for Environmental Studies, established in 1985, honors his work in environmental law. Merhige, who died in 2005, also received the William Green Award for Professional Excellence, the law school’s highest honor, in 1989.

John G. Douglass, professor and former dean, said Merhige had a special regard for law students and young lawyers. Merhige was on the bench for Douglass’ first jury trial as an assistant U.S. attorney. “He was exacting and demanding, but there was a soft place in his heart for young people,” Douglass said.

“What better example could there be for our students than to pass regularly through a room dedicated to a man who stood up to segregation in Richmond schools, who presided courageously over trials involving the Ku Klux Klan and American Nazis, and who had the creativity and foresight to handle complex international disputes,” inventing strategies that courts and lawyers continue to follow, Douglass said. “He was truly ahead of his time.”

— Rob Walker
How Shall the Constitution be Enforced?

A Preview of Minneci v. Pollard

By John F. Preis

Americans love their Constitution. A typical visit to Washington, D.C., might involve a trip to the National Air and Space Museum, a tour of the monuments on an amphibious bus and, quite strangely, veneration of a legal document. That’s right, Americans will stand in a long, snaking line outside the National Archives just to see, for a fleeting moment, their cherished Constitution. It’s enough to make the Restatement of Torts positively jealous.

But perhaps the Restatement deserves a bit more respect. Tort law,
just like much of constitutional law, protects us from invasions of bodily integrity. If a government officer invades this integrity, maybe a tort action could provide the same relief as a civil rights action. Or maybe not.

That is the question presented in *Minneci v. Pollard*, a case I argued before the United States Supreme Court this term. The plaintiff in *Minneci*, Richard Lee Pollard, suffered several Eighth Amendment violations while a federal prisoner in 2001. After accidentally breaking both his elbows, Pollard was denied adequate medical care, nutrition, and hygiene. Given these constitutional violations, Pollard did what many prisoners do: He brought a civil rights action in federal court seeking damages.

Pollard's suit did not proceed like an ordinary civil rights action, however. The district court dismissed Pollard's suit because Pollard arguably had tort remedies under state law. Where common law remedies are available, the district court appeared to believe, there is no need to, as the saying goes, make a federal case out it.

The district court's opinion was an interpretation of the Supreme Court's “Bivens doctrine.” In a series of decisions starting with *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), the Court has defined the circumstances under which federal officers may be sued for constitutional damages. (*Bivens* concerns only the liability of federal officers; the liability of state officers is controlled by the well-known statute, 42 U.S.C. § 1983.)

*Bivens* actions are not popular with the modern Court. Time and again, the Court has turned away *Bivens* plaintiffs, usually with the observation that it is Congress, not the Court, that should be deciding who may sue federal officers. In some cases, the Court has gone so far as to suggest that a constitutional damages remedy is not necessary where a similar remedy could be had under state tort law. These scattered references to state law in the Court's *Bivens* jurisprudence are what doomed Pollard's suit in the district court.

In May 2007, I came across the district court's ruling in Pollard's case. At the time, I was researching the value of state remedies in upholding constitutional norms and felt certain that the district court had made a mistake. I wrote Pollard and offered to represent him *pro bono* on appeal. He accepted and I quickly filed a notice of appeal. Three long years later, Pollard and I prevailed before the Ninth Circuit. Our victory was short-lived, however: This past May, the Supreme Court decided to review the Ninth Circuit's decision.

In *Minneci*, the Court will decide how, at least in some cases, the Constitution shall be enforced. The Court could decide, as Pollard and I contend, that constitutional rights should be enforced through traditional civil rights actions. Or the Court could decide that tort law protects the same interests covered by constitutional law and that common law actions will therefore keep federal actors in line with constitutional norms.

The core of our argument before the Court is that tort law, though hypothetically applicable in the prison setting, lacks specific content as to prisoners' rights. Take, for instance, one of Pollard's Eighth Amendment claims—the deprivation of food and hygiene. To hold that tort law would provide Pollard and all other federal prisoners with relief, the Court would need to find that tort law in *every state* imposes a duty of care on jailers and that this duty encompasses obligations to provide adequate food and hygiene. It is of course possible that state common law might provide such relief, but the case law on this issue is sparse if not nonexistent— principally because constitutional rights have long been enforced on their own terms, not through the proxy of state tort law.

Another problem with relying on state remedies to enforce constitutional rights is that state law will vary between states, and also vary over time within each state. The common law rights of prisoners in California will be different from prisoners in Florida, and the rights in both states will undoubtedly be different in the future than they are today. This variability makes state law a poor replacement for federal law, which by its very nature, is intended to be uniform across the entire country.

None of this is to suggest that states should not attempt to protect civil rights through their common law, or that federal prisoners ought not to press their common law actions. It is simply to say that the Constitution cherished by so many Americans is distinctive both in its content and national reach. The Court should heed this in *Minneci* and hold that Pollard's constitutional rights are enforceable without regard to the content of state law.

John F. Preis is an associate professor of law whose expertise includes federal courts, civil rights litigation, and civil procedure.
Alumni encouraged to stay involved, give back

By Jessica Ronky Haddad, ’93

Fall Gathering kicked off Law Weekend 2011, which brought more than 400 alumni and friends to campus Oct. 21–22 to reconnect with friends, to meet Dean Wendy Collins Perdue, and to view the recent renovations to the School of Law.

While all alumni were welcomed, special consideration was given to those in classes ending in “1” and “6” who were celebrating milestone reunions. The Class of 2001 was especially well represented at the Fall Gathering, and on Saturday night during the Reunion Dinner at the Westin Richmond.

Law Alumni Association President Ann T. Burks, L’84, who has served on the board since 2005, was thrilled to see the turnout. She encourages alumni to extend their involvement with the law school well past Law Weekend. “Part of being a good lawyer, I think, is giving back to the community,” Burks said. “Staying involved is rewarding personally and can be rewarding professionally.”

She points to many ways to stay involved—from serving on a Career Services Office panel, to serving as a mentor to a law student, to interviewing law students, even if it’s just to give them practice. Burks has taught law skills and trial skills as an adjunct faculty member and, before she retired from Ethyl Corp., offered legal internships.

Alumni also can demonstrate their commitment financially. Support of the School of Law’s Annual Fund “is one way the world evaluates the strength of an institution and the pride of its alumni,” explained Cindy Stubbe, associate director of annual giving.

In 2011, for the first time, the School of Law set specific participation goals for each reunion class. No matter what the size, a reunion gift is an Annual Fund gift that honors a lifelong connection and supports the needs of today’s students. The classes of 1981 and 1986 had the highest percentage of participation, Stubbe said, with 1981 alumni narrowly edging past those from 1986. “Going forward, we hope that gifts from folks in reunion years will be the foundation for our Annual Fund in any given year,” she said.

Stubbe challenges the members of each class,
3L Class Gift Campaign

Since 2005, each year’s graduating class has been asked to support the School of Law with a class gift. These students have shown their commitment with increasing participation over the years.

<table>
<thead>
<tr>
<th>Class Year</th>
<th>Participation</th>
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<tbody>
<tr>
<td>2005</td>
<td>24.5%</td>
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<tr>
<td>2006</td>
<td>19.3</td>
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<tr>
<td>2007</td>
<td>24.6</td>
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<tr>
<td>2008</td>
<td>46.4</td>
</tr>
<tr>
<td>2009</td>
<td>62.6</td>
</tr>
<tr>
<td>2010</td>
<td>72.4</td>
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<tr>
<td>2011</td>
<td>75.9</td>
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reunion or otherwise, to follow the lead of the Class of 2011, which had 76 percent participation in its Class Gift Campaign last spring. In two years the Class of 1963 will celebrate its 50th reunion. Already, that class has a small group working to garner support for its reunion gift. “As for those who will be celebrating their reunions in 2012,” Stubbe said, “we encourage them to come back for their reunion and also remember to give back.”

Brandon Rash, L’06, chair of the Young Graduate’s Association, attended the Reunion Dinner Saturday night to mingle with classmates who were celebrating their fifth-year reunion. Rash practices patent litigation with Finnegan in Washington, D.C. “It is important to give back so others will have the same opportunities,” he said. Rash is especially proud that the School of Law’s Summer Stipend Program for public interest internships supported more than 115 students last summer. “There’s something inherently good about a strong legal system and the things a law school can do for a community,” Rash said.
Criminal law program combines theory and practice to shape great leaders

By Gary Robertson, R'70

When Steven D. Benjamin, L'79, graduated from the University of Richmond School of Law, he left with a passionate belief that the law ought to be a great equalizer in the criminal courts—that justice meant justice for all, no matter what their position in life.

That belief has steered his career, ignited his passion, and brought him to the highest office in the National Association of Criminal Defense Lawyers. Next summer in San Francisco, he will become the president of this prestigious association. In that role, he will carry the torch for generations of Richmond graduates who have taken up the practice of criminal law.

“Until the world becomes a perfect place, there always will be a role and need for the criminal defense attorney,” says Benjamin, senior partner of Benjamin & DesPortes in Richmond.

Criminal law is an excellent example of how the University of Richmond School of Law combines theory and intellectual rigor with practice skills and real-world experience. This commitment to combining theory and practice is reflected in the faculty. For example, Professor Corinna Barrett Lain and former Dean John Douglass are nationally known scholars as well as former prosecutors whose real-world experience informs both their scholarship and teaching. Professor Ronald Bacigal, who entered his 40th year of teaching at the School of Law in the fall, serves
Steven D. Benjamin, L’79, senior partner, Benjamin & DesPortes, is president-elect of the National Association of Criminal Defense Lawyers.

“Until the world becomes a perfect place, there always will be a role and need for the criminal defense attorney.”

as court reporter on the criminal side for the Virginia Court of Appeals. He also is the author of a number of widely used books in the area of criminal law.

Graduates praise the approach of faculty to their teaching. John Nowak, L’00, assistant U.S. attorney in the U.S. Attorney’s Office for the Eastern District of New York, prosecutes criminal cases in the rarefied realm of high finance. He recalls taking classes in securities regulation and corporations from Professor Azizah Y. al-Hibri, and classes in internal business transactions from Professor Daniel T. Murphy. Those professors and many others gave him a foundation for his later career. “My experiences at Richmond were a mix of gaining practical experience with academic courses,” Nowak said, expressing gratitude especially for al-Hibri and Murphy.

The program at the law school is further enriched by outstanding clinical offerings and internship opportunities that allow students to work on actual cases while still in school. The Greater Richmond area’s plethora of local, state, and federal offices and courts, most just a short ride from campus, provide almost limitless opportunities for participating in the legal system and watching eminent trial lawyers at work.

Todd Stone, L’91 and M’91, says one of the big advantages the School of Law has over other law schools in the state is its proximity to major law firms and local, state, and federal prosecutors’ offices. “There are a lot of options for internships, and that’s where you get your real-world experience,” says Stone, who frequently appears on television as a legal analyst. Stone’s internship was with the Richmond commonwealth’s attorney during his third year of law school. There he had an immediate opportunity to try cases. Just as importantly, he had a front-row seat to observe and learn from seasoned prosecutors and defense attorneys as they tried cases. “You learn how to try a case by watching good lawyers try a case,” said Stone, who practices with two fellow alumni, Claire Cardwell, L’84, and Bill Dinkin, L’90, at Stone, Cardwell & Dinkin in Richmond.

The school’s clinical opportunities were one of the features that drew Jasman Walson of Greensboro, N.C., to the law school. A third-year student, Walson was particularly interested in the Institute for Actual
Innocence, which works to identify and exonerate wrongfully convicted individuals in the Commonwealth of Virginia.

“I have had the opportunity to assist in case reinvestigation, analyze trial records, and help prepare a case for post-conviction litigation,” Walson says. She is among many for whom criminal practice translates into service to others. One day, Walson hopes to start a nonprofit organization that will help break the multigenerational cycle of poverty, crime, and substance abuse by intervening and strengthening the lives of those who have been affected.

The School of Law wants her to be practice-ready by the time she earns her degree. Toward that end, Richmond is one of few law schools in the country that requires students to take a trial advocacy course as a graduation requirement. The course not only introduces students to elements of an actual trial, but also reinforces skills that are essential for all lawyers, including written and oral communication skills, attention to the facts, and the nuances of procedure.

Dean Wendy Perdue is enthusiastic about the opportunities that the School of Law offers the next generation of great lawyers. “Richmond educates students to be excellent lawyers on the day they graduate and to also have the foundation from which they can grow into national leaders.”

She might have been describing Richard Cullen, L’77, a former U.S. attorney and Virginia attorney general who found his niche in corporate criminal law. “The euphemism is white collar,” says Cullen, describing his practice. Cullen is chairman of McGuireWoods, a Richmond-based law firm whose 900 lawyers represent clients around the globe.

As a McGuireWoods partner, Cullen has been counsel to some of the nation’s highest profile individuals and corporations. He helped represent Tiger Woods’ former wife, Elin Nordegren, in a divorce settlement, as well as former U.S. House Majority Leader Tom DeLay in a successful defense against federal corruption charges. He also has advised corporate giants Boeing and AOL Time Warner.

At the School of Law, Cullen says he learned and began honing the skills that every criminal lawyer must have: the ability to analyze the merits of a case, size up witnesses, present an effective argument, and communicate persuasively with judges and juries. As a third-year law student he obtained a practice certificate that permitted him, under a lawyer’s supervision and with judicial consent, to try two felony cases in federal court.

Another unique strength of the law school is its cadre of highly skilled adjunct faculty. “If you go down the roster of adjuncts, it’s a virtual ‘who’s who’ from the criminal law and judicial sectors,” Douglass says. The adjunct faculty bring not only their expertise from their many years of practice, but also serve as role models and mentors for students.

One such role model is Claire Cardwell, L’84, a former prosecutor for the city of Richmond who is now in private practice, has been an adjunct professor for 21 years.
left law school, he knew trial work would be his forte. Time spent answering questions in the classroom and practicing courtroom skills in mock trials had developed his ability to think on his feet, a crucial asset for any trial lawyer. He began taking court-appointed cases and then became a public defender, thinking that would be a fast way to get trial experience.

“I thought it would be a couple of years … but it turned out to be 20,” Johnson says. Today, Johnson is executive director of the Virginia Indigent Defense Commission and supervises public defender offices across the state. He’s been an adjunct instructor at the law school for a decade, teaching trial advocacy to second-year students and imparting advice learned by trying one case after another, after another.

For lawyers practicing criminal law, the stakes are sometimes as high as they get—life itself. That is certainly true for Craig S. Cooley, R’69, M’75, and L’77. Cooley has appeared for the defense in more than 70 capital cases, including that of Lee Boyd Malvo, who as a juvenile was the younger of two beltway snipers who shot and killed 10 people during a three-week shooting spree in October 2002, largely in the metropolitan Washington area. The trial drew international press coverage, and Cooley, who frequently lectures at the law school, was front and center in the media spotlight.

Over the years, Cooley has adopted a philosophy that enables him to try some of the most difficult death penalty cases. “You have to have a genuine concern for the people you represent. You don’t have to like what they did, but you have to do your best for them and be as zealous as possible, within the bounds of ethics,” Cooley says.

Diversity of viewpoint—the Class of 2013, for example, is nearly 20 percent minority—is one of the attributes that drew Dontae L. Bugg, L’06, to the School of Law. A high school and college track star from a challenging background, Bugg entered law school thinking about a career in sports or entertainment law. He changed his mind when he appeared as a witness in a mock trial, and became intrigued by the study of criminal procedure.

“I had a wonderful education at Richmond,” says Bugg, who recently opened his own practice in Northern Virginia. “I felt the faculty and staff were invested in my success.” As an African-American, Bugg says he believes he fills a special need in the criminal justice system. “Blacks are generally unrepresented in criminal law, and this is exactly where I need to be. I can’t imagine myself doing anything else,” he says.

The School of Law, its graduates suggest, is not only a laboratory for the preparation of some of the nation’s best criminal practice attorneys, but also a laboratory for life. Both are worthy endeavors.

Gary Robertson is a Richmond-based writer and editor.
Clinics renamed to reflect their missions

The faculty has approved name changes of two of the Clinical Law Center clinics, said Jim Gibson, curriculum committee chair.

The Delinquency Clinic has become the Children’s Defense Clinic (CDC). “We had become uncomfortable with the negative connotations suggested by the term ‘delinquency,’” said Adrienne Volenik, acting director of the National Center for Family Law. “The name Children’s Defense Clinic accurately reflects the mission of the clinic—to defend children against juvenile (criminal) charges. It also places the emphasis on the fact that the clients of the clinic are children.”

The clinic will not change its essential focus, emphasized Julie McConnell, director of the CDC. It will still represent children who are charged with committing delinquent acts, and it may, as it has done in the past, also accept some guardian ad litem work.

The Disability Clinic has become the Education Rights Clinic. “In this instance,” Volenik said, “we want to move away from the emphasis on disability and focus on the nature of the representation that we do. Virtually all our representation is of children in public school systems. As a result, this name change more accurately reflects the work that we actually do.”

The Clinical Law Center occupies newly renovated space adjacent to Down Under.

Margaret Ivey Bacigal was reappointed by the Virginia Bar Association to serve as chair of the VBA Commission on the Needs of Children.

Heather Casey, reference and research services librarian, attended the American Association of Law Libraries Leadership Academy in Chicago. The purpose of the academy is to grow and develop leadership skills.

Tara Louise Casey was again selected for inclusion in Virginia Business magazine’s “Legal Elite” in the category of legal services/pro bono.

Henry L. Chambers Jr. presented at “Evolving Issues in Discrimination: Social Science and Legal Perspectives,” at the University of Nebraska School of Law. His paper will be a chapter on retaliation under Title VII in the interdisciplinary book Evolving Issues in Discrimination to be published in 2012. He also presented at “The Constitution and the Sectional Conflict” at Rutgers University–Camden School of Law. “Slavery, Free Blacks and Citizenship” will appear in the conference symposium in the school’s law journal in 2012. Chambers drafted content for a new website on the Constitution launched by The Center for the Constitution at James Madison’s Montpelier, in Orange, Va., and he served as a special assistant attorney general for the Commonwealth of Virginia, working on matters related to redistricting state legislative districts.


Suzanne B. Corriell, head of reference and research services, was elected vice-president/president-elect of the Virginia Association of Law Libraries. She had two short pieces published, “Book Review,” (of Joan DelFattore’s Knowledge

Joel B. Eisen’s article “Residential Renewable Energy: By Whom?” published in the Utah Environmental Law Review, was chosen by the Environmental Law Institute and Vanderbilt Law School from hundreds of articles as one of the four best environmental law or policy articles of the year, and Eisen was invited to present the article in conjunction with a symposium sponsored by the Vanderbilt Law Review and Vanderbilt’s Climate Change Research Network. Eisen presented his article in progress, “Smart Regulation and Federalism for the Smart Grid,” to students and faculty of the Johns Hopkins University Energy and Climate Program in Washington, D.C. He presented “Finality in Brownfields Remediation and Reuse” at Southwestern (Los Angeles) Law School’s 30-year retrospective symposium on “CERCLA and the Future of Liability-Based Environmental Regulation.” He also published a chapter, “Stigmatized Sites and Urban Brownfields Redevelopment,” in the Oxford Handbook of Land Economics; a chapter on “Renewable Energy—China” in the Encyclopedia of Sustainability; and “Environmental Law in China,” a book review of Charles R. McElwee’s Environmental Law in China: Mitigating Risk and Ensuring Compliance, on Chinadialogue.net. Eisen again served as a peer reviewer for the Fulbright Scholar Program, evaluating applications for professors seeking Fulbright grants, and also taught Comparative U.S.–China Environmental Law in the Vermont Law School’s summer term.

David Epstein, the George E. Allen Chair, taught a first-year seminar to the University’s undergraduate students. He made presentations on bankruptcy law at continuing education programs in Houston, New York, San Francisco, Richmond, and Charlottesville, Va., and talked to first-year law students at 20 law schools including the University of Colorado, the University of Minnesota, and the University of North Carolina about how to succeed in law school. Epstein’s new student text on contracts was published by West in November, and he has signed a contract with West to co-author a casebook titled Core Commercial Law Concepts.

David Frisch prepared the 2011 supplement to the treatise The Commercial Law of Intellectual Property. Jim Gibson spoke on “Regulating Privacy Through Contract” at the annual Southeastern Association of Law Schools Conference in July. He traveled to Bogota, Colombia, Sept. 4–8 at the request of the U.S. State Department to speak with Colombian officials about the copyright implications of the pending U.S.–Colombia free trade agreement. While there he also met with industry representatives and public interest groups, and spoke at a public seminar on the U.S. model of online copyright regulation. He presented “Consumers, Contracts, and Complexity” at the New England Intellectual Property Colloquium in Boston in October.

Mary L. Heen published “From Coverture to Contract: Engendering Insurance on Lives” in the winter issue of the Yale Journal of Law and Feminism, Vol. 23, No. 2 (2011). Her article examines the development of gender-distinct insurance rates during the first wave of women’s rights activism from the 1840s to the ratification of the 19th Amendment in 1920. She also published a tribute in Alaska’s quarterly bar journal in memory of Judge James M. Fitzgerald, retired United States District Judge of the District of Alaska and a former member of the United States Judicial Panel on Multi-District Litigation. As one of his former federal law clerks, Heen wrote that “we were lucky to clerk for a great teacher, whose stories, peopled with memorably colorful characters, recounted both high and low moments in establishing the rule of law in Alaska.” In remembering his legacy as a trial judge, she concluded, “he brought an inspiring combination of courage, realism,
integrity and humanity as well as keen intellect, insight and wisdom” to the cases before him.

Ann C. Hodges organized the School of Law symposium “Public Sector Employment in Times of Crisis” held on Sept. 9, and spoke on the panel on “Collective Bargaining: Existing Frameworks and Recent Changes.” (For more on the symposium, see page 5.) She spoke in October at a conference on “Public Sector Labor Law: At the Crossroads” at the University of Toledo Law School. Her presentation, “Southern Solutions for Wisconsin Woes,” focused on what states like Wisconsin and Ohio, which recently amended their public sector bargaining laws, might learn from states like Virginia and North Carolina, which ban collective bargaining for public employees, and she has been interviewed a number of times on that same subject. In June she served as a guest blogger on the American Constitution Society blog about the NLRB’s Boeing case. She spoke on Sept. 28 at the Carrico Center with alumna Phyllis Katz on “Ethical Considerations for Attorneys Working with Nonprofit Organizations.” Hodges joined the executive board of the international E-Journal of International and Comparative Labour Studies. She also joined the Labor, Employment and Employment Discrimination Panel for LEAPS (Legal Education, ADR, and Problem-Solving Task Force of the ABA Section of Dispute Resolution’s Law Schools Committee), a group of consultants who will help faculty incorporate practical problem-solving into their labor and employment law classes. Her article “Avoiding Legal Seduction: Reinvigorating the Labor Movement To Balance Corporate Power” was published by the Marquette Law Review (2011). The article was part of the Marquette University Law School Labor and Employment Law Symposium.


Corinna Barrett Lain was inducted into the American Law Institute in May 2011. She spoke at William & Mary Law School’s symposium on the Sixth Amendment in March. In July, she presented “Cutting Edge Criminal Procedure” at the National Association of Appellate Court Attorneys’

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**FACULTY PROFILE**

**Sharing knowledge and freedom**

**Dr. Azizah al-Hibri**

On June 7, 2011, President Barack Obama appointed Dr. Azizah al-Hibri to the U.S. Commission on International Religious Freedom. “There are daily communications on which I have to act,” al-Hibri says. “It’s really demanding, but it gives me the opportunity to share my knowledge and learn from others.” Sharing knowledge is what al-Hibri does best. When she joined the School of Law faculty in 1991, after having taught philosophy at Texas A&M, she became the first Muslim woman law professor in the United States. In 1993, she founded Karamah: Muslim Women Lawyers for Human Rights, an organization whose purpose is drawn from a Quranic verse that reads, “We have given dignity to the Children of Adam.”

Al-Hibri says that while Karamah’s focus is primarily Muslim women’s rights, the organization is concerned with all forms of human rights issues. To that end, Karamah sponsors town hall meetings, publishes scholarship and commentaries through its website, and educates Muslim women lawyers.

Following the terrorist attacks of 9/11, al-Hibri turned much of her attention “to be a positive influence in the country and with the (federal) government.” Her activities included working with the U.S. government to educate various agencies about the religion and the community, while trying at the same time to ensure that American Muslims’ constitutional rights were not violated by falsely blaming them for the terrorists’ actions. With her return to Richmond for spring classes, al-Hibri plans to finish the book for which she was awarded a Fulbright scholarship.

Though she has many projects, al-Hibri is determined to fulfill her responsibilities as the only Muslim member of the U.S. commission. “It is useful to have someone who knows the region and who can advise about it,” she notes. For this reason, al-Hibri says, it is wise for the U.S. government to learn from and involve American Muslims in policy-making whenever possible. “Most Americans are hyphenated Americans,” she says. “American-Muslims are a perfect bridge for explaining (the Muslim world and American constitutionalism).”

—Paula Peters Chambers

Dale S. Margolin published “Every Adolescent Deserves a Parent” in Capital University Law Review, Fall 2011. She also was named editor of “Education and Practice,” a newsletter of the Virginia State Bar.

Wendy Collins Perdue was an invited panelist at a symposium sponsored by the South Carolina Law Review entitled “Personal Jurisdiction for the Twenty-First Century: The Implications of McIntyre and Goodyear Dunlop Tires.” She spoke on international aspects of personal jurisdiction and on Justice Brennan’s jurisdictional jurisprudence.

John F. “Jack” Preis was The National Law Journal’s “Appellate Lawyer of the Week,” and a feature about him was published Oct. 26. Preis argued his first case before the U.S. Supreme Court Nov. 1, Minnci v. Pollard. The case considers whether federal inmates can bring constitutional claims against employees of a private company that manage a federal prison. (See more on the case and the argument, page 12.)

Noah Sachs’ article “Rescuing the Strong Precautionary Principle from its Critics” was published in University of Illinois Law Review in August. He presented the article to the law faculty at the University of Berlin in November.

Peter Swisher published the 2011 edition of Virginia Tort & Personal Injury Law for Thomson West with co-authors Robert E. Draim and David D. Hudgins. He also published the 2011 edition of Virginia Family Law: Theory, Practice, and Forms for Thomson West with co-authors Lawrence D. Diehl and James R. Cottrell.


Gail Zwirner, head, library access services, served as co-editor of the October 2011 issue of the Virginia Lawyer, which included feature articles by members of the Virginia Association of Law Libraries. She coordinated a program for the joint meeting of the Virginia Library Association and Virginia Association of Law Libraries, titled “Gone With the Wind: the Literary Legal Complexities of a Bestselling Novel,” featuring alumna Ellen F. Brown.

New director of external relations

Sarah Cone, L’06, is the new director of external relations focusing on alumni engagement and external communications for the law school. Cone joined the law school Nov. 14 from The George Washington University Law School, where she served as director of alumni relations. While at GW Law, Cone received a master’s degree with a concentration in higher education administration. She received her undergraduate degree from The Ohio State University.
18 are hired for judicial clerkships


Other federal clerks are: Clayton LaForge, Judge Gustavo Gelpi, U.S. District Court, District of Puerto Rico; Eva Papadimas, Judge Brian Kenney, U.S. Bankruptcy Court, Eastern District of Virginia; Jennifer Sykes, Chief Judge Alvin Thompson, U.S. District Court, District of Connecticut; Lindsey Vann, Judge James R. Spencer, U.S. District Court, Eastern District of Virginia; and Tim Wiseman, Judge Karen Caldwell, U.S. District Court, Eastern District of Kentucky.

State clerks are: Connellee Armentrout, Chesterfield Circuit Court; Erik Baines, Richmond Circuit Court; Mary Garber, Court of Appeals of Virginia; Garrett Hooe, Supreme Court of Virginia; Jeremy Lewis, Roanoke Circuit Court; Joe Martin, Fairfax Circuit Court; Laura May, Chesterfield Circuit Court; Megan Miles, Richmond Circuit Court; Michelle Miller, Richmond Circuit Court; Matt Morris, Henrico Circuit Court; Clay Rollins, Henrico Circuit Court; and Adam Ward, Chesterfield Circuit Court.

17 international students welcomed

In the fall, the law school welcomed 17 international students, the largest number in the school’s history.

Two international students entered the 1L class and nine additional students entered the law school for the first time. These students came from Saudi Arabia, China, France, and Canada. The law school also welcomed six exchange students from China, France, Italy, and Sweden.

“Our international students always come in with low expectations about the support they’ll receive from faculty and administration, and are blown away by the level of engagement at UR,” said Associate Dean for Admissions Michelle Rahman. “It’s really a joy to watch friendships bloom between our international students and our American law students; it’s a whole new level of understanding for some of different cultures and perspectives.”

Rashid awarded diversity scholarship

Qasim Rashid, L’12, received a 2011 Law Student Diversity Scholarship from the Defense Research Institute (DRI). DRI is the largest international membership organization of attorneys defending the interests of business and individuals in civil litigation. Rashid was awarded the $10,000 scholarship in recognition of his demonstrated academic excellence, his service to the legal profession and community, and service to the cause of diversity. He traveled to Chicago on June 16, 2011, to receive the award.

“Our diversity lets us recognize and celebrate our humanity,” Rashid said. “I firmly believe that our purpose here is to serve humanity—irrespective of religious, cultural, or racial differences. I am honored to receive this award, and proud that I could do so while representing the School of Law. Indeed, credit for this scholarship goes to my professors and deans, for their
An American-Muslim human rights activist, Rashid is a prolific writer and a frequent lecturer on American-Islamic issues. He has published numerous articles in The Huffington Post, USA Today, The Washington Post, and other regional and international publications, and is an award-winning member of the Muslim Writers Guild of America. Rashid is a national spokesperson for the Ahmadiyya Muslim Community and serves as a volunteer chaplain for the Virginia State Prison system.

At the School of Law, he is the executive editor of the Richmond Journal of Global Law and Business and is the founder and president of the Muslim Law Student Association. He is an editor of Juris Publici, an associate member of the Client Counseling and Negotiation Board, and a 3L justice on the Honor Council. Rashid also is a research assistant for Dr. Azizah al-Hibri.

Student recognition

Rebecca Anderson, L’13, is the winner of the 2011 Carrico Moot Court competition. Eric Wallace, Patrick Fanning, and Robert Claiborne, all L’13, were finalists. The Best Brief award went to Brooks Spears, L’13. Patrick Sivertsen, L’13, and Geoffrey Easton, L’13, are champions of the 2011 Trial Advocacy Board (TAB) Intrascholastic Competition. In the final round, the pair matched up against Christopher Adams, L’14, and Mark Burgin, L’14. Sivertsen received the Robert Slimak Award for Outstanding Oral Advocacy, as the competitor who had the highest scores throughout the competition.

The Trial Advocacy Board (TAB) sent two teams to the ABA Labor and Employment Law Competition Oct. 29–30 in Washington, D.C. Competing against 23 teams, TAB successfully advanced a team—Meredith Fleming, L’12, Matt Stewart, L’13, Rebecca Johnson, L’13, and Stephen Pierce, L’12—as one of four semifinalists in the regional competition focused on the Family Leave Medical Act. Pierce received the Best Advocate Award. Preparing the teams for competition were Paul Thompson, adjunct professor of law; Ashley Davis, adjunct assistant professor of law; and Guy Horsley, special assistant attorney general.
Law school turns out for Cancer Dancer

At the start of the fall semester, law faculty, staff, and students grooved to the sounds of Earth, Wind & Fire’s “Shining Star” in support of Cancer Dancer, an ovarian cancer awareness organization founded by alumna Esther Windmueller, L’92.

“Who would have thought when you were in law school that 20 years later you would be boogying to Earth, Wind and Fire with the dean?” Windmueller asked.

Windmueller, who was diagnosed with ovarian cancer in October 2009, founded Cancer Dancer at the beginning of 2011. Its mission is to celebrate the lives of those affected by ovarian cancer in an effort to educate, empower, and stimulate research leading to a cure. “Dancing is something fun, that anyone can do, and something that can create a memory,” Windmueller said. “It is not just about dancing—it is about increasing awareness.” The organization encourages people to submit videos of themselves dancing to its website, www.cancer-dancer.org.

Professor Ann Hodges organized the law school event. Hodges, who is a cancer survivor herself, cofounded the Legal Information Network for Cancer in 1996.

Windmueller’s connections to the School of Law go beyond her days as a student—she taught lawyering skills and advanced trial practice for 11 years. After graduating, she worked as a Richmond public defender for almost five years before starting her own criminal defense practice in 1997. She also has worked as a substitute judge. Now she’s concentrating on her treatment and recovery.

“I was overwhelmed that the law school put this together without really telling me,” she said as former professors and colleagues greeted her after the dance. “I was so touched that my family at the law school would step up to the plate and do that for me.”

Blank elected ‘Leader of the Year’

Irving M. Blank, L’67, was elected as Virginia Lawyers Weekly’s “Leader of the Year” by the 31-member Class of 2011 honorees. Blank, of ParisBlank in Richmond, was honored for his service as the 2010–2011 Virginia State Bar president. Other Class of 2011 honorees included five additional School of Law alumni. They were: Craig S. Cooley, R’69, M’75 and L’77, attorney at law, Richmond; Christopher M. McCarthy, L’99, White & McCarthy, Midlothian, Va.; Dale G. Mullen, L’02, County Attorney, Louisa County; Linda F. Rigsby, L’81, Williams Mullen, Richmond; and Stanley P. Wellman, L’87, Harman Claytor Corrigan & Wellman, Glen Allen. U.S. Magistrate Judge M. Hannah Lauck, Richmond, who teaches a weekly John Marshall Scholars seminar at the School of Law with Virginia Supreme Court Justice Elizabeth B. Lacy, also was an honoree.

The “Leaders” program recognizes the lawyers across the commonwealth who are setting the standard for other lawyers in Virginia.
Richmond Law magazine is looking for alumni news to publish in Class Notes. Staying in touch is easy through the online version of the magazine at lawmagazine.richmond.edu. Go to the “Submit a Class Note” link to send your news. Or contact us by mail at Law Alumni, University of Richmond School of Law, University of Richmond, VA 23173, or at (804) 289-8028.

Class news, alumni profiles, and events

### 1960s

In March 2011, the family of Ebb H. Williams III, R’61 and L’64, presented a hand-crafted mahogany lectern to the Henry County (Va.) Circuit Court. The lectern, created by artist Terry Mitchell, symbolizes the contributions Williams and other senior attorneys of the 21st Judicial Circuit have made in Henry and Patrick counties and in Martinsville, Va. In addition to practicing law for 47 years, Williams has served as a substitute judge and as a law teacher at Patrick Henry Community College.

### 1970s

Edward D. Barnes, L’72, president of Barnes & Diehl in Richmond, has been elected president of the American Academy of Matrimonial Lawyers, Virginia chapter.

David S. Mercer, L’73, a principal in the firm of MercerTrigiani in Alexandria, Va., has been named to The Best Lawyers in America 2012, in the area of real estate law. He also is listed in Virginia Business magazine’s 2012 “Legal Elite” in the category legal services/pro bono.

Cyrus A. Dolph IV, L’73, has been selected for inclusion in Virginia Super Lawyer’s 2011 magazine.

William Muse, L’73, was appointed chairman of the Virginia Parole Board in February 2011. Prior to this appointment, he served for 26 years as senior assistant attorney general in the correctional litigation section of the Virginia attorney general’s office.

Peter J. Connors, L’76, is listed in Chambers USA. A partner at Orrick, Herrington & Sutcliffe in New York, his practice focuses on cross-border transactions, handling complex derivatives, private equity, and corporate reorganizations.

Richard B. Chess, L’77, published “Honey I Shrunk the Mortgage! Securities Options to Counter a Reduced Commercial Loan” in the May 2011 issue of The Fee Simple, the Virginia State Bar’s Real Property Section newsletter.

John C. Shea, L’77, has been named to The Best Lawyers in America 2012 for personal injury litigation. His practice at Marks & Harrison in Richmond focuses on brain injury and tractor-trailer accident cases.

Burton F. Dodd, L’78, a partner in the Atlanta office of Fisher & Phillips, has been selected for inclusion in The Best Lawyers in America 2012.

Glenn B. Hammond, L’78, retired as a U.S. Administrative Law Judge in Roanoke, Va. He previously retired as Air Force Reserve colonel and senior reserve JAG for an intelligence agency.

Beth Kaufman, L’78, a senior partner in the NYC-certified, women-owned firm Schoeman, Updike & Kaufman, was installed as president-elect of the National Association of Women Lawyers. She will become president of the organization Aug. 1, 2012.

Steve Benjamin, L’79, of Benjamin & DesPortes in Richmond, is president-elect of the National Association of Criminal Defense Lawyers. (For more on Benjamin, see page 17.)

W. Revell Lewis III, L’79, a partner at Custis Lewis & Dix in Accomac, Va., has been appointed Circuit Court Judge for the Eastern Shore by the Virginia General Assembly.

Law Weekend 2011 was a time to get together with friends and family. From left are Karen Emroch, Sandra Varoutsos, Ted Akis, Christine Varoutsos, ’05, Walter H. Emroch, and George Varoutsos, R’70 and L’73; and Hatcher Johnson, R’68 and L’73, with son Bobby, L’13.
1980s

Gregory Hooe, L’80, of Marks & Harrison in Richmond, has been selected for inclusion in The Best Lawyers in America 2012 for personal injury litigation.

David E. Nagle, L’81, has been elected a fellow of the College of Labor and Employment Lawyers. He is managing partner at the Richmond office of Jackson Lewis.

MichieHamlett attorney Elizabeth Parker Coughter, L’82, joined the Madison House board of directors. Madison House is considered the largest student-led volunteer center in the nation, offering more than 18 outreach programs through which more than 3,000 University of Virginia students each year provide more than 110,000 hours of service in the Charlottesville area.

Fletcher Harkrader, L’83, of Marks & Harrison, has been named a member of the American Board of Trial Advocates by the organization’s national board of directors.

Lucia Anna “Pia” Trigiani, L’83, a principal in the firm of MercerTrigiani, has been selected for inclusion in The Best Lawyers in America 2012 in the area of real estate law. She also has been appointed to two boards of directors—the Library of Virginia Foundation, and the advisory board of the Little Sisters of the Poor of Richmond.

Mary Burkey Owens, L’86, of Owen and Owens, has been named by Virginia Super Lawyers magazine as one of the top attorneys in the state for 2011 and was recognized, for the third year in a row, as one of the “Top 25 Female Super Lawyers” in Virginia in the family law category.

Barbara Balogh Saunders, L’89, was elected to the board of directors of the Metro Richmond Women’s Bar Association.

ALUMNI PROFILE

Judge and filmmaker

Jonathan M. Apgar, R’72 and L’76

Judge Jonathan M. Apgar carried a distinguished but conventional resume up until last year. After law school, he joined the then-new public defender’s office in Roanoke, and a few years later, he moved on to the office of the commonwealth’s attorney. From there, he entered private practice, and in 1997, Apgar was appointed circuit court judge for Virginia’s 23rd Judicial Circuit based in Roanoke.

About 12 years later, the judge went into show business. The five national awards his one documentary project has garnered will be displayed soon in the Roanoke Courthouse.

“There is so much in the practice of law now that would have been science fiction when I was in law school 35 years ago,” Apgar says, this latest chapter included.

His winning documentary is called “The Arrest Is Only the Beginning: How Virginia Drug Courts Succeed.” The 26-minute production focuses on the Roanoke Valley’s drug treatment court. It was made in 2009 on a $25,000 budget funded by the office of the executive secretary of the Virginia Supreme Court, which oversees the 29 drug court programs in Virginia.

Roger Griffin, a videographer, directed and edited the video. It won two gold Aurora Awards, for documentary issue and social issue documentary; two Chicago film festival Hugo Awards, for public access program and special achievement low budget; and a bronze Telly Award for outstanding television documentary. “The Telly looks like the hood ornament off a 1930 Packard,” the judge says.

Apgar began pursuing the video project after seeing a production laying out the cost savings of the drug court in Henrico County, Va. Though drug courts have been around in the state since 1997 when the first was established in Roanoke, their funding has been on a year-by-year basis. Since at least 2006, the House of Delegates has not funded the courts, so they have stayed alive with last-minute appropriations in reconciliation budgets.

“We wanted to educate the public and the General Assembly to make clear what these courts do,” Apgar said. “We wanted to make clear that they do not coddle criminals but help people work their way back to fully productive lives that are addiction-free” at a significant cost savings compared with incarceration. In 2010, with the help of Morgan Griffith, then House Majority Leader and now U.S. Congressman from Roanoke, a DVD of the video was on the desk of every state senator and delegate when the legislature opened. Funding passed for 2010 and 2011.

As for movie making, Apgar says, “You learn that for a 10-second shot, there are two hours of setting up and two hours of tearing down. There’s nothing glamorous in that.”

To watch the video go to Apgar’s profile at lawmagazine.richmond.edu.

—Rob Walker
Save the date!
Make plans to join us June 1–3 for Reunion Weekend. This is the reunion year for classes ending in 2 or 7. Join us!

1990s

Michele Adams Mulligan, L’90 and GB’99, has been included in the list of 2011’s Virginia Super Lawyers in the categories of professional liability defense, real estate law, and insurance coverage. She represents common interest community associations and also practices legal and accounting malpractice defense at MercerTrigiani’s Richmond office.

Major Marc West, L’98, is a Brigade Judge Advocate working to further the rule of law in Afghanistan. (Photo, page 31.)

Christopher M. McCarthy, L’99, is president of the Virginia Academy of Elder Law Attorneys. He also was named to the Virginia Super Lawyers 2011 edition in the elder law category.

Michelle Welch, L’99, of the Office of the Virginia Attorney General, is secretary of the Metro Richmond Women’s Bar Association.

2000s

Christopher Ashby, R’96 and L’01, started Ashby Law in Alexandria, Va. He represents clients in campaign finance, election law, lobbyist regulation, and government ethics matters.

Jason A. Cecil, L’01, of Decatur, Ga., was promoted in July 2011 to the congressional affairs and external relations team in the policy office of the Center for Disease Control’s Center for Global Health.

J. Fielding Douthat Jr., L’01, is associate general counsel at Media General Inc. in Richmond. He is responsible for employment and benefits legal matters at all of Media General’s business operations.

Vanessa L. Jones, C’96, W’97, and L’01, of Barnes & Diehl in Richmond, was awarded the 2011 Virginia S. Duvall Distinguished Juvenile and Domestic Relations Court Prosecutor Award given by the Virginia Association of Commonwealth’s Attorneys.

J. Gregory Webb, L’95, an attorney at MichieHamlett in Charlottesville, has been recognized by Virginia Super Lawyers magazine as a top attorney in Virginia for 2011.

Richard E. Garriott Jr., L’96, of Clarke, Dolph, Rapaport, Hull, Brunick & Garriott in Norfolk, has been selected for inclusion in the 2011 Virginia Super Lawyers magazine, in the family law and civil litigation defense categories.

Nancy van Luyn Oglesby, L’96, was awarded the 2011 Virginia S. Duvall Distinguished Juvenile and Domestic Relations Court Prosecutor Award given by the Virginia Association of Commonwealth’s Attorneys.

Stephen McCullough, L’97, senior appellate counsel in the Virginia attorney general’s office, was elected to an eight-year term on the Virginia Court of Appeals by the General Assembly.

Bridget N. Long, L’98, of Marks & Harrison in Richmond, has been named a member of the American Board of Trial Advocates by the organization’s national board of directors.

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Michelle Welch, L’99, of the Office of the Virginia Attorney General, is secretary of the Metro Richmond Women’s Bar Association.

After 18 years working in corporate law firms, Jeremy Sohn, L’93, started his own practice in Tucson, Ariz. The Law Office of Jeremy Sohn specializes in estate planning, asset protection, probate, trust administration, entity formations, business transactions, succession planning, and related tax issues.

Andrew Carrington, L’95, has been elected vice president, general counsel, and secretary of Media General Inc. He had been the company’s associate general counsel.

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A passion for people

Moji Olaniyan, L’96

Moji Olaniyan knew at a young age that she wanted to go to law school so she could help the poor. Growing up, she watched her parents, both school principals, help people in their Nigerian community by using their house as a community center.

“I had this deep passion,” she says. “That’s the thread running through my life.”

Olaniyan planned to study law as an undergraduate in Nigeria but her father asked her to reconsider and major in English first. “If you can express yourself, you will always be successful,” he told her.

His advice proved valuable when at age 29 Olaniyan enrolled at the School of Law. “I looked at U.Va., but rejected that,” she says. “I wanted a small law school that cared about its students and that’s just what I got. It was perfect for me.”

Professor Ann Hodges says Olaniyan was a joy to teach. “For Moji, it was not just about the grade or the degree, although both were important. It was about the education she received, not only from her professors but also from her fellow students.”

After law school, Olaniyan worked in student academic affairs at U.Va. and helped establish the special education law practice at the Legal Aid Justice Center in Charlottesville where she worked.

“We had so many people calling that I had to teach my boss how to do special education law,” Olaniyan says. Later, she started her own practice specializing in housing, employment, education, and family law, and worked in academic or student affairs at the University of Wisconsin–Madison, Cal State University–Sacramento, and Cornell University.

Since July 2010, Olaniyan has served as assistant dean for academic enhancement at the University of Wisconsin Law School, where she started the academic enhancement program that helps first-year students transition into the law school. “We wanted to sharpen their tools so they can do well in terms of learning the curriculum,” she says, adding that she also has designed a bar exam skills class for third-year and LL.M. students.

Law students aren’t Olaniyan’s only focus. She also is an African storyteller. She was able to launch “African Storytelling on Wheels” to 3rd, 4th, and 5th graders in Wisconsin public schools with a three-year grant from the 2008 Ira and Ineva Reilly Baldwin Wisconsin Idea Endowment. “I used to do storytelling in my daughter’s school when she was young,” Olaniyan says. “I would go dressed up and carry drums.”

She credits her professors at the School of Law with helping her develop a problem-solving approach to life. “That’s really unique to Richmond,” she says. “Up here, I can’t explain to them what I am talking about. It helped in my professional career and it’s been great in the community too.”

—Joan Tupponce
and also is involved in investment fund, joint venture, cross-border, and structured finance transactions.

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Melissa S. VanZile, L’04, a partner at Hall & Hall, was elected to the board of directors of the Metro Richmond Women’s Bar Association. She was named to the Risings Stars list by Virginia Super Lawyers magazine for 2011.

Amandeep Sidhu, L’05, of McDermott Will & Emery in Washington, was named to The National Law Journal’s Minority 40 Under 40 list. (See article, page 4.)

Rebecca Bowen, L’05, is an attorney with ThompsonMcMullen in Richmond. Her practice focuses on business entities and transactions, tax law, and estate planning and administration.

Stinson Munday, L’05, was elected to the board of directors of the Metro Richmond Women’s Bar Association. She is an attorney at Moran Reeves & Conn.

Sean Roche, L’05, is a civil litigator and partner with Cameron/McEvoy in Fairfax, Va.

Shari L. Skipper, L’05, is chief deputy commonwealth’s attorney for Hanover County, Va.

Matt Durden, L’06, and Lauren Durden welcomed a daughter, Martha Elizabeth, on May 7, 2011, in Reston, Va.

Manesh Jiten Shah, L’06, an associate in the business, finance, and restructuring department of Weil, Gotshal & Manes’ Dallas office, has been selected to participate in the 2011–2012 LeadershipSBOT (State Bar of Texas) program, a diversity initiative between SBOT and the Texas Young Lawyers Association. Only 20 attorneys statewide are selected annually for the program.

Kimberly Skiba, L’06, of Owen & Owens, was elected to the board of directors of the Metro Richmond Women’s Bar Association. She also was named a 2011 Rising Star by Virginia Super Lawyers magazine in the family law category.

Ashley K. Williams, L’06, is in-house counsel at Sentara Healthcare in Norfolk, Va.

Jon Hruska, L’07, is counsel at BrownGreer in Richmond. The firm focuses on mass claims administration and resolution.

Robin McVoy, L’07, of Capital One, was elected to the board of directors of the Metro Richmond Women’s Bar Association.

Joshua Parrett, R’04 and L’07, has joined the law firm of Anthony C. Williams & Associates in Stafford, Va. His practice focuses on domestic relations as well as criminal and traffic defense.

Meg Sander, L’07, is an associate in the education practice at Reed Smith in the firm’s global regulatory enforcement group. She also is an emergency medical technician and an adjunct professor at UR’s School of Professional and Continuing Studies and at Virginia Commonwealth University’s School of Education.

Anna-Lisa Jacobson Davis, L’08, married Capt. Timothy Allen Davis, R’05, L’08, and GB’10, on June 20, 2010. Virginia “Gini” Bray and Capt. John Bateman, both L’08, were in the wedding party. Eva Bateman, L’09, and Chris Jones, L’08, attended the wedding. The couple resides in Fayetteville, N.C., where Tim is a judge advocate in the U.S. Army stationed with the XVIII Airborne Corps at Fort Bragg.

Sarah Flynn Robb, L’08, is an assistant attorney general at the office of the attorney general in Richmond. She works in the sexually violent predator civil commitment section in the civil litigation division.

Capt. C. Carter Lee, L’09, is a trial counsel/operational law attorney in the Virginia National Guard for an Infantry Brigade Combat Team whose mission is to further the rule of law in Afghanistan. His supervisor is Maj. Marc West, L’98. Lee shared links to two stories on the rule of law and Afghanistan that other alumni might find interesting. To view them, go to Lee’s class note entry online at lawmagazine.richmond.edu. (Photo of Lee and West, page 31.)

2010s

R. Travis Campbell, L’10, an attorney with Simmons & Narita in San Francisco, wrote an amicus brief with two partners at his firm for a Supreme Court case, First American Financial Corp. v. Edwards, which involves consumer protections statutes and Article III standing. To view it, go to Campbell’s class note entry online at lawmagazine.richmond.edu.
The School of Law underwent a $2.5 million renovation project over the summer, which included improvements to the front entrance and new landscaping. (More photos, pages 6–7.)