CONTENTS

ARTICLES

THE CONSTITUTIONAL LIMITS OF CLIENT-CENTERED DECISION MAKING ............ Todd A. Berger 1089

TRUTH OR DOUBT? AN EMPIRICAL TEST OF CRIMINAL JURY INSTRUCTIONS......... Michael D. Cicchini 1139

CLARENCE THOMAS, FISHER V. UNIVERSITY OF TEXAS, AND THE FUTURE OF AFFIRMATIVE ACTION IN HIGHER EDUCATION ............ Scott D. Gerber 1169

CAUSATION IN WHISTLEBLOWING CLAIMS ...... Nancy M. Modesitt 1193

FILLING FEDERAL COURT VACANCIES IN A PRESIDENTIAL ELECTION YEAR .......... Carl Tobias 1233

EQUITY AND FEASIBILITY REGULATION ............ Dov Waisman 1263

COMMENTS

LOST IN TRANSLATION: HOW PRACTICAL CONSIDERATIONS IN KIRTSANG DEMAND INTERNATIONAL EXHAUSTION IN PATENT LAW ............ Dustin M. Knight 1333

WAGING THE WAR AGAINST UNPAID LABOR: A CALL TO REVOKE FACT SHEET #71 IN LIGHT OF RECENT UNPAID INTERNSHIP LITIGATION ............ Rachel P. Willer 1361

ONLINE EDITION
ACKNOWLEDGMENTS

As Volume 50 of the University of Richmond Law Review comes to a close, it is necessary to reflect upon the many successes that the members of this journal have shared over the past two years. We began our journey under the direction of Paul Holdsworth and the Volume 49 Executive Board. Their commitment to excellence laid a foundation for what would be a year of substantive change and transition.

The year began on a rough note with the discovery that members of the Law Review would no longer receive academic credit for their work. Instead of getting bogged down with this loss, we worked harder and laid the groundwork to help launch a new era for the journal. Ryan Speray headed up an effort to update the Spading Manual, which resulted in numerous changes to both the spading and editing processes. Carter Nichols and Steven Lippman led a team in discerning ways to revamp the Law Review’s online presence, which culminated in an updated website, the creation of the Online Edition, and a host of new positions for next year’s Editorial Board. Joe Szesko worked tirelessly to host the Law Review’s first sold-out Symposium. Joe also amassed the scholarship of the country’s leading practitioners and professors in an effort to bring an end to school inequality in the United States. And the entire Editorial Board worked countless hours to ensure that we published the best work possible and that we set an example that would resonate with members of this journal for years to come.

Moreover, while this past year provided an opportunity for us to look into the University of Richmond Law Review’s future, it was also a time for us to reflect on the journal’s past as we celebrated its fiftieth volume. Ann Reid, along with the Articles and Comments Editors, managed to fill our January Book with articles concerning legal issues that are turning or have recently
turned fifty during this publication year. And the same team filled this issue with a diverse collection of superior scholarship.

The members of the University of Richmond Law Review are not only dedicated to the advancement of legal scholarship, they also are equally committed to their own personal and professional development both inside and outside the classroom. It has been a tremendous honor to serve as the Editor-in-Chief of this journal in no small part because it has provided me the opportunity to work with these people who have given their time, energy, and intellectual fortitude to further its development. Therefore, I would like to take this opportunity to offer my sincerest gratitude and admiration for my colleagues.

Glenice: There is little that I can say that has not already been said more eloquently by those who have come before me. You are the glue that holds this ship together. You have rejoiced in our accomplishments as a journal and you were there for us when things got tough. You have provided laughter in times of stress (and in times of joy). You have celebrated our personal accomplishments and mourned with us through difficult losses. In short, you have become a dear friend to us all. Though I could fill this entire book with memories from the past two years, I will refrain so that you do not have to go back and edit my work—both for grammar and substance. Instead, I will only offer a heartfelt “thank you.”

Jen: You are the reason that this year was a success. In times of stress, you remained calm. When everyone was overwhelmed, you did whatever was needed to get the job done. You somehow managed to bring order to chaos. From setting our schedule months in advance to coordinating office hours, you did it all. Moreover, you brought brightness to the office. You have left this journal—and our school—better than when you found it. The role of Executive Editor is an exhausting one, but you approached it with grace and helped set the tone for collegiality and hard work that permeated throughout the year. So thank you for your dedication to the Law Review and, more importantly, for your friendship.

John: You are a natural leader and your gifts and talents were put to good use as the Annual Survey Editor. Knowing that the

Annual Survey is, in many respects, our most important issue, you were always up for the task and willing to put in the work necessary to ensure its success. And what a success it was. While serving as the editor for the first issue of Volume 50, you helped set the tone for the entire year. Beyond your work on the Annual Survey, you brought unparalleled energy and joy to the office, often when we needed it most. We could always count on you to not only finish your work in a timely and professional manner, but also to provide us with a few good laughs—and some helpful weather predictions—along the way. So thank you my friend for helping to keep me grounded throughout the year in what is truly important and for making it much more enjoyable.

Joe: On a journal filled with hard workers, you stand out. From the moment that you received your position as Allen Chair Editor, you have approached it with dedication and probity. Your efforts led to a sold out Symposium and a March Book filled with the nation’s leading scholars on school inequality. You took an important issue and used your abilities to bring together some of the greatest minds in the country to attempt to solve it. Though you have had many challenges this year, we could always count on you to do what was necessary to see them through, often with a smile on your face. Thank you for everything—including the pranks.

Steven: Despite your busy schedule moonlighting as the caped crusader, you somehow managed to handle the budget and event logistics in a straightforward and organized manner this year. Whether it was updating and compiling the list of judges for our Annual Survey issue or responding to requests regarding our subscription list, you were always on top of everything. Beyond your duties as Managing Editor, thank you for your work in helping to coordinate the upgrades to the website and for being willing to work with everyone to help ensure that we were turning out the best product possible. So thank you for bringing clarity to our journal and dedication, humor, and passion to the Executive Board.

Ann: From the beginning, you took charge on filling our books with novel and unique articles. And you did an incredible job. With the changing landscape of legal publications, you managed to stay on top of the massive influx of submissions, while scrupulously selecting only the best articles for our publications. Moreover, I cannot imagine anyone who could have done a better job
than you did by serving as the face of our journal in communications with authors. You are professional in everything that you do and you have my utmost respect. Further, you made our office fun. Whether it was reintroducing “Mimosa Mondays” or being the gracious recipient of a number of pranks, we would have been bored out of our minds without you. Thank you for all that you have done and will continue to do. The University of Richmond Law Review—and our school—are better because of you.

Jason: No one knows the Bluebook or the Chicago Manual of Style better than you. No matter the situation, we could always count on you to jump in and answer a citation or grammatical question—often reciting the rule from memory. Moreover, you helped lay the foundation for Volume 51 through your fantastic administration of the Unified Journal Competition. And you promoted scholarship amongst our staff members by overseeing the writing competitions. This has been a busy year, but it seemed as if no amount of work was too much for you. No matter what was asked, you went the extra mile. It has been great working with you this past year and I am excited to see how you will put your great talents to work in the world.

Carter: I will never forget the moment last year when, after receiving the disappointing news that you were not elected as “Supreme Leader,” you approached me with the idea of transforming the Law Review’s online presence into something that could help bring our journal into the 21st century. And as I reflect on that moment a little more than a year later, it is clear that your vision has come to fruition. From your dedicated work over the summer revamping the website to seeing the creation of the Law Review’s Online Edition, you have left a lasting impression on our journal, one that I look forward to seeing grow and develop over the years to come.

Manuscripts Editors—Jeremy, Brokie, Daniel, Ryan, Jimmy, Holly, and Kristen: Thank you all for your diligent review of our articles and your scrupulous attention to detail. As the strongest spaders on the Law Review, your contributions often define the quality of our editorial process. And our journal was better this year because of each of your efforts. Moreover, I know that I speak for all of the Executive Board members when I say that we truly enjoyed working with each of you this year.
Articles Editors—David, Amy, Barrett, Shannan, Ben, Zack, and Chris: Thank you for being great mentors and even better colleagues. Since the first day of orientation, your commitment to this journal has paved the way for success. Your editing was top-notch and, more importantly, each of you brought personality and dedication to your positions, which made the entire process much more enjoyable. Volume 51 will be better because of your guidance and leadership.

Articles & Comments Editors—Jake, Chris, Reilly, Gordon, and Liz: Thank you for your efforts in filling our January and May Issues and for mentoring the 2L staff members in writing their comments. Though often publicly under-recognized, your self-motivation and commitment to the betterment of our journal truly made a difference. Thank you for your diligence and hard work and thank you for being a presence in the office, even when your positions did not require it.

Senior Staff—Alec, Luke, Jon, and John: Thank you for your spading efforts throughout the summer and for being willing to provide assistance whenever it was needed.

2L Staff Members: Despite the fact that we had the fewest number of competitors finish the Unified Journal Competition in recent memory, we still managed to get the cream of the crop. Thank you for all of your hard work throughout the year. From weekly spading to Office Hours work to writing your comments, your role on the Law Review was crucial to its success. And beyond your dedication to the journal, your collegiality and dynamic personalities helped make all of our efforts much more enjoyable. It has been an honor to work with each of you. So, to Rachel and the rest of the Volume 51 Editorial Board, good luck next year.

Beyond the journal, I have some personal acknowledgements as well. To Mr. and Mrs. Smith, thank you for your love and support over the past three years. From always being willing to review my cover letters to sending me encouraging text messages, law school would not have been possible without you. And perhaps you helped the most by allowing me to marry your daughter. To Drew, if watching me the past three years has not convinced you to stay away from law school, I do not know what will. Whatever you do, you will be successful, and Elizabeth and I will always support you. I am proud to call you my brother. To Mom, thank you for your love over the past twenty-seven years. Your
energy is seemingly limitless and your dedication to serving others is nothing short of inspiring. No matter what the situation, I have always known that you were no more than a call away and that you would always be there for me. Thank you for everything this past year and for not being the “Marie” to my “Raymond.” To Dad, thank you for being someone that I can always look up to, not only in the legal profession, but in life. Thank you for all of the morning phone calls, for checking in on me when you had not heard from me in a while, and for always telling me when I needed to take a break and go watch some football. It is one of the greatest honors of my life to share your name.

Finally, I want to thank my beautiful wife, Elizabeth. It has been a difficult three years—the past year, especially—but you have somehow managed to make the bad times not so bad and the good times better than I ever could have imagined or hoped for. You are the funniest and smartest person that I know. And your humor and intelligence have only sharpened over time. Whenever I am down, you bring me up. Moreover, you have provided for us for the past three years, all while putting a hot meal on the dinner table every night. I cannot begin to thank you for all of the sacrifices that you have made and for your love and support. I love you more than you can ever know.

And with that, the umbrella has folded.

It is now my honor to present the fourth and final issue of Volume 50.

P. Thomas DiStanislao, III
Editor-in-Chief