

William and Mary Law Review

Alumni Newsletter

The Year in Review

by Jeffrey T. Bozman, Volume 53 Editor-in-Chief



Members of The Volume 53 Executive Board

The *Law Review* celebrated another successful year. In 2,200 pages, we published 31 articles and 10 student notes. We printed the submissions from last year's Symposium and hosted two other Symposia: our annual event with the Institute for Bill of Rights Law that examined the concept of "Law Without a Lawmaker," and a special meeting of the Judicial Conference's Advisory Committee on Evidence Rules, during which a distinguished panel of professors and judges discussed their work in restyling the Federal Rules of Evidence. The *Law Review* continued its leadership role in the online Legal Workshop forum, and we rose in the rankings to number 18 on the list of most-cited law journals.

Our members enjoyed remarkable achievements in professional and extracurricular pursuits. Third-year students will begin jobs ranging from judicial clerkships to careers in the U.S. Foreign Service; second-year students have accepted summer positions at some of the nation's most prestigious law firms, leading academic institutes,

and all levels of government. Several members celebrated weddings and engagements this year, and we welcomed their loved ones into the extended *Law Review* family.

The members of the Volume 53 Executive Board made invaluable contributions to each issue of our volume, and I remain grateful for their efforts. Katie Peebles led the Notes Selection Committee, and she and her team of Notes Editors guided the members of Volume 54 through a remarkably successful writing process. Sam Zimmerman and the Articles Selection Committee pored over more than 3,000 submissions to select the exceptional articles that we published. Kristen Brown and Brandon Sieg brought their extraordinary talents to the administrative and operational management of the *Review*; their leadership enabled us to achieve such success this year.

As always, we owe incalculable gratitude to Beckie Pasipanki for her warmth, wisdom, guidance, and encouragement at every step of the publication process. Although we bid farewell to Andrea Raines last year, we were delighted to welcome Julie Pasipanki to the administrative team in March.

Chief among our accomplishments this year was selecting an outstanding group to lead Volume 54. The *Review* is now in the capable hands of Merideth Snow, and I am confident that her staff will produce another exceptional volume of legal scholarship in the coming year. To all of my colleagues, thank you again for your trust and support during my tenure. Serving as Editor-in-Chief has been a privilege and a pleasure, and I will always remain grateful for this extraordinary opportunity.



The William & Mary Law School is the oldest law school in the United States. Established in 1779, upon the appointment of George Wythe as the first professor of Law and Police, the Law School operated continuously until the beginning of the Civil War in 1861. During that time, William & Mary Law School educated some of the more prominent names in American history, such as Thomas Jefferson, John Marshall, James Monroe, and Henry Clay. After remaining closed for sixty years, the Law School re-opened in 1921, and has since become one of the top-ranked law schools in the United States. The *William and Mary Law Review* is one of five law journals published by the students of William & Mary Law School. Each year, its members produce six issues of high-quality legal scholarship.

The Year Ahead

by Merideth Snow, Volume 54 Editor-in-Chief



Welcome to Volume 53!

My name is Merideth Snow, and I am honored to be serving as the Editor-in-Chief of Volume 54 of the *William and Mary Law Review*. I am a 2010 graduate of Texas A&M University, where I competed for the school's cross country and track programs. William & Mary has been a great fit for me over the past two years, but I am especially looking forward to the year ahead and the opportunity to lead a remarkable team of editors in carrying on the *Law Review's* legacy.

Our publication process has begun in earnest, and we are working arduously to produce another volume of excellent legal scholarship. In February 2013, we will be particularly pleased to publish the Articles associated with the *Law Review's* recent Symposium, entitled "Law Without a Lawmaker." The Symposium featured twelve scholars focusing on the existence and validity of law not created by the lawmakers of a particular jurisdiction. The event was a great success, and we look forward to continuing that success at next year's Symposium, "The Civil Jury as a Political Institution."

Finally, I hope you will join me in extending a very special thank you to Jeff Bozman and the entire staff of Volume 53 for their outstanding commitment to the *Law Review*. The editors of Volume 54 promise the same level of hard work and determination as we seek to continue the tradition of excellence that all of you have established.

A Message From the Faculty Advisor

Greetings from William & Mary Law School! I am now in my fourth year here at the law school. This is my second year as the *William and Mary Law Review's* official faculty advisor. The students at William & Mary, and in particular those on the *Law Review*, continue to impress me. I am particularly fortunate to teach and to work with them. The *Law Review* has maintained its tradition of timely publication of cutting-edge legal scholarship. It continues to hold a high rank among law journals, and has a terrific reputation in the legal academy. Colleagues in the academy continue to rave to me about the professionalism of the editorial staff.

Jeff Bozman has done an outstanding job as Editor-in-Chief. Under his stewardship, the *Law Review* has published approximately 2,200 pages of scholarly work, including thirty-one articles and symposium contributions and ten student notes. In addition, the *Law Review* has hosted and published lectures by prominent academics. Finally, it has successfully completed two symposia, one on the Federal Rules of Evidence and the other entitled "Law Without a Lawmaker." In connection with these symposia, the *Law Review* hosted judges and academics from across the country. We have received very positive feedback on these events, in particular relating to the *Law Review's* organization and involvement. In sum, this was an extraordinarily successful and productive year. I want to thank Jeff and the other members of the *Law Review* for their work on Volume 53, and I very much look forward to working with Merideth Snow, the new Editor-in-Chief, on what I am sure will be a terrific Volume 54.

Sincerely,
Professor Timothy Zick

Alumni Profile: *Michael Durrer*

by Bryan Gividen

As a child, growing up as the son of a Marine meant that Michael Durrer did not settle in any single place for very long. His early experiences moving gave Durrer, Executive Editor of Volume 28 of the *Law Review* and graduate from Class of 1987, the opportunity to adapt to change. That trait helped him on the winding path to his career as a partner in Sidley Austin LLP's New York Office, where he practices in the areas of structured finance and securities law.

After graduating from Duke with a Bachelor's in Medieval and Renaissance Studies, Durrer taught at Sunset Hill School, a private all-girls school in Kansas City, Missouri. Finding teaching to be a good fit for his talents, he returned to school to pursue a position as a university professor. He graduated from Boston College with a Master's in Theology and began a doctoral program at Syracuse in Religion and Philosophy, all while teaching university courses to undergraduate students. But change came again. A tough market for tenure-track positions coincided with a booming legal market. Durrer surveyed the field, withdrew from his PhD program, and determined he could use some of the talents he used as an academic and teacher to make a career as an attorney.

Three years of law courses, two volumes of the *Law Review*, and one published Note later, Durrer graduated from Marshall-Wythe with a position at Brown & Wood in New York. Though Durrer has stayed with one firm for the past twenty-five years—an increasingly rare feat in the legal profession—change has continued to push him to new experiences.

In the late 1990s, Brown & Wood approached Durrer about being a part of a push to expand

the firm's overseas presence by transferring him to its London office for “a couple of years.” He quickly became acclimated to the new challenge, applying his practical skills in an entirely new community. “I was still working with New York law,” Durrer explains, “But [the learning experience] was in understanding how it applied to U.K. financial institutions.” Durrer readily adapted to cultural changes as well, such



Michael Durrer '87

as transitioning from American Football to English Football (soccer). “Knowing nothing about it cuts you out of too many discussions at the pub,” Durrer quips. Six months after arriving, he attached himself to the local club (Arsenal FC) and has been a loyal supporter since. Positive experiences made Durrer feel at home in London; the “couple of years” he was to be there quickly turned into a more than a decade. During that time, his ability

to adapt made more dramatic changes, like Brown & Wood's merger with Sidley Austin, easier to handle. In 2011, Durrer transitioned again, returning to the Manhattan office he now occupies.

Even after twenty-five years at the firm, Durrer recognizes that his circuitous route has been beneficial, both professionally and personally. The skills he developed as a teacher helped him to mentor new associates and to connect with clients in their language. “At least as importantly,” he says, “devoting almost ten years to academics and teaching provided a kind of counterweight to the inevitable grind of law practice. It allowed me to develop interests—in my case history, religion and philosophy—that have stayed with me and help keep my career in law from consuming too much of my life.”

Law Without a Lawmaker

A William and Mary Law Review Symposium

On February 24 and 25, 2012, the Law Review and the Institute of Bill of Rights Law hosted its annual Symposium. This year's topic, "Law Without a Lawmaker," delivered a weekend of insightful and engaging presentations to the Law School. The event was very well attended, with over 70 people in the audience both days.

Following opening remarks by Professor Michael Steven Green, the Symposium participants gave ten presentations over the course of the two days. The presentations

addressed a variety of issues relating to the existence and validity of law not created by the lawmakers of a particular jurisdiction. Some of the questions addressed by the panelists included the nature of the general common law under the regime of *Swift v. Tyson*, the constitutional sources of *Erie v. Thompkins*, and the constitutionality of choice-of-law rules.

Papers from the Symposium will be published in Volume 54 of the *William and Mary Law Review*.

"Law Without a Lawmaker: Exploring the existence and validity of law not created by the lawmakers of a particular jurisdiction."

SPEAKERS INCLUDED

Michael Steven Green	<i>College of William & Mary School of Law</i>
Kermit Roosevelt	<i>University of Pennsylvania Law School</i>
Louise Weinberg	<i>University of Texas School of Law</i>
Lea Brilmayer	<i>Yale Law School</i>
Caleb Nelson	<i>University of Virginia School of Law</i>
Anthony Bellia	<i>University of Notre Dame Law School</i>
Bradford Clark	<i>George Washington University School of Law</i>
Craig Green	<i>Temple University School of Law</i>
Steven D. Walt	<i>University of Virginia Law School</i>
Emily E. Kadens	<i>University of Texas School of Law</i>
Ernest A. Young	<i>Duke Law School</i>
Abbe R. Gluck	<i>Columbia Law School</i>

Student Accomplishments of Note

The *Law Review* is proud that its members maintain successful personal and professional lives outside of the Wolf Law Library. Here is a sampling of Volume 53's many accomplishments from the last year.

BIRTHS

Eddie Eichler (3L) and his wife are expecting their first child, a boy to be named Tamás, in July.

WEDDINGS

Jay Mangold (2L) married Bonnie Foley on December 31, 2011.

Brad Reed (3L) married Liza Toher on March 3, 2012.

Lindsey Welter (3L) married Carl Davis on March 3, 2012.

ENGAGEMENTS

Christopher Brennan (3L) and Kristy Beer were engaged on December 4, 2011.

Lindsey Gill (2L) and Greg Bearce were engaged on December 22, 2011.

Neillee Katona (3L) and Dustin Fogg were engaged on March 17, 2012.

PUBLICATIONS

Meredith McCoy (3L) and **Anisa Somani** (2L) will be published as part of the *Elections* chapter in the American Bar Association's annual publication *Developments in*

Administrative Law and Regulatory Practice, commenting on recent developments in election law.

Jessica Glajch (3L) published an article, *Will Special Labeling Be Required for All Genetically Engineered Foods?*, in the Food and Drug Law Institute's *Update Magazine* in January.

TRIAL TEAM

Emily Riggs (3L) and **Caitlyn Cotter** (3L), along with two other members of the W&M National Trial Team, competed at the Stetson Law National Pretrial Competition. The team won First Place and Emily won three individual awards: Best Advocate - Round 2; Best Advocate - Semi-Final Round; and Best Advocate - Final Round.

Lindsey Welter (3L) competed in the ABA Labor and Employment Trial Advocacy Regional Competition, where her team earned second place. Lindsey also competed at the South Texas Mock Trial Challenge, where her team earned outstanding trial brief.

MOOT COURT

Nate Lambeth (3L) in February won the Atlantic Regional of the Stetson International Environmental Moot Court Competition in Washington, DC and was awarded Best Memorial. In March, he competed in the International Finals of the same tournament and received Runner-Up Best Memorial.

Jacqueline Rogers (3L) won the Best Brief award at the Ruby R. Vale Interschool Corporate Moot Court Competition at Widener University Law School.

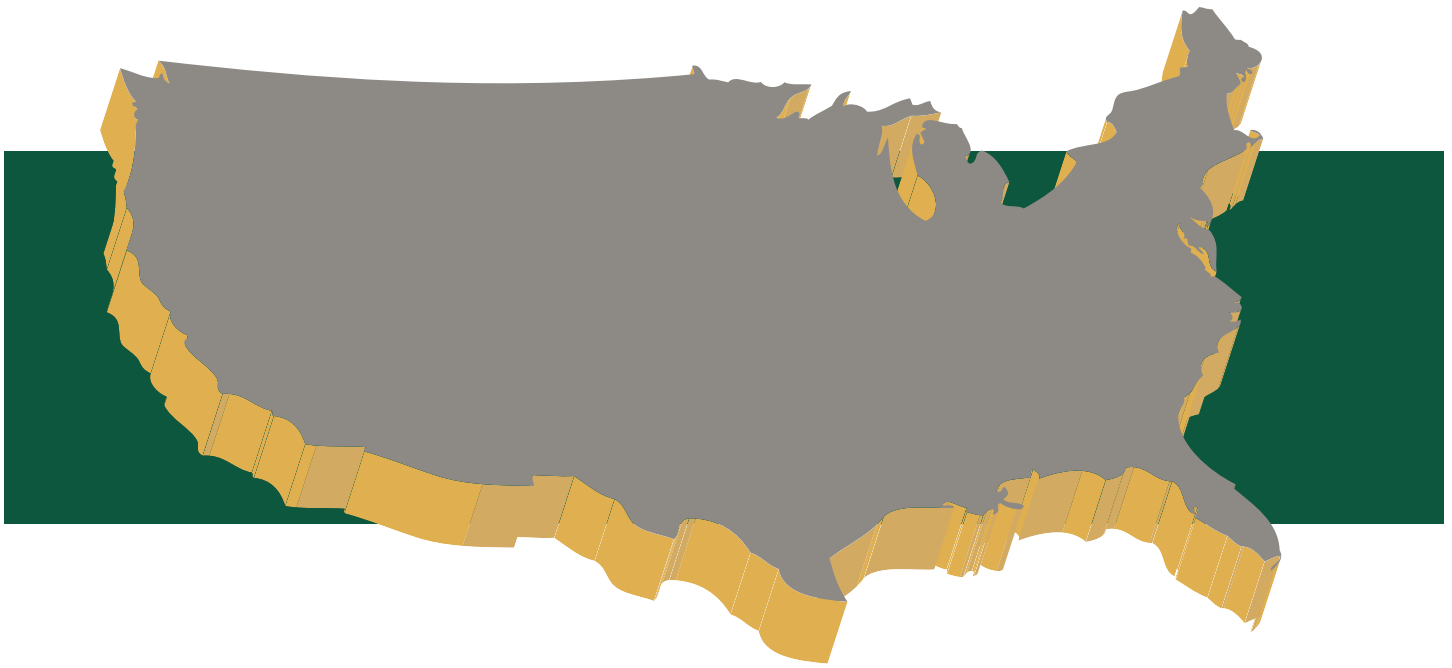
OTHER

Eddie Eichler (3L) was selected as the 2012-2013 Drapers Scholar. The scholarship includes full tuition plus a living stipend to obtain an L.L.M. degree from Queen Mary College at the University of London where Eddie plans to study international trade.

Stephanie Bitto (3L) and **Will Versfelt** (3L) were selected as Benjamin Rush Scholars and presented papers addressing issues regarding the interface of law with current matters of bioethical and health law concern at the Benjamin Rush Symposium in February.

Jordan Evans (2L) will serve as the Chief Justice of the Honor Council in the coming year and **Laura Doore** (2L) will serve as an Associate Justice.

This year, **Laura Carini**, **Brendan Clegg**, **Caitlyn Cotter**, and **Jessica Strock** (all 3Ls) served as Legal Skills Teaching Assistants. Next year's crop includes **Tom Burnham**, **Jordan Evans**, **Adam McGonigle**, **Sean Renaghan**, and **Vladislava Soshkina** (all 2Ls).



Class Notes: 3L Destinations

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Arnold & Porter
Washington, DC

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Venable
Washington, DC

Jeff Bozman
Hon. Rebecca Beach Smith
Eastern District of Virginia
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Washington, DC

Andrew Chan
Ernst & Young
McLean, VA

Blake Christensen
Willcox & Savage
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Dominique Church
Morris, Nichols, Arsht & Tunnell
Wilmington, DE

Caitlyn Cotter
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Washington, DC

Mimi Epstein
Hon. Lorraine Nordlund
Fairfax County Circuit Court
James Evans

Federal Trade Commission, Bureau
of Consumer Protection
Washington, DC

Katy Gratton
Hon. Mark S. Davis
Eastern District of Virginia
Gibson, Dunn & Crutcher
Washington, DC

Neillee Katona
Dept. of Labor, Office of
Administrative Law Judges
Newport News, VA

Tom Moyer
Akin Gump
Washington, DC

Katie Peebles
Hon. Henry Floyd
U.S. Court of Appeals for the
Fourth Circuit

Nate Pittman
Staff Attorney's Office
U.S. Court of Appeals for the
Fourth Circuit

Tom Ports
Reed Smith LLP
Falls Church, VA
Adam Prescott
WilmerHale

Washington, DC

Ben Reed
Milbank Tweed Hadley & McCloy
New York, NY

Brad Reed
Frantz Ward
Cleveland, OH

Emily Riggs
Skadden, Arps, Slate, Meagher &
Flom
New York, NY

Jacqueline Rogers
Potter Anderson & Corroon
Wilmington, DE

Brandon Sieg
Vandeventer Black
Richmond, VA

Michael Warwick
Troutman Sanders
Richmond, VA

Sam Zimmerman
Chadbourne & Parke
New York, NY

The Articles of Volume 53

by Sam Zimmerman, Volume 53 Senior Articles Editor

In what once again turned out to be the Articles Committee's busiest year to date, our editors reviewed 2,796 submissions. The *Law Review* will publish thirty Articles on a broad range of issues including the First Amendment rights of public employees, the role of ideology in bankruptcy appeals, the Fourth Amendment rights of children, and how business courts affect interstate competition. A few samples of the exciting scholarship of Volume 53 follow.

In *Disability Cause Lawyers: Relentless Pragmatism in the Shadow of the Supreme Court*, William & Mary Professor Michael Stein, Loyola Law School Los Angeles Professor Michael Waterstone, and Harvard Law School Professor David Wilkins examine the work of disability lawyers as cause lawyers for the disability rights movement. By conducting extensive interviews with the lawyers who bring disability cause cases, the authors paint a picture the strategies that disability cause advocates use. The Article demonstrates how these lawyers have operated in light of the Supreme Court's restrictive jurisprudence.

In *Citizens, United and Citizens United: The Future of Labor Speech Rights?*, Seattle University School of Law Professor Charlotte Garden evaluates a potential silver lining for labor unions in the much-discussed *Citizens United* case. Although many view the case as a net loss for labor unions relative to corporations, she argues that the reasoning of *Citizens United* undermines the intellectual basis



The Volume 53 Articles Committee.

of existing restrictions on the First Amendment rights of labor unions outside of the campaign finance context. According to Garden, *Citizens United's* broad articulation of associations' free speech rights calls into question current limitations on labor picketing, boycotting, and striking. Furthermore, *Citizens United's* treatment of dissenting shareholders jeopardizes restrictions on unions' use of dues for political speech.

In *The Role of Charity in the Federal System*, Boston College Law School Professor Brian Galle offers a new justification for charitable subsidies based on federalism concerns. He critiques the existing justification as failing to adequately account for the federal system. Galle views charity as a mechanism to enhance the low-quality government services resulting from too much or too little interjurisdictional competition. He proposes a system based on the comparative advantage of offering a particular good or service through charity versus through a government solution.

In *Why Agencies Punish*, New Mexico School of Law Professor

Max Minzner challenges the traditional consequentialist conception of why administrative agencies punish those who violate their rules. After examining the policies and practices of four agencies, he demonstrates that the agencies design their punishment schemes in order to achieve retributive ends. Minzner argues that agency punishment is improperly calibrated to achieve legitimate retributivism. He further contends that because of the strong reasons to doubt agencies' competence to administer retributive punishment, we must reevaluate the methods and goals of agency punishment.

In *The Null Patent*, Vanderbilt University Law School Professor Sean Seymore addresses the potentially important role that negative experimental results can play in determining patentability. He observes that although negative results compose the majority of scientific knowledge, current scientific norms as well as the patent system fail to incentivize the disclosure of this body of knowledge. Seymore proposes a "null patent" as a tool that the Patent and Trademark Office could adopt that would provide incentives, such as priority review of future patent applications, to people who disclose their negative results. He argues that the increase in negative information would enhance the PTO's ability to efficiently make patent determinations. Moreover, use of the null patent would promote innovation by increasing the body of public knowledge available to inventors.

The Scholarship of Volume 53

ISSUE ONE (OCTOBER 2011)

Articles

Charlotte Garden, *Citizens, United and Citizens United: The Future of Labor Speech Rights?*

Jamelle C. Sharpe, *Legislating Preemption*

Kristin Henning, *The Fourth Amendment Rights of Children at Home: When Parental Authority Goes Too Far*

Christopher L. Peterson, *Two Faces: Demystifying the Mortgage Electronic Registration System's Land Title Theory*

Notes

Adam R. Prescott, *On Removal Jurisdiction's Unanimous Consent Requirement*

J. Brandon Sieg, *Tort, Not Contract: An Argument for Reevaluating the Economic Loss Rule and Classifying Building Damage as "Other Property" When It Is Caused by Defective Construction Materials*

ISSUE TWO (NOVEMBER 2011)

Articles

Kevin E. Davis & Helen Hershkoff, *Contracting for Procedure*

Amy L. Wax, *Disparate Impact Realism*

Gillian E. Metzger, *Federalism Under Obama*

Julian Ku & John Yoo, *Globalization and Structure*

Frederick Schauer, *Is Legality Political?*

John O. McGinnis, *Laws for Learning in an Age of Acceleration*

Jide Nzelibe, *Partisan Conflicts Over Presidential Authority*

Paul M. Schwartz, *Regulating Governmental Data Mining in the United States and Germany: Constitutional Courts, The State, and New Technology*

Christopher S. Yoo, *Technologies of Control and the Future of the First Amendment*

ISSUE THREE (FEBRUARY 2012)

Articles

Jonathan Remy Nash & Rafael I. Pardo, *Does Ideology Matter in Bankruptcy?: Voting Behavior on the Court of Appeals*

Joseph A. Seiner, *Plausibility Beyond the Complaint*

Brian Galle, *The Role of Charity in a Federal System*

Max Minzer, *Why Agencies Punish*

Notes

Kaitlin C. Gratton, *Desperate Times Call for Desperate Measures: Reclassifying Drug Possession Offenses in Response to the Indigent Defense Crisis*

Samuel L. Zimmerman, *Understanding Confidentiality:*

Program Effectiveness and the Freedom of Information Act Exemption

ISSUE FOUR (MARCH 2012)

Articles

Matthew D. Adler, *Interpretive Contestation and Legal Correctness*

J. Maria Glover, *The Structural Role of Private Enforcement in Public Law*

Ryan J. Owens & David A. Simon, *Explaining the Supreme Court's Shrinking Docket*

Michael E. Waterstone, Michael A. Stein, & David B. Wilkins, *Disability Cause Lawyers*

Notes

James Evans, *The "Flesh and Blood" Defense*

Katherine E. Peebles, *Negligent Hiring and the Information Age: How State Legislatures Can Save Employers from Inevitable Liability*

ISSUE FIVE (APRIL 2012)

Articles

Symposium, *The Restyled Federal Rules of Evidence*

Heather K. Gerken, *Our Federalism(s)*

Alexander R. Reinert, *Release as Remedy for Excessive Punishment*

Edward Rubin, *The Affordable Care Act, the Constitutional Meaning of Statutes and the Emerging Doctrine of Positive Constitutional Rights*

Wendy Wagner, *Revisiting the Impact of Judicial Review on Agency Rulemakings: An Empirical Investigation*

Notes

Christopher R. Brennan, *Katz Cradle: Holding On to Fourth Amendment Parity in an Age of Evolving Electronic Communication*

Dominique Church, *Neuroscience in the Courtroom: An International Concern*

ISSUE SIX (MAY 2012)

Articles

Christopher A. Cotropia, *What Is the "Invention"?*

John F. Coyle, *Business Courts and Inter-State Competition*

Randy J. Kozel, *Free Speech and Parity: A Theory of Public Employee Rights*

Sean B. Seymore, *The Null Patent*

Notes

Nathan Pittman, *Unintentional Levels of Force in § 1983 Excessive Force Claims*

Jessica Strock, *Setting the Terms of a Break-Up: The Convergence of Federal Merger Remedy Policies*

The Notes of Volume 54

Each year, students submit many excellent notes for consideration by the Notes Committee. Congratulations to the following authors whose notes have been selected for publication in Volume 54 of the *William and Mary Law Review*.

Lauren Gill, *Who's Your Daddy? Defining Paternity Rights in the Context of Private Sperm Donation*

Lindsey Gill, *Secure Communities: Burdening Local Law Enforcement and Undermining the U Visa*

Travis Gunn, *Knowledge is Power: The Fundamental Right to Record Present Observations in Public*

John Hoke, *Parens Patriae: A Flawed Strategy for State-Initiated Obesity Litigation*

Peter Kyle, *Contracting for Performance: Restructuring the Private Prison Market*

Sam Mann, *The Symbolic Exemption: How Baseball's Reliance on its Antitrust Exemption is Hurting the Game*



Volume 53 Notes Selection Committee

Adam McGonigle, *Applying Equitable Estoppel to ERISA Pension Benefit Claims*

Anisa Somani, *The Use of Gender Quotas in America: Are Voluntary Party Quotas the Way to Go?*

Vladislava Soshkina, *Beyond Morrison: The Effect of the 'Presumption Against Extraterritoriality' and the Transactional Test on Foreign Tender Offers*

Jarred Taylor, *Information Wants to be Free (of Regulation): Why the President Cannot Regulate Foreign Access to Social Media Under U.S. Export Regulations*

The Nation's Top Law Journals

The *William and Mary Law Review* continues to be well regarded by the legal academy and the judiciary. Our most recent law review ranking, compiled by Washington & Lee, places the *Law Review* as the eighteenth-ranked journal based on the number of citations to the *Review* in legal scholarship and judicial opinions.

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2011-2012

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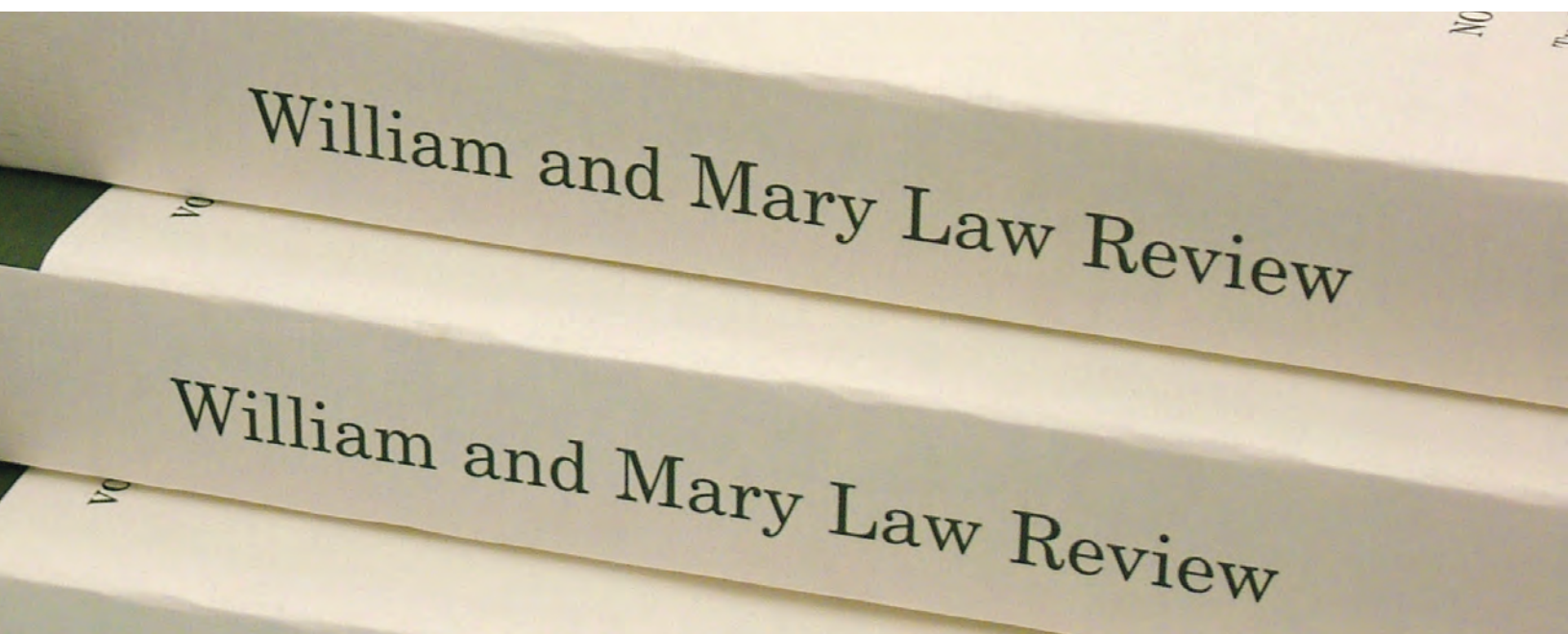
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