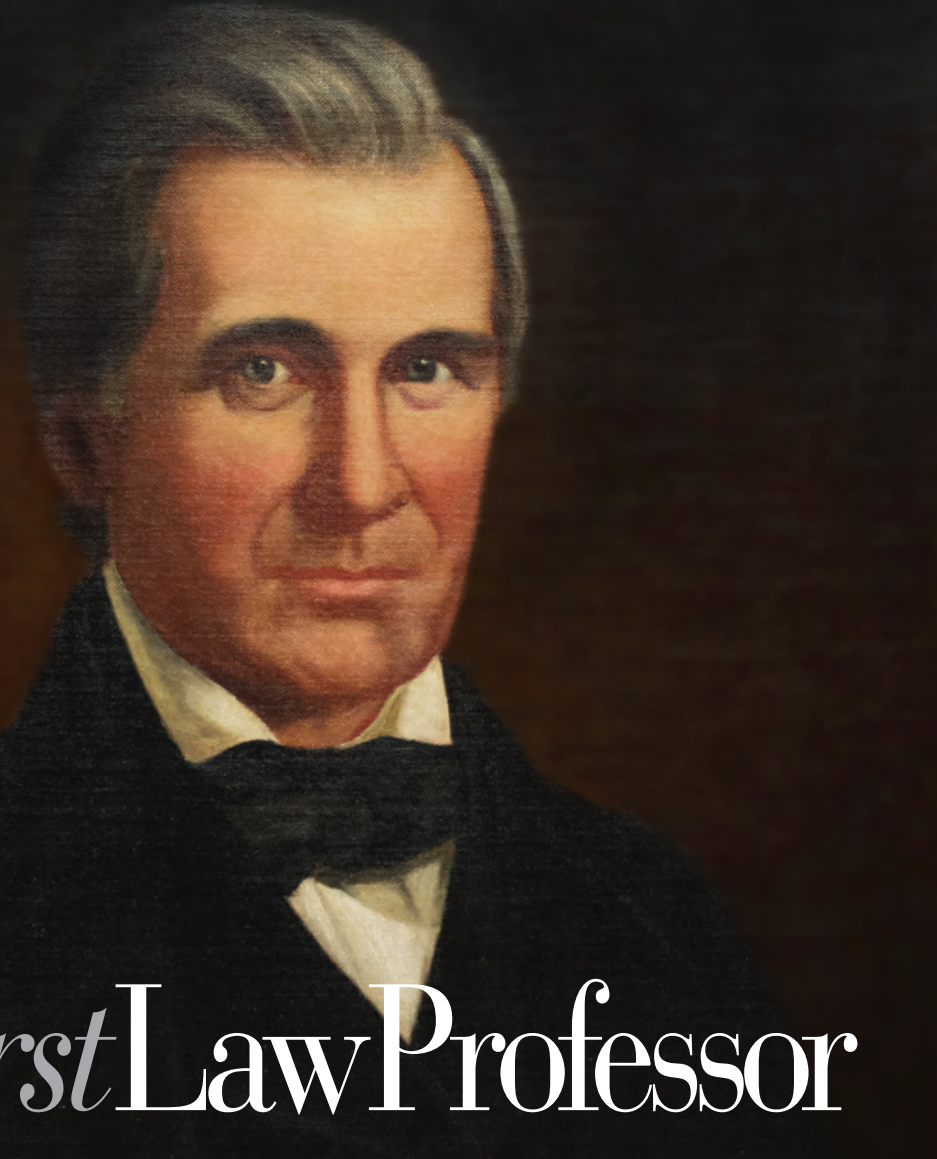


LANDING
UVA LAW'S
INAUGURAL
INSTRUCTOR
WAS
SURPRISINGLY
DIFFICULT
FOR THOMAS
JEFFERSON



The First Law Professor

THOMAS JEFFERSON considered 12 candidates to teach law at the University of Virginia before hiring John Tayloe Lomax. Why was it so difficult to find the right person for the job?

"Most law professors at that time were also sitting judges, so there was not necessarily a great deal of prestige to holding the professor of law position," explained Professor Gordon Hylton '77, who is writing a book on the history of legal education at the Law School. "Law teaching as a career did not really exist in 1824, when Jefferson began his search for the first law professor at UVA."

Part of the problem was bad luck. The original choice, William Cooper, wasn't willing to wait around for the University to open (which didn't happen for six years after its official founding). The next choice, Francis Gilmer, dithered over whether or not to accept the position and then died shortly after he decided to accept it. Most of the others were not interested, although two of Jefferson's candidates were too young to be accept-

able to the other members of the Board of Visitors. In some ways, the problem was also that Jefferson's vision of an ideal law professor—a relatively young man of broad intellectual interests whose expertise was not limited to a narrow mastery of private law—was not shared by many of the members of the Board of Visitors, most of whom were prominent attorneys. Except for James Madison, many of his colleagues thought the best candidates for the position of law professor were experienced judges or practicing lawyers. In the end, Lomax got the job.

"Lomax was a respected lawyer and an expert on real property law and chancery practice, but he fell far short of what Jefferson had been looking for," Hylton said. "He was also apparently not a very good teacher. He attracted very few students, and when he had the chance in 1830 to take a judicial position, he jumped at the chance, even though the judgeship he accepted had already been slated for termination under the new Virginia constitution."

Jefferson believed that law should be taught as a liberal art with an equal emphasis on public and private law. In his

mind, constitutional law, international law, political theory and political economy should constitute at least half of the law course—a curriculum that Lomax ignored, even though he appears to have been chastised by the Board of Visitors for not following Jefferson's outline. His successor, John A. G. Davis, restored the Jeffersonian curriculum, but in the end, Lomax's approach won out. By the mid-1840s, the primary focus of the School of Law was teaching law and legal practice skills to future lawyers.

Hylton drew upon a rich collection of early records at UVA relating to the founding of the University and the Law School for his book, part of a planned three-volume history, which is to include a volume on architecture and one on the history of law student life.

Jefferson may have had bad luck recruiting a law professor, but the process of recruiting other University professors "actually went pretty smoothly," Hylton said. "The first faculty members as a whole proved to be quite distinguished."

—Mary Wood

FACULTY

SPENCER
NAMED
AUTHOR OF
FREQUENTLY
CITED
'FEDERAL
PRACTICE
AND
PROCEDURE'

WRIGHT & MILLER'S
"Federal Practice and
Procedure" quietly added
a new name to its list of
authors this year:

**PROFESSOR A.
BENJAMIN SPENCER.**
Spencer is taking over
responsibilities for
updating the civil rules of
procedure covered in
Vols. 5, 5A, 5B, and 5C—
focused on pleadings—for
the massively cited, multi-
volume reference book
series. He published his
first supplement to
volume 5A this year.
Additional supplements
will follow, with a new
edition of the volume to
carry his name in 2018.

"This is the preeminent
reference for civil
procedure topics for
practitioners, courts and
professors," Spencer said.
"It's the No. 1 most-
respected treatise, and it's
a big responsibility,
because courts cite this
frequently. You'll see
thousands and thousands
of citations to this work."

—Eric Williamson



FALL 2016 FACULTY NEWS



KENNETH S. ABRAHAM recently published "Prosser's 'The Fall of the Citadel'" in the Minnesota Law Review.



KERRY ABRAMS published an article co-authored with **BRANDON GARRETT**, "DNA and Distrust," in the Notre Dame Law Review. The article compares the ways in which DNA testing is regulated in various areas of law, including criminal, employment, health care and family law. She also contributed a chapter titled "(Mis)recognizing Polygamy" to a book called "The Polygamy Question," which included contributions examining polygamy from legal, sociological, anthropological and political theory perspectives.

Abrams continues to serve as the University's vice provost for faculty affairs, coordinating faculty recruitment and retention, overseeing the promotion and tenure process, and developing faculty policy University-wide. In June, she participated in the Harvard Graduate School of Education's Institute for Management in Leadership and Education.



MICHAL BARZUA made numerous presentations this year, including at the American Law and Economics Association's annual conference at Harvard Law School; the Harvard Law and Economics Seminar; the Tel Aviv University Law and Economics Workshop; the Tel Aviv University faculty workshop; Hebrew University's Law and Finance Workshop; the University of Pennsylvania/New York University Law and Finance Conference; and as a panelist at the 2016 Kirkland & Ellis M&A Roundtable.

Last year, she presented at the Stanford Law and Economics Seminar; the Texas Law, Business and Economics Workshop; the George Mason Law and Economics Workshop; the Tel Aviv Law, Business Court Roundtable; the Virginia Law faculty workshop; the American Law and Economics Association Annual Conference at Columbia Law School; and Michigan Law School's Law and Economics Workshop.

Barzua's publications last year included "Board Interlocks and Corporate Governance" with Quinn Curtis in the Delaware Journal of Corporate Law and "Self-Selection and Heterogeneity in the Choice of Corporate Law" in *Theoretical Inquiries in Law*.



In June, the president of the National Academy of Medicine, Victor Dzau, asked **RICHARD BONNIE '69** to chair the Committee on Pain Management and Regulatory Strategies to Address Prescription Opioid Abuse. The 18-member committee is charged with writing a consensus report summarizing what is known about use of opioid analgesics in pain management, about the epidemic of prescription opioid abuse and misuse, and with making recommendations to the Food and Drug Administration to address the epidemic in a way that balances the needs of pain patients with the need to reduce and prevent deaths and other harms to the public health caused by opioid abuse. The report is due next fall.

Bonnie continues his work chairing an expert advisory body charged with preparing options for the Virginia General Assembly's panel studying "mental health services for the 21st century." Although the final study report is due in December of next year, the panel made preliminary recommendations this fall. On July 22, Bonnie spoke about the challenges of mental health law reform to the annual meeting of the Virginia Bar Association.

Preventing firearm-related deaths and injuries remains a pressing policy challenge in the commonwealth as well as the nation. Bonnie chaired a plenary session at the VBA's annual meeting on "Preventing Gun Violence and Suicide, Preserving the Right of Self-Defense: The

Search for Common Ground." He also spoke on this topic at a "fusion seminar" at the UVA Medical School on July 11.

Bonnie continued to focus his scholarly attention on issues relating to juvenile justice and other aspects of youth law. On Oct. 20, in his role as co-reporter for the American Law Institute Restatement on Children and the Law, he presented proposed sections on minimum age of jurisdiction over juveniles as well as availability of the infancy defense in delinquency proceedings and in criminal adjudications to the ALI Council.

His recent publications include an article in the Fordham Law Review, co-authored with **ELIZABETH SCOTT '77**, titled "Young Adulthood as a Transitional Legal Category: Science, Social Change and Justice Policy."

Bonnie presented a talk Sept. 17 on leveraged treatment for physicians with behavioral health problems under the Physician's Health Program at a governance meeting of the American Psychiatric Association and a paper on proposals to exempt defendants with serious mental illness from the death penalty at a public forum Aug. 15 in Richmond. The Washington and Lee Law Review published Bonnie's paper "Mental Illness, Severe Emotional Distress and the Death Penalty: Reflections on the Tragic Case of Joe Giarratano."



MAUREEN (MOLLY) BRADY published "The Lost 'Effects' of the Fourth Amendment:

Giving Personal Property Due Protection" in the Yale Law Journal in February. In addition, her article "Property's Ceiling: State Courts and the Expansion of Takings Clause Property" appeared in the Virginia Law Review in September. Also in September, she was asked to deliver a lunch presentation on teaching law at Yale Law School's annual "Moot Camp" for aspiring law professors, and she presented a work in progress, "The Damagings Clause," at the Property Works in Progress Conference at Boston University. In October, Brady was invited to participate in the North American Workshop on Private Law Theory at Fordham Law School.



In September, **DARRYL BROWN '90** attended the Critical Legal Conference in Kent, England, and the Society of Legal Scholars' annual meeting in Oxford, England, to present a portion of his book "Free Market Criminal Justice."



In May, **JON CANNON** participated in a conference in Ireland on Pope Francis' "Laudato Si" and its implications for environmental thought and practice. With UVA English professor Steve Cushman, he wrote "Beyond the Church: The Influences on and of 'Laudato Si,'" which

is out for review. He also drafted a chapter, "Judicial Review in the New Age of Deference," for inclusion in a book on the Clean Air Act and climate change.



GEORGE COHEN gave an ethics talk to Law School alumni May 13 as part of alumni weekend. The talk, "The Laws of Agency Lawyering," was based on a paper of the same title that he presented at a conference at Fordham University last fall and published in the Fordham Law Review last spring.



This spring, **ASHLEY DEEKS** published an invited commentary responding to a lecture by Harold Koh at the University of Houston. Her piece, "Multi-Part Tests in the *Jus Ad Bellum*," explores why states and scholars regularly proffer multi-part tests as a way to structure and assess state uses of force in nontraditional contexts. She also reviewed Rajan Menon's book on humanitarian intervention for *The New Rambler*. In addition, Deeks is working on a paper for the Hoover Institution on the international legal dynamics of encryption. She also moderated a Virginia Journal of International Law symposium panel on the effect of cyberattacks on financial markets.

In June, Deeks spoke at the "Transat-

lantic Dialogue on Cyberespionage and Surveillance" in Berlin, which was organized by the law schools of the universities of Texas and Glasgow. She addressed international legal issues surrounding surveillance, including the implications for human rights and sovereignty norms. Deeks also will participate in a Chatham House roundtable discussion in London on the use of the "unwilling or unable" test in international self-defense. She continues to serve on the U.S. State Department's Advisory Committee on International Law, and in June provided commentary on the legality of targeting war-sustaining objects in armed conflict.

Deeks has been appointed a senior fellow at the Lieber Institute for Law and Land Warfare, the mission of which is to foster a deeper understanding of the complex and evolving relationship between law and warfare.



In June, **MICHAEL DORAN** presented a paper, "Uncapping Executive Pay," at the Columbia Law School Summer Tax Conference.

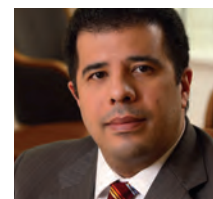


KIM FORDE-MAZRUI resumed the directorship of the Center for the Study of Race and Law, a position he previously held from 2003-10 as the center's founding director. He also authored two recent publications: a new casebook, "Racial Justice and Law: Cases and Materials" (Foundation Press, 2016) (with Ralph

and friend, Michael Moore, was published by Oxford University Press. "Legal, Moral, and Metaphysical Truths: The Philosophy of Michael S. Moore" contains 22 essays celebrating Moore's extraordinary contributions to legal theory. Ferzan co-edited this volume with her former criminal law professor, Stephen Morse.

She participated in two panels at the Southeastern Association of Law Schools' annual meeting in August. For the first, "Looking Forward: Criminal Law's Role," she discussed the complexities of the American Law Institute's endeavor to revise the Model Penal Code's sexual assault provisions and to come up with an ideal code in a less-than-ideal world. For the second, "How Is Philosophy Relevant to Law?" she discussed the myriad ways that criminal law requires answers to philosophical questions.

In November, she participated in a conference on self-defense at the University of San Diego Law School. She continued to work on "Rethinking Crime and Culpability," a book she is co-authoring with University of San Diego law professor Larry Alexander.



He presented a paper, forthcoming in the Virginia Law Review, titled "A Tactical Fourth

Richard Banks, Guy-Uriel E. Charles and Cristina M. Rodríguez), and an article, "The Canary-Blind Constitution: Must Government Ignore Racial Inequality?" in *Law & Contemporary Problems*. On Sept. 15, he delivered the Constitution Day lecture at Bucknell University, titled "Black Lives Are Our Lives: Reframing Our Constitution's Commitment to Racial Equality."



BRANDON GARRETT presented chapters from "The Triumph of Mercy," a book in progress exploring the decline in the use of the death penalty, at a May 20 conference at William & Mary. He and **KERRY ABRAMS** presented a paper forthcoming in the Boston University Law Review, "Cumulative Constitutional Rights," at a workshop April 5 at the Washington College of Law at American University.

In April, he taught a class on "big data" in criminal law at the UVA Engineering School, and two Osher Lifelong Learning Institute continuing education classes on his book "Too Big to Jail."

Garrett participated in discussions at the Virginia Department of Forensic Science board on April 19 and June 16 to plan reviews of forensic science testimony. This summer, he submitted written comments on two Department of Justice efforts to improve testimony and review casework in a range of forensic science disciplines.

He presented a paper, forthcoming in the Virginia Law Review, titled "A Tactical Fourth



MILA VERSTEEG WINS MCFARLAND PRIZE

PROFESSOR MILA VERSTEEG, who is among a small group of scholars to be the first to employ empirical methods in comparing the world's constitutions, has been awarded the Law School's Carl McFarland Prize.

The award is given in the spring to a junior faculty member for outstanding research. Versteeg, an expert in constitutional study whose research also extends to other aspects of international law, joined Virginia in 2011. She also directs the Human Rights Program.

"Mila can fairly be called a founder of the field of empirical comparative constitutional law," then-Dean Paul Mahoney said. "Her energy and creativity have drawn new insights and opened new avenues for constitutional scholarship. In her brief time in the academy, she has gained substantial visibility and influence."

—Eric Williamson

Amendment,” co-authored with **SETH STOUGHTON '11**, at a summer faculty workshop on June 28. Also that day, he gave a talk on false confessions to law enforcement at a Montpelier seminar.

Garrett's recent publications include “Why Plea Bargains Are Not Confessions” in the William & Mary Law Review; “Blinding Eye-witness Identifications,” a chapter in a book on blinding in science and the courts; “Rare as Hen's Teeth: The New Geography of the American Death Penalty” in the American Bar Association's Human Rights Magazine; and “The Rise of Bank Prosecutions” in the Yale Law Journal online.

His recent short commentary includes “(Not) Prosecuting Financial Crimes,” RegBlog, June 21; “Bad Hustle,” CLS Blue Sky Blog, June 13; “Deferred Prosecutions Need Judicial Oversight,” National Law Journal, May 2 (with Alan Morrison); and “The Genetic Panopticon,” Boston Review, March 17.

Garrett launched a new online resource on the first 330 DNA exonerations in the United States at www.convictingtheinnocent.com.

On Sept. 22, he delivered the inaugural Fishlinger Lecture at the University of Maryland Center for the Study of Business Ethics, Regulation, & Crime. On Oct. 13, he discussed current trends in corporate enforcement with an association of French general counsels in Paris. On Nov. 11, he participated in a Journal of Criminal Law and Criminology symposium at Northwestern Law on the death penalty, where he presented an empirical paper studying county-level data on the death penalty, co-authored with student Ankur Desai '17 and UVA Law

empirical researcher Alexander Jakubow. On Nov. 18, he participated in a symposium at Harvard Law School on the death penalty and its future, celebrating the publication of Carol Steiker and Jordan Steiker's new book.



In June, **MICHAEL GILBERT** presented a draft paper titled “Entrenchment and Legal Change” twice, first at the Political Economy and Public Law Conference at Cornell University and second at UVA Law's faculty workshop.

His paper, “The Problem of Voter Fraud,” originally published in the Columbia Law Review, was reprinted in the Civil Rights Litigation and Attorney Fees Annual Handbook. In August, he completed a chapter, “Aggregate Limits in the States,” for an edited volume, forthcoming in Cambridge University Press, on campaign finance regulations. In September, he participated in the Manne Faculty Forum at George Mason University. During the summer, Gilbert taught a two-week course on law and economics to judges in Lake Tahoe.



Dean **RISA GOLUBOFF** recently was made a member of the Raven Society, the oldest and most prestigious honorary society at the University.

She gave a faculty presentation on her

book “Vagrant Nation” at the University of Münster Law School and participated in an Author Meets Reader book panel on “Vagrant Nation” at the American Society for Legal History Annual Meeting. She also spoke on “President Obama and a Changing Roberts Court” at a conference on the Obama presidency at Princeton University.



RACHEL HARMON recently published “Reconsidering Criminal Procedure: Teaching the Law of the Police” in the St. Louis University Law Journal's annual teaching issue, which was devoted this year to criminal procedure. The article describes Harmon's innovative course, Law of the Police, which she teaches each fall at the Law School. In the course, Harmon explores the comparative advantages and disadvantages of the various institutions and forms of law that influence police conduct, considers the effectiveness of different legal remedies for police misconduct, and helps students understand the preconditions for effective regulation of the police.

Harmon has a casebook for the course, also titled “The Law of the Police,” forthcoming. She presented a draft paper, “Lawful Orders and the Legal Authority for Police Coercion,” in July at CrimFest 2016 at Cardozo Law School. In May, she presented a draft paper, “The Structure of Police Authority,” to the Neighborhood Criminal Justice Roundtable at William & Mary Law School. She gave a talk on and facili-

tated a discussion of “Safe Arrests” for law enforcement agencies and nonprofit groups in May in Oakland, Calif., and in October in San Diego. She presented her paper “Why Arrest?” to the University of California, Los Angeles law faculty workshop in April. “Why Arrest?” is forthcoming in the Michigan Law Review in early 2017, and it has been declared a “must-read” article by the National Association of Criminal Defense Lawyers.

Harmon gave talks on “Prosecuting Police Officers” and “Police Bias and the Courtroom” to the NAACP Legal Defense and Education Fund, Thurgood Marshall Institute. In September, she made three presentations to the National Executive Institute: one on “Harm-Efficient Policing,” one on “Accountability of and the Role of Police Chiefs,” and one on a “Model of Police/Citizen Interactions.”

Harmon continues to serve on the National Research Council's Committee on Proactive Policing and as associate reporter for the American Law Institute's Principles of Law, Police Investigations project.



ANDREW HAYASHI presented his paper “The Effects of Refund Anticipation Loans on Tax Filing and Compliance” at the American Law and Economics Association Annual Meeting, the Junior Tax Scholars Workshop at the University of California, Irvine and the Columbia University-Hebrew University Tax Conference. The paper shows that the regulation of tax refund loans

caused taxpayers to substitute into alternative financial products and reduced the use of paid tax preparers and reduced the number of returns claiming the earned income tax credit. He presented that paper, as well as his paper “A Theory of Facts and Circumstances,” at the National Tax Association Annual Meeting.

Hayashi's paper “Determinants of Mortgage Default and Consumer Credit Use: The Effects of Foreclosure Laws and Foreclosure Delays” (co-authored with colleagues from New York University and the Federal Reserve Bank of New York) was published in the Journal of Money, Credit and Banking. His review “Putting a Face to International Tax Avoidance,” discussing “The State Administration of International Tax Avoidance” by Omri Marian, was published online in Jotwell.



A. E. DICK HOWARD '61 advised Virginia's governor, Terry McAuliffe, when the governor issued an executive order restoring the voting rights of more than 200,000 felons who had completed their sentences and any periods of supervised release. William J. Howell, speaker of the Virginia House of Delegates, and several other petitioners challenged the governor's order. They asked the Supreme Court of Virginia to declare that McAuliffe had exceeded his authority under the Constitution of Virginia in that he had acted on a class of people, rather than acting one case at a time. Howard, joined by **DAN ORTIZ** and two

professors from the University of Richmond, filed an amicus brief arguing that there was ample constitutional basis for the governor's action. By a vote of 4 to 3, the court held that the governor had acted beyond the bounds of his constitutional authority.

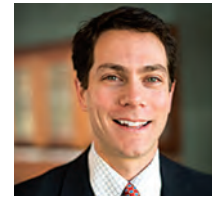
Howard has been active on the speaking circuit. For the Fourth Circuit Judicial Conference, he organized and moderated a program featuring both English and American perspectives on the Magna Carta. He traveled to Bridgewater College, where he gave the keynote lecture for that college's Constitution Day convocation.

The Supreme Court of the United States was the subject of other programs. At Hampden-Sydney College, he gave his impressions of the court's most recent term, emphasizing the dynamics of an eight-member bench occasioned by the death of Justice Antonin Scalia. At the Law School, under the auspices of the Student Legal Forum, Howard organized a program summing up highlights of the 2015-16 term.

Other talks included remarks at the Class of 1961's reunion dinner and, speaking to members of the Rex Lee Society at Howard's house, reminiscences of Rex Lee (sometime president of Brigham Young University and a fellow law clerk when Howard clerked for Justice Hugo L. Black). When faculty and students from England's Northumbria Law School, Newcastle-on-Tyne, visited the Law School, Howard talked to them about American state constitutions, with particular focus on the Constitution of Virginia.

Howard's participation in the voting rights case drew an unusual number of calls from editors and reporters, including representatives of The New York

Times, The Washington Post, The Economist, National Public Radio, the British Broadcasting Corp. and the Australian Broadcasting Corp.



In the first semester for the Law School's newly revamped Environmental and Regulatory Law Clinic, Director **CALE JAFFE '01** is working with students in two cases involving renewable energy proposals (one from Dominion Virginia Power, the other from Appalachian Power). The clinic is representing two community-based conservation nonprofits in the service territory for both utilities in those cases. Additionally, Jaffe is taking clinic students to Richmond to discuss climate policy with Virginia Secretary of Natural Resources Molly Ward.

On Dec. 1, Jaffe and clinic student Opeyemi Akinbamidele '17 will present to a working group established by Virginia Gov. Terry McAuliffe to look at reducing greenhouse gas pollution from power plants in the state. The talk will examine the scope of the governor's authority to establish regulations for the reduction of carbon pollution from existing electric power generation facilities under Virginia's State Air Pollution Control law.



JOHN C. JEFFRIES JR. '73 chaired the third biennial Jefferson Sympo-

sium, “Free Speech on Campus,” on Oct. 13-14. The event, sponsored by the Thomas Jefferson Center for the Protection of Free Expression and the Law School with the support of the Scripps Howard Foundation, examined contemporary attitudes about free speech at American colleges and universities.



In addition to serving on the recently completed Dean's Search Committee, **ALEX JOHNSON** chaired the University's Task Force on Academic Integrity, which submitted its final report to President Teresa Sullivan in late spring.

Johnson recently completed his first two-year term as a member of the Accreditation Committee of the American Bar Association's Section on Legal Education. He was reappointed to serve a second two-year term that began this fall. During the summer, Johnson was appointed as a member of the Title 55 Recodification Work Group, which is charged by the Virginia General Assembly with the recodification and reorganization of Title 55 (Real Property) of the Virginia State Code.

Johnson published “Is it Time for Irrevocable Wills?” this fall in the University of Louisville Law Review.



JASON JOHNSTON made presentations at the Law and Economics

Workshop at Harvard Law School in October of last year and at the Law and Economics Workshop at George Mason University Law School this March. He was made chair of the Law and Economics Section of the American Association of Law Schools for 2015-16 and in February was appointed an adjunct scholar with the Center for the Study of Science at the Cato Institute. In May, he was appointed a member of the Federalist Society Law and Innovation Project.

Johnston gave testimony in May before a House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit hearing on “Examining the CFPB's Proposed Rulemaking on Arbitration: Is it in the Public Interest and for the Protection of Consumers?” In July, he spoke on “The CFPB's Proposed Arbitration Rule” for the Federalist Society Teleforum.

He published “Do Product Bans Help Consumers?: Questioning the Economic Foundations of Dodd Frank Mortgage Regulation” this year in the George Mason Law Review and “The Social Cost of Carbon: How Is It Derived and How Is It Used to Justify America's Climate Policy?” in the spring issue of Regulation.

Between February and April, his editorials on climate policy appeared in The Washington Times, The American Spectator online, The National Interest and The Hill.



In May, **LESLIE KENDRICK '06** presented her paper “Use Your

Words” at a keynote panel at the Free Expression Scholars Conference at Yale Law School, and she was an invited commentator at a symposium on Seana Shiffrin's book “Speech Matters” at University College London. She also enjoyed her 10th reunion at the Law School.

Over the summer, she spoke to UVA alumni during reunion weekend about the First Amendment and terrorism, and organized and moderated a panel at the Southeastern Association of Law Schools.

In October, she served as a panelist and co-organizer of the Jefferson Symposium, “Free Speech on Campus,” at the Law School. She also presented a reply to Robert Post's keynote address on the “right to be forgotten” at the Annual Privacy Lecture of the Berkeley Center for Law & Technology at Berkeley Law.



DOUGLAS LAYCOCK spoke in March on *Zubik v. Burwell* (better known as The Little Sisters of the Poor litigation) to the Federalist Society at the University of Michigan, and he responded to Ken Klukowski's presentation on religious liberty to the Federalist Society at the Law School. In June, he spoke on a Showcase Panel on “Religious Freedom in the Workplace” at the Virginia State Bar convention in Virginia Beach and gave the lunch address at a Cato Institute conference on “Protecting Religious Freedom” in Washington, D.C. In September, he spoke on “Religious Freedom: Now and in Jefferson's Time” at



FEELING THE ‘FORCE OF LAW’

JUST OVER A YEAR after it was published, **PROFESSOR FREDERICK SCHAUER'S** book “The Force of Law” (Harvard University Press, 2015), which argues for law's power to coerce behavior as its distinctive feature, has spawned a raft of scholarly responses, lectures and symposia worldwide, and even a book dedicated to the topic.

“Schauer contends not only that coercion is important to our understanding of law but also that the jurisprudential quest for essential characteristics of law is misguided,” said **PROFESSOR KIMBERLY KESSLER FERZAN**, also a noted legal philosopher. “He has changed the nature of the debate for generations to come.”

Schauer said some of the issues he raises have not been examined enough.

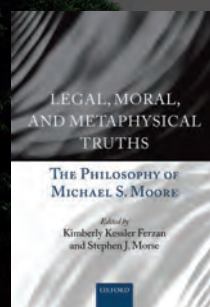
“I think it matters not only in the sense that it has attracted much jurisprudential attention, but also because it relates to closely to the truly important—and not just jurisprudentially important—issue of legal compliance and legal effectiveness,” Schauer said. “The typical law school casebook, for example, tells us very little about what has happened in the world as the result of some law or judicial decision. Do officials or individuals comply with it? How is it enforced? Does it make a difference? And so on. I am of course not the first to worry about these issues, but it remains an underexplored and undertheorized domain of law teaching and legal scholarship, and it will also be the path to some of my future work.”

—Mary Wood

Bookshelf

NEW BOOKS FROM FACULTY

Legal, Moral, and Metaphysical Truths: The Philosophy of Michael S. Moore



KIMBERLY KESSLER FERZAN (co-edited with Stephen Morse) Oxford University Press

Ferzan honors the scholarship of law and philosophy giant Michael S. Moore with her co-edited festschrift, while also expanding upon Moore's transformative theories.

Racial Justice and Law: Cases and Materials



KIM FORDE-MAZRUI (with Ralph Richard Banks, Guy-Uriel E. Charles and Cristina M. Rodriguez) Foundation Press

Forde-Mazrui's casebook, which examines the role of law in reinforcing and ameliorating racial injustice, surveys key historical precedents and contemporary controversies across a variety of settings.

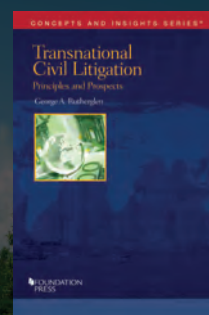
The Presidential Debates: Issues and Questions for the 2016 Election and Beyond



JOHN NORTON MOORE Carolina Academic Press

As the book's editor, Moore reached out to thinkers in key areas—economic growth and domestic policy, foreign policy and defense, and criminal justice—to identify where they feel the current political discussion should be focused.

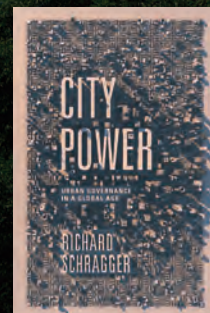
Transnational Civil Litigation: Principles and Prospects



GEORGE RUTHERGLEN Foundation Press

Rutherglen's book, a companion to his 2013 co-authored "Transnational Civil Litigation," provides a framework for students trying to get a grasp on international civil litigation.

City Power: Urban Governance in a Global Age



RICHARD SCHRAGGER Oxford University Press

Schragger, an expert in local government law, looks at the power cities have to control their own destinies.

VISIT WWW.LAW.VIRGINIA.EDU FOR FULL STORIES ON EACH BOOK.

Poplar Forest, Jefferson's second home, and to the quadrennial convention of the Religious News Association in Silver Spring, Md., on "Give Me Religious Liberty or Give Me an Amicus Brief!" (He didn't write the title.)

He is on an amicus brief in support of the church in *Trinity Lutheran Church v. Pauley*, a Supreme Court challenge to a state Blaine Amendment, and he is serving as an adviser to the American Law Institute's "Project on Sexual and Gender-Based Misconduct on Campus: Procedural Frameworks and Analysis."

Laycock recently published "Protecting Same-Sex Marriage and Religious Liberty" with Thomas C. Berg in "Religion and Equality: Law in Conflict" (W. Cole Durham, Jr. & Donlu Thayer, eds., Routledge, 2016), and the 2016 Supplement to his casebook, "Modern American Remedies: Cases and Materials."



MICHAEL LIVERMORE'S article "The Perils of Experimentation" will be published in the Yale Law Journal this fall. That piece was selected for inclusion in the Yale/Stanford/Harvard Junior Faculty Forum, which Livermore attended last June. In September, he presented that work at the Elisabeth Haub School of Law at Pace University as the recipient of the Haub Environmental Law Distinguished Junior Scholar award. Livermore also presented the article at the University of Chicago Law School, where he is visiting for the fall term. In October, he joined **JOHN DUFFY**, along

with other prominent scholars and experts, for a symposium at the Law School on administrative law co-hosted by the Journal of Law & Politics. In November, Livermore presented work with economist Peter Howard (New York University) on the relationship between societal conflict and environmental treaty-making at the Energy Policy Institute at Chicago, an interdisciplinary center of the University of Chicago schools of public policy and business. Along with several collaborators in mathematics, computer science and the digital humanities, Livermore has ongoing research projects in the area of computational analysis of law that examine legal search, notice-and-comment rulemaking, and the effect of individual characteristics on the texts of judicial opinions.



In January, **JULIA MAHONEY** published "The Struggle for America's Fiscal Soul," an essay on the financial challenges confronting the U.S. government, in *The New Rambler*. That month she also published "Takings, Legitimacy, and Emergency Action: Lessons from the Financial Crisis of 2008" in the *George Mason Law Review*. In March, she contributed a blog post titled "Takings Claims in the Aftermath of Financial Crisis" to the Harvard Law School Forum on Corporate Governance and Financial Regulation. In May, she presented "The Safety Net and American Exceptionalism" at the Uni-

versity of Chicago Law School's Workshop on Regulating Family, Sex & Gender.

In September, she attended the American Law Institute's second conference on the upcoming Restatement (Fourth) of Property. This fall she is a visiting scholar at Stanford Law School.



DAVID A. MARTIN participated in a February conference in Washington, D.C., hosted by the Council on Foreign Relations on "Immigration Enforcement at the Crossroads: Bridging Community Policing and Federal Immigration Policies." Participants included academics, immigration policy experts, and several police chiefs and sheriffs. As a guest speaker for UVA's Immigration Law Program later that month, as part of the program's series addressing refugee issues and the Syrian refugee crisis, he provided a broad overview of U.S. legal provisions governing refugee admissions and of recent U.S. and U.N. policies. In March, he moderated a panel for the Virginia Festival of the Book titled "A State of Many Nations: Immigration and the Changing Face of Virginia."

In April, Martin participated in an interdisciplinary conference at the University of California, Los Angeles called to discuss and help map out the future of immigration scholarship at a time of considerable ferment in the field. He also took part in a UVA conference on Main Grounds on "Flight and Refuge: The European Crisis in Global Perspective."

The next month, he participated in a discussion on political asylum reform hosted by the Migration Policy Institute in Washington (he is a nonresident fellow of the institute) and a session considering a new architecture for the global system for refugee protection and assistance, held in New York City as part of the Open Society Institute's Migration Colloquium. He remains a member of the Homeland Security Advisory Council, advising high officials of the Department of Homeland Security on ongoing issues.

Martin is also a participant in an ambitious project launched by the University's Miller Center called the First Year Project. It draws together experts in a wide range of policy fields to evaluate the policy opportunities and threats for our next president during his or her first year in office, and to examine the history and structure of presidential first years. Martin contributed an essay on immigration policy titled "Go Comprehensive, Go Bold: The Time is Actually Ripe to Push Through Immigration Reform." He was also featured, along with historian and fellow project participant Daniel Tichenor, in a panel discussion on immigration policy moderated by John Hockenberry of National Public Radio's "The Takeaway" on July 4 at Monticello. The discussion followed the traditional Monticello naturalization ceremony. In August, the eighth edition of Martin's co-authored and widely used casebook, "Immigration and Citizenship: Process and Policy," first published in 1985, went on sale, along with its statutory supplement. With Martin's retirement from teaching this year, this is the



PROFESSORS MAKE CASE TO RESTORE FELON VOTING RIGHTS

UVA LAW PROFESSORS A. E. DICK HOWARD, the principal architect of Virginia's current constitution, and **DANIEL ORTIZ** were joined by other Virginia-based law professors in filing an amicus brief in *Howell v. McAuliffe*, a case that challenged the restoration of voting rights to convicted felons in the state.

Gov. Terry McAuliffe had consulted Howard, who helped write the state's current constitution, in announcing the restoration—a move that was ultimately challenged and struck down by the Virginia Supreme Court. The brief outlined the rationale in favor of group restoration.

The professors' amicus was facilitated by the pro bono efforts of Hogan Lovells partner **TOM CONNALLY '93** (see more on p. 60).

—Eric Williamson

final edition in which he will be directly involved.



This past summer, Jonathan Klick and **GREGORY MITCHELL** published a commentary, “Infantilization by Regulation,” in *Regulation* magazine on the government’s increasing use of “nudges” to achieve policy goals, and in October, Mitchell served as a presenter in a conference on “Nudging” held at the University of Missouri School of Law. In November, Mitchell served as a panelist discussing implicit bias research for the program, “Implicit (Unconscious) Bias: A New Look At An Old Problem,” which was held at the University of Memphis School of Law.



In May, **JOHN MONAHAN** presented a Frontiers of Science lecture at the annual meeting of the American Psychiatric Association on recent developments in the risk assessment of violence among people with mental illness. The following month, he addressed an international meeting of national security professionals at the University on the risk assessment of terrorism.

His article with former students David Faigman and Christopher Slobogin, “Gate-keeping Science: Using the Structure of Scientific Research to Distinguish Between Admissibility and Weight in

Expert Testimony,” appeared in the *Northwestern University Law Review*. In July, he returned to research and lecture at All Souls College, Oxford, where he previously was a visiting fellow. In October, Monahan became the seventh member of the Law School faculty to be inducted into the American Academy of Arts and Sciences.



The 40th annual conference of the Center for Oceans Law and Policy, which **JOHN NORTON MOORE** directs, took place June 27-28 at the U.N. headquarters in New York and was, Moore said, a great success. The conference, “Legal Order in the World’s Oceans: U.N. Convention on the Law of the Sea,” was held in cooperation with the Division for Ocean Affairs and the Law of the Sea, and the Office of Legal Affairs of the United Nations. Papers from this conference, which Moore will co-edit, are forthcoming in 2017.

The 41st annual center conference will be held May 17-19 in Yogyakarta, Indonesia. The topic is “The Marine Environment and UN Sustainable Development Goal 14 (Life Below Water).”

The 21st session of the Rhodes Academy of Oceans Law and Policy, which COLP organizes, took place this summer in Rhodes, Greece. Moore taught four classes at the academy. During the session, the landmark ruling on the South China Sea Arbitration was released. Moore said students at the academy were privileged to attend a special

seminar offered by two of the judges on the tribunal and received an inside look at the decision in this important case. COLP and the Naval War College co-sponsored a “Workshop on Maritime Intelligence Operations and the Law of the Sea” on Oct. 25 at the Council for Foreign Relations in Washington, D.C. The Center for National Security Law, which Moore also directs, is having a busy fall. CNSL sponsored the Women in National Security Law panel on Sept. 29 at the Law School. In October, CNSL and the J.B. Moore Society of International Law sponsored Fall Semester International Law Career Advising by Wes Rist, director of education and research at the American Society of International Law. CNSL also sponsored a discussion hour, “How the NSA Meets the Challenges of Today,” with National Security Agency General Counsel Glenn Gerstell, Nov. 10 at the Law School. In addition, CNSL sponsored a panel at this year’s ABA Annual Review of the Field of National Security Law on Nov. 14-15 in Washington, D.C. The panel, which Moore moderated, was called “The National Security Process and Structure.” CNSL and the Daniel Morgan Academy will co-sponsor a conference on “A Region in Conflict: The Operational Domain of ISIS” on March 2 in the Law School’s Caplin Auditorium. Finally, Moore participated for a fifth time as a member of the U.S. National Power Lifting Team competing in the World Championships in May in South Africa. He won the silver medal in the bench press, complementing the bronze medal he won as a

member of the national team in last year’s competition.



In June, **THOMAS NACHBAR** co-hosted a workshop for policymakers with the International Committee of the Red Cross. There were more than 30 participants from academia, all levels of government, nongovernmental organizations and international organizations. In November, his paper “The Rationality of Rationality Review” is being published by the *Virginia Law Review*. This fall, he is presenting workshops on two papers: “Rational Basis ‘Plus’” at the University of Minnesota and “Taking Formalism Seriously” at UVA.



CALEB NELSON was elected to the American Law Institute in June. He also published “The Constitutionality of Civil Forfeiture” in the June 2016 issue of the *Yale Law Journal*.



DOTAN OLIAR published “The Federal Intellectual Property Power” in *American Governance* (Schechter et al. eds., McMillan/Cengage, 2015), an article surveying the

extent of Congress’ power to make laws on the subject of patents, copyrights, trademarks and trade secrets. He submitted for publication the piece “Copyright Registration,” in “Research Handbook on the Economics of Intellectual Property Law: Volume II—Analytical Methods” (Peter S. Menell & David L. Schwartz, eds., Edward Elgar Publishing, forthcoming 2016), which surveys available empirical data on copyright registrations in the U.S.

Oliar presented a working paper titled “Right on Time: First Possession in Intellectual Property Law” (co-authored with **JAMES STERN ’09**) at workshops in the Tel Aviv, Bar-Ilan, Hebrew University and Haifa law schools in Israel. He presented a working paper titled “Copyright Registrations 1978-2012” (with Bob Brauneis) at the Research Handbook on the Economics of Intellectual Property Law Conference at Northwestern Law School in August 2015 and at the Oxford Handbook on IP Workshop at Tel Aviv University’s law school in December 2015.

As an editor of the online blog Jotwell.com, Oliar published “Copyright’s Interpretive Turn” in June 2016, reviewing Zahr Said’s “Reforming Copyright Interpretation,” published in the *Harvard Journal of Law & Technology* in 2015.



SAIKRISHNA PRAKASH received an honorable mention for best legal writing from Scribes, the Society of Legal Writing, for his book

“Imperial from the Beginning” (Yale Press, 2015). He served as a lecturer for the Originalism Boot Camp at Georgetown Law Center and attended a conference on executive power at New York University Law School. He gave two papers on executive authority, one at Georgia and one at Emory. Finally, he wrote short online pieces for the National Constitutional Center and for the *Harvard Law Review Forum*. Two of his articles came out—“Zivotofsky and the Separation of Powers” in the *Supreme Court Review* and “People ≠ Legislature” in the *Harvard Journal of Law & Public Policy* (with John Yoo).



In March, **MILDRED ROBINSON** presented at a conference sponsored by the Nootbaar Institute at Pepperdine Law School. The conference explored “Doing Justice Without Doing Harm.” The paper, “Is It Possible to Reconcile Economic Expansion, Altruism, and Effective Participatory Public Education Through Tax Systems?,” examined the interplay between state economic initiatives, philanthropic support of public education deductibles for federal tax purposes, and public participation (especially from parents of students) in the quest for self-sustaining public education that really works for all stakeholders over time. Later in March, she participated in a Woodson Institute Forum at UVA, “The Race Tax: Economic Predation in Black

America.” In her paper “Financing Local Government: Poverty, Business Expansion, and Local Revenue Sources,” Robinson explored ways in which poorly functioning economies ultimately drive local governments to rely upon nontraditional sources of revenue for financing, including fines imposed through the exercise of police power.

Finally, on April 1, she presented “Business Tax Incentives + Charitable Contributions: No Case for Deferral of Public Infrastructure Investment” during the Critical Tax Theory Conference at Tulane Law School. In that paper, she criticized state economic initiatives that rely upon tax incentives in order to generate private-sector activity. She noted that such programs generate neither immediate collateral positive economic activity nor sustained growth over time. In the meantime, concurrent ad hoc charitable initiatives that may have sprung up to fill the financial gap are inadequate substitutes for long-term public program support, and should therefore not be viewed as appropriate substitutes for traditional public support, Robinson argued.



In addition to his new book, “Transnational Civil Litigation: Principles and Prospects” (Foundation Press, 2016), **GEORGE RUTHERFORD** has several forthcoming publications, including “Employment Discrimination Law: Visions of Equality in Theory and Doctrine” (Foundation

Press, 4th ed. forthcoming 2016); “What Happened to the Framers of the Federal Rules?,” *Journal of Supreme Court History* (forthcoming 2017); and “Personal Jurisdiction and Political Authority,” *Virginia Journal of Public Policy* (forthcoming 2017).

Rutherford presented a paper at a conference in Cambridge, England, on “External Dimensions of Constitutions.” His paper, “The Rights of Aliens Under the United States Constitution: At the Border and Beyond,” will be published in the *Virginia Journal of International Law*.



FREDERICK SCHAUER spoke on “Positive Rights and the First Amendment” in June at a conference at Columbia University (hosted by its law and journalism schools) on the 50th anniversary of the Freedom of Information Act. In July, he taught an intensive one-week course on freedom of speech at the University of Melbourne. Also that month, Schauer was keynote speaker for the Australian Society for Legal Philosophy with a lecture titled “Defeasibilities.” He gave a lecture on “Neuroscience and Lie Detection” at the Ninth International Congress on Procedural Law in Cartagena, Colombia, in August.

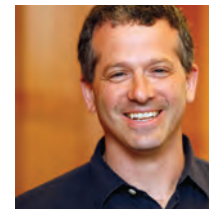
In September, Schauer gave a keynote lecture on legal coercion to the annual meeting of the Brazilian Fiscal Law Association in Belo Horizonte, Brazil, and gave a lecture on jurisprudential methodology at the

Federal University of Minas Gerais, also in Belo Horizonte. He delivered the Seegers Lecture at Valparaiso University on “The Sources of Law.”

Schauer spent a week in Vienna, Austria, in September delivering the keynote lecture at the Vienna Circle Conference on the Philosophy of Friedrich Waismann, giving a lecture to the Hans Kelsen-Institute, and delivering a keynote lecture to the University of Vienna Conference on International Constitutional Law.

His recent publications include “Calibrating Legal Judgments” (with **BARBARA A. SPELLMAN**) in the *Journal of Legal Analysis*; “Why the Declaration of Independence is Not Law—and Why It Could Be” in the *Southern California Law Review* as part of a symposium on the Declaration of Independence; “Not Just About License Plates—Walker v. Sons of Confederate Veterans” in the *Supreme Court Review*; and “Lie-Detection, Neuroscience, and the Law of Evidence” in “Philosophical Foundations of Law and Neuroscience” (Patterson & Pardo, eds., Oxford University Press).

In addition, a symposium on Schauer’s “The Force of Law” was published in *Ratio Juris*, including his response to six commentators. “The Force of Law Reexamined,” another symposium about the same book that included his response to eight commentators, was published as a book by Springer Verlag. And “How (and If) Law Matters,” his response to Mark Greenberg’s review of “The Force of Law” in the *Harvard Law Review*, was published in the *Harvard Law Review Forum*.



RICHARD SCHRAGGER was a visiting professor this summer at the University of Münster in Germany, where he co-taught a course on “Topics in Constitutional Law” with **DEBORAH HELLMAN**. His book “City Power: Urban Governance in a Global Age” was published by Oxford University Press in September. Called “brilliant” and a “tour de force,” the book was the topic of discussion at a conference of urban policy experts at the University in November. Schragger will appear at the Virginia Festival of the Book in the spring.



MICAH SCHWARTZMAN ’05 recently hosted a symposium on “Liberalism, Religion, and Law” that brought together scholars from law, political science and religious studies to discuss forthcoming books by Nelson Tebbe (Cornell/Brooklyn) (University College London). In May, he commented on Seana Shiffrin’s book, “Speech Matters,” for a workshop at UCL. The following month, he participated in a conference at the WZB Social Science Research Center in Berlin, giving a paper titled “Must Laws Be Motivated by Public Reason?” At the Southeastern Association of Law Schools 2016 Conference, Schwartzman was a panelist for a work-



RATING THE PRESIDENTIAL CAMPAIGN RHETORIC

PUBLIC SPEAKING PROGRAM professors **ROBERT SAYLER** and **MOLLY BISHOP SHADEL** re-launched their blog, “Tongue-Tied Applied,” this summer to explore the rhetoric of the presidential campaign as it progressed.

From national conventions and debates to campaign speeches, Sayler and Shadel evaluated the campaign rhetoric and communication strategies of Hillary Clinton and Donald Trump, and their running mates.

Saylor and Shadel’s blog, “Tongue-Tied America: Reviving the Art of Verbal Persuasion,” was designed to inspire people of all political backgrounds to improve their public speaking skills by using the presidential campaign as an example.

“Everything that’s happening—every major political speech, every debate—is an exercise in verbal persuasion,” Shadel said. “Rhetoric matters because the way a politician speaks can cause people to take action.”

—Lyndsey Raynor



2 PROFESSORS ATTAIN MEMBERSHIP IN AMERICAN LAW INSTITUTE

PROFESSORS **KIM FORDE-MAZRUI** and **CALEB E. NELSON** were recently elected members of the American Law Institute.

The institute is the leading independent organization in the United States producing scholarly work to clarify, modernize and otherwise improve the law. The organization includes judges, lawyers and law professors from the United States and abroad, selected on the basis of professional achievement and demonstrated interest in improving the law.

Forde-Mazrui, whose election was announced in October, is the Mortimer M. Caplin Professor of Law and director of the Center for the Study of Race and Law. He is an expert on constitutional law, employment discrimination and criminal law, among other topics. His scholarship focuses on equal protection, especially involving race and sexual orientation.

Nelson, who was elected in the spring, is the Emerson G. Spies Distinguished Professor of Law and Elizabeth D. and Richard A. Merrill Professor at UVA Law. He teaches and writes about civil procedure, federal courts, statutory interpretation and constitutional law.

—Eric Williamson

MEMBERS ARE SELECTED FROM CONFIDENTIAL NOMINATIONS SUBMITTED BY EXISTING ALI MEMBERS.

ELECTED MEMBERS:	Caleb E. Nelson	John C. Jeffries Jr.	Paul B. Stephan
	Kenneth S. Abraham	Mildred W. Robinson	Walter J. Wadlington (emeritus)
LIFE MEMBERS:	Richard Bonnie	Benjamin Spencer	G. Edward White
	Kimberly Kessler Ferzan	Stanley D. Henderson (emeritus)	Risa Goluboff
EX-OFFICIO MEMBERS:	Kim Forde-Mazrui	John Norton Moore	
	Brandon Garrett	Kent Sinclair	
	Rachel Harmon		
	Alex M. Johnson Jr.		

shop on the question, “Is Religion Special?” His paper, “How Much May Religious Accommodations Burden Others?,” co-authored with Tebbe and **RICHARD SCHRAGGER**, is forthcoming in a volume on “Law, Religion, and Health in the United States,” published by Cambridge University Press.

Schwartzman is working on a casebook, “Constitutional Law and Religion.”



GIL SIEGAL'S recent publications include “Ethical Issues in Nanomedicine: Tempest in a Teapot?” with Irit Allon and others in *Medicine, Healthcare and Philosophy*; “Medical Information Exchange: Pattern of Global Mobile Messenger Usage Among Otolaryngologists” with others in the journal *Otolaryngology-Head and Neck Surgery*; and “Organ Traffic” and “Medical Malpractice,” both in the *Encyclopedia of Global Bioethics* (Henk ten Have, ed., Springer Publishers, 2016).

Siegal also chaired a subcommittee of ethical legal and regulatory affairs, “Ownership of Medical Data,” for the National Institute of Health Policy of Israel’s Ministry of Health.



In June, **BARBARA SPELLMAN** spoke about her recent book, “The Psychological Foundations of Evidence Law,” at a roundtable discus-

sion at the Law and Society Annual Meeting in New Orleans. She also gave a talk on reasoning to the Human Factors in Forensic Practice Sourcebook Working Group at Research Triangle International in North Carolina.

In August, she organized an invited symposium called “Legal Reasoning” at the International Conference on Thinking at Brown University in Providence, R.I. The same month, she was a guest on the Public Radio International/National Public Radio program “Science Friday” to discuss “The Replication Game: How Well Do Psychological Studies Hold Up?”

Spellman also co-chaired (with Traci Mann) a symposium called “Opening Our File Drawers: Issues in Creating a More Complete and Useful Psychological Science” that was presented in September to the Society of Experimental Social Psychology in Santa Monica, Calif.

Her recent publications include “Calibrating Legal Judgments” (with **FREDERICK SCHAUER**) in the *Journal of Legal Analysis* and “A Different Kind of Scientific Revolution” in *The New Atlantis: A Journal of Science and Technology*.



A. BENJAMIN SPENCER recently published two articles, “Rationalizing Cost Allocation in Civil Discovery” in *The Review of Litigation* and “The Forms Had a Function” in the *Nevada Law Journal*. In May, he gave a presentation on the 2015 amendments to the Federal

Rules of Civil Procedure to U.S. District Court judges at the Fourth Circuit Judicial Conference.

He also has begun his service as an officer in the U.S. Army Judge Advocate General’s Corps, **Reserve Component**. Spencer spent the summer providing legal support to the U.S. Southern Command and the U.S. Central Command, as well as legal assistance services to military personnel and dependents in various parts of Florida.

He is working on a book on military law that will serve as a comprehensive primer on the subject for practitioners and those interested in entering the field.

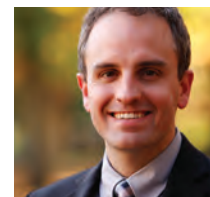


In July, **PAUL STEPHAN '77** testified before the Subcommittee on the Constitution and Civil Justice of the House Judiciary, at its invitation, concerning the Justice Against Sponsors of Terrorism Act. Now adopted, the act will amend the Foreign Sovereign Immunities Act in ways that Stephan said he regards as unfortunate (see sidebar).

In September, he took part in the Henry G. Manne Forum at Antonin Scalia Law School. The forum is devoted to encouraging the scholarship of younger scholars. Later in September, Stephan presented the three drafts of the Fourth Restatement of the Foreign Relations Law of the United States (Jurisdiction, Treaties, Sovereign Immunity) to the advisers and the members’ consultative group at the American Law Institute in Phila-

delphia.

His recent publications include “Treaty Enforcement” in “Economic Analysis of International Law” (Eugene Kontorovich and Francesco Parisi, eds., Edward Elgar Publishing, 2016); “The Political Economy of *Jus Cogens*” and “The Political Economy of Judicial Production of International Law” in “The Political Economy of International Law: A European Perspective” (Alberta Fabbriotti, ed., Edward Elgar, 2016); and “Agora: Reflections on *RJR Nabisco v. European Community*—Private Litigation as a Foreign Relations Problem” in the *American Journal of International Law Unbound*.



GREGG STRAUSS will publish “The Positive Right to Marry” in the December issue of the *Virginia Law Review*. This summer, Strauss helped organize the Family Law Scholars and Teachers Conference in New Orleans, where he presented a paper titled “What’s Wrong with *Obergefell’s* Valorization of Marriage?”



In February, **PIERRE-HUGUES VERDIER** spoke at Georgetown University Law Center on “The Rise of Financial Sanctions,” a draft chapter from his forthcoming book on civil and criminal enforcement actions against international

banks. At Northwestern University in April, he presented “The Strength of Weak Review: National Courts, Interpretive Canons and Human Rights Treaties,” which he co-authored with **MILA VERSTEEG** and Yonatan Lupu.

This summer, Verdier met many European graduates of the Law School’s LL.M. program at their biennial reunion in Warsaw. In December, he will welcome leading scholars of international finance and sovereign debt to the Law School for this year’s edition of the Sokol Colloquium on Private International Law.



J.H. (RIP) VERKERKE delivered a chair lecture, “Rethinking Vicarious Liability for Employee Torts,” on Oct. 26 in Caplin Pavilion to mark his appointment as the T. Munford Boyd Professor of Law. He is also in the process of publishing a paper, “Mapping Employment Dismissal Law: A Leximetric Investigation of EPL Stringency and Regulatory Style,” (with Benoit Pierre Freyens) in the *International Labour Organization Working Paper series*.



G. EDWARD WHITE published a review essay, “Looking Backward: Harvard Law School as Seen From 2016,” in *The Weekly Standard* and “Law on Nantucket” in

the spring 2016 issue of *Green Bag*. On Nov. 10, he participated in a panel session on his book, “Law in American History II: From Reconstruction Through the 1920s,” which was published in February 2016. Participants in the panel were Logan Sawyer of the University of Georgia Law School, Charles McCurdy of the Department of History and School of Law at the University of Virginia, and Barbara Welke of the Department of History and the School of Law at the University of Minnesota.



This year, **GEORGE YIN** published “Preventing Congressional Violations of Taxpayer Privacy” in *The Tax Lawyer*. The article asserts that the U.S. House Ways & Means Committee violated the law in 2014 when it voted to disclose the confidential tax information of 51 taxpayers. Because, however, the Speech or Debate Clause of the Constitution insulated the committee from prosecution for the violation, the article recommends new restrictions on committee access to such information to prevent a future breach of taxpayer privacy.

Additionally, Wolters Kluwer published new editions of Yin’s casebooks on corporate tax and partnership tax (co-authored with Karen Burke).

Yin also completed a manuscript titled “A Maritime Lawyer, the Percentage Depletion Allowance, and the Joint Committee on Taxation.” The paper presents evidence that a

maritime lawyer with little background in energy, natural resources or tax (and a fundamental misunderstanding of the law) originated a 1918 tax proposal that helped lead to approval of both percentage depletion and the Joint Committee in 1926. Since the conditions especially favorable to enactment of the 1918 proposal were short-lived, the paper raises the possibility that but for this lawyer (or his misunderstanding), the tax system might never have included percentage depletion or even, conceivably, the Joint Committee.

Yin was involved in a number of programs during the past year. In late 2015, he commented on “The IRS Crisis” by Leandra Lederman at the Second Annual UVA Invitational Tax Conference at the Law School. As a panelist on a Federalist Society tax reform program also held at the Law School, he critiqued the “fair tax” proposal (a form of national sales tax) advocated by one of the other panelists, Rep. Rob Woodall (R.-Ga.).

In February, Yin presented a paper, “The Joint Committee on Taxation and the Codification of the Tax Laws,” at a conference celebrating the 90th anniversary of the Joint Committee. Yin served as chief of staff of the committee from 2003 to 2005. The program was sponsored by the U.S. Capitol Historical Society and was held at the U.S. Capitol in Washington. He also participated in a roundtable discussion conducted by the Government Accountability Office in Washington to help in the preparation of its report on tax expenditures and the federal budget process. Also in Washington, Yin delivered a researcher talk in May to the

Center for Legislative Archives at the National Archives. The topic was “The Early Years of the U.S. Joint Committee on Taxation and Some Current Implications.”

Finally, Yin continued his consulting work for the “Tax Gap” subcommittee of the IRS Advisory Panel and his service as a member of the board of directors of the Charlottesville Symphony Society, which is responsible for the performances of the Charlottesville Symphony Orchestra.



PAUL STEPHAN '77



JASON JOHNSTON



JOHN DUFFY

STEPHAN, JOHNSTON *and* DUFFY TESTIFY BEFORE CONGRESS

THREE LAW PROFESSORS were called upon in recent months to give congressional testimony on issues related to terrorism, financial institutions and regulatory reform.

PAUL STEPHAN '77 gave testimony on July 14 before the U.S. House Judiciary Committee's Subcommittee on the Constitution and Civil Justice. He spoke out against the Justice Against Sponsors of Terrorism Act. In light of the revelation that the Saudi Arabian government had ties to the Sept. 11 attackers, the legislation was created to provide a private civil remedy for families and other parties affected by terrorism.

Stephan predicted the bill would harm the United States by increasing its exposure to litigation abroad; would not likely hold foreign states accountable for material support of terrorism, per its stated aim; and would strip the executive branch of its power to determine which states sponsor terrorism, putting that power in the hands of private litigants.

President Barack Obama later vetoed the bill, but a congressional majority overturned his veto.

JASON JOHNSTON addressed a House panel on May 18 on a rule proposed by the Consumer Financial Protection Bureau to ban forced arbitration

clauses in financial products. The bureau cited its own study, mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, which found that consumers received smaller awards from arbitration. But Johnston said the bureau did not study enough cases before taking action, and pointed out that arbitration is typically a speedier means to payment than litigation—63 percent of consumers receive an award or settlement within five months through arbitration, he said.

JOHN DUFFY testified on May 17 before the House Judiciary Committee's Subcommittee on Regulatory Reform, Commercial and Antitrust Law for the second time this year (he also testified in March). He praised a proposed House bill, the Separation of Powers Restoration Act, which would demonstrate statutory disapproval of various judge-made doctrines requiring deference to administrative legal positions, including the doctrine commonly associated with the U.S. Supreme Court's decision in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* Duffy said the proposed legislation will likely decrease litigation by "eliminating the myriad complexities and uncertainties in the current case law governing judicial review of legal issues." The bill passed the House and has been referred to the Senate.

—Eric Williamson



Charles
Adams Jr.
'73

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