The Volume 54 editorial board and staff has worked incredibly hard to achieve another successful year for the William & Mary Law Review. Through the tremendous effort and unyielding dedication of our members, Volume 54 published 31 articles and 10 notes over 6 issues—for a total of over 2100 pages of important legal scholarship. I can attest to the amazing amount of work that has gone into each and every aspect of the Law Review this year, and I am grateful for the opportunity to have worked with such dedicated and talented classmates in this endeavor.

The 2013 Law Review Symposium marked a notable achievement for Volume 54. Entitled “The Civil Jury as a Political Institution,” the Symposium featured the work of fifteen scholars from different disciplines, including law, political science, and psychology. Participants provided both theoretical and empirical perspectives to analyze the civil jury’s role in our contemporary political system. With such a relevant and accessible topic, students and scholars alike found the panel presentations to be particularly engaging.

Although I have mentioned the effort and dedication of all of the members of the Law Review, I would like to specifically recognize the work of my fellow executive board members. It has been a privilege to work with each of them and to see them excel in their respective positions. Many thanks to: John Hoke, for his leadership of the Notes Selection Committee and his ushering of the 2L staff through the note-writing process; Shanna Reulbach, for the countless hours she dedicated to leading the Articles Selection Committee in the task of selecting excellent legal scholarship; Anna Pulliam, for her meticulous attention to detail and thoroughness in her role as Executive Editor; and Jarred Taylor, for his incredibly effective management of the Volume 54 publication process.

Volume 54 also owes enormous thanks to our administrative assistants, Beckie Pasipanki and Julie Pasipanki. Their service and dedication has been invaluable, and the Volume’s success would not have been possible without their support. And, on a bittersweet note, we would like to wish Beckie the very best as she completes her time with the Law Review this spring. For almost 20 years, her wisdom, kindness, and patience have played an integral role in the publication of each volume of the Law Review. We will miss Beckie tremendously, and we thank her for all that she has done.

Finally, we are very excited to be passing the baton to the talented editors of Volume 55, led by Editor-in-Chief Cassandra Roeder. I am very confident that under Cassandra’s leadership, Volume 55 is poised to carry on the Law Review’s tradition of excellence, and I wish them all the best in the upcoming year.
The Year Ahead
by Cassandra Roeder, Volume 55 Editor-in-Chief

My name is Cassandra Roeder, and I am honored to be the incoming Editor-in-Chief of the William & Mary Law Review. I am a 2007 graduate of the University of Virginia, where I earned a Bachelor of Arts in Sociology. Before enrolling at William & Mary, I worked in consumer protection and advocacy for the Insurance and Financial Services Division of the Massachusetts Attorney General’s Office. As a Williamsburg native, the decision to move home from Boston to attend law school at William & Mary came naturally. I’ve had a wonderful experience so far, and I am very excited about the upcoming year.

Volume 55 already holds great promise. We have selected exceptional Articles and Notes covering a wide variety of topics, and we believe these pieces will contribute meaningfully to the Law Review’s longstanding tradition of impressive legal scholarship. Issue 3 of Volume 55 will feature Articles from the Law Review’s 2013 Symposium, “The Civil Jury as a Political Institution.” The event was a great success. We were particularly honored to host Professor Akhil Amar, preeminent scholar of constitutional law, and U.S. Senator Sheldon Whitehouse of Rhode Island.

I am grateful to Merideth Snow and the Volume 54 Editorial Board for leading the Law Review through a fantastic year, and for devoting their time and energy to teaching Volume 55 the ins and outs of the publication process. We have benefited immensely from their knowledge and experience. I wish them all the best in their next endeavors.

My classmates on Volume 55 are a remarkably talented and hard-working group, and I am confident that we will build upon the distinguished legacy of the Law Review that you have established over the years.

A message from our Faculty Advisor

Greetings from William & Mary Law School! We’ve had a terrific academic year. Three new colleagues joined the full-time faculty this past academic year, each with excellent teaching credentials and impressive scholarly profiles. Three additional faculty members will join us next fall. The Law School continues to receive thousands of applications each year, from prospective students across the nation. It enjoys an outstanding reputation, both inside the academy and among judges and practitioners.

This is my fifth year as the William & Mary Law Review faculty advisor. I have enjoyed working with Merideth Snow, the outgoing EIC, and I am impressed by the strong start of the new editorial board and the EIC Cassandra Roeder for Volume 55. My role as advisor is minimal, in large part because the Law Review is run each year by a dedicated and industrious group of students. This year has been no exception. As is typical, the Law Review has published outstanding scholarship by a diverse group of authors on a variety of cutting-edge topics. Volume 54 contains over 2,000 pages of published work from some of the leading scholars in their respective fields. I continue to be impressed both with the student notes selected by the Law Review and by the pieces the articles editors select for publication. Members of the legal academy ask quite a lot of student-run law journals. It is a true credit to our students, and to the Law School, that wherever I go colleagues sing the praises of the William & Mary Law Review. In my own research, I often find original and important pieces the Law Review selected over the years. This continuity of excellence should give both new members and alumni great pride. Both personally and in my capacity as faculty advisor, I’d like to thank the Law Review staff members and leadership for representing the Law School so well, and for continuing to provide an invaluable service to the legal academy.

Sincerely, Professor Timothy Zick
Since graduating from William & Mary Law School, Christine Parker has epitomized the “citizen lawyer” concept that Thomas Jefferson and George Wythe espoused more than two centuries ago.

Parker is originally from the Chicago suburbs and came to Williamsburg after graduating from Trinity Christian College. In her words, she “wanted a school with both a top tier law school and a top tier business school.” She enrolled in the school’s dual-degree program, earning her MBA at the Mason School of Business.

As a student, Parker was a Notes Editor on Law Review and president of the William & Mary Law School chapter of the Christian Legal Society (“CLS”). Her role in CLS was especially important because she was president on September 11, 2001. Parker’s memories include the CLS chapter helping those with loved ones in New York or Washington, D.C. She recalls having “the opportunity to see the entire law school community band closely together to comfort and support one another.”

Upon graduation, Parker returned to Chicago as an associate in Jenner & Block’s Corporate Practice Group. Parker utilized her M.B.A. to specialize in mergers and acquisitions as well as securities. After several years at Jenner & Block, IBM approached Parker with an offer to join their legal team.

“It was intriguing because IBM is a top tier company, known to have a great legal department and a strong philanthropic bent,” Parker says, revealing her dual passions.

Parker fills several roles within IBM’s counsel’s office. “At IBM, they allow and actually encourage their attorneys not only to practice in their law firm area of expertise, but to also move throughout the legal department and practice in different areas.” Her primary responsibility is negotiating technology contracts, and she is also involved with intellectual property, health care, banking, and privacy law.

Her diverse range of experience illuminates Parker’s favorite part about the job: “If you have an interest in some area of the law, you can take the initiative to develop expertise in that area and take on a leadership role within the company.”

Parker is actively engaged as a citizen lawyer, developing a notable philanthropic record. Most of Parker’s charity work revolves around education because, she says, “I believe [education] is the great equalizer for people across all ethnic and socioeconomic backgrounds.”

Parker is on the Board of Directors of By the Hand Club for Kids, an after-school program for at-risk students in Chicago’s most impoverished and dangerous communities. Parker describes By the Hand as focusing on “academics and a commitment to nurturing the whole child—mind, body and soul.” It currently provides after-school programming to almost 1,000 of Chicago’s lowest-performing students and, Parker says, plans to increase to 5,000 students by 2020. In addition, Parker is a founding member of IBM’s Chicago Public Schools Advisory Board, formed a non-profit to fundraise for her neighborhood school, and is involved with her neighborhood park.

Parker and her husband, a fellow Mason School of Business graduate, have three children—ages eight, six, and two—with whom they enjoy traveling the world. Despite their other commitments, Parker and her husband also find time to play prominent roles in their church: from serving on the marriage ministry to leading financial seminars and hosting education panels.

In just over a decade since graduating, Christine Parker has excelled in practicing law. But her philanthropic drive has defined her as a model “citizen lawyer.”
The Civil Jury as a Political Institution
A William & Mary Law Review Symposium

On February 22 and 23, the Law Review, joined by the Institute of Bill of Rights Law and the National Center for State Courts, hosted its annual Symposium. This year’s topic, “The Civil Jury as a Political Institution,” centered around questions about how juries function as political actors, whether juries are made up of experts or the ill-informed, how damages reflect value judgments, and the role of representation and diversity on civil juries.

In their keynote addresses, United States Senator Sheldon Whitehouse of Rhode Island and Professor Akhil Reed Amar of Yale University discussed the historic and modern role of the civil jury in our constitutional structure.

During the following two days, thirteen legal scholars from around the country presented their scholarship and engaged in discussion with audience members.

Papers from the Symposium will be published in Volume 55 of the William & Mary Law Review.

William & Mary Law Review Symposium
co-hosted with the Institute of Bill of Rights Law and the National Center for State Courts

Participants

The Honorable Sheldon Whitehouse, United States Senator, Rhode Island; member of the Senate Judiciary Committee

Professor Akhil Reed Amar, Sterling Professor of Law and Political Science, Yale University

Suja Thomas, Professor of Law, University of Illinois College of Law
The Jury as a Branch

Stephan Landsman, Professor of Law and Robert A. Clifford Chair in Tort Law & Social Policy, DePaul University College of Law
Juries as Regulators of Last Resort

William E. Nelson, Judge Edward Weinfeld Professor of Law, New York University School of Law
Political Decisionmaking by Informed Juries

Ethan Leib, Professor of Law, Fordham University School of Law
Fiduciary Principles and the Jury

Herbert Kritzer, Marvin J. Sonosky Chair of Law and Public Policy, University of Minnesota Law School; Guangya Liu, Empirical Research Analyst, Duke Law School; Neil Vidmar, Russell M. Robinson II Professor of Law and Professor of Psychology, Duke University
An Exploration of the “Non-Economic” Components of Civil Jury Compensatory Awards

Valerie Hans, Professor of Law, Cornell Law School
The Billion Dollar Question: How Do Juries Decide on Damage Awards?

Alexandra D. Lahav, Professor of Law, University of Connecticut School of Law
The Jury and Participatory Democracy

Robert Burns, Professor of Law, Northwestern University Law School
The Jury as a Political Institution: An Internal Perspective

Shari Seidman Diamond, Howard J. Trienens Professor of Law, Northwestern Law School/Research Professor, American Bar Foundation (co-authors: Mary R. Rose & Beth Murphy)
Embedded Experts on Real Juries

Ilya Somin, Associate Professor of Law, George Mason University School of Law
Jury Ignorance and Political Ignorance

Jeffrey Abramson, Professor of Law and Government, University of Texas Law School
Second-Order Diversity Revisited

Christina Stevens Carbome, Berkeley Law Jurisprudence and Social Policy Program; Victoria Plaut, Professor of Law and Social Science, Berkeley Law School
Diversity and the Civil Jury
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 54’s many accomplishments from the last year.

BIRTHS
Adam Prestidge (2L) and CheyAnn Prestidge welcomed Boston Adam Prestidge, their second child and first son, to their family on February 7, 2013.

WEDDINGS
John Hoke (3L) married Patricia Massey (MBA Student at Mason School of Business) on May 26, 2012.

ENGAGEMENTS
Kelsey Kremer (3L) and Adam McGonigle (3L) are engaged to be married on May 31, 2014.
Kayla McCann (2L) and Jeff Marty (MBA Student at George Washington University) are engaged to be married on August 16, 2014.
Jarred Taylor (3L) and Claire Carlson (recent graduate of Georgetown’s accelerated nursing program) are engaged to be married on September 1, 2013.

PUBLICATIONS AND WRITING AWARDS
Kelci Block (3L) published Congressional Wolf Delisting and the Erosion of the Separation of Powers Doctrine in Volume 42 of the Environmental Law Report News & Analysis. Her article analyzed the separation of powers issues that were implicated when Congress interfered in an ongoing case by delisting the gray wolf through a rider on an appropriations bill.

Vladislava Soshkina (3L) won third place in the Association of Securities and Exchange Commission Alumni Annual Writing Competition for her note that was published in Volume 54 of the William & Mary Law Review.

TRIAL TEAM
Vladislava Soshkina (3L) competed in and won the 2013 Regional National Trial Competition as part of one of two teams to advance to the national competition.

MOOT COURT
Katlin Cravatta (2L) competed at the Charleston National Moot Court Competition where he won Best Brief and was the overall runner-up.

OTHER
James Booth (2L) will serve as a teaching assistant in the Legal Practice Program next year.
Kevin Elliker (2L) will serve as a teaching assistant for Civil Procedure next year.
Alex Lott (2L) will serve as a teaching assistant in the Legal Practice Program next year.
Sean Radomski (2L) was elected Student Bar Association President for next year.
Alexander-Snyder Mackler (2L) was appointed to the Honor Council as an Associate Justice and will serve as a teaching assistant for Torts next year.
Andrew Steinberg (2L) was appointed to the Honor Council as Chief Justice for next year.
## Class Notes: 3L Destinations

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<th>Name</th>
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<td>Jay Mangold</td>
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<td>Merideth Snow</td>
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<td>Vladislava Soshkina</td>
<td>Weil, Gotshal &amp; Manges</td>
<td>New York, NY</td>
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<td>Anisa Somani</td>
<td>Skadden, Arps, Slate, Meagher &amp; Flom, LLP</td>
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<td>Jarred Taylor</td>
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<td>Rebecca Van Derlaske</td>
<td>Davis, Polk &amp; Wardwell</td>
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<td>Katherine Ward</td>
<td>Venable LLP</td>
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The Articles Committee had another busy year, reviewing just under 3000 submissions during the spring and fall 2012 selection cycles. The Law Review published a well-rounded volume that included twenty-one professional articles on topics ranging from federal courts to intellectual property, First Amendment to immigration, and corporate and financial relationships to structural political principles. Below is a sample of the brilliant scholarship in Volume 54.

In Dicta, Schmicta: Theory Versus Practice in Lower Court Decision Making, William & Mary Professor Neal Devins and University of Virginia Professor of Politics David Klein analyze whether courts distinguish between dicta and holding in practice. Relying on their own empirical study of federal and state intermediate appellate and lower court decisions between 2008 and 2010, the professors conclude that courts invoke the distinction in a meaningful way very rarely: in 1 in 2000 federal district court cases, and in less than 1 in 4000 state court or federal appellate cases. The article continues to examine the potentially troubling implications of this trend on common law making.

Professor Paul Stancil, University of Illinois College of Law, advances a novel economic model of statutory interpretation in Congressional Silence and the Statutory Interpretation Game. He incorporates transactions costs into his calculations and determines how a hypothetical Congress, President, and Supreme Court would interact to maximize their competing policy goals.

Applying the model to real world political debates, Professor Stancil proves the interpretative value of his graphical theories.

In The Cost of Securities Fraud, University of Maryland Professor Urska Velikonja describes the overlooked harms that securities violations impose on human and financial capital providers, as well as rival firms. After examining nonshareholders’ losses, Professor Velikonja proposes solutions that increase the accuracy of disclosures, better deter fraud, and provide victims with useful compensation options. As she astutely observes, because it is harder for nonshareholders to take measures of self-insurance, it is particularly important to provide them protections.

Professors Gideon Parchomovsky, University of Pennsylvania, and Peter Siegelman, University of Connecticut, paired up to publish Cities, Property, and Externalities. Their article recommends that businesses in cities copy the market structure of suburban shopping malls to create positive externalities and revitalize urban shopping centers. Specifically, the professors explain how “anchor stores” that pay subsidized rents should be surrounded by smaller stores so that patrons drawn to the larger franchises will also stop into the local establishments because they are already in the area. They suggest public law tools cities could use to build these planned commercial districts.

In Jurisdictional Procedure, University of Denver Professor Justin Pidot examines how courts treat jurisdictional doctrines and finds many variations. Most notably, when an appellate court discovers that there is not enough on the record to assess jurisdiction, some courts will dismiss the case, some will remand, and still others will allow the parties a chance to submit additional materials. Troubled by the disparate effect the inconsistencies have on parties, Professor Pidot recommends assigning trial courts an inquisitorial-style duty to examine jurisdictional facts.

Entering the realm of intellectual property, Andrew Gilden, a Stanford Law Fellow, brings to light the relationship between rights and remedies in copyright litigation. His article, Copyright Essentialism and the Performativity of Remedies, makes the subtle observation that judges may sometimes determine the substantive merits of a case based on the remedies that are available. Professor Gilden then notes that the recent trend in copyright law has been to limit injunctive relief, which in turn has served to entrench dominant interests’ hold on substantive standards.
The Scholarship of Volume 54

**Issue One (October 2012)**

Articles
- Justin Pidot, *Jurisdictional Procedure*
- Justice Levitt, *Resolving Election Error: The Dynamic Assessment of Materiality*
- Helen Norton, *The Equal Protection Implications of Government’s Hateful Speech*
- Gideon Parchomovsky & Peter Siegelman, *Cities, Property, and Positive Externalities*

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

**Issue Two (November 2012)**

Articles
- Michael C. Dorf, *Spandrel, or Frankenstein’s Monster? The Vices and Virtues of Retrofitting in American Law*
- Mark D. Rosen, *The Structural Constitutional Principle of Republican Legitimacy*
- Maya Steinitz, *The Litigation Finance Contract*
- Julian Velasco, *The Role of Aspiration in Corporate Fiduciary Duties*

Notes
- Samuel G. Mann, *In Name Only: How Major League Baseball’s Reliance on Its Antitrust Exemption Is Hurting the Game*
- Adam S. McGonigle, *Applying Equitable Estoppel to ERISA Pension Benefit Claims*

**Issue Three (February 2013)**

Articles
- Anthony J. Bellia Jr. & Bradford R. Clark, *General Law in Federal Court*
- Craig Green, *Can Erie Survive as Federal Common Law?*
- Michael Steven Green, *Law’s Dark Matter*
- Emily Kadens & Ernest A. Young, *How Customary Is Customary International Law?*
- Kermit Roosevelt III, *Valid Rule Due Process Challenges: Bond v. United States and Erie’s Constitutional Source*

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**Issue Four (March 2013)**

Articles
- Andrew Gilden, *Copyright Essentialism and the Performativity of Remedies*
- Benjamin Means, *Nonmarket Values in Family Businesses*
- Paul Stancil, *Congressional Silence and the Statutory Interpretation Game*
- Rick Su, *The States of Immigration*

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

**Issue Five (April 2013)**

Articles
- Donald Earl Childress III, *Rethinking Legal Globalization: The Case of Transnational Personal Jurisdiction*
- Brian Galle, *Charities in Politics: A Reappraisal*
- Leslie Kendrick, *Speech, Intent, and the Chilling Effect*
- Christine Jolls, *Privacy and Consent over Time: The Role of Agreement in Fourth Amendment Analysis*

Notes

**Issue Six (May 2013)**

Articles
- Paul R. Gugliuzza, *The Federal Circuit as a Federal Court*
- Tracey L. Meares, *The Good Cop: Knowing the Difference Between Lawful or Effective Policing and Rightful Policing—And Why It Matters*
- David Klein & Neal Devins, *Dicta, Schmicta: Theory Versus Practice in Lower Court Decision Making*

Notes
- Lindsey J. Gill, *Secure Communities: Burdening Local Law Enforcement and Undermining the U Visa*
- Peter H. Kyle, *Contracting for Performance: Restructuring the Private Prison Market*
The Notes of Volume 55

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 55 of the William & Mary Law Review.


Scott Dranoff, *Tinker-ing with Speech Categories: Solving the Off-Campus Student Speech Problem with a Categorical Approach and a Comprehensive Framework*

Nicholas House, *Conflicting Property Rights Between Conservation Easements and Oil and Natural Gas Leases in Ohio: Why Current Law Could Benefit Conservation Efforts*


Adam Prestidge, *Safe Harbor in the FCPA? Successor Liability in Cross-Border Mergers and Acquisitions*

M.C. Miller, *Copyrighting the “Useful Art” of Couture: A Plea for the Expansion of Intellectual Property Protection for Fashion Designs*

Larsa Ramsini, *Unwelcomeness in Sexual Harassment: Choosing a Perspective and Incorporating the Effect of Supervisor-Subordinate Relations*

Meghan Stubblebine, *The Federal Medical Loss Ratio: A Permissible Federal Regulation or an Encroachment on State Power?*

Cassandra Roeder, *Transparency Trumps Technology: Reconciling Open Meeting Laws with Modern Technology*

Janet Sully, *Precedent or Problem: Alameda County’s Diversion Policy for Youth Charged with Prostitution and the Case for Immunity*

The Nation’s Top Law Journals

The *William & 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 nineteenth-ranked journal based on the number of citations to the *Review* in legal scholarship and judicial opinions.

1. Harvard Law Review
2. The Yale Law Journal
3. Columbia Law Review
4. Stanford Law Review
5. Fordham Law Review
7. The Georgetown Law Journal
8. Texas Law Review
9. Virginia Law Review
10. California Law Review
11. UCLA Law Review
13. New York University Law Review
15. Northwestern University Law Review
16. Cardozo Law Review
17. Minnesota Law Review
18. Iowa Law Review
20. Cornell Law Review
21. Vanderbilt Law Review
22. The University of Chicago Law Review
23. Duke Law Journal
24. Boston University Law Review
## William & Mary Law Review

**Volume 54** 2012-2013

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### Faculty Advisor

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<td>Timothy Zick</td>
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### Administrative Assistants

Beckie Pasipanki & Julie Pasipanki

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