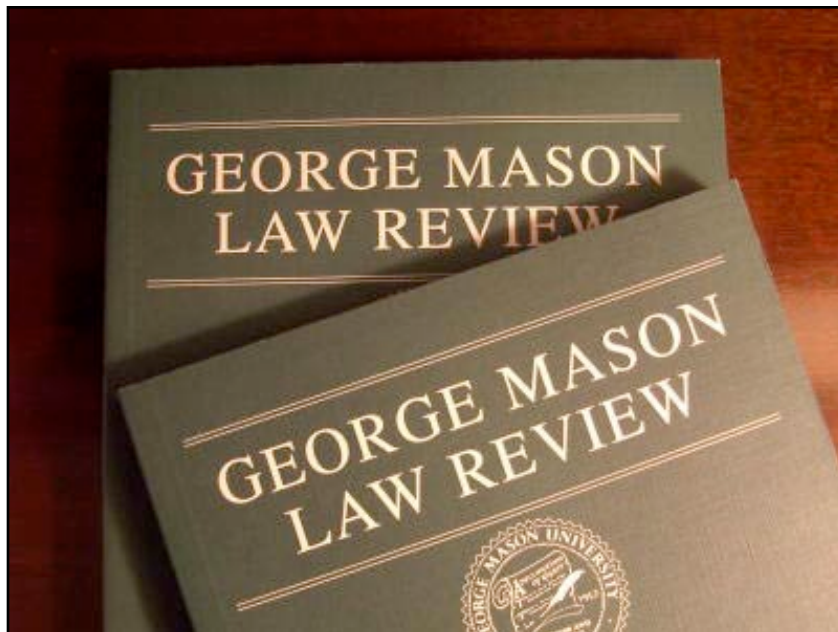

NEWSLETTER



Note from the Editors

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It's hard to believe that another busy semester is rapidly drawing to a close! It's been a busy year for the Law Review: our November issue is on its way to subscribers this week, second-year members are putting finishing touches on second drafts, and we are looking ahead to an exciting spring semester. This newsletter highlights a few of our members' recent achievements, previews a few upcoming articles, and includes a few important dates to add to your calendars. Please visit us online at <http://law.gmu.edu/gmulawreview> for more updates, and be sure to check out our revamped website debuting in January.

Best,

Alyssa & Darren

SPECIAL THANKS

Many thanks to Kyle Epting, Mark Cowen, Taryn Elliott, Lindsey Champlin, Michael Manteuffel, Janice Pardue, and Kevin Pettrey for their work on this newsletter.

In this Newsletter

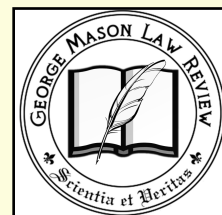
Elizabeth Maher Wins the
 2009 Burton Legal Writing
 Award

Joshua Newborn Wins the
 Adrian S. Fisher Casenote
 Award

Anthony Peluso Wins the
 Arthur E. Schmalz Write-On
 Award

Preview of the November
 Issue

Upcoming Events



ELIZABETH MAHER WINS THE 2009 BURTON LEGAL WRITING AWARD

The Law Review congratulates former editor-in-chief Elizabeth Maher on winning the prestigious Burton Legal Writing Award. Ms. Maher was one of only fifteen law students in the country to win the award for 2009. She joins two previous Law Review Burton Award winners recognized for outstanding and concise legal writing skills.

The Burton Awards began in 1999 as a way to honor law firm partners and law school students that demonstrate clear and concise legal writing and avoid archaic, stilted legalese. Among the Burton Award's Board of Directors are former Seventh Circuit Chief Judge Richard Posner, Judge Alex Kozinski of the Court of Appeals for the Ninth Circuit, and Dr. Rubens Medina, Law Librarian of Congress. Each year, the Burton Awards Committee honors thirty partners from the nation's largest firms that participate and honors the top fifteen law students from all U.S. law schools.

Ms. Maher won the Burton Award for her comment, *When a Majority Does Not Rule: How Supermajority Requirements on Voter Initiatives Distort Elections and Deny Equal Protection*, where she argued that supermajority requirements on voter initiatives without a legitimate public purpose violate the Equal Protection Clause. Analyzing supermajorities through the lens of a recent amendment to the Utah state constitution, Ms. Maher's article concluded that the Equal Protection Clause provides a strong constitutional basis for courts to intervene on behalf of individual voters when state regulatory initiatives result in equal protection violations. In addition to the Burton Award, Ms. Maher also won the Law Review's 2008 Adrian S. Fisher Award for the best student article for her work on this comment.

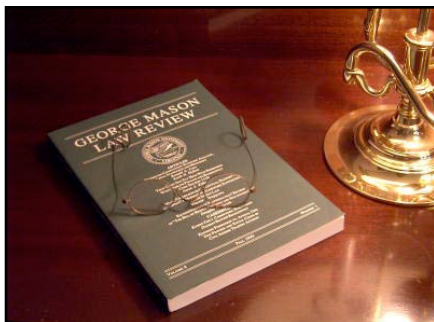
Upcoming Events

Alumni Reception

The Law Review will host its annual Alumni Reception on Thursday, January 28, 2010, from 6:30-8:30 p.m. at the offices of Paul, Hastings, Janofsky & Walker LLP, 875 15th Street, NW, Washington, D.C. Please keep an eye on your inbox for further details!

14th Annual Antitrust Symposium

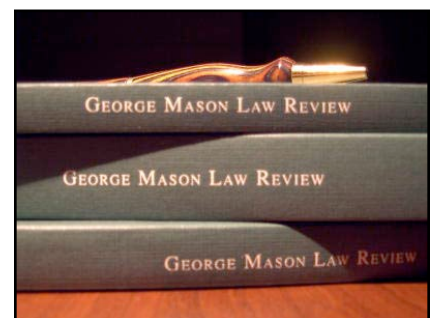
The Law Review will host its 14th Annual Antitrust Symposium on February 4th at the Ritz Carlton, 1150 22nd St., N.W., Washington, D.C. Look for more information on panelists!



Calendar

January 28, 2010
Annual Alumni Reception

February 4, 2010
14th Annual Antitrust Symposium



 JOSHUA NEWBORN WINS THE ADRIAN S. FISHER CASENOTE AWARD

The Law Review congratulates Senior Research Editor Joshua Newborn on winning the 2009 Adrian S. Fisher Award. Each year the Law Review presents the Adrian S. Fisher Award to the second-year member who authors the best student article selected for publication.

Mr. Newborn's comment, *An Analysis of Credible Threat Standing and Ex Parte Young for Second Amendment Litigation*, discusses the implications of *District of Columbia v. Heller* for standing requirements to challenge state gun ban laws in federal courts. Mr. Newborn argues that the D.C. Circuit erred in denying standing to five of Heller's original co-plaintiffs, and that the Supreme Court's "credible threat" analysis should be used to determine whether threat of enforcement exists for purposes of standing under *Ex parte Young*.

The award is given in memory of Adrian S. Fisher, a public servant and legal scholar who culminated his long and prestigious career at George Mason University School of Law. Mr. Fisher attended Princeton and Harvard Law School before beginning his legal career as a clerk for Supreme Court Justice Louis Brandeis and then for Justice Felix Frankfurter. After serving as a bomber navigator in World War II, Mr. Fisher continued his legal career as a principal legal advisor in the prosecutions at the Nuremberg Trials. Mr. Fisher continued his work with the United States government in the late 1940s as legal advisor to the hydrogen bomb development project, and then in the 1960s and late 1970s as a lead negotiator for the United States in nuclear test ban and disarmament treaties with the Soviet Union. Outside of government work, Mr. Fisher served as general counsel to the *Washington Post* and dean of the Georgetown University Law Center. After representing the United States at the United Nations Committee on Disarmament, Mr. Fisher returned to academia as a Professor of Law at George Mason University School of Law, where he served until his death in 1983.



 ANTHONY PELUSO WINS THE ARTHUR E. SCHMALZ WRITE-ON AWARD

The Law Review congratulates second-year member Anthony Peluso on winning the 2009 Arthur E. Schmalz Award. Each year, the Law Review's editors select the best entry from the annual Write-On Competition to win the Schmalz Award. The editors selected Mr. Peluso's piece from nearly a hundred entries submitted to this year's competition.

The 2009 Write-On Competition asked prospective candidate members to write a casenote on *United States v. Moussaoui*, 382 F.3d 453 (4th Cir. 2004). Prospective candidate members related the Fourth Circuit's decision in *Moussaoui* and its decisions on the admissibility of enemy combatant witnesses for a suspected terrorist to existing case law and statutory authority. Included among such statutory authority was the Classified Information Procedures Act, which governs access to classified information by defendants and its admissibility in court.

Arthur E. Schmalz was editor-in-chief of the Law Review from 1992-1993. In 1992, the George Mason University School of Law administration tried to bring the Law Review under faculty supervision, believing that students were too inexperienced to edit legal scholarship. Dean Henry Manne wanted to focus the Law Review's efforts on the faculty-edited Supreme Court Economic Review. Facing resistance from the student body, Dean Manne allowed the *George Mason University Law Review* to continue to operate as a publication solely for student articles and for distribution solely within the school. In response, Schmalz, in concert with then Student Bar Association president Christian Curtis, worked to create another journal, the *George Mason Independent Law Review*. In large part due to Schmalz's efforts, in 1995, Dean Manne recognized the need for a fully circulated student-run publication and the *George Mason Independent Law Review* became George Mason's official law review. Today, Schmalz is a partner in the Litigation and Intellectual Property practice at Hunton & Williams in McLean, Virginia.

PREVIEW OF THE
NOVEMBER ISSUE

The Law Review has an exciting set of articles slated for publication in its November issue. The articles will be available online this week; here's a preview of what to expect.

In *Contributory Negligence, Technology, and Trade Secrets*, Professor Elizabeth R. Rowe argues that recent technological changes necessitate a reexamination of what constitutes a reasonable effort to protect trade secrets. Professor Rowe's approach draws on contributory negligence principles and proposes a more objective framework for courts conducting reasonable efforts analysis.

In *The Path to Profitability: Reinvigorating the Neglected Phase of Merger Analysis*, Professors John B. Kirkwood and Richard O. Zerbe Jr. argue that courts have failed to sufficiently analyze the role of entry in conducting merger analysis. They propose a practical approach for analyzing whether entry will solve a merger's competitive concerns. Their method would first require the defendants claiming that new entrants would address the merger's anticompetitive problems to identify a successful business strategy for a new entrant—that is, a "path to profitability." Upon such a showing by the defendants, the government would then have the burden of proving that the proposed "path to profitability" is not viable because of barriers to entry to challenge the merger successfully.

In *Limiting Anti-Competitive Government Interventions that Benefit Special Interests*, Professor D. Daniel Sokol considers government-imposed restraints of trade and their anticompetitive impacts within the global economy. Professor Sokol provides a framework to identify and analyze domestic and international responses to these restraints and recommends the creation of a new WTO antitrust panel as the best way to address the anticompetitive effects of such restraints.



In *Medellin, Delegation and Conflicts (Of Law)*, Professor Peter B. Rutledge examines the academic and policy debates over delegations of grants of authority to international institutions. Rutledge recommends improving the delegation debates by adopting a broader definition of the term, creating a more nuanced classification system, and expanding research on the costs and benefits of delegation.

In *The Need to Apply the "Plain-Meaning" Rule to the First Paragraph of 18 U.S.C. § 2113(a) is "Plain": A Bank Robber Must Have Used Actual Force and Violence or Intimidation*, Notes Editor Michael Rizzo

examines how circuit courts interpret 18 U.S.C. § 2113(a), which determines whether the prosecution must prove actual use of force and violence or merely an attempt to use force and violence in an attempted robbery case. Mr. Rizzo argues for the adoption of the current minority interpretation, which applies the "plain-meaning" rule and requires actual use of force and violence or intimidation.

In *Danforth v. Minnesota: The Confrontation Clause, Retroactivity, and Federalism*, Articles Editor Tom Cummins examines the Supreme Court's ruling in *Crawford v. Washington*, which eliminated the adequate indicia of reliability exception to the Confrontation Clause. Mr. Cummins argues that states should use their power under *Danforth v. Minnesota* to retroactively apply *Crawford* to those imprisoned under an unconstitutional rule.

In *Texts R Safe 4 2day: Quon v. Arch Wireless and the Fourth Amendment Applied to Text Messages*, Editor-in-Chief Alyssa H. DaCunha analyzes the Ninth's Circuit's decision in *Quon v. Arch Wireless*, where the court used the Fourth Amendment as a source of privacy protection for electronic communications. Ms. DaCunha argues that current protections for text messages are too weak, supports the Ninth Circuit's restoration of broad Fourth Amendment protections for electronic communications, and develops an approach for courts to apply *Quon*.

