



# VIRGINIA LAW WEEKLY

2017, 2018, & 2019 ABA Law Student Division Best Newspaper Award-Winner

A Look Inside: Fighting Through Isolation as a 1L.....2  
Criminal Law, a Banjo, and Soccer? Meet Professor Frampton.....3  
Nothing Puzzling About this Fun Activity on Valentine's Day.....5

Wednesday, 17 February 2021

The Newspaper of the University of Virginia School of Law Since 1948

Volume 73, Number 16

## Originalism in the Twenty-First Century

Jacob Smith '23  
Staff Editor

“Originalism’s critics have failed to convince America that originalism is a bad idea.” Suggesting that originalism had in a sense never left, Professor Kurt Lash presented evidence from contexts as diverse as *McCulloch v. Maryland* and the recent debate over former President Trump’s impeachment that it has always been popular to claim the “moral high ground” of adhering to the original meaning of the Constitution. Professor Lash attributed originalism’s survival to the persistence of the idea of popular sovereignty—that the people’s will, as embodied in our Constitution, should be respected.

But Professor Lash’s words also reflected two major threads that pervaded Friday’s symposium. On one hand, commentators recognized that originalism has achieved a historical position of influence in the legal academy and judiciary. But they were also keenly aware of the challenges that originalism faces as they discussed topics related to the subject of the Third Annual Originalism Symposium, “Originalism Under Fire.”

As in prior years, UVA’s Federalist Society chapter hosted last Friday’s symposium, but of course this year’s event was held via Zoom. “I’m proud that our Federalist Society chapter has, despite the challenges posed by the COVID-19 pandemic, continued our tradition of bringing top legal minds to UVA for discussion and debate,” said the symposium’s chairman, Connor Kurtz ’22. The symposium featured professors, judges, and a handful of other commentators—including David Lat, the founding editor of the infamous blog website *Above the Law*.

One external challenge to originalism comes from the Right. Some readers may not know that there is a Republican school of thought that has an attitude of hostility, or at least wariness, toward originalism. As originalism and the Supreme Court have come under increasing scrutiny, those voices have grown louder. Last year Harvard Professor Adrian Vermeule proposed an alternative to

ORIGINALISM page 2

## Panel Discusses Practicing Law in the “Age of Colorblindness”



Pictured: Professor Thomas Frampton (Bottom Right) moderated the panel on gathering Black perspectives on the practice of criminal law, featuring Judge Angel Harris (Top Left), Mike Herring (Top Right), and Alanah Odoms (Bottom Left). Photos Courtesy of Anna Bninski '23 and law.virginia.edu

Anna Bninski '23  
Staff Editor

“Anything I’ve said about this is online already, so why change?” asked Judge Angel Harris, before speaking in very plain terms about the racial disparities that she sees in the criminal legal system.

On Tuesday, February 9, the Law School’s Diversity, Equity, and Belonging Committee hosted a formidable panel of speakers in conjunction with SBA’s Diversity Week and in recognition of Black History Month. The accomplished trio of Black criminal law practitioners—Judge Angel Harris, former criminal defense attorney and current Orleans Parish Criminal District Court Judge; Mike Herring ’90, Commonwealth’s Attorney for the City of Richmond for over a decade and current partner at McGuireWoods; and Alanah Odoms, Executive Director of the ACLU of Louisiana—shared their perspectives on issues raised in Professor Michelle Alexander’s book, *The New Jim Crow* as well as advice for current law students.

The first question posed by Professor Thomas Frampton, who moderated the panel, focused on *The New Jim Crow*. The premise of Professor Alexander’s book is that the criminal legal system, in its current “colorblind” iteration, accomplishes the same work of subordination and exclusion that overtly racist prior regimes sought to enforce.

Judge Harris agreed with the premise, pointing particularly to the effect of mandatory minimum sentences on communities of color, disparate opportunities to plead down, and

the “caste system” created by the disenfranchisement of people who have been convicted of a crime.

The inevitable Zoom problems that plague every contemporary talk left listeners briefly in suspense as to whether they would get to hear from Odoms, but after some brief wrangling she was able to share that she keeps a pocket copy of the Constitution on her desk. “I like to remind students that slavery and involuntary servitude are ingrained from the beginning,” she said, reminding listeners that the Thirteenth Amendment allows for the involuntary servitude of people convicted of a crime. Odoms also highlighted the “insidious operation” of legal financial obligations, given that most people in jail are not formally charged with a crime, but rather, unable to make bail and simply stuck there, thereby being denied a speedy trial. Expanding on Judge Harris’s point, she noted that disenfranchisement of Black voters has been particularly systematic in the South.

Herring recalled reading *Slavery By Another Name*—which is about the racist system of forced labor that persisted from the Civil War into the twentieth century—while serving as a prosecutor. “I was so troubled. I could not force policy in such a way as to cripple my office . . . I was torn by the reality of the genesis of our criminal justice system with what we as modern practitioners thought we were doing for the greater good.”

Speaking to changes that he has seen over the course of his career, Herring said that he sees law students today rejecting the

traditional roles of prosecution and defense, a shift from the conviction-oriented training he received as a young prosecutor. He also described the difference between reactions to the last two drug epidemics: crack and opioids. While appreciating the shift to a treatment-based response, which can be seen in the opioid epidemic, Herring noted that this reaction was sorely missing in response to crack-related drug infractions. “I hope that the difference in approach is a product of cultural evolution and not disparity, but time will tell.”

Odoms recounted seeing change follow President Obama’s appointment of Eric Holder as U.S. Attorney General, particularly in the guidance he gave to prosecutors about marijuana infractions. She also noted the educational work done by Black Lives Matter and other groups, which has led to a more diverse group of people running for prosecutor positions. “If you take folks committed to justice and fairness and put them in these positions, you’ll see a difference.” She also emphasized that the legal system should seek wholeness for the individuals and communities who have been harmed, rather than trying to “exact as much retribution and trauma as possible on people.”

Judge Harris cited Virginia’s current moves toward abolishing the death penalty as a positive development “that I wasn’t expecting to hear when I heard it.” More broadly, Judge Harris observed that she’s seen people become better informed, and less afraid to push issues and to

PERSPECTIVES page 2

## around north grounds



Thumbs up to the Journal Try-out being split over two weekends. ANG has a monopoly on looking like a shell of a person after staying up for seventy-two hours straight, and is glad no 1Ls will steal ANG’s thunder.



Thumbs down to FedSoc for failing to include their name on advertisements for events they host. ANG has attended these events for free Chick-Fil-A, but trying to trick ANG into logging onto another Zoom meeting solely with pretty wordart is a new low.



Thumbs sideways to students who feel obligated to respond to every question a professor asks. While ANG appreciates never having to speak in class, ANG doesn’t pay a hefty tuition bill to hear fellow students talk more than the professor.



Thumbs down to having class on President’s Day. What’s the point of blindly exalting and emphasizing the University’s connection to Jefferson if there’s no real perks?



Thumbs sideways to COVID testing happening in the rain. If students get pneumonia, that means there will be more of Student Affairs’ cake pop goodie bags for ANG.



Thumbs down to the never-ending cycle of snow, melted snow, and then mud. ANG already works hard not to be a brown-noser, unlike most 1Ls, but this weather is making ANG blend into the crowd too well.



Thumbs sideways to the big demolition going on next to the Law School. ANG appreciates seeing the destruction of any part of civilized society. But all the noise is disrupting ANG’s afternoon naps in the crevices of Slaughter Hall.



Thumbs up to T-Swift releasing some old songs. ANG feels like a sixteen-year-old filled with hope and wonder again. Take that, UVA Law.

## PERSPECTIVES

continued from page 1

question previous models. “Part of it is beginning to change the narrative . . . the way we talk about criminal courts. There was always this value judgment: Why are we pushing for the rights of ‘criminals?’ I say in quotes, as though they were not human beings deserving dignity and respect like everyone else.”

The panelists also discussed the need for data-driven policy; redefinitions of accountability; trauma-informed practice; the rewards and difficulties of working within a flawed system; and nuance within restorative justice. “For a certain level of offender, removal is the right option,” Mr. Herring said, while noting the importance of examining sentencing disparities. “But we need to be careful not to indict ourselves and the system so much that we pass back to communities an unfair burden.”

In parting words of wisdom for students, both Odoms and Judge Harris shared that they did not seek Law Review positions, opting instead to find programs or research that fit their specific interests. Odoms also had a question for young lawyers—or any lawyers—to keep in mind. “Any job you do, recognize that you have to come back into the community. What will your answer be to the community that you were responsible for serving?”

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## ORIGINALISM

continued from page 1

originalism: common-good constitutionalism. Vermeule’s conclusion, as described during the panel by *Newsweek Opinion* Editor Josh Hammer, is that “we should instead overtly go for substantive and normative conservative outcomes.”

In contrast, the landmark decision *Bostock v. Clayton County* has stirred debate among adherents of originalism, with some supporting and some opposing Justice Gorsuch’s reasoning. Some of those perspectives were on display in a discussion of “Textualism after *Bostock*.” Textualism is sometimes considered the statutory analogue of originalism, which is often thought of as a method of constitutional interpretation.

In *Bostock*, both Justice Gorsuch’s majority opinion and dissenting opinions by Justices Alito and Kavanaugh followed textualist approaches, but they arrived at radically different conclusions. Professor Tara Leigh Grove favored Justice Gorsuch’s approach, which she described as “we focus on the statutory language, and that’s that,” in contrast to the “more flexible textualism” applied by the dissenting justices, which considered factors such as social context and practical consequences. Professor Josh Blackman, in contrast, thought “Justice

Gorsuch failed to acknowledge that the Court’s precedents were inconsistent with textualism. “Textualism is apolitical in that it looks to the meaning of a word, as opposed to a question of policy values in a statute,” said Jessie Mann ’23. “It was fascinating to hear the different arguments for how staunch Justice Gorsuch was in his *Bostock* opinion.”

Popular misconceptions are another challenge faced by originalism. In a discussion of the public perception of originalism, Lat addressed some common misunderstandings. Originalism, at least in its most prominent version, focuses not on the Founders’ intentions but on the Constitution’s original public meaning. Nor does originalism demand strict constructionism or anachronism. The Constitution can be construed “as broadly as necessary” to embrace all it originally meant and its original meaning can be applied to new contexts.

These misconceptions persist. Lat noted that folks on the street tend to think of originalism as “antiquated” and “harsh.” I refer readers to the penultimate episode of Netflix’s *A Series of Unfortunate Events*, where a pseudo-originalist court requires everyone to wear blindfolds since “justice is blind.” But I think originalism’s biggest challenge is persuading liberal Americans that it is more than a Republican power play. As one of Friday’s panelists not-

ed, perhaps the easiest way to advocate for originalism is to point out cases where it has not favored Republican outcomes, like *Bostock* and certain Fourth Amendment opinions authored by Justice Scalia. Still, it is reasonable to expect skepticism to continue so long as the Supreme Court’s originalists are all conservatives.

James Ford ’23 expressed this kind of skepticism, stating that “originalism is just paleo-conservatism with more steps.” Many Democrats agree, if calls for court-packing are any indication. The challenge for the Supreme Court’s originalists is to persuade observers that their methodology truly is non-partisan and to do so at a time when the stakes are higher than ever. In the balance hangs not only originalism’s reputation but also, just maybe, the Supreme

Court as we know it.

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Pictured: The panel discussed the different approaches that led the the *Bostock* opinion. Photo Courtesy of Jacob Smith '23.

## COVID: Loneliness, Guilt, and a Sad 1L

My back aches. My mind is tired, whittled down to an unproductive nub by count-

Jonathan Peterson '23  
Staff Editor



less hours of mental strain. I’ve never worked this hard in my life, and my body, hunched into a position fit for someone fifty years my senior, is beginning to reflect that fact. The pillow caresses my grossly convex back, a seemingly well-intentioned act undercut by the extreme lack of lumbar support. My TV plays what must be the millionth episode of some sitcom, affirming that I am Netflix’s most dedicated customer. A knock on my door—my mom has brought me dinner. Life is hard.

Suffice to say, despite the melodrama playing out above, I had a cushier quarantine than your average Wahoo. I was, like many before me, locked in my room for ten full days after exposure. I, like many, saw the outside world mostly through my window and interacted with friends entirely virtually. However, because of my own personal situation—living at home—I likely retained more amenities than most in a similar position. Oddly, it felt reminiscent of high school. Scarily, I can’t say I hated it.

For that to be the case,

my story is necessarily riddled with privilege. I am lucky. Lucky to have a vaccinated mother, lucky to have caring friends, lucky to be capable of Zooming into school. And I am blessed to have remained COVID free. Which is why my personal experience is perhaps not the best to highlight when trying to talk about the strains of quarantine and isolation, or what one should picture if they have a friend or acquaintance going through the same. It isn’t easy. Which is why I believe it’s important to talk about what people can do for those going through it.

The most difficult part of quarantine is perhaps the loneliness. In our technological era, it isn’t especially difficult to kill time, although doing so enjoyably is its own beast. However, Snapchats, texts, and even FaceTime calls don’t exactly substitute the coffee-and-muffin-conversations we enjoy in ScoCo. Even the brief wave and smiling eyes of a passing friend in a hallway have a different impact than virtual interactions. Of course, when in quarantine these options aren’t available, but interaction remains essential nonetheless. Interaction is of paramount importance to those who are either coping with the worries associated with having COVID, of which there are many, or the fears of possibly contract-

ing the disease. And, for those two groups of people, that coping is done alone out of necessity. There is no one who can be there for them, at least not physically. Which is why it is important that, if you are a friend or an acquaintance of someone going through quarantine, you check in on them. It is a small gesture and as I’ve stated above, it’s no substitute for actual interaction. However, for those in quarantine, simply having people reach out to them every once in a while—to check in on how they’re feeling, if they have symptoms, how school is going, anything along those lines—is a pleasant reminder that, despite their current loneliness, they are not alone.

Another important thing to remember, especially when interacting with people who have COVID, is that they’re scared. They’re scared for themselves, but even more than that, oftentimes, they’re scared for the host of known and unknown people they may have impacted. And it’s necessary to understand that even the most COVID-conscious among us can, without error on our own part, become infected at any time. Even a simple trip to the grocery store, fully masked, yet made at the wrong time, can be all it takes. And yet, for those who contract the virus, many of them feel fundamentally

responsible. Responsible for contracting the virus and responsible for possibly, innocently, passing it along to others. This message of responsibility is important on a societal level—if individuals didn’t feel responsible for these things, what would nation-wide COVID compliance look like? However, on a personal level, when dealing with those around you who are in this situation, it’s important to remind them that this is a global pandemic. These things are, often, uncontrollable. The guilt that accompanies a positive test result is frightening and, for those who are already going through the mental strain of a fourteen-day isolation, crippling. Briefly, to qualify this, not all who contract COVID are blameless. However, I believe the

vast majority of people are not intentionally reckless. Nonetheless, they may feel responsible for their test results, and that guilt makes the already extremely difficult experience of isolation that much more harrowing.

My goal in highlighting this is to point out that if a friend or acquaintance gets COVID, these concerns may be on their mind. However, times are crazy. Some even say unprecedented. Personal accountability is important, and it’s hard not to feel accountable when staring an astronomically deadly virus in the face. However, guilt is not necessarily the appropriate response. Certainly, if there’s a lesson to be learned about following protocol, that lesson should

LONELINESS page 5



Pictured: It felt as though life were passing me by as I watched, lonely, from my window. Photo Courtesy of Jonathan Peterson '23.

# Club Spotlight: The Ministry of Truth

Founded in 1948, the *Law Weekly* has regaled students with the antics that have occurred on North Grounds for

Phil Tonseth '22  
Production Editor



the past seventy years.<sup>1</sup> Composed of students who, instead of miserably attempting to write onto *Virginia Law Review*, would rather write entertaining pieces or detail current events around the school, the *Law Weekly* boasts a robust membership and contributor base. Published weekly, the *Law Weekly* is not just for lighthearted stories about Barristers, Foxfield, or visiting speakers. The newspaper can also hang its hat on the fact that it has been cited by the Supreme Court<sup>2</sup>, the Fifth Circuit<sup>3</sup>, and numerous other state supreme courts.

How can you join such an illustrious organization, and are there any cool incentives to do so? The *Law Weekly* wishes for everyone with an opinion to join, from all walks of life and all organizations. In fact, after attending three of our weekly editing meetings, an attendee officially

1 <https://www.lawweekly.org/about-virginia-law-weekly>

2 *Patterson v. New York*, 432 U.S. 197 (1977)

3 *Thermo King v. White's Trucking Service*, 292 F.2d 668 (5th Cir. 1961).

becomes a 'Staff Editor', which, if you're asking the author, is a pretty cool resume addition.

What would you do as a member of the *Law Weekly*, and does being a 'Staff Editor' mean having responsibilities? At its base, the position doesn't require any formal work; rather, one can work/help as much as they wish.<sup>4</sup> Members are asked to edit pieces submitted by the various authors for grammar and spelling and to help contribute fun ideas for articles. Plus, if a member has a particular interest, they're encouraged to write to their heart's desire about such topic.<sup>5</sup>

Why would you want to give yourself more work by joining this organization? Well, first, the *Law Weekly* is the funniest band of misfits around the Law School. We turn all of our gripes into weekly opinions on the Court of Petty Appeals, channel our frustrations into the comments section, "Around North Grounds," and share the funniest professor quotes we hear with the masses. Additionally, pre- (and hopefully post-) COVID, we have free Domino's pizza at each weekly meeting. Lastly, we also have a corner office in Slaughter Hall with a brand new refrigerator and coffee maker.

4 See, another reason why *Law Weekly* is more fun than being on a journal.

5 See *Love in the Time of Corona* by Ben Stievetar '22 or the multiple features on anti-trust by Donna Faye Imadi '22.

I cannot sweeten this offer any further.

If you've gotten this far in the article, I applaud you. However, I need to provide a disclaimer that, while all of the above information is accurate, I was contractually bound to write it. Here's the real truth. Ever read *1984* by George Orwell? Did you notice that it came out in 1949, a year after the *Law Weekly* was founded? If you made that connection, I hope you also connected the dots and noticed the similarities between the Ministry of Truth and the *Law Weekly*. The *Law Weekly* is the underground organization that controls what is fact around these parts, and we work hard to make sure our narratives fit those truths.<sup>6</sup> You may be thinking, this would violate the First Amendment and chill speech, especially in a time when political commentators are facetiously arguing for 'alternative facts.' You may even attempt to use my boy Scalia's own remarks against me, when he said "[t]he mere fact that a private individual can chill somebody's speech does not say, well, since a private individual can do it, you know, the 'Ministry of Truth' can do it."<sup>7</sup> Respectfully, we disagree.

6 DISCLAIMER: the *Law Weekly* takes pride in publishing true and honest news stories.

7 <https://www.usnews.com/news/articles/2014/04/22/supreme-court-reviews-ministry-of-truth-election->

At its core, the *Law Weekly* is its own propaganda machine.<sup>8</sup> We alter the facts to fit our own desired narrative, often requiring the Law School to change its tactics to continue to appease us.<sup>9</sup> What I didn't tell you about our office is that it's strategically located directly above the dumpster behind the Law School. Ever wonder where graded exams go that students thought they did well on? Our dumpster. Ever wonder where positive articles

speech-case

8 We are an actual news organization; this is all satire. Please don't take this or me seriously.

9 For instance, we forced Student Affairs to bring back Weekly Wind-down Fridays because we wanted more cookies in *1L Cookie Monsters v. UVA*, 370 U.Va 100 (2020).

go about politically charged student organizations? Our dumpster. Ever wonder why the administration continues to let us post ridiculous stories about ranking bread, playing Zelda, or *Call Her Daddy*? The administration knows we can throw them in our dumpster.

We chose to spotlight our club, the Ministry of Truth, both as an invitation and a warning. For all of those with similar worldviews who like pizza, you are more than welcome to join our pseudo-cult. For those students who believe you can undermine us, good luck and come give it a shot. We are both the institution and the resistance. We are absolute and never wrong. We are Big Brother. Join at your own risk.

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Pictured: Where truth is formed, pizza is served, and the Law Weekly controls the world. Photo Courtesy of reddit.com

# Criminal Law and Kerfuffle FC: A Snow Day Talk with Professor Thomas Frampton

Last Friday, I logged onto a Zoom call with Christina Luk '21, Maria Luevano '21, Sam

Leah Deskins '21  
Professor Liaison Editor



Pickett '21, and Jacob Smith '23 to interview Professor Thomas Frampton. A native of Washington, D.C.,<sup>1</sup> Professor Frampton attended Yale for his bachelor's and master's degrees, before attending UC Berkeley for law school. After law school, he clerked at the trial and appellate levels, practiced law as a public defender for the Orleans Public Defenders in (shocker) New Orleans for a few years, and then was a Climenko Fellow at Harvard before landing in Charlottesville last summer. Professor Frampton is a criminal law scholar, and, perhaps unsurprisingly, taught criminal law this past fall. This semester, he's teaching criminal adjudication.<sup>2</sup>

1 D.C. proper, not Northern Virginia or Maryland. Specifically, he's from the area near the National Cathedral, which also happens to be where he got married last year.

2 Of note, Professor Frampton incorporates real-world, current(ish) happenings into class meetings and conveys enthusiasm for discussing legal and policy issues adjacent to the doctrine in the case-

The first portion of our discussion focused on "academic" topics. Professor Frampton explained that he's been very impressed with how well students have rolled with the punches and been so resilient this year, and that his favorite part of teaching is learning from his students.<sup>3</sup> We chatted about the oral argument for a real case he conducted in his criminal law class last semester and the wonderful opportunity it presented for 1Ls to see the law in action. Professor Frampton also spoke about a current article he's working on that discusses prison abolition and focuses on how the criminal justice system should handle the "dangerous few." Although Professor Frampton is still working on his argument, it seems like the article will be very interesting and timely, and one that students should be on the lookout for. Finally, we discussed an interesting quirk of Professor Frampton's teaching style: He asks students to call him by his

book. Readers may recall that he conducted an oral argument for a real client during one of his criminal law class meetings last semester.

3 Professor Frampton explained that he spends a lot of time preparing for class, at least in part because students' questions are "intellectually exciting."

first name but calls students by their last names. I wish I could say there was a fascinating reason behind this unusual phenomenon, but really it seems that the last name thing is sort of a default setting for Professor Frampton. However, our conversation may have prompted him to reconsider his ways. TBD.

The second portion of our discussion dealt with life outside of the Law School. Professor Frampton mentioned that he's looking forward to experiencing the Charlottesville music scene once things are back up and running again, and that during the pandemic, he learned how to play banjo.<sup>4</sup> Aside from working on his banjo technique, he has been a member of a local soccer team, Kerfuffle FC.<sup>5</sup> And his three favorite musical artists are The Mountain Goats, Against Me!, and Phil Ochs. We also learned that he hates eggnog and that

4 Am I seeing a bluegrass cover band in the Law School's future? Alternatively, he could play the banjo part in "Come on Eileen," a la Professor Kim Ferzan's rendition of "Heartbreaker," at Fauxfield 2019, should any Law School-affiliated group ever play that song. \*wink\*

5 I'm supposed to mention that Kerfuffle FC defeated the Law School's team, Barristers United.

he's not a fan of King Cake. I mean, who wants to bite into a plastic baby, anyway?

Lastly, Professor Frampton offered some advice for law students. He advised that, as UVA Law students, we've already done a ton of gold star chasing, and that at some point we should make peace with ourselves and relax our desire to continue to collect gold stars. While Professor Frampton framed this advice as directed at "1L Thomas," his insight could benefit law students of all levels.

I decided to get in touch with Professor Frampton about speaking with the *Law Weekly* because I've really been enjoying his criminal adjudication class. His interview did not disappoint. We had a lively discussion, and he even suggested a new, professor-re-

lated idea for the *Law Weekly*: instead of students interviewing a professor, the professor could interview the students. Overall, it was a great interview, and my only regret is that the pandemic prevented us from getting together in person.<sup>6</sup>

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6 Professor Frampton wanted me to mention that he's 7'4". Because of the pandemic, there's no way for me to see how tall he actually is, so I guess I'm just going to have to accept this stated fact as true. See Christina Luk, *Something About Twiqbal But Make It Zoom*, 72 Va. L. Weekly 19 (2020).



Pictured: From a criminal law scholar to a banjo picker, Professor Frampton is multi-talented and a must-take-professor! Photo Courtesy of law.virginia.edu.

# LAW WEEKLY FEATURE: Court of Petty Appeals

The Court of Petty Appeals is the highest appellate jurisdiction court at UVA Law. The Court has the power to review any and all decisions, conflicts, and disputes that arise involving, either directly, indirectly, or tangentially, the Law School or its students. The Court comprises eight associate justices and one Chief Justice. Opinions shall be released periodically and only in the official court reporter: the Virginia Law Weekly. Please email a brief summary of any and all conflicts to [cl3eh@virginia.edu](mailto:cl3eh@virginia.edu)

## 1Ls v. God 73 U.Va 16 (2021)

TONSETH, J., delivered the opinion of the Court, in which BIRCH, QUERNER, WUNDERLI, McDERMOTT, and LUK, C.J., join. LAKE, J., concurs in part, dissents in part. KULKARNI, J., concurs in part, dissents in part. SCHMID, J., concurring in part.

JUSTICE TONSETH delivered the opinion of the Court.

### I.

Sunny skies, warm temperatures, and picnics on Copley Field. Abundant wineries, the ability to manage a proper school/social balance, and a collegial atmosphere. What do all of these have in common, you ask? These were promises made to the current UVA Law 1L class at their admitted students weekend to lure them into paying for an overpriced Zoom School of Law Degree. While petitioners here have taken copious advantage of both the oversaturated wine market in Charlottesville and relied on their classmates in the truest sense of the Law School's collegial atmosphere, their claim concerns the weather that has overtaken North Grounds, specifically the god-awful amount of snow recently. Never before has this esteemed Court had the privilege of deciding whether law students may enjoin God for preordained weather events, but no one is above the law, not even God himself. Although I relish the power I have bequeathed unto myself to rule against God if I really wanted to, I must rule against the 1Ls on both substantive grounds.<sup>1</sup>

### II.

At the outset, God, through divine intervention, has requested this suit be dismissed for a lack of

1 This ruling may also be a duly-ordered penance for all of the shenanigans I engaged in at Bar Review.

standing on the part of petitioners. God reasoned that 1Ls cannot possibly claim to be injured from the overbearingly cold, bleak, and grey weather lately. Nor have the large amounts of snow dampened their return to North Grounds. However, God forgot that "emotional distress is a harm within the risk of attending school."<sup>2</sup> Therefore, I find an injury in fact to establish standing, even if that's a mere prudential aspect of jurisdiction. Against the objection raised by God that standing is a requirement of Article III, I rely on the first Petty Rule of Civil Procedure: "We do what we want."<sup>3</sup> Again, standing schmanding, I

*"Never before has this esteemed Court had the privilege of deciding whether law students may enjoin God for preordained weather events, but no-one is above the law, not even God."*

want the power to hear this case and rule against the Divine.

### III.

Like Lazarus rising from the dead, God decided to save his best trick for last. Pointing to our ruling in *1Ls Gunnery v. Everyone Else*, "1Ls always lose,"<sup>4</sup> and thus must do so here. While my 1L colleagues may wish to override this rule as tyrannical, unfair, un-collegial, mean-spirited, and the works, it is a keystone of this Court's jurisprudence. Further, in my reign of terror on this bench, this Court will not imply that rights exist for 1Ls through substantive due process.<sup>5</sup> 1L is supposed to be hard. 1Ls already

2 *1L Gunnery v. Everyone Else*, 324 U.Va. 22, 24 (2019).

3 *Law Weekly v. CoPA Copiers*, 369 U.Va 96 (2019).

4 *1L Gunnery v. Everyone Else*, 324 U.Va 22 (2019).

5 *NGSL v. UVA IM-Rec Sports*, 73 U.Va 9 (2020).

got an easier journal tryout, the ability to attend class from the comfort of their bedrooms, and the opportunity to avoid all of the embarrassing stories that would result from one bad night at Bar Review. It is beyond any sense of reason to lay at their feet the ability to enjoin God for the snowy weather on North Grounds.

LAKE, D. concurring in part and dissenting in part.

### Introduction

We are ruling today on whether or not to issue default judgment against cold, absent Defendant (hereinafter "God") and in favor of the well-prepared, delightful, good-looking Plaintiffs

(hereinafter "1Ls"). This collective action has united a fractured class against one true adversary—God Themselves, and the unconscionable weather They have wrought.<sup>6</sup>

### Facts

It has been a long, long winter. Plaintiffs have borne a series of increasingly egregious slights with grace: first the death and decay of Charlottesville's lovely foliage, then 4 p.m. sunsets, then finals, then people saying "don't you love having seasons," and finally bitter cold and gray settling over town like a blanket made by someone who took up crochet to help with their anxiety and made themselves hate-finish it.

The record clearly shows Charlottesville is a Southern city, located in a Southern state, sold to prospective students as an idyllic mountain retreat. Google

6 Diddy Morris has cooled it on the survey requests, and the camaraderie she inspired has quickly dissolved.

"UVA Law" and check through the images—how far do you have to scroll before you see snow? Discovery has yielded testimony from at least one Floridian who was told "you can make it through the winters here with just a sweatshirt" and later had to chip actual ice off her windshield with an expired gift card on more than one occasion.<sup>8</sup>

### Whose Injury Is It Anyway?

Me. It's my injury. I have been injured by the snow, and so have the Plaintiffs. Justice Tonseth correctly concludes Plaintiffs have an actionable claim against God based on the extreme emotional toll the weather has in-

spired, but fails to mention the psychic turmoil 1Ls suffer as a direct result of the Law School's deceptive advertising practices. Plaintiffs have cited expert witness testimony in support of their claim that this fraud was a matter of determinism, making God directly responsible. (See: *Final Destination*, 2000; David Hume, *A Treatise on Human Nature*, (1739)).

7 Really, really far. Suspiciously far.

8 This brave, anonymous student is filing a separate claim against the lying liars who lied to her.

### Conclusion

Plaintiffs have a right to seek damages against God for both injuries, and this court ought to allow their case to proceed. We cannot rely purely on sweeping precedent established three whole years ago. The Justices who wrote *1L Gunnery* are long out of touch with modern times, and could not have predicted a winter such as this. This Court must let the 1Ls go.

KULKARNI, S. concurring in part and dissenting in part.


Both of my esteemed colleagues appropriately recognize that 1Ls have standing to bring this case. God is all-powerful but justice ranks one step above. Justice Lake appropriately recognized the emotional and psychic damages that Plaintiffs have sustained as a result of the action at issue, relating, in part, to the false recruitment strategies employed in the past year. But even she fails to consider the emotional harm from losing the ability to see other 1Ls outside. The Law School recommends that interactions between students occur in a way that is compliant to health protocols. Chief among these protocols is a recommendation to meet outside, at a distance. God is working directly contrary to these goals with extensive snowstorms and extreme cold weather.

Beyond the level and scope of injury, the opinion of Justice Tonseth relies upon *1L Gunnery*, a case that continues to misdirect this court. In addition to pointing to this ridiculous precedent, Justice Tonseth claims that avoiding "all of the embarrassing

COPA page 5

## Faculty Quotes

<b>C. Nelson:</b> "Mindless invocation of dictionaries is only for trained textualists, not for amateurs like Justice Breyer."	<b>K. Abraham:</b> "We went from looking like a high school to looking like the nicest airport you can imagine."
<b>C. Barzun:</b> "I have a sort of zealous hatred for surveys."	<b>J. Cannon:</b> "The eco-golf movement has not gained a lot of momentum."
<b>R. Harmon:</b> "This should be like breathing for you. You breathe and you analyze things under the Fourth Amendment. Same activity."	<b>J. Harrison:</b> "I'm sorry for shaking my finger at you."
<b>S. Prakash:</b> "We don't have to and you can't make us! Nanny-nanny-boo-boo."	<i>Heard a good professor quote? Email <a href="mailto:editor@law-weekly.org">editor@law-weekly.org</a></i>



# Virginia Law Weekly

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continued from page 4

stories that would result from one bad night at Bar Review” is a benefit that has accrued to 1Ls as a result of the tragedies of the past year. This one comment shows how far my esteemed colleague has strayed from the public with his devotion to one bad case; I am sure that Plaintiffs would appreciate the opportunity to enjoy an event such as Bar Review. Rights are not abrogated simply because of the class of people involved.

In two years, Justice Tonseth will no longer be opining on this court. In two years, I shall remain steadfast in my devotion to the idea that 1L Gunners sets bad precedent and all decisions made following it should be held void.

To conclude, Plaintiffs have an actionable claim and the Court should allow the case to proceed.

SCHMID, J., concurring in the result.

I agree with Justice Tonseth that 1Ls cannot be granted the relief requested. I write separately to elaborate on two points. First, I am troubled by the attack upon our bedrock principle announced in 1L Gunners that “1Ls always lose.” As my time on this Court is nearing its end, I strive to ensure that stare decisis is respected and our precedents are not jettisoned willy-nilly by the younger members of this Court. The rule articulated in 1L Gunners has been a bedrock principle of this Court for as long as this justice can remember (read:

COPA page 6

# Seekers Solve Romanov Mystery: A Valentine’s Day Puzzle Review

**Background:** Coming up on the one year anniversary of COVID,<sup>1</sup> my girlfriend and I are still looking for new ways

Sam Pickett '21  
Columns Editor



to entertain ourselves during quarantine. We’ve been to Charlottesville’s wineries and breweries, we’ve watched countless movies, and we’ve even seen the entirety of *Sex and City*.<sup>2</sup> And so as Valentine’s Day arrived and snow fell on the ground, we found a solution to our problem on TikTok: a Finders Seekers mystery box. The box promised “abundant cryptic clues and puzzles to get your heart racing and brain ticking.” Intrigued, we purchased the “St. Petersburg, Russia” mystery, where we would help solve a hundred-year-old mystery surrounding the royal Romanov family and their well-guarded secret.

**Description:** The puzzle opens with a letter describing our task. According to legend, Russian princess Anastasia

1 Not the anniversary of its existence, but the anniversary of when we actually began to take it seriously. And by we, I mean those of who are not conspiracy theorists.

2 Including the movies.

secretly escaped her family’s captors in 1918 and evaded execution, becoming the only surviving member of the royal Romanov family. A group of Romanov relatives had a family relic, an antique box, that they believed would reveal Anastasia’s secret location. To open the box, they contacted the “Society of Seekers,” of which we are now members.

And so we were transported, via my MacBook Air, to St. Petersburg, Russia, where we would have to solve a series of ten puzzles. For each puzzle we solved, we received an animal and a gemstone that would later help us discover the numbers needed to open the mysterious box. The puzzles varied in difficulty and in form. In one, we had to cut out designs in a dress pattern to reveal the answer. In another, we had to analyze a program for “Swan Lake” to find a hidden message. Over the course of the ten puzzles, however, we were able to use almost every method of puzzle-solving that I had seen in a movie. I felt like I was in the *DaVinci Code*.

**Review:** All in all, the puzzle took us about two hours. Finders Seekers was supposed to be the most difficult of the puzzle subscription services, according to reviews, but I’m not sure if we would agree. It was challenging at times—but we did use the “hint” button a couple of times—but that was less because we couldn’t dis-

cover the answer and more because we weren’t sure what kinds of solutions the puzzles were targeting. Were we overthinking or would shining your phone flashlight through a random train ticket actually reveal some kind of hidden secret?

But, when you think about it, how long would you really want to spend on a virtual puzzle? Two hours was about perfect for us. If we got stumped, there were options for a hint, and they would even reveal the answer if you got desperate (we, as proud UVA Law students, refused to even consider this as an option). This ensured that we never got too grumpy or mad at the game, which is important to consider when doing activities as a couple.

We had also wondered about the possibility of doing

this kind of puzzle with friends in a \*COVID-less\* future. We felt that it was a game best suited for two-to-four people. Any more than that, and people get left out because not everyone can examine the puzzle at once. Any less than two and you can’t rely on your super smart girlfriend to solve the puzzles that stump you.

**Conclusion:** We rate this experience a 7/10. High points were the well-made quality of the objects/puzzles in the box, novelty, affordability,<sup>3</sup> and feelings of accomplishment. Low points were it not being that hard and no trophy at the end. I love a good trophy.

---

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3 The box was only thirty dollars. That’s cheaper than drinks and dinner for two!



Pictured: The contents of a Romanov Mystery Box. Photo Courtesy of Sam Pickett '21.

## HOT BENCH



Whitney Carter '23

Interviewed by Jack Brown '23

**Hi Whitney! Thanks for joining us on Hot Bench this week. Where are you from?**

Seattle, Washington.

**Where did you go to undergrad and what did you study there?**

I went to a school called Whitworth University, which is in Spokane, Washington on the east side of the state. It’s a small liberal arts college, and I studied Communications and minored in Political Science.

**What made you start thinking about law school?**

I graduated early. Going into my last semester I thought, “Wow, I hate journalism, I do not want to do this anymore,” but it was too late for me to change my major and still graduate early. So I decided to join the Peace Corps to take some time to figure out what the next step was. While I was there, I decided to take the LSAT because the law seemed like a place where you can make a lot of change and that was some-

thing I always wanted to do.

**Where were you stationed in the Peace Corps?**

Ukraine, I taught English in a small village in Southwest Ukraine.

**What was it like taking the LSAT in Ukraine?**

It was difficult because I had intermittent Internet access and couldn’t buy books or take a class so I ended up only using used Powerscore books that someone had already written in and tried to study with that. The actual test was only offered once a year in the capital, so I had to take an overnight train and a bus to stay there for the weekend to get there and take it. I also took it on my birthday, which was kind of rough.

**How did you get interested in Public Defense?**

Brian Stevenson, who wrote *Just Mercy* and is well known within the public defense world, spoke at my school. After that, I read his book and thought, “Okay this is super cool, I want to do something like that.” At that point, it wasn’t necessarily public defense, but I wanted something where I could make an impact. Then, when I settled on the law I decided to go in that direction because that’s what he did.

**How has it been pursuing public defense at UVA?**

Initially, it felt very daunting. It can feel like there’s a Big Law push at UVA. But I’ve still been able to find my niche through both PILA and LPS. I have mentors who remind me that law school is only a step in the process and to remember why you’re here and what your goal is.

**What has been your favorite 1L memory so far?**

Not school related, but I got engaged right before the fall semester started. We got engaged on campus, which was beautiful and it’s really cool because we both go to school here together.

**Wow! What is the story behind that?**

When we met we didn’t know that the other was going through the application process. It was on our first date that we found out. We just started dating knowing there were a lot of unknowns with where we were going to end up. Both of us intended to go to the best school we could get into and since we had very different interests in the law we only applied to three of the same schools.

Initially we were both going to be in D.C., which was going to be great because we’d both be together even if we wouldn’t be at the same school. Then I got in here, which was an incredible opportunity I couldn’t turn down. Luckily, right before we put down a deposit anywhere, he got in here and it was like, “Oh my gosh, it’s all meant to be.” Later we drove all the way out here [from Washington] to move in and got engaged on the steps of the Law School.

**Okay now let’s do some lighting round questions, favorite food?**

Thai food!

**Favorite class from undergrad?**

International Relations, but it was really just because I liked the professor.

**Class you’d want to teach?**

I’d probably just want to rant about the injustice in the crimi-

nal justice system. Something about bail or prison reform.

**If not law school, what would you be doing?**

I think I’d be working for a non-profit, doing some sort of service work. That was always kind of my path in general.

**Last movie you saw in theatres?**

*Just Mercy*, Brian Stevenson’s movie. It was in February, right before everything shut down.

**Last non-law book you read?**

Over Christmas break I read *Gideon’s Promise*, which is about the Sixth Amendment right to public defenders. It all tracks I guess!

**I definitely think you’re in the right place.**

I know, right!

**How do you de-stress?**

I try to watch the trashiest TV imaginable. Right after finals, I watched the *Real Housewives of New Jersey*, which is my guilty pleasure.

**Do you have a favorite case?**

*Reiss v. New York*—it’s the case where her boyfriend threw lye in her face and then they got married after that. Everything that happened around that case was absolutely insane.

**If you could give yourself one piece of advice what would it be?**

The best advice I’ve ever gotten was when I was fifteen, when my teacher told us to always surround ourselves with good people.

**Any shoutouts?**

Reidar and Weekend Thursdays.

---

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## LONELINESS

continued from page 2

be learned. However, that feeling of loneliness which is fundamentally a part of isolation is only exacerbated by the fears that you may have infected not only your friends, but your community. I do not believe that people already struggling with COVID should, or need, to feel that added guilt.

So please, if there’s anyone you know in isolation or quarantine, just reach out to them. See how they’re doing. Ask if you could drop some food off for them. That alone will mean the world and show them that they aren’t alone and that they aren’t ostracized. It’ll show them that COVID is the danger, COVID is the enemy, and not our suffering friends. We can still care for them, even from afar, and look forward to their return.

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COPA

continued from page 5

since alllll the way back to Fall 2018). This Court's former Chief Justice Shmazzle<sup>9</sup> proclaimed that the rule that 1Ls always lose is the "second-most important rule of this court" behind the principle that "we do what we want." Such authoritative words should not be cast aside so hastily by the younger members of this court. Were we to overturn a "super-duper precedent"<sup>10</sup> such as *1L Gunnars*, I have concerns for this Court's legitimacy. After all, the Court of Petty Appeals' "power lies . . . in its legitimacy, a product of substance and per-

ception [that 1Ls always lose]."<sup>11</sup> To actually give some semblance of legal analysis, I believe, in any event, that the Plaintiffs have sued the wrong party. The party who controls the weather in Charlottesville is actually the person who sends the weather-related emails to the Law School community: Dean Stephen T. Parr. As such, Plaintiffs should have sued Dean Parr for any perceived weather-related grievances. On either grounds, and consistent with this Court's precedent, 1Ls lose.

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ms3ru@virginia.edu

<sup>9</sup> And Deposed Newspaper Tyrant.

<sup>10</sup> That's the technical term, right?

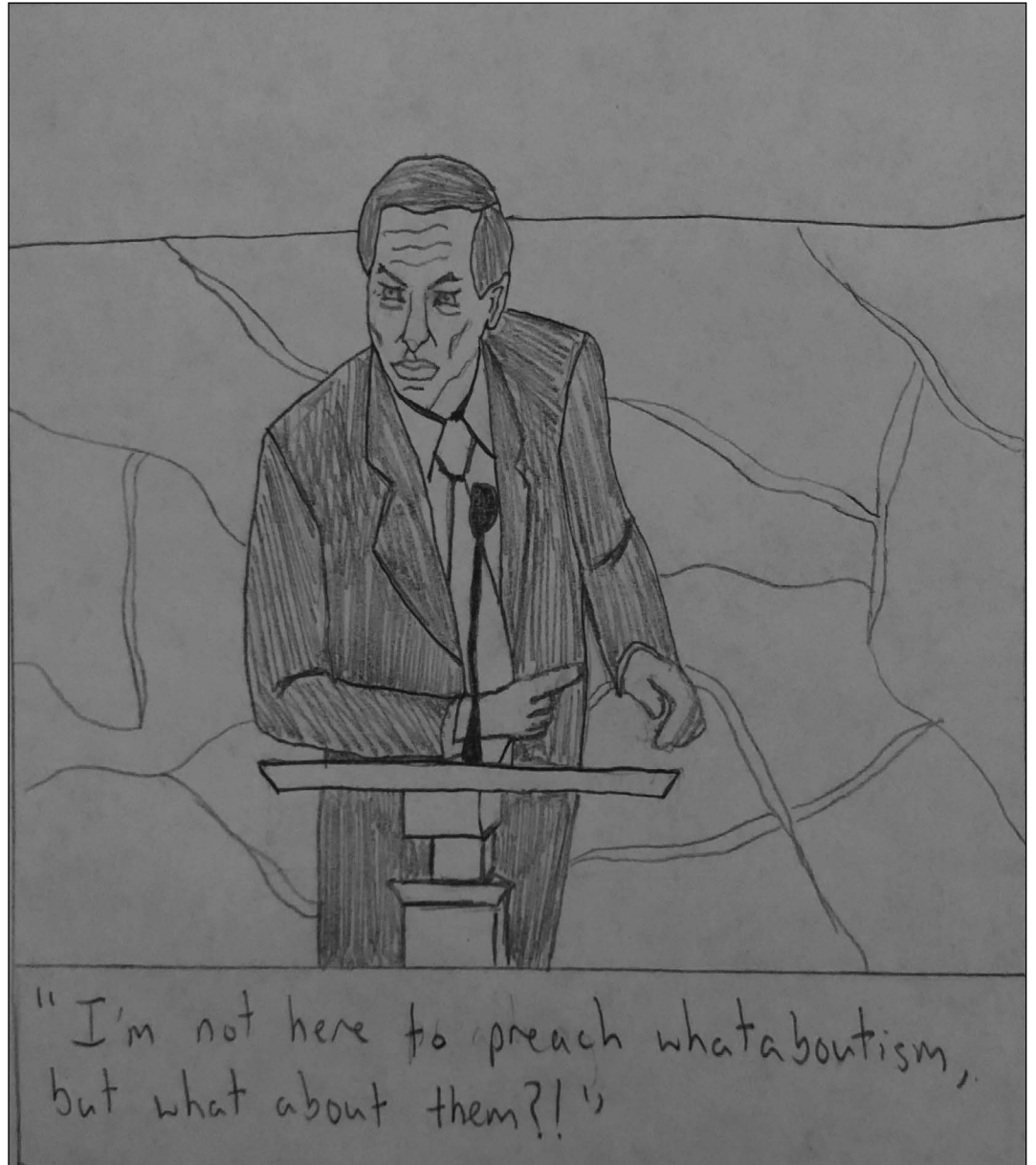
<sup>11</sup> I don't think Justice O'Connor would mind this paraphrase.

**Valentine's Day: Law School Edition**



Pictured: Heartwarming submission from Connor Kurtz '22. Photo Courtesy of Connor Kurtz '22.

Cartoon by Raphael



TIME	EVENT	LOCATION	COST	FOOD?
<b>WEDNESDAY - February 17</b>				
12:00 -	Peer Advisor Application	Zoom	Free	⊗
13:00	Information Session!			
18:30 -	UVA Law and the Federal Courts	Zoom	Free	BYOCFA
19:30				
<b>THURSDAY - February 18</b>				
11:00 -	LexisNexis Office Hours	Zoom	Free	⊗
14:00				
17:15 -	UVA Law Dems: A Conversation With Sen. Sheldon Whitehouse '82	Zoom	Free	⊗
18:15				
19:00 -	Therapeutic Thursday Yoga	Zoom	Free	⊗
20:00				
<b>FRIDAY - February 19</b>				
13:00 -	Workshop on Race and the Law of Business & Finance	Zoom	Zoom	⊗
14:00				
14:00 -	Nuts and Bolts of Clerkship Applications for 2Ls	Zoom	Free	⊗
15:00				
14:00 -	Innocence Project: Investigating Wrongful Convictions	Zoom	Free	⊗
15:00 -	Dual-Degree (JD/MA) in Legal History Info Session	Zoom	Free	⊗
16:00				
<b>SATURDAY - February 20</b>				
09:00 -	Winter Farmers Market	IX Art Park	Free	Available for Purchase
13:00				
10:00 -	Shaping Justice Conference	Zoom	Free	⊗
16:00				
<b>MONDAY - February 22</b>				
09:00 -	Meditation Monday	Zoom	Free	⊗
10:00				
11:00 -	Cybersecurity and Emerging Technologies	Zoom	Free	⊗
12:00				
<b>Tuesday - February 23</b>				
16:00 -	Meet the Judges: Justice Monica Márquez	Zoom	Free	⊗
17:00				
17:00 -	Atlanta UVA Law Alumni Virtual Reception	Zoom	Free	⊗
18:00				

THE DOCKET

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Solution

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