



VIRGINIA LAW WEEKLY

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

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Prepared to Prosecute?

Michael Berdan '22
Opinions Editor

Emily Bazelon's excellent book *Charged: The New Movement to Transform American Prosecution and End Mass Incarceration* describes the movement for so-called "progressive prosecution". Progressive prosecutors purport to operate under a lower-incarceration ethos, choosing alternatives to incarceration, non-prosecution of certain cases (such as low-level drug offenses), and other means to try to steer the ship of the justice system toward less carceral shoals. Examples of this movement are Philadelphia's Larry Krasner, San Francisco's Chesa Boudin, and just out our back door, Jim Hingeley in Albemarle County. Bazelon is hopeful, if appropriately skeptical, toward this movement.

But we must admit that it is somewhat shocking that prosecutors have individual discretion over such tremendously consequential state action. The public tends to imagine our system of criminal prosecution as something of a machine or a process, where the law is applied mechanically and uniformly. But law students come to recognize that the law rarely applies uniformly, cleanly, or mechanically, and there is, in fact, quite a bit of flex in the rules for the exercise of discretion. Bazelon's book, and progressive prosecution proponents, focus on this exercise of discretion as a critical hinge point between the out-of-control incarceration we've seen in the past several decades, and a system that safeguards the public good without the enormous fiscal and human costs of overincarceration. Indeed, between justice and injustice.

I have seen only a glimpse of this as a third-party observer, when a friend of mine was arrested and charged, purportedly for throwing rocks at his ex-girlfriend's car. The only evidence was an inconsistent and highly coincidental statement from the alleged victim. My friend had an alibi - he was half an hour away at a friend's home, all night. The prosecutor chose to charge my friend with terrorist threats and assault with a deadly weapon, and hold him on enormous bail. My friend sat in jail, trying to get his absentee assigned counsel to speak to his alibi witness, to no avail. Finally, after ten months behind bars, he could no longer stand it, so he pled out to a felony on his record and was released on parole.


A recent article by a trio of law

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FAUXFIELD 2021





around north grounds

 Thumbs up to the Fauxfield organizers for having pizza right by the fence! ANG certainly didn't saunter by a few times and still save ANG's \$30.


 Thumbs sideways to Halloween decorations. ANG weaves ANG's own tangled webs of existential fear, and doesn't need to see giant spiders everywhere.

 Thumbs up to the *Law Weekly* coloring and caption contest! ANG has been stuffing the ballot box hoping to win the grand prize before submissions close on November 1st.


 Thumbs down to UVA parking for reserving every single spot in the Student Health Center parking lot the entire day for football parking, leaving those of us who need silly luxuries like COVID testing to have to choose between parking illegally or not getting tested.

 Thumbs up to classes being so monotonous that ANG could spend 90 minutes refreshing multiple websites in an attempt to get World Series tickets. This is the most work ANG has done in class in several years.

 Thumbs down to Ivy Gardens playing fast and loose with rental insurance agreements. ANG never wanted to read one contract, let alone three.

 Thumbs sideways to this ambiguous sweater weather. ANG starts out the day with a cozy layer and then is uncomfortably warm and moist by noon.

 Thumbs down to Facebook. Their level of incompetence almost rivals ANG, but at least ANG could do minimal work and stop misinformation contributing to a civil war in Ethiopia, or the US for that matter.

 Thumbs up the *Sines v. Kessler* trial beginning this week. ANG's loves the city of Charlottesville and is looking forward to the community moving forward together.

Fauxfield: Inside the Band

The drive over to Crozet on Friday morning was bright, sunny, and still a little crisp. A perfect day for

Clint Roscoe '23
Staff Editor



debaucherous shenanigans at Charlottesville's favorite old-house-turned-outdoor-pizza-bar. I was really glad I had packed and loaded up the whole drum kit the night before. Not because the weather had anything to do with that: it just always sucks, I just love sleeping in.

Since *Torts Illustrated* would be playing, and I'm the drummer, my experience was bound to be a little different than your average Fauxfielder, but I was super psyched for it. We finished getting set up and running a soundcheck right around the time they brought in the huge FAUXFIELD balloons (that took me an embarrassingly long time to figure out. I know we're all bad at math; are we allowed to be bad at English, too?) I'm also pretty sure we tripped one of Crozet's circuit breakers at some point – I was out grabbing more equipment when it happened, but that's cool, right? I don't know. I'm the only one of us that's not wired up to anything, and that's probably best for everyone involved. The last thing anyone needs is a drummer playing with electricity.

I had been a little worried about space before I got there, but as I unloaded the kit and started setting up equipment with the rest of the band, Crozet and their stage delivered. It was like that little magic bag from Harry Potter – doesn't look that big, but did it fit two PAs, extra guitars and pedals, microphones, an entire drum kit, and six people? Yes. Yes it did. I didn't think anything could contain the sheer rocking power of our guitarists – Davin Laskin '22, Ethan Treacy '23, and our bassist, Kelli McQuillan '23. Nor did I expect there to be room for our vocalist Marc Kilani '22 and guest vocalist Rachel Wunderli to belt out some Papa Roach and Paramore, but I'm very happy to have been proven wrong on all counts.

We finished the first half of the set as the sun began to set and the darty turned into a normal party. This was exciting, because the second half had "Enter Sandman" in it, which is my favorite song because, as I said before, I love sleeping. That would have to wait until later, though, because we cranked the PAs a bit and had an even bigger blast with the rest of the set – judging by the copious amount of beer flowing and the dancing of the crowd, I hope you all did too. By the time the last notes of "I Want It That Way" faded out, I was more than a little exhausted, very stoked

to have played another gig, and mostly impressed with myself for not falling backwards over Crozet's railing. (That has to have happened to someone at some point, right? Maybe the balcony at Trin? The whole Corner feels like a premises liability hypothesis waiting to happen.)

For how tucked into a corner¹ it is, I was very impressed by how easy it was to load everything into and out of Crozet's staging area; they obviously do this a lot and it shows. We packed everything out as quickly as we had come in – many thanks to the extra hands that helped us – and joined the rest of the school in the exodus to one of the many afterparties that would, in true UVA fashion, inevitably end up back on the Corner.

Before Friday, 1Ls and 2Ls alike had been asking me what Fauxfield was for about a month, and it kept feeling like I was making up the answer because I was just repeating what I had heard about it. The blind leading the blind, so to speak. I'm sure I'm not alone among the 2L class in feeling like that a lot over the last couple months. Institutional knowledge has had an interesting relationship with the pandemic – the blurred outlines² of normally annual events are still there, but their exact details are a little fuzzy. Lucky for us, I think it keeps working out. I don't know exactly what Fauxfield's past looked like, and that's okay. Because THIS Fauxfield rained Jell-O shots, pizza, balloons, and the sick tones of Davin's guitar blasting out the main riff from "Sweet Child O' Mine," and that was pretty awesome.

Lastly, I've got to give a big thank you to everyone who attended and helped facilitate Fauxfield. I'm immensely glad to have an opportunity to play the drums again, especially around so many wonderful people. I know I speak for the entire band when I say we all had a fantastic time, and we can't wait to get back out there. See you all at the next big gig.

¹ Ba-dum *tsch*

² Apologies for using this word so close to November.

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Fauxfield: A 3L's Perspective

Darty, the colloquial phrase for a day party, is the base theme for Fauxfield. To the casual observer, Fauxfield is nothing

Phil Tonseth '22
Editor-in-Chief



more than law students enjoying pizza, refreshments, and quality bands all day long. However, after taking a year off, Fauxfield is both the Alpha and Omega for UVA Law in the fall, establishing the line of demarcation between summer and winter. It signals the transition from a carefree first few months of class, football tailgates, and Thursday nights spent at Carter Mountain getting the perfect picture for "the 'gram," to the impending doom of finals season for 1Ls, cuffing season for everyone else, and sweater weather. Filled with debauchery, I invite you to join along and experience the journey of Fauxfield from a 3L's perspective.

6:03 – Alarm goes off. I already regret how this day is starting.

6:24 – Eating a Granny Smith apple, followed by blue raspberry fireworks-flavored pre-workout for breakfast, continuing my bad ideas to start the day.

6:57 – A doggo at The Gym™ let me pet him. Plus, I got some face licks. My day will only go downhill from here.

Undetermined time – I did work out during this intermission. I also took a lot of breaks, a few gym selfies, and shopped for some new Lululemon workout gear.

9:04 – Time for breakfast. Nothing says "let's get this bread" like 2 sausage biscuits, 4 hashbrowns, and a 20 ounce tallboy of Bud Light.

10:01 – Walk in to get a haircut. The Jersey Shore bois al-

most knew how to do it right: Gym, T(ake time to get a haircut) an, and laundry, eventually.

10:46 – My man spent 45 minutes on my hair. It feels quaffed, fresh, and I even got a free beard trim. Crozet doesn't know what it has coming.

11:28 – I will be late to the pregame/birthday party. I forgot to meal prep my lunch and my mirror looked too good to walk away.

12:14 – The utmost and best shoutout goes to Ariell Branson. I have never seen a pong shot go over the table, hit an uneven brick beyond the playing surface, and bounce back into the cup. I thought my day had peaked when I was licked by a doggo, but it just got better.

12:16 – I was told my crop top wasn't short enough. I apologized to my fans; I won't be caught slipping like that again.

1:14 – I've been told there will be a balloon fort at Fauxfield. I was already excited for the endless pizza, but the surprises from this day just keep getting better.

1:15 – Reports are false. There are balloons, but solely to spell out "Fauxfield." I expected more.

1:50 – Roni Courtney, one of the amazing organizers of the event, desperately tells the pregame to go to Crozet now. It seems as though she's there alone; she shan't suffer like this.

2:07 – Literally nobody else is here except four 3L boys who showed up already. I'm not sure which group suffered the bigger social faux pas here.

2:10 – Free pizza is being served. Good thing I wore my stretchy pants today.

2:48 – Nate Wunderli introduced me to his family attending Fauxfield from out of town. While his brother was cool, his sister rocked it out on stage and gave Paramore's Hayley Williams a run for her money. Props

to a talented family.

2:49 – I just swatted Nate Wunderli's drink onto the ground, thinking I could just hit the bee on the rim instead. Good thing we got two free drink tickets, here's my last one bud.

3:30 – I move upstairs. Too many cool kids are dancing on the balcony, and I want to join.

3:32 – The bartenders upstairs set up two pong tables. Maybe the balcony will wait.

4:45 – I had way too many pong partners to thank, but victory sure tastes sweet. Apologies to Kelli Finnegan and Craig Campbell for taking so many L's. Better luck next time.

5:00 – I think this is when *Torts Illustrated* started. While I'm watching from the balcony, they have the place rocking.

No idea – I'm leaving Crozet. You'd think I'd be tired and dehydrated after starting to celebrate Fauxfield ~9 hours ago, but to another party here I go.

8:12 – I find myself playing King's Cup, but praise the sweet soul of Chris Leveroni for bringing me a glass of water.

8:59 – Call me old, but it's almost my bedtime. Time to summon the uber.

9:17 – My cat is giving me a disapproving look. She smells this morning's doggo and is only offering not to claw me for double her normal treats. I'm bad at negotiating.

10:01 – Not sure how I lost 40 minutes on my phone instead of sleeping, especially when I don't even TikTok, but it's officially time for bed. Food for thought for next year's advertisers of Fauxfield: by day-drinking so early, we can all still go to bed at a reasonable time.

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PROSECUTE?

continued from page 1

professors sought to quantify the exercise of prosecutorial discretion across jurisdictions by presenting 500 prosecutors with a single set of facts and asking how they would handle it.¹ The hypothetical involved a man who was having an emotional breakdown at a bus stop while holding a knife, culminating in him briefly grabbing a woman by the arm. No one was physically injured, and the man was arrested. The prosecutors' answers varied wildly, from dismissing the case outright to seeking felony prosecution and significant jail time. Many respondents talked about teaching the individual a lesson or deterring future acts in vaguely paternalistic tones. A number of respondents mentioned the mental health concerns at play, but many indicated they would seek conviction and incarceration regardless.

I can't help but wonder how those of my colleagues intending to become prosecutors would respond to the hypothetical posed in the article, or to my friend's case. It dawns on me that a student can enter UVA Law at 21

¹ *Inside the Black Box of Prosecutorial Discretion*, Wright et al.; UC Davis Law Review (2021).

or 22 years old, graduate at 24 or 25, and enter their first job, perhaps in a city and community entirely new to them, as a line prosecutor deciding whether individuals like my friend should be held in jail, marked for life with a felony conviction, incarcerated for months or years, or released without charges. They almost surely have never been incarcerated themselves, likely have never been arrested, and may never have known an incarcerated person or even visited a jail or prison. I wonder whether my prosecution-bound colleagues understand the tremendous weight of the discretion they're about to be handed, or even if understanding is possible.

95% of elected prosecutors in the United States are white, and 75% are white men.² Are the future prosecutors among us reckoning with the fact that they are choosing a career that will have them incarcerating people of color at heavily disproportionate rates? Are they being required to do so by their legal education? A student could conceivably graduate and become a prosecutor, having 1L Criminal Law and Criminal Procedure as the

only courses on the subject they have taken. They may have little or no understanding of disparities in race and economic class in the criminal justice system, or the possibilities presented by the movements for progressive prosecution, alternatives to incarceration and policing, or prison abolition. Surely some of our criminal law professors are building some of these concepts into their curriculum,³ but an academic awareness is quite different from the grounded understanding that comes from having been incarcerated oneself, or loving someone who is incarcerated. Do those among us who will soon be exercising the tremendous power of prosecutorial discretion truly understand what they'll be doing? Do career prosecutors even get it?

³ For example, Prof. Thomas Frampton's Criminal Adjudication course this semester has included guest lectures from a formerly incarcerated bail reform activist and a currently incarcerated person.

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Student Dicta: A Brief Introduction to Unoriginal Textualism

Professors interested in submitting or being featured in the Dicta Column are invited to contact the Professor Liaison Editor, Jacob Smith.

Jacob Smith '23
Professor Liaison Editor



What is “unoriginal textualism”? Exactly what it sounds like. Instead of looking to the past, Professor Frederick Schauer thinks that we should look to what the Constitution’s text means *now* in interpreting it.¹

It is worth starting with how “unoriginal” or “contemporary meaning” textualism differs from originalism. Originalists are generally textualists who think that the language, the text, of the Constitution should *constrain* governmental actors. Unoriginal textualism agrees with that premise. But originalists also believe that the meaning of the Constitution’s text was *fixed* at the time of ratification: the words mean now what they meant “originally.” Professor Schauer’s insight is that

1 Professor Schauer argues for this position in his paper, Unoriginal Textualism, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3911956 and forthcoming in the *George Washington Law Review*.

one can be a textualist who views the constitutional text as authoritative and constraining without accepting fixation, without looking to the text’s past meaning to understand the text.

At first glance, this proposal might seem baffling. What do you gain by swapping out the eighteenth-century (or nineteenth-century) meaning of a word for its twenty-first-century meaning? One might think that judicial wisdom accrues over time, resulting in the evolution of a better, higher form of our Constitution under a common-law constitutionalist approach. But no one directs the evolution of the English language. Why entrust the meaning of the Constitution to a rather random process?

But, as it turns out, Professor Schauer’s paper operates under the assumption that in “most cases,” the difference between original and modern meaning “will turn out to be inconsequential.” Even when the modern meaning of the text turns out to be vague or underdetermined, it will be because the original meaning of the text was also vague or underdetermined. Unoriginal textualism is not a movement aimed at changing the substantive meaning of, say, the Second Amendment.

Instead, the thrust is methodological: lawyers, judges, and public officials

forced to grapple with the constitutional text can rely on their own impressions of how the English language works. They can look at a modern dictionary instead of an eighteenth-century dictionary. Busy lawyers will find the Constitution more accessible because they do not need to treat it as an ancient text written in a different tongue. There will be no need for judges to become “amateur historians.”

Making the Constitution more accessible is important to the constitutional purpose of constraining government officials. We want government officials to obey the Constitution and accept its constraints, even when judges are not yet looking over their shoulders. Now, in practice, government officials generally do follow the Constitution when its text is straightforward and easy to understand. For example, presidents do not run for third terms and defy the judiciary to remove them from office.

Unfortunately, much of our Constitution is not straightforward, but vague. Therefore, it is less effective at directly constraining government officials. Congress has passed laws directly conflicting with Supreme Court precedent interpreting less lucid Constitutional language. One example is the Flag Protection Act, which

was passed just weeks after *Texas v. Johnson* (which found flag-burning to be protected speech) and was predictably struck down within a year. When I asked Professor Schauer why officials would do such a thing, he explained it as a logical calculation: voters care much more about short term political goals than long-term fealty to the constitution. No politician will lose votes for passing popular legislation that later turns out to be unconstitutional.

Of course, it’s too late to rewrite the Constitution to make it clearer. But how we interpret the Constitution today can make its meaning more or less accessible. When the Supreme Court considers an issue, it can hand down clear decisions to better constrain and guide government officials. But when a constitutional issue has *not* been adjudicated, the government officials and their lawyers will have to interpret the Constitution for themselves. At that point, a method of constitutional interpretation that is “actually usable,” that allows us to rely on our knowledge of contemporary English, will make the Constitution’s meaning more accessible, more straightforward, and more constraining.

STUDENT DICTA page 6

Law School Guide to Cuffing Season

Merriam-Webster defines “cuffing season” as “a period of time where single people begin

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Satire Editor/
Photographer



looking for short term partnerships to pass the colder months

of the year.” These “colder months” are typically viewed as beginning in October and ending around Valentine’s Day. Suffice to say, we’re in the thick of it. And if you have yet to find your short-term love, time may be running out.

However, fear not, all ye bachelors and bachelorettes, for I am here to pave the way towards five blissful months of snuggles which slowly reveal that the two of you are decidedly incompatible. But that’s okay. I’m not here to show you how to find the one. I’m only here to show you how to find *a* one.

The first question you’re probably asking is “where do I even start?” Good question. First, you must decide what pool of people best suit your cuffing season needs. And I’m here, once and only once in my life, to vouch for Darden. Think about it for a second. If you’ve read my Tips for 1Ls, you may have realized that my suggestion that you date within the law school was in jest. This especially applies to cuffing season. Like Apple, cuffing season makes heavy use of planned obsolescence. And when the now-obsolete investment has emotions, friends, and a family, it may be better not to have to engage with them at every Bar Review, in the halls, and, if you’re a 1L, for the next three years. But Darden? They might as well be from the moon.

Still, you may be asking, why Darden? Why not look to the Med School or perhaps try to find a nursing student?¹ As one who is familiar with the Socratic method, let me ask you a question in response: Why look for a partner during cuffing season at all? According to the Merriam-Webster dictionary, there is only one real answer: to find a warm body. And what good is a warm body who is as busy or busier than you? This is the true power of Darden—their availability. Unlike other graduate students, your Darden hunny will be there for you when you leave for class, when you get back from class, after a difficult cold call, and really any time they’re not at North Grounds’ gym or “networking.”

So, you have your starting point. What’s next? You’re go-

1 Don’t even mention undergrads to me. They’re off the table (and probably on an elevated surface).

CUFFING page 5

What the Red Sox Getting Knocked Out of the World Series Playoffs Means for Women’s Healt

There is magic in baseball, which any fan of the sport could explain to you. But there is also a very real magic to

Dana Lake '23
Production Editor



baseball, sort of like a sports-based astrology. It is an underreported phenomenon, but so empirically true you don’t need to bother doing your own research on it: The World Series Playoffs predict future Supreme Court decisions. Within this trend, there is a special correlation with the American League.¹ It’s just like that famous saying: “As goes the American League Division Championship, so goes the world.”²

One example is the 1999 season, where the Boston Red Sox finally defeated the Cleveland Indians in the ALDS after losing to them in their last two postseasons. It was a series of hope—the Red Sox won game four 23-7, setting a record for most total runs scored in a playoff game, a record that still stands today, and which put them on track to win their

1 I don’t know what role having a designated hitter plays in a league’s ability to portend the future but clearly there is some relationship, like Mercury going into retrograde.

2 If you haven’t heard this saying before, that sounds like a “you” problem, not ours.

first American League pennant since 1986. They proceeded to lose to the establishment Yankees in five games. Two months later, the Supreme Court ruled in favor of George Bush in *Bush v. Gore*.

Baseball fans are some of the most superstitious people you’ll ever meet.³ The stakes might seem low, but the anxiety is very real. From Wade Boggs only eating chicken before games to Alex Verdugo rocking the baby after hits, there are rituals that must be observed and respected. The same is true for predicting SCOTUS decisions. In the 2021 postseason, the streaky Red Sox lost to the Houston Astros in six games. The loss comes only a few weeks before the Supreme Court has agreed to hear an expedited challenge to the Texas Abortion Ban. The Court will review S.B. 8 on November 1, considering only two questions: the vigilante provision, and the United States’ ability to block the bill.

SCOTUS failed to prevent the law from going into effect prior to review, and abortion services in Texas have become so restricted that people in need of this care have been forced to travel out of state or otherwise proceed with an unwanted or dangerous pregnancy. S.B. 8 continues a trend of conservative administrations staking their legacy on radi-

3 See the entirety of the Chicago Cubs myths, if you need evidence.

cal approaches to social issues. While polls have found that a majority of Americans oppose both a cardiac activity law and a law that allows vigilante enforcement,⁴ and several studies show that a majority of Americans believe abortion should be legal in all or most cases,⁵ nineteen states have collectively enacted over 100 abortion restrictions in 2021. At the forefront of these new laws before Texas came sweeping in was Mississippi, which enacted a ban on abortions before fifteen weeks. SCOTUS will hear arguments on that law in December.

Much like the refusal to expand Medicaid and ending COVID unemployment benefits early, it is tricky to explain why so many states have spent so much time, money, and political goodwill fighting an issue that actively harms their citizens.⁶ Is it plain old narcissism, as in the case of the middle-school edge lord—willing to be cringy and provocative so long as they are receiving attention? Is it the result of unrestrained partisan ger-

4 tinyurl.com/427dwbr

5 tinyurl.com/3xbzvf93

6 “Aha,” skeptical readers may be thinking. “You’ve played your hand, Red Sox fan. This whole article reeks of east coast elitism.” Well, reader, in response we can only fall back on age-old baseball wisdom: We call it like we see it.

rymandering causing political apathy, where moderate views are punished and extremism is rewarded? Can we blame this on Facebook? Who can say. What we do know is SCOTUS is split on the issue 5-4, with the Chief Justice currently joining the liberal contingent of Sotomayor, Breyer and Kagan.

What does the Red Sox’s valiant fight but ultimate defeat by the Astros mean for the Court’s final decision on the right of a pregnant person to make their own medical decisions? It really doesn’t look good. I think it is an especially worrying sign that the Red Sox lost 5-0 in game six. Cynical reporters believe the Texas law will be rolled back and Mississippi upheld, a sort of compromise that still undercuts the essential guarantee of *Roe v. Wade*. A rollback of *Roe* would be a rollback on the expansions to personal liberty and privacy the Court has tended toward over the last few decades. It will leave the people least prepared for pregnancy in the worst position—those who do not want to go through with a birth, who do not have the savings or ability to take time off work or the mental health to travel out of state for medical care—in states where social support networks have been continually restricted.

You can donate to planned parenthood at weareplannedparenthood.org.

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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 pjt5hm@virginia.edu

UVA Law Student Body v. Chief Justice Tonseth

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MORSE, J., delivered the opinion of the plurality of the Court, in which SANDU and D'ROZARIO join.

REYNA, J. concurs.
KULKARNI, J. concurs.
TONSETH, C.J., dissents.
BNINSKI, J. and LAKE, J. dissent.
WUNDERLI, J. dissents.

It is with a heavy heart that we consider the case before us today. This Court is charged with upholding justice, and today we are faced with a dire threat to this mission arising from the pinnacle of our Court: the Chief Justice himself. The Plaintiffs, every single student at the University of Virginia School of Law, have brought a class-action lawsuit against Chief Justice Phil Tonseth for fraudulent misrepresentation and are seeking i) mandatory hard labor and cultural reeducation training, to be carried out in the Darden basement;¹ ii) an injunction preventing any writing by Chief Justice Tonseth until such reeducation is complete; and iii) compensatory damages in the form of a ceremonial quilt made of all of Chief Justice Tonseth's crop-tops, short-shorts, and 1/4 sleeve hoodies. The District Court of Petty Appeals, calling this "a no-brainer," granted a directed verdict for Plaintiffs. The Circuit Court of Petty Appeals reversed, in an opinion whose footnotes appear to be a code indicating that Chief Justice Tonseth was physically hovering over the judge while repeatedly whispering "MY Thunderdome."² In

1 AKA "The North Korea of North Grounds"

2 <https://www.lawweekly.org/front-page/2021/3/3/welcome-to-the-thunderdome-chief-justice-phil-tonseth->

response to this miscarriage of justice and the Circuit Judge's desperate plea for help, we reverse the Circuit Court's erroneous decision and order the defendant to report to the Darden basement immediately.

The Plaintiffs' complaint alleges that Chief Justice Tonseth "made multiple, aggressively confident representations that he possessed a sufficient amount of cultural knowledge such that he was qualified to write in and run the *Virginia Law Weekly*." The evidence the Plaintiffs offered to support this claim is

Chief Justice Tonseth's recent misidentification of Dennis Villeneuve's *Dune*, as "just another Marvel movie." But what say you, astute and skeptical reader – couldn't this have been a slip of the tongue? And even if it wasn't a mistake, is it really indicative of the Chief Justice's hilarious, woeful, and glaringly deficient grasp of the cultural zeitgeist? First, yes.³ Second, as Watergate showed us, small mistakes can begin investigations which lead you down a path revealing hitherto unheard-of levels of corruption and vice.

While I could spend buckets of ink detailing all the unnerving similarities between President Nixon and Chief Justice Tonseth, that's not why we're here today. The sad, simple fact is that if Chief Justice Tonseth had only insulted *Dune*, Plaintiffs wouldn't have a leg to stand on. But the Chief Justice's long his-

takes-the-gavel

3 And if you don't watch it, there is pleeeenntty of room in the basement of Darden for you too.

tory of cultural calumny, seemingly without end, can broadly be organized into three categories of offenses. The first category consists of all the movies that the Chief Justice has identified as a "superpeople, Marvel movie," including *Star Wars*, *The Titanic*, *Call Me by Your Name*, *Mad Max*, and *The Pianist*. The second category is the Chief Justice's refusal to read any news source that is not Barstool Sports or BuzzFeed.⁴ The third and final category is what you could call, boomer-lite references. This category is where I admittedly find

myself somewhat sympathetic to the Chief Justice's position, as I am myself, like the Chief Justice, nearly 30 years old and have a penchant for references to terrible 80's action movies and 90's MTV series.⁵

We concur with the Trial Court's determination that the preponderance of evidence standard was met by the above evidence, and now move to explore the broader motivations and implications of this decision. Leaving aside the difficulties of being a newspaper editor when you're the young-body-old-mind Benjamin Button, adrift in a world you no longer recognize or relate to, there is the added weight of

4 The Chief Justice's most recent, timely article he shared: <https://www.buzzfeed.com/jamiejirak1/which-og-power-ranger-matches-your-personality-3dxnr>. My Power Ranger is red.

5 TRL, Yo! MTV Raps, and Headbangers Ball. Walk a mile in my shoes before passing judgement, my youthful readers.

the responsibility that the *Law Weekly* and this Court have in upholding the law of UVA. The law is the expression and operationalization of society's norms. A society's norms are grounded in its culture. If the Chief Justice willfully does not inhabit the same culture, how can he possibly rule on matters of importance to the Law School? Indeed, how has he managed to do so to this point?⁶

This brings us to the first of two conclusions: that this Court does its best to bring the Chief Justice's reign of terror to an end

and admit our own complicity. To paraphrase *Succession*⁷ how much those of us who executed the Chief Justice's wishes is for another day, but I think this is the day his reign ends.

The second, and more impor-

6 See Chief Justice Tonseth's dissent in *Students v. Labor*, *Generally* 73 U.Va 4 (2020); the Chief Justice's opinions in *3LOLs v. Gunners* 73 U.Va. 10, 2020 and *Entitled Millennials v. Student Affai* s 73 U.Va 3 (2020).

7 Chief Justice Tonseth, Google it. (Chief Justice Tonseth, Google is like an encyclopedia, but on the computer. You'll love it.)

tant of the two impacts of today is that this Court finally, inexorably, and triumphantly overturns its long-standing precedent handed down in the Court's decision in *1L Gunners v. Everyone Else* 939 U. Va. 111 (2019) that 1L's lose.⁸ Given that 1/3 of the plaintiffs in this case are 1Ls we cannot possibly rule in their favor without abandoning this precedent. While the need to do justice in the immediate case provides overwhelming support for this decision, the truth is that my disdain for *stare decisis* outside of decisions which I signed onto and my own self-interest as a 1L, is the driving force here. Let the reign of the 1Ls commence!⁹

It is so ordered.

REYNA, J., concurring.

I join my colleague, Justice Morse, in full on this important cultural matter. However, I must issue this concurrence to admonish most of the UVA Law public at large in addition to Chief Justice Tonseth specifically.

Mr. Chief Justice, I'm not disappointed, I'm just mad. Where should I even begin: should it be at your comically inadequate knowledge on what even is or isn't a superhero movie, or at your general ambivalence to-

8 https://en.wikipedia.org/wiki/Trojan_Horse

9 Chief Justice here. This entire paragraph is just dicta. 1Ls will always lose. Sorry kiddos.

COPA page 5

Faculty Quotes

C. Hwang: "Ugh. I feel like these are all Darden words."

J. Monahan: "Index cards. You've never heard of such things...they were like a prehistoric spreadsheet."

J. Setear: "Ok, so here's Russia: Beets."

J. Harrison: "Back to the 1940s and the SEC's deep suspicion of people who own racehorses."

J. Johnston: "Most people don't know much about much of, well, anything."

C. Jaffe: "I don't even know how Alexa works much less how to retrieve metadata."

A. Hayashi: "Why does Solomon Brothers need a destroyer? ...Probably for tax purposes!"

Heard a good professor quote? Email us at editor@lawweekly.org

Virginia Law Weekly

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COPA

continued from page 4

wards putting in the effort to watch *Star Wars*? I consider both infractions to be categorically determinative of perpetual guilt from henceforth.

Now I must speak to the UVA Law general student body. While it is true most of you are incredibly busy with your heavy course load and light social lives, I know for a fact that all of you binged *Squid Game* in one night but still have yet to see iconic, generation-defining content. While I try to do my small part of dragging as many people as I can to watch films like *Dune* and, *Shang-Chi*, and forcing people to watch *Revenge of the Sith* until they admit it's the best *Star Wars* film, I am but one person who can only do so much. If you're looking for an escape from Law School, and I know you are, I am officially mandating that everyone, if they want to, voluntarily go appreciate the one-of-a-kind experience of watching a great movie for the first time.

KULKARNI, J., concurring.

I don't need to see any of the other opinions to write my own. Is the Chief Justice missing key portions of cultural knowledge? Yes. Is it incredibly biased and inappropriate that he gets to write an opinion? Absolutely. Should he be sued for other reasons as well? No question. This Court exists to hold the school accountable and if we cannot hold our own to the same standard, then we are derelict in our duties. Do better, Mr. Chief Jus-

tice, because if given the chance, Justices Birch and Wunderli will join me for the most scathing majority opinion ever.

TONSETH, C.J., dissenting.

If you come at the king, you best not miss.¹⁰ While this first and foremost will be my catchphrase once I'm cast to be on a *Real Housewives* show, it equally applies today. All of the Associate Justices who swung and missed today should've ensured that they had proper standing before they started, as they definitely got caught slipping.

I don't even need to bother myself with reading their "opinions." They'll probably attempt to dismiss my trope about standing by quoting Professor Re's "standing shemanding" philosophy, or arguing that as the benevolent dictator of Big Brother, I allowed this case to proceed in the first place. To that, they are correct. You don't simply refuse to play a game against a toddler, knowing you'll ultimately win in the end. They need to have some hope, some belief that they have a chance.¹¹

Even as I've let this case proceed, and even though there is no standing to sue an individual, let alone me, the benevolent overlord, the reason for this suit is as preposterous as thinking student leaders can change national level policies of their parent organizations.¹² Because

10 RIP in Power.

11 Laughing in 3LOL.

12 This will probably be the only time I openly, however

I don't dedicate my time to staring at a screen and watching people in tights perform magical acts, I'm in the wrong? Color me jaded, but I'd rather focus on, idk, being outside, sipping some red wine and catching a sunset, or watching *Love Island* while I cuddle with cats. For this purpose, I concur with the dissent of Justices Bninski and Lake, as there's so many other good reasons to throw shade my way. Forewarning, I have made Pit Vipers a new part of my brand, so better make sure your shade is good enough to get through.

The final attempt by the pluralities here to discredit my untarnishable name is to claim I, as Chief Justice of this esteemed Court, should recuse myself from a case about myself. That's absolute hogwash. The first Petty Rule of Civil Procedure is "We do what we want."¹³ As I convened this Court, was democratically elected to my post, and have nobody to stop me, this need to recuse myself falls short of anything that could be deemed coherent.

Do better, plurality, you got into UVA Law for a reason. The pedantic arguments you make today are soiling that decision by the Administration.

BNINSKI, J., and LAKE, J., dissenting.

There are so many other rea-

begrudgingly, defend FedSoc. However, students can only do so much.

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

sons to sue the Chief Justice.¹⁴ Have you met him? Lack of Marvel knowledge is the least of his crimes.

WUNDERLI, J., dissenting.

I'm not surprised Chief Justice Tonseth doesn't know the difference between Marvel and Pixar; he is probably paying much more attention to the lady next to him on the couch than any movie. I would've sued him for calling full-grown adults "kiddos," or wearing Pit Vipers and crop-tops to softball, and for that reason I respectfully dissent. Additionally, J. Morse insinuating that 1Ls have actual rights makes the Chief Justices of old roll in their graves. Back in my day, 1Ls were not allowed to even write COPAs, let alone unilaterally grant themselves rights. You will learn one day, young padawan.

14 While conceding the existence of abundant *reason* to sue the Chief Justice, we question whether this Court can, in fact, legitimately exercise authority over the Executive Board of the Law Weekly. This of course has nothing to do with us cherishing the protection of executive privilege.

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Do you have any pets?

I have two rescue pets—a Schnoodle named Joy and a cat named Charlie.

Since the VCRRC is also in Charlottesville, were you already based here, and if so, for how long? What do you think law students should be sure to do before graduating and leaving?

I've lived in Charlottesville for more than thirteen years. Before law students graduate and leave, they should eat pizza at Dr. Ho's, go for a hayride at Albemarle Ciderworks during the Apple Harvest Festival, and get a gelato at Splendor's.

If you weren't a lawyer, what would you like to do?

I would love to narrate audiobooks!

Lightning round! What's your favorite movie?

Legally Blonde
Dessert?
Peanut butter cheesecake
Charlottesville lunch spot?
Milan Indian Cuisine
Pet peeve?
The use of unnecessary quotation marks and capital letters

Relaxing activity?

Spending time with my friends and family

ddavison@law.virginia.edu

CUFFING

continued from page 3

ing to have to go it alone for a bit, as I cannot select a Darden student for you.² However, once you've made your selection, I can start giving tips again.

First: don't be open and honest. You're in it for the long haul. You're waiting for a ring. You're definitely not planning on ending things within a month of Valentine's Day. The reason for this farce is quite simple—you need someone on call for those chilly nights in Pav,³ and to get someone on call, you need commitment. Admittedly, some of you might have moral qualms about this—fear not. Your morals would probably be warranted if you were planning a law student's obsolescence.⁴ The morals would certainly be warranted for a med student or a nurse, people who will go on to do actual good in this world. However, the simple beauty of Darden students rears its well-groomed head once again. It is an *a priori* fact that we need not engage in moral reasoning in relation to our Darden compatriots.

Second: pick your shows well. We all know you'll be watching Netflix, Hulu, HBO, whatever floats your boat, with your Darden cuddle buddy. But be sure to be selective. There's nothing worse than being on season four of *Friends* with your partner when cuffing season ends, and you move on to greener pastures. Keep the shows short and sweet, so that when the fateful day rolls around, you can pull the plug on the same night as the finale of whatever show you chose. This will serve two purposes—not only are you not stuck with a half-watched, memory-filled series, but your ex-partner gets let down softer thanks to the feeling of finality and satisfaction that accompanies finishing a show.

Third, and final: don't get attached. If you've listened to my advice thus far, you should be good on this front, namely because you'll be with someone from Darden. However, this doesn't mean you're free and clear just yet. Those pesky little feelings of caring for someone emotionally can always crop up, whether you like it or not, and you have to be on guard.

There you have it. If you've read diligently and briefed this article, your chances of success this cuffing season will be astronomical. If not, good luck to you. Perhaps you'll be the one fading into obsolescence this coming February.

2 However, if you're seeking individualized help, please reach out to me at jtp4bw@virginia.edu. We can always set a time to workshop your options.

3 If you're in Ivy, you better be making use of those fireplaces for cuffing season.

4 Be nice to the public service people.

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HOT BENCH



Dawn Davison

Interviewed by Anna Bninski '23

Dawn Davison recently joined the Law School staff as a Director of Public Service, and kindly took the time for a short interrogation by the Law Weekly.

Welcome to the Hot Bench, Dawn! To start off, where are you from?

I was born in Alabama, and I grew up in New Mexico. I've been in Virginia since 2004.

What drew you to study law?

I first became interested in the law when I participated in a mock trial in fifth grade. A classmate's father was an attorney for the ACLU and he orchestrated the whole thing. I was selected to be one of the attorneys. At that point, I gave up on my plan to become an astronaut and never looked back!

Before coming here to UVA, you worked at the Virginia Capital Representation Resource Center (VCRRC), a non-profit that focuses on death penalty cases. What was that work like? How did it feel to see Virginia abolish the death penalty earlier this year?

When I was hired by VCRRC, I felt like I won the lottery. I had decided I wanted to do death penalty work while I was in law school, and I was thrilled to line up that job after my clerkship. Capital work combines two of the things I love most about the law—intricate legal problems and one-on-one work with clients. It taxes your intellectual abilities and your social abilities. When Virginia abolished the death penalty, it also commuted the death sentences of the two people remaining on death row. Both men were my clients, so when the bill passed I felt a tremendous sense of relief and lightness. We had worked their cases hard enough to keep them alive long enough to benefit from the legislation.

It's quite a leap from capital representation to working here at the Law School! What are you excited for in your new position? And what are your wildest hopes and dreams for working with students aiming for public service careers?

I am so excited to be working with law students at the beginning of their careers. I

enjoyed my time with interns in my last office—talking to them about their plans for the future, listening to them process what they had learned in our office, and hearing from them after they graduated. This job will allow me to continue those conversations on a much larger scale. For those students working toward careers in public service, my hopes are that they leave UVA Law elated by the prospect of starting their dream jobs and reasonably confident in their abilities to do good work (overconfidence is a curse!). Although, my wildest dream would be to send out a graduating class comprised only of public service attorneys and private attorneys with robust plans for pro bono work!

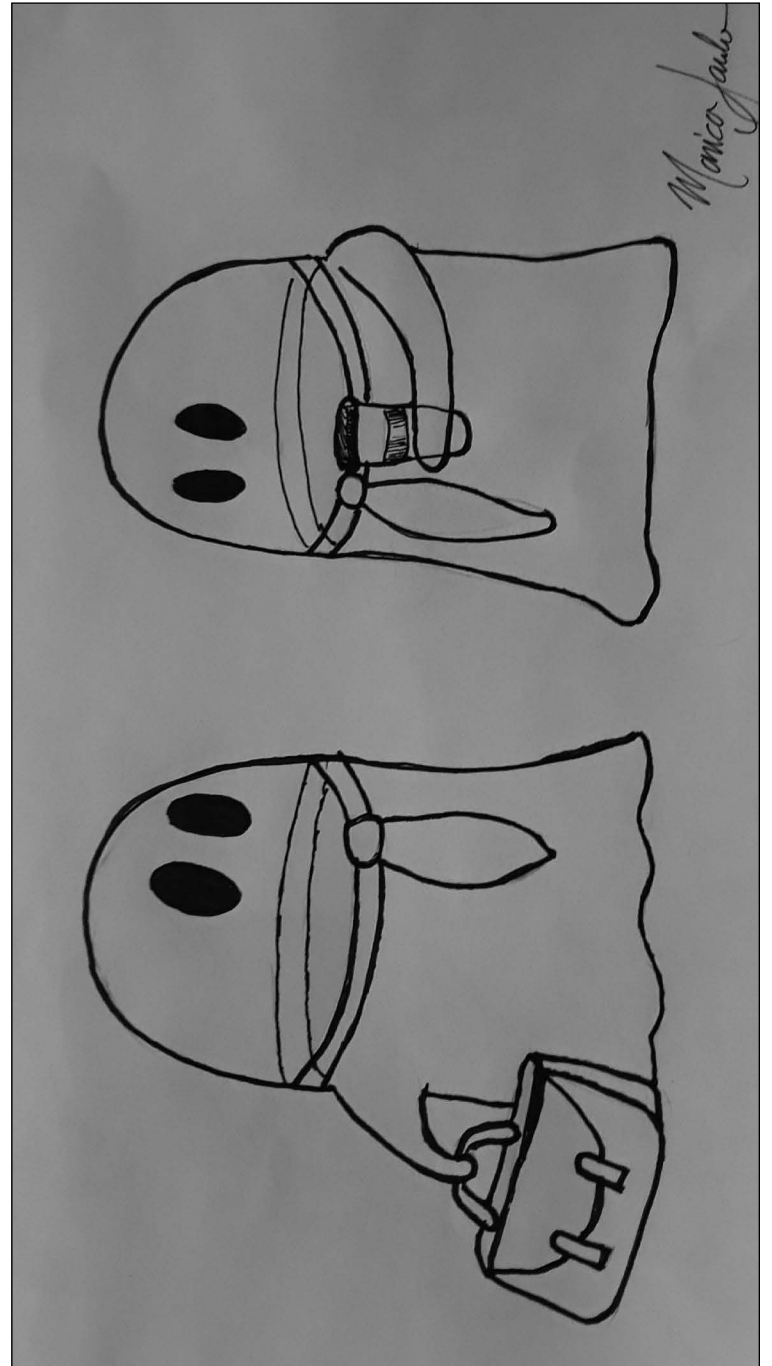
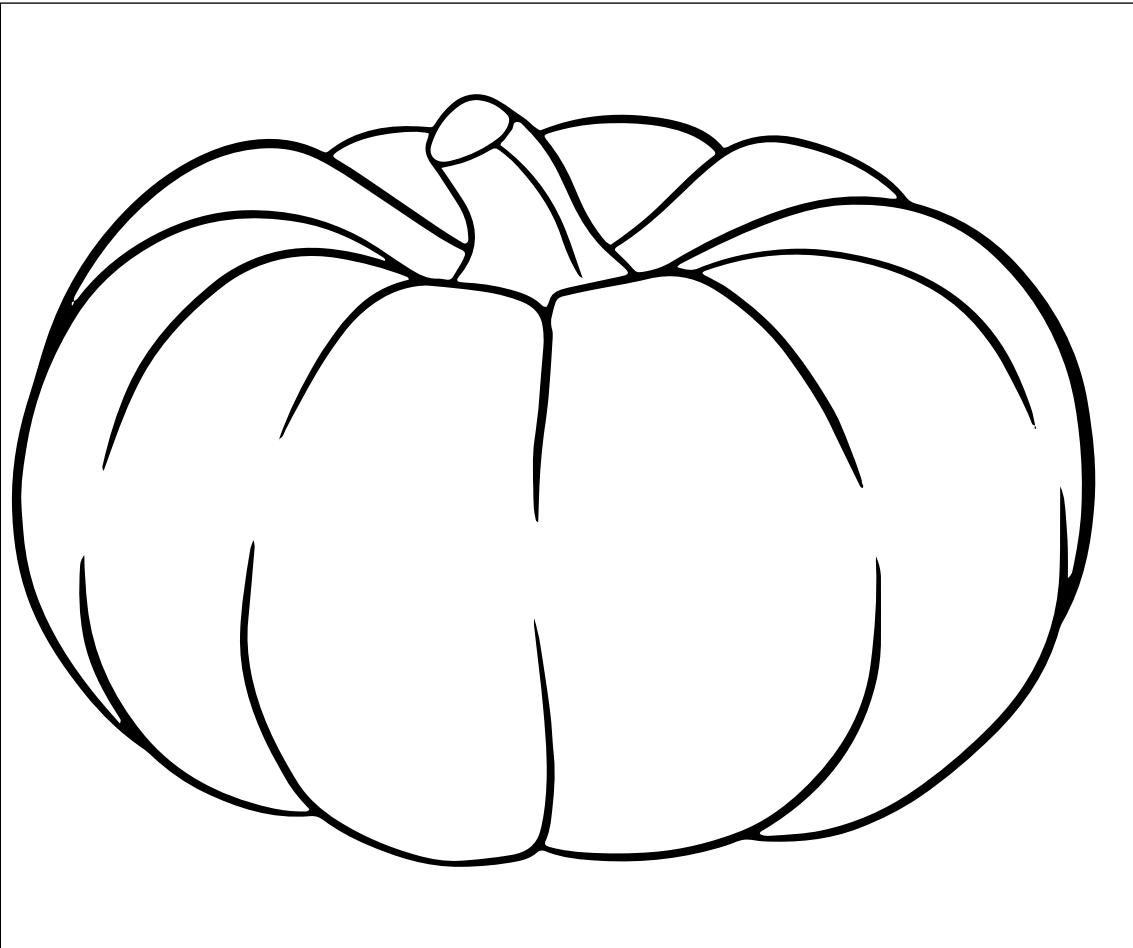
On to some lighter questions. What's the worst advice you ever heard about law school or getting a legal job?

Before law school, I worked as a legal assistant at a law firm. One of the attorneys suggested I read *One L* before I started law school. Truly terrible advice.

How about the best advice?

My criminal procedure professor told my class, "You may not always be the smartest person in the room, but you can always be the most prepared person in the room." He meant courtroom, but I think it's sound advice for any room.

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STUDENT DICTA

continued from page 3

Whether you think contemporary meaning textualism is a good idea or a bad one, you can certainly learn a lot from Professor Schauer's paper. Perhaps the biggest takeaway for me was simply how important it is that law constrains, even when no one bothers to bring a lawsuit. Rules do most of their work without a judge ever getting involved: for every traffic ticket there are thousands of maneuvers, lawful and unlawful, the police never see. That important function is worth considering when thinking of how judges should judge and lawmakers legislate.

And it is worth remembering that law school is hard for a reason. Even lawyers often find it difficult to figure out what the law is, especially in the context of constitutional law. Government officials (and other non-lawyers) desperately need lawyerly aid both to understand *what* the law requires and *why* it is important to comply. That's an important responsibility--even if it doesn't require becoming an amateur historian.

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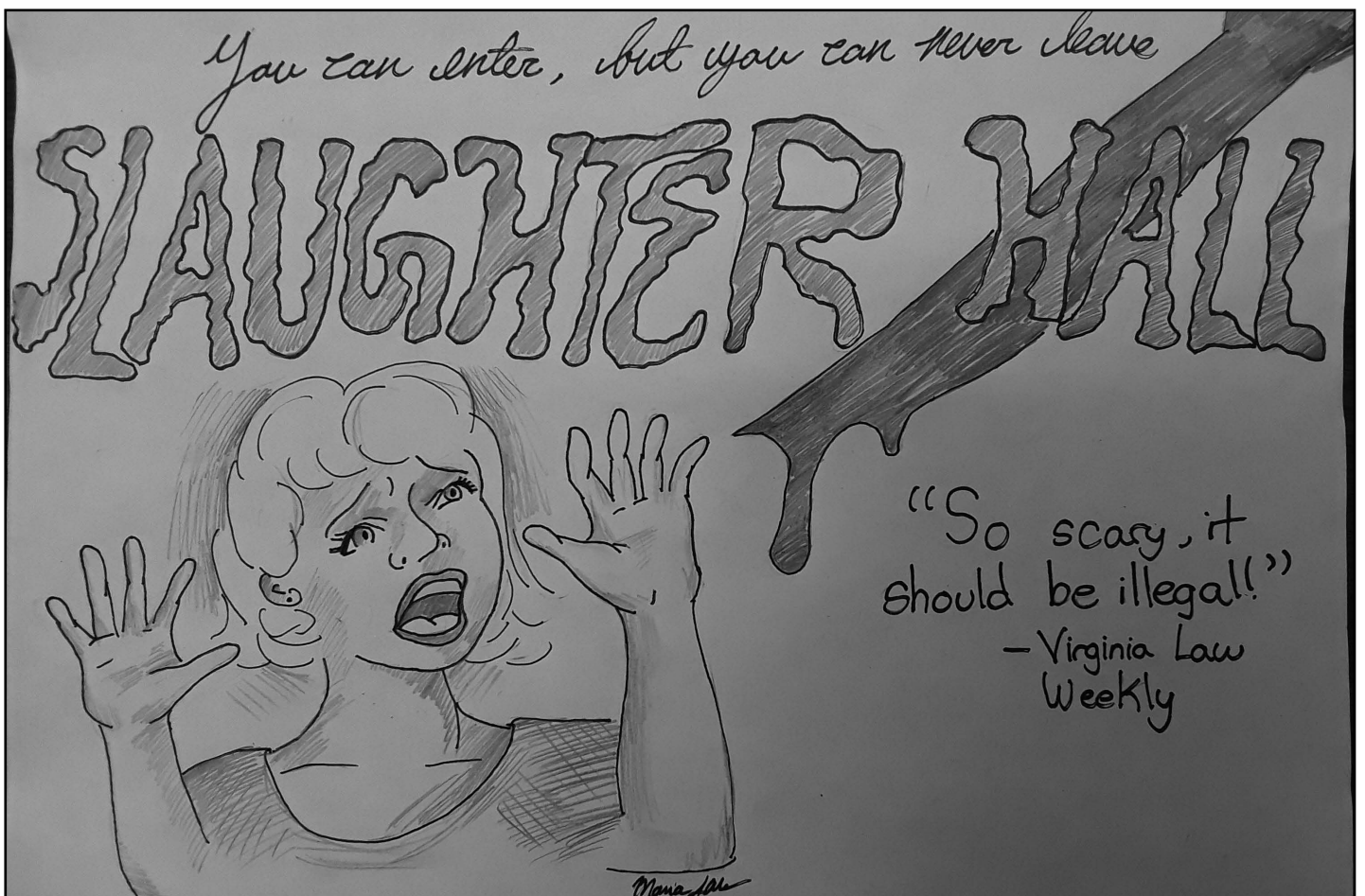
Events Highlights

Rivanna Investments x Milbank	Wednesday October 27	Food Provided	5 pm WB 104
Religion at UVA Law	Thursday October 28	Food Provided	6-8 pm Caplin Pavilion

Solution: It's an easy one, you can do it.

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SUDOKU



Cartoon courtesy of Monica Sandu '24.