



# VIRGINIA LAW WEEKLY

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

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

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## Letter to the Editor: Hate Crime on Grounds

Letters of interest to the Law School community may be sent to editor@lawweekly.org. Letters may be published at the discretion of the Editorial Board and are subject to editing for grammar, style, and clarity, but not content or viewpoint. The views expressed reflect the opinion of the writer, and not necessarily of the Law Weekly.

In the early morning last Thursday, the University Police Department notified the community that it was investigating a hate crime that took place in a prominent location on Main Grounds: A man affixed a noose to the statue of Homer that has stood on the South Lawn since 1907. Later that day, President Jim Ryan issued a statement in which he condemned the act and promised to “undertake every measure to find out who did this and to hold them accountable.” On Sunday, our Black Law Students Association circulated its own statement, underscoring the ways in which such acts “are disruptive to the very education both we and our predecessors have fought so hard to secure.”

We know that many more colleagues share these and similar concerns. A few of us began an informal conversation that leads us to wholeheartedly endorse the sentiment poignantly expressed in BLSA’s letter: that the hurt, fear, and shock experienced by many in our community, especially Black students and other people of color, must compel us to redouble our efforts to grapple with the legacies of racial violence and exclusion here at UVA and in Charlottesville. Whatever the intended message, the act derives most of its power to shock from a history of racial terror, as President Ryan noted in his message. And it is incumbent upon all of us to meaningfully confront the ways in which such racism remains present within our institution today. Having passed the five-year anniversary of the Unite the Right rally a month ago, we note that it was neither the first nor the last time students here have faced such hate.

We know that part of the process towards addressing Letter to the Editor page 2

## Panel of Experts Reviews Latest Supreme Court Term



Pictured: Professor Julia Mahoney, Scott Keller, and Professor Douglas Laycock discussing the Supreme Court term.

Nikolai Morse  
Managing Editor

This past Tuesday, a panel of legal experts discussed several high-profile decisions from the Supreme Court’s October 2021 Term. Professor Julia Mahoney, Scott Keller,<sup>1</sup> and Professor Douglas Laycock reviewed cases concerning abortion, the Second Amendment, administrative agency challenges, and religious liberty.

Professor Julia Mahoney began with a review of *Dobbs v. Jackson Women’s Health Organization*. Professor Mahoney acknowledged the case’s import, which upheld Mississippi’s ban on abortion after fifteen weeks and explicitly overturned *Roe v. Wade* and *Planned Parenthood v. Casey*. Professor Mahoney noted the complexity of the Supreme Court’s decision, which contained five opinions, each important.

Beginning with the majority, the Court argued that *Roe* ignored the text, history, and tradition of the Constitution, which Professor Mahoney characterized as a “shoutout to originalist methodologies.”<sup>2</sup> Reviewing

1 Mr. Keller is a founding partner of Lehotsky Keller and the former Solicitor General of the State of Texas.

2 Though Professor Mahoney noted that other prominent originalists, such as Professor Lawrence Solum, argued the Court’s analysis was not originalist because it failed to pinpoint the original public meaning of due pro-

cess, the Privileges and Immunities Clause, and the Equal Protection Clause. 3 Professor Mahoney listed these five factors considered by the Court: 1) the nature of the precedent’s error, 2) the quality of precedential reasoning, 3) the workability of the rules, 4) the disruptive effect on other areas of the law, and 5) the presence or absence of concrete reliance.

edent.<sup>4</sup> Professor Mahoney noted that Justice Kavanaugh’s concurrence appeared to reference Justice Rehnquist in noting that the “Constitution is neither pro-life nor pro-choice.”<sup>5</sup> Professor Mahoney said Chief Justice Roberts’s opinion, which concurred in the judgment, was primarily a statement of judicial minimalism, arguing that the Court could uphold both *Roe* and Mississippi’s abortion ban. Professor Mahoney noted that while Justices Breyer, Sotomayor, and Kagan’s dissent took aim at the majority’s “cavalier” approach to overruling precedent, they did not engage in an equal protection analysis, despite this being a strong argument in favor of *Roe*.

Turning next to *New York State Rifle & Pistol Ass’n v. Bruen*, which challenged New York’s concealed carry licensure law, Professor Mahoney suggested that New York lost not only on an ob-

4 Professor Mahoney said this was unsurprising, given Justice Thomas’s well-known belief that unenumerated rights would be better located in the Privileges and Immunities Clause.

5 Though, Professor Mahoney noted, the concurrence did not go as far as Rehnquist in saying that there could be abortion laws so restrictive that they would be unconstitutional (e.g., “no rational relation”).

Supreme Court page 2

## around north grounds



Thumbs up to BLSA publishing a statement on the hate crime reported on main grounds September 8th in the absence of word from the Law School.



Thumbs up to members of the E-Board who skip meetings on their birthday, and thumbs down to members of the E-Board who come to meetings on their birthday. ANG respects a work-life balance.



Thumbs up to 1Ls not getting loan forgiveness. 1Ls have enough good things going their way already.



Thumbs down to Westlaw’s reward system. Raffles are not the same as guaranteed gift cards.



Thumbs down to the beautiful weather. ANG’s home under the bleachers by Copely is getting overrun with people enjoying the outdoors.



Thumbs sideways to Student Affairs’ office renovation. ANG likes having more space to scurry in and swipe snacks, but the slightly better lighting burns ANG’s mostly-nocturnal eyes.



Thumbs up to college football resuming again. ANG loves having an excuse to stay at home and watch tv in a way that’s socially acceptable.



Thumbs down to college football resuming. ANG doesn’t want to be a part of whatever “fantasy” your “league” is concocting, so stop asking.



Thumbs up to all the voter registration efforts. While ANG fears overeager people with clipboards, ANG truly believes this is the year the Libertarian Party will finally adopt ANG’s platform of decriminalizing dumpster diving and shutting down animal control (aka the raccoon community’s public enemy #1).

# Refugees in Romania

Monica Sandu '24  
Co-Executive Editor



Of the seven million Ukrainians forced from their homes since the start of the war, over 1.7 million of them fled to Romania.<sup>1</sup> As of the end of August, 86,178 have chosen to stay.<sup>2</sup> Over 4,000 are unaccompanied children.<sup>3</sup> This summer, I had the opportunity to see for myself how Romania was adapting and how Ukrainians were adjusting

1 All data and statistics in this article come from the UN High Commissioner for Refugees' Situation Report, published Sept. 6, 2022: <https://reliefweb.int/report/romania/regional-refugee-response-plan-ukraine-situation-inter-agency-operational-update-romania-august-2022>.

2 Out of the 86,178 total refugees, 59,056 so far have obtained temporary protection status, which grants access to jobs, education, and healthcare. Sixty-five percent of these protected refugees are women and girls.

3 According to the UN: "Since the beginning of the humanitarian crisis, 4,218 unaccompanied children have been registered by the General Directorate of Social Assistance and Child Protection. Currently, 963 unaccompanied children remain in Romania together with a relative or a caregiver." An additional 210 Ukrainian children are in the state protection system.

## Supreme Court

continued from page 1

jective basis<sup>6</sup> but also due to the perception that the rich and powerful were able to obtain permits, while ordinary citizens struggled to do so. In a majority opinion written by Justice Thomas, the Court held that "consistent with this nation's historic tradition of firearm ownership," the Second and Fourteenth Amendments protect citizens' rights to carry firearms outside the home for self-defense. Professor Mahoney noted, however, that the opinion did not give significant guidance to lower courts in what level of scrutiny they should apply to firearm regulations going forward.

Speaking next, Scott Keller framed his discussion by noting that recent years have seen an increasing number of challenges to administrative laws. Mr. Keller argued that this has been driven by Congress passing fewer laws and administrative agencies filling that gap with administrative actions that have "sweeping policy consequences."<sup>7</sup>

6 Professor Mahoney noted that New York's law based approval on having a seemingly subjective "special need or condition," while forty-three other states' concealed carry laws were based on objective factors.

7 Mr. Keller pointed out that many litigants to administrative actions are from the states, which, along with "the rise of States' Solicitors Gen-

to life across the border.

This is a difficult article to write. I can only speak as to what I've seen, recognizing that I cannot possibly capture the full reality. Nevertheless, I felt compelled to write this article in order to humanize those numbers above. Their stories deserve to be heard.

In Bucharest, messages of support for Ukraine were a constant backdrop to the rhythm of everyday life. Posters across town featured a QR code that linked to a government website with job hunting resources. Graffiti on the sides of walls featured the Romanian and Ukrainian flags together, with a heart between them. Nowhere were these messages more prominent than in the city center, where large signs across Bucharest's famous landmark buildings proclaimed, "Solidarity" in Romanian and Ukrainian. Ukrainian refugees were even given free access to all public museums. Bucharest's central train station, Gara de Nord, was a flurry of constant activity. Lines of tents were set up throughout the terminal, with signs in English and Ukrainian pointing to information stands, food, medical services, and even temporary lodging. Amidst the sea of travelers heading to and from vacation during the peak season, translators stood out in bright yellow vests, ready to assist anyone who needed it.

On a train from the mountains, my parents met two young women who were third-year marketing students at the

Lastly, Mr. Keller pointed to the Supreme Court's acknowledgment of the "major questions doctrine" within this context as a significant development.

Mr. Keller first reviewed *NFIB v. OSHA*, which challenged OSHA's mandate for businesses with 100 employees or more to either vaccinate or test their employees for COVID-19. Mr. Keller noted that this mandate was made under an emergency temporary standard granted to OSHA by Congress, which had been used less than ten times in the last fifty years, and typically on a narrow topic, such as the presence of a chemical in particular workplaces. Mr. Keller noted that because this was done under an emergency temporary standard, it would take immediate effect for 84 million Americans overnight, without the notice and comment process that is typical for agency rulemaking. "I think it's safe to say that there really wasn't a disagreement over, 'Is this a major question?'"<sup>8</sup> Mr. Keller

eral," has made them effective litigants against the federal government.

8 Mr. Keller noted that the major questions doctrine, while only explicitly invoked by the Supreme Court in *West Virginia v. EPA*, has been a doctrine whereby the Supreme Court over the last thirty years has said that when an agency takes an action that is of "vast political and economic significance," Congress must be clear



Pictured: A banner reading "Solidarity" displayed in front of the National Art Museum of Romania, Bucharest

University of Kyiv. They told us they had made lots of friends during their stay, and that they were trying to use their time in Romania to explore the country. Both were hopeful that they would be able to return and finish their degrees. In the city of Brasov, near central Romania, Ukrainian children sat at tables in the central courtyard of our hotel, where they were housed, and practiced their Romanian lessons. Tourists and refugees stayed under the same roof, swapping good mornings and thank yous around the breakfast buffet in a mix of languages.

While at the seaside, I saw many Ukrainian families with small children playing by the shore as the parents watched over them (or, occasionally, even joined in on the fun). For this moment, they were safe. They could sit on the sand, share an ice cream cone, and enjoy as

said. The Court issued a per curiam majority opinion, which held that OSHA did not have the power to enter this emergency temporary standard. The Court said that this power was historically more limited in scope and that since this was a question of vast economic and political significance, the question was whether Congress had been clear in delegating this power, which the majority held it was not.

Mr. Keller then transitioned to *West Virginia v. EPA*, in which the Court held that the EPA does not have the power to order energy generation shifting (as opposed to ordering particular sites to process chemicals more cleanly). "The Court said...this doctrine isn't just about hyper-textualism and looking at specific terms," Mr. Keller said. Rather, the Court said that when there are equally plausible textual interpretations and a major question, then Congress must be clear. Mr. Keller noted that while the opinion "did not mention or overrule *Chevron* deference directly, that is the opposite of how *Chevron* deference works." Importantly, Mr. Keller said, while this case is one in a series of cases over forty years not following *Chevron* deference, this was the first case in which the Supreme Court explicitly invoked the major questions doctrine—though, Mr. Keller noted, whether there is in fact a major ques-

tion is a crucial issue which will be a focus of future litigation.

normal a childhood summer as they could. Everyone I spoke with was extremely friendly. Their children laughed with pure delight as they ran from the oncoming waves or built sandcastles with other families, despite the language barrier.

During my time at the beach, I met a woman from Odessa. She said she was extremely grateful for the welcome she received and the hospitality of the locals. She had left Ukraine with her elderly mother and a group of her friends only a few days after the start of the conflict. "I did not tell my mother about the war," she mentioned. "We all left quickly, but we told her we were taking her on vacation. My mother remembers the last war. I could not make her suffer again." Her mother passed away one month later. She was interred in a local cemetery, unable to be returned to her home. However, in the face of such tragedy, there was also a small comfort. "It's very similar to Odessa," the woman remarked, looking out over the vast expanse of the Black Sea. "The waves, the coast, the view. It's the same sea."

Overall, what struck me most was the sense of optimism among everyone I met. Though their worries were never fully gone, Ukrainians were making the most of their time abroad, filled with the hope that soon, they will be home again.

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Letter to the Editor  
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this shameful history must be instilling a collective commitment to opposing white supremacy. We must be vigilant against expressions of hatred, particularly those in our own backyard. Most simply, we stand with BLSA and all those fighting to make our community a more just, inclusive, and equitable space.

We regret that we were unable to circulate this statement widely before VLW's print deadline. However, we invite other colleagues to add their names to an online version of this letter, available here:

<https://bit.ly/3BaUeTN>

Naomi Cahn, Anne Coughlin, Kim Forde-Mazrui, Thomas Frampton, Craig Konnoth, Joy Milligan, Kelly Orians, and Bertrall Ross

servance from government reprisal." In this case, the Court held that a football coach, who had a tradition of kneeling and praying at the fifty-yard line and was later terminated, was protected by the First Amendment. "If you want to know what happened in this case, do not read the majority opinion; it is a pack of lies. Look at the photos in Sotomayor's dissent." Professor Laycock pointed out that the majority opinion appears to ignore the dynamics between a football coach and his players, many of whom began joining him at the fifty-yard line for post-game prayers. Professor Laycock argued that this was "a disaster" and inconsistent with the historical rule prohibiting school-sponsored religious speech or observances. Professor Laycock closed by positing that if a coach can pray at the fifty-yard line immediately following a football game, it seemed plausible that a fourth-grade teacher could pray in their classroom.

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9 Maine provides a robust tuition assistance program because approximately half of Maine's school districts do not have a public high school, according to Professor Laycock.

# nOGI: Lively Discussions, and Dedicated Students

Bryanna Lindberg '23  
Staff Editor



On Thursday evening at the Park, students gathered for nOGI, an annual event where public interest students celebrate their moral superiority over pizza (shockingly, no vegan options were offered). As the most marginalized and oppressed members of the UVA Law community, public interest students have long envisioned the creation of their safe space, a place where “f\*rm” is the real f-word, Kirkland is something you buy at Costco, and facial piercings outnumber paid internship positions. nOGI has become such a place, where students who chose not to participate in OGI can find the support they aren’t getting from the administration.

Everyone who attempted to enter the event was veb-checked at the door. One woman who accidentally mentioned she was on the *Virginia Law & Business Review* was escorted from the Park in tears. She returned shortly after with a signed letter from Professor Frampton affirming that not only did she work at a public defender’s office this summer, she worked at \*that\* sexy Southern office, and was allowed to enter. Inside the Park, students could be seen greeting each other excitedly, nodding along as their

friends and fellow soldiers in The Battle Against Injustice™ (except not actual soldiers because the military is carrying out a neo-liberal colonialist agenda) spoke eloquently about “holistic defense,” “trauma-informed lawyering,” and “f\*rm all prosecutors,” while simultaneously complaining about how poor they are.

At one point, a lively discussion was had about student organization funding. When it was discovered that a particular student organization had received less funding than other organizations, a frenzy of future public defenders, legal aid attorneys, and that one brave guy who wants to be an Assistant U.S. Attorney but still shows up to PI events began gnashing their teeth and banging their metal water bottles on the picnic table. Cries of “funding transparency is justice!” and “Dean’s discretion my ass!” echoed across the Park. One group of students began planning a protest, but heated disagreement between the peaceful protestors and the anarchist faction almost threatened to derail the project. It was only after the Co-President of the Law and Public Service Program stood on a picnic bench and shouted, “Remember who the real enemy is: the administration!” that order was restored. A plan was formed, but the specifics of the plan were critiqued so thoroughly that the organiz-

ers were temporarily paralyzed with indecision. It was decided that using cardboard banners furthered destruction of the rainforest, but foam boards purchased from Walmart both increased the pace of global warming and lined the pockets of an evil corporation. Nailing placards to wooden sticks wasn’t inclusive of the over-six-foot community, but forcing the shorter demonstrators to hold signs above their heads equaled unpaid labor. One notably tall woman pointed out that public interest students are accustomed to performing unpaid labor—RIP PILA points—but she was overruled when the shorter demonstrators decided to unionize. After several hours of discussion and negotiation, it was decided that both the short and tall demonstrators would perform a sit-in at ScoCo. When the day arrived, however, only a dedicated few participants showed up because, as every good PI student knows, it’s way easier to talk about protesting than it is to actually protest.

Nothing bonds PI students like mutual outrage, and this year’s nOGI was no exception. Sitting together, toeing the line between protest and mob violence, PI students were reminded why they do it. Why do we piss off our BigLaw friends by telling them the laptop they bought with their summer associate salary is a physical manifestation of capitalist greed?

Why do we choose to explain to Uncle Brett every Thanksgiving that we’re spending hundreds of thousands of dollars to make less money than the average electrician because immigrants are people, too? Why do we wake up in the morning and decide to carry a beige tote bag when backpacks with compartments are so much more organized? Because we care. We care so much that we passed up 3L job security, a summer in New York drinking cocktails and playing Topgolf on our firm’s dime, and the chance to flex our mid-August trip to Europe on Instagram. We care so much that sometimes, our caring looks like judging. And, well, that’s because we are judging. We watched your Instagram story; we know you went to Italy, okay? And yeah, we’re kind of bitter because we used up our PILA Grant in six weeks and had to go home to Ohio after our internship so our parents would feed us. But ultimately, we judge because we care. And if you’re lucky enough to be friends with a PI student, it means we care about you, too. But for the love of Bernie Sanders, if you bring up that pasta carbonara you ate on a balcony overlooking the Tuscan countryside one more time!

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## Barristers United Match Report September 11, 2022

Jack Brown '23  
Staff Editor



Every weekend, the brave students of UVA Law take to the fields of Charlottesville in their quest to hoist the most prestigious soccer trophy in the world: the SOCA Cup. The *Law Weekly* aims to document this legendary journey week in and week out, as our community looks to prove that UVA is more than just a softball/pickleball school.

Last season was one of the worst in Barristers United history. Only finishing second in the league, Barristers’ lowest placing in almost four years, the squad came into this week’s late-night game against Net Six and Chill looking to show that they were not going to repeat the same mistakes as last year (losing).

With the start of a new year, longtime Barristers fans will see many new faces in the squad, thanks to the inevitable passage of time. Luckily, recruiting efforts (including a new soccer skills component of the Law School’s application) have borne fruit, with an incredibly talented 1L class poised to assert themselves on the game’s biggest stage.

The game was a tight affair, with both teams anchored by impressive de-

fenses. For the Law School, starting in the net was this year’s captain and Barristers legend, Aziz Rashidzada '23, who remembers the club’s golden years better than anyone else. Right in front of him was the devious duo of Tom Schnoor '23 and Keith Stone '24. This solid defensive core allegedly has over 300 combined pickup and Sunday League games between them and helped the Barristers squad weather Net Six and Chill’s talented players.

For twenty minutes, the game was a brutal defensive contest with a series of precise fouls preventing any real forward progress for Barristers. The closest goal-scoring opportunity came from the victim of many of those fouls, Zack Pierce '24, whose header off a corner was cleared at the goal line in a dramatic moment that robbed Barristers of a deserved lead.

The game changed, however, with the first wave of substitutions. Moments after coming on, JMU transfer Stephen Foss '25 received the ball at the thirty-yard line and ripped a shot that scorched past the dumbfounded keeper. Sensing blood in the water, Barristers surged forward, with target man Nathan Sheeley '24 and the ever-speedy Drew Flanagan '24 taking several chanc-

es that were saved by a now very awake Net Six and Chill keeper.

Unfortunately, during this period of pressure, a rapid counterattack from the other team resulted in Barristers conceding in their opener. Still, the defense, bolstered by the addition of Barristers youth product/Libel star Chris Hamborsky '23 and the ever-consistent Warren Griffiths '23, held strong after this lapse.

At halftime, the score was tied 1-1, but momentum was clearly with Barristers, who had been the better side all game. Taking the stage for the first time, but not the last, Captain Aziz inspired the squad to keep the pressure up, to avoid getting mad at the ref, and to use the squad’s superior speed.

His speech resonated with the team, who came into the second half with renewed purpose and determination. The homophobic duo of Elana Murray '25 and Alayna Choo '23 dominated on the right side, while Ben Keller '25 and Seth Coven '25 showed the future was bright as the two 1Ls valiantly held the left flank.

Despite this heroism, the game remained tied 1-1 going into the last four minutes with the closest scoring chance of the half coming from the other team (with the shot brilliantly cleared

off the line by Schnoor). As the game drew to a close, Barristers was able to earn a last-second corner. Barristers historically has not been known for its goals off set pieces. BUT SUNDAY, THAT DIDN’T MATTER as Cam DiGiovanni '25 soared like a salmon and headed the game winner into the net with unreal force to end the game with barely any time left.

Another goal was put in by Foss after the other team overextended and opened themselves up to a counterattack, which resulted in a penalty. The game ended 3-1, with all of Barristers’ goals coming from 1Ls, which bodes well for the squad’s future. Join us next week as your fellow students go into battle again to raise yet another SOCA championship trophy.

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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 dl9uh@virginia.edu

The Law Weekly  
v.  
Professor Mitchell  
75 U.Va 3 (2022)

LAKE, C.J., delivers the opinion of the court, in which MORSE, J., KULKARNI, J., D'ROZARIO, J., BNINSKI, J., GRUBBE, J., and BROWN, J., join.

WALSH, J., concurs.

PETERSON, J., dissents.

**Lake, C.J. delivered the opinion of the court.**

The case before us is brought by the *Virginia Law Weekly*, a publication of great renown and extensive readership,<sup>1</sup> against University of Virginia Law School Professor Greg Mitchell. The *Law Weekly* has long been enjoined from using quotes arising from Professor Mitchell in the much beloved "Professor Quotes" roundup,<sup>2</sup> and has brought this action to demand an end to the prohibition.

The District Court of Petty Complaints dismissed this case on the grounds that it is neither impartial nor "legal" to have a decision rendered by the same body bringing the complaint. As the Editor-in-Chief of the paper bringing this case, the Chief Justice of the Court of Petty Appeals, and—most importantly—a student of Professor Mitchell, I don't see any reason why this case should not be heard. I am capable of being fair when I feel like it, and moreover, there is nothing anyone can do to stop me.

**Facts**

First, Professor Mitchell is known for his enjoyable and, as Plaintiff emphasizes, quotable instructional style. As a proud Arkansan with a PhD from

1 We even have our own Wikipedia page.

2 See below, bottom right of this page.

Berkeley, Professor Mitchell has a rich background to fuel his sometimes meandering, occasionally profane, but always entertaining stories and asides.

Second, this semester alone, Professor Mitchell is teaching courses in Civil Procedure, Law and Social Science, and Professional Responsibility. There are 143 students across these three courses who are subjected to Professor Mitchell's unique and award winning<sup>3</sup> teaching style. That is thousands of students through the years that have been restricted in their right to sub-

been concerned with the incentives our rulings create.<sup>6</sup> In ruling in favor of Plaintiff, we run the risk of disincentivizing professors from spicing up their lectures at the risk of being reported to the newspaper. An over-emphasis on quotability may also create a culture of forced fun, where less entertaining professors feel compelled to compete for a spot on the coveted list. Furthermore, Professor Mitchell is sort of low-hanging fruit. A good quote from a rarer professor is far more impressive. Pure entertainment value is thus

mutual trust. Access to the recorded lectures does not lessen Professor Mitchell's right to confidentiality any more than when a client discloses to you the massive amounts of fraud they have been committing.<sup>7</sup> As Defendant mumbled in a sort of embarrassed manner to the process server, "It's a bit more special when the class is just between us. Also, I hate talking about it with Setear every week."<sup>8</sup>

**Conclusion**

Against our best and most fervent wishes, this Court must uphold the injunction barring

tire semester (as a 3L, no less), I'd better be getting something out of it. Because of the injunction, I do: the satisfaction of knowing that I get to hear Mitchell's quotes and the students in Professor Sachs' PR class don't. Every time someone from that class gives me a pitying look and tells me how they could never take an 8:30 Friday class,<sup>11</sup> I just think about how much Mitchell content they're missing, and that thought alone is enough to garner my support for today's decision.

**Peterson, J., dissenting.**

Guys, this is some constitutional shit we are messing with here. I'm talking freedom of the press, First Amendment stuff: come on. The stuff that's so basic, you don't even learn it in Constitutional Law. Which is why I am so appalled today by the court's ruling.

I think it goes without saying that the *Law Weekly* is, despite all appearances, a part of the press. And, while the defendant's right to privacy is certainly also a constitutional right,<sup>12</sup> such a petty right, one which finds its locus in the penumbras of our Constitution, cannot rise to the same level of importance as the goal of maintaining a free and vigorous press.

Am I the only judge bound by the law left on this Court? Have petty appeals become so petty that we must now abandon the sacred directives passed down to us from the text itself? Can I really not publish quotes of Mitchell, even if I really, really want to?

The answer to this last question is, of course, in the negative. I may do as I please whether legal or not—it is simply that the law sanctions certain behavior while sanctioning other behavior.<sup>13</sup> Furthermore, as this is the Court of Petty Appeals, we judges are empowered to make the law wholecloth at will. Which is why it is so alarming that a rogue court of nine unrepresentative

11 I GET IT; you can stop.

12 *But see* Any Clarence Thomas Opinion.

13 I'm using sanction in both senses of the word here because isn't it just a funny little word?

COPA page 5

Professor Mitchell quotes from publication. If you want to know what you're missing, you'll just have to take a class with him.<sup>9</sup>

**Walsh, J., concurring.**

I agree wholeheartedly with the Court's decision and write only to elaborate on my own personal reasons for supporting the injunction barring Mitchell quotes from being published in the "Professor Quotes" section of the *Law Weekly*.<sup>10</sup>

Ultimately, while I care about the student body and its ability to enjoy the fleeting moments of entertainment that legal education offers, I care about myself more. Like the Chief Justice, I am also a student of Professor Mitchell's, and the bottom line is that if I'm going to be dragging myself out of bed and into the Law School by 8:30 a.m. every Thursday and Friday for an en-

7 I don't own the textbook, so I can't fact check this claim, unfortunately.

8 As quoted in a 2018 interview with former Chief Justice VanderMeulen '19: "The last person I want to get grief from is Professor Setear."

9 He teaches Evidence in the Spring.

10 I recognize that it is perhaps unfair for me to decide this case on the basis of my own personal feelings, but—unlike the Chief Justice—I am not fair, nor have I ever claimed to be.

*"If you want to know what you are missing, you'll just have to take a class with him."*

mit his quotes for publication, robbing countless students of the satisfaction of telling their friends, "Oh, that's a quote I sent in!"

Third, Defendant, when served with this suit, did not recall asking the *Law Weekly* to stop publishing his quotes.<sup>4</sup> Furthermore, since class recordings have been offered by the Law School, Professor Mitchell has allowed his courses to be recorded and made available to students automatically.<sup>5</sup> Plaintiff contends that whatever concerns Professor Mitchell may have had in being put on the record are greatly compromised by his easily accessible recorded lectures.

**Analysis**

First, this Court has always

3 Professor Mitchell received the UVA All-University Teaching Award in 2016.

4 "You guys actually have a rule about that?" Defendant was heard to say.

5 Something every professor is greatly encouraged to do.

not a compelling enough force to find in favor of Plaintiff.

We can discuss the second and third points in combination because it will make it easier to use the metaphor I am trying to force. I haven't learned much in PR so far (except for when I'm allowed to sleep with my clients), but there was an assigned reading on forming the attorney-client relationship I assume 2Ls in the class did. What I'm thinking is, when a prospective client shares confidential information with an attorney, the Rules of Professional Conduct restrict how that attorney can engage with the case, even if they don't end up getting hired. You can't take that information and then share it with another party unless the prospective client consents. Is this doing anything? Do you see where I'm going here? By signing up for a class with Professor Mitchell this semester, those 143 students have formed a relationship built on

6 What kind of incentive does consistently ruling against 1Ls create? We aren't allowed to use the word "hazing" for liability reasons...

## Virginia Law Weekly

### COLOPHON

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## Faculty Quotes

**C. Nicoletti:** "Most of being a legal historian is me saying, God I am so glad I didn't live then."

**B. Porter:** "It's so funny I have this strong opinion because I really don't care."

**G. Rutherglen:** "This argument is clever. . . but why make it?"

**K Kordana:** "I'm deeply in favor of book burning. The problem is they always burn the wrong books."

**M Collins:** "Of course [the slides] don't look good on Canvas; Canvas is lame."

**C. Nelson:** "If you promise not to tell the *Law Weekly*, I will tell you a story."

**J. Mahoney:** "Life estates. You may ask, is this a thing? Yes. Yes, it is a thing."

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

COPA

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tative and unelected idiots<sup>14</sup> today make a new law grounded in nothing but sheer selfishness and cowardry.

Let the School revel in Mitchell's comedy, I say. Fears of "sound[ing] like an oversexed hillbilly"<sup>15</sup> neither should nor do constitute a cognizable legal harm. This is not to say that fears of being poorly represented are baseless, just that fears of sounding like an oversexed hillbilly are not harmful, because the Court has binding precedent that such insults do not, as a matter of law, debase an individual, and instead operate more like a misunderstood compliment.<sup>16</sup>

Based on the prior reasoning, it seems preeminently clear that Mitchell's quotes should be released to the School immediately, unless we wish to risk being overturned by a future Court of Petty Appeals with more spine, an insult that this Court has not suffered in all of my years on its staff. Accordingly, I dissent.

14 Myself included.

15 Jansen VanderMeulen, *Lunch with Professor Mitchell: "It All Started with a Redhead,"* Va. L. Wkly., Sept. 11, 2018.

16 See *Lone Star Lawyers v. Cool Kids of UVA Law*, 53 U.Va. 6 (2000).

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# Yet Another Sunset Series Review

Sai Kulkarni '23  
 Production Editor

Unless you are a new KJD 1L, you probably spent this summer wrapped up in work. It was exhausting, irritating, and any number of words that are negative and end in "-ing." All of this was immediately rewarded with a return to the joys<sup>TM</sup> of law school. In between the stresses of studying, networking, or planning your party schedule for the week, we are all under a lot of pressure. By the time you get your head above water, it will likely be time to switch out the shorts and tank tops you are used to for sweaters and sweatpants. The cold, combined with the impending doom of needing to pay attention in class, is likely to ruin your mood. So why miss out on one of the few outside activities available before the cold sets in? Enter: Sunset Series.

If you've read this paper over the last two years, you've already seen a review of this event. But as a member of the Triumvirate,<sup>1</sup> I can be lazy and redo old articles. What are you going to do, sue me?<sup>2</sup> But there's a reason

1 We coined this in Issue 1 this year, and I will now be using it as often as I can.

2 If so, please email edi-

I'm writing about this again; it's because Sunset Series is a unique and fun event. With many wineries around, it's easy to think they are all the same. On Thursdays from 6 to 9 p.m., though, Sunset Series offers live music, great drinks, and the best donuts that this city has to offer.<sup>3</sup> Could I name a single one of the bands that have played there? No, but that's on me. Could I list all of the flavors of Bold Rock off the top of my head? Absolutely not, there are a lot. Could I tell you any of the food trucks that park there? Not a chance. But all of those things combine to provide the ideal ambiance for an end-of-the-week activity.<sup>4</sup>

One thing you should absolutely remember to bring is a blanket. You might be tricked into thinking that with at least ten picnic tables, there is enough space for you and your friends. You

tor@lawweekly.org for this and all petty complaints.

3 Yes, better than Dunkin' or Krispy Kreme. If you disagree, it's okay to be wrong, as long as you accept your wrongness.

4 If you have Friday classes, I feel bad for you. Not too bad, because you did it to yourself. But a little bad.

would be wrong. It's not just law students that go there; it's not Bar Review. But the mountain has so much space open to lay out a blanket (that will absolutely get wet on the grass) that you could be excused for thinking that you are in the student section of a UVA football game before halftime. Another small thing is to make sure to check your tire pressure before you go.<sup>5</sup> You don't want to be the person who rolls down the mountain on the drive up because you didn't press the gas hard enough while absentmindedly flipping through your playlist.<sup>6</sup>

Regardless of the fact that I couldn't tell you the name of all the Bold Rock flavors available, I do recommend you try out many different flavors across your trips there. It's a local brand and one of the best available. And if you are sober, the regular cider is no slouch, either. Mixed with a bite of donut, that cider hits harder than watching Appalachian State beating a Power Five team that made the mistake

5 Yes, this was out of left field. I write after midnight; all of my articles are streams of consciousness.

6 No, this didn't happen to me; how dare you accuse me of that?

of scheduling them. With a variety of desserts, the built-in food and drink services at Carter Mountain are great, and the rotation of local food trucks only pushes that to the next level. On top of all of this, there is also a fantastic country store. With artisan jugs, freshly picked apples, a number of sweet treats, and anything else you can imagine, this is a great addition to the Sunset Series experience.

One final promo is that taking a trip to Carter Mountain will allow you to experience the local community in all its beauty. I made the big mistake my 1L year, some would say for reasons out of my control,<sup>1</sup> of barely leaving the North Grounds area. Everyone talks a lot about the wineries in the area, but part of these visits isn't just the chance to dress up with your friends, it's a real opportunity to see the town we are in. Make sure to take advantage of the opportunity you have to eat, drink, and see everything Charlottesville has to offer—you will be ending up as a joyless cog in the machine either way.

1 The pandemic. Remember that?

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## Counsel's Counsel

*Counsel's Counsel is the world's preeminent advice column for law students. Written by recent UVA Law graduate, Jane Doe, J.D.*

**Subject:** "How can I improve time management as a 1L?"

**Question:**

Hi, I'm a 1L, and overall, I'm having a great time at school. I like my classes and professors. I like all of my classmates and the sense of community here. However, I am really struggling to manage my time. I'm enjoying the content of my classes but having a hard time keeping up. People's collegiality and involvement here is great, but sometimes I feel like I am being pulled in so many directions. I wouldn't say I'm drowning...more like treading. Regardless, it's early in the semester, and I'm already worried about spreading myself too thin. I am particularly worried because I want to work at a BigLaw firm after graduation, and I have heard horror stories about BigLaw work demands. How would you recommend getting on top of time management during 1L?

Best,  
 A Busy Beaver

**Answer:**

Thanks for writing in! It's good to hear you like all of your classmates; UVA must have changed its admissions policies since I graduated.

I feel for you, I really do. 1L Fall is tough. You want to have a life. If you're at UVA Law, you're probably used to academic success.

Time management is something all lawyers struggle with. But in law school, there is no such thing as "spread too thin." As a BigLaw lawyer, you will

have unreasonable demands on your time. You must acclimate to this reality if you are going to succeed. In BigLaw, if a partner needs your help, are you just going to say no?

Firms sell clients the promise of immediately-accessible labor because they can deliver. Legal education and industry incentives work together to create a School-to-BigLaw Pipeline, so to speak.

Much of the Pipeline is built on a series of initiatory rituals that are functionally hazing for firm-bound law students. Yet, these rituals also provide valuable insight into a future associate's productivity. First, applicants must take the LSAT, a test where high scores often correlate with an inhuman ability to sit in one place quietly and work. Then, 1Ls are told that their success in OGI is determined largely by their 1L grades. This helps already competitive students to compete just a little harder. Journal tryouts show firms which students are willing to work all weekend for the opportunity to do two years of free labor in exchange for some prestige. Nobody likes status seekers who undervalue their labor more than prestigious firms.

Recent graduates then must take the bar, an exam based mostly on stuff they learned two years prior. Like the LSAT, this ritual has the added benefit of keeping potential lawyers out of the field, increasing legal job security. Then, partners haze associates by assigning them more work than is humanly possible to

identify associates who are obedient. A willingness to compromise other areas of life for work is great for client retention.

Overall, these initiatory rituals push lawyers to feel like underdogs, despite being amongst the wealthiest people in the world. Lawyers without a chip on their shoulder are more likely to lateral out. This, my friend, is how the American legal industry separates the wheat from the chaff.

An alternative would be to hire more attorneys to reduce attorney workloads, but that will never happen because share partners, reasonably so, appreciate money. Until you retire, your relationship to time simply will be unreasonable.

All I have to say is that 1L Fall semester is an excellent time to get used to unreasonable time demands. Your future is likely made of them. So, spread yourself thin. Study hard. Participate in as many clubs as you can and then some. Go to social events. In the future, you might not have enough time to practice not having enough time.

*For a serious response to your serious inquiries, please access the anonymous submission form using the QR code below.*

the anonymous submission form using the QR code below.



## Beware of Lyme Disease: Five Important Tips

Charlottesville, if you have not yet realized, is hardly a concrete jungle. A charming little town nestled in the midst of forests and mountains, nature is always just around the corner. And so are ticks, as I unfortunately discovered about this time last year after coming down with Lyme Disease. I made a full recovery after a round of antibiotics, but it was a 0/10, do-not-recommend experience. Following are some tips to avoid the same fate, taken from the CDC and the Virginia Department of Health.

### 1. Ticks are closer than you think.

You do not have to be an avid hiker to be in tick territory. Forests, fields, and the like are all within easy walking distance of the Law School classrooms. Ticks, similarly to the deer and rabbits you may have seen around North Grounds, do not respect the boundaries of UVA property or city limits—the only outdoor areas I had been to the month before getting sick were the woods behind the Law School, the area around the soccer fields near the Law School, and the sidewalks connecting the Law School, Harris Teeter, and main campus.

Take extra care around forested and other shady areas, tall grass, and leaf litter. Stay in the center of trails when possible.

### 2. Ticks can be very

### small, so check closely.

Some of the ticks that are the most likely to transmit disease are the size of pinheads. After being in tick habitats, be sure to conduct a thorough check of your entire body, including the backs of the knees, neck and hair, armpits, and other body creases and hard-to-see areas.

### 3. Wear appropriate clothing and bug spray when in tick habitats.

When in tick habitats, wear bug spray containing DEET or picaridin and/or clothing treated with permethrin. Also consider wearing long pants tucked into socks. Note that ticks will be more visible on light-colored clothing. Ideally, shower and change promptly after getting back from your outdoor adventures, and keep your hiking clothes quarantined after changing until you can run them through the dryer on high heat.

### 4. Many tick-borne illnesses can be prevented by prompt removal.

Finally, some good news! With some exceptions, many tick-borne illnesses require an estimated twenty-four hours or more of the tick being attached to transmit. So, don't freak out too much if you find a tick—I only ran into problems because I did not think to check.

The CDC and the Virginia Department of Health recommend removing ticks by

## HOT BENCH



Professor Alison Gocke

Interviewed by Dana Lake

**Good morning, Professor Gocke. Thank you for taking the time to talk with us today! We're excited to have you join the faculty and expand the environmental programming here at the Law School. Let's start with where you're from and how you are liking Charlottesville so far.**

I've moved around a bit: I was originally born in San Francisco, California, then moved to Hershey, Pennsylvania, and then finally landed in Columbia, Maryland, where I lived for around ten years. So, I usually say I'm from Maryland, and in that sense, coming to Charlottesville feels like coming home. I love this area. I still have family and friends in Maryland/D.C./Virginia, and I feel like even in the short amount of time I've been in Charlottesville, I've been able to see people a lot more.

**You are new to the Law School this year, but you have been doing some pretty amazing things at Chicago and Yale's law schools since getting your J.D. in 2018 from Stanford. Can you tell us a bit about your past work?**

I knew when I went to law school that I wanted to work in the environmental law field in some way. I was an Environmental Studies minor in undergrad, and I went to Stanford specifically for their joint-degree program in law and environmental science. I also always loved academia; reading, researching, and writing make me really happy.

So I tried to choose things after law school that let me explore my substantive interests and also be in academic environments. Following a clerkship, I completed a joint fellowship between the Natural Resources Defense Council and Yale Law School. In the first year of the fellowship, I litigated cases with NRDC's climate and clean energy team, which exposed me to some of the most important legal issues in the climate change and environmental law fields. I worked on cases related to the EPA's regulation of greenhouse gas emissions from power plants and cars; the Federal Energy Regulatory Commission's reg-

ulation of natural gas pipelines; and state and local climate tort cases. I learned so much from NRDC's attorneys, some of whom have been doing this work for decades—they were there when the Clean Air Act was first being crafted.

Then, I spent the second year of my fellowship as the co-director of YLS's environmental law clinic. We partnered with environmental organizations, like NRDC, on a wide variety of environmental issues. My time at Yale made clear to me that while I love the substance of environmental law, I really enjoy being in an academic environment. I love teaching and working with students, and being in a place where intellectual curiosity and scholarly inquiry is part of your daily life. I knew that if I could make a career in legal academia, it would be a good fit for me.

So, I went to the University of Chicago to be a Bigelow Fellow, which is a fellowship that is designed to help prepare people for the academic job market. There, I taught legal research and writing to 1Ls, and also got to devote time to my own scholarship.

**As someone interested in energy work, I was stoked to see your resume added to the faculty page. You have a focus on environmental regulations—how did you find your specialty?**

I'm so excited to get to know the energy community here at UVA! I got interested in environmental issues from a very young age—my mom was always passionate about the environment, and she passed that passion along to me. In undergrad, I minored in Environmental Studies, and I became very interested in climate change. As I mentioned, I went to law school with the idea that I would work in the environmental law field in some way. The more I studied these issues, the more I realized that if we want to tackle climate change, we need to take a closer look at how we regulate our energy systems.

In the United States, much of our energy law relies on an old system of public utility regulation that was not built to address major environmental issues, like climate change. I'm also really interested in history—my scholarship tends to be a mix of legal history and environmental/energy law work—and I was fascinated by this puzzle of an old legal regime running into a distinctly modern problem. So that's how I got interested in energy law in particular: both because of its centrality to modern environmental issues, and as a particular set of legal doctrines that needs to be examined in a new light and with different interests at stake.

**In addition to your J.D., you have a Master's in Environmental and Natural Resources. How was your experience getting a dual degree? Do you recommend it?**

I really loved my joint-degree program. As I said, I went to Stanford specifically for its joint-degree program, which

not only let me study environmental science but also to specialize in clean energy. I think dual degrees can be incredibly valuable. They let you explore a field from a wider variety of perspectives; they often introduce you to subjects, scholarship, and scholarly methods that you wouldn't otherwise see in law school; and they give you access to interdisciplinary work across a university, which I find to be so important, both socially and intellectually. The one downside, as I see it, is that part of the value of the law school experience is its all-encompassing nature. You're being trained to think as a lawyer in law school, and part of the way you achieve that is by really immersing yourself in the law. It can be difficult to pull yourself out of that, or to switch between different kinds of classes, if you're in a joint-degree program. So I think these programs can be really wonderful, but you want to give some thought as to how you structure your coursework.

**You have some forthcoming articles—mind giving us a sneak peek into what you've been researching?**

I'm currently editing a piece related to the Federal Energy Regulatory Commission's authority to permit interstate natural gas pipelines under the Natural Gas Act (it will be coming out with the *Harvard Environmental Law Review* in the spring). This issue has been in the news a lot recently, as FERC's permitting of natural gas pipelines has gotten increasingly contentious, both for the potential climate change impacts of the development of natural gas infrastructure and for environmental justice concerns. My paper traces the historical origins of this authority and finds that FERC used to approach these permitting decisions very differently: it engaged in highly political and complex proceedings in which it attempted to weigh a variety of interests at stake, including the impact of pipeline development on alternative forms of energy and the social and political dimensions of pipeline permitting.

Over the last twenty years, however, FERC's permitting process has become incredibly routinized: FERC tends to approach each pipeline approval in the same way, looking for evidence that there is market "need" for the pipeline in the form of a particular contract, and zeroing out other countervailing interests. I try to tease out what might be the cause of this shift; whether FERC's current approach is consistent with its statutory delegation under the Natural Gas Act; and why, if FERC's current approach is not consistent with the statute, it would be difficult to force FERC to change its ways. At bottom, the paper emphasizes the importance of recognizing that FERC's permitting decisions are political ones—intentionally so, as Congress directed FERC in the Natural Gas Act to resolve highly political questions around the development of natural gas—and those political forces are crucial to the form and application of the legal doctrine in this space.

**You clerked on the Second Circuit, something many law students hope to do. How did you like the experience? How did it impact your professional development?**

I loved my clerkship experience. I clerked for Judge Guido Calabresi on the Second Circuit, and he has a reputation of producing a lot of clerks who go into legal academia, so I thought it would be a good fit for my interests. I had also heard that Guido is a really wonderful person, and that was important to me. Not only is Guido brilliant, but he is kind; he cares a lot about his clerks, and you feel like you're joining a family when you clerk for him. I learned so much from him, from how to think about the law and the role of a judge to how to approach legal issues and legal writing. My clerkship was important to me professionally because it gave me insight into how the law actually works in practice; this fed straight into my experience as a litigator with the NRDC. Guido is also very much an academic, so I believe my experience with him helped me hone my scholarly skills. And, maybe most importantly, working with Guido introduced me to my co-clerks and clerk family, many of whom are also academics. I have found them to be an invaluable resource as I navigate being a law professor myself.

**What course are you most looking forward to teaching?**

I'm really enjoying my Energy Law class this fall—I have such a great group of students! Next semester, I'll be teaching a Climate Change Law class, which will let me blend some of my energy law and environmental law interests, and I'll also be teaching a Public Utility Regulation seminar. I think that seminar will let me tap into my legal-history-nerd side, which will be fun. So...I'm looking forward to all of them!

**Lighting Round! Have you been to any good restaurants in Charlottesville, or have you done any good hikes?**

Good restaurants: My husband and I celebrated our one-year anniversary at C&O, which was lovely. Good hikes: The hike to Sugar Hollow is awesome! Shoutout to Professor Josh Bowers, who gave us the hiking trail.

**Do you have any pets?**

No, but I am desperate to get a dog. If anyone knows of a goldendoodle who needs a home, let me know!

**What was your favorite law school class?**

Either a Democracy & the Constitution seminar with Larry Kramer, or Michelle Anderson's Property class.

**How do you like your coffee?**

Frequently and with lots of milk.

**What have you been watching or reading?**

Reading: a short fiction collection of female writers from the nineteenth century, which I picked up from a used bookstore in Charlottesville. Watching: just finished the second season of *Only Murders in the Building* and looking for a new show.

**What is your secret talent?**

It's not a "talent" because I'm not good at it, but I am the percussionist in a wizard rock band with two of my best friends from high school.

**Favorite type of weather?**

Autumn—chilly, leaves turning brilliant colors, cool and crisp air.

**First job you ever had?**

Lifeguard.

**What are you looking forward to the most, living here in Charlottesville?**

The people and the nature.

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## Lyme Disease

continued from page 5

grasping them with tweezers as close to the skin as possible and slowly pulling upward with gentle pressure until the ticks let go. Wash and disinfect the area afterwards. Dispose of ticks by placing them in alcohol, flushing them down the toilet, wrapping them in tape, or placing them in a sealed bag.

**5. Communicate with your doctor.**

If you do get sick, let your doctor know if you have or may have been bitten by a tick in the last month or so (incubation periods may vary). Be sure to report any rashes or abnormal bug bites, but be aware that not everyone with a tick-borne illness gets (or finds) a distinctive rash. Many common tick-borne illnesses can be easily treated, but the earlier, the better to avoid long-term side effects.

(A version of this article ran September 22, 2021.)

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