



# VIRGINIA LAW WEEKLY

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

Safety on North Grounds.....2  
Your Law Weekly Horoscope.....3  
Dandelion's Three-Time Victor.....3  
Court Of Petty Appeals.....4

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## UVA Alumnae Inspire Future Public Defenders

Brooke Boyer '26  
Staff Editor

On September 14, Maggie Birkel '18, Lindsay McCaslin '09, and Erin Seagears '20 returned to the Law School for the second installment of the "Real Deal" panel series on public defense. Students joined the alumnae in the Purcell Reading Room to gain a glimpse into their lives as successful public defenders, including the highlights of their careers, the challenges of public defense, and the wisdom they have to offer.

After graduating from UVA Law, Birkel, McCaslin, and Seagears pursued their long-held passions for working in public defense. Birkel is now the Deputy Director at the Second Look Project, an organization founded to provide legal support for individuals who received extreme sentences as young people in Washington, D.C. Before becoming involved in the Second Look Project, Birkel was a George Kaiser Family Foundation Women's Justice Fellow at Still She Rises, the first public defender office that exclusively represents women.

McCaslin, on the other hand, is an Assistant Federal Public Defender in Norfolk, Virginia. Her work entails representing her clients on a variety of charges and advocating for them in suppression hearings, jury trials, and at sentencing. Prior to this position, McCaslin was a state public defender in Virginia.

Last but not least, Seagears is an Assistant Public Defender in the Juvenile Division for the Maryland Office of the Public Defender. She was set on juvenile work from the first day of her law school career. Previously, she clerked for the Honorable John Nugent on the Baltimore City Circuit

PUBLIC DEFENDERS page 2

## Miller Center Hosts Panel on the Future of Affirmative Action



Photo Credit: Miller Center.

Garrett Coleman '25  
Managing Editor

After *Students for Fair Admissions v. President and Fellows of Harvard College*,<sup>1</sup> race-conscious diversity-initiatives in undergraduate admissions were drastically curtailed. To explain the Supreme Court's prior jurisprudence and the impact of *SFFA*, the Miller Center at the University of Virginia hosted a panel discussion titled, *The evolution of affirmative action—and its uncertain future*, on Friday, September 15. The panelists, introduced by Dean Christa Davis Acampora of the College of Arts and Sciences, included Professor Kevin Gaines, senior fellow at the Miller Center; Eugene Hickok, former Unites States Under Secretary of Education; Professor Barbara Perry, Co-chair of the Presidential Oral History Program; and the law school's own Professor Kimberly Jenkins Robinson, also a senior fellow at the Miller Center.

Professor Perry, who served as moderator, began the discussion on a history of the term "affirmative action" itself. First introduced by President John F. Kenne-

<sup>1</sup> *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 143 S. Ct. 2141 (2023) (hereinafter *SFFA*).

dy in an executive order, the early mission was well-presented by a commencement address President Lyndon B. Johnson gave to Howard University in 1956. In it, President Johnson gave the metaphor of chaining someone down for decades, only to free them and demand they compete with the rest of society.

Adding to that historical context, Professor Gaines explained the response to affirmative action in the various conservative movements since the civil rights era. It was President Richard Nixon who first successfully implemented affirmative action through the Philadelphia Plan, which was an executive order that addressed the exclusion of Blacks from the skilled labor unions in Philadelphia. But Professor Gaines also implied that President Nixon's support for affirmative action waned as large swaths of the conservative base grew sour to the idea. This then takes us to the conservative revolution ushered in by President Ronald Reagan, which brought with it a distinctly *colorblind* approach to race in America. Accordingly, affirmative action becomes another form of impermissible discrimination, rather than a remedy. By the end of

the panel, Professor Gaines made an interesting observation on a footnote within Chief Justice John Roberts's majority opinion in *SFFA*, which said that the Court was not addressing admissions for the *military academies*. Professor Gaines found this interesting because the U.S. military has been "the showcase example for racial integration" and its benefits.

At this point, the conversation shifted to cover the legal landscape prior to *SFFA*. After providing background on Equal Protection for the audience, Professor Robinson dove into the two *Fisher* cases.<sup>2</sup> The unique aspect to these cases was that the school could provide clear evidence that there were no less restrictive means to achieve their goals. With the state of Texas having outlawed affirmative ac-

<sup>2</sup> *Fisher v. Univ. of Texas at Austin*, 570 U.S. 297 (2013); *Fisher v. Univ. of Texas at Austin*, 579 U.S. 365 (2016) (approving the two main admissions policies of the university, one of which was a top 10 percent plan specifically implemented to increase diversity, the other being a holistic review process that took race into consideration as one factor among many).

AFFIRMATIVE ACTION page 2

## around north grounds



Thumbs up to everyone who makes being a Screen Peeker a worthy hobby. ANG suggests everyone sustain wordy fights with their boyfriends, photo-shop their Instagram posts, and online shop for cat posters in class.



Thumbs down to people who eat Cheez-its in class, ensuring their seat neighbors won't hear a single word the entire semester.



Thumbs sideways to recovering from COVID-19. ANG enjoys being able to breathe again but hates returning to class.



Thumbs up to the Constitution Day Cupcakes. ANG loves sweet treats that honor the sacrifice for the rule of law.



Thumbs down to the Pavilion's Wi-Fi. ANG loves an excuse to delay submitting assignments but hates delays during Netflix and Chill.



Thumbs up to the 2Ls and 3Ls taking steroids. ANG looks forward to the spring semester gains.



Thumbs sideways to professors who don't speak loud enough to be heard over the sound of student affairs snacks. ANG stays hungry and hates waiting to eat until the end of class.



Thumbs down to gunners in 1L Civ Pro. Save that nonsense for Fed Courts.



Thumbs down to the new Bar Czars. ANG does not want anyone stealing ANG's thunder. Also, ANG thinks one Czar is enough. (We already have the Clif Bar Czar).



Thumbs up to the return of Torts Illustrated! ANG loves illustrating torts IRL.

# Law School Trains for an Active Attacker

Sally Levin '24  
Staff Editor



On Wednesday, September 13, the Dean's Office invited the UVA Department of Safety & Security to give a presentation to Law School faculty, staff, and students on active attacker prevention, response, and notification. The training was led by three members of the UVA Threat Assessment Team: University Police Sergeant and Victim/Witness Assistance Program Coordinator Ben Rexrode, Dr. Anna Grace Burnette, Associate Director of Threat Assessment, and Dr. Rachel Slotter, an Emergency Management Coordinator.

At the end of last semester, a group of 2Ls asked the Law School to host a yearly training in a proposal to the administration regarding safety at the Law School.<sup>1</sup> The proposal also requested

that the Law School host a listening session on campus safety issues, the creation of a campus safety committee with faculty and students, and a concrete emergency plan for students and faculty. It was signed by nearly ninety students and endorsed by the Student Bar Association. In addition to hosting this week's training session, Senior Associate Dean Stephen Parr will be meeting with the students who submitted the proposal next week. Annie Somerville '24, one of the students involved in writing the proposal, said she "looks forward to having the opportunity to voice her concerns and collaborate with the Law School administration on campus safety issues."

Before beginning the training, Rexrode acknowledged the difficulty of the topic, especially given the shooting on Main Grounds last November.<sup>2</sup> He ex-

plained that the shooting has had a ripple effect across grounds. While the Threat Assessment Team has hosted active attacker trainings across Grounds for years, more departments and groups have requested trainings since last fall. Rexrode stated that "the purpose of the presentation is to promote education, not to create fear or paranoia."

Following the 2007 mass shooting at Virginia Tech, Virginia was one of the first states to pass legislation requiring threat assessment procedures in institutions of higher education.<sup>3</sup> The mission of the Threat Assessment Team is to identify, assess, and evaluate potential threats of violence in both academic and medical settings. Burnette explained that the Threat Assessment Team is "working in the grey" because they

are gathering information and assessing the credibility of threats before law enforcement is involved.

Next, Sergeant Rexrode discussed responding to active attacker situations. He played the Active Attack Prevention and Response Video, which all students were required to watch via SIS before the start of the academic year.<sup>4</sup> Rexrode stressed that every building on grounds will have a different response plan, and that we all must do what is best for us as individuals during a violent attack.

Diddy Morris, the Special Assistant to the Dean, spoke briefly about safety precautions specific to the Law School building. Both she and the other presenters encouraged attendees to identify the emergency exits in different areas of the Law School. She noted that certain classrooms in Brown Hall have interior exits that lead down to the exit near Caplin Auditorium. Class-

rooms in Slaughter Hall also have connected interior exits in the back of each room. Morris warned that while it might be tempting to evacuate to Spies or Purcell Garden, both should be avoided during an emergency because they are fully enclosed. All classroom doors are also equipped with thumb latches to manually lock the doors from inside.

The presentation also covered the different types of alerts sent via the UVA safety notification system. There are three different types of alerts: UVA Alerts, Community Alerts, and General Communications. A UVA Alert is an emergency notification for situations involving an imminent threat to health or safety. This includes warnings for severe weather, gas leaks, fires, and armed intruders. Community Alerts are required by the Cleary Act and are released by the UVA Police Department when certain crimes are reported on or near University property. General Communications provide

SAFETY page 6

<sup>1</sup> Proposal to Increase Campus Safety at UVA Law (April 19, 2023), [https://docs.google.com/document/d/1-BC4CjyVAbvRxVWkdQLzUT-MLsj\\_KQQ-3M\\_ZzEQ8xic/edit](https://docs.google.com/document/d/1-BC4CjyVAbvRxVWkdQLzUT-MLsj_KQQ-3M_ZzEQ8xic/edit).

<sup>2</sup> Justen Jouvenal & Lisa Grace Lednicer, *Timeline: How the U-Va. Shooting Unfolded*, Wash. Post (Dec. 26, 2022), <https://www.washingtonpost.com/dc-md-va/2022/12/26/uva-shooting-timeline-what-happened/>.

<sup>3</sup> Susan Svrluga & Laura Vozzella, *Virginia bills aim to refine how colleges assess threats after U-Va. shooting*, Wash. Post (Feb. 17, 2023), <https://www.washingtonpost.com/education/2023/02/17/virginia-college-threat-assessment-uva-shooting/>.

<sup>4</sup> Active Attack Prevention and Response Video, <https://uvapolice.virginia.edu/active-attack-prevention-and-response-video>.

## PUBLIC DEFENDERS

continued from page 1

Court. While each of these women followed different career paths, their experiences and advice share several similarities.

Being a public defender requires more than the skills one learns in law school. As McCaslin and Seagars expressed, there is a lot of social work on the side because they regularly work with children and families. Emotional intelligence, or the ability to understand others' emotions and manage one's own, is also a critical skill for those working in public defense. The work undoubtedly bears an emotional toll, but each of the women contend that it is important to remain strong and rational while representing their clients.

The reality of being a public defender can be frustrating due to what McCaslin called the "backward" nature of the justice system. For example, Birkel stated that it is challenging to interact with people who "do not treat her clients like humans." Many of her clients have been incarcerated for years, and it is disheartening for her to see that the law is not always applied in a way



*Pictured (left to right): Maggie Birkel '18, Erin Seagers '20, and Lindsay McCaslin '09. Photo Credit: Brooke Boyer '26*

that is balanced and just. Seagars expanded on this point, expressing that the judge she gets on a particular case is a matter of pure luck. McCaslin agreed that it can take extensive effort to show a judge that a "kid is just a kid" at the end of the day. Because of this, leaving the fate of their cases in the hands of a judge can feel hopeless at times.

Despite the challenges and frustrations that come with working in public defense, Birkel, McCaslin, and Seagars unanimously agreed that it is an incredibly rewarding and fulfilling career path. It is an opportunity to make an impact in the lives of individuals and in the justice system itself. According to Birkel, working on cases for one to two years has resulted in the creation of deep relationships with her clients: "I know about the worst times of their lives and the best

times of their lives." She additionally spoke of the sense of community that has developed among her coworkers because they possess the same core values and work together toward a common goal. McCaslin has gratefully witnessed progress spurred by public defense work, including the passage of major legislation expanding children's rights. Finally, Seagars answered without hesitation that advocating and fighting for her clients is the best part of her job.

For students interested in public defense, the alumnae gave advice on how to best prepare for and ultimately secure a job after graduation. Seagars and McCaslin encouraged students to take advantage of any opportunity to pursue public defense work during summers, winter breaks, and other extra free time because it is essential to show employers your dedication to that line

of work. Only having experience in Big Law, therefore, will not be particularly convincing on a resume. McCaslin recommends taking advantage of the clinical experience UVA Law has to offer, such as the Criminal Defense Clinic and the Child Advocacy Clinic, in order to start building crucial skills early.

Birkel noted that "cold emailing" alumni and others in the UVA support system is a highly useful tool for developing connections and learning from those who already work in the field. Although it can be nerve-racking to send an email to a stranger, those involved in public defense are thrilled to help other UVA Law students become involved in it as well.

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## AFFIRMATIVE ACTION

continued from page 1

tion several years earlier, the state universities were consistently unable to meet their diversity goals solely through race-neutral means. This allowed the school to provide "tangible evidence" that the diversity goals necessitated some consideration of race in their holistic review pathway, supporting their conclusion that the plan was narrowly tailored. But, while this iteration of affirmative action survived equal protection scrutiny, Professor Robinson said that the Court's opinion was a "ratcheting up of the legal standard" that schools would have to meet in the future when compared to the *Grutter* standard.<sup>3</sup>

Professor Robinson also touched on Justice Sonia Sotomayor's dissent in *SFFA*, which she called "a beautiful opinion that really challenges the majority's description of what the Constitution means." That majority reading of the Fourteenth Amendment, tying back to Professor Gaines's com-

<sup>3</sup> *Grutter v. Bollinger*, 539 U.S. 306 (2003).

AFFIRMATIVE ACTION page 6

# A Dandelion Triple-Crown: James Hornsby '24, Dance Icon

Ethan Brown '25  
Features Editor



A few weeks ago, the class of 2026 participated in Dandelion, a perennial fixture of life at UVA Law that brings together 1Ls, 2Ls, and 3Ls for a rousing display of songs, dances, and skits from each 1L and LLM section. Every year, there are at least thirty students at the Law School who can claim the spoils of Dandelion victory—this year, it was the lucky members of Section H. But since Dandelion only invites participation from new 1Ls each September, there is no way to “win” Dandelion more than once. Or at least, so I thought.

It turns out there is one person at the Law School who might have a credible claim to winning Dandelion every year—first as a 1L, and then twice as a peer advisor whose respective 1L sections went on to claim the Dandelion trophy for themselves. James Hornsby '24 was a part of the class of 2024's Section C, which won Dandelion in fall 2021. He then was a peer advisor for the class of 2025's Section H, as well as the class of 2026's

Section H,<sup>1</sup> both of which won Dandelion in their respective years. Since peer advisors are often responsible for helping to guide their sections through Dandelion and provide choreographic insight, Hornsby will have left his mark on the competition when he graduates in May.

What, if anything, has been Hornsby's unifying influence on the 2021, 2022, and 2023 competitions? And what can that influence tell us about success for future 1L cohorts? Join me as we walk down memory lane for a retrospective look at the Dandelions of years past, with commentary from Hornsby on each of his victories.

## 2021's Competition

Hornsby's first Dandelion win came through his 1L section's impeccable performance of “Juice,” one of Lizzo's breakout songs. His section boldly disregarded the tradition that sections

<sup>1</sup> Executive Editor Andrew Allard '25 and myself both were in Section H last year, so clearly there is a culture of Dandelion winningness at the *Law Weekly*. As if we needed another reason for why our publication is so elite.



Pictured: Section H Cinches Gold at This Year's Dandelion.  
Photo Credit: James Hornsby '24

pick a song that starts with the same letter as their section, instead opting to subtly style their performance as “juice” as an homage to their section's letter.

The performance itself is a classic, with drops, twirls, and sashays perfectly timed to Lizzo's clarion call to “blame it on [her] juice.” But looking back it's hard not to credit Section C's victory at least partially to Hornsby's display in the final seconds of the performance, in which he ceremoniously drenched himself in half a gallon of grapefruit juice from the Barracks Road Harris Teeter as his sectionmates crowded around him. It made for a stunning show-stopper, with just the right amount of theatrical camp to cinch that year's competition.

Hornsby weighed in with

his thoughts on his first win two years ago. “This was the first time Dandelion occurred since the beginning of Covid, and we knew we needed to come up with a stunt to make it memorable. You can clearly see that there wasn't much guidance as the song didn't match up with any sort of ‘C’ theming, the costumes were nothing but colorful exercise clothes, and the dance was honestly a glorified Zumba dance. Nevertheless, that year all we needed was some grapefruit juice to secure the win. Still, I hesitate to recommend to future 1L sections that they should use grapefruit juice, as it burns the eyes and, unsurprisingly, it isn't much fun playing softball covered in juice.”

## 2022's Competition

Hornsby returned to Park

6 in fall 2022 not as a 1L, but as a peer advisor for the class of 2025's Section H. And he brought a desire to continue his winning streak to the section as it prepped for Dandelion that year. Your humble author, along with John Henry Vasant '25, was one of Section H's softball captains last year tasked with choreographing the section's routine. Hornsby's influence was huge. We knew two things from his performance a year earlier. First, victory would come from taking things just a *little* too far; and second, having people get drenched in some sort of liquid at the end of the skit—grapefruit juice or not—was a game-changer.

And so our section gave its all with a rendition of Britney Spears's “[Hit Me] Baby One More Time.” Inspired by Hornsby's juice stunt, our section shot-gunned non-alcoholic<sup>2</sup> beer during the final chorus and splattered it across ourselves

<sup>2</sup> We respected the institution of Dandelion so much that we didn't even smuggle alcohol into the event. You're welcome, NGSL.

TRIPLE-CROWN page 6

# Horoscope: Which Law School Event Are You?

Julia D'Rozario '24  
New Media Editor



Welcome back to the Law School Astrology series. Last time, you found out which niche area of the Law School you were, based on your zodiac sign.<sup>1</sup> If you're wondering why it's taken me a full year to write Part Two, it's because I was mobbed by angry Sagittarians after Part One, and it's taken me this long to build the courage to write again. With that said, keep reading for another woefully uninformed and deeply biased take: Which Law School event are you, based on your zodiac sign?

## Gemini (May 21–June 21)

**Feb Club.** Geminis are the party animals of the Zodiac, and Feb Club is the biggest (well, longest) party on the Law School calendar. Like Feb Club, you love to socialize, plan events, and are incredibly fun to be around. Also like Feb Club, you're a

<sup>1</sup> D'Rozario, Julia, “Which Niche Area of the Law School Are You, Based on Your Zodiac Sign,” <https://www.law-weekly.org/col/2022/9/21/which-niche-area-of-the-law-school-are-you-based-on-your-zodiac-sign>.

mild drain on unsuspecting introverts in your radius.

## Cancer (June 22 – July 22)

**Dandelion.** Dandelion is a 1L rite of passage. Against your natural inhibitions (and lack of dance skills), you join with your new sectionmates in choreographing and performing a dance in front of what seems like a million strangers. Yes, it's awkward at first, but you do it in the pursuit of bonding, and you get closer to your section in the process. Cancer, your amiability is your greatest strength. Like Dandelion, your warmth and friendliness mean that you tend to be the first to break the ice, put people at ease, and make friends. And people love you for it!

## Leo (July 23 – August 22)

**Bar Review.** I've written before about Leos being hit-or-miss. Half the Leos I know are warm, funny, outgoing, wonderful people. The other half are basically the evil butler in *The Aristocats* who poisoned the milk and tried to send the kittens to Timbuktu—which is to say, villainous. There's no in between. Bar Review is similarly hit-or-miss. It's either a lovely

time with friends or the type of night out that leaves you weary, fatigued, and full of regret for the rest of the weekend. Again, no in between.

## Virgo (August 23 – September 22)

**OGI.** I recognize your innate goodness, your personal drive and meticulous organization, and I know that your positive qualities are likely to improve my life in the long run, just as OGI did. Having said that, both an alarming number of Virgos and an alarming number of OGI screeners have made me cry. And I'm still emotionally scarred years later.<sup>2</sup>

## Libra (September 23 – October 22)

**Foxfield.** At every elementary school, there was inevitably a kid who had a crush on Spirit the horse. Think back to your elementary school years, and remember that individual. Now pull up their Facebook page. They're a Libra, aren't they?

## Scorpio (October 23 – November 21)

**Graduation.** The reason

<sup>2</sup> See *id.* (outlining my history of romantic anguish vis-à-vis Virgos).

we're all here. Fulfilling. Incredible. Radiant. Joyful. Entirely unbiased.

## Sagittarius (November 22 – December 21)

**Journal Tryouts.** At the risk of being mobbed again, I am doubling down. Like you all, journal tryouts are harrowing. Unacceptable. Taxing. Unnecessarily intense. Downright spooky. No further comments at this time.<sup>3</sup>

## Capricorn (December 22 – January 19)

**The Library Reception.** The Library Reception is so underrated. Live music, snacks, and wine in the library? Yes please! My only gripe is that I didn't even know this event existed until this year. Capricorn, like the bi-annual Library Reception, you're a hidden gem. Capricorns get a bad rap for being “boring,” but I don't think you're boring at all. You're just low-key—once people

<sup>3</sup> Disclaimer: If you read my last Astrology article you'll know that I have one singular Sagittarius mortal enemy. I actually love every other Sagittarius I know. But the *Law Weekly* lets me publish my astrology opinions even when they're unreasonable.

get to know you, they see how great you are.

## Aquarius (January 20 – February 18)

**The Libel Show.** I've never known an Aquarius who wasn't incredible, witty, creative, and hilarious. And sort of weird. But in a good way. Like the *Libel Show*, you're eccentric and fun to be around. And, to repeat, sort of weird. In a good way.

## Pisces (February 19 – March 20)

**Barrister's Ball.** Pisceans are known for being the most sentimental of the zodiac. Your friend who gets misty-eyed after one drink and starts telling you that they will find you and befriend you and hang out with you in every lifetime? A Pisces. Well, Barrister's Ball brings out the Pisces in us all. As the one event of the year that almost everyone attends, it's one of the few events that overcomes the difficulty of our busy law schedules, putting you and all of your friends in the same room at the same time. It's kind of beautiful if you think about it. Kind of makes you misty-eyed. Kind

HOROSCOPE page 6

# 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 [editor@lawweekly.org](mailto:editor@lawweekly.org)

*Virginia Law Review*  
v.  
*Virginia Journal of International Law*  
76 U.Va 3 (2023)

ALLARD, J., delivered the opinion of the court. MORSE, C.J. concurred in part. SANDU, J. concurred in part and dissented in part. COLEMAN, J. joined by ALLEN, J. dissented..

### Background

This case is brought before us on appeal from the District Court of Petty Complaints. At issue is an age-old conflict between the Law School's second and third most prestigious journals.<sup>1</sup> Defendant-appellant the *Virginia Law Review* ("VLR") appeals the lower court's denial of its motion to dismiss. In turn, plaintiff-appellee the *Virginia Journal of International Law* ("VJIL") requests on cross-appeal that the Court review the denial of its motion for summary judgment.

In its complaint to the District Court of Petty Complaints, VJIL alleges that VLR has engaged in a pattern of discrimination and a host of dignitary violations against its members. These alleged violations include, most prominently, the labeling of a water fountain as "VLR Only" and a rule that members of VJIL enter the parties' shared office space through "the scary door." VJIL sought declaratory and injunctive relief requir-

<sup>1</sup> The Court will refrain from identifying which party is second and which is third, but we note the self-evident fact that the *Law Weekly* is first.

ing VLR to refrain from excluding VJIL members from these amenities. Urging the court to enjoin this "invidious discrimination," VJIL cites several persuasive authorities, including *Brown v. Board of Education*, the Equal Protection Clause of the Fourteenth Amendment, Title III of the Civil Rights Act, and the dormant collegiality doctrine.

VLR filed a motion to dis-

person, and thus outside of the court's jurisdiction. At oral argument, VLR's advocate, a reanimated Alexander Porter Morse, adeptly explained that VJIL's complaint is better suited for an international human rights tribunal.

Secondly, VLR argues that even if the court has jurisdiction, VJIL has failed to state a claim upon which relief can be granted. While

that goal. See *Gay Section H Law Weekly Staff v. Lake*, 75 U.Va 16 (2023) (Lake, C.J., concurring) ("1Ls may have rights when it is funnier for them to win than it is for them to lose").

Here, we can think of no outcome funnier than acknowledging VLR's cruelty while refusing to grant VJIL relief. Indeed, willful blindness to cruelty finds support in the recent decisions

of the Law School's entertainment, VJIL's complaint must be dismissed unless they can produce persuasive evidence that it would be funnier for their case to proceed.

### II.

Having decided that the lower court must reconsider VLR's motion to dismiss, we decline to decide whether VJIL was entitled to summary judgment. However, for no other purpose than to add insult to injury, we note that we totally would have granted this motion had we reached the issue.

The case is thus remanded to the District Court of Petty Complaints with instructions to issue an order consistent with this opinion.

It is so ordered.

*Morse, J., concurring in part.*

I write separately to note that while I agree with the majority's application of the canon of uncomical avoidance, I believe that it fails to identify what would be both the funniest and pettiest outcome to this dispute. As anyone who has been into the new VJIL/VLR office knows, the crown jewel of

COPA page 5

*"It is the well-established practice of this Court to avoid dispositions of a case that are based on legal reasoning rather than humor..."*

miss based on several theories. They have appealed on two of those: that the District Court of Petty Complaints lacked jurisdiction to hear the case and, in the alternative, that VJIL's complaint failed to state a claim upon which relief could be granted. While we reject all of VLR's arguments, we believe that the trial court should have granted its motion to dismiss. For the reasons explained below, we think that it would be funnier and more entertaining for everyone else at the Law School if both parties just duked it out.

### I.

VLR first contends that VJIL's complaint falls outside of the jurisdiction of the District Court of Petty Complaints. VLR argues that the offenses alleged by VJIL are far from petty, and are, in fact, heinous offenses to the

conceding that *Brown* and other binding legal authority forbid the blatant discrimination in which its members are engaged, VLR nonetheless asks the court to "[j]ust be cool and apply separate but equal—for old time's sake." VLR also contests VJIL's reliance on the dormant collegiality doctrine, arguing that the only authority cited in support of that doctrine is dicta. See *Hungry People v. Law School Student Orgs*, 75 U.Va 12 (2022) (Pazhwak, J., concurring).

While we find VLR's arguments to be legally sound, we reject them under the canon of uncomical avoidance. It is the well-established practice of this Court to avoid dispositions of a case that are based on legal reasoning rather than humor, and to give Justices wide latitude in pursuit of

of the U.S. Supreme Court. See e.g., *Jones v. Hendrix*, 599 U.S. 465, 492 (2023) ("[T]here is nothing fundamentally surprising about Congress declining to make [the imprisonment of legally innocent persons] remediable in a second or successive collateral attack.") Furthermore, our decision today is supported by a legal fact which requires no elaboration: Nerd fights are funny. To allow VJIL to proceed with its case would likely foreclose the opportunity for a nerd fight of the highest caliber. In the interest


## Faculty Quotes

<b>M. Gilbert:</b> "I don't know how people teach 1Ls. When you could call them, there is a fifty percent chance they will die."	<b>C. Nicoletti:</b> "He sort of... swashbuckles...I don't know why that word came to mind... he sort of swashbuckles his way through history."
<b>B. Sachs:</b> *Sigh* "Elon...is it still called Tweets?"	<b>J. Jeffries:</b> "All the great unwashed masses out there are not experienced."
<b>N. Cahn:</b> "I was going to play We Are Family at the start of class today, but then I didn't because today is 9/11."	<b>J. Harrison:</b> "Sometimes when I ask students for information they learned earlier in law school, it's like sending a FOIA to the CIA: Can Neither Confirm Nor Deny."
<b>R. Schragger &amp; M. Schwartzman:</b> "We need someone to argue against the idea of private property in class today."	<i>Heard a good professor quote? Email us at <a href="mailto:editor@lawweekly.org">editor@lawweekly.org</a></i>
<b>J. Mahoney:</b> "Of course there's fights between Pfizer and Moderna. That's like a fight between Predator and... whoever."	

## Counsel's Counsel

The world's preeminent advice column for law students.





## Virginia Law Weekly

### COLOPHON

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**EDITORIAL POLICY:** The *Virginia Law Weekly* publishes letters and columns of interest to the Law School and the legal community at large. Views expressed in such submissions are those of the author(s) and not necessarily those of the *Law Weekly* or the Editorial Board. Letters from organizations must bear the name, signature, and title of the person authorizing the submission. All letters and columns must either be submitted in hardcopy bearing a handwritten signature along with an electronic version, or be mailed from the author's e-mail account. Submissions must be received by 12 p.m. Sunday before publication and must be in accordance with the submission guidelines. Letters and/or columns over 1200 words may not be accepted. The Editorial Board reserves the right to edit all submissions for length, grammar, and clarity. Although every effort is made to publish all materials meeting our guidelines, we regret that not all submissions received can be published.

COPA

continued from page 4 this office—nay, of the Law School—is the pool table. It is a welcome respite from the cold calls, cite checks, and general hurly-burly of the Law School. The only thing that could improve it would be regular access to fine scotch and a selection of cigars which would make Churchill blush. Because it would be funnier<sup>2</sup> to turn the VJIL/VLR office into an upscale version of Miller’s, but I agree with the rule laid down in this case, I concur in part.

*Sandu, J., concurring in part, dissenting in part.*

The facts of this case have left me speechless, as has my (formerly) esteemed colleague’s lackadaisical approach to legal analysis. I write a separate opinion speaking for all VJIL members, nay, all law students, who have never been to their journal’s office.<sup>3</sup> Whether or not I knew about the layout of the VLR/VJIL office is irrelevant to my ability to

<sup>2</sup> And serve my own purposes.

<sup>3</sup> To be honest, I’m still not entirely sure where the office is, but I’m sure I’ll find it eventually.

express an opinion on the matter. It is not merely a matter of practicality—it is a matter of principle. And we are nothing if not a court of principles. Petty principles, but principles, nonetheless.

First, some may argue that Justices on this Court who are a member of the journals party to this litigation ought to recuse themselves. But this is not a consideration which our Court can entertain, else we would cease to function altogether. Many Justices on this Court belong to at least one of the two journals. Furthermore, this Court’s jurisdiction is over the conflicts and concerns of law students, and what are we if not law students? Must we recuse ourselves entirely from every dispute which reaches our bench? Must every judge in America recuse themselves from issues which impact the lives of Americans? This is clearly an untenable position.

I must also express my concern for Justice Allard’s statement, “Nerd fights are funny,” becoming binding precedent upon this court. This Court’s jurisdiction is over what is funny, as Justice Allard’s opinion correctly identifies. However, it is a generally accepted

truth that 1Ls are nerds. If nerd fights are funny, then 1Ls would be permitted to fight amongst themselves on both sides of litigation. In such a scenario, we would be forced to choose a 1L victor in violation of this Court’s most sacred provision: 1Ls always lose. While there is an addendum that they may win if it is funnier, a “nerd fight” consisting solely of 1Ls will not allow the court the option to decide if finding in favor of a 1L is funnier, because a 1L will always have to win. This cannot happen. However, following the outcome of the present case, any case solely between 1Ls must necessarily be dismissed.

As to the case at hand, whether a student actually uses their journal’s office (or if their preclusion from the facilities is merely theoretical) is irrelevant when faced with VLR’s intentional infliction of emotional distress. Law students are inherently competitive beings with chronic imposter syndrome. Every day, VJIL members are forced to live with the guilt, agonizing over whether memorizing the Bluebook before orientation would have granted them access to that sweet, sweet VLR nectar. Denying

VJIL relief now is akin to waiting until the middle of summer to let them know that they didn’t make it onto VLR. This is a cruel and unusual punishment which must not be inflicted.

While I concur with Justice Allard’s finding that VLR’s cruelty cannot be allowed to stand, I disagree with the outcome that VJIL cannot be granted relief. Not only is the behavior in which VLR is engaging plainly unconstitutional, it is also an affront to me personally *during my birthday month*.<sup>4</sup> For this reason alone, the Court ought to find in favor of VJIL.

*Coleman, J., dissenting, joined by Allen, J.*

It is a thin line upon which VLR treads. Its appeal simultaneously argues that its behavior with respect to VJIL was so heinous as to put the controversy outside our jurisdiction, and that it gave rise to no claim upon which relief could be

<sup>4</sup> See <https://www.horoscope.com/zodiac-signs/virgo> (“Virgo is notorious for being type A but that’s only because this sign knows that everything good can be made great, and that everything great can be perfect.”) Justice Allard is also a Virgo, so he should know better.

granted. Because of their formidable intellects, I find their oxymoronic position consistent, and I disrespectfully dissent in full.

But the majority does not disagree with our brave Law Review students on the merits—as if such a thing were even possible. Instead, they rely on the novel theory of uncomical avoidance, best explained by Chief Justice, emerita, Lake, in *Gay Section H*, 75 U.Va at 5 (“There is nothing more vital to the exercise of justice than committing to the bit.”)

This doctrine is totally inapplicable beyond 1L disputes or the specific facts of that case. Chief Justice Lake was under duress when she wrote that opinion, having been berated by her staff for routinely confusing the two gay writers. The Law Weekly office was positively mutinous. So, in her darkest hour on this Court, she wrote an overly broad concurrence that is today being exploited by those same mutinous editors. I refuse to condone a shake down of this sort, and therefore refuse to apply the doctrine of uncomical avoidance beyond its original context. I would rule for VLR, as any sane Justice would.

## 5 Signs Your Professor is a Ken

Andrew Allard '25  
Executive Editor



If you took the initiative to enjoy the summer blockbuster experience that was *Barbie*, then you are no doubt wise beyond your years and will excel during this semester at law school and beyond. But, if you are like me, you may have nonetheless left the theater feeling bitter and disheartened. To see the Barbieland Supreme Court and to know just how far we are from that utopian tribunal was almost too much to bear. Could I return to the study of law with the burden of the patriarchy crushing me like a ConLaw textbook?

If this was weighing on me, I thought, then it was no doubt a daunting concern for the incoming class of 1Ls. Thankfully, as you will quickly learn, your 2L and 3L classmates are fountains of knowledge and advice. And the *Law Weekly*, among its many prestigious functions, serves as an archive for the very best of that advice. Think of it as a sort of Library of Alexandria for surviving three years at UVA Law.

Sadly, freeing you of your

Barbie-induced yearning for a better world is beyond the earthly powers of even our most talented writers. Here, unlike in Barbieland, speaking truth to power is *not* a surefire way to save your friends and overthrow Kendom. But much like in Barbieland, the Kens of our world tend to make themselves known. So, without further ado, I give you your most important toolkit for surviving law school: How to identify Professor Ken.<sup>1</sup>

**#1: Your professor always cold calls you at the worst possible moment.**

Ah, cold calls. A 1L’s greatest fear. Well, at least for the first week or so. After a few lectures, the eerie veil that shrouds cold calls in mystery tends to fade away. But even a seasoned law student can get caught off guard by an awkwardly timed cold call. This is a favorite of Professor Ken, who, much like Beach Ken, has horrible timing. Right when you’re daydreaming of important things, like your nightly dance party plans, that’s when you’ll get asked

<sup>1</sup> Do not be mistaken: This is **\*\*not\*\*** a reference to Professor Abraham.



*Pictured: Portrait of James E. Coleman, Jr. '51 (aka 'Horse Guy'). Photo Credit: Andrew Allard '25*

about poor Mrs. Palsgraf. This Ken trait is especially dangerous, so be on the lookout. Its known side effects include cellulite and irrepressible thoughts of death.

**#2: Your professor has a weird obsession with horses.**

“This can’t possibly be a real problem,” you say, your face contorting with fear. And you would be wrong. The Law School is home to horse racing fans, riders, and even that one weird

portrait of some guy with a horse.<sup>2</sup> Here in Albemarle County alone, there are nearly 2,000 horses,<sup>3</sup> not to mention that Virginia ranks thirteenth among the states for its horse population.<sup>4</sup> So

<sup>2</sup> My sources tell me that “horse guy” is none other than James E. Coleman, Jr. '51. His portrait is located in Brown 126.

<sup>3</sup> U.S. Dep’t of Agric., 2017 Census of Agriculture: Albemarle County Profile (2017).

<sup>4</sup> Data Paddock, <https://>

look out for the one Contracts professor that won’t stop talking about Bascom’s Folly. Probably a Ken.

**#3: Your professor drives a Hummer or similar vehicle.**

Okay, this one may be a bit of a cheap shot. Sorry to any Barbie Hummer drivers out there. But, we’ve got to look out for ourselves, and driving a Hummer just happens to have a high prevalence among Kens. So, if you’re crossing Massie Road on your way to class and nearly get decked by a Hummer, that’s probably Professor Ken on his way back to his Mojo Dojo Casa House. Go figure.

**#4: Your professor walks into class on flat feet.**

This one is tricky because it could mean that your professor is a Ken or a distressed Barbie—or if you’re really lucky, Weird Barbie. Nonetheless, you should be on the lookout for flat feet. Thinking your professor might be a Ken? Flat feet are a good way to confirm. Confident that your professor is

[datapaddock.com/](https://datapaddock.com/) (last visited Aug. 10, 2023).

KEN

continued from page 5

a Barbie? Flat feet are a good indicator that you should get to know them better. They have clearly weathered some storms to get here and are likely to be a humbling source of wisdom.

**#5: Your professor brags about their guitar skills.**

If your professor keeps talking about his pick collection, or even worse, actually brings a guitar to the Law School, then that is your sign to run. You should probably pull the fire alarm or something. Flaunting one's guitar skills shows some seriously dangerous levels of Ken-ergy. If you're worried that come exam season this professor will want to push you around—well, they will.

So that's it. Now you know how to find Professor Ken. Now if only someone could figure out how to *avoid* Professor Ken. Then of course, in Barbieland, there are no Professor Kens, so maybe the best first step is a trip to Venice Beach. Make sure to bring your rollerblades.

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TRIPLE-CROWN

continued from page 3

and audience members. We also dialed up the camp by pretending to spank each other, dressing in drag, and having an uninterrupted ten seconds of hula hooping. It was glorious. Hornsby, as one of our peer advisors, had claimed victory a second time, this time by proxy.

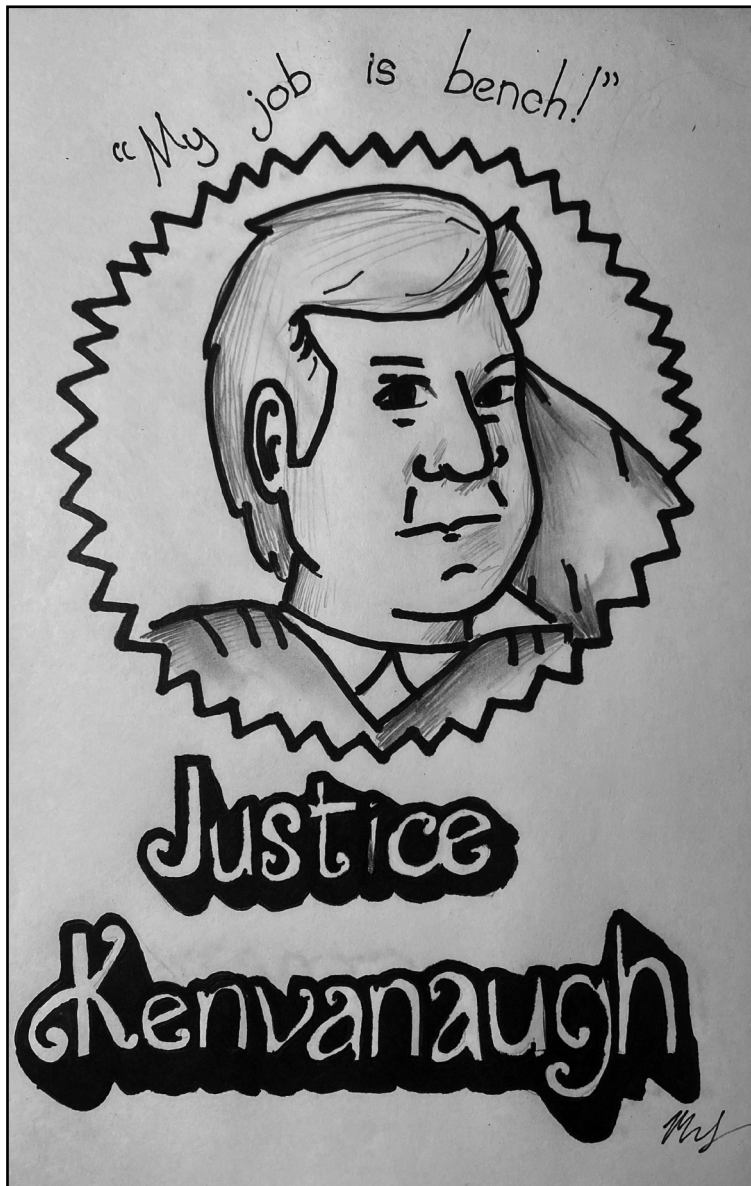
"In my opinion, last year's competition was the most chaotic of the three I've been involved with," Hornsby said. "It clearly built on the success of Juice the year earlier, but it multiplied its effects by ten as the entire group ended up hosing down themselves (and the audience) with non-alcoholic beer. This is also where we see the beginning of the incorporation of drag elements, cohesive costumes, and pop icons' influences in Dandelion, as this group masterfully channeled the talents of Ms. Spears."

**2023's Competition**

Hornsby was again assigned to serve as a peer advisor for Section H<sup>3</sup> this fall. Again, his PA section took the crown—making him possibly the first-ever UVA Law student to be involved

3 Who I'm sure are great and all, but not as fantastic as last year's.

Cartoon



"I am Kavenough" by Monica Sandu '24  
Graphite and Ink on Paper

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with a winning Dandelion team three years in a row. Familiar themes came up in this year's first-place performance.

"This year's show was the most technically sound of the group, and it was the most cohesive in terms of concept, costuming, and choreography," Hornsby said. "This year's group brought together the best elements of the previous two shows, and they came up with the ingenious idea to channel Rihanna's Super Bowl performance. I am probably most proud of this group as I wasn't able to give them as much help as the previous two years, and they still managed to absolutely knock it out of the park."

Looking back on his three years of involvement with Dandelion, Hornsby had a few parting words of wisdom for future 1L sections.

"You have to 'commit to the bit,' because the moment you let self-consciousness creep in, you're sunk. The key to Dandelion is realizing that it's absolutely ridiculous and that the purpose is to have as much fun with your section as possible."

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HOROSCOPE

continued from page 3

of makes you want to find your friends and love them and hang out with them in every lifetime...

**Aries (March 21–April 19)**

**3@3 - Fall.** I'm going to be so honest: Your energy is vibrant—unmatched, even—but it's too much for me in December. Your unbridled zest for life, like the palpable post-exam joy that fills every corner of Rapture after Fall finals, exacerbates my seasonal depression.

**Taurus (April 20–May 20)**

**3@3 - Spring.** Spring 3@3 is the laid-back, wholesome counterpart to the ungovernable mass hysteria that is Fall 3@3. The sun is out, the weather is beautiful, and there is a sense of peace in the air. Taurus, like Spring 3@3, you are the very essence of harmony and comfort.



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AFFIRMATIVE ACTION

continued from page 2

ments on the Reagan Revolution, is a fundamentally colorblind one. On the other hand, jurists like Justice Sotomayor would achieve equality by first acknowledging race. And Professor Robinson argued that this is consistent with the intent of the Fourteenth Amendment, as evidenced by congressional action to create the Freedmen's Bureau, which explicitly acknowledges race.

The last voice to chime in on this panel was that of Eugene Hickock, who worked to implement the No Child Left Behind Act of 2001 in the second Bush Administration. He characterized that act and movement as one that dealt with academic disparities across racial lines as early as possible in the developmental cycle, and opined that President George W. Bush does not get enough credit for that legislation's impact. This is even more true given that the law was not going to fully take effect until the years after his administration had ended.

Absent from this discus-

sion were hints about how the school would proceed in light of *SFFA*. Given the academic character of this discussion and absence of admissions officials, this did make sense and made for a more focused panel.

Professor Berry ended the event with a quote from Justice Charles Evans Hughes, which he gave when the first cornerstone<sup>4</sup> of the Supreme Court building was laid in 1932: "The Republic endures and this is the symbol of its faith."

4 <https://supremecourthistory.org/homes-of-the-supremecourt/#:~:text=When%20the%20cornerstone%20was%20laid,the%20symbol%20of%20its%20faith.%E2%80%9D>

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SAFETY

continued from page 2

awareness and updates about safety issues when there is no ongoing threat. This is the first year the University is sending out UVA Alerts via text message in addition to email.

During the hour-long presentation on Wednesday afternoon, attendees received a Community Alert

email reporting shots fired on Preston Avenue and news alerts about an active lockdown situation at the University of North Carolina. These real-time notifications underscore the need for active attacker prevention and response training and the importance of UVA's safety notification system.

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