Virginia Law Weekly

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

Wednesday, 18 Sep. 2024 | The Newspaper of the University of Virginia School of Law Since 1948 | Volume 77, Number 4

97th Annual Lile Moot Court Competition Kicks Off with Info Session

Noah Coco '26
Managing Editor

Most 2Ls roll into their second year of law school, many with summer associate positions in hand, content to ride out their remaining years of school with light schedules and ample softball. For a minority of students, however, the fall semester of their 2L year offers an opportunity to engage their competitive spirit with more case research and appellate advocacy in the first round of a venerable Law School tradition: the William Lile Minor Moot Court ("Lile Moot Court") Competition.

The Lile Moot Court Competition, named after the first dean of the Law School, is entering its ninety-seventh year of competition. This past Wednesday, September 11, the Lile Moot Court board, composed entirely of students, introduced the competition to a group of eager and curious 2Ls in advance of the first round in October.

The Lile Moot Court Competition is open to all 2Ls. Participants in the competition will compete in teams of two in a four-round tournament (hopefully) spanning their second and third years. In each round, teams are presented with a problem created by the Lile Moot Court board and tasked with preparing appellate briefs and oral arguments. The first two rounds are conducted during consecutive semesters during 2L year, and the competition culminates in two additional rounds conducted during the fall of 3L year. Teams are cut from the pool of competitors in each subsequent round of competition.

The competition begins with the preliminary round running from October 1–25. Every team that signs up by the dead-

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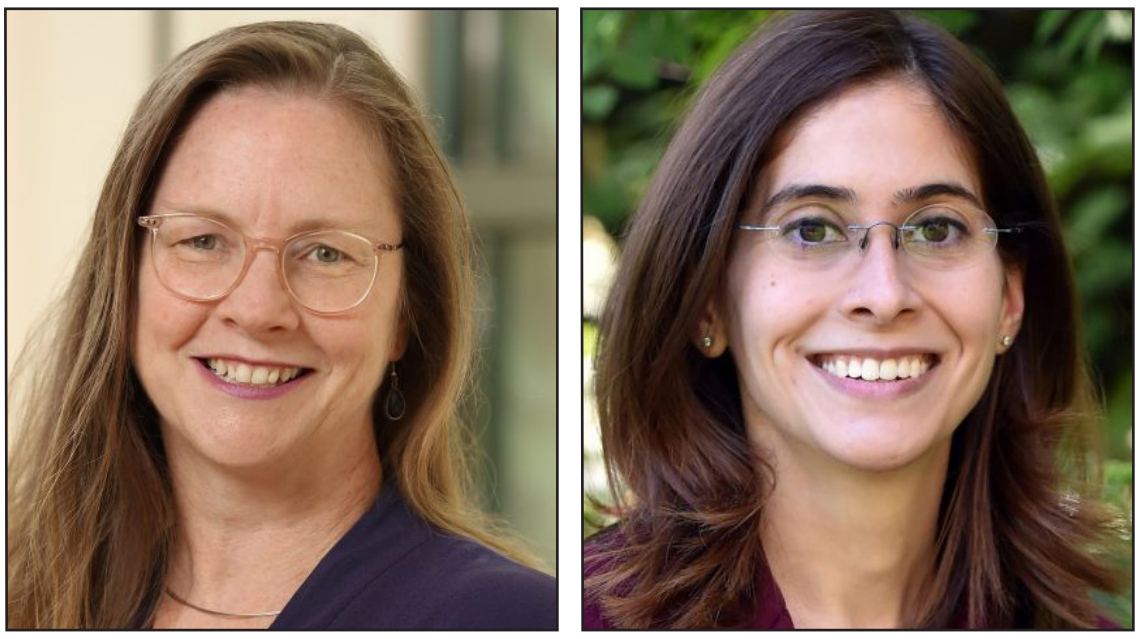
How Two UVA Law Professors Think About Living Constitutionalism



Professor Sarah Shalf '01 (left) and Professor Rachel Bayefsky (right).
Source: UVA

Andrew Allard '25
Editor-in-Chief

Last Wednesday, September 11, Professors Sarah Shalf '94 and Rachel Bayefsky, hosted by the American Constitution Society at UVA Law, led a discussion on living constitutionalism. Professor Shalf, the Law School's Director of Clinical Programs, began by offering a "practical perspective" on living constitutionalism.

Professor Shalf explained that living constitutionalism is difficult to define because academics, jurists, and politicians have developed different versions of living constitutionalism. "You end up with a lot of different versions of . . . what living constitutionalism is. And there are also different flavors among different justices, different judges, different academics in terms of how they flesh out what the theory is," said Shalf. "It actually describes a number of different theories."

Shalf also responded to how Professor Solum described originalism and living constitutionalism at a Federalist Society event last week. "Professor Solum would say that living constitutionalism rejects [that] the meaning the Constitution is fixed when it was ratified or it rejects that that should be binding on us. . . . Depending on what flavor of originalism and what flavor of living constitutionalism you're comparing, they might actually have some overlap," Shalf explained. "I'm not sure that in reality what people think originalism is and what people think living constitutionalism is are always necessarily mutually exclusive."

Shalf continued by explaining the constraints on living constitutionalist interpretation. "You're not just sort of making things up as you go along, but you're looking to the Constitution trying to discern what the underlying constitutional value is. Then you're applying those values and provisions to the modern context, in a way that reflects the diverse America that didn't get to participate in writing the Constitution."

This approach, Shalf explained, has defined Eighth Amendment jurisprudence since the 1950s, when the Supreme Court adopted the "evolving standards of decency" framework in *Trop v Dulles*.[1] "An originalist might say . . . we're going to look at all kinds of historical evidence to see what in 1789 was considered cruel and unusual punishment," Shalf said. But the Warren Court, which was more sympathetic to living constitutionalism, chose a different path, looking to changes in culture and legal practice among the states and globally.

The Supreme Court's more expansive rights jurisprudence reached a high point in *Roe v. Wade*, an early decision of the Burger Court. But the prevalence of living constitutionalism that defined mid-twentieth-century jurisprudence ultimately resulted in a conservative backlash, Shalf explained. "There was a reaction against *Roe v. Wade* and also against a lot of the reforms, the Civil Rights Movement. And so a group of conservatives got together and developed a more methodological theory of originalism because they wanted to constrain the court." That group of originalists became the Federalist Society.

Responding to the criticism that living constitutionalism is unconstrained, Professor Bayefsky explained how living constitutionalism does constrain judges, while also noting that originalism may not be as constraining as its proponents claim. Bayefsky focused on a popular living constitutionalist theory, Columbia Law Professor Philip Bobbitt's constitutional pluralism. Bobbitt's theory consists of six modalities—historical, textual, doctrinal, structural, prudential, and ethical—each of which judges use to decide cases. "You could see this as descriptive in the sense of—here's how constitutional argument takes

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1 356 U.S. 86 (1958).

around north grounds

Thumbs up to BLSA. ANG loves the proliferation of white liberals in "Black Lawyers Matter" shirts.

Thumbs up to cats and dogs. Not for their taste, but for their companionship.

Thumbs down to FedSoc for @'ing us on X without consent. ANG wants this paper to be hostile to all other law student orgs.

Thumbs up to Fyre Fest II being scheduled for next year. ANG is looking forward to the next round of documentaries.

Thumbs up to Constitution Day. ANG thinks it rolls off the tongue better than Articles of Confederation Day.

Thumbs down to the alarm system test. ANG did not like the *Hunger Games* aesthetic.

Thumbs up to the Barrister's save the date. ANG hears it'll be the largest Barrister's in UVA Law history. ANG thinks it's funny that the planning committee still hasn't found out that last year's ticketing troubles were because of ANG's scalping.

Thumbs sideways to the new pimento chicken sandwich at Chick-Fil-A. It is delicious but ANG did not need a reason to eat more fried chicken.

Thumbs down to golf hazards. ANG thinks they are getting out of hand in Florida.

Thumbs down to the polar vortex that is the law library. If it gets any colder, ANG is going to start a bonfire with ANG's old 1L casebooks.

Thumbs up to Moo Deng. ANG loves water dogs.

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line of September 27 is eligible to compete and will receive materials containing a single-issue problem at the commencement of the round on October 1. Teams have until October 21 to brief the issue and are capped at a 3,500-word argument section. Teams will then present at oral arguments conducted between October 22–25. Although teammates may collectively prepare the brief, they will have to argue their issue individually during this round of competition before a panel of judges composed of the Lile Moot Court board and previous competitors. The written brief constitutes 50 percent of teams' final scores, with the remaining 50 percent allocated to performance during oral arguments.

Only eight of the original teams will advance to the quarterfinal round scheduled for February–March 2025. Advancing teams will be prompted with a new two-issue problem to brief, this time capped at a 7,900-word argument section. Teams will then, seeded by their preliminary round scores, compete against opposing teams at oral arguments judged by Law School professors.

The pool of teams will then be narrowed to four who will compete in the semifinal round hosted in September–October 2025. For the final time, the remaining two teams will be presented with a new two-issue problem to brief. Each team will again face off at oral argument against an opposing team, this time appearing before acting judges, usually representing state supreme courts, state courts of appeal, or federal district courts.

The final two teams will compete one last time in November 2025 in what will certainly by then be an adept display of appellate advocacy. The same issues briefed and argued in the semifinal round will again be argued in the finals, although both teams will be given an opportunity to revise their briefs before competing in oral arguments.[1] The final round is generally presided over by acting federal circuit court of appeals judges.[2]

The winning team will be announced at the conclusion of the final round. In addition to receiving a cash prize (of a currently undisclosed amount), the winners of the ninety-seventh Lile Moot Court Competition will be honored with a plaque to be adorned on the walls outside the moot court rooms in Slaughter Hall adjacent to the ninety-six winning teams preceding them, including the yet-to-be-determined winners of the ninety-sixth competition chosen this November.[3]

Any 2Ls interested in competing in the ninety-seventh Lile Moot Court Competition may sign up with a partner, or sign up individually and be assigned a partner, by the September 27 deadline. Questions may be directed to Amy Vanderveer (fvu2tr@virginia.edu) or Natalie Little (ngl17vc@virginia.edu).

1 One team may be required to switch sides between the semifinal and final round.

2 Historically, the finals round has occasionally been presided over by sitting Supreme Court justices, including Justices Marshall, O'Connor, and Brennan.

3 Astute observers may notice at least one notable name on a plaque memorializing the 1959 Lile Moot Court winners: Edward "Ted" Kennedy '59.

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place . . . . We could also see this as normative—that these should be the accepted categories of constitutional argument," Bayefsky explained, adding that it is common for judges to rely on multiple modalities in a single case.

Bayefsky acknowledged that constitutional pluralism may enable judges to simply follow the modality that they prefer in a given case. But she argued that multimodal arguing is already the accepted practice among judges. "Most if not all judges are, in fact, pluralists. Even in cases where judges purport to be saying, we're drawing only on the original meaning, it's very common to hear pragmatic arguments." Ultimately, multimodal reasoning may be a necessary consequence of judgment, Bayefsky explained. "In the end, judging does require a certain amount of judgment. It's impossible to completely extricate judicial discretion, and the purpose is to train judges, law students, academics, scholars, perhaps even politicians, to be thinking about how to wisely exercise their discretion based on their legal understanding and experience."

Ironically, the debate between originalists and living constitutionalists may be the product of institutional incentives more than legal philosophy. Professor Shalf, citing the work of Professor Richard Re, pointed out that the current divide between conservatives and liberals may be realigning. "When the judges you have appointed are in the minority, then you want to constrain judicial interpretation by the judges who you don't agree with. You want to say everything is very fixed and defined and objective . . . Whereas more expansive theories of constitutional interpretation might be adopted by the people who are in the political majority." Professor Shalf suggested that the court's fractured opinion in *United States v. Rahimi*[2] may indicate the beginning of such a realignment among the Court's conservative justices.

2 602 U.S. ___ (2024).

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First-Years Introduced to Program in Law and Public Service

Jamie Newton '27
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On the afternoon of Monday, September 10, the Program in Law and Public Service (LPS) crowded Caplin Pavilion with prospective first- and second-year fellows to decorate cupcakes, learn about LPS, and connect with current LPS fellows. Students iced their cupcakes with their choice of frosting and sprinkle variety—the classic take of chocolate frosting and rainbow sprinkles seemed to be exceedingly sought-after—as LPS Director and Professor Annie Kim '99 discussed the many components of this tailored curriculum and "hub" for students interested in a career in public service.

In 2009, President Jim Ryan '92, then a professor at the Law School, created the Program in Law and Public Service to better prepare and support the minority of students at the Law School seeking public service careers in law. LPS offers special classes and curricular requirements, opportunities for faculty mentorship, academic advising, an outline bank, and more.

In the past fifteen years, the Program has expanded in size and capacity. In 2023, a total of 130 law students were LPS fellows, forty-five of them 1Ls. The 2023 cohort was the largest ever in LPS's history, in addition to a record number of applicants. Currently, the program boasts around 400 alumni working in and adjacent to the public sector as resources for support and networking. Given that every seat in Caplin Pavilion was filled, and the cupcake supply was quickly demolished, interest in the program continues to thrive for the foreseeable future.

One of the most emphasized components of LPS during this information session was the vital role core faculty play in advising and guiding students in the public service journey. While other professors working and researching in fields directly involved with or adjacent to public service are available for support, LPS hosts four "core faculty members": Professors Kim, Andy Block, Chinh Le '00, and Josh Bowers. These four professors assist in teaching the required spring semester course for new 1L fellows, supervise a recommended 3L capstone course, host a faculty dinner series, and provide all-around support to the LPS fellows.

Professor Kim highlighted that LPS gives public service students, often isolated by the experiences and interests of their private sector peers, "your cohort, your tribe." To access the niche support system and community of faculty and peers offered by LPS, fellows must complete a series of requirements. Apart from the spring semester course for new 1L fellows, students must work at least one full summer in public service (excluding judicial internships) after their first or second year of law school, take at least one clinic or do one externship, enroll in ten broadly defined credits that support a student's specific public service aspirations, and write a substantial research paper related to those aspirations. Given the latitude fellows have in pursuing their interests, it was noted that these requirements are only natural stepping stones any student in public service would likely take during their law school career.

Both 1Ls and 2Ls with intentions of working in public service are invited to apply. Professor Kim and LPS Outreach Chair Carter Farnsworth '26 recommended applicants talk honestly about their intentions after graduation, as the program exists primarily for those planning to start their public service careers directly out of law school. They stress this as an important factor for Professor Kim and other faculty in evaluating applications, especially during a competitive cycle such as last year's. Aside from post-graduation plans, students should not stress if they don't have a resume jam-packed with previous experience in public service. Students aren't selected based on their specific interests or niche aspirations; they need only provide "something" to demonstrate a general interest in public service, whether that be newly found or long-established.

To apply, students must submit a resume, an unofficial copy of their undergraduate transcript if they're a 1L or law school transcript if they're a 2L, and a list of two references "who know you well." In addition, students should write two 400-word responses to questions regarding their passions and any expected hurdles or stressful factors in pursuing a public service career. After applying, students will have a quick meeting with Professor Kim to discuss their interest in LPS and foreseeable contributions to the community. Professor Kim stressed that the application and interview are relatively informal and low-stakes. Farnsworth advised students not to "select out" because of the application requirement.

After outlining the application process and makeup of the Program, Professor Kim turned it over to current fellows to mingle with prospective students. By this point, the cupcakes were gone, but conversation was still lively. Fellows spoke to their various interests in public service, the paths they took to finding those interests, and how LPS has played an integral role in uplifting and honing their passions. Many of the current fellows expressed a sentimental appreciation for the community LPS has provided them. Cheryl Bond '25 remarked, "I get to have friends in the same

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Common Law Grounds Addresses Homelessness


Kelly Wu '27 and Mayan Lawent '25
Staff Editors

On Tuesday, September 10, 2024, Common Law Grounds (CLG) gathered students across the ideological spectrum in Caplin Pavilion with a brand new topic of discussion: "Shelter Under the Law: Addressing Homelessness Through Law & Politics." Students grouped into small sections, introduced themselves to each other, and shared their honest feelings and experiences with the specified topic, and interactions with politics at large, over a provided lunch.

To begin the discussion, every small group was handed information sheets explaining and examining the U.S. Supreme Court decision in Grants Pass v. Johnson, decided mere months ago in June 2024. Within the decision, the city of Grants Pass, Oregon was ultimately allowed to pass a law that prohibited camping with bedding on public property, with the U.S. Supreme Court noting it did not constitute a violation of the Eighth Amendment's prohibition of "cruel and unusual punishment." This decision came six years after a 9th Circuit case, Martin v. Boise (2018), in which the court found that such laws would in fact violate the Eighth Amendment's prohibition of cruel and unusual punishment.

In the aftermath of this decision, students were asked to read responses from legislative and judicial figures across an array of ideologies from California Governor Gavin Newsom's celebration of the decision's ability to provide local and state officials the authority to clear unsafe encampments, to Justice Sotomayor's criticism of the decision's punishment based on the status of homelessness. The groups were supplied with both big-picture and specific questions to get the conversation started and asked to reflect on what the decision meant to them.

Once broken out into smaller groups of five or six, the audience was quickly spurred into open discussions on things as large in scale as "Is housing a basic human right that the government is responsible for providing?" to smaller ideas concerning reactions towards Newsom's idea that homelessness should be addressed through local government rather than national. Within the small groups, people with backgrounds from big cities where homeless encampments are prominent to those from smaller areas where homelessness is less visible began to reflect on how their upbringings had shaped their view on the topic. This led to related discussions on thoughts about anti-homeless architecture, drug usage within homeless communities, criminalization of homelessness, human dignity's place within the law, and the role of community and religion in society.

These conversations then spurred questions about the role of policy, with CLG facilitating the shift through a look into various policy approaches. Considering proposals such as Housing First policies, which provide permanent housing to individuals through housing vouchers and rental assistance, the students were then asked to discuss the benefits and detriments of various policies. Despite the large breadth of topics and opinions discussed, no clear policy answers were easily found. Overall, the discussions showcased the murky and ambiguous nature of homelessness and the law, with complexities at every corner. Many groups found themselves affirming these were questions with no clear answers, and policies all had their caveats. The lunch concluded with the development of a deeper understanding of differing viewpoints, and as students headed back to their classes, many were reflecting on how the state of homelessness should be addressed in a modern context.

The event showcased the ultimate goal of Common Law Grounds: to prompt difficult conversations on relevant, controversial topics. Started almost eight years ago, the organization was founded on a foundation of respect and civility for those growing up in any background. CLG hosts a series of roundtable discussions every year, with topics including abortion, gun control, and the role of religion in the judiciary. For the board members and those who attended, it was clear that the organization is not merely for centrists seeking fellow like-minded people; it aims to be the exact opposite. Before every discussion panel, attendees are asked to rate how liberal their views are on a scale of 1 to 10 for the facilitators to both form more diverse groups and see how to cater to differing opinions. If you ever find yourself wanting to step out of your comfort zone and learn more about how the rest of the Law School understands various topics, be sure to look into future discussion panels hosted by Common Law Grounds!

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Law Alumni Present on Prosecution

Bradley Berlich '27
Staff Editor

This past Tuesday, September 10, the Office of Public Service hosted a panel of four Law School alumni to discuss their experience as prosecutors. The panel was chaired by Ryan Faulconer '08, himself a former federal prosecutor, now the assistant dean of public service. The panelists were buzzing with excitement at being back at the Law School and having an opportunity to share their experiences when Faulconer prompted them to talk about the most rewarding parts of their work.

Some panelists focused on the responsibility of bringing bad guys to justice. "Solving the big crime . . . Saying 'my name, on behalf of the United States of America' . . . never gets old," said Zach Ray '16, an Assistant United States Attorney for the Eastern District of Virginia, where he focuses on healthcare fraud cases. "We get to play FBI and Sherlock Holmes . . . Taking [a defendant] down when they never see it coming . . . is really rewarding," echoed Alec Ward '21, a trial attorney in the Criminal Section of the Civil Rights Division at "Main Justice"—the U.S. Department of Justice in Washington, D.C.

Others talked about their ability to meaningfully change the lives of people in hard situations for the better. Megan Mers '20 and Amanda Swanson '20 both work on matters of domestic violence in the Manhattan District Attorney's Office and the U.S. Attorney's Office for the District of Columbia, respectively. Both conceded that line of work often exposed them to difficult situations, and vicious cycles of relationship violence, from which the victim was unable to escape. Mers elaborated: "It is everyone's worst day. It's the worst day of your defendant's life, witness's life, survivor's life. And sometimes they take that out on you." But, Swanson added, "[e]very now and then, when you stick with a case long enough, you find someone who is willing to stand up for themselves and not live [in a violent relationship] anymore."

However, the bad days are still bad. And sentencing is the worst. "Sentencings are like funerals," said Ray, who explained that he stands right next to the defendant during the procedure. "I walk out, and I pass their mom, their dad, their spouse, and their kids . . . . [We] don't celebrate convictions." Mers agreed. "The day sentencing feels fun or not impactful to you is the day you should stop being a prosecutor." It's easy for some to think of the prosecutor as the good guy, but this is not strictly the case. The person you convict might otherwise be a pillar of their community, a good spouse, parent, coworker, and neighbor. Or worse, the unstated fear that they could very well be innocent. "Some people go in thinking they're going to be the superhero . . . [but n]o one with a conscience who does it for very long comes away not seeing shades of gray," said Ward.

That's why it can really matter that you have some degree of discretion within your role as a prosecutor. All four attorneys stressed the importance of personal autonomy in their work. Often, the ability to follow an assigned case from beginning to end is an office policy known as "vertical prosecution." Many prosecutor offices are horizontal, not vertical, and instead break up assignments by case stage to improve efficiency with some attorneys only dealing with the beginning, middle, or end. "[It is] very hard to wield discretion at a horizontal office," said Ward. "[In contrast] most of the cases I prosecute, I was the lead investigator on." But with discretion comes more complications, and more responsibility. "Sometimes it's difficult dealing with the uncertainty of if you're prosecuting for the sake of prosecuting or doing it for the sake of improving someone's life," Swanson remarked. And though prosecution has better hours than big law, there are still long days, but no make-work to fill time-entry sheets. "Someone has to be there in a vertical prosecution office. There are weeks and sometimes months where I am working as much as my firm friends, but there's always a reason I care about," commented Mers.

When asked by Faulconer to tell the story of their paths to prosecution, and if they had any advice for interested students, the panelists agreed that there was no single path to prosecution, and that a resume that reflected an interest in public service and criminal law was the most important thing. "Don't think you have to know right now that you want to be a prosecutor, or it's over," said Ray, who was an associate at Covington & Burling in D.C. after graduating. "Go see Jennifer Hulvey [in the Office of Financial Aid, Education and Planning]," continued Ray. "I knew I didn't want the golden handcuffs, and so we created a plan where I could pay back these loans . . . we had a plan, we stuck to it, and once my loans got down to a certain point, we made the jump."

UVA can help you land the gig, too. "I came to this panel," admitted Ward. "Rachel Kincaid was working [at DOJ Civil Rights] and I think I literally took her desk . . . [I am] totally unashamed to say it was UVA and the folks here that got me this job." Swanson quoted a talk Merrick Garland gave at the Eastern District of Virginia—good advice for all prosecutors and people who spend their days running around—"wear rubber-soled shoes." Tights not included.

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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 editor@lawweekly.org

Ex Parte Undergrad
77 U.Va 4 (2024)

Coleman, J., delivers the opinion of the Court, in which Coco, Jones, Demitry, & Allard, JJ., join.

Allard, C.J., concurs.

Coleman, J., delivers the opinion of the Court.

This Court has been asked to grant a writ of habeas corpus to the undergraduate student who is currently imprisoned in the *Law Weekly* office. We decline to offer him any relief and accordingly uphold the constitutionality of his confinement. If there is an undergraduate studying in our library, any law student, even a 1L, may imprison him within the Law School until an Honor tribunal is prepared to hear his case.

I

This case began on a calm Sunday evening. The library was packed with nervous 1Ls who were working furiously. But something seemed off at one of the tables in the gunner pit. Four younger-looking students were giggling, and they looked suspiciously happy. So, one member of the *Law Weekly* staff and current 1L, who shall remain nameless, approached the table to gather more information. But she was taken aback by the screens in front of her. They were all studying anatomy, a subject that no self-respecting law student would ever engage with. Shouting ensued. Weapons were drawn. And amid the chaos, the *Law Weekly* reporter was able to subdue and hog-tie one of the undergraduates. She then dragged him back and handcuffed him to the refrigerator in the *Law Weekly* office, where he has remained since.

> *"If there is an undergraduate studying in our library, any law student, even a 1L, may imprison him within the Law School until an Honor tribunal is prepared to hear his case.*

Subsisting on nothing but leftover pizza and beer, this undergraduate student learned enough to file this habeas petition. He seeks immediate relief from his unlawful detention. He claims that he is not a flight risk, and has been so traumatized by his experience in the Law School that he will never again step foot on North Grounds.

II

This case forces us to deal with an issue of first impression in this Court. What rights does an undergrad have in relation to the lowly 1L? It goes without saying that 1Ls always lose. *See, e.g.*, *Virginia v. Harvard L. Rev. Ass'n*, 76 U.Va 4 (2023) ("1Ls must always lose."); *see also 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 . . . ."). But as far as the clerks of this Court are aware, that principle is only promulgated in cases where 1Ls are pitted against 2Ls or 3Ls. Surely, the rights calculus must change when the adverse party has not even taken the LSAT.

This Court is of the opinion that our jurisprudence must give way to evolving circumstances. The law of the land is that 1Ls always lose *when they assert rights against more advanced law students*. We are not unaware of the arguments against this. At the beginning of their studies, 1Ls are little more than undergrads. They often exhibit the same personal foibles common to undergrads. But the key difference is that they have successfully taken the LSAT, thereby demonstrating some potential for the legal reasoning that differentiates us from the laity.

III

While this new articulation of the 1L rule establishes a massive presumption against granting this writ, there is still work to be done on the merits. It is still conceivable that it is funnier for the undergraduate to win.

The petitioner alleges that this confinement violates his rights to substantive and procedural due process. While The Constitution does not govern our petty jurisdiction, we are bound by substantive honor analysis. *See Students for Fair Socialization v. Student Bar Association*, 76 U.Va. 2 (2023) ("Our constitutional order was fundamentally changed when the Honor System was established in 1842. And with that, the Framers protected some inalienable rights by putting them outside of the Honor Code's ambit."). The petitioner contends that the basic right to liberty is protected by substantive honor because it is not addressed in the three pillars of the Honor Code. But this argument is unavailing.

The Honor Code expressly prohibits stealing. The use of space in our Law School by uninvited third parties is a form of stealing. Therefore, no right of the undergraduate captive was violated when he was taken to the *Law Weekly* office, in the same way that no right is violated when a murderer is arrested by the police.

There is a final question as to whether the 1L was the proper authority to arrest this undergrad. Based on this Court's recent holding in *ASSES*, regular law students have the power to enforce criminal provisions. *Aggrieved Stu-*

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Virginia Law Weekly

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Faculty Quotes

M. Collins: "I guess the solution to contempt is the gulag forever!"

K. Kordana: "What do I do on a Friday night? I start looking at my private jet catalogs."

J. Harrison: "My hope at the beginning of every semester is that the world will end."

D. Brown: "He's living #vanlife."

K. Kordana: "No, slicko. Triangles have three sides. Do you accept that or deny it?"

J. Harrison: "Massive litigation - that's more beer for us."

J. Milligan: "City of Boerne hates Catholics, or whatever it is."

Heard a good professor quote? Email us at editor@lawweekly.org or submit at lawweekly.org/quotes.

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dents Seeking E-Mail Solutions v. Univ. of Virginia Information Technology Services, 77 U.Va. 3 (2024) ("[W]e believe [that allowing private criminal enforcement] is consistent with this Court's commitment to vindicating the public's petty disputes."). Following this precedent, there is no question that a law student can take petty enforcement into her own hands.

The undergrads lose on the merits. The undergrads lose on humor. They have failed in every respect to rebut the presumption against them, even when facing a 1L captor. Law students may detain undergrads with impunity before their Honor trials when they trespass on North Grounds. However, the 1L must be transferred to the proper Honor authorities when it is time for a full adjudication, in the interest of comity with the larger institution.

This petition for the writ of habeas corpus is hereby DENIED. Costs are awarded to the 1L respondent.

Allard, C.J., concurring.

I join the opinion of the Court because it correctly holds that law students—including 1Ls—may arrest undergraduates trespassing on North Grounds. As the majority ably explains, our decision in *ASSES* enables law students to enforce the Honor Code against undergrads. This result is also consistent with this Court's commitment to the bit. *See Gay Section H Law Weekly Staff v. Lake*, 75 U.Va 16 (2023) (Lake, C.J., concurring) ("There is nothing more vital to the exercise of justice than committing to the bit."). Pitting the 1Ls—no doubt chomping at the bit to try out this "law stuff" they're learning about—against undergraduate interlopers is priceless.

But I would go further and hold that undergraduate students do not have standing to bring a *habeas* petition in the first place. "Oh, but Mr. Chief Justice Allard, that issue wasn't briefed by either of the parties!!" God my clerks are annoying. Who hired you anyway?

The Court of Petty Appeals is not bound by such impotent philosophies as "judicial restraint." Instead, the Court should answer the question we were *all* thinking: Do undergraduates possess any rights that law students are bound to respect? The answer is surely no. This Court has previously described undergraduates as "bad," *Class of 2021 v. Doe*, 903 U.Va 12 (2018) (Schmalzl, J., concurring), "annoying," *Remote Students v. Student Records*, 73 U.Va 11 (2020) (citing *Annoyer*), and disease-spreading, *Law Students for Fall Break v. The Law School*, 73 U.Va 7 (2020). Should this Court be an open forum to such individuals? You be the judge. Just kidding, I'm the judge. And I say no.

I would hold that the privilege of the writ of *habeas corpus* is permanently and inherently suspended as to undergraduate students. If someday, a case arises where it would be exceptionally funny to grant a victory to an undergrad, perhaps we will hear their arguments. But we need not do so here.

LPS

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boat." At a law school with seemingly infinite resources for those looking to pursue careers in the private sector, these fellows credited LPS with affording them a safe space for those with interests outside of the norm.

Students interested in applying to the Program in Law and Public Service should submit their applications to Professor Kim by October 18. More information is available on the LPS page online.

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HOT BENCH

Alice Abrokwa
Interviewed by Alicia Kaufmann '27

Good morning, Professor Abrokwa. Thank you for taking the time to talk with me today! We're excited to have you join the UVA Law faculty, and I'm very much enjoying your class thus far. Maybe we can start with a little bit about where you're from and how you are liking Charlottesville so far.

Yeah, so I've been living in DC for the past ten years. I went there because I knew it would be a good place to practice public interest work, so I spent the time at various nonprofits and at the federal government. I've worked at the Department of Justice in the past, and most recently I was coming from the Department of Education, all doing civil rights work. Before that, I lived in Richmond, and people told me to expect Charlottesville to be a little like Richmond which has been the case so far. I grew up in a pretty small college town too, so there's a lot that's familiar to me here from my life growing up.

I saw that you were previously a fellow with the Harvard Law School Project on Disability and a senior counsel at the U.S. Department of Education. Can you tell us a little more about those past work experiences?

The fellowship was really my own research and engagement with other scholars around disability civil rights issues. My work at the Department of Education was on education civil rights, but most of that looked like disability civil rights too. My first job after clerking was focused on children with mental health disabilities, making sure they had the support they needed to do well in school and that they had home and community-based mental health care. So, most of my expertise has been focused on children with disabilities. I did that work at the Department of Education most recently working on drafting regulations. The Department's regulations that protect students from disability discrimination haven't been updated in a generation, so I spent a long time working on those regs and then separately my own scholarship through the program with Harvard.

What inspired you to transition from practicing to teaching?

I knew I liked the kind of writing you get to do as a scholar. When you write as a lawyer for a client or even a government agency, it's not your voice, it's not your perspective, but when you engage in legal scholarship you get to articulate your own views. They don't have to be tied to particular facts, they don't have to be within the limits of what makes sense for your case or the jurisdiction of the office that you work in. I found it really liberating to think through legal questions and problems that maybe don't often arise in practice but are still interesting to me. I've also lectured over the years at various law schools in the D.C. area and had a lot of fun meeting with students in that capacity. Lastly, I've done all public interest since I graduated law school and there's a strong pay-it-forward mentality. I benefited a lot from people who were willing to give me career advice, and I spent a lot of my time out of law school giving advice to law students or recent grads. So, I just had the realization at some point that being a law professor combines everything that I already know I like: the scholarship piece, mentoring and advising students, and the actual teaching part has been really fun.

Speaking of advising, do you have any advice for students who are interested in a career in public service?

I think the number one concern I've heard from people is that it's hard to get a job in public interest and also manage your loans. That's a real consideration for a lot of people. I participated in public service loan forgiveness programs, both at my law school and the federal program. I wouldn't have been able to do public interest if it hadn't been for those programs. I was able to do fellowships at non-profits that wouldn't have had the money on their own to pay my salary. So that's a realistic option, and I hope that people consider it. The other thing that I will say is you can still do work that serves the public from a firm. There are lots of smaller law firms in the DC area that have civil rights practices and they're really robust. A lot of them are staffed by people who were former government attorneys, civil rights attorneys, defenders, and prosecutors, so if you want to do that kind of work you can do that at a firm too. The last option I'd say is government lawyering positions. They can be a bit more stable, they pay a little bit better than some nonprofits, and a lot

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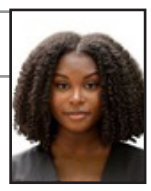
Armacost, Institute of Justice Attorney Talk 4th Amendment

Ashanti Jones '26
Features Editor



"When it comes to private trespassers, the law is pretty straightforward," Robert Frommer said. "Somebody trespasses you can call the police and say 'Hey, I'm having a problem here,' and they'll come. But what about when it's not a private person that wants to trespass on your land, but a government official themselves? That's a completely different story."

On Thursday, September 12, the Federalist Society at the University of Virginia School of Law hosted UVA Law's own Professor Barbara Armacost '76, J.D. '89 and senior attorney for the Institute of Justice, Robert Frommer for their event titled "Reforming the Fourth Amendment." The event focused on the Fourth Amendment open fields doctrine—a doctrine that allows law enforcement officials to search and seize on open land, including public and private property, without a warrant.

The Federalist Society's Vice President for Speakers, Andrew Odell '26, opened the discussion by welcoming attendees and introducing the day's speakers. Professor Armacost specializes in criminal procedure and policing and the law. She has written several articles on both topics. Frommer serves as the Director for the Institute of Justice's Fourth Amendment Project and has litigated several search and seizure cases, including the ongoing 9th Circuit case *Snitko v. FBI*.

Frommer began by describing the open fields doctrine and framing its effect on American society. Despite its name, the open fields doctrine does not just apply to what the average person would consider an open field. In simple terms, the doctrine allows law enforcement officials to inspect, search, and seize without a warrant any outside area except curtilage, or the area "immediately surrounding the home," reasoning there is no expectation of privacy in these areas.[1]

Historically, courts have interpreted curtilage very narrowly with fenced-in areas and areas marked with "no trespass" signs considered open fields, which Frommer found particularly troubling. Frommer shared with the audience, that according to a study conducted by the Institute for Justice, an estimated 96 percent of private property in the United States would be considered open fields under the existing doctrine.[2]

"In many places, officers can enter private property without it even being considered a search," Frommer said. "[With open field searches,] you're not in the Fourth Amendment bucket at all, it is completely unregulated. The open fields doctrine . . . privileges officials over private citizens . . . and the property owner themselves."

Frommer believes the open fields doctrine is directly opposed to the origins of the Fourth Amendment and the Framers' intentions for the scope of its protection. He described the Fourth Amendment as a continuation of the British common law ideal of "a man's home is his castle" in the colonies, and a rejection of the use of British general warrant searches leading up to the American Revolutionary War.

"[General warrant searches were] a blank check given to these officials to allow them to go where they want, to search, and to root through things without judicial authorization and without any evidence of a crime being committed," Frommer said.

Frommer argued that the Fourth Amendment was created to combat these types of searches and should be construed more broadly to respect the Framers' intent. Frommer stated judicial constitutional interpretation should not boil down to a game of semantics but should consider the text in light of traditional American values.

"We're supposed to put in our general principles and values, and then work out the details through legislation," Frommer said.

Frommer shared some previous and current litigation the Institute of Justice's Fourth Amendment Project has taken on regarding the open field doctrine. Frommer emphasized that these cases rest on individual state constitutions instead of the federal Constitution, which he credits as the source of their success in a recent Tennessee case, *Rainwaters, et al. v. TN Wildlife Resources Agency*.

In *Rainwaters*, game wardens from the Tennessee Wildlife Resources Agency would regularly enter the plaintiff's private land to search for possible hunting violations and also installed cameras for twenty-four-hour surveillance. Frommer and his team argued since the Tennessee Constitution gives citizens the right to be secure in "possessions," the Tennessee Constitution covers beyond just the curtilage. The Tennessee Court of Appeals agreed that "possessions should be interpreted as covering real and personal property and confined the authority of the Tennessee Wildlife Resources Agency to search without a warrant to 'wilds and wastelands,'" i.e. unowned or unkept/unenclosed land.

Following Frommer's presentation, Professor Armacost asked Frommer follow-up questions about his opinions on public policy surrounding the Fourth Amendment and possible movement of the open field doctrine at the federal level.

Professor Armacost opened her questioning by remarking on the delicate balance with Fourth Amendment jurisprudence between giving law enforcement officials the ability to do their job and protecting citizen's right to privacy.

"We're all on both sides of any debate on the reach of the Fourth Amendment," Armacost said. "On the one hand, we want the level of protection from surveillance by law enforcement that guarantees a robust level of privacy for the activities we want to do in private. On the other hand, we want law enforcement to secure some level of safety so we can live without high risk of crime that would make our lives less secure."

Professor Armacost asked Frommer if he has any suggestions on balancing both of these needs, especially in the context of investigating hunting violations since a majority of land used for hunting is private land and it is substantially harder to obtain evidence to create probable cause for a warrant for hunting violations due to the nature of the crime.

Frommer responded that he believes the need to balance is a false dichotomy—several states with big hunting populations such as Montana, Washington, New York, Vermont, and Mississippi, have rejected the open-field doctrine. Frommer also feels like the balance is already instilled into the Fourth Amendment.

"The Framers when they created the Fourth Amendment, they already struck that balance," Frommer said. "When they said that searches and seizures can't be unreasonable as violating the spirit of the common law. You can use your powers under the common law to investigate . . . regular police work, you can talk to people, you can drive down the street."

Next, Professor Armacost asked Frommer his level of optimism on changes to the federal open field doctrine under *Jones* and *Carpenter* in light of law enforcement using twenty-four-hour video surveillance without obtaining warrants. Frommer shared he was not that optimistic.

"Possibly, but unlikely," Frommer said. "[The] key thing for *Carpenter* and the Fourth Circuit . . . was able to create a comprehensive picture of your movements—follow you from one place to another—but a static camera here would [only] catch you when you were going by. Maybe if [the static camera] was at an entryway where it captures every time you come or leave."

1 "Amdt 4.3.5 Open Fields Doctrine" Legal Information Institute, Cornell Law School. <https://www.law.cornell.edu/constitution-conan/amendment-4/open-fields-doctrine>

2 "Good Fences? Good Luck" Windham, Joshua and David Warren, Ph.D. Institute for Justice, March 13, 2024. <https://ij.org/report/good-fences-good-luck/>

HOT BENCH

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of states have honors attorneys programs. So, don't be discouraged if you are worried about paying for your loans or finances in pursuing public interest. There are ways to make it happen!

You mentioned that you are teaching a course called Pain and the Law in the spring. Can you give a sneak peek at some of the topics that will be discussed in the course?

The idea behind the Pain and the Law class is to think about different contexts where the law regulates the experience of pain. There are some contexts where the law authorizes the infliction of pain on someone else. Coming from the school and health perspective that I do, you could think about restraint or seclusion of the student or corporal punishment as an infliction of pain, but there are also plenty of examples in the criminal legal context too. So, the law allows the infliction of pain in one context, but also creates a remedy for the experience of pain, like pain and suffering damages or reparations. The idea behind the class is to tease out what the law does with pain when it forces someone to endure it and authorizes that infliction, and when it creates a remedy for it.

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