

# VIRGINIA LAW WEEKLY

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## Collins, Macomber Take Lile Title *Harman Is Best Oralist*

Jansen VanderMeulen '19  
Editor-in-Chief  
M. Eleanor Schmalz '20  
Executive Editor

The final round of the 2018 Lile Moot Court competition took place on Thursday, November 8 in the Caplin Pavilion. Lights illuminated the podium, sitting front-and-center in the pavilion, as well as the tables covered in black cloth meant for the esteemed jurists who had ventured to Charlottesville for the special occasion. Students and professors alike huddled around the back and along the sides of this packed “courtroom,” with seats hard to find thanks to the large crowd the opponents had drawn to the event. Katharine Collins '19 and Christopher Macomber '19 faced Kendall Burchard '19 and Scott Harman-Heath '19 in front of Judge Karen Nelson Moore of the Sixth Circuit, Judge Albert Diaz of the Fourth Circuit, and Vice Dean Leslie Kendrick '06, who substituted for Judge



Katharine Collins and Christopher Macomber after their victory. Photo Jenny Lamberth '19 / The Virginia Law Weekly

Stephanos Bibas of the Third Circuit. Judge Bibas was unable to attend due to bad weather. As the room buzzed with excited anticipation, the

judges entered the room, the crowd stood in respect, and the finalists put their months of hard work to the test.

This event was the cul-

mination of many months of preparation. Collins, Macomber, Burchard, and Heath began the Lile competition in the fall of their 2L year and progressed through an individual brief (arguing both on- and off-brief) the quarterfinals, and semifinals to reach this final round. After all this work, the finalists faced the problem for the final round, written by Derek Keaton '19. This final prompt was centered on James Herek, a fictional plaintiff in a § 1983 suit against a police officer. In the fictional problem, the officer interviewed Herek in connection with a scandal in the police department's forensic lab. The officer told Herek he could be fired if he did not cooperate with the investigation, and Herek admitted to some misconduct. On the basis of Herek's statements, the officer referred the case to the district attorney, who used the statements at a pre-trial, probable cause hearing. Herek's statements were suppressed as a coerced confession, and the charges were dropped. Herek brought suit against the officer under 42 U.S.C. § 1983, alleging he was deprived of his Fifth Amendment right against self-incrimination. The litigants addressed two questions: (1) Does the Fifth Amendment's right against self-incrimination apply at pre-trial probable cause hearings? And (2) Is the officer protected by qualified immunity because his constitutional violation was not “clearly established”?

Annie Chiang '19 introduced the contestants. Arguing for Appellant Herek, Collins and Macomber led

### around north grounds

Our hearts go out to Californians affected by the fires burning across the state. ANG's heart has been going out a lot lately and ANG wants it to stop.

Thumbs up to Dean Kendrick telling her daughter that “crying in the Law School is not allowed.” ANG is glad to finally hear Dean Kendrick's secrets to queendom revealed, but feels this could cut into ANG's side business selling bottled 1L tears as “hornbook supplements.”

Thumbs sideways to the guy that interrupted his girlfriend's first marathon to propose to her. He made something she worked on for over a year all about him, but then again ANG would marry a stranger to get out of running even twenty feet.

Thumbs down to President Ryan meeting with Law Review after being “too busy” for an in-person interview with the Law Weekly. A person is a person, no matter how small-headed. (Yes, that's a shot at you, W. Campbell.)

Thumbs up to rain. As we get deeper and deeper into November, ANG is glad to see the weather is holding strong in its determination to crush the hearts and souls of all NGSL members and softball lovers alike.

Thumbs down to the lack of open bar at this year's PILA. ANG lost all of ANG's cash in the riot at coat check and had to ransom off women's flats for \$10 gin and tonics.

Thumbs up to hot cocoa. You go, hot cocoa.

Pour one out for Stan Lee. ANG is going to miss your imagination and stories.

Thumbs down to the FDA considering outlawing e-cigarettes. First the law library, now the country? ANG knew Dean Davies had power, but never imagined she hated the lingering chemical smell of ANG's cotton-candy e-cig so much.

## Tomorrow We May Die:PILA Auction Last Chance at Pre-Exam Social Life

Jacob Jones '21,  
Sarah-Jane Lorenzo '21,  
Tyler D'Ambrose '21  
Staff Editors

The PILA Auction is a special annual event that allows UVA Law students and professors to join in coura-

who earn grants to work in low-paying public interest jobs over the summer. For the first time, the event was split into two separate auctions: a live auction on Thursday evening (featuring free alcohol and professors being pieped in the face), and the Yule

Professor Mitchell in the face.

The division of events allowed professors to bid on fancy items, such as private band performances and music lessons with guitarist extraordinaire Read Mills, without interacting with students over the weekend. It also ex-



Silent Auction attendees mill excitedly around the auction tables. Photo Kolleen Gladden / The Virginia Law Weekly

geously consuming inordinate amounts of alcohol while bidding on hot-ticket items ranging from poker with professors to choosing someone else's next tattoo. The proceeds go towards cash-strapped UVA Law students

Ball-themed silent auction on Saturday night. Dividing the events proved successful this year: around 600 tickets were sold to Saturday's “Law School Homecoming”—many more than were sold last year—and on Thursday, one lucky student paid \$350 to pie

cused students and professors alike from having to mutually acknowledge how much the student body likes to drink, and for that reason, many awkward interactions were avoided. Eager Thursday bid-

## LILE

continued from page 1

off by arguing that the Fifth Amendment's protection against self-incrimination extends to pre-trial probable cause hearings and that Officer Bautch violated clearly established law by referring a coerced confession to the DA. Macomber argued that the Fifth Amendment's application in sentencing hearings made clear that the protection against self-incrimination was not merely a trial right, but one that protected criminal defendants throughout court proceedings. Judges Diaz and Moore pushed back at this point. What about grand jury proceedings? Macomber admitted the right against self-incrimination appeared not to apply in front of the grand jury, but argued that formal proceedings in front of a judge were different. The judges sought a limiting principle: Where does the right against self-incrimination stop? Macomber was ready with an answer: Defendants have a right not to incriminate themselves in formal, in-court, judicial proceedings, not just at trial.

Burchard came next to speak, arguing for Appellee Eugene Bautch that the Fifth Amendment applies only when penalty is at stake, which explains why it can cover sentencings but not the pre-trial probable cause hearing at issue in the case. Noting that Herek had spent a weekend in jail prior to his hearing, Judge Diaz called Herek's ordeal a "stiff penalty," but Burchard pushed back, calling the weekend in jail *"de minimis."* Burchard acknowledged that the prevalence of plea bargaining had broadened the reach of the right against self-incrimination, but insisted that the right should apply only in adversarial proceedings, which a probable cause hearing is not.

Collins went next, arguing that Bautch's conduct was barred by clearly established law that prohibits using coerced statements in criminal prosecutions. The judges took turns questioning Collins about how Bautch's conduct—using a coerced statement at a probable cause hearing—could be a "clearly established" violation of the law when only a few courts had declared the Fifth Amendment applicable at such hearings. Collins urged the judges to zoom out and look at the officer's conduct more broadly. Bautch referred Herek for criminal prosecution on the basis of his coerced statements; he didn't know they would be used only at a probable cause hearing, but expected them to be used at trial, when their use would be a clear violation of the Fifth Amendment. Judge Kendrick expressed concern that Collins's standard muddled the water of qualified immunity doctrine.

Harman finished for Appellee. He argued that widespread disagreement among the circuits about the starting point of the right against self-incrimination precludes

a finding that Bautch violated clearly established law. A right is clearly established, he noted, when no reasonable officer could think his conduct was permissible. Haman noted that the purpose of the qualified immunity doctrine of § 1983 law is to give officers space to operate in the gray area of the law. By awarding money damages against officers like Bautch who have no notice that their conduct is a violation of constitutional rights, the courts would pervert the purposes of § 1983, Harman argued.

After a brief rebuttal by Collins, the judges left the room for about fifteen minutes. The guests—students, faculty, and assorted guests—whispered with anticipation when Lile President Amanda Lineberry '19 brought the judges back in the room. Judges Diaz and Moore both complimented the advocates and assured them they could hold their own in any courtroom in the country; they noted wryly that the students were often better prepared than the professional lawyers who argued before them. Vice Dean Queen Kendrick self-deprecatingly commented that she was out of place among such distinguished jurists (she was not) but complimented the advocates nonetheless, telling Collins, Macomber, Burchard, and Harman that they made her proud to be affiliated with UVA Law. After these compliments, the judges declared that Collins and Macomber were the narrow winners of the contest, and that Harman had won the award for Best Oralist. Harman's forceful and persuasive tone stood out to judges and observers alike, and all the finalists excelled in their ability to advocate for their clients while maintaining excellent poise and strong skills staying composed in the moment.

Reached for comment, Collins told us, "It's pretty cool we could get a victory where my answer to a question was, verbatim, 'Yes. No. Kind of.' Also have you heard Ted Kennedy is on the plaque too?" Collins also expressed a gratitude toward her and Macomber's "tireless mooters," including one N.S., who wore a robe and brought a hammer to make the experience realistic. Macomber expressed disappointment that he was unable to fit the phrase "skrrt skrrt" somewhere into his argument—he had apparently engaged in a "prop bet" to do just that—but asked that the *Law Weekly* communicate his gratitude to his section friends who helped him prepare, especially Sarah Ingles '19, currently in Australia. Harman declined comment. Burchard told us, "It was an honor to compete and I'm grateful for the learning opportunities the competition provided."

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## LOOKING BACK: 70 Years of the Law Weekly

In celebration of seventy years of publication, Volume 71 of the Law Weekly takes pleasure in publishing excerpts from the past seventy volumes. This week, Remembrance of PILAs Past...

It's PILA time! In honor of last weekend's PILA auction, please enjoy this collection of PILA-related news from over the years now that the post-PILA season has come along and brought us the despair of outlining season.

"Also generating much auction-worthy attention was a getaway beachfront-villa vacation in Hawaii, donated by members of Section L of the first-year class. The winner, who had to survive a fierce bidding competition, was third-year Lauren Griswold. If one takes the broader view, this transaction represented a construction transfer of wealth from the television game show *Greed* (which Griswold handily took to the cleaners) to the deserving pockets of U.Va. students laboring in public interest. Hear, hear!" Jonathan Riehl, "PILA's Annual Auction a Roaring Success," *Virginia Law Weekly*, Friday, Dec. 1, 2000. 1)

1) *LS, please step it up. I'm sure I'm not the only one who's here for a beachfront villa in Hawaii.* 2) *Hope everyone's ready for this year's transfer of wealth! Hopefully everyone gets something good in exchange for their hard-earned (or borrowed) cash.*

"Yep, it's time for the auction again, the event that has given Virginia Law students a

reputation as, well, the people you'd most want at a party as long as the party isn't at your house. 'Up until last year, the auction was held at a university building,' explained third-year Auction Director Jennifer Tink. 'Unfortunately, the Law School got so out of hand that the University won't let us use any of their buildings.'" Susan Burgess, "PILA Auction Coming Nov. 15," *Virginia Law Weekly*, Friday, Nov. 2, 2001.

*Friendly reminder that mens rea will be imputed even if you're intoxicated. I expect everyone to be all glammed up and on their somewhat-best behavior. On the plus side, we're back at the Omni again this year so we must not have ruined anything too badly last year!*

**A sampling of "Top Ten Items We'd Like to See at Next Year's PILA Auction":**

"An NGLS commissioner-ship."

"24-hour access to the library."

"Twenty votes in the Electoral College."

"Law Review membership, minus those abusively long cite checks."

"Dean Jeffries' 'Reserved for the Dean' parking space."

"Tenure."

Brent Olson, *Virginia Law Weekly*, Friday, Nov. 5, 2004.

*Just in case any 1L sections out there need to make some last-minute donations to prove their dominance as the best section ever.*

"It is the eve of exam season. I know this because the PILA auction is this weekend. This UVA tradition funds charitable work and gives us one more chance to celebrate before everyone becomes unwashed, bleary eyed, sweat pant wearing zombies. However, the PILA auction is not all fun and games... I have compiled some warnings and advice for this year's PILA auction.

Bidding Wars Suck  
Watch Out for PILA's Drink Tickets

Clothing Optional  
Provide/Buy Creative Auction Items"

Lee Gilley '11, "Keep Your Eyes Open at the PILA Auction," *Virginia Law Weekly*, Friday, Nov. 13, 2009.

*Eve of exam season = meh. Clothing optional = still meh. I know how much pizza this law school consumes. Stay clothed, my friends.*

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## Tyler Ambrose: A Story of Destiny

There are many times in one's life where the path forward seems uncertain

Tyler D'Ambrose '21  
Staff Editor



and every turn could be the wrong one. But on occasion, opportunities will present themselves that compel one's attention. That is precisely the situation that transpired when this writer was given the opportunity to sit down with someone at UVA, with whom he shares a nearly identical name.

When pressed with the hard question of why his last name was missing a "D" and an apostrophe, Ambrose insightfully answered that, since he was born before me, it was *I* who most likely had the misspelled name. Quick wit and insight come second-hand to Tyler Ambrose. A UVA graduate who deferred from Harvard Law to work as the Assistant to the Dean for Special Projects, Ambrose has displayed a remarkable capacity for talent in his short professional career. In his current role, Ambrose provides special support to Dean Goluboff. In addition to providing briefing materials to the Dean's guests at the Law School and helping her prepare for meet-

ings and events, Ambrose also facilitates the Dean's social media presence. In speaking about Dean Goluboff, Ambrose said simply, "She's brilliant." Ambrose expressed appreciation for being able to "learn a lot from her" during his time at UVA, and expressed appreciation for being exposed to the different perspectives of his co-workers. Ambrose specifically mentioned how the Dean's sense of humor helps to "energize the people around her."

Additionally, Ambrose said that UVA's unique environment makes it a special place among the other top law schools in the country. Before arriving at UVA, Ambrose was not sure if collegiality "was just a talking point" used by admissions to attract prospective students. His experience here indicates otherwise. "Most of my co-workers have been here for at least fifteen years. I think that speaks to the environment here."

The interview was not without controversy, however. Being in Charlottesville for a few years has given Ambrose a unique perspective on one of the area's most popular restaurants: Bodo's Bagels. On the topic of Charlottesville eateries, Ambrose said simply, "I think bagels

are overrated." Ambrose contended that there is an "overwhelming hype over Bodo's." As he puts it, "A bagel's a bagel's a bagel." While Ambrose's credibility on this position is without question, it remains to be seen whether the UVA student body can handle the uncomfortable veracity of this statement.

As for Ambrose's future prospects, there seems to be no limit to what he may accomplish. Although he is "not sure what [his] long-term destiny is," Ambrose expressed interest in higher-education spaces. He hopes that eventual attainment of a law degree will help him engage in higher education advocacy in "a more sophisticated way." There is no doubt that his experience at UVA will help him in this regard. And with a name as great as his own, there is plenty of potential to be realized.

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# Changes Coming to Printing Policy: The Law Weekly Investigates

It was just last March that I was touring the Law School, and while I don't remember much from that whirlwind of a visit, I distinctly remember the tour guide pointing to the Copy Center and proclaiming that we could use it to print our course materials and resumés for free. A better, more prepared future student asked if they would print it on special resumé paper. I (unaware that special resumé paper existed but suddenly intrigued) was excited to hear the tour guide affirm that, yes, we could even print it on special resumé paper.

Fast forward to November 2018, a few months after I made the questionable decision to attend law school, I began hearing rumors that the Copy Center would change its course materials and resumé policies. Eager to use the mighty power of journalism to flex the muscles of justice, I was prepared to do some hard-core interrogation. I arranged for a meeting with Troy

Sam Pickett '21  
Staff Editor



Dunaway,<sup>1</sup> the Senior Assistant Dean for Business and Finance and overseer of printing. While I entered ready to “do some investigative journalism,” I left with a better understanding of how the printing system works now and what the changes will actually look like this spring.

What does the system look like now?

Students currently receive an allocation of \$25.00 printing credits per semester. At 5 cents per page, that's 500 pages a semester, with any unused credits rolling over to the next semester. That allocation is to be used as students please, but students are not expected to use it for printing course packs or resumés through the Copy Center. Course packs are instead printed in the Copy Center, where they can be picked up (or not) by students at the beginning of each semester. This system has resulted in “hundreds of thousands

<sup>1</sup> Dunaway has been key in organizing a number of important changes around the law school in recent years, including free resume printing (we didn't always have that!) and the new coffee machines with compostable coffee grounds.

of pages” being wasted each semester, according to Dunaway, with many students opting to use the sources online instead of in print. In an effort to discourage waste, to bring UVA Law in line with its T14 peers, and to be more efficient with the Center's resources, Dunaway is making a change.

What will the system look like Spring 2019?

Dunaway will be implementing an individualized course pack delivery model. Instead of having course materials already printed out upon students' arrival, professors will put all of their materials online and students will be responsible for ordering these materials to the Copy Center themselves through an e-ticketing tool (this sounds like a lot of work, but it takes maybe thirty seconds). The cost will be subtracted from our printing credits. The allocation of printing credits, however, will be raised significantly to account for students' increased printing needs. Dunaway has not yet decided how much the allocation will increase during this next trial semester, but he plans to raise the allocation enough to take the “price pressure” out of students' decisions

to print.<sup>2</sup> In other words, Dunaway will increase the printing allocation enough to allow students to print a full course-load of class materials and still be able to fulfill their other printing needs. Dunaway and his staff will then study the data on students' needs in an on-demand print model and adjust the allocation accordingly. In this manner, the school hopes to promote more conscientious printing among students, which can help reduce the Law School's significant paper waste.

Students will also be relieved to know that they will continue to be able to print resumés for free at the Copy Center. Dunaway also seemed to think that they will continue the policy of printing future 1Ls materials for them during their fall semester, a service that this 1L expressed support for.

**Considerations for Students**

Dunaway repeatedly stressed the experimental nature of this upcoming

<sup>2</sup> It is worth noting that printing credits are not real money. The only money you pay for printing is what you spend when you go over the printing quota.

semester. He invites student feedback and hopes to continue improving upon the new individualized on-demand printing model. He says IT is ready to help students and faculty and that he has received support from both SBA and the Law School's administrators.

That being said, students should prepare to make some changes. With the new individualized nature of printing, they will need to account for some turnaround time when they order their materials. In other words, don't wait until thirty minutes before your class to order the materials printed and bound. And, while the increased allocation should prevent students from paying anything out of pocket next semester, this may not be the case in the future. Thus, students should be prepared to use their printing credits wisely in the future to prevent having to add additional credits to their account.

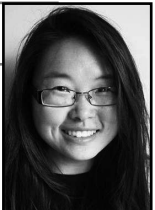
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## Bubble Tea in C'ville: The Law Weekly Review

Dear readers, we invite you to take a moment from your busy day procrastinating from your increasingly pressing responsibilities to indulge in a meditative exercise. Clear your mind. Continue to breathe as you have been since birth. Picture a white space. Imagine in that space a clear cup before you, bobbing in the friendly manner that cups do. We're going to fill the bottom-third of that cup with delicious, chewy tapioca pearls. (What's a tapioca pearl? It's a piece of happiness you can eat.) Next, we'll add some ice, clink, clink, and your favorite tea. Add to that a bit of milk and honey, and we've got some bubble tea!

Grace Tang '21  
Staff Editor



Christina Luk '21  
Staff Editor



rest gently at the bottom of the drink like friendly black pearls. Drinks can be grouped into three broad categories: (1) Classic tea-based flavors, such as jasmine, green, or black tea; (2) Flavored teas, which range from familiar (strawberry, mango, grape, etc.) to slightly more adventurous (lychee, guava, taro); and (3), slushie/smoothie



Two sweet, enticing glasses of Kung Fu Tea's bubble tea. Photo courtesy Kung Fu Tea.

blends, which are thicker and include flavors like Oreo, chocolate, and mocha. Aside from tapioca, other popular toppings include pudding, aloe, jelly, and red bean.

There are two competing theories about the origin of the name “bubble tea.” The

first theory is that the name refers to the tiny air-bubbles that form when the drink is shaken to mix its contents. The other theory is that “bubble” refers to the tapioca pearls at the bottom of the container.

In Taiwan, there is a bubble tea shop around every street corner. Here in Charlottesville, we've worked hard to find a couple of

**Kung Fu Tea**  
1001 W Main St, Charlottesville, VA 22903

**Pros:** Kung Fu Tea is the place to go for bubble tea! This franchise started in New York and has not lost traction as it expanded southward. With an incredible selection of flavors and toppings, this shop is your one-stop pick-me-up for that midweek hump. Not only can you select your own toppings, you can also adjust the ice and sugar levels in your drink to your own liking. The inside of the shop is trendy and inviting, featuring comfy sofas and board games for use. It's a great place to go with friends and play a game of Taboo or Codename. Kung Fu Tea also has an app, which you can scan when you check out for special promotions and free drinks. The sheer array of drink options can be overwhelming, but you can't go wrong with the basics like Kung Fu Milk Tea, or anything off of their Top 10 Drinks Menu.

**Cons:** Since this shop specializes in bubble tea, there isn't a large selection of food options. The limited menu, which includes pork buns, shumai, and potstickers, is reasonably priced and pretty good. Although Kung Fu Tea is available for Grubhub delivery, they do occasionally mix up an order, which can be really disappointing at 10 p.m.

**Got Dumplings?**  
1395 W Main St, Charlottesville, VA 22903

**Pros:** Got Dumplings? sells dumplings, ramen, and other drool-worthy Asian snacks. This means that with just one trip inside, you can get a meal *and* bubble tea. The tea menu is extensive and contains traditional milk teas, fruit teas, and slushies. The bubble tea comes only in large, which means you don't need to feel guilty about getting the bigger size. The flavor of the tea also tends to be milder, which may be good for a first time bubble-tea drinker.

**Cons:** The store is located on The Corner, which makes parking difficult. There is a parking garage on Wertland Street off of 14th Street NW. Got Dumplings? is on the small side and gets busy during lunch. Additionally, the quality of your drink depends on who makes it, so consistency leaves something to be desired. Overall, Got Dumplings? Is an amazing place for dumplings and noodles, but we'd recommend elsewhere if you're looking specifically for a good cup of tea.

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# Blue Wave Breaks

## Both Sides Claim Victory in Inconclusive Midterm

The Democrats’ predicted “Blue Wave” swept unevenly across the country last Tuesday, washing aside suburban

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Republicans and handing Democrats the House of Representatives, but falling short against conservative rural strongholds, especially

Taylor EliceGUI ‘20  
Features Editor



in the Senate. With several races (mostly in California) remaining uncalled, Democrats have gained thirty-two seats in the House of Representatives, converting the Republicans’ 235-193 majority to a Democratic majority of 227-200. But Republicans swept aside several vulnerable Senate Democrats, taking seats in Florida (subject to recount), Missouri, Indiana, and North Dakota while losing Sen. Dean Heller’s seat in Nevada and the seat left open by Sen. Jeff Flake’s retirement in Arizona. This two-seat gain increases Republicans’ majority in the Senate from 51-49 to

1 Sen. Dean Heller (R) lost to Rep. Jacky Rosen (D). Rosen got on the Democratic Party’s list of possible Congressional candidates for Nevada’s Third District in 2015, at the suggestion of then-state district judge Elissa Cadish—Rosen was one of Cadish’s bridesmaids. Political reporter Jon Ralston said there was “something Shakespearean” at Heller losing to Rosen, considering Heller blocked Cadish’s 2013 federal judge nomination “in an extraordinary act of demagoguery and pettiness.” Jon Ralston, *Predictions for Thursday*, The Nevada Independent, (Nov. 4, 2018 1:45 AM), <https://thenevadaindependent.com/article/predictions-for-tuesday>.

53-47.

Democrats also had a good night at the state level, flipping seven governorships, including the seat held for two terms by liberal nemesis Gov. Scott Walker (R-Wisc.) and the open Kansas race in which notorious immigration scourge Kris Kobach was the Republican nominee. Republicans won wide victories in the liberal bastions of Massachusetts, Maryland, and Vermont, while managing to take back the Alaska governor’s mansion from the independent who won it in 2014. Republicans hold twenty-two state trifectas (that is, control of both houses of the legislature and the governor’s seat), Democrats hold fourteen, and thirteen states still have divided government (with Mississippi too close to definitively call). According to election law expert and UVA Law Professor Michael Gilbert, the result of the governors’ races will make the redistricting process more complicated in 2020 and increases the chances states will be gerrymandered in a bipartisan fashion to favor incumbents rather than the one-sided partisan redistricting more common in recent years.

In Virginia, three Republican House incumbents lost: Reps. Barbara Comstock (R-Va. 10), Dave Brat (R-Va. 7), and Scott Taylor (R-Va. 2) were defeated by Democratic challengers. In the open seat covering Charlottesville vacated by Rep. Tom Garrett (R-Va. 5), journalist Leslie Cockburn (D) came up short against distillery owner Denver Riggleman (R). Cockburn carried Charlottesville and Albemarle County, but Riggleman swept to a six-point victory by carrying most of the rest of the district, which stretches from the North Carolina border to the Washington, D.C. exurbs. Meanwhile, Sen. Tim Kaine (D-Va.) swept to a fifteen-point victory over Prince William County Board of Supervisors Chairman Corey Stewart, winning commanding majori-

ties in the Northern Virginia D.C. suburbs and flipping the traditionally Republican Richmond suburbs of Chesterfield and Henrico Counties. Stewart ran up strong totals in rural Southwest Virginia and the ruby-red Shenandoah Valley, though Kaine won the cities of Staunton, Harrisonburg, Waynesboro, Lynchburg, and Blacksburg. Stewart came under heavy criticism for calling anti-Semite Paul Nehlen his “hero” and for embracing Alabama Chief Justice Roy Moore after allegations that Moore had sexual relations with various underage girls. Meanwhile, about 40 UVA Law students got involved in monitoring polls across Virginia. Organized through the Democratic Party of Virginia, these students, including Molly Cain ‘20, provided precinct information to voters, assisted those who cast provisional ballots, and kept track of wait times. Cain emphasized the importance of such work amid voter-eligibility and ballot-counting challenges across the U.S.

Partisan shifts across the country mirrored those of Virginia. Republicans won Senate seats in Indiana, Missouri, North Dakota, and (probably) Florida by winning huge victories in rural areas, with increased turnout from the last midterm in 2014. Democrats defeated Republican House incumbents in areas such as Oklahoma City, the Chicago, Dallas, and Houston suburbs, and exurban Los Angeles. Also of note, Democrat Lucy MacBeth defeated Rep. Karen Handel (R) in the Atlanta suburbs, after Democratic challenger Jon Ossoff lost in a 2017 special election to replace Secretary of Health and Human Services Tom Price in the same seat.

The night started off slow for Democrats as their candidates for Florida Governor and U.S. Senator—predicted by the polls to win by three to five points—fell behind their Republican challengers amid

off-the-charts rural turnout and a weak showing among Miami Hispanics. But Democratic wins piled up; Republican House seats fell across the Upper Midwest, ensuring a Democratic majority before California had even begun to count. According to Law Democrats President George Rudebusch ‘20, “What we saw in the 2018 midterms was America taking an affirmative and resounding step to the left. Although a slanted map put the Senate majority out of reach, Democrats have much to rejoice. We took control of the House for the first time in eight years. We elected more minority candidates to Congress than ever before, including a historic number of women. We netted seven new governorships. We expanded Medicaid coverage to another 300,000 Americans in Idaho, Nebraska, and Utah. We voted to increase the wages of nearly 1 million workers. And we restored voting rights for 1.4 million Americans in Florida.” Law Republicans President Max Wagner ‘19 disagreed. “Last week’s midterms were a success for the Republicans. Democrats were heavy favorites to take the House. Their gains in the chamber were well within the range of a normal midterm election. Republicans have expanded their control of the Senate, which was the more important chamber for Republicans at this time.”

Several of the yet-undecided races have the potential to shift the narrative and analysis of the election. Eight House races and one Senate race remain too close to call. In Florida, recounts remain underway

for U.S. Senator and governor. Republican Rick Scott (R) leads Sen. Bill Nelson (D) by 12,562 votes, or 0.15 percent. Professor Gilbert described the situation as feeling very similar to the 2000 Florida recount that preceded Bush v. Gore. The Florida Secretary of State ordered a machine recount by November 15, and Florida law requires a manual recount if the election is within 0.25 percent. However, Palm Beach County Supervisor of Elections already announced it is impossible for Palm Beach to finish its recount by then, drawing the ire of Scott and Republicans. Scott and others (including the President) have made unsubstantiated claims of voter fraud, while Democrats have been on the defensive about Broward and Palm Beach Counties’ lack of compliance with transparency laws that require public disclosure of election information, including number of ballots on hand. Professor Gilbert finds these unsubstantiated claims of fraud to be destructive, but said the claims are more of a reflection of who is ahead rather than a partisan position. Democrat election law attorney Marc Elias, head of Perkins Coie’s Political Law practice group, is representing the Nelson campaign and suing the Florida Secretary of State.<sup>2</sup> Elias has been tweeting out frequent updates; readers

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2 Of the twenty-six elections that have gone to a recount since 2000, only three changed the results. Elias represented the candidates in two

## Faculty Quotes

**G. Rutherglen:** “Procedural rules do have real world consequences. I mean, imagine if they didn’t. I would be heartbroken! This course would be pointless.”

**R. Hynes:** “Paying taxes is for suckers . . . I don’t teach professional responsibility.”

**D. Leslie:** “That was a really stupid answer!”

**F. Schauer:** “For those of you who haven’t encountered French opinions, this is quite typical, except it’s in English.”

**J. Harrison:** “I find this highly frustrating and it inter-

fered with my nap.”


**J. Setear:** “We’re ahead of schedule by a week, which is really weird for me.”

**K. Kordana:** “I’m personally tormented by my failure to sue this woman in Maine I rented a house from.”

**R. Harmon:** “You’re looking at me going, ‘Swiss cheese, what the hell are you talking about?’”

**M. Gilbert:** “PG in the 80s . . . wasn’t really PG.”

*Heard a good professor quote? Email editor@law-*



## Virginia Law Weekly

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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 four 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 [jmv5af@virginia.edu](mailto:jmv5af@virginia.edu).

Angry Horde of 3Ls v. Fuqua

901 U.Va. 76 (2018)

HOPKIN, J. delivered the opinion of the unanimous Court. UNANIMOUS, FRANCES.

Justice HOPKIN, for the Court.

The case before the Court is whether a group of 3Ls (hereinafter “Angry Horde”) can sustain a breach-of-contract claim against the UVA Student Bar Association (SBA) for the severe lack of “Wednesday Socials” held recently. Angry Horde brought this suit against President Frances Fuqua (hereinafter “Dictator Fuqua”) in her personal capacity and requests specific performance of the contract to provide Wednesday Socials. This Court upholds Angry Horde’s claim against Dictator Fuqua and grants an injunction mandating an SBA Social to be held within the next twenty-four hours.

I  
SBA entered into a valid contract with the Class of 2019. If the Court remembers correctly (and the Court does), this means there was offer and acceptance and people were totally allowed to be drunk.

See *Lucy v. Zehmer*, 84 S.E.2d 516 (Va. 1954). The Court finds two separate ways to fulfill these requirements. First, when the University of Virginia School of Law admitted the individuals in this class, Dean Cordel Faulk promised “a great law school experience.” The man is a saint, and his word is interpreted by this Court as black-letter law. See *Dean Faulk v. Sniveling Law Student*, 578 U.Va. 80 (2016) (“The Court didn’t get into any other schools and managed to squeak past the Quality Assurance section of Admissions, and, therefore, like really owes Dean Faulk. He wins on summary judgment. We don’t even know what this case is about.”). The Court has previously held that “great law school experience” means “two kegs of beer and one keg of cider with some kind of cheap food if you show up on time.” *Entitled Class of 2017 v. Dean Davies*, 593 U.Va. 94 (2017). Therefore, the Class of 2019 was offered bread and circuses and accepted by attending UVA Law rather than another school. The Class of 2019 gave consideration when they turned down other schools that grade on a “High Pass, Low Pass” system.

The SBA, led by Dictator Fuqua, modified this contract by offering Wednesday Socials every other Wednesday

during the Fall 2018 Semester. A subsection of the Class of 2019, Angry Horde, then accepted by religiously attending the socials when they were held. Angry Horde even talked some Professors into skipping breaks during class to let students out at 5:30 p.m. instead of 5:40 p.m. so that Angry Horde could enjoy the cold food offered alongside the beer. Therefore, under both theories, Angry Horde entered into a contract with UVA Law for Wednesday Keg Socials to be fulfilled by the SBA under the leadership of Dictator Fuqua.

II  
Dictator Fuqua has allowed SBA to breach this contract. For several Wednesdays in a row, Angry Horde has shown up to an empty Spies Garden. In the words of one member of Angry Horde, “What—and I cannot emphasize this enough—the f\*ck. I seriously cannot find the keg.” The Court finds this behavior so repugnant that it cannot comment further on the breach except to say, “RUDE.” I mean I thought we were friends, Frances. We shared a drink special at Bilt—you can’t just turn your back on that.

III  
The most appropriate remedy for this breach is specific

performance. The Court cannot place a number on the amount of damage this breach has caused. Any dollar amount given to Angry Horde would fail to make these parties whole, because no amount of money can satisfy the need for cheap beer and cold pizza the way an SBA social can. Damages are, therefore, impossible as a remedy here. Therefore, the Court grants an injunction to Angry Horde ordering Dictator Fuqua to hold a Wednesday Keg Social within the next twenty-four hours.

Dictator Fuqua is lucky that Angry Horde brought this action under breach of contract rather than intentional infliction of emotional distress. (Although so is the Court because all the Court seems to remember about this doctrine is a horse cuddling a toddler and Professor Abraham saying, “It really worries me that you can’t understand basic fact patterns.”)

Even though the Court agrees with her general sentiments, the Court will not consider the *amicus curiae* filed by Kate Duvall calling Angry Horde “overly dramatic” and urging them to “please study” because she’s “seen [their] grades.” Everyone knows 3Ls don’t study. So silly.

Conclusion  
Shaaaaamme. Shame on

you, Dictator Fuqua. And Read. And Taz. The people need access to kegs, and you purposefully withheld them. Angry Horde will be in Spies Garden this evening ready for kegs—you better bring them.

Finally, Professor Setear requests that you have a cold Diet Coke ready for him in addition to the kegs. There’s no real legal basis for this, but you’ve upset the Court. And the Court would like to earn above a C- in his class. Two birds, one injunction.

Also, if this Court incorrectly used any Contract Law terms or doctrines, it has been ages since this Court attended any class that even refers to Contract Law. If you push it, the Court is not afraid to use Criminal Law on your insubordinate attitude—and the Court actually learned that subject. See *Justice Hopkin v. Her Nemesis*, 362 U.Va. 71 (2017) (maintaining a conviction against someone who consistently parked over the line in the D3 lot against a charge of malicious prosecution because of Petty Rule of Civil Procedure 1: “We do what we want.”)

It is so ordered.  
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HOT BENCH



1. Where did you grow up?  
I split my childhood between Hong Kong and Oakland, California.
2. What are you most excited for during your first year in San Francisco?  
There’s a vegetarian pizza place called Cheeseboard that I dream about. I know. Potato and corn pizza sounds like an abomination but tastes like pure happiness.
3. What is your favorite word?  
No.
4. What’s the best meal you’ve ever had?  
Street tacos in Mexico.
5. What’s your favorite hobby to avoid the stress of law school?  
Cooking. Also failing at cooking.
6. Where is your favorite place to vacation?  
Lake Tahoe.

7. What did you have for breakfast this morning?  
I never wake up in time to eat breakfast.
8. If you were a superhero, what would your superpower be?  
Prediction of financial markets. As Batman and Iron Man have shown, money is the best superpower.
9. If you could live anywhere, where would it be?  
I’d like to have a little ranch in northern California.
10. What’s the best (or worst!) PG-rated pickup line you’ve ever heard?  
“Looking?”
11. What’s your favorite thing to do in Charlottesville?  
Complain about Charlottesville.
12. If you could make one rule that everyone had to follow, what would it be?  
Tipping would be illegal.
13. What’s your favorite food(s)?  
Late-night, non-sober carne asada fries.
14. If you had to pick one song to play non-stop in the background of your life, what would it be?  
4’33” by John Cage.
15. What’s the longest you’ve gone without sleep and why?

- Four days. I was camping for the first time and discovered I hate camping. I’m weak and cannot sleep in the wilderness.
16. If you won the lottery, what would you do with it?  
Make it rain. Then donate it to charity.
  17. If you had Matrix-like learning, what would you learn?  
Mandarin. I’ve been trying to learn for years and it’s going nowhere.
  18. If you could be in the Winter Olympics, which sport would you compete in?  
Bobsledding. Other than the sled driver, it seems like the rest of the team just chills in the sled. I could do that. Maybe.
  19. Where is a place you haven’t been but want to travel to?  
Antarctica. I want to see it before it changes too much because .... CLIMATE CHANGE IS REAL.
  20. What are the seven wonders of the Law School?  
I don’t know if this counts as a wonder, but everyone should try to chat up the security guards at the law school. They’re some of the nicest people on Grounds.
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BLUE WAVE  
continued from page 4  
may follow @marceelias for the latest on his efforts. In the governor’s race, Rep. Ron DeSantis (R) remains in the lead by 33,684 votes over Tallahassee Mayor Andrew Gillum (D) and the machine recount will proceed until Thursday.  
The midterms were largely good for UVA Law alums; of the eight who ran, at least six won.<sup>3</sup> Sen. Angus King ’69 (I-Me.) retained his Senate seat, defeating his challenger Eric Brakey (R) by 19.6 percentage points. Sen. Sheldon Whitehouse ’82 (D-R.I.) easily won his third term. Sen. Bill Nelson ’69 (D-Fla.) remains locked in the race with Governor Rick Scott (R). Rep. Sean Maloney ’92 (D-N.Y. 18) won his fourth term in a district that twice voted for President Obama and then went for President Trump in 2016. On Sunday, November 10, Rep. Maloney announced his candidacy to lead the DCCC. Rep. Sheila Jackson Lee ’75 (D-Tex. 18) easily kept her seat and will go on to her twelfth term. Rep. Don McEachin ’86 (D-Va. 4) won his first full term after winning the seat in a 2017 out of those three elections.

3 This list is the product of a good-faith, but not necessarily exhaustive, search. Please send an email to [editor@law-weekly.org](mailto:editor@law-weekly.org) if you know of any UVA Law alums we missed so we can include them in next week’s newspaper. Also, many thanks to Diddy Morris for her contributions!

special election. In statewide races, Ken Paxton ’91 (R) won re-election as Texas’s attorney general. Jeff Bartos ’97 (R) lost his race for Pennsylvania lieutenant governor.  
Amid the tumult and upheaval that is the era of President Donald Trump, the midterm elections provided a surprisingly predictable result: Democrats re-took the House of Representatives, just as Republicans did in President Obama’s first midterm in 2010 and in President Clinton’s first midterm in 1994. And while Republican gains in the Senate should not be discounted—especially their rural surge and their gains in important presidential states like Florida—those gains can more easily be credited to the difficult map faced by Democrats, who defended twenty-three seats to the Republicans’ ten. The partisan makeup of the new Congress will now be a mirror image of the Republican House/Democratic Senate that President Obama faced beginning in 2011, a parallel that should worry President Trump if he has grand designs on passing a legislative agenda. And civic advocates may rejoice: Midterm turnout, at close to half the eligible population, was the highest in nearly fifty years. Whatever else is true of the current era, it is not one marked by quiescence or apathy.

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PILA

continued from page 1

ders spent more than twice as much during the live auction this year than last, which will hopefully enable students to do more public interest good in summers to come.

Saturday’s silent auction<sup>1</sup> featured men donning their best JCPenney or Sears suits and women puttin’ on the ritz with their snazziest dresses. Over 600 students and their dates crammed into a hotel ballroom for the event. Silent auction ticket items featured common themes including dog sitting, gift cards,<sup>2</sup> and various offers from talented people promising to teach the rest of us skills we can use to impress our mothers over winter break.<sup>3</sup> It seemed everyone had pregamed sufficiently to feel just fine about placing max bids on items ranging from stick-shift driving lessons and home-cooked meals to the chance to choose somebody’s next two-inch tattoo. Students who were most inebriated were easy to recognize by the trails of max bids in their names scrawled illeg-

1 Which was actually very noisy from all the music and conversation.

2 Hopefully not for JCPenney.

3 Other than 1Ls newfound ability to say a string of facts and then declare “res ipsa.”

ibly around the room.<sup>4</sup>

For many items, competition was fierce: Multiple items quickly reached their maximum bid amounts, and law students desperately tried to outbid those maximums. Sometimes, people left mean comments in the margins for their competitors. Fortunately, a good samaritan scribbled over nasty comments and wrote “I ‘heart’ you” instead. There was no shortage of items to bid on, and since there were no announcements of who won, everyone got to go home feeling like a winner. The hottest ticket item was a 2”x 2” tattoo of the bidder’s choice offered by the bold Andrew Sexton ’19, which quickly reached its \$650 buyout. The legality of buying rights to a part of someone’s body is sketchy at best, so it is important to make sure we all normatively enforce this contract through peer pressure.

While the event was supposedly Harry Potter-themed, there were no magicians promising to make all of our dreams come true.<sup>5</sup> On the other hand, there were several elixirs offered at the cash bar, which seemed to

4 This author’s heart goes out the drunken guy or gal who bid over \$75 for a basket of life savers and beauty products.

5 However, Lena Welch was particularly on-theme, with a homemade robe and a time-turner in her bun.

Regular League Playoffs

BatMen over RELLS

boost law students’ spirits when consumed in the right amount. Students without the foresight to bring cash were forced to locate the lone ticket booth amidst the drunken crowd. Their struggle was rewarded once they got to see their tickets magically transformed into intoxicating elixirs.

The event provided students with plenty of food, and all were challenged to eat back some of the \$35 ticket cost.<sup>6</sup> 3Ls led by Daniel Grill ’19 could be heard grumbling about the price difference between 1L and 3L. “Tickets were what, forty bucks when we were 1Ls?” Grill said. “And we got two drink tickets!” One PILA representative, who spoke off the record with the *Law Weekly’s* editors, blamed the Omni for driving prices up. The Omni lavishly provided “chicken nuggets,” mystery meat on a stick, pulled pork sliders, and \$8 rum and cokes. Many law students hit the dance floor when they were not busy walking around the bidding tables in a magic-potion-induced stupor. While the dance floor was flooded with nerdy law school

6 Or \$30, or \$40, depending how early or late you were to the game.

Co-Rec League Playoffs

Fairly Odd Patents over Legal-Es

200Ls over DDD

students, the dancing was surprisingly classy. Most students left plenty of room for Jesus, or whichever religious figure they prefer. As one attendee stated, “Thank God I didn’t see any twerking.” Both flossing and the robot are still considered classy and appropriate dances for a law school shindig, however.

After pre-pregaming, pre-gaming, and then sweating a lot in an environment that felt like a high school gymnasium for around three hours, many students went home. Those with the courage and stamina to continue the party rallied at Rapture, where their long trek was rewarded with the familiar siren songs of Gunners n’ Roses.<sup>7</sup> For many students, this was the last official chance to go out and party with classmates while collectively and negligently blowing off our outlines.<sup>8</sup> According to meteorologists,<sup>9</sup> winter is

7 This author takes no official position with regards to the recent Court of Petty Appeals decision concerning Gunners n’ Roses and Panic! At the District Courthouse.

8 “Res ipsa.”

9 Also according to Jon Snow and the maesters.

coming, and it is time for students to move into the library for the next month. We will now settle down into our favorite corners of the gunner pit to hide away as we slowly become one with our outlines.

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Correction

In last week’s edition, the *Law Weekly* ran several photographs of spooky children on the hunt for candy, dressed in their finest costumes. One persnickety student (who won’t be named, but whose name rhymes with “France McGraw ’21”) pointed out that we had labeled as a dragon a small human who was “clearly a triceratops.” The student suggested our staff watch Jurassic Park. He’s a bit of a jerk, but he’s not wrong. Sry.

THE DOCKET	TIME	EVENT	LOCATION	COST	FOOD?
	WEDNESDAY – November 14				
	12:00	Baker Botts Lunch Panel	WB 126	Free	Yes
	15:00	DOJ Volunteer Internships Webinar	Various	<a href="https://ecs.acms.com/volunteer/passcode10200">https://ecs.acms.com/volunteer/passcode 10200</a>	BYOB
	17:00	“62 Days” Film Screening, Dinner, Discussion	Purcell	Free	Yes
	THURSDAY – November 15				
	12:00	Law & Public Service Lunch & Learn	WB 119	RSVP Symplicity	Yes
	12:30	Vinson & Elkins Exam Panel	WB101	Free	Yes
	12:45	Human Rights in Conflict: Book Talk: The Third Degree	Purcell	Free	----
	17:00	Winter Diversity Reception	Caplin	Free w/ RSVP	Snacks
	19:00	Law Vets Charity Bar Crawl	The Corner	Tickets still on sale!	MRE entrees (choice of Veggie Omelet / 5 Fingers of Death)
	FRIDAY – November 16				
	07:45 – 14:00	Prison Visit to Fluvanna Women’s Correctional Ctr.	Buses from Law School	RSVP gos4td	----
	14:00	Justice Kennedy Visit	Caplin Auditorium	Free	----
	20:00 – 22:00	Fall Dance Concert	Culbreth Theater	Free to students	----
	SATURDAY – November 17				
	18:30	FLAVA: Community Thanksgiving Meal	ScoCo	RSVP mkb4ja	Bird, starches, NPR’s Cranberry Relish, pie
	20:00 – 21:30	Charlottesville Symphony: Tchaikovsky Symphony No. 5	Old Cabell Hall	Free	----
	SUNDAY – November 18				
	14:00	<i>West Side Story</i>	The Paramount	\$5-\$7	Onsite / BYO for the adventurous
	MONDAY – November 19				
	11:00 – 12:15	Miller Ctr: The Conservative Case for Universal Healthcare	Miller Center	Free	----
	18:30 – 20:00	Alcohol Ink Tiles Craft Workshop	JMRL Crozet Library	Free w/registration	----
	TUESDAY – November 20				
	13:00 – 14:30	Authors Eat Free Luncheon / Networking Event	Foundation for the Carolinas, Charlotte NC	Free (on craigslist)	If you’re an author!
	WEDNESDAY – November 21				
	00:00 – 11/23 23:59	Thanksgiving Break	Various	To include airfare, breakup with pre-law SO, politics at dinner table, pre-exam jitters	See FLAVA <i>supra</i> .

Softball Playoff Results

Co-Rec League Playoffs

Fairly Odd Patents over Legal-Es

200Ls over DDD

students, the dancing was surprisingly classy. Most students left plenty of room for Jesus, or whichever religious figure they prefer. As one attendee stated, “Thank God I didn’t see any twerking.” Both flossing and the robot are still considered classy and appropriate dances for a law school shindig, however.

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SUDOKU

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	6		9					
9	4					1		5

Solution

5	8	1	9	3	7	4	6
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4	6	9	5	7	1	7	8
8	9	7	6	7	3	5	1
7	4	3	1	5	8	7	6
6	1	5	4	9	7	8	3
1	5	8	7	6	9	3	4
7	7	6	3	1	4	9	5
9	3	4	7	8	5	6	1