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Virginia Law Weekly

A Look Inside:

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Law Weekly Exclusive:

Law Review to Vote Friday on Selection Overhaul

Contentious New Plan Would Select Half of VLR *Membership Holistically*

Jansen VanderMeulen '19
Editor-in-Chief

The *Virginia Law Review* (*VLR*) will vote Friday on a contentious plan that would overhaul how this Law School's flagship journal selects its members. The new plan, obtained by the *Law Weekly*, would limit the number of members admitted based on grades and select half the membership based on a holistic review of applicants' grades, writing competition performance, and personal statement. *VLR*'s managing board approved the plan in a close 14-11 vote.

Current *VLR* policy is this: The students with the top fifteen GPAs are automatically admitted to *VLR*, as are the top fifteen performers on the write-on not already admitted by grades. After that, the five students with the next highest grades who also score in the top half of the write-on are admitted, as are the next five highest write-on performers in the top half of the class in grades. Finally, up to ten students are admitted through the Virginia Plan, which considers personal statements specifically tailored to diversity, but is restricted to students in the top half of the class in both GPA and write-on score.

The new plan replaces the Virginia Plan with an authentically holistic review—eliminating the top-half requirement—and removes the Virginia Plan's quasi-requirement that candidates come from a historically disadvantaged group. Some of the plan's features are the same as in years past: the ten students with the highest GPAs would be automatically admitted (down from fifteen), as would the students with the top fifteen write-on scores. But the other twenty-five would be selected by *VLR*'s Membership and Inclusion Committee.

The seven-person committee would be made up of *VLR*'s Editor-in-Chief, Managing Editor, a new "Membership and Inclusion Editor" (selected by the outgoing managing board) and four members selected by the editorial board and new managing board. The committee would select the top personal statements, taking between fifty and seventy-five, with the understanding that some of their picks will make *VLR* through other means. Those students' information would be sent to the Student Records office, which would send back the students' grade information based on relative GPA tier—the committee would not know students' exact GPAs, just their position in tiers relative to their classmates. And for students whose GPAs come back in the bottom third of the class, *VLR* would receive no tier information; they would know only that the student is in the bottom third. The members of the committee would then weigh the students' grade information, their write-on scores, and their personal statements to select twenty-five of them for membership on *VLR*. Students must receive five of seven votes to be admitted.

Supporters and opponents disagreed markedly about the new plan's merits. Most *VLR* members who spoke with the *Law Weekly* did so on condition of anonymity: several pointed to an email sent by Managing Editor Aparna Datta '19 that informed members that the proposal was "internal and confidential to *VLR*." (*VLR* sources say this was meant to avoid panic among the 1Ls.) Nonetheless, the Law Weekly interviewed nearly a dozen *VLR* members about the plan, including members of the managing board.

Supporters contend the plan will strengthen *VLR* by allowing for greater diversity of membership and remove arbitrary hurdles to getting the best students on Law Review. Opponents criticize the plan's concentration of power in a small number of people, its potential for abuse, and its dilution of what it means to "be on Law Review."

Several *VLR* members who spoke with the *Law Weekly* agreed the current lack of underrepresented students on *VLR* is a problem, but expressed concern with leaving the selection of half of Law Review's members to a committee they claim is secretive, opaque, and rife with potential for abuse.

One source said, "It's problematic that our current system—one written exam graded on a curve—leaves an unrepresentative group at the 'top' of the class," they told me. "Perhaps [grades and the writing competition] are arbitrary, but discretionary selection from a committee is surely more arbitrary." Another *VLR* member agreed: This process "will create opacity, confusion, and stress among 1Ls" unsure how exactly one "gets on Law Review." Other members worried about the potential for backroom politics, or at least the perception of unfairness. "People will inevitably wonder whether popularity, politics, networking, or other inappropriate factors played a role," a member said. "Especially since the personal statements will be impossible to keep totally anonymous."

Another member—supportive of the Virginia Plan but opposed to this plan—echoed that concern, worrying that this "gooey process" could spawn selection based on popularity or corruption and collusion among the members of the committee, who, though required to give weight to each of grades, the write-on, and the personal statement, are under no obligation to disclose their weighting or have a consistent metric for balancing the three factors. One member called the committee's discretionary power "insane."

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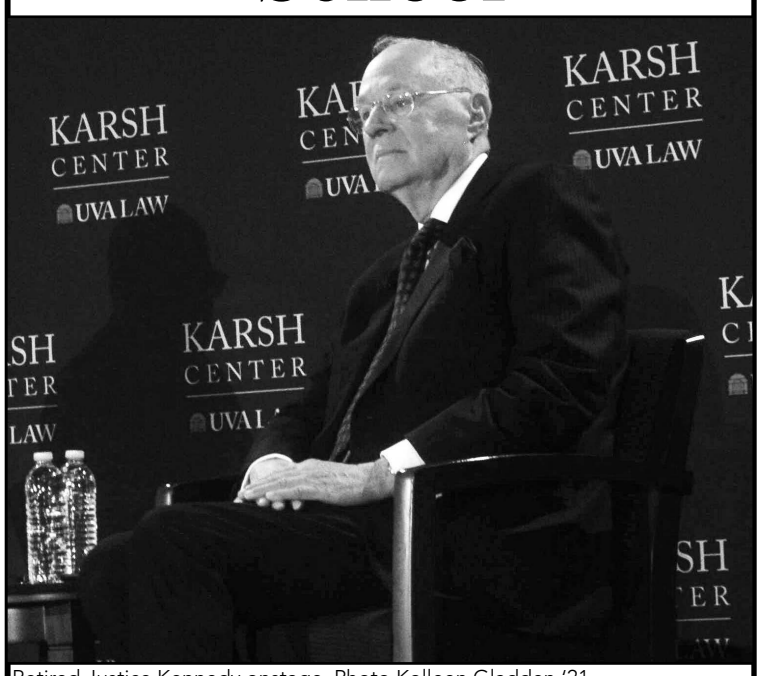
Justice Kennedy Swings by Law School



Retired Justice Kennedy onstage. Photo Kolleen Gladden '21

Jansen VanderMeulen '19
Editor-in-Chief

Retired U.S. Supreme Court Associate Justice Anthony M. Kennedy visited the University of Virginia School of Law on November 15 and 16, christening the new Karsh Center for Law and Democracy and displaying a humorous side rarely seen from the bench.

Kennedy, 82, was originally scheduled to visit the Law School in September, but the visit was postponed due to Hurricane Florence's approach. This rescheduled visit took place on the Thursday and Friday preceding the Thanksgiving Recess, but attendance at Kennedy-related events was undiminished.

Several venues in the Law School played host to the retired justice—Professor Micah Schwartzman '05 described Kennedy as "generous with his time"—starting with a combined sitting of Professor J. Scott Ballenger '96's Civil Liberties and Professor Schwartzman's own Religious Liberties courses on Thursday. There, Justice Kennedy—the author of famed civil and religious liberties cases such as *Church of the Lukumi Babalu Aye v. City of Hialeah*, *Lawrence v. Texas*, and *Obergefell v. Hodges*—lectured on his jurisprudence and took questions from students.

Next on Thursday, Kennedy participated in a lunch in the faculty lounge with a group of students selected from diverse backgrounds. The justice talked about his own experience in the law: law school at Harvard, returning home to take over his father's law practice in Sacramento, and being appointed by President Gerald R. Ford to the Ninth Circuit. He quoted Aristotle, stuck up for the Socratic method, and recalled the very different days during which he be-

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around north grounds

Congratulations to Alex Haden '17 and Ashley Angelotti '17 on their engagement! The couple led the *Law Weekly* their 3L year and got engaged in our office with a special edition of the paper. ANG's pumped to black out at their wedding with the Aristocrat vodka Alex left in the Law Weekly fridge.

Thumbs up to President Ryan's Office. ANG appreciates the thoughtful outreach and congratulates Ryan on leading by example: if YOU see a friend, foe, or fictional entity circling the paranoid drain of insanity this finals season, reach out! Maybe take 'em to coffee (HINT). #PSA

Thumbs down to finals. On a related note, thumbs up to Harris Teeter's wine selection.

Thumbs sideways to Thanksgiving dinner. On the one hand, ANG's always down for passive aggressive political discussions. On the other, ANG thought this year's Law School Expansion Pack would come with more features!

Thumbs up to the students holding a wine-and-turkey Thanksgiving in the study rooms by the bookstore last Wednesday amid the Law School ghost town.

Thumbs down to the Baker Botts food-less "lunch" panel. ANG hasn't read the Model Penal Code in a long time (ever) but ANG's pretty sure this is statutorily punishable by four course meals at spring 1L receptions.

Thumbs up to shared electric scooters coming soon to campus! ANG looks forward to drunkenly scooting back from bar review. Is that a felony?

Thumbs down to ANG. Turns out ANG was spreading fake news last week when ANG said President Ryan met with Law Review when he was actually meeting with a shadowy cabal called the "Tri-Sector Leadership Fellows."

Outline Formatting: Timely Tips for Success

Hunter Hampton '19
Guest Columnist

Creating an outline is no simple task. There's an unbelievable amount of material, a limited amount of time, and the very real risk that you'll develop carpal tunnel before you've ever set finger to key in your actual exam session. Well, I'm here to complicate things further for you, introducing another level of complexity to your already-arduous task. Beyond having good content, it's vitally important that your outline read smoothly as well. Without this trait, your outline will be an anchor tethering you to a senseless sea of words. Am I making things more difficult for you by asking you to spend some time on formatting? Yes, but only because, in the end, I'm making it easier for you. With that in mind, here are my tips for writing a legible outline.

First, choose a readable font. Readability depends on the purpose to which the font is put. In an outline, the goal is quick, efficient reference. You're not looking for the most finely sculpted letters, but rather a set of glyphs that are easy to identify at a glance. I recommend fonts with wide spacing between characters. Please don't use Times New Roman. It's a newspaper font that is far too dense for quick reference. My personal favorite is Work Sans. It's very widely spaced, the letters are sharp and easily identifiable, and it comes in nine different weights—not just bold, but extrabold, thin, and black as well. Different weights are handy because you can set off different levels of headings and subheadings without ever changing font or even font size, though I would still recommend the judicious use of the latter option. Work Sans does not come downloaded on most computers, but you can find the whole set of weights on GitHub for free. If you're not quite as dedicated as I am (read: willing to procrastinate), go with Century Schoolbook or Segoe UI, which should be in most editions of Word. They don't have nine different weights, but you should be able to make up for that by varying the font size.

Second, never use single-spacing. When you're looking at your outline during exams, it will probably be nested into one half of your screen so you can type on the other half. This will make everything look smaller, but it will have a particularly deleterious effect on your ability to distinguish one line from another unless you've set them apart a little more than you would normally. There's no need to choose the nuclear option of double-spacing though; 1.2 to 1.5 lines is sufficient. Similarly, if you use paragraphs in your outline, make sure they are set off more than individual lines are. I'd recommend six pts.

Third, use the "bold" option to indicate the theme of a line within the topic of your heading or subheading. For example, if your topic is "Negligence," you might bold the words "Duty," "Breach," "Causation," and "Damages" in the lines referring to those subtopics. Within each line, use italics to denote standards: "clear and present danger," "all or substantially all," "materially alters," etc. Additionally, you can use bold and italics at the same time for key qualifying phrases like "not," "if and only if," and "unless."

Finally, consistency is the most important thing here. When you always abide by a set of rules (they don't have to be these), you will train your brain to identify certain relationships quickly and efficiently, which is the whole point of an outline. Don't allow your outline to slow you down. If you put in the effort now, well-designed formatting will complement your well-thought-out content and help you beat that curve.

The author is pleased to take all your formatting questions.

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gan his law practice in Sacramento, days he said lived up to the term "old-boys club." Asked his favorite film, Kennedy gave a classic Kennedy answer: *Guess Who's Coming to Dinner*, the 1967 version starring Spencer Tracy, in which Tracy's daughter is set to marry a black man, which makes her parents uneasy. As Kennedy describes the film, Tracy's character stands out on his San Francisco balcony wrestling with his convictions, finally realizing that he's wrong, that his opposition to the marriage was derived from his prejudice.

Readers needn't be experts in Justice Kennedy's jurisprudence to know he was often held to have changed his own mind. From *Planned Parenthood v. Casey*, in which he joined the joint opinion upholding the core of *Roe v. Wade* despite previous opposition to legalized abortion, to *Fisher v. Texas*, in which he upheld the University of Texas's affirmative action program after previously voting to strike it down, Justice Kennedy was renowned on the bench for his willingness to reconsider his own previous positions. Kennedy largely avoided providing answers to substantive legal questions, responding to Molly Cain '20's thoughtful question about how his opinion in *Town of Greece v. Galloway*—upholding explicitly Christian prayer by councilmembers in municipal meetings—might influence zoning variance decisions relating to religious minorities with a fascinating story about his own experience representing a client before a zoning commission.

On Friday, Justice Kennedy appeared in Caplin Auditorium as part of the kickoff of the Karsh Center for Law and Democracy. Funded by a record $44 million donation from philanthropist financiers Bruch Karsh '80 and Marth Lubman Karsh '81, the Karsh Center promotes "civil discourse and democratic dialogue, civic engagement and citizenship, ethics and integrity in public office, and respect for the rule of law."[1] Justice Kennedy's visit was the perfect fit for the Karsh Center's kickoff. Professor Schwartzman told the *Law Weekly*, "Justice Kennedy—both in the classroom and at his public interview—emphasized the importance of reason-giving in judicial decision making. The Court's only power is the power to persuade by the reasons it gives. The mission of the Karsh Center is to foster civil discourse, which is about the exchange of reasons and about justifying how we relate to one another under the rule of law."

Dean Risa Goluboff introduced the Karshes to talk about their gift and about Justice Kennedy. Telling the story of how he moved to California to clerk for then-Judge Kennedy, Bruce Karsh reflected on Kennedy as a boss, calling him "courteous and kind" and recalling how the judge would invite him over to his house for dinner to spend time with his young family. Bruce Karsh went on to work for O'Melveny & Myers and then in private equity, co-founding Oaktree Capital Management. Martha Karsh spoke next, calling Kennedy "a beacon of wisdom, jurisprudence, and leadership." She thanked Kennedy for welcoming Bruce and her to their family and California and quoted Jefferson: "Honesty is the first chapter in the book of wisdom."

After the Karshes finished speaking, Dean Goluboff introduced David Rubenstein, who interviewed Kennedy for the event as part of his *David Rubenstein Show* on PBS. The conversation between Rubenstein and Kennedy centered on Kennedy's years on the court and his reasons for leaving. To the latter question, Kennedy answered, "It's hard leaving something you love, but you can do it for something you love more," telling of how he had spent too many years working away from his wife Mary. Quizzed about his feelings toward his successor, Justice Brett M. Kavanaugh—who clerked for Kennedy and endured a brutal confirmation process that included accusations of past sexual misconduct—Kennedy ducked the direct question, but said, "The public will see that the system works" and reassured the audience that the Court "is operating in a collegial, thoughtful way." When Rubenstein noted there were now two former Kennedy clerks on the Court (Kavanaugh and Justice Neil M. Gorsuch), Kennedy quipped, "All we need is one more and we can rule the world," drawing laughter from the unsuspecting audience. That wasn't his only laugh line; Kennedy caused laughter throughout the audience with his surprisingly on-point imitation of President Ronald Reagan, who knew Kennedy when he was governor of California and who nominated Kennedy to the Supreme Court.

After talking with Kennedy about the inner workings of the Court, Rubenstein asked about his plans for the future. Writing and teaching, Kennedy replied. He also expressed an openness to sitting on the lower courts and brought up Aristotle again. Aristotle thought, Kennedy said, that democracy was a bad form of government because it could not mature. "Our destiny—our duty—is to prove him wrong." Kennedy wrapped up by telling the crowd what he wanted the American people to know. He reiterated his faith in the Supreme Court, telling the audience that the Court "is dedicated to finding what the law is," that its work is "not a partisan exercise," and that "the work of freedom is never done."

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1 https://www.law.virginia.edu/karsh/about.

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Supporters of the plan respond that these concerns are overblown or wrong. Kareem Ramadan '20 told the *Law Weekly* that the concern that the committee would pick members based on politics or favoritism instead of merit is misguided. "I can't imagine five of the seven people on the committee won't care about grades," he said.

Supporters pointed out that scores on the writing competition and GPA are highly correlated; unsurprisingly, those who do well on law school exams also tend to do well in the writing competition. This means that under the new plan, while the committee wouldn't see the grades of applicants until after it has narrowed the pool to fifty-or-so candidates, it would have a good idea of candidates' caliber based on their written work. What's more, supporters dispute the idea that grades and write-on scores are any less arbitrary than the holistic process that will be applied by the committee. "[M]argins for admission to the law review are incredibly fine," one member told me, "and there are a vast number of extraordinarily qualified candidates."

Supporters also contend the holistic review will allow the committee to take into account life experiences that would benefit *VLR*. "[G]rades and journal tryout scores are clearly not the only markers of success," Dana Raphael '20, told the *Law Weekly*. "People with fascinating and varied backgrounds—particularly backgrounds that would make adept members such as prior editing experience—should be considered fully for *VLR*."

Another member concurred, telling the paper, "I believe that an array of skills, perspectives, and experiences prior to law school is not only valuable but necessary to the continued strength of this publication." Responding to criticism that too much power is vested in the seven committee members, this member told the paper, "It is set up so that, functionally, the outgoing Managing Board is able to choose about half of the members and the full membership of *VLR* is able to choose the other half, and any student who is accepted to *VLR* through the committee process must receive a supermajority of votes," Such a process would make 'back-room politics' . . . virtually impossible."

Most contentious was the idea that selecting half of *VLR*'s membership through this process will dilute what it means to be on Law Review. "I worry that the new discretion-heavy process may take away from some of *VLR*'s cachet in job and clerkship interviews. Before, being on *VLR* meant you finished your 1L year at the top of your class or as one of the standouts in the writing competition," the source told the *Law Weekly*, worrying what Law Review membership will mean if the admissions process becomes less clear

Another member told the paper the new plan would be "catastrophic in the long term" as it becomes clear that Law Review membership is no longer a proxy for either high grades or stellar writing. One member was blunter: "Excellent grades . . . do not happen by accident but are the result of hard work. This plan diminishes the value of grades while vesting discretionary authority in a committee of seven."

Supporters sharply disputed the idea that the plan would lessen *VLR*'s clout pointing to the law reviews of Harvard and Columbia Law Schools, which utilize holistic admissions processes and have not suffered corresponding reputational damage. "The University of Virginia produces exceptional graduates," Raphael said, "and changing the process by which students are admitted to *VLR* is unlikely to affect anyone's employment opportunities." Another member added, "I think that the implication that [the prestige element] will change is an exaggeration, if not patently false."

VLR Editor-in-Chief Campbell Haynes '19 voiced support for the plan in his personal capacity, telling the *Law Weekly*, "This membership reform proposal is the result of months of hard work, research, and outreach to other law reviews." He wrote that the new process "will make our membership process fairer and more open to all" because "selecting a sizable portion of the *Review* through holistic review will allow *VLR* to ensure that all students have the opportunity to be fully considered." Haynes concluded, "It will also allow us to identify potential editors who are strong across the board. That will make us even better at our main job: publishing thought-provoking legal scholarship."

This is the last edition of the *Law Weekly* for the semester; there will be no follow-up to this report until January. The leak that produced this piece, as well as long experience with law students, leave us skeptical that we will have to wait until then to hear of the result of Friday's vote, however. A timely reminder: tips may, be sent to editor@lawweekly.org.

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The Villa Diner, Then and Now: The *Law Weekly* Review

Jill Rubinger '19
Diner Aficionado

When we arrived back to North Grounds for this semester not much had changed. The Law School is still always either really hot or really cold. Mandy is still stirring up caffeinated drinks in ScoCo, George Geis is still looking goooooood, and the 1Ls are still sitting four-to-a-table in the library. However, there was one *huge* change. The beloved Villa Diner, which closed briefly at the end of last school year, had reopened in a new location on US-29. As a consistent patron of Villa Diner and lover of breakfast food, I was nervous and excited about this big move.

The Villa's former, unhurried location. Photo courtesy *The Cavalier Daily.*

The UVA Foundation owns the property where the Old Villa (hereinafter "OV") was located and recently decided to terminate the diner's lease to further development plans for the University. According to the *Cavalier Daily*, which interviewed Villa owner Ken Beachley, reported that Beachley and his wife were aware of the eventual demolition plans when they first purchased the diner back in June 2005, but were still upset by the news when the time finally came to relocate. So it is worth noting that the owners were perfectly content with the OV location. And so was I. My opinions about the big move stem from nostalgic tendencies and incurable impatience.

Excited to try New Villa (hereinafter "NV"), I pulled into the very crowded parking lot on a Sunday morning. The NV aesthetic factor is worth noting. It's a good–looking diner, not gonna lie. The white brick exterior is clean and inviting. It definitely looks nicer than the OV exterior. But what gave OV some of its charm was its hidden–gem quality. At OV, there was never a wait. I would wait fifteen minutes maximum on a weekend. I also enjoyed the layout of OV. When you walked in you could see everything happening; None of the tables were hidden in any nooks and crannies of the building. If your friends were there, you'd spot them quickly. This made for some fun coincidental group breakfasts during my times at OV. Thomas Watson '19, a Villa staple, notes the inconvenience of the new location. In lamenting the move, he remarked, "[OV] had a bigger parking lot with multiple points of entry and the new location is on the other side of that Barracks Road traffic light, which is always a nightmare."

At NV, the wait time has skyrocketed. I cannot tell if the new location has drawn a larger crowd or if there is simply less seating in the new building. If you're going on a Sunday morning with a group of four, expect to wait thirty to forty-five minutes alongside the church crowd and the undergrads. Shanna Adler '19 says she hopes to one day become such a regular that she can get a priority spot in the diner to avoid this hassle. There is a larger waiting area in NV, but that is simply because they need it now. Once seated, you can take in the ambiance of the new location. The tables are spread out and are more removed from the kitchen. This may be a positive feature to many people, but I kind of like it when I am seated close to the kitchen in a diner. This is probably why I enjoy Waffle House so much. There are definitely cleaner vibes at NV. According to Winnie McBride '19, a Triple Hoo and Villa expert, the restaurant feels clean and has better natural lighting.

The Villa's new location— featuring "cleaner vibes" but longer waits. Photo Jill Rubinger / *Virginia Law Weekly*

I would say that the biggest differences between OV and NV are procedural in character. The substantive stuff hasn't changed. The food is still delicious and the staff still wears royal blue collared shirts sporting the diner's logo. There are still paper place mats at the table featuring a fun-fact-filled illustrated map of the state of Virginia. The menus are the same, and I still order the Super Big Complete Breakfast every time I go. All in all, it's still the best quick diner in Charlottesville. Just be sure to factor in a few extra minutes of wait time before your next trip.

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LAW WEEKLY FEATURE: Organization Spotlight— Law, Innovation, Security & Technology Society (LIST)

Each week, the Law Weekly *showcases a Law School group in a feature we call "Spotlight." Our goal is to give leaders a regular platform to inform readers about their goals and to educate the UVA Law community about their diverse perspectives. If you or your organization would like to be featured, please send an email to editor@lawweekly.org.*

Jeremy Gordon '19
LIST President

That new technologies like drones, autonomous vehicles, cyber warfare tools and artificial intelligence are "disruptors"—that they can and are transforming markets, societies, and traditional approaches to problem-solving—is a common refrain. As these technologies reshape our world, they will also create some of the most pressing and most interesting legal questions that law students will face over the course of their legal careers. Lawyers will need to know, for example, if their company faces potential liability for a data breach based on the security of its data storage systems or whether using a hash function to search computer files violates the Fourth Amendment. Clients expect and a well-functioning legal regime requires that lawyers understand the technology underlying these types of questions. Too often, though, lawyers lack tech fluency—they may think they are too busy or that it's too difficult to learn.

So in the fall of 2017, a group of UVA Law students came together to launch the Law, Innovation, Security & Technology Society (LIST). LIST's mission is to educate law students about the legal issues that a range of complex emerging technologies pose, provide students opportunities to gain hands-on experience working on those issues, and launch them into careers at the intersection of law and technology. We accomplish this mission through our speaker series, education and training program, and networking opportunities.

All of LIST's programming is intentionally designed to be accessible to students with a range of experiences, from humanities majors to hardcore coders. I did not have much of a "tech" background when I joined LIST. I joined because I was particularly interested in the implications of emerging technologies for national security law. Once I became involved, though, I could not help but be fascinated by the many opportunities LIST had to offer, and I decided to get more fully involved.

Speaker Series

In its first two semesters, LIST has been fortunate to attract leaders from government, the tech sector, law firms, and nonprofits who shared their experiences and introduced students to their areas of expertise, giving LIST members career advice tailored to our specific interests. Speakers have included a former cybersecurity director on the National Security Council, public policy officials from Uber and Verizon, and a prosecutor with the Computer Crimes & Intellectual Property section of the Department of Justice. LIST's speaker events introduce students to cutting-edge legal issues, provide students with role models and networking opportunities, and are engaging and enjoyable while asking for little of students' time.

On January 25, LIST is also co-hosting, with the *Virginia Law Review*, a symposium on digital democracy. The symposium will feature panels of speakers throughout the day on the role of technology in antitrust and competition, racial justice, and national security, and will convene leading experts in business, government, nonprofit and the academy, with the *Virginia Law Review* accepting student pieces for publication online.

Education and Training

LIST believes strongly that the most effective learning comes through practice. To that end, LIST started its own pro bono program, the first of its kind at the University of Virginia School of Law. The pro bono program is designed specifically for LIST members and is made possible through partnerships with nonprofits in the technology and cybersecurity fields—and almost all of our projects qualify for PILA hours. LIST has sponsored more than thirty law students, pairing them with organizations like the Global Cyber Alliance and the Future of Privacy Forum, which do innovative work in AI, smart cities, and more. The program culminates in a student panel at LIST's annual spring networking event, where students who participated in pro bono projects have the chance to present their work to an audience of peers, professors, and employers.

This fall, LIST also teamed up with a group of students from UVA's computer science department to host MetaCTF, an all-day cybersecurity competition involving technical, legal, business, and policy challenges. The event provided law students with no computer-science background the opportunity to practice solving coding problems, and meanwhile get exposed to fields like reconnaissance, cryptography, and web exploitation. Employers like Baker McKenzie, the NSA, Raytheon, and Capital One all sent representatives to meet the participants.

Networking Opportunities

LIST is grateful to have the interest and support of a number of employers in the public, private, and nonprofit sectors, who work with LIST to expose students to the ways in which practicing attorneys interact with tech issues and prepare students to enter practice themselves. Hogan Lovells, Baker McKenzie, Arnold & Porter, and Venable have all actively supported and collaborated with LIST. We also work directly with government employers who are interested in LIST members for their skills and interests. LIST recently hosted a panel of attorneys from the CIA on careers at the agency's Office of General Counsel, and we look forward to hosting the General Counsel of the NSA, Glenn Gerstell, for a discussion of his office's legal work and career opportunities in the spring.

LIST members will have the opportunity to meet attorneys from many of these organizations and others at our spring networking event to be held on March 27 of 2019. In addition to the student panel, in which our pro bono students will speak about the tech law and policy research they worked on throughout the year, the event will also include a panel of professionals, a networking reception, and dinners with firms in attendance.

My involvement with LIST has been one of my most valuable experiences in law school: It has informed my career goals, helped me take steps toward achieving them, and introduced me to an incredible community of students and practitioners who I can look forward to building professional and personal relationships with for years to come. LIST is always happy to welcome new members, so please do not hesitate to reach out to me if you are interested in joining.

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Justice Fortas: Johnson's Blunder and the End of the Warren Revolution

William Fassuliotis '19
Guest Columnist

Why does a justice of the Supreme Court decide to leave the Court? For some, the ravages of old age make the job impossible; others fear dying on the Court, too busy to have spent their last moments with their loved ones. Some are closely attuned to the politics of the Supreme Court and retire so their replacements will not undo the very decisions they propounded while on the bench. Only one has resigned in disgrace. When he publicly announced his plan to retire in June 1968, Chief Justice Earl Warren said it was solely for reasons of age.[1] Seventy-seven years old, age was certainly one factor, but it was not the primary factor.

As the election cycle was coming into full steam, Richard Nixon, Warren's old California political rival, seemed poised to win not only the Republican nomination for President, but the general election as well. The two still despised each other sixteen years after Nixon undercut Warren and helped Dwight D. Eisenhower win the Republican nomination for president in 1952. Their mutual contempt only increased as Nixon campaigned on nominating judges who would roll back the perceived excesses of the Warren Court. For personal and ideological reasons, Warren could not stomach Nixon choosing his replacement.[2] Instead, Warren's retirement permitted President Lyndon Johnson, a New Deal liberal, to have an opportunity in the last months of his presidency to solidify the Warren revolution against the coming conservative counter-revolution. Johnson nominated Abe Fortas, an associate justice already on the Court, to replace Warren as chief justice, and Homer Thornberry to replace Fortas. Neither nomination would come to pass; Warren would not get his wish. This is the story of Abe Fortas' brief time on the bench and the only resignation from the Court in disgrace.

Born in Memphis, Tennessee, the youngest of five children to two Orthodox Jewish immigrants, Abe Fortas attended Yale Law School where he would become close to future Justice, then-Professor William O. Douglas.[3] Despite graduating second in his class, no firm was willing to hire Fortas because of his Judaism. Douglas would help Fortas find work in D.C., helping implement New Deal programs in the Roosevelt Administration's infancy. Among other jobs, Fortas worked for the SEC and became one of the youngest undersecretaries at the Department of the Interior. Like many other New Deal government lawyers, his familiarity with the regulations and bureaucracy made him attractive in the private sector. In 1946, he co-founded Arnold, Fortas & Porter (now known as Arnold & Porter Kaye Scholer), where he was extraordinarily successful and known as a behind-the-scenes powerbroker in D.C. His ascent to the Supreme Court can be traced to 1948 when an obscure Congressman from Texas hired him to litigate an election-law squabble. That Congressman was Lyndon Baines Johnson.

President Johnson takes questions at a press conference, flanked by Justice Fortas (right) Photo courtesy the AP.

In 1948, Johnson sought a promotion and ran for the U.S. Senate from Texas. During this time in the South, the general election was a mere formality. The real action was in the Democratic Primary—whoever won the primary would become the new senator. LBJ came in second in the first round of the primary, after former Governor Coke Stevenson, but as no candidate had a majority, the party held a runoff election. After all the votes were counted, "Landslide Lyndon" narrowly lead by eighty-seven votes. Both sides accused the other of ballot stuffing and electoral fraud; most historians accept that both sides did indeed try to steal the election. The Texas Democratic Party upheld the result in favor of Johnson, to which Stevenson responded to by suing in federal court.

The district judge voided the results, and set a hearing for September 21 to determine how to continue. Johnson could not wait long—state law required certification by October 3. Johnson feared that Stevenson would continue the suit to try to keep him off the ballot out of spite, so he called for Fortas and his firm to win the suit. Johnson and Fortas had met before, while Fortas was a government lawyer, but this was the first time they had sustained relations. On September 24, the Fifth Circuit refused to hear an appeal without convening with all members, well after the deadline. Fortas was able to get a hearing in front of Justice Black[4] and convinced Black that federal courts did not have jurisdiction over state elections. On September 28, 1948, Black issued an order to end its restraining order until the whole Supreme Court could hear it, effectively ensuring Johnson would become the senator for Texas. Fortas would become one of Johnson's main advisors and confidants as LBJ ascended to Senate majority leader, vice president, and eventually president. As a newly installed senator, Johnson told one of his aides "Abe would make a great Supreme Court justice." Neither could have imagined only a decade and a half later Johnson would be able to carry out those idle musings.

The problem was that when Johnson assumed the Presidency in 1963 there was no opening on the Court. Of course, as we saw last time with Marshall, a lack of vacancy wouldn't stop Johnson. An opportunity would arrive on July 14, 1965, when Ambassador to the United Nations Adlai Stevenson died. Johnson's first choice for ambassador was Harvard economist Kenneth Galbraith. Galbraith did not want the job, and, desperate to avoid it, told LBJ that Justice Arthur Goldberg "was a little bored on the Court," and suggested him as a replacement. Johnson took to the idea. Goldberg was known as a great negotiator, and this would mean Johnson could put his friend Fortas on the Court. Plus, Goldberg occupied the "Jewish seat" on the Court, which could help explain why Johnson chose Fortas over other candidates.

But why would a member of the Supreme Court, with lifetime tenure and guaranteed importance, leave for a position as ambassador? Especially Goldberg, who was practically just appointed to the bench by Kennedy in 1962? The sources differ. Most agree that Johnson played to Goldberg's patriotism. Johnson greatly escalated America's involvement in the Vietnam War at this time, and he may have intimated that Goldberg could play a role in formulating policy. Goldberg for his part said he was opposed to the Vietnam War and hoped that he could help end it. Other sources suggested Johnson offered Goldberg the vice president position on the Democratic ticket when he ran for re-election in 1968 or even possible reappointment to the court, including possibly as chief justice. In any event, after a little fewer than three years on the Court, Goldberg stepped down to become UN ambassador. After some hesitance by Fortas, Johnson nominated him to the Court. Fortas faced little opposition by the Senate, which approved him by voice vote on August 11, 1965.

In stark contrast, Fortas' nomination to replace Chief Justice Warren faced vehement and vigorous opposition. The reasons are complicated in some ways, yet simple in others. For one, his Jewish faith did not help, even though he was the fifth Jewish justice on the Court, and though he had already been approved to the Court without opposition. In the perverse logic of racists, it might be one thing for a Jew to be on the Court as an *associate* justice, but *chief* justice was a bridge too far. Like Brandeis before him, it is hard to say this was the primary objection my any one senator (and in fact one Jewish senator supporter of Fortas said he did not believe the opposition to be motivated by anti-Semitism), but it certainly made opposition easier.

Initial opposition came from conservative senators who opposed the perceived liberalism of the Supreme Court in general and Fortas in particular. Nineteen of the thirty-six Republican senators came out in opposition. No, that is not a typo: of the hundred senators, only thirty-six were Republicans. On a purely party line vote, Democrats were only three votes short of the two-thirds majority needed to end a filibuster. The appointment looked assured when Republican leader Everett Dirksen (R-Ill.) early on came out in approval of the nomination, dismissing arguments against Fortas as "frivolous, diaphanous, and gossamer." Fortas' nomination would not be on a party-line vote, however, as many Southern, conservative Democrats opposed the Warren Court as well. The cross-party conservative coalition decried the criminal procedure revolution they thought let criminals off on "technicalities," as well as the court's decriminalization of "obscenity." To hammer the point home, Senator Strom Thurmond (D-S.C.) held a "Fortas Film Festival," and screened for other Senators the pornographic movies the Warren Court protected from prosecution.

Another source of opposition came from Johnson's lame-duck status. LBJ's nomination came months after he announced he would not run for reelection, weakening his ability to convince senators to vote for Fortas. Opponents of Johnson leapt at the chance, saying the next president should choose the justice, clearly hoping for Nixon to win. Nixon's role is unclear. Early on, he said that the next president should get to replace Warren, but did not specifically oppose Fortas's nomination, saying he "would not interfere with the Senate's right to decide on the nomination." In September, he came out against a filibuster, but some suspected this was intentionally done late in day to look reasonable for the electorate without actually helping Fortas. Whether Nixon privately encouraged the opposition or not, supporters clearly knew that were Nixon to win with a vacant chief justice seat, he could more easily fulfill his promise to stock the Supreme Court with justices hostile to the Warren Court.

Another source of opposition came from Johnson's close ties to his nominees. It was well known that Fortas was a good friend of Johnson's. Thornberry,

FORTAS page 7

1 In his letter to the President, Warren actually worded his retirement to be "effective at your [President Johnson's] pleasure." Johnson responded, "With your agreement, I will accept your decision to retire effective at such time as a successor is qualified," meaning the nomination hearings occurred while Warren was still on the bench and technically without a vacancy. Arguably the first time a Justice conditioned his retirement on the confirmation of a successor, some Senators argued that a confirmation vote could not even occur without a vacancy. Right or wrong, this position did not win the day, and Warren would stay on the bench until his successor took his spot.

2 For more on the rivalry between Warren and Nixon: The Inside Story of Richard Nixon's Ugly, 30-Year Feud with Earl Warren, by John A. Farrell, March 21, 2017. https://www.smithsonianmag.com/history/inside-story-richard-nixons-ugly-30-year-feud-earl-warren-180962614/

3 I drawing primarily on the works of Bruce Allen Murphy's "FORTAS: The Rise and Ruin of a Supreme Court Justice," and Laura Kalman's "Abe Fortas: A Biography."

4 The petition almost did not get to Justice Black. The court clerk at first refused to accept the petition as it refused certain formalities. Desperate to get the petition across, Fortas' partner, Thurman Arnold, told the clerk if he refused, the lawyers would "effectuate a lodgement." Not wanting to risk a "lodgement," the clerk submitted the petition. The threat was an empty one as Arnold had no idea what a lodgement was other than some obscure pleading he remembered from law school. The clerk likely had no idea either.

3L Head Sizes Revealed: "Ears" How They Stack Up

Daniel K. Grill '19
Staff Editor

Every year the 3L class enjoys a number of events that bring the class together, such as the 3L bonfire and graduation. While these events are certainly fun, no event has had as big of an impact on Grounds as the graduation regalia measurements. What seemed like an innocent measurement by our Graduation Co-Chairs (#SEN19RS) has revealed interesting information about fellow classmates and even pitted a number of classmates against each other.

This year's biggest heads welcomed their newly discovered status among the 3L class. The biggest head, Toccara Nelson, was particularly pleased with her accomplishment. "I'll take this honor with me for the rest of my days," she stated. "When my grandchildren ask me 'Grandma Toco, what did you do at UVA Law?' I'll say, 'Young child, my head was big AF . . . the biggest throughout the land. Expecto patronus or whatever.'" Brendan Woods, the second-biggest head, was also pleased to learn he had one of the biggest heads in the 3L class. He highlighted the hardships he endured in earning this recognition. "I am used to getting gasps from ski rental workers when they measure my head and I have a hard time finding hats that fit my bulbous skull," he shared, as he held back tears. These experiences, however, have shaped how he relates with those who have heads across the whole spectrum. Woods plans to treat even the smallest heads in the class with the same respect as his big-headed counterparts, and he hopes they will return the favor to him.

Large-headed Brendan Woods '19 enjoys a slightly less large cigar. Photo courtesy Brendan Woods.

W. Campbell Haynes earned a surprising finish as only the third-biggest head in the 3L class. Given his buoyant locks and an apparent misinformation campaign spreading that he had the biggest head in the class, many expected a top-two finish for Haynes. Upon learning that he only had the third biggest head in the class, a noticeably upset Haynes muttered, "Go Vols." The *Law Weekly* is not aware of the source of the rumors regarding Haynes's big head, but will continue to pursue the matter.

While the 3L class has a definitive ranking for the biggest heads, there is no such consensus for the smallest heads. Lina Leal, an LLM from Colombia, earned the measurement for the smallest head. She has always been aware that she has a small head, and was glad to earn this honor. She said, "It would have been a surprise to have the biggest head taking into account that I am petite" (weird flex but ok). While there is no doubt that Leal has a small head, the *Law Weekly* has recently learned of a complication shaking up the smallest head rankings. Christy Allen, who was thought to have the second-smallest head in the class, claims that her measurements do not accurately reflect the size of her head. Christy provided the L*aw Weekly* with the following statement: "All I can say is that I've always had big hair, so I never knew I had such a small head!! :) and I actually went up a quarter inch just to be safe, so my head is actually smaller than they measured! :)" Graduation Co-Chairs and noted phrenologists Robbie Pomeroy and Julia Wahl declined to comment on the matter. While this may be disconcerting to those seeking a definitive smallest-head-in-the-class, the two seemed content to share the title.

The excitement surrounding the graduation regalia measurements has far exceeded anyone's expectation. Pomeroy did not even realize the importance of the measurements to the 3L class. "I only wanted to make sure we got tams instead of undergrad cardboard graduation caps. I didn't realize that measuring the circumference of everyone's head would bring the class together as it has," he shared. Wahl was also surprised at the impact her measurements have had and reflects positively on the experience. "I feel a lot closer with the 3L class after touching everyone's foreheads," she said. Needless to say, the graduation regalia measurements have provided the class with a wealth of personal information about each other. While no one is really sure what do with this information, there is no doubt that the excitement surrounding the class's head sizes will continue as the semester progresses.

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1L Small Sections Not So Small in Coming Semester

Taylor Elicegui '20
Features Editor

Changes are coming to the size of 1L classes next semester. Instead of having one small-section class, one combined class, and two electives, 1Ls will have both their core classes with another section. Additionally, LRW II will now be a two-credit class and LRW I will count as a skills credit. The third LRW credit will be awarded spring semester, but it will reflect the time spent outside of class in both the spring and fall.

According to Associate Dean for Academic Services and Registrar, Jason Dugas, the faculty collectively decided to change LRW in August. Regarding the combined sections in Property and Constitutional Law, Dugas explained, "There are many factors at play for the Vice Dean and me to consider when it comes to class scheduling and sizing, with the result that the spring 1L class size may vary from year to year. It could be that 1Ls will take combined sections of these courses for many future spring terms, or it could be that they don't—we make that determination from year-to-year." Professor Sarah Ware, co-director of the Legal Research and Writing Program, added, "The increase in credits was the result of a routine review conducted by the Vice Dean's office. The school periodically reviews course workload to make sure the credit allotments are appropriate. It was our turn, and the assessment demonstrated a need for one more credit to reflect work outside of class. Accordingly, the faculty implemented an adjustment. We also considered whether some part of LRW might feed into the ABA's new skills requirement. We concluded it could (as have a number of our peer schools)."

Students reacted to the increase in class sizes in a variety of ways. 1L AJ Santiago '21 was not pleased to learn about the increase in class size. He said, "Having only 30+ people in a class allows each student a greater opportunity to ask questions about difficult concepts, and I feel like it likewise helps the professor to get a better sense of when the majority of the class is struggling with a concept. I have definitely benefitted from my section being able to have more intimate, in-depth discussions in Contracts, in a way that we are simply not able to in any of our other classes. And I can say with near certainty that I would have a better grasp on a class like Torts if the class were smaller." Similarly, Meg McKinley '21 was sad to hear about the increased class sizes. Meg told the paper, "People are more comfortable participating in the small section, and we definitely know Rip better than any of our other professors. I think the smaller size makes everyone more engaged with the class (but that could also just be Rip's teaching style). I hope they bring it back for future classes!" Head PA Robbie Pomeroy '19 said, "I think that having two larger classes in the Spring will give students a better sense of what to expect for their 2L and 3L years, as well as exposure to more of their peers in class." Professor Charles Barzun '05, who occasionally teaches Con Law but won't be teaching the class this spring, thinks there could be a slight downside to the change. Barzun believes there may be a downside because students always benefit from smaller classes, but ultimately, he doesn't think the increase in class size will make much of a difference. Barzun also explained that 1Ls didn't have small section classes in the spring when he was a student and some of the classes used to have three sections, which was less preferable than class sizes of sixty.

Students generally responded positively to the changes to LRW. Pomeroy also said, "I think it's great that students will be rewarded for their hard work in LRW. I wish we'd had the same credits as 1Ls, but I'm happy for the Class of 2021 and years to come." Nellie Black '20, a Legal Writing Fellow, told the paper, "I think increasing the credits will help students to feel like their work is proportional to the credit they are receiving. I think all students know how important LRW is, but it can feel frustrating to put what feels like two credits worth of time into the class and only receive one credit at the end of the semester. Likewise, I think adding a professional-skills credit helps to recognize the time and effort that goes into preparing and presenting oral arguments in the Spring." According to Ware, the increase in credits will not "prompt a major alteration to the course as a whole; rather, both are mostly based on an evaluation of what we are currently offering. We think the credit changes just better reflect the educational experience students are gaining through their LRW course work."

In total, the changes are not large deviations from the past. Students can look forward to receiving an extra credit for LRW and getting credit for the skills they develop. 1Ls will have larger class sizes next semester, which may be adjusted going forward.

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Scenes From an Italian Thanksgiving

Tyler
D'Ambrose '21
Staff Editor

It is late Saturday night as I sit at an airport bar in Durham. Two gin-and-tonics and a can of Copenhagen mint were sufficient to dull the stress that accumulated as a product of a long, tiring day of cancelled flights and TSA tomfoolery. After flipping through Hunter S. Thompson's musings on the mundanity of political journalism, I now feel capable of elaborating on my Thanksgiving break.

Italians are intriguing people. They talk loudly, and they have a unique tendency of waving their arms around as they speak. Their manners aren't always on par with societal norms. In fact, approximately half of the food prepared for an evening is consumed by an Italian family before it reaches the dinner table. I say all this to convey the point that one may feel understandably out of his or her element when attending a sufficiently Italian dinner gathering. Such was the position that my Uncle Norman found himself in this past Thanksgiving.

My uncle had the good fortune of marrying into an Italian family thirteen years ago. I say *good fortune* because the gourmet meals, strong family bonds, and lively political debates that accompany such an arrangement are more than sufficient to make up for the occasionally ill-mannered Italian-American lifestyle. However, that is not to say that Italian familial gatherings are easy to be a part of. Here it is worth noting for the uninformed audience the three unwritten rules of Italian dinners.

You *must* try all of the food. This is the most iron-clad of the three rules. There are absolutely no exceptions to this rule. I should know. In junior high, while spending my Sunday morning running while covered in a garbage bag to cut weight for wrestling, I still had to sit and eat dinner with the family. I then spent the rest of the evening coming up with an explanation for my coaches as to why I was seven pounds over the weight limit.

You *must* compliment Grandma's cooking. This applies even if she did not actually make anything. The primary purpose of this rule is to show your great love and appreciation for the most highly regarded member of the Italian family. The secondary purpose of this rule is to stay in Grandma's good graces, lest you suffer the consequences.[1]

You *will* participate in the post-dinner, pre-dessert political discussion. This is an inevitability. If you sit at the table with your eyes down while silently sipping a drink, you will

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1 Diplomats at the Geneva Conventions briefly considered adding "Italian Grandma Ear-Beatings" to the list of prohibited war atrocities.

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.*

Smith v. 2L and 3L Gunners

903 U.Va. 122 (2018)

Schmalzl, J., delivered the opinion of the Court, in which VanderMeulen, C. J., and Hopkin and Elicegui, JJ., joined. Ranzini, J., filed a dissenting opinion.

Justice Schmalzl delivered the opinion of the Court.

The class action before the court concerns the complaints of several 2L and 3L students of the sort that arise around this time every year. Members of the class have come back from Thanksgiving break with a semester of cases not read, outlines not begun, and no fucks to give about finals despite their immediate threat on the students' grades and pride as they realize C+'s do, in fact, exist.[1] However, defendants in this action arrive back from break[2] under very different circumstances: all cases read with accompanying reading notes, outlines up to date on the course material, heavily highlighted and annotated supplement books, and in search of new E&Es for more practice problems.[3] Plaintiffs allege that this group of students, whose true size is unknown due to their deceitful lies about "not doing anything" as upperclassmen and secret studies in the alcoves of Slaughter Hall, are committing multiple wrongs deserving of punishment and remuneration for plaintiffs. First, plaintiffs allege defendants are breaching an implied covenant contained in the contract of making it to the second and third year of law school, namely that all upperclassmen can't care that much or work that hard so they all can ride the curve into the sunset of graduation. Second, plaintiffs allege that defendants are taking without due process of law plaintiffs' property, here taking the form of wellbeing and enjoyment of life that is guaranteed to them after the hell of 1L and OGI ends. The court first summarizes the facts and reviews the lower court decision before addressing plaintiffs' complaints.

I

The named class plaintiff, 3L Smith, filed this complaint after a recent interaction with a "friend" she ran into upon returning from Thanksgiving with her family. After sauntering up to the coffee machines in MyLab and delighted to see no line and two functioning machines, she was humming "Santa Baby" when said "friend" entered the room. Cheerily, Smith asked her classmate about his break and what fun he got up to, to which he replied with a cackle, "Wasn't able to make it home this year, had too much work to catch up on." Concerned by such an odd response from an upperclassman, Smith inquired about the work to be done. The defendant, unnamed for his own safety and protection, began discussing the supplements he needed to read, the class lectures he needed to re-listen to, and the questions he needed to ask his professors that would certainly take up the entirety of their office hours. Smith, resisting all urges to throw her freshly brewed hot coffee on the defendant, smiled politely as she swiftly moved to the exit and filed the complaint that gave rise to this opinion.

Judge Luk below, sitting in her normal chambers in the hallway where the annoying bar review people sometimes give out free stuff, ordered summary judgment in favor of defendants on both counts of plaintiffs' complaint, citing so-called "legitimate" reasons for studying as an upperclassman such as "a desire to clerk," "wanting to get the most out the opportunity to attend a T14" and, most absurdly, "a goal to get the most bang for their buck" due to tuition costs. This court condemns the lower court decision and reverses in favor of plaintiffs on all counts for reasons set forth below.

II

Plaintiffs' allegations, that defendants are breaching an implied covenant not to work hard post-1L spring and that defendants are unlawfully taking plaintiffs' property in the form of wellbeing and enjoyment of life guaranteed to them after 1L, are supported by long-standing tradition, precedent, and public policy considerations. Plaintiffs' contention that the implied covenant is either (1) a sacred tradition as old as the Law School itself; (2) a norm handed down from the days of Jefferson himself; or (3) a custom since at least whenever they moved OGI to August is viewed in the light most favorable to plaintiffs, and therefore accepted as fact. Defendants argue that, as the times change, the customs and traditions must change with it. Further, defendants claim that they are preparing themselves for the profession they are about to enter, namely one of (1) secret late-night gunning in the heights of the skyscrapers in NYC in hopes of receiving a promotion as well as (2) a life of courteous-but-limited interaction with anyone they meet for fear of developing meaningful relationships that might tempt them away from the office. To these defenses the Court responds with little sympathy; if these defendants wanted to perpetuate the harshness that is the legal culture, then they should've known better than to attend the collegial[4] school that is UVA Law. A desire to "fit in" to the legal world does not excuse the clear violation of cultural norms that this school has long held dear, and as a result, defendants lose on these claims.

Further, cases such as *Mitchell v. Those Damn 3Ls Gunning When They Should Be Taking the FebClub Challenge*, 423 U.Va. 7 (2014) and *Goluboff v. Students Who Lie About Neglecting Reading in Violation of the Honor Code*, 771 U.Va. 225 (2015) support a decision against defendants and all the studying they've engaged in this semester. Oddly, defendants cite no cases but urge the Court to overturn prior precedent despite the clear role precedent plays in the Court's decision making today. We respond by rejecting defendants' "argument" and urge them to review Constitutional Law and the importance of *stare decisis* in the Court's jurisprudence. Our anti-gunning jurisprudence is clear, and any exploration of the specific claims levied here is unnecessary.

Finally, public policy considerations support a finding for the plaintiffs. While defendants claim that studying after 1L is important to secure public interest jobs, find clerkships, and complete the bar exam, the Court does not find any of these considerations as important as the wellbeing of upperclassmen and their ability to go to Bilt, play softball, and, most importantly, nap.

4 ®

The Court, in considering that UVA Law is the Disney World of law schools, cannot endorse practical concerns like employment, résumé builders, and being successfully barred over the ultimate desires of happiness and laziness that 2Ls and 3Ls are guaranteed to enjoy. Consequently, any arguments put forth by defendants regarding policy concerns are not considered here today.

III

This Court reverses Judge Luk's decision in the Court of Petty Claims and finds for plaintiffs in the class before us. As a remedy, this Court orders an injunction against studying for all upperclassmen who have gunned all semester and compels them to write, "I must not tell lies or try to out-study my classmates" again and again in detention with Professor Dolores, visiting professor from the unaccredited Hogwarts School of Law. This Court passionately advocates for an end to the cruelty that is upperclassmen studying and hopes this decision is a step in the right direction for law students everywhere.

It is so ordered.

Justice Ranzini, dissenting.

The Court today announces a decision whose sentiments I applaud, but whose implications I must deplore. No one may doubt the sincerity of my brethren Justices' solicitousness to the suffering of the plaintiffs here, or impugn the impulse to shield the innocent from harm. But that, as Justice

1 Note: The Court hasn't actually confirmed that C+'s do, in fact, exist, but it's heard they do and that's pretty much the same thing.

2 If they even left.

3 One was even overheard in the Library Reserve Room, cursing the librarians for not stocking enough old versions for additional practice.

Faculty Quotes

G. Rutherglen: "A Friday without Civil Procedure is like a day without sunshine."

L. Kendrick: "It's all well and good until you find a finger in your chili."

M. Collins: "You're no potted plant!"

M. Gilbert: "I can tell who is a 2L and a 3L: you're looking for lines! There's no line. There's a big highlighter that's faded on the margins."

A. Johnson: "There are over 500,000 frozen pre-embryos in the US, each one a potential lawsuit."

B. Armacost: "This topic is boring."

K. Kordana: "We've shifted from a high-trust society to a low-trust society overrun by meth addicts. Tragedy."

A. Vollmer: "Some of you out there are more anal than I am . . . I am pretty anal, but some people are worse, and some of them are in this room."

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

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Holmes might have put it, is not the whole of the way of the law.

It is the proud Anglo-American tradition whose flame we tend in this court, the spirit of Hobbes and of Burke, of Locke and of Hamilton and Calabrese and the Chicago Boys. From specter-haunted Europe with its talk of *egalité* and *fraternité* we maintain our majestic remove. But the French jurists have put their finger on what is essential to the law in the name they give to what we call "a public policy argument". In the original, it is resort to the *ordre public*, the public *order*, and that is what my brethren jurists fail to appreciate today. Law school has never been more accurately described than as "training for hierarchy"[5] and an essential component of that training must include, every once in a while, the sacrifice of a select few *pour encourager les autres*. Without the goading presence of "gunners" among them, and the specter of failure, financial ruin, and social ridicule, how would our law students make the rod they need for their own backs—and for their classmates'? What would be left to us as legal lodestars in such a world? Mere kindness? Humanism? Mutual respect?

I respectfully dissent.

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5 Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. L. Educ. 591 (1982)

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continued from page 5

still be asked to give your opinion. Here it is vital that you give your honest take on current affairs. If honest, you will only draw the ire of one half of the dinner attendees. If dishonest, you are inviting a full-on barrage of politically incorrect insults for having the gall to give such a ludicrous response.

My uncle, as one well-acclimated to Italian dinners, knows full well the veracity of Rule 3. To ease the inevitable pain, he (somewhat) wisely makes sure to down a few Moscow Mules before the discussion begins. But while this strategy is sometimes prudent, it has its own risks. These risks fully materialized last Thursday. During our regular post-dinner, pre-dessert political discussion, the hot topic was on guns. As should be expected from a politically right-leaning family, many pro-gun sentiments were expressed. At first, my uncle seemed to concur. But as the Mules worked their way into his bloodstream, his answers became more grandiose. After ten minutes of a hideously slurred defense of the second amendment, it became apparent that Uncle Norman was not giving his honest political views. Rather, he was merely parroting the talking points from the two hours of Fox News we had just watched before dinner. He broke Rule 3, and consequently a verbal bombardment ensued with enough viciousness to put Bush's "shock and awe" assault to shame.

At this point I think it is best to leave out the specific details of the barrage inflicted upon my uncle. Needless to say, everyone felt at ease to give him a piece of their minds. Grandma's verbal attacks were by far the most brutal. Even the kids got involved in the ordeal, undoubtedly filled with tremendous shame at their father's ill-advised and disingenuous soliloquy.[2]

Despite this unfortunate incident, my uncle showed tremendous resilience after taking his ear-beating. He poured himself another Mule and joined the family for the post-dessert, pre-second-dinner nap. As Italian Prophet Rocky Balboa once said, "Life's not about how hard you can hit. It's about how hard you can *get hit* and keep moving forward." And while Italians can sometimes be pretty vicious, there is one unwritten Rule that trumps them all: always love and cherish your family. I hope that my fellow law students got to spend some time this Thanksgiving with the people they love most. And if not, then at least be thankful that you weren't my uncle.

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2 The dog was also involved. While I was unable to hear back from a credible dog whisperer, I'm pretty sure that "woof woooof" translates to "I am deeply ashamed of your lack of genuine political insight."

FORTAS

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the nominee to replace Fortas, was also a longtime friend of Johnson's who actually took Johnson's seat in the House when Johnson became a senator. Though Thornberry was a circuit judge when nominated to the Supreme Court, the appearance of cronyism left a sour taste in the mouths of even senators who were otherwise sympathetic to the Warren Court's jurisprudence. This was amplified when it came out that Fortas continued to advise President Johnson even as a justice. This included helping write speeches (including the 1966 State of the Union), and advising on legislation, violating the spirit of separation of powers between the branches of government. Though this seems obviously wrong now, justices have taken advisory roles to the other branches since the adoption of the Constitution. Possibly, Fortas's advice differed in degree, as a near-constant presence in the White House as opposed to the occasional letters of other justices. Perhaps it was different only in that it became public while other advice remained private. In any event, Fortas would be one of the last justices to advise presidents on politics while justice, at least that has become public. Making matters worse, Fortas clearly lied to the Senate about how involved he was in advising Johnson, and these lies came to light during the hearings.

Finally, there were financial scandals. Of particular note were payments from a seminar Fortas taught at American University's Law School. He received $15,000 for one year (worth over $100,000 in today's money), over 40% of his $39,500 salary as a Justice. The money for his seminar came from former clients and friends, some of whom had ties to criminal proceedings, and none of whom had any independent relationship with the university. At worst the payments looked like straight up bribery, at best it created an appearance of lack of objectivity (though no evidence ever came that Fortas was actually corrupted). Combined with his lies above, Fortas exuded sleaziness unbefitting a chief justice.

As these sources of opposition developed over the summer and fall, it became obvious that Fortas could not overcome a filibuster, and even if he could, might not get a majority. To save face, Johnson forced a cloture vote. On October 1, 1968, the Senate voted 45-43 to end the filibuster, well short of the two-thirds majority required.[5] Johnson withdrew the nomination. Fortas was the first, and to date only, justice to be defeated by filibuster.

And so Earl Warren's fears

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5 Like many cloture votes, it is hard to tell if Fortas would have had the same majority had the vote been for confirmation. Many Senators, out of respect for Johnson, "took a walk" and did not vote even though they publicly opposed the nomination. On the other side, some Senators who opposed Fortas voted for cloture anyways.

HOT BENCH

Moussa Ismail '20

Hi Moussa! Thanks for coming to Hot Bench. We're happy to have you. Let's get the ball rolling with a few easy questions. What is the story behind that brown hat you love to wear? It's my trademark look. It's like Mario and Luigi, my twin brother and I both have our signature hats.

You have a twin! There are a surprising number of twins at the law school. What does your twin do? He's in med school. He's also in his second year. He and I keep in touch, and we still mentor people from our flipped incubator program.

What's a flipped incubator program? A traditional incubator program brings in companies to help them grow, but for us, our focus was on the people who would go on to build those companies. My brother has this thesis: "Talent is everywhere, but opportunity isn't," and we ran with that idea. We worked exclusively with underrepresented minority students in community college and high school. They went on to win at seventeen major league hacking competitions!

Wow! Is the incubator what you did before coming to UVA? Actually, my background is in echocardiography and vascular technology, I am a registered diagnostic cardiac sonographer. I spent over five years helping physicians diagnose conditions of the heart and blood vessels in adults and children (and no, children aren't just small adults!) I also built two companies with my brother.

What made you give up that glamorous life for law school? I got tired of paying the lawyers so much! But really, it was something of a journey. I originally wanted to be an interventional cardiologist, but during my last year in undergrad, I realized that a lot of the problems in healthcare aren't clinical problems—they're mostly business and legal problems.

Were you deciding at that point between an MBA and a J.D.? Well, I knew I wanted to be done with graduate school before thirty, but I wanted to spend at least five years working in healthcare to make sure I really understood the field, so I split my time between the hospital and my companies. About four years in, I realized that many of our business problems were really legal problems masquerading as business problems! It was then that I decided on the J.D.

What kind of impact do you hope to have as a lawyer?

I'd like to shepherd the next generation of great companies, especially those addressing issues in healthcare and the life sciences.

Moussa, at this point, you have tried to work the word "shepherd" into a few of your answers, and so I have to ask, what is it with you and "shepherd"? I come from a long line of shepherds. My dad was a shepherd as a kid growing up in Ethiopia. He would spend long stretches of time in the wilderness with his flock.

Did you ever want to be a shepherd? No, I have the worst sense of direction. :(

Let's do a lightning round!

Favorite place in Charlottesville? The BLSA Office.

Pet peeve? Dirty bathrooms! We're all adults, there's no reason why it should be so dirty.

Favorite word? Why.

Favorite food? Maybe lasagna, but my favorite dessert is definitely tiramisu made with ladyfingers and no rum.

If you could live anywhere in the world, where would it be? If I had the option, I would just keep moving. I would be a nomad. It's in my genes!

If you won the lottery, what would you do with it? Disappear. I would claim the prize anonymously and then quietly invest in things that will change the world.

What is your least favorite sound? A fork scraping a plate.

What's your spirit animal? A stoat! Stoats breakdance to catch their prey.

If you could make one rule that everyone had to follow, what would it be? I would make it mandatory for everyone to travel and live somewhere with a culture very different from their own for two years.

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Fake News: Law Student Incapable of Interaction with Non-Law Friends

Jargon, Pedantry Mar Once-Firm Friendships

In just three months since starting law school, first-year law student Brian Krantz has managed to completely alienate himself from all of his non-law school friends.

Graham Pittman '19
Guest Satirist

Although Krantz' friends were initially supportive of his decision to pursue his dreams of becoming a lawyer, they became increasingly alarmed as their interactions with Krantz soon revolved exclusively around law school.

"Brian used to be a pretty cool guy, but he needs to chill out with this lawyer stuff," said Jeff Holt, Krantz' former roommate and childhood friend. "It's like he's completely incapable of having a conversation that doesn't involve jurisprudence or gossip about his classmates who I've never met. I don't know how many times I've had to explain to him that I have no idea what a tort is, much less why it's funny that some guy in his section didn't understand how Judge Learned Hand's negligence calculus informed the development of duty of care in the American common law system."

Other sources corroborated Holt's assertions that Krantz has become insufferable since starting law school, citing numerous instances where he derailed perfectly normal conversation about non-legal topics by shoehorning in various Latin phrases and legalisms. "Brian's been acting like he's the next reincarnation of Justice Scalia ever since he took the LSAT. Like we get it, dude. You go to law school. We actually had to kick him out of our group chat a couple weeks ago after he went on a four-paragraph rant, including footnotes, about mens rea and something called the Exxon Doctrine after someone shared a meme about President Trump. I'm like 90 percent sure he hasn't even taken a constitutional law class yet . . . "

Krantz's long-term girlfriend, Emily Johnson shared similar concerns. "I understand that long-distance relationships are supposed to be difficult, but we've really started running out of things to talk about. I don't know how much longer I can pretend to be interested in the social dynamics of his study group or what he learned in Civil Procedure. Brian's also been spending a lot of time with this one girl in his section, but he says not to worry about it because she has a long-distance boyfriend. I'm sure it's nothing."

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were realized, and Richard Nixon narrowly won the 1968 election. Though Warren considered rescinding his retirement letter, he concluded it would be hypocritical and publicly indefensible after he said he was too old. Nixon and Warren agreed that Warren would stay on the Court until the end of the 1968-69 term to avoid an eight-justice Supreme Court. Though bruised, Fortas remained defiant in public and returned to the court. Neither would be on the bench when the sixties came to a close.

Beyond the American University payment, Fortas had other skeletons in his closet. When Johnson first approached Fortas about becoming a justice, Fortas resisted. Chief among his reasons were concerns about lack of money as a justice and that he would be removed from the "action" he was an integral member of as a partner. Hearing of this, Louis Wolfson, a self-made millionaire, asked Fortas to be a consultant for his foundation in 1966. Wolfson explained that the foundation was to be for the advancement of civil rights and other causes Fortas sympathized with. The two negotiated a lifetime contract, where Wolfson would pay Fortas $20,000 a year for the rest of his life, and his wife's life if she survived Fortas. This alleviated Fortas' two worries, and he accepted.

Wolfson ran into legal trouble with the SEC for various security-law violations, a connection that clearly would cause problems for any justice. Though rumored, this relationship did not come out during the confirmation hearing. Only after would a reporter find enough sources to be confident enough to publicize the accusation. On May 5, 1969, Life Magazine published "Fortas of the Supreme Court: A Question of Ethics," including accusations Wolfson was motivated to retain Fortas to help avoid legal trouble through Fortas's connections with the president. Fortas conceded he accepted a payment for the first year, but that he severed the connection after that year and returned the money eleven months later. Lying again, he said this was all the connection the two had.

Eventually, the Justice Department found the original lifetime contract, showing the connection actually ran deeper. Attorney General John Mitchell privately delivered copies of the evidence to Chief Justice Earl Warren, who remarked to his secretary, "He [Fortas] can't stay."

With calls by Republicans to step down, no Democrats or other supporters defending him, and having lost the faith of his brethren on the Court, Fortas resigned on May 14, 1969, a month short of his 59th birthday. Earl Warren would retire a month later on June 23. The Warren Court, in spirit as well as in name, looked to be at its end. Next time: Richard Nixon's nominees and his attempt to change the Supreme Court.

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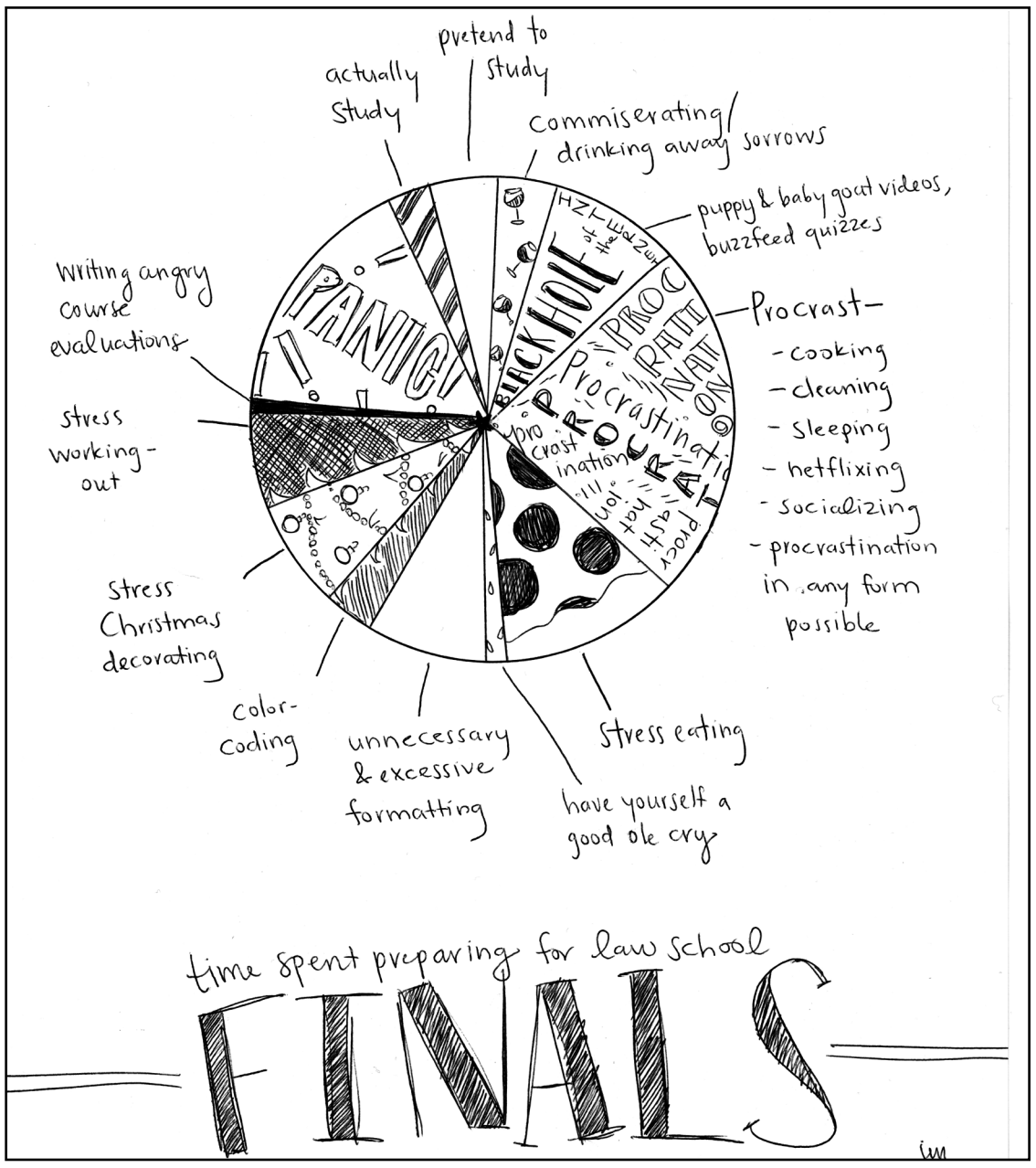
Cartoon By Jenny



The Docket

Time	Event	Location	Cost	Food?
		Wednesday – November 28		
18:00 – 20:00	Mexican Necropolitics & The Question of World Literature	Minor Hall	Free	Reception follows
		Thursday – November 29		
13:00 – 14:30	Music Dept. Teatime Recitals	Old Cabell Hall	Free	----
		Friday – November 30		
11:00 – 12:00	US National Security Policy in the Trump Presidency	Miller Center	Free with RSVP @ millercenter.org	----
11:30	JB Moore / LLM Language Social	Student Lounge 2	Free	ピザに決まってるだろう（笑）
11:30 – 12:00	A Capellate Opinions Study Break	Caplin Pavilion	Free	Donuts
11:30	VA Bar Assoc. Study Break Info Session	WB 152	Free	"Food"
13:00 – 16:00	Library Wikipedia Edit-a-thon: Surfacing Black Life in Charlottesville	Harrison Small Auditorium	Free	Refreshments provided
13:00 – 14:30	Music Dept. Teatime Recitals	Old Cabell Hall	Free	----
20:00 – 21:30	VA Glee Club 78th Annual Christmas Concert	Old Cabell Hall	$5 students $15 general	----
		Saturday – December 1		
15:30 – 17:00	Chamber Music Ensenble Recital	Brooks Hall	Free	----
20:00 – 21:30	Cville Symphony Family Holiday Concert	Old Cabell Hall	$10-45 general, UVA students free	----
		Sunday – December 2		
15:30 – 17:00	Cville Symphony Family Holiday Concert	Old Cabell Hall	$10-45 general, UVA students free	----
		Monday – December 3		
19:00	Music Dept. Voice Recital	Newcomb Hall	Free	----
		Tuesday – December 4		
12:00 – 13:00	Edgar Allan Poe: A Life	Virginia Humanities Ctr.	Free	----
20:00 – 21:30	*Messiah* Sing-in	Old Cabell Hall	$10 general / $5 students	----
15:45 – 16:45	Mindful Communication	Library 2F Collaborative Classroom	Free	Snacks
		Wednesday – December 5		
13:00 – 14:30	UVA Org. Excellence Pres: How to Use Storytelling to Get Support for Ideas	Newcomb Hall South Mtg. Rm.	Free w/ registration	----

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Solution

1	2	7	8	3	5	9	4	6
9	4	8	7	2	6	3	5	1
5	6	3	9	4	1	2	8	7
2	3	6	5	9	4	7	1	8
4	1	5	3	7	8	6	2	9
8	7	9	6	1	2	5	3	4
7	5	2	1	8	9	4	6	3
3	8	4	2	6	7	1	9	5
6	9	1	4	5	3	8	7	2