

VIRGINIA LAW WEEKLY

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ANG's Guide to the PILA Live Auction

ANG
Commentator Without Portfolio

Editor's Note: The PILA Live Auction will be held this Thursday, November 8 from 5:30 to 8 p.m. in Caplin Pavilion. Wine and light refreshments will be served and the professor whom the Student Body selects for the honor will be pried in the face. The Silent Auction will be held on Saturday, November 10, at 9 p.m. at the Omni Hotel. Tickets for the Silent Auction are \$35 and will be on sale in Hunton & Williams Hall from 10 a.m. to 2 p.m. through Wednesday.

ANG looks forward to spending the piles and piles of money ANG earned¹ over the summer on recovering from the stresses of 3L with a one-week stay in a Lake Tahoe vacation home with five of ANG's nearest and dearest (starting bid of \$2,000). Due to the limited acquaintanceship ANG possesses after umpteen years at this institution of highest education and ANG's resultant lack of choice in identifying those dear ones, ANG is certain that certain of ANG's companions will compel ANG to do things like hike, ski, or "participate in water-based activities" (whatever those may be).

Obviously, this will be exhausting. ANG will have to immediately take a truly relaxing vacay south of the border . . . the question to answer is: a one-week stay in a beachfront condo in Cozumel with one or two of ANG's laziest (read: favorite) friends (starting bid of \$810) or a three-night stay at Hacienda Guachipelin in Rincon de La Vieja Volcano, Guanacaste, Costa Rica with ANG's beloved, who will get to enjoy both One-Day Adventure Passes while ANG chillaxes (starting bid TBA)? Or does ANG just optimize the utility derived from that one southbound airfare and go for both?

Upon return to los Estados Unidos, ANG expects ANG will need opportunity to reacclimate to the Virginia climes, rendering a weekend stay at Camp House in Flint Hill, Va. an absolute necessity (starting bid of \$500). Add on to that a wine BASKET (not just a bottle, folks!)

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¹ Making sure all the real associates were eligible for free lunch on the firm was a full-time job, yo.

Thanks S'More the Memories

3Ls "Toast" Autumnal Outing



3Ls gather around their cozy mountain "bonfire." Photo Kim Hopkin / The Virginia Law Weekly

Kim Hopkin '19
Development Editor

Last Thursday evening, approximately 130 members of the Class of 2019 gathered at a bonfire at the base of the Blue Ridge Mountains to celebrate friendships, kick off the start of graduation festivities, and, of course, eat s'mores.

Organized by Julia Wahl '19 and Robbie Pomeroy '19, the 3L bonfire was an exceptionally smooth event, all things considered. Tickets were sold for the reasonable price of \$10 and covered transportation, food, and beverages. Bus pick-up and drop-off was staggered among three shifts: green, yellow, and red. This did mean that the green and red ticketed groups had only about ten minutes with each other at the bonfire, but a little planning when buying tickets ensured you could still catch everyone by going on the yellow bus. Perhaps for this reason, yellow bus tickets sold out first.

The night of the event, the buses headed toward the bonfire were delayed due to a traffic accident. Fortunately, a timely email sent to all those who purchased tickets helped keep the start of the evening relatively seamless. The bus ride took about twenty minutes, and for at least one of the red buses, it was (as the kids say) "lit." Christopher Macomber '19 described the yellow bus as "not bad at all—why? What happened on the other buses?"

When we arrived at the destination, it was a short yet perilous walk to reach the bonfire. One source said, "Maggie Echols ['19] tripped over a log. I heard she didn't get up for a while." This reporter was unable to personally verify this fact, but since said reporter also tripped over one of the two full trees laying at knee level across the unlighted path, it seems reasonable. Alison Malkowski '19, another *Law Weekly* reporter on the scene, was able to verify that a rumor was indeed started to that effect, and also that she was told her repeated calls of "LOG!" were "unhelpful."

Chicken, green beans, and mac n' cheese from Waysides, as well as a s'mores station, greeted those who arrived at the bonfire safely. In true law student fashion, this was accompanied by a thoughtful selection of kegs: two beer and one cider. Many students reportedly got their fill, including Kat Collins '19 and Dave Gremling '19. Collins was extremely happy about the food selection for the evening saying, "Wayside doesn't get the acclaim it deserves." However, Gremling noted "a lack of drummies—which are the ideal handheld option." Perhaps this is why Gremling could be seen stealing food off Collins's plate throughout the evening.

Although the night was unseasonably warm compared to the rest of the week, the environment was comfortable and fun. The beer stayed cold, the food was

definitely delicious, and the fire stayed crackling thanks to the mysterious volunteer fire-tender who emerged from the woods unsolicited, threw wood into the flames for three hours, and then insisted on a ride back because he "is a law student." While it was difficult to get close enough to the fire to roast marshmallows without burning yourself, several experienced students stepped up so that gooey s'more goodness could be widely enjoyed.

Since the fire provided all of the light and heat, some students complained that they couldn't see anything or anyone. Nicole Llinares '19 summed it up perfectly when she said, "The lighting was non-existent. I had a hard time identifying people so I had to spend the whole time talking to the same three people I always talk to, and I didn't get seconds on the potato salad because I couldn't find the plates, forks, or potato salad." However, Macomber, one of Llinares's three friends, said, "It was so dark I couldn't see my friends. Then I realized I didn't have any friends there. So that all balanced out. The s'mores were a nice touch." Llinares is seeking the identity of the person she met at the bonfire so that she can have a fourth friend. Other than increasing social circles, the darkness also made drinking the pure beer foam that came out of the empty

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around north grounds



Thumbs up to this weekend's muddy make-up softball games.

ANG enjoyed America's Funniest Home Videos: Fall Edition.



Thumbs down to impending finals. If ANG had a dollar for everytime

ANG cried in the shower this week, ANG wouldn't need the big firm job ANG is studying to get.



Thumbs up to Lile. ANG has been looking for an opportunity for a foam

finger that does not require sitting outside, and has been informed that bringing one to class is "distracting."



Thumbs down to the 1L girls yelling "got it!" on fly balls while the opposing

team is in the outfield. ANG plans to begin employing this same tactic in your 1L classes on your behalf.



Thumbs up to W. Campbell Haynes '19 for his victory in the graduation regalia

Head-Size Measurement Contest! Color ANG shocked-shocked—that Campbell has the biggest head in the 3L class.



Thumbs down to the burglar who attempted to rob Mr. Feeny's house

last week. You can't just attack one of America's most beloved educators. Who's next?? Mr. Rogers???



Thumbs down to the 3L who said "sorry sweetheart" after almost running

ANG over in the hallway. ANG is not a 1960s flight attendant, and ANG was hoping UVA law boy culture had progressed to at least the Reagan era.



Thumbs sideways to studying for the MPRE. On one hand, the spike in

stress has been an unexpected treat for the snakes under the WB floorboards. On the other hand, the Themis prep professor's increasingly frequent asides about his life have ANG concerned that he is trapped in that room Black Mirror-style and this is a cry for help.



Thumbs down to the 3L bro who continues for a

third year to place his bare feet on the tables of the gunner pit. Have you no shame? ANG eats there sometimes, loudly.

BONFIRE

continued from page 1

kegs go down easier, so some sources count the lack of light as a win. As Malkowski put it, “I definitely told a lot of people they should go for ‘the views’ and realize now that the event was at night and also in the woods. That said, I have no regrets other than not making more *Blair Witch Project* jokes.”

The atmosphere of the bonfire was relaxing and friendly. It even included a recitation of “Happy Birthday” for our very own Editor-in-Chief, Jansen VanderMeulen ’19. His heartfelt response was “It’s not my birthday...?” In the words of Pomeroy, “It was so great to see so many people from different corners of our class come together. It was a beautiful night to sit by the bonfire, eat s’mores, and reconnect with everyone.” I can personally echo those statements since I ran into friends from 1L year who I had not been lucky enough to catch up with recently.

All in all, it was a wonderful way to spend a Thursday night with friends—without having to brave the undergrads at the Corner. I could have done without the antiphonal singing on the bus ride back, when one brave soul decided that being out of range of the radio signal wasn’t going to dampen his ability to party, but it was quite festive. 10/10, would bonfire again.

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Above: A 1L classmate paints a young dragon’s face as he takes a break from burning down all nearby villages.

Below: Pooh Bear and Eeyore made a special one-off trip away from The Hundred Acre Wood for this year’s carnival, delightfully surprised at the variety of sweet options.



Above: When interviewed, Olaf told the Law Weekly staff his favorite candy combination: “Hot tamales mixed with a York peppermint patty—the hot and cold are both so intense, put ‘em together, it just makes sense!”

Below: While being two peas in a pod is hard enough, this carnival attendee found just how much more tiring it is to add an extra pea to the mix.



LAW WEEKLY FEATURE: Organization Spotlight—
Muslim Law Students Association

Each week, the Law Weekly showcases a Law School affinity 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.

When we came to Grounds last fall, the Muslim Law Students Association (MLSA) did

Hamna Ahmad ’20
Guest Columnist



not exist. Similar to a number of affinity groups at the Law School, the events of August 2017 served as a rallying cry to come together in order to

Kareem
Ramadan ’20
Guest Columnist



show solidarity with the community and with affected minority groups. For the both of us, it made it easy to give our support to reinvigorating an organization for people that needed a voice within the law school. Thanks to the effort of a number of then-1Ls and 2Ls, we were able to get MLSA off the ground and running after a ten-year hiatus from the Law School. While the events of last August added a sense of urgency to restarting MLSA, the ultimate mission of this group is a simple one: To create and foster an environment for Muslims and allies of all backgrounds to come together as a community, while also functioning as a vehicle to ignite conversation with regard to Islam-centric and minority-focused issues. We both got involved to help future Muslim students find a place they felt comfortable in when they ar-

rived on Grounds, whether that is finding a spot to pray or recommendations for halal food.

Aside from being a space where Muslim students and allies can come together and engage one another with difficult topics, MLSA has served as an excellent way to make new friends and connect with people throughout the school. From game nights to lunchtime discussions, this group has given us the chance to learn about people from all sorts of backgrounds that we may not otherwise have had a chance to otherwise. Most Muslim Student Associations on campuses tend to be ethnically homogenous, but we are lucky to have a Muslim population that has a mix of South Asian, Arab and Middle Eastern, African American, East Asian, North African, and European American students! This allows us to be exposed to Muslim traditions from all over the world, even ones that we may not have known about previously. One of the best experiences of this year was observing an Ashura fast, the first time for both of us. Ashura is a traditional holiday mostly observed in Shia communities throughout the world, and it was great to observe it in our own small group in Charlottesville.

Furthermore, we realized that there is a need for a cohesive network of Muslim attorneys across the public and private sectors. We want to ensure that

Muslim students have the same access as other students to career opportunities in the future, even though many of our members tend to come from families with no connection to the legal world. This summer, both of us struggled to find Muslim attorneys at firm receptions in our respective markets. To make Big Law a more diverse experience in the future, it’s vital to create this sort of network starting from the ground up—in law school. As our members start to graduate and enter the legal profession, we hope that they will create a foundation of alumni for future Muslim law students.

We are lucky to have an established Muslim community in Charlottesville. The Islamic Society of Central Virginia is a great mosque that our members attend in town, and we encourage all interested students to stop by Friday services if they are interested in learning about our prayers. Furthermore, the undergraduate Muslim Students Association puts on excellent programming that MLSA members are always invited to, including Quran studies and service events. This year, we hope to forge closer relationships with the Medical School and Darden’s Muslim Student Associations as well.

Although we are primarily a faith-based organization, we realize that the Muslim-American identity has been highly politi-

cized; we, as Muslim law students, do not have the privilege of opting out of the contentious politics of our time. According to the Pew Research Center, assaults and crimes against Muslims reached new heights in 2016, surpassing 2001, the year of the September 11 terrorist attacks. Last semester, the University released a statement condemning “Punish a Muslim Day,” a hateful event originating in Europe that spread to the US. In July of this year, our MLSA signed on to an open letter with Muslim law student associations across the country to respond to the Supreme Court’s decision in *Trump v. Hawaii*. It was an amazing experience to see the collective power of young, engaged Muslims speaking out against a legal ruling that has affected and will affect our own community and families. Our members are Muslims who grew up in America during the turn of the century, and we have seen our religion twisted by both those who claim to follow it and those who claim to hate it. For many of us, this was a motivation to attend law school: to learn about our rights and privileges as Americans, and to ensure that our faith was treated with as much dignity and respect as all faith groups in this country.

Next semester, we are hosting an event with the Jewish Law Students Association (JLSA) about minorities in faith in Big

Law, and how to stay steadfast with your faith while meeting the demands of the workplace. We are also partnering with the Virginia Law and Business Society to host a panel event on Islamic Finance in the U.S. and abroad. We invite all students to attend our advertised events and to ask engaged questions about Islam and allyship.

Note from the Co-Presidents: Although we are only in our first year of being a registered student organization, we are indebted to so many individuals at this law school. First, thank you to Muskan Mumtaz, ’19, for creating this group and getting us organized. Thank you to JLSA for helping us through the certification process and for exhibiting the truest form of sisterhood. Thank you to everyone in the Office of Student Affairs for making us feel welcome and for organizing prayer spaces for our members. Thank you to Professor Thomas Nachbar for reaching out to us and wanting us to feel welcome. Thank you to the Office of Admissions for being mindful on how we can grow our representation on Grounds. May God bless our efforts, and allow this group to be a light to all members of the Virginia Law School community.

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Confirmation Stories: The Right Thing to Do, the Right Time to Do It: The Confirmation of Thurgood Marshall

On October 2, 1967, Thurgood Marshall took his place on the bench as the 86th Justice

William Fassuliotis '19
Guest Columnist



on the Supreme Court—the first Black and first non-white Justice in its 178-year history. President Lyndon Johnson appointed Marshall. After Abraham Lincoln, Johnson did more to improve the legal status of African Americans than any other President by shepherding the Civil Rights Act of 1964 and the Voting Rights Act of 1965 through Congress. In addition to advancing the cause of integration in society through legislation, integrating the Supreme Court would prove a powerful symbol confirming the gains made so far. The only problem: There was no opening on the Court at the beginning of 1967, and it looked unlikely that a vacancy would open.

Opportunity would come soon. In late February, 1967, Justice Tom C. Clark¹ an-

1 A Truman appointee in 1949 from Texas, Justice Clark had a fair amount of correspondence with Marshall earlier in their careers. Clark was the Attorney General from 1945 to 1949, where he prosecuted civil rights violations more vigorously than any of his predecessors since reconstruction. Marshall, as head of

nounced he would take senior status towards the end of the year. Earlier in February, Johnson announced he would appoint Ramsey Clark as Attorney General. The two Clarks shared more than surnames: Ramsey was Tom's son. To avoid the appearance of conflict when the government argued in front of the Supreme Court, Justice Clark decided to retire at the relatively spry age of 67 so his son could advance his career. Was Ramsey Clark's appointment a coincidence? Johnson knew that Clark would have to retire if he appointed Clark's son, and, as my next article will discuss, this would not have been the first time Johnson schemed to create a vacancy on the Supreme Court. Manufactured or not (and I think Johnson likely did intentionally create the opening),² Johnson had

the NAACP's legal arm, would write to suggest where the federal government could intervene more or better. When Clark was nominated for the Supreme Court, Marshall wrote in support for Clark.

2 E.g. https://www.washingtonpost.com/news/retropolis/wp/2017/10/02/lbjs-shrewd-moves-to-make-thurgood-marshall-the-nations-first-black-supreme-court-justice/?utm_term=.b41c060dd5f0 I have not found a source attempting to disprove Johnson's purported politicking, but enough sources about the nomi-

his opening.

As Lyndon Johnson said in his nomination remarks, Thurgood Marshall "already earned his place in history" prior to his nomination. Marshall had argued thirty-two cases before the Supreme Court, which Johnson remarked was more than all but six other men up to that point.³ He argued both as a private litigator for the NAACP, including *Smith v. Allwright* (White Primary Case), *Shelley v. Kraemer* (racial restrictive covenants), *Brown v. Board of Ed.* (needs no explanation), and as the Solicitor General for the United States under Johnson.⁴ President John F.

nation do not even bring up this amazing, must-say, scenario that I am hesitant to say it certainly happened.

3 Chief Justice Roberts now holds the record for most Supreme Court arguments prior to becoming a Justice, arguing 39 and winning 25 of them.

4 Bizarrely, Marshall's record is contested. Most sources, such as his *New York Times* obituary, say he argued fourteen for the NAACP and eighteen for the government, winning twenty-nine of thirty-two. But a minority of sources say he argued nineteen for the government, winning fourteen. Compare Randall W. Bland's Justice Thurgood Marshall (nineteen for government) with [Kennedy appointed him to the Second Circuit in 1961, only the second African-American Circuit Judge. Marshall was, without a doubt, one of the most experienced litigators in America at the time, and one of the most experienced in American history.⁵](https://archive.ny-</p></div><div data-bbox=)

Like Justice Louis Brandeis before him, Marshall faced opposition that was overtly about his likely liberal jurisprudence, but was in large part motivated by racism. Unlike Brandeis, Marshall sat before the Senate Judiciary Committee during his confirmation hearing and was subject to Southern Senators' snide insinuations. Dur-

[times.com/www.nytimes.com/learning/general/onthisday/bday/0702.html](https://www.nytimes.com/learning/general/onthisday/bday/0702.html) (eighteen). I have no idea who is right as finding this data is difficult.

5 Absolutely fascinating to me, Marshall was involved in helping Kenya draft its first post-colonial constitution. While not all of his suggestions were incorporated in the final constitution, his biggest contribution was a "just-compensations"-like takings provision to protect the white minority from land confiscation. "I said that I was going to give the white Kenyan the same protection I would give a Negro in Mississippi. ... They can take your land, but they had to pay you. And if they don't give you the price you like, you can file [suit]."

ing the hearing, Senator Strom Thurmond (D-S.C.) (of States-Rights "Dixiecrat" fame during the 1948 election) grilled Marshall with over sixty arcane questions about the Thirteenth and Fourteenth Amendments, which Marshall often did not know the answer to. Thurmond railed against Marshall as ignorant of the drafters of the Fourteenth Amendment, Marshall's so-called expertise. Senator Ted Kennedy '59 interrupted Thurmond and asked if Thurmond knew who the drafters were. Flustered and ignorant himself, Thurmond said he'd let Kennedy know later. (Thurmond forgot the cardinal rule of cross-examination: never ask a question you don't know the answer to).

After cajoling, President Johnson, similar to President Wilson with Brandeis, convinced twenty senators to abstain, rather than vote against Marshall. It took two months, but Thurgood Marshall was confirmed by a vote of 69 in favor, 11 against.

It is easy to understand why Marshall was chosen to be a Justice on the Supreme Court. But why was he the first African American to sit on the court? The proximate answer is racism—racism made any previous attempt dead on arrival. But why was Marshall the first? Marshall was not the only Black lawyer fighting for equality and civil rights. In fact, there

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Letters to the Editor

Letters of interest to the Law School community may be sent to editor@lawweekly.org. Letters may be published at the discretion of the Editorial Board and are subject to editing for grammar, style, and clarity, but not content or viewpoint. The Law Weekly does not necessarily endorse the content or viewpoint of any letter herein published.

Not All Criticism of Israel is Anti-Semitic

Noah Karr-Kaitin '19

Last week the Jewish Law Students Association (JLSA) published an opinion piece aiming to shed light on anti-Semitism on both the left and the right. As a Jewish law student, and proud supporter of Israel, I write to express my strong disagreement with their argument regarding Leslie Cockburn and her 27-year-old book, "Dangerous Liaison." I am extremely disappointed in JLSA's seeming willingness to wield accusations of anti-Semitism as a preemptory means of stifling honest and thoughtful debate of Israeli policies.

JLSA dangerously conflates those who hate Jews and those who hold Israel to the standard of other advanced democracies operating on the world stage. JLSA admits that no such hatred can be found in Cockburn—instead the entirety of their argument is that her criticism of Israel is so egregious as to put her "problematic book" within the realm of the most famous work of anti-Semitic literature outside of "Mein Kampf"—that is, "The Protocols of the Elders of Zion."

Far from being anti-Semitic, the tenor of Cockburn's reporting is actually shared by

many Jews in Israel and those of us in the United States who strongly support Israel without always agreeing with its leaders' decisions. In fact, a recent American Jewish Committee poll found that only 34 percent of American Jews support U.S.–Israel relations as currently constituted, while 41 percent "disapprove strongly."

While JLSA writes that "not all criticisms of Israel constitute anti-Semitism," they damn Cockburn without even citing her arguments in any meaningful sense—as if such accusations, with all their weight, can be hastily made. JLSA brushes aside Cockburn's meeting with local Jews as a "perfunctory campaign stop" despite *The New York Times*' directly quoting the emeritus Rabbi for Charlottesville's only synagogue as saying that most of the event's attendants were not even taking "the charge [of anti-Semitism] seriously . . . even [the] folks who read her book." (Emphasis added.) That the largest pro-Israel PAC in the country, J Street, has endorsed Cockburn and funded her campaign also goes unmentioned.

Perhaps most damning of all, JLSA does not quote one word of Cockburn's supposedly "deeply concern[ing]" book. Instead, a book review is the only support offered. The review—and I encourage

you to read it—simply does not support JLSA's claim. The reviewer was no fan of "Dangerous Liaison," but his complaints stem from his willingness to generally endorse Israel's first 40-odd years of foreign policy. He does not address the quality or veracity of Cockburn's reporting, much of which would have to be off the record considering the secrets being discussed.

Unfortunately, Alderman's copy of "Dangerous Liaisons" is missing. However, an hour-long 1991 interview with Cockburn is easily accessible on C-SPAN's website.

In it, Cockburn explains how she interviewed numerous top-level Israeli and American leaders. She also highlights the beginning of the U.S.–Israeli espionage relationship when, in 1951, Israeli Prime Minister David Ben-Gurion offered his nation's assistance to the CIA; how America sold arms to Iraq during the Iran–Iraq war through an Israeli proxy; how Mike Harari—a senior officer in the Mossad—worked closely with Manuel Noriega, Panama's brutal military dictator; and her experience reporting from Tel Aviv during the Gulf War as Iraqi missiles landed nearby.

I decided to check up on these statements and quickly found direct support for each

claim by mainstream journalistic entities. Last year, *Haaretz*, a mainstream Israeli newspaper, described Harari as playing "second fiddle" to Noriega.

Given this easily accessible information, JLSA's willingness to compare Cockburn to the authors of "The Protocols of the Elders of Zion" is shameful, and doing so without first critically engaging in the source material is inexcusable. "The Protocols" was a work of pure fiction, and as JLSA highlights, instigated mass slaughters of Jews. To say that "Dangerous Liaisons" is a "variation on the Protocols theme" is to devalue whatever factual qualms might be accurately raised against it while making it more difficult to credibly call out true instances of anti-Semitism.

I leave you with this claim: Much like America, Israel has often fallen short of its ideals. This was true in 1991 and it is true in 2018. For instance, Israeli Prime Minister Benjamin Netanyahu welcomed Viktor Orbán, the far-right prime minister of Hungary, to his nation this past summer, calling him "a true friend of Israel." Orbán's run for office included billboards evoking anti-Semitic language denouncing George Soros. Orbán also praised Hungary's World War II-era ruler who collaborated with

the Nazi war effort. Orbán's arrival sparked an uproar in Israel. *Haaretz* penned a three-part expose, explaining the seemingly bewildering partnership as being predicated on the leaders' "common goal," shared with President Trump, "in disrupting EU polic[ies]" that impede all three leaders' agendas. It is plainly disgraceful that Orbán be let into Israel, let alone greeted with open arms.

Does writing the paragraph above make me an anti-Semite? I did just reference quasi-conspiratorial motivations between American and Israeli leaders. Perhaps I gave sufficient detail such that JLSA will allow me to pass as somebody whose "criticisms of Israel [don't] constitute anti-Semitism." Then again, if 432 pages worth of reporting was not enough to save Cockburn's writing from being labeled an "anti-Semitic canard[,]" why should one paragraph suffice?

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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.

Gunners N’ Roses v. Panic! at the District Court
901 U.Va. 74 (2018)

ELICEGUI, J. delivered the opinion of the Court, in which ZABLOCKI, HOPKIN, and RANZINI, JJ., joined. VANDERMEULEN, C. J., filed a concurring opinion.

Justice ELICEGUI delivered the opinion of the Court.

A group of precocious 1Ls formed a band and joined the staff of the newspaper. As a result, the 1L cover band stole the cover photo of the newspaper from the Law School’s official, beloved cover band, Gunners N’ Roses. While such chutzpah might be considered praiseworthy, the 1Ls acted without regard for the laws and social norms which govern our community. Given the relevant laws, which provide that 3Ls rule the school and give property rights to the original creators of great ideas, and the justice system which provides a remedy to the aggrieved, the 1L cover band breached an implied contract, trespassed, and stole the thunder of GNR and must make amends accordingly.

I

On Saturday, October 20, the members of the Law School’s beloved cover band, Gunners N’ Roses (“GNR”), took to the stage to headline SBA’s new event, Fauxfield. Fauxfield was a replacement for Foxfield, the Law School’s annual event where the 1Ls must provide food and beverages to the upperclassmen to thank them for welcoming the new students into our school. Our treasured band performed their hearts out for more than three hours. By all accounts, they crushed it and demonstrated to the school their countless hours of rehearsal were worth it. During the three-hour performance, Gunners N’ Roses played twenty songs and even refrained from too many beers to ensure

they gave it their all. Four days later, GNR’s lead singer, Betty Rizzo, arrived at school to find the front page of the *Law Weekly* contained a giant picture of Panic! At the District Court (“P!ADC”), the 1L “cover band,” or, as appellant’s brief asserts, a cheap knock-off version of GNR. Rizzo couldn’t believe her eyes, particularly because P!ADC only played four songs (that’s all they know) and she was still hoarse from singing for more than three hours. Rizzo gathered the other members of the band—Marty Maraschino, Danny Zuko, Sonny LaTierri, Putzie, and Kenickie—to discuss this outrage. As a result of that conversation, appellants decided to file the foregoing suit.

Appellants asserted that P!ADC infringed on their copyright, breached an implied contract, trespassed on their property, and intentionally inflicted emotional distress upon them. Appellants first argued that, as the rightful heirs to the school’s first law-pun cover band, they own a trademark over such band names any other group looking to found a law-pun band must pay them the appropriate trademark fees. Second, appellants argued that, implicit in the 1Ls’ acceptance to UVA Law, they created an implied contract to “wait their turn” to form a band and “know their place” in the Law School hierarchy, which they breached. Third, appellants argued that, as the rightful heirs to the discoverers of the successful formula for law-pun band success, they hold property rights over all Law School musical performances under the doctrine of discovery, and that P!ADC trespassed on their property by performing at Fauxfield without their permission. Fourth, appellants contended that P!ADC intentionally induced other 1Ls to put their picture on the front page of the newspaper in an attempt to sabotage GNR and upset the band members. Appellants asked the lower

court for monetary damages, paid in the form of four kegs of good beer, and a permanent injunction preventing P!ADC from performing at future Law School-wide events without their express and written permission.

For their part, appellees, through their lawyer, third-year student Julianna McCarthy, denied all claims.¹ They asserted, “That’s not how trademarks work,” and questioned if the members of GNR had even taken Copyright Law yet. Appellees responded to the breach-of-contract claim by explaining that contracts require an objective intent to form a contract, and no objective person would agree not to form a band when they were as talented as the members of P!ADC and the competition was so weak. Appellees also asserted that the doctrine of discovery only applies to land and is no longer a permissible form of establishing property rights, given that the underlying logic is “pretty racist” and ignores the property rights of the indigenous peoples. In response to the intentional infliction of emotional distress claim, P!ADC argued that “Gunners N’ Roses shouldn’t be such pansies” and “competition makes everyone stronger.”

After a two-day bench trial at the court below, Judge Jacob Jones found for P!ADC on all claims.² Judge Jones ruled that GNR had no trademark on law-

1 Appellees retained Ms. McCarthy’s services because “We’re 1Ls and don’t know any law yet. The doctrine of discovery?! That sounds like some made-up mumbo jumbo to us.”

2 Judge Jones is the author of the article that originally ignited this dispute. This Court was unimpressed that he didn’t recuse himself from the case, but recusal is up to each individual judge, so our hands are tied. We are excluding him from social events for the week, though.

pun band names because, “Eh, I don’t know what a trademark is and neither brief really explained it.” He also found no implied contract between the 1Ls and the larger student body and agreed with P!ADC that GNR shouldn’t be “such prima donnas. Who do you think you are, anyway?! Upperclassmen?” Finally, Judge Jones found the doctrine of discovery doesn’t apply because he hasn’t taken property yet. Appellants timely appealed and we granted them a hearing. We now reverse on three of GNR’s claims and remand for a calculation of damages.

II

First, we address appellants’ trademark-infringement claim. Like Judge Jones, the members of this high court have yet to take Copyright Law and aren’t sure what a trademark *actually* is. We surmise, though, that trademarks only apply to more specific and original ideas than law school puns, which are a dime a dozen. *See Students of UVA Law v. Common Law Grounds*, 818 U.Va. 545 (2017) (“As a student organization at UVA, you have a duty to have at least one board member who hates puns to guarantee you don’t subject the student body to events like ‘Confirmation Bias’ focused on judicial confirmation hearings.”). Given this Court’s past pun precedent and Petty Rule of Civil Procedure 1,³ we do what we want and we don’t want to research what a trademark actually is. Therefore, we uphold the lower

3 “We do what we want.”

court’s decision on this claim. The lower court erred, though, in finding for the appellees on the breach-of-contract, trespass, and intentional-infliction-of-emotional distress claims. The Court will now take them up in that particular order.

UVA Law is a school where students respect their elders and all students who accept their offer of admission form an implied, but binding, contract with the 3Ls to allow them to shine all year. Under this contract, 1Ls, 2Ls, and professors may not require anything particularly strenuous from 3Ls or interfere with their fun in any way. We don’t call it #3LOL for nothing. *See Grey v. Collins and Dugas*, 713 U.Va. 27 (2014) (“Fed Courts is hereby enjoined from being held on Friday and messing up the 3Ls’ three-day weekend. And don’t even think about doing any cold-calling in there, either.”). Because GNR is made up of several 3Ls,⁴ the band functions as an agent of the 3L class and is therefore a party to the implied 3L contract. P!ADC breached this contract by stealing the cover photo from GNR and must make amends for that breach. Besides, wasn’t it hurtful enough that these youngins didn’t have to provide us with food, booze, and ponies?! Where will this madness end?!

While the doctrine of discovery may no longer apply to land, the doctrine is still in full force at UVA Law and GNR has full

4 We ignore, for now, the presence of that 2L guy in GNR. *See* Footnote 3.

Faculty Quotes

M. Collins: “I want to talk about life...in an offensive nonmutual collateral estoppel jurisdiction. I think about it a lot.”

J. Setear: “Usually you have to go farther to find a contradiction in someone’s ideology than across their bumper”

M. Gilbert: “If you’re a 3L that has a job, what are you doing here?”

J. Harrison: “As a Charlottesville taxpayer, I am outraged that my tax money


is being spent on Art in Place.”

G. Rutherglen: “Why do I feel like I’m the only one who really understands the Erie doctrine?”

A. Vollmer: “Not my fault – life is according to alphabetical order.”

K. Kordana: “Note to self: Kill self. Because loser.”

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



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property rights over all school-wide musical performances and law-pun band names. Although GNR is not the first Law School cover band, GNR is the successor in interest to Jefferson Clerkship⁵ and inherited all Jefferson Clerkship’s property rights when the original band broke up. This bundle includes the usual sticks (right to exclude, right to destroy, right to use, right to sell). Given that GNR has the right to exclude others from Law School-wide musical performances and from using law-pun band names, P!ADC violated these rights by performing at Faux-field without their permission and sucking up GNR’s rightful press coverage.

P!ADC’s transgressions against GNR caused the members of GNR emotional distress and justice requires Panic! At the District Court make amends for the pain they have caused. *See Ex-GF v. Ex-BF*, 673 U.Va. 1145 (2016) (“You can’t just be a dick and get away with it. Wrongs must be righted, and sometimes the only way to do that is by saying sorry with a keg.”). Because P!ADC breached the laws and social norms governing the law school community, they owe GNR beer to compensate.

III

The upperclassmen of UVA Law can’t just let these meddling kids get away with it. Therefore, the lower court’s holding is reversed and the case

is remanded for a calculation of damages not inconsistent with this opinion. And this opinion has nothing to do with the fact that a majority of this Court’s justices are GNR groupies.

It is so ordered.

VANDERMEULEN, C. J., concurring.

I join in full my colleague Justice ELICEGUI’s able opinion. I write separately to note additional precedent that supports the holding outlined in her opinion. Can it be that the 1Ls have never heard of the famous *SBA v. First-Year Council*, 323 U.Va. 882 (1983)? There, the Court outlined its seminal, nuanced rule controlling 1L cases: “1Ls lose.” Like Professor Kordana’s “female plaintiffs lose” rule, this principle of the law is a time-honored and intellectually sound maxim strongly supported by the Petty Academy. Through the decades, the Court has applied it again and again, with increasing certainty and vigor. *See, e.g., Class of 2005 v. Jeffries*, 580 U.Va. 100 (2002) (“The 1Ls lose.”); *PILA v. Annoying Smelly 1Ls*, 612 U.Va. 205 (2009) (“The 1Ls lose.”) (Opinion of Watkins, J.)

When applied to this case, the outcome is clear: The 1Ls lose. Strongly endorsing this ancient and sound rule, I concur.

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MARSHALL

continued from page 3

was another African American who was given strong consideration before Johnson chose Marshall.

Earlier, I noted Marshall was the second Black federal appellate judge—the first Black appellate judge was the lesser known William H. Hastie. Hastie, born in Tennessee, would graduate from Amherst as valedictorian, and Harvard Law School as member of its Law Review. Hastie would make history as the first African-American federal district judge when, in 1937, President Roosevelt appointed him as judge for the District of the Virgin Islands. After two years, Hastie resigned to become dean of Howard University’s School of Law, where one of his students was a young Thurgood Marshall. Together, Hastie and Marshall would co-argue *Smith v. Allwright* and *Morgan v. Virginia* in the Supreme Court. Hastie would again make history as the first African-American appellate and Article III judge⁶ when Truman appointed him to the Third Circuit in 1949.⁷

Hastie’s name did come up as a possible nominee for the

6 As a territory, the District Court for the Virgin Islands is an Article IV court, the chief difference being that its Judges do not have lifetime tenure.

7 The Third Circuit hears appeals from the Virgin Islands. Hastie was also the Virgin Islands’ governor from 1946-1949, also appointed by Truman.

Supreme Court, including during the Eisenhower administration. Hastie’s best opportunity came when Justice Charles Evans Whittaker retired early in President Kennedy’s administration.⁸ Hastie was the first choice of Robert Kennedy, then serving as Attorney General under his brother.⁹ However, Hastie was not chosen because there were fears that Hastie, outside of racial questions, was too conservative. Kennedy’s Assistant Attorney General for the Office of Legal Counsel, Nicholas Katzenbach (who would become Deputy Attorney General after Byron White’s confirmation) asked Chief Justice Warren about his thoughts on Hastie. Warren was adamantly opposed, telling Katzenbach that Hastie is “not a liberal, and he’ll be opposed to all the measures that we are interested in.” Robert

8 Justice Charles Evans Whittaker is a cautionary tale against being promoted beyond one’s capabilities. A stellar district judge (appointed in 1954), but a merely good appellate judge (appointed in 1956), Whittaker was overmatched as a justice (appointed in 1957). After vacillating over *Baker v. Carr*, Whittaker had a nervous breakdown, prompting his retirement at the age of 61 and after only five years on the Court.

9 This narrative predominantly comes from Dennis J. Hutchinson’s “The Ideal New Frontier Judge” in *The Supreme Court Review* Vol. 1997, pp. 373-402.

Kennedy called Justice William O. Douglas to ask about Hastie, who responded Hastie would be “just one more vote for [Justice Felix] Frankfurter,”¹⁰ Douglas’s chief ideological opponent and the Court’s leading conservative at the time. (A sign of the times—Justices felt no compulsion to avoid advising members of the executive branch.) Not wanting to risk a conservative Justice, and wary about whether an African American could be confirmed, Kennedy ended up appointing Byron White to the seat.¹¹

And so history goes, contingent on choices we could easily imagine going different ways. But Thurgood Marshall would be the first African-American Justice, because as President Johnson said when explaining the choice, it was “the right thing to do, the right time to do it, the right man and the right place.”

Next time: Johnson’s judicial blunders and the beginning of the end of the Warren Court.

uf5ex@virginia.edu

10 Frankfurter was known for his judicial restraint in all fields, economic and social, and viewed the protections of the Bill of Rights as more limited than most of the rest of the Warren Court did.

11 The choice is ironic as White, while by no means doctrinaire, would join or author a fair share of “conservative” opinions.

HOT BENCH



Jeremy Pushkin '19

- 1. Have you ever had a nickname?
Pushkin. And in law school various combos of J-[noun] – J-Bird, J-Bone, J-Dog, etc.
- 2. Where did you grow up?
Baltimore, Md., with summers in my mom’s hometown of Sassoferrato, Italy.
- 3. What are you most excited for during your first year in San Francisco?
Finding the best burrito in SF.
- 4. What is your favorite word?
Apericena: when aperitifs and small plates become your dinner.
- 5. What’s the best meal you’ve ever had?
Chirashi-zushi at the Tsukiji Fish Market.
- 6. What’s your favorite hobby to avoid the stress of law school?
Planning trips to vineyards and never being able to make

it the next day.

- 7. Where is your favorite place to vacation?
Bermhooda [@bermhooda on Instagram].
- 8. What’s something you wish you’d known about law school before coming to UVA Law?
That it’s like being back in high school.
- 9. What did you have for breakfast this morning?
An everything bagel with cream cheese from a non-Bo-do’s bagel shop.
- 10. If you were a superhero, what would your superpower be?
Knowing the Mega Millions numbers in advance.
- 11. If you could live anywhere, where would it be?
Rome (Italy, not Georgia).
- 12. What’s your least favorite sound?
The sound of a random undergrad’s scent diffuser going off at the table next to me in the library 1L year.
- 13. If you owned a sports team, what/who would be the mascot?
The Montgomery Biscuits already perfected it with Monty, an anthropomorphized butter-milk biscuit.
- 14. What’s the best gift you’ve ever received?
The email informing us that “[w]e have had complaints that people are juuling in the Law School.”

- 15. Blueberries or strawberries?
Blueberries with breakfast, strawberries for everything else.
- 16. What is the best concert you have ever been to?
Danny Brown and Childish Gambino. Donald Glover told me he loved me.
- 17. What’s the best (or worst!) PG-rated pickup line you’ve ever heard?
I hope it’s not Shabbos because you’re turning me on.
- 18. What’s your spirit animal?
According to a BuzzFeed quiz I just took, a “very cute kitty.”
- 19. Backstreet Boys or *NSYNC?
*NSYNC. Don’t @me.
- 20. If you won the lottery, what would you do with it?
Start my own vineyard.
- 21. If you could be in the winter Olympics, which sport would you compete in?
Curling. I’m just waiting for my mustache to grow out so I can really fit in.
- 22. Where is a place you haven’t been but want to travel to?
St. Petersburg, Russia.

jnp6aj@virginia.edu

Dog in Search of Foster Human



Buck

Me:

- Devilishly handsome hound currently living outside and on a chain;
- Deeply affectionate and looking for human or canine companions who enjoy playtime as much as I do;
- Looking to make a major life change and move to a home with amenities such as a warm hearth and warm hearts;
- Fifteen months old, white and brown fur with a splash of black across my back, 45-55 lbs;
- Going to the vet (!!!) on November 8th and hoping to head to a new home, temporary or permanent, right after!

You:

- Appearance generally unimportant, but prefer high level of skill in administering belly rubs and ear scratches;
- Willing to provide accommodation in exchange for snuggles;
- Age, color, presence of fur/hair, and weight irrelevant.

For a legit puppy video, please go to <https://www.youtube.com/watch?v=BG-iaZrOk1s>.

For more information, please contact Hannah Hein at Hannah.L.Hein@gmail.com.

PILA

continued from page 1

and a gift card to a local restaurant? ANG might not bother coming back to Charlottesville.

In the unlikely event ANG makes it back from these adventures and deems there to be any hope in schmoozing professors for a passing grade, ANG will be looking for companionship² at the following competitive events. These include a choice between Poker Night for Five with Professors Bowers, Gilbert and Schwartzman or Poker Night for Four with Professor Ferzan (both with a starting bid of \$200). Does one of these sound like a better deal than the other??

For when ANG is pretending to be an educated and/or refined individual like ANG's mom always hoped ANG would grow up to be before she relinquished this pipe dream, ANG plans to bid on and win Pub Trivia for between five and nine people with Professor Brady (starting bid of \$300). No word on how prominently Kelo will feature in the question set. If "physical activity" is more where your skills lie, ANG will need the assistance of

² Applicants for the position of "companion" must provide evidence of winning tendencies in the selected event. ANG can't be a champion at everything and gets by only with a "little" help from ANG's friends.

seven individuals for Dinner and Croquet for Eight with Professor Geis (those seven can figure out croquet and ANG will eat everyone's dinner; ANG was banned from any mallet-based sports after an incident that does not bear going into).

Last but not least, ANG will bid as high as ANG needs to³ in order to win the Ice Cream Social with Dean Goluboff and Professor Schragger (starting bid of \$200 but real talk that's not a reasonable estimate of the value). This is still a competitive event; if you haven't seen ANG eat ice cream then you haven't seen ice cream eaten. Period. ANG is listening if anyone wants to form an alliance in bidding / financing this event. For those interested in consolation prizes and/or making a fierce comeback in the bidding wars during the silent auction on Saturday night, ANG understands that there will be some truly excellent salted chocolate-chunk cookies on the table, among other delectables (as well as other, non-edible items). Let us pray that if any of the above prizes are snatched out from under ANG, ANG will at least be able to eat ANG's sorrows away in gourmet style.

knh3zd@virginia.edu

³ COME AT ME, UVA LAW BROS!!!

Co-Rec Softball Playoff Results

Habeas Porpoise over VLW

Sermon on the Mound over Fed Sox

C's Get JDs over Justice RBIs

A'notha One over Rip's RAngers

Fairly Odd Patents over Nerd Herd

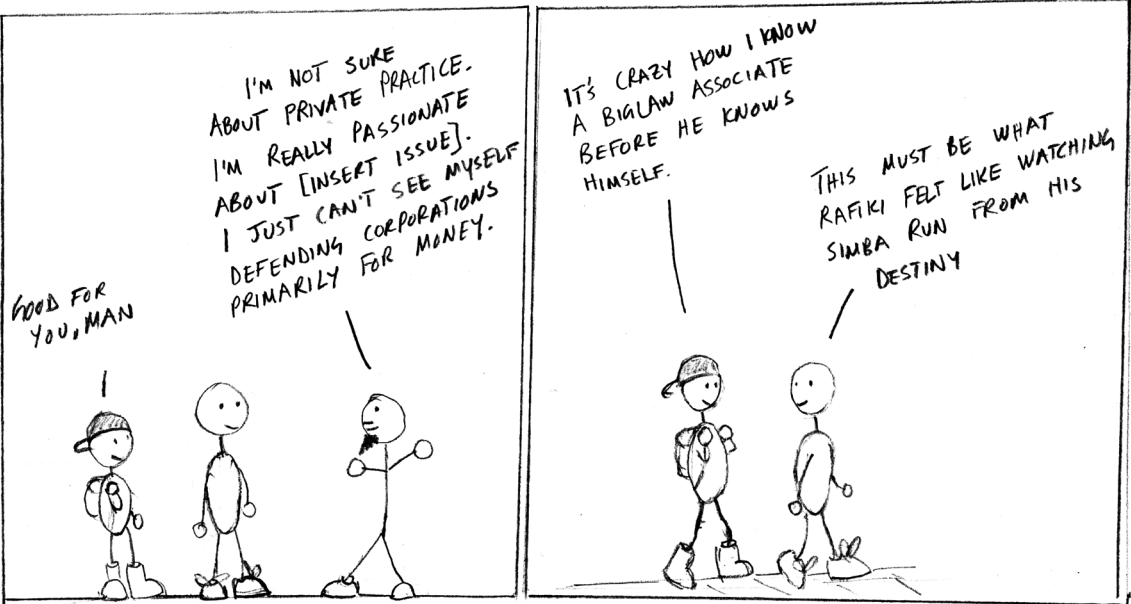
Section I '19 over C's and Desist

Legal-Es over Bam's I's

Cases Loaded over Beyond a Reasonable Out

Rio Grande Slams over Docket Like It's Hot

Cartoon By Hamza Rashid '19



WORLDLY 3LS MEET A 1L

THE DOCKET

WEDNESDAY – November 7				
17:15 – 20:00	Women in Public Service Panel	Caplin	Free w/ RSVP	----
17:30 – 19:30	MRC Mixer	Pav Clubhouse	Free	Light refreshments
19:00 – 20:30	ACS / Law Dems Present 8 Court Decisions Affecting Indians & Tribes	Purcell	Free	----
THURSDAY – November 8				
11:30	Interviewing With Public Service Employers	WB 154	Free	----
12:30 – 13:30	First Generation College Celebration	SL 298	Free	Lunch
13:00 – 14:00	ACS / CARE: Equal Education Opportunity ft. Prof. K. Robinson	Purcell	Free	Lunch
17:30 – 20:00	PILA Live Auction	Caplin	Free	Light beverages
17:00 – 19:00	Author/Translator Ken Liu: CN/EN Translation of Sci-Fi	Nau Hall 101	Free	----
FRIDAY – November 9				
12:00 – 17:00	CARE: Trip to Art 180 Exhibit	Carpool from Law School – Richmond	Email lgg8em@virginia.edu	----
12:00 – 13:00	Karsh Ctr. Presents: The Future of the Supreme Court	WB 103	Free	Lunch
SATURDAY – November 10				
21:00 – 00:00	PILA Silent Auction	Omni Hotel	Tickets still on sale this week	Hors d'oeuvres, drinks
SUNDAY – November 11				
20:00 – 21:30	Telemetry at The Bridge	The Bridge PAI	Free	----
MONDAY – November 12				
12:00 – 13:15	Applying the Law of Armed Conflict to Nonstate Actors	Purcell	Free	Lunch
12:30 – 1:30	Financing Your Public Service Career	WB 128	Free	----
TUESDAY – November 13				
09:30 – 13:30	Thank a Donor Day Card-writing	Hunton-Williams Hall	Time & Materials	----
12:00 – 13:00	LIST: Autonomous Vehicles & the Law	Purcell	Free	Lunch
12:00 – 12:30	ECVC Weekly Meeting	WB 154	Free	----
12:00	FLAVA: Food Law & Careers	WB 121	Free	----
18:00 – 20:00	Antisocial Media: How Facebook Disconnects Us & Undermines Democracy	Alumni Hall	Free	Light hors d'oeuvres, cash bar
WEDNESDAY – November 14				
12:00 – 13:00	VLBS: Baker Botts Lunch Panel	WB 126	Free	Cold cuts, knockoff "Yeti" coffee mugs
18:00 – 20:30	BLSA/VLPP/Echols: "Just Mercy" Book Discussion & Dinner	Caplin Pavilion	Free	Some kind of evening meal strongly implied

SUDOKU

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Solution

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7	6	£	Z	9	I	8	L	S
9	8	Z	6	S	L	I	7	£
S	L	I	7	£	8	9	Z	6
I	9	7	S	L	6	Z	£	8
L	£	6	8	Z	9	7	S	I
Z	S	8	£	I	7	6	9	L