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Debate and Controversy as SBA Postpones Blood Drive

Jansen VanderMeulen '19
Editor-in-Chief

The Student Bar Association (SBA) voted last week to postpone the semiannual blood drive and appoint a committee led by Toccara Nelson '19 and Tim Sensenig '20 to study how to proceed in light of the Food and Drug Administration's (FDA) policy restricting blood donations from men who have had sex with men. Fourteen senators voted for postponement, one senator voted against, and one abstained. Students of the Law School began debating the issue immediately, with supporters hailing the decision as a victory against discrimination and detractors criticizing halting the flow of blood to those in need.

At its heart, the dispute around this Law School's continued participation in the blood drive lies with the policies of the FDA. For decades, the FDA completely prohibited the donation of blood from the category of "men who have had sex with men" (MSM) on the theory that blood from MSM was more likely to carry risk of HIV infection. In 2015, the FDA changed the MSM blood-donation policy from indefinite prohibition to a one-year deferral policy. That is, MSM may give blood one year after their last sexual contact with another man.[1] For advocates of allowing MSM to give blood, that change, while welcome, retains what they call a scientifically unsound and unnecessary policy.[2]

The decision to postpone the regularly scheduled blood drive was months in the making. Astute readers of the *Law Weekly* will recall Kyle O'Malley '19's criticism of the FDA's MSM policies and the University's toleration of "the discrimination the FDA's regulation engenders" in his guest column for this paper last spring.[3] According to SBA officials who spoke with the *Law Weekly*, last year's blood drive—held during Diversity Week—sparked calls to end the Law School's participation in the blood drive, or at least couple participation with activism demanding an end to the FDA's MSM policies. Nelson and Sensenig backed that version of events, writing in a statement to the *Law Weekly* that "students called on the SBA to discontinue its practice of hosting blood drives until the FDA policy becomes more inclusive and no longer stigmatizes men who have sex with men," while other students "called on the SBA to reform its programming and promotion surrounding Blood Drives, while petitioning to keep Blood Drives on UVA's Law Grounds."[4]

The result of last spring's controversy around the blood drive was the vote to create the Special Committee on Blood Drives. Nelson and Sensenig explained the special committee "did not obtain an adequate level of participation to properly represent the diversity of perspectives" on the blood drive issue and therefore "tabled discussions until Fall 2018 to seek more student representation." Meanwhile, the SBA's Health and Wellness Committee went forward with scheduling the semesterly blood drive, apparently unaware that the Special Committee on Blood Drives had not yet produced a recommendation.

One student familiar with both years' SBA deliberations, who spoke to the *Law Weekly* on condition of anonymity, told the paper that the Health and Wellness Committee, staffed primarily by 2Ls, did not know of the Blood Drive Committee's existence or mandate, and scheduled the blood drive as usual. That student, supportive of the blood drive but sympathetic to allowing the special committee to finish its work, stressed that the postponement of the drive was much more about allowing a duly appointed committee to finish the work it was assigned than about ending the Law School's participation in the blood drive.

Nelson and Sensenig stressed the same point: "We are cognizant of and sensitive to the need for [b]lood donations in the midst of Hurricane Florence," they wrote, while emphasizing the need for the special committee to complete its work. The SBA is offering reimbursement of up to five dollars for those students who traveled to town to give blood September 17 and 18.

Reaction to the SBA's postponement of the blood drive was mixed. Some students and student organizations re-

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1 https://www.fda.gov/forpatients/illness/hivaids/safety/ucm117929.htm

2 Li Zhou & R.T. Winston Berkman, "Ban the ban: A scientific and cultural analysis of the FDA's ban on blood donations from men who have sex with men." *Columbia Medical Review* June 22, 2015. https://medicalreview.columbia.edu/article/ban-the-ban/

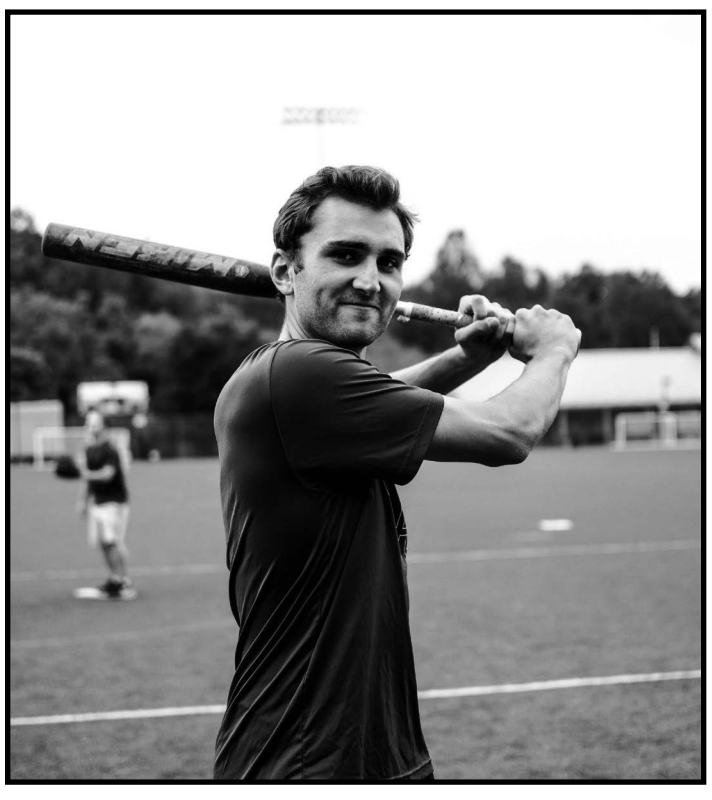
3 Kyle O'Malley, "Tainted Love." *Virginia Law Weekly* March 14, 2018. https://www.lawweekly.org/col/2018/9/16/tainted-love

4 Nelson and Sensenig's full statement to the *Law Weekly* as well as the other statements made on the record to the paper may be found at lawweekly.org.

1L Softball Practice Off to Wet Start

Lily Teague '21 warms up with Section H.

Due to begin this week, the annual fall softball season was largely delayed by the onset of Hurricane Florence. The fringes of the hurricane left Copeley Field soggy and largely unplayable. That didn't dampen the spirits of Section H 1Ls, who managed to complete one of their games at The Park. 2Ls and 3Ls were forced to reschedule their games, and with the ongoing humid gloom imposed by the tropical monster, increasingly glum about their ability to complete their scheduled games. The Law School's students can only hope their noble overlords at NGSL will somehow rise to the challenge of scheduling the missed games.



Dominic Adduci '21 in the Section H bullpen.

around north grounds

Thumbs up to the continued delay of softball season. ANG hasn't cared about softball since ANG got chosen to be in NGSL. Who needs softball when you can be part of a Adderall cult!

Thumbs sideways to the upcoming premiere of the Great Canadian Baking Show. On the one hand, have you ever heard of anything more Canadian? On the other, ANG can't wait to see how this batch of bakers fares on the proving ground. #bakingpuns

Thumbs down to the 1L job search starting early. The few blissful weeks where 1Ls are only neurotic and insufferable in ways related to school have always been ANG's favorites! How could you, KDon?

Thumbs up to library statue and fashion icon Arthur's new raincoat. You are the fashion role model that ANG needs, not that ANG deserves.

Thumbs down to this hurricane-adjacent weather. ANG also waited until Monday to do all of ANG's work.

Thumbs sideways to last week's review of the Law Library's new coffee machines. On the one hand, ANG was v impressed by the machine's hot water. Hottest water ANG's tasted since 'Nam. On the other, the Vanilla Coffee those nice kids recommended tasted like pondscum.

Thumbs up to the approach of fall break. ANG likes fall break because the upstairs at Bilt empties out and no one yells at ANG for "being intoxicated in public in violation of Section 18.2-388 of the Virginia Code."

Thumbs up to the new season of the Serial podcast premiering on 20 September. ANG depends on these podcasts to pedantically talk down to inferior classmates in the hallway who are discussing a completely different topic.

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acted positively. Lambda Law Alliance President Eleanora Kaloyeropoulou '20 wrote to the *Law Weekly* that she supports the special committee's mission "of planning future, inclusive blood drives." She went on to add that "Lambda supports the use of the committee that SBA created to handle the planning of future blood drives."

SBA Treasurer MacLane Taggart '19 described the postponement as "purely a reflection of SBA's commitment to follow through with the promise made last spring to allow for a productive dialogue regarding how best to address the discrimination inherent in the FDA's policy to not allow blood donations by men who have sex with other men." Taggart added that he personally "support[s] blood drives at the Law School, despite [his] inability to donate blood as a gay man." He also supports the decision to postpone the drive "until the special committee has the opportunity to make recommendations."

Kyle O'Malley '19 expressed support for the SBA's decision to postpone the drive, but indicated frustration at the FDA's continued exclusion of MSM from the blood-donation pool and at student leaders who "continue to schedule blood drives." "My personal opinion is that individuals who are not subject to 'deferral' and who want to donate blood may do so," O'Malley said, "But they are not entitled have their donation collected on Grounds. It might be inconvenient to travel off-Grounds to donate, but that can hardly be an excuse. That is—we're either seriously committed to non-discrimination or we're not."

Other students expressed frustration and disappointment that the SBA was taking out LGBTQ students' and allies' righteous anger on the wrong target. Wade Foster '19, a former Lambda board member studying abroad in Australia, wrote to Nelson and Sensenig in a message shared with the *Law Weekly* that "protesting the UVa Law blood drive is not going to change FDA policy. It is only going to deprive the Albemarle County area of much needed blood at a time when Virginia is in a critical blood shortage."

In comments provided to the *Law Weekly* only with the promise of anonymity, another student familiar with SBA deliberations said, "SBA allowed itself to be bullied away from providing desperately needed help to communities in need, especially with a major natural disaster hitting our region. This was done in the name of an ill designed political statement."

Taylor Elicegui '20 echoed Foster's comments. "While I think the FDA's policy is discriminatory and wrong, eliminating the blood drive only hurts people who need blood. I also know it's much easier for students to access the blood drive when it's on Grounds, even with the SBA's reimbursement for going to town," she said. "I hope students will contact their representatives in an effort to have this policy changed."

Whatever their positions on the merit of the decision to postpone the blood drive, everyone involved was clear in their desire for the students of the Law School to get involved with the process, which Nelson and Sensenig hope to have wrapped up in a few weeks at the latest.

SBA President Frances Fuqua '19 told the *Law Weekly* in a statement, "SBA wants to make sure everyone in this community has an opportunity to be heard and we will work towards the most collaborative solution possible when it comes to the blood drive."

Nelson and Sensenig echoed the same idea: "We embrace the diversity of perspectives from students . . . All members of the Law School community who are interested in this issue are welcome to join or send comments to the leaders of the special committee." Fuqua can be reached at fhf5jm@virginia.edu. Nelson and Sensenig encourage anyone who wants to be on the committee to contact them at tmn2aa@virginia.edu for Nelson or tps4zf@virginia.edu for Sensenig.

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jmv5af@virginia.edu

Exciting New Composting Initiative

Elizabeth Buttitta '20
Guest Columnist

Student organization lunch events at UVa Law are a well-known staple of life at the Law School. Each semester, organizations of various kinds put on events, such as hosting speakers and panels, which often include food. Yum! Despite the free-food table, these events can generate a significant amount of waste in the form of plates, cups, utensils, food scraps, and the like. Unfortunately, most of the waste ends up in the landfill. Until now!

Introducing zero-waste events! Thanks to the Recycling and Waste Diversion Program here at UVa, we now have the ability to create "green" events by providing recycling and compost bins at events. Additionally, the program offers compostable wares, such as plates and utensils. The process is very simple and completely FREE. Event organizers simply contact UVa's recycling supervisor, Victor Martin (vem8n@virginia.edu), to request bins (and compostable wares, if desired) for the event. Once event organizers let him know the date and location of the event, approximately how many people are expected, which bins are being requested (compost, recycling, and/or landfill), which compostable wares are wanted, and desired drop-off and pick-up time, Victor and his team will be on the case! They will drop off the bins and wares and come back to pick it up at the end of the event. It's that easy!

It is important to note that event organizers must be willing to help attendees discard items into the appropriate bin. This is essential to successfully making the event zero-waste. For instance, if a compost bin gets contaminated with non-compostable items, it unfortunately must go to the landfill. Additionally, if non-recyclables are placed in the recycling bin, the result will be a lot of unnecessary work for Victor and his team.

For this reason, SBA's Building and Environmental Services Committee will be hosting an information session about what is compostable and recyclable. The session will also demonstrate what a zero-waste event looks like by serving food and having compost and recycling bins. Be on the lookout for more details!

In the meantime, feel free to contact me (mkb4ja@virginia.edu) with any questions, comments, or comments.

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A Nation at the Brink: Why Judge Kavanaugh Should Not Be Confirmed

Editor's Note: Mr. Rudebusch submitted his column prior to the allegations of sexual assault against Judge Kavanaugh that emerged at the end of last week. For that reason, his column deals only with Kavanaugh's judicial temperament and ideology.

The confirmation process of Brett Kavanaugh, Judge of the Court of Appeals for the D.C. Circuit, represents the latest Republican effort to prioritize party over nation.

George E. Rudebusch '20
Guest Columnist

That is nothing new. But what is new—and what we have learned over the past few weeks—is just how eagerly Republicans are willing to accept a bargain that entrenches their own power at the cost of conservatism, democratic norms, and our national politics.

Democratic legitimacy hinges on deliberation. It springs forth from fair and open processes. This explains why the Constitution requires the advice and consent of the Senate to confirm a justice for a life appointment to the Supreme Court. For decades, Senate Republicans have seemingly understood this, even defending the confirmation process from attempts to change it.

And yet, since the election of President Donald J. Trump, the Republican Party has embraced with open arms fundamental changes to how the Senate confirms nominees to our highest court. During the confirmation of then-Judge Neil Gorsuch, Republicans invoked the so-called nuclear option, which lowered the threshold for closing Senate debate on a Supreme Court nominee from sixty votes to a simple majority. In doing so, Republicans opted to relax the decades-long cloture rule instead of using traditional democratic processes to confirm their candidate of choice.

As the Senate proceeds with the confirmation process of Judge Kavanaugh, Republicans continue to flout democratic norms. They have withheld hundreds of thousands of Kavanaugh documents from their Democratic colleagues in the Senate. And they are hellbent on steamrolling the circuit judge through the confirmation process before the midterm elections this November. How is the Senate to advise and consent on Kavanaugh's nomination with an incomplete documentary record and without sufficient time for due process? And what about waiting until after the midterms in order to "give the people a voice in the filling of this vacancy?" Mitch McConnell, Majority Leader of the Senate, made this very argument in 2016 during the doomed confirmation of Merrick Garland, Chief Judge of the D.C. Circuit Court of Appeals. Does it apply with any less force today?

Judge Kavanaugh. Photo courtesy of Time Magazine.

For a party that extols the virtues of responsibility, Republicans have been anything but since taking power in 2017. Over the past two years, Republicans have furthered the deep partisan divide in America. They have fortified their unpopular policy positions by degrading our democratic institutions.

And if they should succeed in appointing Judge Kavanaugh to the Supreme Court, we could experience a profound reworking of our society. In his confirmation hearings, Judge Kavanaugh has expressed cagey, contradictory, and misleading testimony about his views on reproductive rights and whether *Roe v. Wade* is settled law.

He also has revealed that he perjured himself in 2006 when he testified for nomination of Judge William H. Pryor, Jr. to the Eleventh Circuit. Evidence of perjury for any judicial nominee should raise serious issues during the confirmation process. But in these times when the line between truth and lie has been obscured, such evidence should automatically disqualify Judge Kavanaugh—and arguably provides grounds for his impeachment from the D.C. Circuit.

Perhaps most concerning, however, is Judge Kavanaugh's beliefs in expansive executive authority. His extensive writings on the subject raise the specter that Judge Kavanaugh will shield President Trump from criminal and civil lawsuits that could stem from Robert Mueller's investigation. His views on Presidential immunity have even caused some to question whether President Trump nominated Judge Kavanaugh specifically to insulate himself from the special counsel's eventual findings. Chuck Schumer, Senate Minority Leader, arguably said it best when he rhetorically asked, "Is it any wonder that President Trump chose Kavanaugh from the list of 25 [candidates] when we know he's obsessed with this investigation?"

For these reasons, and despite his qualifications, Judge Kavanaugh should not be confirmed to replace his former boss, Anthony Kennedy, as an Associate Justice on the United States Supreme Court. Judge Kavanaugh's nomination has only further inflamed partisan tensions and adds to the mounting evidence that the Republican party is unfit to control all three branches of government.

Better is possible. Rather than exploiting Kennedy's vacancy for its own partisan ends, the Republican party

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LAW WEEKLY FEATURE: Organization Spotlight—Black 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.*

Rachel Barnes '20
Guest Columnist

The National Black Law Students Association (NBLSA) was founded in 1968 by Algernon Johnson Cooper, the former mayor of Pritchard, Alabama, at the New York University School of Law. Today, NBLSA is one of the largest student-run organizations in the United States, comprising over 130 chapters. NBLSA chapters represent over 6,000 members and are organized into six regions. Through its national reach and local chapters, NBLSA strives to develop lawyers of tomorrow by sponsoring its prestigious competitions such as the Constance Baker Motley Mock Trial Competition, the Nelson Mandela International Negotiations Competition, and the Thurgood Marshall Moot Court Competition at the NBLSA Annual Convention. NBLSA also implements community service and social-action initiatives in furtherance of its mission.

The Virginia Law Chapter of the Black Law Students Association was founded in 1970 and formally chartered in 1996. Dedicated to the development of talented, engaged, and diverse attorneys, UVa BLSA sponsors various student support programs, community outreach projects, panel discussions, and receptions. The Virginia Law Chapter is a leading BLSA chapter, and in recent years, has been recognized as Regional Chapter of the Year five times and National Chapter of the Year three times. UVa BLSA also regularly sends its members to serve as regional and national officers, boasting three past National Chairs and various other Directors, Coordinators, and Specialists among our alumni.

I personally decided to join UVA BLSA after visiting for Admitted Students Open House. Meeting so many impressive black law students inspired me and gave me hope. These accomplished and driven students are now my peers.

This year, I am very excited to serve as the President of BLSA here at UVA Law. Serving with me this year are: Emmaline Rees, Vice President (vicepresident@uvablsa.org); Alexis Wallace, Treasurer (treasurer@uvablsa.org); Tomi Olutoye, Secretary (secretary@uvablsa.org); Lise Guerrier, Firm Relations Chair (firmrelations@uvablsa.org); Moussa Ismail, Community Service Chair (service@uvablsa.org); Michele St. Julien, Social Action Chair (socialaction@uvablsa.org); Courtney Davis, Education Chair (education@uvablsa.org); Sarah O'Brien, Social Programming Chair (socialprogramming@uvablsa.org); and Jasmine Lee, Membership Chair (membership@uvablsa.org).

As we move forward into our 49th year, our Executive Board plans to reimagine BLSA's programming in order to ensure that we not only maintain BLSA's expected level of excellence, but also address the diverse needs of our members. To that end, our Chairs will be hosting a wide variety of academic, professional, and social programming designed to provide holistic support for our members as they navigate their law school journey.

Additionally, we plan to host a number of social and service related events as a complement to our annual "Role of Non-Black Allies" event in order to better connect our members with supportive members of the greater Law School community. One such event is the Community Bridges 5K scheduled for Saturday, October 20, 2018. BLSA will be participating and volunteering this year and we welcome allies to join us! Anyone interested joining our team to run or volunteer should email our Community Service Chair, Moussa Ismail, at service@uvablsa.org.

My personal goal as President this year is to do whatever I can to support my fellow board members and ensure that the black law students here at UVA feel safe and supported. Law school can be a challenging and occasionally isolating place by itself, but these obstacles are often compounded when only 6% of the law school looks like you; which is why BLSA and its mission are so important to me. The mission of the Black Law Students Association is to increase the number of culturally responsible black and minority attorneys who excel academically, succeed professionally, and positively impact the community. Both locally and nationally BLSA provides a haven of support and understanding for black students pursuing their legal education, and I hope to share this haven with the Class of 2021.

Following the events of August 11 and 12, it was members of BLSA who reached out and took care of me when I suddenly was very unsure of my decision to come to Charlottesville. Thanks to their kindness and support I was able to overcome that trying time. UVA BLSA has a very special place in my heart and I am grateful and honored to serve as its President. I look forward to seeing what this year has in store and encourage all who read this to join or support our BLSA chapter because Black Lawyers do Matter.

If you would like to learn more about BLSA and our events please sign up for our allyship listserv by emailing socialaction@uvablsa.org.

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rb5ae@virginia.edu

Confirm Kavanaugh (If the Allegations are False)

W. Augustus "Gus" Todd '19
Guest Columnist

When the news broke that President Trump nominated Judge Brett Kavanaugh to fill Justice Kennedy's seat, I had some initial concerns. In particular, I was concerned about his role in the Ken Starr investigation and his role as a member of President Bush's legal teams during the 2000 election and in the White House. It seemed to me that one does not seek out these sorts of opportunities unless one wants to serve as a political operative. Criticisms of Judge Kavanaugh along these lines resonated loudly with me as he seemed poised to be a senator in a judge's robe.

However, exploring Judge Kavanaugh's written record put my concerns to rest. In particular, it was his record as a judge that alleviated my concerns about his being a politician disguised as a judge. He has consistently applied an originalist and textualist approach to his interpretation of law and has applied precedent in a consistent manner. A judge can hardly be denounced for being an originalist or a textualist, even if those interpretive tools are different from the ones an observer might otherwise prefer. These approaches are unquestionably within the mainstream of contemporary jurisprudence and their use should not be seen as a legitimate reason to withhold confirmation. From any objective criteria that one would look for in a Supreme Court nominee, Judge Kavanaugh would be declared well qualified. He graduated from Yale undergrad and law school. He clerked for a Supreme Court justice and served as a federal appellate judge for over a decade. His extensive judicial record shows us already what type of judge he will be. He was unanimously rated "Well Qualified"—the highest rating available—by the American Bar Association, not exactly a bastion of right-wing thought. At a minimum, he is a competent jurist who has the intellectual ability to carry out the role of a Supreme Court justice.

Similarly, the particular conclusions a judge draws after deploying his or her mode of jurisprudential analysis should not concern us either. Much of the controversy surrounding Judge Kavanaugh's nomination has centered around whether he would vote to reach certain policy outcomes. These sorts of ideological litmus tests should be eradicated from the nomination and confirmation process entirely. It is one thing if a judge's analysis does not support his or her conclusion. It is an entirely different thing to make a decision on a judge based on what that conclusions that judge is expected to reach. One can disagree with the conclusions a judge will reach and still think that person is qualified to hold his or her office.

It strikes me that the controversies surrounding Judge Kavanaugh's nomination to the Supreme Court are a microcosm of the broader issues facing our politics and our culture more generally. In some ways, the Court has become the most powerful institution in our government, and as a result, choosing the individuals who have the privilege to serve in that institution has become a political game of progressively higher stakes. Activists have increasingly changed their tactics from lobbying legislatures to funding lawsuits to challenge or re-define laws they disagree with. And because courts render their decisions from behind a bench and in robes, beyond the rough and tumble of electoral politics, their decisions are gilded with a veneer of inexorable truth. In other words, when the Court speaks, many people look at it not as if it is merely deciding a case before it, but rather as if it is clarifying right and wrong itself. Unsurprisingly, polarizing issues with morally contentious perspectives (abortion, healthcare, gun laws, etc.) are front and center in the debate over whether to confirm a judge to the highest court in the nation.

Broadly speaking, we need to turn the temperature down in these hearings so that we can better ensure that the Senate is able to provide sound advice and give informed consent to the nominees before it. This has proven to be especially true with Judge Kavanaugh. Hearings should be about whether a nominee has the intellectual capacity and character to serve as a public official. We should seek to determine whether a nominee has the temperament to be an impartial judge and whether the nominee's record reflects consistency in his or her approach to the law. Judge Kavanaugh checks all of these boxes. However, the antics we witnessed during his hearings, including hysterical episodes of audience members disrupting the hearings to protest, Sen. Cory Booker's posturing as "Spartacus," or Sen. Kamala Harris's blatant mischaracterization of Judge Kavanaugh's views,[1] have only served to inhibit the Senate's ability to credibly carry out this role.

Unfortunately, the choice of some Senators to exchange credibility for political capital has become more significant given the recent allegations levied against Judge Kavanaugh. Senator Leahy has alleged that Judge Kavanaugh misled the Senate during his hearings for his current position on the D.C. Circuit and then doubled down on these statements during his more recent hearings.[2] Also, a serious claim of sexual misconduct began to trickle out last week, culminating in the accuser, Dr. Christine Blasey Ford, publishing her story in the *Washington Post* last Sunday.[3] Each of these allegations should be investigated, but the Senate must do so in a way that searches for truth rather than political points. Sadly, the theatrics of the earlier hearings may have vicariously tainted those stepping forward to accuse Judge Kavanaugh of real misconduct. Democrats have been crying wolf for a long time with precious little to support those accusations. Now that there may in fact be a wolf, it is uncertain whether there is anybody to hear the warning cry. Should an honest investigation determine either of these allegations to be credible, I will be the first to admit that Judge Kavanaugh does not possess the integrity to serve on the Supreme Court. However, as of this moment I do not think we are there yet. Monday's hearing with Judge Kavanaugh and Dr. Ford should be clarifying.

At the end of the day, an ideal world would have obviated the need for the absurdity surrounding Judge Kava-

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1 https://www.washingtonpost.com/politics/2018/09/11/did-brett-kavanaugh-offer-dog-whistle-abortion-foes/?utm_term=.ecc7c6b2ab75

2 https://www.washingtonpost.com/opinions/brett-kavanaugh-misled-the-senate-under-oath-i-cannot-support-his-nomination/2018/09/13/ea75c740-b77d-11e8-b79f-f6e31e555258_story.html?utm_term=.01f24b3fbd85

3 https://www.washingtonpost.com/investigations/california-professor-writer-of-confidential-brett-kavanaugh-letter-speaks-out-about-her-allegation-of-sexual-as-

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.*

Section B v. Section A (In re: Wanna-Bs)
883 U. Va. 110 (2018)

ZABLOCKI, J., announced the opinion of the Court in which VANDERMEULEN, C. J., and RANZINI, J. joined. MALKOWSKI, J., filed a dissenting opinion in which SCHMALZL, J., joined. SCHMALZL, J., filed a dissenting opinion.

Justice ZABLOCKI delivered the opinion of the Court.

Before this esteemed Court comes the case of Section B v. Section A, more colloquially known as In re: Wanna-Bs, on appeal from the Petty Court of Petty Complaints, which held as follows: "Huh?"

The facts are as follows: the twerpy 1Ls of Section A thought they would be super clever and co-opt the University-assigned generic name of another section—namely, Section B—for their section softball team name. Section B protested the purloining of the only name by which they are recognized throughout the University community, the only name which is likely to be appropriate to mention whilst schmoozing still-wet-behind-the-ears, just-minted UVa alums at firm receptions, the name that not one member of the section ever objected to, unlike the seventeen others considered for their own softball team name. In short, Section B claimed trademark infringement on grounds of likelihood of confusion, dilution, and deceptive and/or fraudulent trade practices. In response, Section A moved for declaratory judgment, seeking to establish that no valid trademark could attach to "like, SUCH a dull name" as "Section B." In the alternative, Section A countered that its desire to be known as "Section B" is intended as the highest compliment, to boot, as that most sincere form of flattery known as imitation, and that Section B's reaction has provoked feelings of deepest melancholy and rejection among the section's members, who were hoping to befriend their classmates adjoining them in the alphabet and instead are suffering deepest emotional distress.

This Court shall set aside any horror at the lack of creativity apparently engendered by the thirty or so, um, humans[1] of Section A. This Court recognizes this would be a form of personal judgment rather than legal. Similarly, this Court shall not comment on the related allegations that Dean Faulk and his office have breached their duty to the existing student body not to admit only utter and absolute bores, except to say that allegations alone don't make for a lawsuit—in this school, we don't conduct trials in the media, but rather in court, as is proper. Instead, this Court shall focus on the instant claims relating to the putative trademark "Section B."

Trademark infringement describes the scenario when some genius who can't think of his own trademark or trade name starts using a trademark or name belonging to someone else, who did not give permission for such use, in commerce. As a threshold matter, a valid trademark needs to exist for infringement to occur, so we'll deal with that first. It is not contested that Section B has first use, as assigned by prior years' Section Bs from one Section B to the next since 1819. Similarly, it is acknowledged that Section B has been using the putative mark as an identifier of its section in commerce, with goods in the form of section T-shirts and services ranging from "team-building" (i.e., forcing non-athletes to relive the painful experience of middle school gym and forcing non-theater-ish people everyone to suffer through Dandelion) to procurement of sponsorship from area retailers generous enough to support the aforementioned albeit somewhat lackluster softball team. Rather, Section A bases its motion on what it alleges to be the generic nature of the putative mark, proffering that the word "section" followed by a single letter is a common schema, particularly in the Law School community. In fact, this Court would agree with Section A if not for the context of the Law School community. You see, each section has acquired distinctiveness through years of use in commerce, be it providing recreational activities or donating the winningest PILA auction items.[2] In the case of Section B, previous years' Section Bs have earned the reputation of being the most gossipy section, which is quite an achievement at a Law School that itself has more drama than 82% of high schools in the U.S. Notwithstanding the dubious nature of the acquired distinctiveness, this Court is unable to deny that it exists and, with it, a valid trademark for "Section B."

This Court now directs its attention to the claims of infringement levied by Section B against Section A. Likelihood of confusion exists when marks are "confusingly similar," as tends to be the case when they are identical, and "the goods and/or services of the parties are related such that consumers would mistakenly believe they come from the same source." This is a fairly universal standard, having been adopted even by the United States Patent & Trademark Office, from which these quotes were taken.[3] While it is unclear that Section A would be able to match the traditional Section B reputation for drama at the end of the school year, at this point in time we find that a likelihood of confusion does exist. After all, none of us can tell the 1Ls apart and honestly probably won't be able to until they emerge from their 1L bubbles, and if any of said 1Ls don't suck at softball, it's probably on an individual basis, not by section.

Because all 1Ls are kind of interchangeable to the world at large, in which they don't even fully exist, see above, we find that dilution at this point in time is impossible without some evidence of intent to act in such a manner that "Section B" acquires a reputation worse than that of the average 1L section, namely, being kind of gossipy and kind of a mix of gunners and complacent individuals who think they have Made It because they are here rather than at Georgetown[4] and, in sum, just a stressed-out bunch of people who really aren't cool.[5]

With regard to Section B's allegations of deceptive and/or fraudulent trade practices, we think that's going too far. Much as a rose is a rose is a rose by any other name, with that signature floral fragrance, Section A is Section A is Section A by any other name, and there ain't no escaping that stink.6 In other words, if you feel compelled to pretend to be a whole different section because you're so bad at softball, the situation is probably dire enough no one will be fooled by the ruse, and attempted deception that is so far from succeeding is what passes for humor here on North Grounds.

Section A's counterclaim of IIED provoked by Section B's reaction to their so-called flattery is dismissed. Stop being such smarmy little shits, guys.

The Court orders as follows. Section A is liable for trademark infringement and is hereby enjoined from any further use of the mark. Further, in lieu of paying damages to Section B, Section A is hereby assigned the team name "Wanna-Bs." Being merely descriptive of Section A, it is unlikely that Section A will be able to acquire trademark protection for itself; however, this Court has never seen a section exhibit such behavior and feels Section A should wear, if not a scarlet letter, at least a highly descriptive one which, bonus, will also incorporate

1 Lol but only until the fully dehumanizing experience of 1L reallllly sets in. We hear Memo #2 is due right around now ☺

2 This Court suggests designated driving as your donation, reader. Why? Because We need a drink or six after word-vomiting this BS, and it'll probably be cheaper to pay you than an Uber to take us winetasting.

3 Technically not copyright infringement, since no copyright vests in government-authored works. BOOM. And if I'm misremembering? Sue me, we'll get into judicial sovereignty and it'll be fun.

4 "And so the wrath of Dean Donovan shall pour down on ye who think the hard part has passed." Kordana 3:14.

5 "Matriculating at a T-14 law school and being 'cool' are mutually exclusive pursuits." In re NGSL, 70 U. Va. 143 (2016).

6 Lest any smartass reader spout off about the double negative: it is a manner of speaking. The stench of Section A and its treachery are indelible.

Faculty Quotes

F. Schauer: "Obviously I've just had a spasm of lucidity. I can't promise that all the time."

K. Kordana: "I'm in favor of book burning. The problem is they usually burn the wrong books."

G.E. White: (Describing a famous theory of torts): "Preposterous... utterly worthless... not a contribution at all"

M. Gilbert: "I'm not a geologist, although I really liked the Rocks for Jocks class in college. For me, it was just Rocks."

A. Vollmer: "Does this sound like fancy tap dancing or what?"

A. Woolhandler: "You see? Things don't really ever get better!"

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

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what is apparently the section's favorite letter. Also, court costs and fees are awarded; Section A owes this Court donuts for services rendered in consideration of this case—and this being the great Commonwealth of Virginia, all y'all's driver's licenses will be suspended if you don't pay up. We convene in SL 279 at 5:30 PM on Mondays, we prefer Duck Donuts, and we will be expecting you.

It is so ordered.

Justice MALKOWSKI, dissenting.

"Letting" 1L sections vote amongst themselves for clever nicknames is one of this law school's most blatant methods of lying to itself about what 1L year entails. 1L sections can hardly be either trusted or burdened with the task. They are busy, people. They've just found out they are in seventh grade again. They all have to purchase gym shorts, sneakers, lunchboxes, and acne medication, start pretending they enjoy team sports with strangers, and organize various GroupMe cliques. I propose that instead, all 1L section names be submitted to the authority of the Committee for Naming Truthfulness, to be henceforth organized and manned by this justice. Some initial suggestions: Section A for Anxiety Athletes, Section B for Battered Nerves, Section C for Curve? Balls, Section D for Distressed on the Diamond, Section E for Ego Bruise Bears, Section F for Fatigue of Their Own, Section G for Griever Pitch, Section H for Healed of Dreams, Section I for Ipso Cracked-o, and Section J for Just Chills in the Outfield.

Justice SCHMALZL, dissenting.

After a heated conference debate, I dissent.

First, Justice ZABLOCKI's statement that there is no contention regarding whether a trademark exists or not is, in fact, false. A trademark, as I have recently learned in Law and Economics from the wonderful Professor Gilbert (who I'm hoping will read this and give me an A on our upcoming exam for applying what I've learned in class to hard-hitting legal issues), is a distinctive logo to be used for consumers to identify brand and quality of products/services to decide which to purchase. To my knowledge, Section B has put forward no logo on shirts, nor put anything (except maybe drama) into the commerce of the law school. Therefore, the only thing to trademark is not a logo, but the words "Section B" used in connection with each other. The irony here is that "Section B" is used every year by a different group of people, proving on its own that it is not a distinctive logo that identifies a certain group. In fact, Section B changes annually and their reputation changes with it, making Justice ZABLOCKI's argument factually incorrect. If we allow them to trademark the English language, we are stifling the limited creativity that law students have, and I can't condone such a precedent to be set by this Court.

Further, Section A is not using the name in any legal capacity—it is not their team name—and seem to be following the rules set out by the Court of Petty Appeals in "doing whatever they want." Chanting Section B at the announcement of their second-place finish at Dandelion can only build the Section B reputation after their pitiful attempt at gymnastics, so IDK what they're even complaining about TBH. Section B should be thanking Section A for building a better reputation for them instead of going against UVa Law's core value of collegiality and refusing to share. As the famous and well-respected High School Musical cast once said, "We're all in this together," so let's stop the madness and get over ourselves for a hot sec.

I join Justice MALKOWSKI's dissent in full, and am glad to see that the redhead representation on the Court understands the harm inflicted by the majority. I worry about what this means for the future health and wellbeing of an innocent section just trying to make friends, but don't let it get ya down. The only way to spread collegiality far and near, is practicing it and shouting it for all to hear.

Also, the majority's attacks on Section A's softball skill is unfounded given that they're undefeated. BOOM.

I respectfully dissent.

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LAW WEEKLY FEATURE: Classic Court of Petty Appeals

It has come to the attention of the Court of Petty Appeals that the law firm below ONCE AGAIN distributed the hats discussed below. Some of their offerees posted a picture with the caption, "Thimson bitches." Thank you for proving our point. Their damages are therefore trebled and their donuts need to have CHOCOLATE on them. It is so ordered.

Student Body of UVA[1] v. Thimpson Sacher[2]
713 U. Va. 819 (2017)

ZABLOCKI, J., delivered the opinion of a unanimous Court. [[Summary of facts: The law firm "Thimpson Sacher" gave out branded UVa hats at their offer dinner. Their offerees wore them to Bilt. It was grotesque. Justice Zablocki found the firm in violation of UVa's trademark under the Lanham Act. She proceeded to analyze the plaintiffs' claim under Intentional Infliction of Douchebaggery. Her analysis follows.]]

The second claim brought by the Student Body against Thimpson Sacher is for inciting douchebaggery. Though the base elements are the same as those requisite to a claim of IIED, incited douchebaggery is distinct from IIED in that the emotional distress is determined according to a reasonable person standard rather than the subjective experiences of the victim, whose proximity to the events occurring may be as distant as shared group affiliation. The tort of inflicted douchebaggery extends from the tort of douchebaggery, in some jurisdictions known as hurt feelings. *UVA Law Class of 2021 v. UVA Law Faculty*, 883 U. Va. 991 (2017) ("This Court acknowledges even the iciest of special little snowflakes may suffer on the hot seat of professorial cold calls; truly extreme examples of such may result in liability for the tort known as douchebaggery."). Regardless, inflicted douchebaggery typically involves pain and suffering (mental, emotional, or otherwise) of a group of three or more people.

The base elements of IIED corresponding to the base elements of incited douchebaggery are easily satisfied by this fact set. Defendant's intent is clear from embroidery of "V" and its own name in garish orange and white thread; this conduct was outrageous in the extreme.

HISTORICAL COPA page 6

1 Excluding offerees and current/future employees of Thimpson Sacher.

2 A pseudonym to protect ~~against sullying the name of a party not yet shown to bear liability~~ against the wrath of Career Services, those godlike beings who make it rain for us in a way the inhabitants of Mount Olympus only ever aspired to. See *In Rem Noah's Flood*.

HOT BENCH

Jill Rubinger '19

1. What are you most excited for during your first year in D.C.?
Trying out new restaurants.

2. What is your favorite word?
"OH!"

3. Where did you grow up?
I grew up in Atlanta, Georgia. Rise up.

4. What's the best meal you've ever had?
Christian's Pizza after a night on the corner.

5. If you could meet one celebrity, who would it be and why?
Chrissy Tiegen.

6. What's your favorite hobby to avoid the stress of law school?
Impromptu dance parties.

7. Where is your favorite place to vacation?
Deer Valley, Utah.

8. What's something you wish you'd known about law school before coming to UVa Law?
That I would need to have answers ready for hot bench.

9. What did you have for breakfast this morning?
Breakfast tacos and lots of salsa.

10. What's your most interesting two-truths-and-a-lie? (And what's the lie?)
I'm amazing at beer pong, I've thrown a (fake) bat-mitzvah and wedding during law school, and my name is misspelled on the UVA internal people search. Lie: I'm dreadful at beer pong.

11. If you could live anywhere, where would it be? Paris.

12. What's your least favorite sound?
Forks scratching on a plate.

13. What's the best gift you've ever received?
The block rocker.

14. Blueberries or strawberries?
Both, I am #BerryGang til I die.

15. What is the best concert you have ever been to?
All of Austin City Limits in 2016.

16. What's your favorite thing to do in C'ville?
Villa breakfasts on Sunday mornings.

17. If you could make one rule that everyone had to follow, what would it be?
If I send you a meme, it will be the first time you've seen it.

18. What's your spirit animal?
Becca Chandler.

19. What's your favorite food(s)?
Tossup between tacos and sushi.

20. If you won the lottery, what would you do with it?
Accidentally spend it all online shopping.

21. If you could be in the winter Olympics, which sport would you compete in?
Probably alpine skiing. I would prepare while vacationing in Deer Valley.

22. What are the 7 wonders of the law school?
(1) snack office; (2) Gambini Room in the Library; (3) the Kingdom; (4) free food table after ACS and Fed Soc host competing events; (5) what actually goes on in Dean Dugas's office/head; (6) the folder on Dean Davies computer of everyone saying their names; (7) the portrait of the dean wearing white fur.

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LOOKING BACK: 70 Years of the *Law Weekly*

An Old But Relatable Missed Connection

"**I Saw You** ... In the library. You: emerging from the magazine room with sleep marks on your face and drool on your shirt. Me: coming out of the Lexis lab where I spent the last three days cite checking for my journal. I'm the one you almost ran over in your semi-conscious state. Meet for coffee so I can wake you up?" Ben Block, "Looking for Love in All the Wrong Places," *Virginia Law Weekly*, Friday, September 3, 1999.

A Really '80s Complaint From When Dandelion Was a Drunk Driving Parade

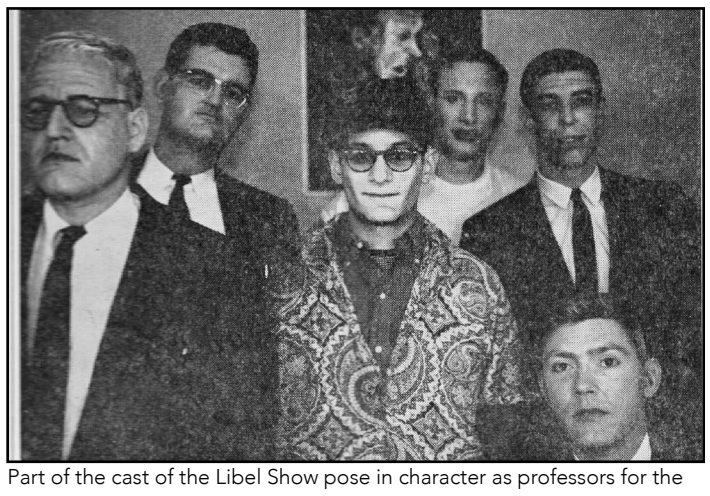
"Question of the week: Why are the parties on Rugby Road able to run wild and out of control, while the 'animals' of the law school have their outings raided or closely guarded by the police? There is always a cop at Graduate Happy Hours and last Thursday night during Bar Review, firemen invaded Sloan's and gave a citation to our beloved haunt for being overcrowded." ANG, *Virginia Law Weekly*, September 9, 1988.

UVa Law: teaching students how to effectively fight for their right to party since '88.

Seriously Stop Gunning People We've Been Serious About This for Twenty-Four Years

"This Week's Sign that the Apocalypse is Upon Us: First-years checking out exams from the library during the first week of school. If you're that tense, you should have gone to Harvard." *Vanguard of Democracy* (NGSL), *Virginia Law Weekly*, September 16, 1994.

It was true then, and it's still true now—don't worry about outlining until your PAs tell you to.



Part of the cast of the Libel Show pose in character as professors for the Thursday, April 16, 1964 edition of the *Law Weekly*.

HISTORICAL COPA

continued from page 3

given reasonable knowledge both the group constituting offerees—to get drunk and dance on tables—and of the group constituting non-offerees—the majority of whom are generally nice, not obnoxious folk who would be appalled by the conduct incited. Parading around your offers of Big Law jobs with full knowledge there are people nearby who neither know nor, more importantly, care to know about your success is the very definition of douchebaggery. While We hesitate to call classmates douchebags, these individuals are certainly guilty of the crime of douchebaggery and We are ashamed at sharing Grounds with them.[3] Having determined Thimpson Sacher's liability on both counts, this Court now turns to the matter of damages. This Court will solely award punitive damages, which it acknowledges will do little to assuage the Student Body but tough shit. It is henceforth decreed that Thimpson Sacher shall leave their hats behind and bring not only Bodo's, but also donuts. And not just any donuts, DUCK DONUTS.

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3 Unfortunately, charges have not been formally brought against these individuals, so we can only hope that shame at being the source of the Student Body's shame is sufficient punishment. And karma. She's a bitch, in case you haven't heard.

FOR KAVANAUGH

continued from page 3

naugh's nomination. There is little question he has the ability do the job well. His resume is littered with sterling credentials and his tenure as a judge has shown him to be thoughtful, consistent, and competent. His record assures me that he will not act like a politician while on the bench. Viewed in light of his judicial record, Judge Kavanaugh is exceptionally well qualified for the position to which he is nominated. While we can be free to dispute whether Judge Kavanaugh reaches the right conclusions should he eventually be confirmed, anticipating those disagreements isn't a reason not confirm him. The only question Judge Kavanaugh's hearings exposed is whether he has the character to be a judge. Unfortunately, the Senate may lack individuals with the unimpeachable character to credibly make that determination. Alas, that is our system, but I have hope that the honest truth will emerge soon. Should the accusations levied against Judge Kavanaugh turn out to be untrue, the only other arguments raised against confirmation come from a concern over ideology. Judge Kavanaugh has shown himself to not be an ideologue but instead a judge. His record demands he be confirmed as such.

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AGAINST KAVANAUGH

continued from page 3

should seize it as an opportunity to help heal our ailing body politic. Toward that end, Republican Senators should join their Democratic colleagues and block the confirmation of Judge Kavanaugh. And President Trump should heed Senator Schumer's advice and nominate Judge Garland to replace Kennedy. Doing so would not only replace a moderate justice with a moderate circuit judge. It would also bridge the partisan gap between Democrats and Republicans.

Indeed, nominating Judge Garland to the Supreme Court is precisely the olive branch that our nation needs. It would help President Trump to appear reasonable. It would help the Republican party make the case that it can effectively govern. And it would help put reorient our politics in a more bipartisan direction, where the national interest is put before the party.

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Cartoon By Hamza

THE DOCKET

Time	Event	Location	Cost	Food?
		Wednesday – September 19		
13:00 – 14:00	CARE General Body Meeting	WB 127	Free	"Lunch"
13:00 – 16:00	Public Service Photo Exhibit Opening	Rotunda W Oval	Free	Refreshments
16:00 – 17:00	Externship Program Info Session	SL 298	Free w/ RSVP to externships@law.virginia.edu	Refreshments
		Thursday – September 20		
11:30 – 13:00	The Real Deal: Government	Purcell	Free w/ RSVP	Lunch for RSVP
12:00 – 13:00	Panel: Talking, Listening, and Engaging Across Perspectives	Caplin Pavilion	Free w/ RSVP	Lunch for RSVP
12:00 – 13:00	How to Publish in VLR	WB 152	Free	Take it Away Sandwiches
12:30 – 13:30	Law & Public Service Info Session	SL 298	Free	----
17:30 – 18:30	Rapid Response Hotline Info Session / Training	WB 126	SRC al bgb2cd@virginia.edu	Pizza
18:30 – 20:30	The Music of Appalachia: A Global History	Northside Library	Free	----
		Friday – September 21		
11:30 – 12:30	First Generation Law Student Lunch	Purcell	Free	----
11:30 – 12:30	1L Judicial Clerkships / Internships Kickoff	Purcell	Free	Lunch for Symplicity RSVP
15:15 – 16:15	E. Asia Lecture Series: "Self-Interest and Manipulation in Early Chinese Prose"	Monroe 116	Free	Think hard about what my angle might be in saying "light refreshments"
		Saturday – September 22		
10:30 – 11:15	Gallery Talk w/ Jenni Kemarre Martiniello	Kluge-Ruhe Museum	Free	----
18:00	Earth-Based Healing 2d Annual Benefit Concert & Silent Auction	Wayne Theater, Waynesboro	$20	"Funky rhythm, hard horn riffs, and supple bass" not enough for you?
		Sunday – September 23		
9:00 – 18:00	1L Softball Tournament	Copeley Field	Free	Stay hydrated out there, team.
		Monday – September 24		
12:00 – 13:15	JLSA/FedSoc: Alexander Hamilton & The Politics of Faith	Purcell	Free	Lunch
		Tuesday – September 25		
18:00 – 20:00	Signs of Change: Untold Histories of Cville's Black Community	Second St. Gallery	Free	----
		Wednesday – September 26		
11:30 – 12:30	Lambda: What I Wish I'd Known as a 1L: Academic Success Tips	Purcell	Free	----
12:30 – 13:30	Common Law Grounds: Norms & Standards Behind Judicial Confirmations	Caplin Pavilion	Free	Lunch

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