Virginia Law Weekly

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Professors Frampton and Prakash Discuss the Trump Indictments

Photo Credit: *UVA Law*

Noah Coco '26
Staff Editor

Students and faculty gathered on Wednesday, September 27, for the first session of a series on the federal and state indictments against former President Donald Trump, sponsored by the Karsh Center for Law and Democracy. The first session, titled "The Indictments: A Primer," focused on reviewing the indictments at a high level and addressing basic questions regarding possible constitutional problems that could arise. The discussion was led by Professors Thomas Frampton and Saikrishna Prakash. They combined their expertise in criminal law and the presidency to provide context regarding the upcoming litigation.

Professor Prakash kicked off the event by discussing constitutional issues that may arise in the course of litigation. Many open questions remain about how this unprecedented criminal litigation against a former president, and possible future sitting president, will proceed. The Constitution provides some hints, but not many concrete answers. Unlike the specifically enumerated privileges for members of Congress – speech and debate privileges, for instance – the presidency does not actually have privileges against arrest or prosecution. The only guidance on this issue comes in the form of a memo produced by the Office of Legal Counsel (OLC) in 2000. OLC concluded that a sitting president cannot be prosecuted, or even indicted, in either state or federal court because it would interfere with the president's ability to serve. This remains Department of Justice policy, although there has been no occasion to challenge it since its publication.

Prakash maintains that the conclusion of OLC is incorrect. He believes that criminal indictments and prosecutions fall within Twenty-fifth Amendment's categories of incapacities that would make a president unable to adequately serve in his duties. And while the record of criminal indictments against sitting presidents is sparse, he does note one, albeit comical, instance when President Ulysses S. Grant was arrested for speeding while riding in a horse-drawn carriage through the streets of Washington, D.C.

While only speculating about how a criminal prosecution might proceed if Trump is reelected before the resolution of the impending litigation, Prakash was much more confident in asserting that there are no constitutional concerns that preclude prosecuting a presidential candidate, even one with the status of former President.

Prakash concluded by discussing possible defenses Trump may have against the indictments, namely that his conduct was performed in his official capacity as president, and an assertion of executive privilege. It is perhaps unsurprising that former President Nixon provides the closest hint as to whether these defenses will be successful. In cases stemming from the Watergate scandal, courts have held that a president or former president cannot be sued for damages resulting from official acts. Prakash believes, however, that this logic should not extend to criminal charges. Instead, he argues, this question should be addressed by Congress. On the question of executive privilege, too, courts may decide to override Trump's defense.

Professor Frampton, armed with printed copies of all of the indictments, followed Prakash with a discussion of their contents. Trump faces four separate criminal cases composed of

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100 Years of Elizabeth Tompkins

Abigail Williams '24
President of Virginia Law Women

Just over 100 years ago, Elizabeth Tompkins '23 left the University of Virginia School of Law with her degree and a zeal to begin the practice of law. In 1920, the Law School admitted its first three female students: Elizabeth Tompkins, Rose May Davis, and Catherine Lipop. The Law School's decision to include women in the ranks of their prestigious class was not made from a desire for equality. Rather, Dean William Minor Lile was responding to pressure from women's rights activists, namely Mary-Cooke Branch Munford. While Dean Lile appealed to the "chivalry" of the men in the Law School, his comments and the attitude of Tompkins' male classmates made it clear that women were not seen as equals in the legal field.

During her time here, Tompkins wrote home to her father (who encouraged her pursuit of the law) detailing all the ways she was shut out of the collegiality that UVA prides itself on. In 1921, she wrote "[The men] are beginning to know that I am not after them, and that they have nothing I want." Despite graduating near the top of her class in 1923 and earning a perfect score on the bar exam, she was underestimated by her peers. Dean Lile predicted it would "not be long before she deserts the profession of the law and takes up that of wife & mother." Tompkins went on to prove him, and any others sharing that sentiment, wrong.

She was the first woman admitted to the Virginia State Bar, and she clerked for then judge and fellow UVA Law graduate R.T.W. Duke, Jr.[1] After she gradu-

1 https://encyclopediavirginia.org/entries/from-recollections-by-r-t-w-duke-jr-1899/.

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around north grounds

Thumbs up to Section J on winning the 1L Softball Torunament on Sunday. ANG loves a Cinderella story.

Thumbs down to Fall Break. ANG will miss feeding upon the fear and anxiety of 1Ls in the library.

Thumbs sideways to Bar Prep Week in ScoCo. ANG appreciates three days of free food but is not interested in studying for the Bar. ANG asks BARBRI to stop spaming ANG's inbox. Only ANG is allowed to spam.

Thumbs up to all of the speculation over who will be next dean of the Law School. ANG agrees that John C. Jeffries is the obvious choice, as ANG has already gracefully declined the committee's numerous offers.

Thumbs down to weekly homework assignments. ANG knows self-worth is dervied only from a single, multi-hour exam at the end of the semester and finds any suggestion to the contrary offensive and counterproductive.

Thumbs up to the general misunderstanding that Fall Break is a full week long.

Thumbs down to those going on exotic trips for Fall Break. ANG loves procrastinating but hates being upstaged by fancy vacation destinations.

Thumbs sideways to the Senate relaxing the dress code. ANG is happy to see ANG's style is catching on, but did it have to beccome popular with America's most powerful circus?

Thumbs up to the Senate reinstating the dress code. ANG is pleased to see ANG's representatives taking ANG's feedback into account.

An Original Conversation

Garrett Coleman '25
Managing Editor

Meghan Flatley '25
Guest Writer

When I first agreed to report on the *Originalism 101* event hosted by The Federalist Society, I thought to myself: *What law student needs a primer on the defining interpretive methodology of our era?* *Perhaps* there are some 1Ls less nerdy than myself. But that certainly does not include Meghan Flatley '25, who had the privilege–or torment–of sitting next to me in Con Law. There, in the spirit of collegiality, I called her constitutional ideas "laughable," "absurd," and "preposterous." Being the (much more) diligent student that she is, Meghan would often correct my understanding of the record, while probably reporting me as a Papal extremist to the FBI. But we are not here to let facts get in the way of abstract reasoning. The best primer on originalism is a public cage match between two friendly adversaries, one boisterous, the other prepared.

Garrett: Meghan, welcome to the *Virginia Law Weekly*. I think our conversation should begin by asking what a constitution is for. And, as any self-respecting originalist would, I lob my first volley with a quote from Justice Antonin Scalia: "It is plainly unhistorical . . . to regard the Constitution as simply a shorthand embodiment of all that is perfect–to think that whatever element of perfection does not appear there explicitly *must* be contained within more vague guarantees."[1] In short, I think that the purpose of a *written* constitution is to preserve a structure of government that puts some fundamental guarantees beyond the reach of fleeting majorities. It is the judicial *preservation* of that structure that I am concerned with, not the insertion of all conceivable values into our constitutional order.

Meghan: Garrett, thank you for the warm welcome. I look forward to solving all issues of constitutional interpretation. I'm sure we'll be able to resolve an issue that has been debated for hundreds of years.

Anyway, I have no issue with judicial preservation. But I am not melodramatic enough to think that the country falls apart when we move beyond 1791 or 1868 (you take your pick, since originalism, and its *many* iterations, leaves you with more wiggle room than you are willing to admit). So, with that in mind, what *are* we preserving? What year are we in? Whose perspective are we considering? Or should we do a little bit of both, depending on the persuasion of the justice, to get to the result we actually, personally want? You know, the lovely new test in *Bruen*[2] that has us in the past and present all at the same time, weaponizing a cherry-picked history to neuter the legislature. So true to the Framers, don't you think?

Garrett: Pretty simple: We should preserve the law based on its public meaning in the year enacted (let's leave statutes aside for now, since there are plenty of other considerations at play there). For example, the Fourteenth Amendment meant something to the people who wrote it and the citizens that ratified it through their state legislatures. That democratic choice should be honored by jurists today, as best they can.

To address your *Bruen* comment, though, I don't think that it is inconsistent to say that a law can have a fixed meaning with some flexibility for later applications. When the Fourth Amendment guaranteed an individual's security in her "papers," it had a public meaning that likely protected private letters. Knowing that, a good judge should be open to applying that liberty to an age in which everyone communicates via cellphone. So, the past gives us the democratically agreed upon meaning, but a judge does not need to hide his head in the sands of 1789.

Meghan: I don't think we can really describe any constitutional theory as "pretty simple," especially here when there are plenty of debates about how to even

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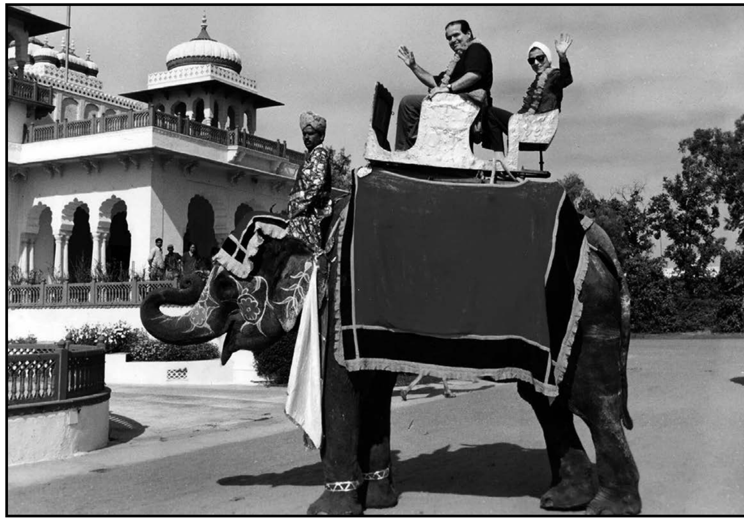

Pictured: Ruth Bader Ginsburg and Antonin Scalia in Rajasthan, India (1994)
Photo Credit: Collection of the Supreme Court of the United States, via Associated Press, https://www.nytimes.com/2020/09/22/opinion/ruth-bader-ginsburg-antonin-scalia.html

1 Antonin Scalia, Scalia Speaks 164 (Christopher J. Scalia, et al. eds., 2017).

2 *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022).

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ated, Dean Lile changed his tune. In 1924 he noted that "[Tompkins'] powers of acquisition and of appreciation of legal principles were fully equal to those of the men in the front rank of the graduation class" and suggested she pursue her legal career in Richmond. With that advice, she moved away from Charlottesville and began practicing with other UVA Law alumni in Richmond. She later served as a commissioner in chancery for the Richmond circuit court. Drawing on her experience at UVA Law, she became a leader at the University of Richmond and sat on the Board of Trustees. In 1969, she was dubbed "the dean" of women lawyers in private practice by the Virginia State Bar. The next year, she received an honorary Doctor of Laws degree from the University of Richmond for her exceptional work.

We cannot reflect on the last 100 years of the University of Virginia without thinking about Elizabeth Tompkins' experience. The legal field and university have come a long way since her admission in 1920, at a time when women had to be white, at least 22 years old, and have two years of education before being admitted to the Law School. As Dean Lile noted in June 1921 to a group of alumni, women's "insistence and persistence – their crying aloud night and day without surcease" begot more inclusive changes to the legal profession. Every person graduating from UVA Law has some of that insistence and persistence; it is inculcated into our hearts and minds through our professors, fellow classmates, and the world at large. In a 1936 article about women in the legal profession, Tompkins described the profession as taking "hard, exacting work and long hours." By persisting through that hard work, applying what we learn during our time at this institution, and reflecting on the incredible life of people like Tompkins, we can all become better lawyers and make our communities better places.

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Pictured: Elizabeth Tompkins '23
Photo Credit: UVA Law

Pictured: Jane Caster '56, the first woman elected to the Virginia Law Weekly's *editorial board*
Photo Credit : UVA Law

INDICTMENTS

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over ninety felony charges. In the time allotted for him to speak that afternoon, Frampton remarked, he had approximately five seconds per felony count.

The first case was brought in New York and primarily concerns allegations of falsifying Trump Organization business records. Wrapped into the facts of this case is the entertaining, yet disgraceful, saga of payments made to adult film star Stormy Daniels. Former Trump lawyer, Michael Cohen (who has already pleaded guilty to violations of the Federal Election Campaign Act) was reimbursed for "legal services" for the payment he made to Daniels. Frampton noted, however, that this case will hinge on whether the prosecution can prove that Trump acted with an intent to defraud, a necessary element for these felony charges.

Trump faces additional federal indictments in the Southern District of Florida for unlawfully retaining documents related to national security, as well as in Washington, D.C. for his actions in the January 6 events that contributed to the disruption of Congressional proceedings and obstruction of the government's lawful function of certifying election results.

The final case against Trump is the truly sprawling Georgia RICO indictment. The basis of this state RICO indictment is the "idea that there was one, big, criminal conspiracy to subvert the results of the Georgia election," Frampton summarized. The indictment articulates over one hundred overt acts that the prosecution alleges constitutes the conspiracy. Frampton was cautious not to make any predictions as to the success of any of these indictments, particularly in light of Prakash's discussion of the uncertainty concerning constitutional restraints and Trump's possible defenses.

Two future sessions have been scheduled : "The Trump Indictments: The Presidential Election and Congress," led by Professors Payvand Ahdout and Bertrall Ross on **Wednesday, October 4 at 11:45 a.m. in WB 101**; and "The Politics of Presidential Indictments," led by Professors Cynthia Nicoletti and Frederick Shauer on **Tuesday, October 17, at 4 p.m. in WB 101.**

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The Conservative Case for Criminal Justice Reform

Ashanti Jones '26
Staff Editor

Thursday, September 28, the Federalist Society at the University of Virginia School of Law hosted speaker Jason Pye for the society's event titled "The Conservative Case for Criminal Justice Reform: 5 Years After the First Step Act." Pye serves as the Director for Rule of Law Initiatives at the Due Process Institute in Washington, D.C., and was a key player in the creation and passage of the First Step Act.[1]

Federalist Society President, Aquila Maliyekkal '24, stated that under the guidance of Vice President for Speakers, Connor Fitzpatrick '25, the Federalist Society came into this academic year with a mission to diversify the topics discussed during their speaker events to traditionally non-conservative issues. Maliyekkal shared that the goal of this event was both framing criminal justice reform in a conservative context and celebrating the First Step Act as a bipartisan measure.

"The idea behind this is that the First Step Act was one of the biggest pieces of bipartisan legislation that we've seen in recent years, particularly during a very polarizing administration, which made it unique," Maliyekkal said. "The fact that you were able to get so much support from both conservatives and liberals around it made it important, and now we're at the five-year anniversary, so when we were considering events, we generally wanted something different than what we normally do."

Fitzpatrick opened the event with a brief overview, followed by welcoming Pye to the podium. Pye began his presentation by mentioning a recent, incremental shift towards small scale criminal justice reform in historically conservative states such as Georgia, Texas, South Carolina, Mississippi, and Alabama, but remarked larger reforms are uncommon due to a lack of empathy around the issue.

Pye presented several potential justifications for criminal justice reform that could appeal to a conservative audience. Pye's main justifications for conservative criminal justice reform were protecting those with untreated addictions and mental health issues from unjustified punishment, fairness in sentencing, returning sentencing power to judges, and the premise of second chances.

Pictured: Jason Pye
Photo Credit: Due Process Institute

On protecting those with untreated addictions and mental health issues, Pye stated some crime is often the result of an untreated addiction, mental health issue, or potentially both. He argued that those suffering from an untreated addiction or mental health issue should not be punished for simply having an addiction, unless those persons commit a violent offense.

"Sending people to prison who have unaddressed addiction issues and mental health issues is fundamentally wrong," Pye said. "Now, if they commit violent crimes, repeat offenses, we should have a conversation about how to punish those people and the appropriate way to punish them."

Next, Pye stated conservatives should pursue criminal justice reform to ensure the punishment given is equal to the crime committed to ensure fairness across the system. Pye illustrated his point by discussing the sentencing disparity between crack and powder cocaine adopted by the Federal Sentencing Commission in the 1980s. "1986, Congress passes the Anti-Drug Abuse Act, creates a sentencing disparity of 100 to one," Pye said. "Five grams of crack cocaine got the same five-year mandatory minimum prison sentences as 500 grams of powder cocaine . . . There is no chemical difference between the two."

After discussing justifications, Pye explained key provisions of the First Step Act and their effect on criminal justice. Pye focused the most on Title 5 of the Act, which reauthorized the bill's predecessor, the Second Chance Act of 2007, by reinstating, clarifying, and retroactively applying the federal government's earned time credits and good time credits systems for federal prisoners.

The good time credit system allowed federal prisoners to earn reductions in their total sentences by demonstrating good behavior, while the earned time credit system allowed federal prisoners to earn eligibility for halfway house or home confinement by participating in rehabilitation programming.[2] Pye shared

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1 For context, Pye describes himself as a libertarian, not a conservative.

2 Nellis Ph.D., Ashley and

The Dos and Don'ts of Employer Interactions

Brooke Boyer '26
Staff Editor

On Wednesday, September 27, Office of Private Practice counselors Marit Slaughter '09 and Lauren Parker '08 gave a fun (yes, fun!) presentation on employer interactions. Through skits and illustrative examples, they turned the daunting process of learning about everything from emailing to networking into a lighthearted experience.

Email etiquette and digital footprint

Parker began the presentation where many law students first start interacting with employers: emailing. As unfortunate as it may be for many future Gen Z lawyers, "Email is the language of your chosen profession. It is not texting, it is not 'insta,' it is not TikTok," she said. Because of this, learning how to appropriately write and respond to emails is an essential skill for interacting with firms. To cover the basics, emails have salutations, signatures, and complete, typo-free sentences.

Even when some emails don't seem to require a response, it is important to thoroughly read the message in order to figure out whether one is expected. Parker suggests getting into the habit of skimming every email, responding if necessary within 24 hours, and separating them into specific folders.

While tone via email can be tricky, it is important to keep in mind that employers can often sense when an email implies an entitled, pushy, or lazy tone. To illustrate this, Slaughter gave examples of common emails students send and Parker then interpreted them as what the firm actually hears. For example, one common email is, "Dear recruiter, I recently applied to your firm. Please send me a status report at your earliest convenience." According to Parker, what the firm hears is, "Dear recruiter, I am really important. My time is more valuable than yours, and I would like information. Get it to me." While the email of course did not explicitly say those words, they were implied in the student's impatient tone. To avoid this pitfall, simply err on the side of showing more gratitude rather than less.

It's also important to maintain a clean digital presence because employers will be doing their research before hiring someone. Parker recommends Googling yourself and asking: "Do I want employers to see this about me or to see me this way?" With this in mind, maybe the time has finally come to delete that video of you beerbonging at a college party three years ago.

The nuts and bolts of networking

Slaughter prefaced the discussion on networking by saying, "It is a marathon, not a sprint." It requires taking many, many baby steps rather than large leaps. There are a few primary goals of networking. One goal is to learn things, such as what makes people like a particular practice and what skills it entails. Next, one must be able to articulate their interest in a particular practice and come across as professional and likable in the interview room. Finally, networking serves as practice for forming relationships with future clients. According to Slaughter, networking is a practiced and learnable skill, and the Office of Private Practice has resources on their webpage for students to find strategies that suit them best.

To show the difference between effective and ineffective networking, Slaughter, playing the interviewee, and Parker, playing the interviewer, performed yet another skit. When Parker said, "Tell us a little bit about why you want to work in New York," Slaughter first responded, "I mean – why NOT New York?" This response is unsurprisingly unlikely to impress an interviewer. "I hear that it's a great city, and just a place I've always wanted to spend time," is also a less than compelling response. However, Slaughter improved her response by citing the "fast-paced nature of the city" and wanting to be "at the epicenter of the corporate world" to compliment her interest in transactional work as specific reasons motivating her to choose New York City.

Additionally, mastering the handshake is a critical part of the networking process. Parker recommends a firm grip, a couple of shakes, and maintaining eye contact. Importantly, the other hand should not be participating in any way, shape, or form.

Since 1L year is busy, amid maintaining good grades and meeting classmates, while still adjusting to the Law School environment, Slaughter says to let the firms come to you. Participating in events hosted at UVA Law is the easiest way to begin the networking process. Over winter break, though, getting coffee or lunch with employers is more typical. Firms will also host "home for the holidays" events, so keep an eye out for those.

Dress for success

After learning how to act professionally, one has to learn how to dress professionally. It can be difficult to determine what to wear to an event due to the emergence of confusing new styles, like smart casual (?). If a dress code is provided for an event, it is best to follow it. If not, Parker suggests that the best bet is to wear a suit off Grounds and "nice student attire" on Grounds. Also, as a general rule for Zoom meetings, don't skip the pants.

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LAW WEEKLY FEATURE: Court of Petty Appeals

The Court of Petty Appeals is the highest appellate jurisdiction court at UVA Law. The Court has the power to review any and all decisions, conflicts, and disputes that arise involving, either directly, indirectly, or tangentially, the Law School or its students. The Court comprises eight associate justices and one Chief Justice. Opinions shall be released periodically and only in the official court reporter: the Virginia Law Weekly.
Please email a brief summary of any and all conflicts to editor@lawweekly.org

Students of UVA Law
v.
Dean Risa L. Goluboff
76 U.Va 5 (2023)

Brown, J., delivers the opinion of the court. Allard, J. concurrs in the judgment. Moore, J. and Sandu, J. dissent..

Brown, J. delivers the opinion of the court.

On Thursday, September 21, Dean Risa Goluboff announced her plans to step down from her role as dean, effective June 30, 2024. In her email to students, Dean Goluboff noted that she will have served eight years as dean by the end of her tenure; she also confirmed that she will continue to teach on the Law School's faculty for the 2024-25 academic year.

Dean Goluboff's leadership of this institution deserves a round of applause, and frankly, this Court will be the first to salute her for her work. Because in addition to her impressive management of UVA Law, this Court—under Dean Goluboff's honorable reign—has had something of a renaissance. During Dean Goluboff's tenure as dean, this Court's jurisdiction has *exploded*: The pandemic; the 2016 and 2020 presidential elections; increased tensions between jaded 3Ls and gunnery 1Ls. The list goes on, but one thing is certain—pettiness has proliferated in the past several years, and this Court has become stronger for it.

So when petitioners came to this Court seeking an injunction preventing Dean Goluboff from retiring from her position, the decision was a straightforward one. We grant petitioners' request and hereby indefinitely enjoin respondent from resigning her position as the Law School's twelfth dean.

> *"The Court today mandates Dean Goluboff rescind her retirement, and that she continue mercifully leading us until the heat destruction of the universe."*

I. Jurisdiction

Dean Goluboff assumed office in July 2016. In her time as dean, she led an impressive hiring spree; navigated the Law School's COVID-19 response; and has focused, to much success, on improving accessibility and inclusivity in the student experience on North Grounds.[1] Now that she plans to return to her teaching role, the search will soon begin to find her successor—who will become the thirteenth (and hopefully not unlucky) dean.

Petitioners are UVA Law students who have cherished—or, at the very least, tolerated—Dean Goluboff's leadership. Fearing change, and admiring the accomplishments of the only Law School dean they have ever known, they filed suit here to prevent her from riding off into the sunset[2] and abdicating her position next summer.

Jurisdiction is acceptable here. First, the 1948 Petty Jurisprudence Act § 12 explicitly grants this Court the authority to hear the case. ("This Court shall retain original jurisdiction in all matters involving the dean of the Law School.") Second, as is well-known by practitioners, this Court retains jurisdiction only over *petty* complaints. And what could be pettier than hoping to derail the plans of an innocent academic for personal fulfillment? We struggle to imagine it.

II. On the Merits

Mustering together what this Justice remembers off the fly from Torts and Property,[3] permanent injunctive relief is appropriate[4] depending on several factors, including whether (1) compensatory remedies, such as monetary damages, are inaccurate; (2) the public interest would not be disserved by a permanent injunction; and (3) petitioners have suffered an "irreparable injury."

All three factors weigh in favor of granting injunctive relief. First, no amount of money will be able to compensate petitioners for Dean Goluboff retiring from her current role; her full-time return to the classroom seems daunting because I, for one, am terrified of disappointing her during a cold call. Second, the public interest would surely not be dissatisfied by Dean Goluboff remaining in her current position. She has been well-received by alumni, current students, and legal practitioners. Third, petitioners have surely suffered an irreparable injury; the thought of having to stomach countless emails from UVA Law about a new dean upon his or her selection is draining, and frankly, annoying.

The Court today mandates Dean Goluboff rescind her retirement, and that she continue mercifully leading us until the heat destruction of the universe.

Allard, J., concurring in the judgment.

I join the majority because I agree that Dean Goluboff should not be permitted to retire at this time. But I write separately to clarify that, in my opinion, the Dean must petition this Court to determine the lawfulness of her retirement. Until she has done so, she may not retire.

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1 While this Court feels obligated to maintain its reputation as a neutral and detached observer, it is worth reading about Dean Goluboff's time in office here: https://www.law.virginia.edu/news/202309/dean-risa-goluboff-step-down-2024-concluding-history-making-tenure.

2 If teaching a bunch of hungover 3Ls Con Law II on a Thursday morning constitutes a sunset...man, times are grim.

3 Professors Kenneth Abraham and Julia Mahoney—you both deserve better than how I may butcher this now.

4 Yeah, I know this was in a patent law setting. But...please don't press me.

Faculty Quotes

J. Duffy: "I don't want to see the rest. That's legal reasoning. That's going to interfere with my golf game."

J. Fore: "I feel like Jeb Bush. Please clap."

T. Nachbar: "Avoiding regulation is like America's pastime."

C. Nicoletti: "How many amendments are there, twenty-seven?" **looks at book** "Something like that."

X. Wang: "When academics want to talk about their research, it's like when your friends want to talk about their fantasy football team."

M. Livermore: "I'm not an educational expert."

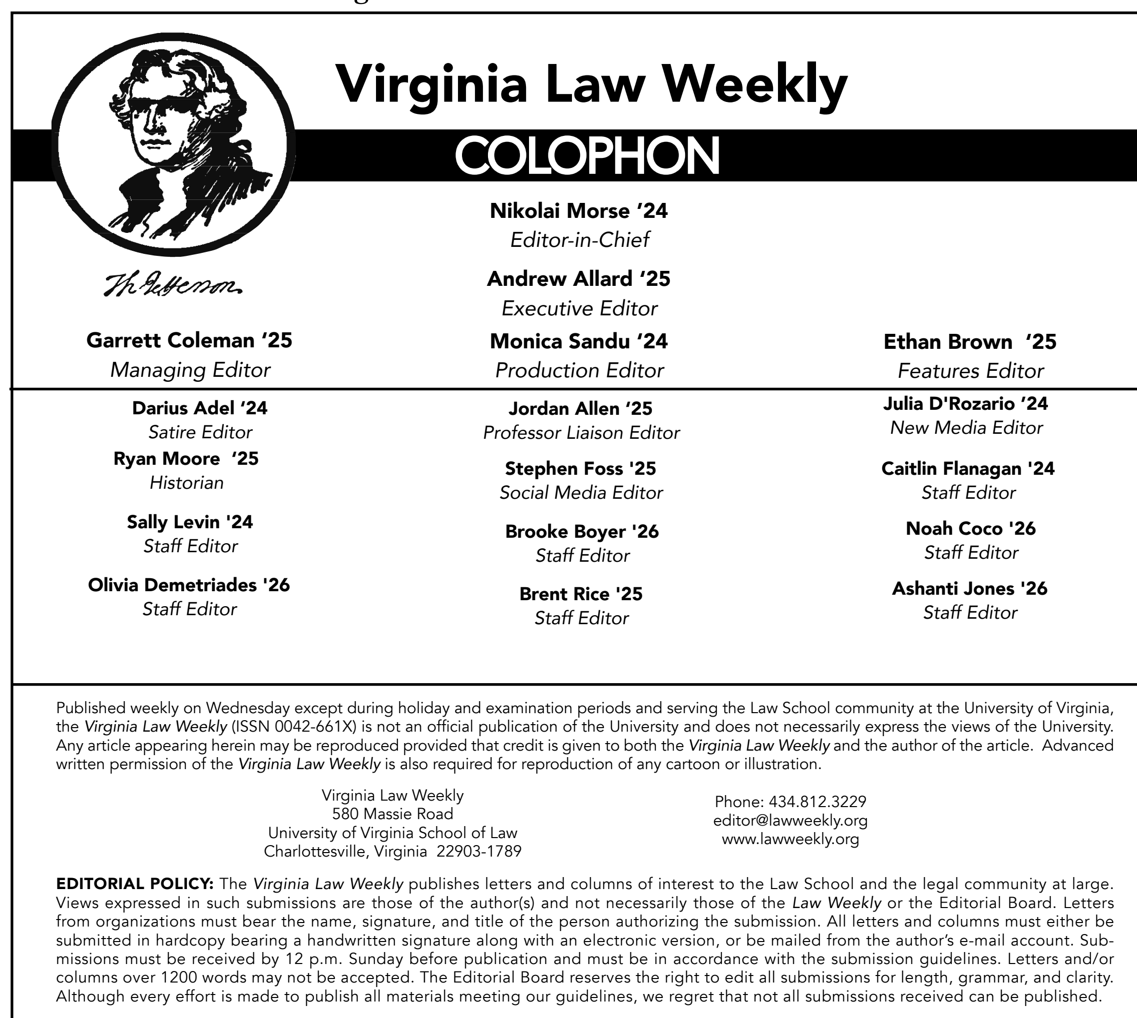
J. Harrison: "I'm always on the verge of saying dot the Ts and cross the Is."

A. Bamzai: "When I took the Virginia Bar, I had to learn all the statutes of limitations for all their cases, which I memorized that week and then forgot. Because, you know, it's not useful stuff to have in your brain."

M. Collins: "And he's back again! Justice Holmes from the background!"

J. Mahoney: "You're not supposed to surrender your humanity when coming to law school!"

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



Virginia Law Weekly
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Counsel's Counsel

The world's preeminent advice column for law students.

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As Justice Brown correctly identifies, the 1948 Petty Jurisprudence Act granted this Court jurisdiction over all matters involving the Dean.[5] It is surely correct to say that the Act confers upon this Court the jurisdiction to hear this case. But as the legislative history of the Act reveals, the law does much more than confer jurisdiction. It was intended to charge this Court with the duty of certifying all important administrative decisions of the Law School, to the extent that the Court's involvement would promote petty sentiment.

Accordingly, I conclude that the Petty Jurisprudence Act, properly interpreted, requires the Dean to first file a *habeas* petition, whereafter the Court may decide whether the Law School may lawfully require her remainder in office. This construction ensures adherence to the legislature's intent, greater administrative stability, and most of all—more pettiness. By requiring all future deans to petition this Court for approval of their career decisions, we provide this court with ample opportunities for petty slights.

Because Dean Goluboff has not filed any petition seeking our blessing, instead focusing only on responding to the instant litigation, I would enjoin her retirement until such a petition is filed. Then, and only then, may the Dean present her case. And it had better be a petty one.

Moore, J., dissenting.

It is not lightly that I dissent from the majority's opinion mandating that Dean Risa GOLUBLUFF[6] "rescind her retirement." Like my learned siblings on this bench, I have truly enjoyed my time at UVA Law under Dean GOLUBLUFF, and I cannot imagine UVA Law without her. However, all good things must come to an end, including the Dean's time with us. Dean GOLUBLUFF will soon set off on her next step in life: running for President of the United States.

It is obvious that Dean GOLUBLUFF intends to run for President as the timing could not be more perfect. By remaining a law school dean she has avoided all the negative attack ads this election cycle. She has studied constitutional law extensively, which will help her as president. She announced plans to retire from her deanship on June 30, 2024, a mere 15 days before the Republican National Convention on July 14, 2024. It all lines up.

Because the UVA Law student body should be encouraging our first female Law School dean to subsequently become the first female POTUS, I respectfully dissent.

5 *See supra* at 4.

6 Yes, I am going to run this bit into the ground. IYKYK.

REFORM

continued from page 3

the title's biggest effect on the time credit systems was fixing the amount of reduced time a prisoner could earn.

"There was already time credit that existed in federal law," Pye said. "What we did with the First Step Act was restore congressional intent. Given that you all are law students, I'm sure you've heard of *Chevron* deference. The Bureau of Prisons had their own 'interpretation' of what 54 days meant . . . it literally says 54 days in the statue—this is not up for debate, it says that in black and white—but they somehow interpreted that to be 47 days . . . so we fixed that. People who had been denied those seven days of good time credit got them back."

In closing, Pye also examined recent moves for criminal justice reform at the federal level following the First Step Act. Pye stated while success of recent efforts has been limited, some legislation, such as the Fair Chance Act of 2019 and FAFSA Simplification Act of 2020, have had major effects on the system.

Pye also shared an economic rationale for current criminal justice reform for conservatives. Pye argued conservatives should consider criminal justice reform as an economic necessity to fulfill the need for workers. Pye stated criminal justice reforms such as record expungement could aid in reducing the number of unemployed positions by improving employment rates of formerly-incarcerated persons.

"Production is what drives an economy," Pye said. "In July 2023, there were 8.8 million job openings for 5.8 million people looking for work. We don't have enough workers to fill the jobs . . . The unemployment rate for people who have served time . . . in prison is 60% at a minimum . . . Individuals whose records were expunged saw yearly wage gains of nearly $4,300 for men and $4,600 for women."

Liz Komar. "The First Step Act: Ending Mass Incarceration in Federal Prisons." The Sentencing Project, Aug. 2023, <https://www.sentencingproject.org/policy-brief/the-first-step-act-ending-mass-incarceration-in-federal-prisons/>.

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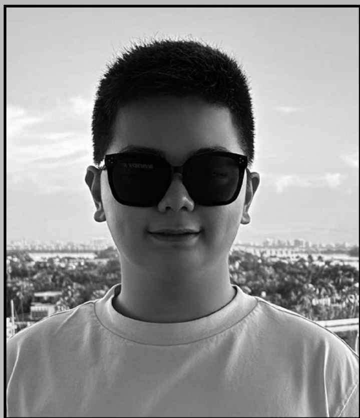
HOT BENCH



Shunkai Ding

Interviewed by Andrew Allard '25

Hi Shunkai! Thanks for joining me this week. I understand that you already have *two degrees* from UVA. What brought you here for round three?

When I began to consider studying law and investigating law schools, UVA became the first on my list, as I valued the quality of life and community. Having lived here for five years, UVA has become irreplaceable to me as it provides me with a sense of community I have never felt elsewhere.

As the first person in my family to study and live abroad, I was initially overwhelmed by the cultural differences and was struck by a sense of loneliness when I first came to the U.S. for college. UVA allowed me to establish more personal relatio ships with professors and other students. I had opportunities to have lunch with some of my professors and visit their homes on the weekends. My friends here always invite me to stay and celebrate with their families during the holiday season. I have never felt alone here.

Like I always tell my parents, UVA and Charlottesville are my second hometown, and the people here are also my family. Law school is not easy, and I am glad I can continue my legal education in a place that already feels like home.

And your master's degree is in statistics, isn't it? Why are you in law school if you can do math?

I can do math, but I am just not really passionate about it. Math is useful in many ways. I just cannot imagine working all day with only numbers and codes on the screen. It will drive me crazy. So, I decided to be a lawyer who is good at math.

That's a lot of power for one person. You will be unstoppable. You also lived in Shanghai before coming to UVA, right? Going from one of the world's most populous cities to a college town of less than 50,000 sounds jarring. How was that transition?

The transition was surprisingly smooth. Shanghai and Charlottesville are indeed very different in terms of population and lifestyle, but I genuinely enjoy this contrast. One of the things I cherish the most is the proximity to nature here, with plenty of outdoor activities I can do with my friends on weekends. In addition, Charlottesville is much less crowded, which I think makes the community more close-knit. When walking down the main street, I can always see people wearing UVA t-shirts or hats. The sense of connection between students and residents is truly heartwarming.

With five years in Charlottesville under your belt, you must have a good sense for the area. Do you have any recommendations or favorite spots around Virginia?

Charlottesville has some great places to eat. For pastries and bread, you can't go wrong with Cou Cou Rachou and Albemarle Baking Company. Pineapple Thai and Umma's are definitely two of my favorite Asian food places. Taco Gomez has the BEST tacos in Charlottesville (in my opinion). And I also love Sultan Kebab, Milan, and Bodo's. The list goes on, and I am still trying to explore something new every week!

Great list. I envy the quality of croissants made at Cou Cou Rachou. Speaking of pastries, the holiday months are fast approaching, which is truly shocking to me. What is your favorite holiday?

Halloween! First, fall is my favorite season. I really enjoy October and November here in Charlottesville when the weather gets cooler, and the leaves turn all yellow. What makes it even more exciting is the tradition of trick-or-treating on the lawn right in the middle of the semester. Puppies and babies in Halloween costumes are just so adorable.

I have not had the pleasure of seeing the costumed parade of puppies and babies. I'll have to fix that this year. Do you have a costume planned yet for Halloween?

Not yet. I will probably still be on crutches at the time of Halloween, so I am thinking hard about creative ways to incorporate them into my costume.

I'll be looking forward to seeing what you come up with. What's something you could talk about uninterrupted for ten minutes?

Probably ballroom dancing? I have been doing ballroom dancing for fifteen years, and I can certainly talk about differences in dance styles, techniques, and share fun stories nonstop for ten minutes, if not more. It is something I take great pride in and enjoy doing in my spare time.

Math, coordination, and law brain? You're supposed to pick one. Aside from dancing, what do you like to do outside of class to de-stress / procrastinate?

I cook and bake to procrastinate. I have convinced myself that I need to eat well to do well in law school, so I'll happily justify cooking a large pot of curry or baking a dozen cupcakes when studying. Staying in the kitchen provides me with a great escape from all the readings and ensures that I have something to eat during the week.

100 percent agree on the eating well point. Cooking is the best study break. Do you have any plans for the upcoming long weekend?

I will be staying in Charlottesville for the upcoming fall break. My main plan is to get some good rest. My parents will be in town, so I will spend a lot of time with them. My friends and I are also planning a hotpot party during the break.

Aw, that's great. I could use some hotpot right now... Alright—lightning round!

Who is your favorite artist?

Leslie Cheung is definitely my favorite.

What's a trend you wish would go away?

Crocs (especially with socks).

No objection here. What's your most recently used emoji?

The speak-no-evil monkey.

A man of culture, I see. If you could bring any fictional character to life, who would it be?

Minions!

Okay, well I'm glad that one is only hypothetical. What's your preferred room temperature?

74 degrees.

ORIGINALISM
continued from page 2

apply originalism. My concern is that this method of interpretation can be—and is—widely abused. Judges are not nearly as good at being historians as they would have to be under such a method. Of course, there are cases where interpretation is easy, but in many other instances the door is left wide open to error and cherry-picking. Moreover, history itself is complicated. Often there is not one easy answer written down hundreds of years ago. Historians frequently disagree on public meaning, but judges frequently select the meaning best molded to their arguments, disregarding competing interpretations and creating a jurisprudence far more subjective than originalists would like to admit.

Regarding your Fourth Amendment comment, how is that *not* inconsistent? You say we must look to the public meaning, but, suddenly, when originalism and public meaning become inconvenient, we can abstract to create opinions we feel match the results we want. Public meaning is suddenly out the window. What does originalism say about deciding when and where we can abstract, if at all? How do we know when to provide flexibility in some areas while providing fixed meanings in others—without letting personal views and vague reasoning get in the way? What is the source? Such abstraction starts moving us away from originalism and into waters typically *disfavored* by originalists. Originalism's various methods of application are highly inconsistent, leaving plenty of room for manipulation. All in all, the more content an originalist is with abstraction, the further he can move away from originalism and "public meaning at the time" to inject his own views, while still trying to use the term to legitimize his opinion.

Garrett: Originalism is not perfect, but it is the best interpretive option out of many bad ones. So, I agree with you that there will always be judgment calls, like choosing a level of generality. What I am defending is the baseline orientation of the judge, that she is *trying* to preserve something akin to an original public meaning. The risk of cherry-picking certain evidence or abstracting too far is present in every case by every judge. Finding and appointing people who have good judgment is a legislative and executive function, not an originalist one.

To your point on knowing when abstraction is appropriate, we can also turn to contemporary texts like the *Federalist Papers* or notes from the Constitutional Convention. The Supreme Court recognized this history in *Riley v. California*,[3] in which Chief Justice Roberts, writing for the majority, stated that "[o]ur cases have recognized that the Fourth Amendment was the founding generation's response to the reviled 'general warrants' and 'writs of assistance' of the colonial era."[4] Understanding that history gives context to the privacy right that the people were enshrining. And it allows us to apply that right to an evolving technological reality while still being faithful to the democratic process that preserved it. When done correctly, the level of abstraction is determined by the historical evidence as well.

But I can acknowledge some truth to the claim that historical research will always be a bit unreliable. That is why, to some degree, originalism is going to be better at calling balls than strikes–the originalist argument is at its clearest when saying something like the Eighth Amendment did not protect against the death penalty because every felony in 1791 was punished by death. That is the sort of evidence that most clearly lends itself to the originalist methodology. But it should always be remembered that originalism is pushing back against the judges who offer no fixed point of reference for their analysis. At least originalists try something.

To wrap this up, I'll give you the floor again to conclude.

Meghan: Arguing that originalism isn't great, but at least it's not like other theories is hardly a glowing endorsement.

My point is that, when public meaning proves unclear or inconvenient, you begin arguing in favor of a theory that looks less and less like originalism. When you abstract that much (especially regarding your Fourth Amendment argument, where you seem to favor analyzing the *purpose* of the amendment), it's less like the originalism we know and love (or hate). If you are unsure of this, I am more than happy to lend you my notes from our Con Law class where we discussed this very issue. Perhaps you aren't as big of a fan of originalism as you let on. Understandable!

It is incumbent upon originalism, as an analytical framework, to account and compensate for the risks and issues it creates; to say this is instead the job of other branches of government is a non sequitur. That "baseline orientation" of the judge is necessarily affected by any problems with interpretation. Why wouldn't these risks be necessary when analyzing the quality of a theory? If originalism is not up for the job, perhaps it is best to look elsewhere.

Also, I am not sure I understand your argument that, because historical research is unreliable, that makes originalism the best. Why? The example you provide concerning the Eighth Amendment I agree is cut and dry under originalism, but that means it isn't responsive to the issue of historical ambiguity. If we want a good interpretive theory, we can't solely examine its easy applications and pat ourselves on the back.

All in all, it seems your personal version of originalism twists with whatever argument you wish to bring forth, even though that's what you criticize other theories for doing. When there's clear history of the public meaning at whatever relevant year you choose, that's the easy answer. But when it's difficult, you abstract, speaking of baseline orientations that can perhaps illuminate the purpose of the law, twisting originalism into something it's not to make the answer what you want, avoiding any criticisms by labeling them as irrelevant to the theory.

(Note: I am using "you" generally here. Don't worry, Garrett, our friendship is intact, but if you think our perspectives are irreconcilable, perhaps, to appease an originalist such as yourself, we should resort to how the Framers might have handled such a disagreement: a duel. Pistols at dawn?)

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3 *Riley v. California*, 573 U.S. 373 (2014).

4 *Id.* at 403.

Sudoku

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

Solution

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

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