



VIRGINIA LAW WEEKLY

2017, 2018, & 2019 ABA Law Student Division Best Newspaper Award-Winner

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Titan of Torts Awarded Prosser Prize from AALS

Noah Coco '26
Staff Editor

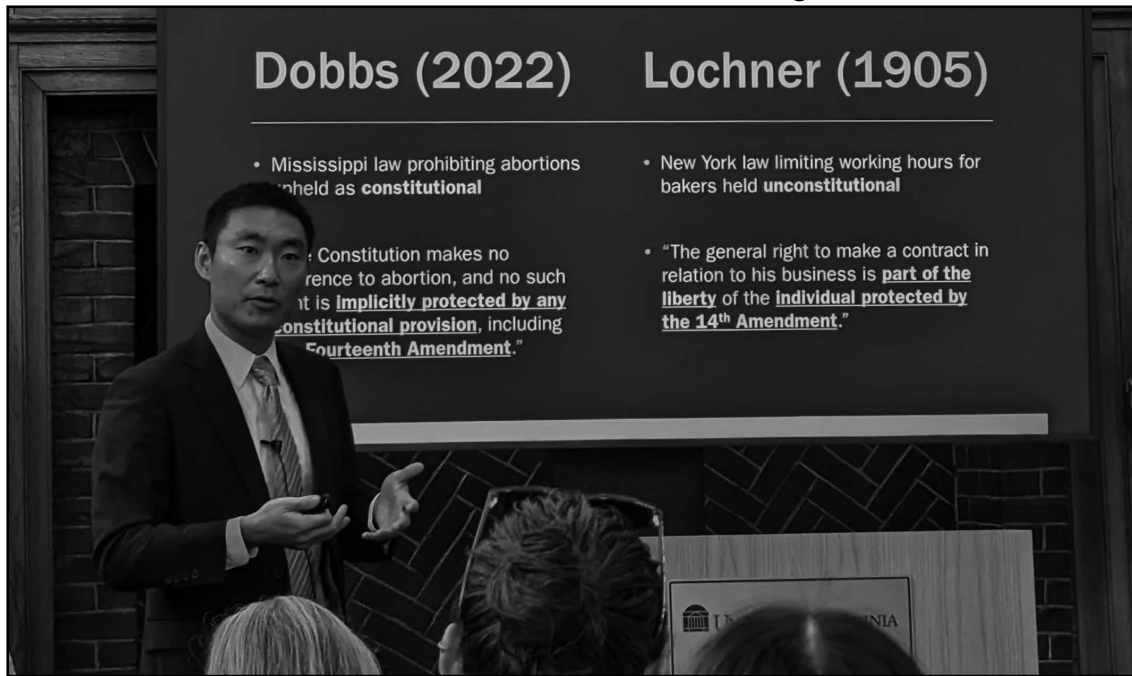
Astute 1Ls may have noticed one particular name repeated like a constant refrain in the notes and footnotes of their Torts casebook. Some may even see that same name printed on the cover of their own. That name is Kenneth Abraham. A "luminary in the field" of torts according to one of his colleagues, Professor Charles Barzun '05, this titan of tort law walks among us on our hallowed Law School grounds. In recognition for his extraordinary contributions to the field, he was recently awarded the 2024 Prosser Award from the Association of American Law Schools (AALS) Section on Torts and Compensation Systems. The Prosser Prize is the AALS' highest award in the field of torts.

Professor Abraham will be joining a long list of esteemed torts scholars, including former Judge Richard Posner of the U.S. Court of Appeals for the Seventh Circuit and Judge Guido Calabresi of the U.S. Court of Appeals for the Second Circuit, the latter of whom Abraham actually studied under while attending Yale Law School. A review of Professor Abraham's career leaves no mystery as to why he was selected as a recipient of the 2024 Prosser Award. Throughout his career he has authored over seventy law review articles and six books, and his casebook Insurance Law and Regulation has been a staple among law school insurance law courses. His contributions to the field of insurance law have been particularly influential since the publication of his first book in 1986, "Distributing Risk: Insurance, Legal Theory, and Public Policy."

Professor Abraham is no stranger to awards for

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Professor Xiao Wang Returns to Batten for Constitution Day Talk



Andrew Allard '25
Executive Editor

Photo Credit: Andrew Allard '25

Could recent controversial constitutional law decisions bring about renewed interest in direct democracy? Through his research, Professor Xiao Wang has found that not only is a new wave of grassroots democracy already here, but also that this response finds precedent in U.S. history.

Last Monday, in celebration of Constitution Day, Professor Wang returned to his alma mater, the Frank Batten School of Leadership and Public Policy at the University of Virginia, to present his research to a packed room of students and faculty. Professor Wang, an Ohioan, opened with a recent example from his home state, where a referendum to be held on November 7 will decide whether to enshrine reproductive rights, including abortion, in the Ohio Constitution.¹ In August, a second proposed amendment supported by the Republican Party of Ohio

1 Julie C. Smyth & Samantha Hendrickson, *Voters in Ohio reject GOP-backed proposal that would have made it tougher to protect abortion rights*, AP News, <https://apnews.com/article/ohio-abortion-rights-constitutional-amendment-special-election-227cde039f8d-51723612878525164f1a> (Aug. 9, 2023, 9:26 AM).

would have made it more difficult to amend the state constitution by increasing the referendum threshold from a simple majority to 60 percent.² That proposal was rejected by voters.³

Voters today, Professor Wang explained, are using the referendum process to protect abortion rights in response to the *Dobbs*⁴ decision in 2022. Both the decision itself and Ohio officials' efforts to entrench the status quo garnered backlash from the public, with one commentator noting, "[O]ur courts have been stacked, our lawmakers have been captured by special interests, our politicians are riddled with corruption, and now our own majority voter power over our constitution is being assaulted."⁵

2 *Id.*

3 *Id.*

4 *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 213 L. Ed. 2d 545 (2022) (finding that there is no constitutional right to an abortion).

5 David Dewitt, *Ohio government is already captured by radical special interests. State Issue 1 would make it worse*, Ohio Capital Journal, <https://ohiocapitaljournal.com/2023/06/29/ohio-government-is-already-captured-by-radical-special-interests-state-issue-1-would>

In this country that so reveres its Constitution and the rule of law, such a strong rebuke of the legal system is rare. But, as Professor Wang points out, it is not without precedent. Professor Wang's research suggests that Ohio's constitutional referendum process grew out of popular dissatisfaction with the courts. As Professor Wang explained, at the turn of the 20th century, the Supreme Court produced some of its most controversial opinions, including *Plessy v. Ferguson*⁶ and *Lochner v. New York*.⁷ In 1912, seven years after *Lochner*, Ohio held a constitutional convention, during which it adopted its modern referendum process. Proponents of the new referendum process explicitly criticized the courts and judicial review. As one representa-

make-it-worse/ (June 29, 2023, 4:30 AM).

6 163 U.S. 537 (1896) (creating what became known as the "separate but equal" doctrine).

7 198 U.S. 45 (1905) (striking down a New York statute restricting working hours for bakers on the basis of a Fourteenth Amendment freedom to contract).

DEMOCRACY page 6

around north grounds



Thumbs up to Professor Xiao Wang for single-handedly inspiring 37.5 percent of this week's articles.



Thumbs down to Dean Goluboff stepping down as UVA Law's first female dean. Who will ANG look to to gaslight, gatekeep, girlboss now?



Thumbs sideways to the return of Assassins 2023 this week. ANG loves chaos but dislikes competition in causing said chaos.



Thumbs up to the slight chill in the air. ANG looks forward to being able to freely order fresh, delicious pumpkin spice lattes rather than relying on the curdled remains ANG has squirreled away from last year.



Thumbs down to the sketchy Dean Goluboff email. ANG actively ignores all cybersecurity trainings but still knew not to open that link.



Thumbs up to the slow but steady tides of change ANG is sensing in the Gunner Pit. ANG thinks the most beautiful part of the library should be a free space for conversation and snacking.



Thumbs sideways to stores already selling Christmas decorations. ANG loves capitalism but hates the season of charitable giving.



Thumbs up to all the students in LRW standing in solidarity with the WGA strike.



Thumbs down to the ACS Voter Registration Drive. ANG does not appreciate other law students diluting ANG's six votes in Virginia's Fifth District.



Thumbs up to the brave student who told Professor Abraham his line of questioning was "confusing and unhelpful." Fortune favors the bold.

Lessons from Fall Planting

Darius Adel '24
Satire Editor



The bounty of late fall is upon us. If you head to the farmer's market at the IX Art Park this Saturday, you'll find an assortment of squash, pumpkins, peppers, tomatoes, mushrooms, and an assortment of greens. This is a great time to get fresh vegetables on the table. If you don't feel like dealing with the hustle and bustle of a farmer's market, I would also recommend the Barracks Road Farm Market. It's much smaller, and you can pick up your produce and be out of there in a matter of minutes.

While these options are great, I've always been a proponent of growing some of your own food. You can learn a lot by taking something from seed to table, and the satisfaction of eating something you grew yourself makes any meal better. The issue is that most of us weren't here over the summer and thus are now unable to reap a heavy summer harvest. Luckily, there are plenty of crops you can plant that will grow over the

fall and winter.

One of my favorite vegetables I was never able to grow well in sunny California are radishes. Since Charlottesville's weather gets sufficiently cold in the fall and winter, you can continually plant and harvest them this semester. They take little maintenance beyond the occasional watering, mature quickly, and don't really take up much space. If you have a couple of planter pots, you can easily grow some with just a few square feet of space. The fact that they mature so quickly is really great for a budding gardener, since you can get something on the table in just three to four weeks.

Inevitably though, you're going to need to learn patience if you want to grow most fall and winter crops. Just like doing readings early in the semester in preparation for a final that is several months away, you'll need to nurture seedlings you may not be able to eat until late November.

I mentioned in an article last year that Charlottesville is in zone 7a, which is just a label for the type of climate we live in. If you're ever won-



Photo Credit: San Antonio Express-News

dering when or if to grow a crop in town, just look up if it will grow well in zone 7a during the month you're in. Grow food that you actually want to eat, even if you don't have the perfect conditions. That being said, I do have a few recommendations for late September or early October planting.

Cabbage is really hardy and grows well in the cold weather we'll be getting soon. If we end up getting some snow this year, they will do just fine. While cabbages are a great cold weather crop, they can take up a lot of space if you just have an apartment balcony to work with. If space is an issue, I recommend growing beets. As long as they have enough space for their roots, you can plant them relative-

ly close together without too much of an issue. Similarly to cabbage, they are pretty frost resistant.

Potatoes may not be the sexiest vegetables, but they are incredibly easy to grow, and you can get a lot of them from a single planter pot. You can buy potato seeds if you want an exotic variety. I've done that before, but usually I'll just take an old potato from my pantry that's sprouting, cut it up, and bury it in some soil. As long as you keep the plant sufficiently watered, you'll have a ton of them come spring.

If you really don't have any outside space to grow vegetables this season, you could always resort to growing herbs indoors. I used to be anti-herb growing for

religious reasons, but law school has broadened my horizons. They have a ton of herb growing kits out there, but I'm always a proponent of starting cheap. A bundle of live basil at Harris Teeter is like three dollars. Just separate the individual plants and stick them in a pot of well draining soil in a sunny part of your house, and you'll have a great edible houseplant. I like to just trim the tops every few weeks and make sure it doesn't get too tall—just eating whatever I cut off.

I started a garden during 1L as a little non-law related project. Relatively speaking, it's a pretty low time commitment hobby. You may think that growing produce is a lot of work and that just buying your food at a store is way more efficient. You're right. But, gardening in a city isn't necessarily about saving money or being efficient. It's about cultivating a nurturing attitude, practicing patience, living with the seasons, and hopefully learning a bit about the food we eat.

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ABRAHAM

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his scholarship and teaching prowess. He was previously awarded the All-University of Virginia Outstanding Teacher Award, the Distinguished Faculty Achievement Certificate from the State Council of Higher Education for Virginia, the American Bar Association's Robert B. McKay Law Professor Award, and he was first among all law professors to be elected an Honorary Fellow of the American College of Coverage Counsel.

It might be expected that such a prominent torts dignitary's first words as an infant were "duty, breach, cause, and harm," but Abraham's entry into the field was not preordained. He enrolled at Yale Law School in the 1960s in an atmosphere with "politics and public policy in the air," said Abraham. While in law school, he took a year off to be on active duty with the US Army Reserve, a decision he made in order to avoid being drafted into the Vietnam War, and I am sure to also avoid a number of corollary tortious acts. Following his graduation from Yale Law School in 1971, Abraham joined a two-person law firm



Picutred: Professor Kenneth Abraham
Photo Credit: UVA Law

in Hackensack, New Jersey, that focused on general civil practice. He spent his time at the firm drafting wills, facilitating real estate transactions, and handling small personal injury cases, a far-cry from the heights of torts fame he would later achieve.

Torts was, in fact, Abraham's favorite 1L doctrinal class in law school, but it was not until his first Visiting Assistant Professor position at Case Western Reserve Law School that his foray into torts scholarship began. Even then, it was not necessarily because of any innate passion for elucidating liability, but simply

because the law school was in need of a torts professor. After teaching at Case Western Reserve Law School and subsequently at the University of Maryland School of Law for several years, Abraham accepted a teaching position at UVA Law in 1984. And now, this year marks his thirty-ninth year on faculty at the Law School.

In addition to his contributions to the fields of torts and insurance law at large, he has equally established his impact on the Law School grounds through his interactions with faculty and students. Professor Barzun reflected on the past fifteen

years teaching torts alongside Abraham at the Law School and the innumerable questions that Abraham has provided insight into over this period. "What I always love about Ken's answers," Barzun said, "is that he would not only tell me what I could say or how to think about the problem, but he would often reassure me that it was okay if I did not know the exact answer." Professor Barzun continued, "instead of dwelling on it, he'd encourage me to step back and look at the big picture in order to see the deeper themes at work in the doctrine."

Abraham continues to teach torts to 1Ls, guiding them from their first day of wondering "What's a tort?" (I cannot imagine that I was the only one) until (hopefully) mastering the rituals of discerning duty, breach, cause, and harm. Ashley Ramsay '26 is currently taking his 1L torts class and similarly reflected on Abraham's ability to "challenge the class to think beyond how the Court came to its conclusion in a case and instead, push us to think critically about how the driving principles and philosophy of tort law influences the ultimate holding."

The next time you pass Professor Abraham in the hallways, remember to congratulate him on the award, ask whether *res ipsa loquitur* is a useful construct, or give him a recommendation for a great mystery novel, which I hear is one of his pastimes.



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Professor Wang Gives Inside Look at Supreme Court Litigation Clinic

Olivia Demetriades '26
Staff Editor



On Tuesday, September 19, UVA Law Professor Xiao Wang addressed a crowd of interested law students in the Supreme Court Litigation Clinic Information Session. He spoke about the clinic's structure, some exciting potential cases, and the application process.

A recent addition to the faculty, Professor Wang is taking on the role of director of the Supreme Court Litigation Clinic this year. He left chilly Chicago and his role as the director of the Appellate Advocacy Center at Northwestern Pritzker School of Law for warmer weather in Charlottesville. At Pritzker, he supervised the Federal Appellate and Supreme Court clinics. Professor Wang also directed the National Appellate Clinic Network, a project that fosters digital collaboration and the sharing of resources between law students and faculty across the country to advance appellate clinic

practice. He plans to introduce this program to the UVA Law community.

During the information session, Professor Wang extolled the benefits of participating in the clinic. While students can expect to greatly improve their written advocacy skills with the countless drafts of briefs they will write (and, of course, rewrite), they can also expect to play a role in some pretty influential decisions.

"Supreme Court opinions are breaking news," Professor Wang said. "And by ethics rules, we don't represent Chiquita or IBM. We represent the people that Chiquita and IBM allegedly oppressed. That's a really powerful thing to get the chance to do in your third year of law school."

The clinic, which is open to 3Ls (1Ls and 2Ls sit tight!), seeks to introduce students to all aspects of the U.S. Supreme Court practice. Students who participate get the chance to work directly with experienced litigators from Covington & Burling, Vinson & Elkins, or with Professor Wang

himself as they conduct research, look through the case records, and write and edit briefs. Given the small number of writs of certiorari the Supreme Court grants each year, it can be difficult to find cases in need of litigation, so students should expect to play a role in the case identification process as well. Professor Wang mentioned an upcoming case students will work on in the spring that involves a question of mistaken identity and a previous case he worked on with Northwestern law students about food labeling to give students a sense of the wide variety of cases to which they may contribute.

For this academic year, the clinic will be offered in the spring only. Professor Wang said he anticipates it to have between twelve and sixteen students who will be split into four smaller groups to work on specific cases. The clinic will have a seminar component that meets once a week to allow time to talk about the rules and procedures of the Supreme Court and discuss the

cases students are working on. The four-credit clinic will be graded on an H/P/F scale, though it typically is a yearlong, eight-credit commitment.

Students hoping to secure a spot in the clinic can also look forward to an array of accomplished guest speakers. Previous guests of clinics Professor Wang taught at Northwestern include the Director of the National Association of Attorneys General and the hosts of 5-4, a podcast that offers progressive insight into landmark Supreme Court cases.

3Ls who wish to participate in the clinic this spring should apply by sending Professor Wang a resume, unofficial transcript, and brief letter of interest to x.wang@law.virginia.edu by October 4 as well as ranking the clinic in the lottery system. In their application materials, they should highlight any areas of law or specific issues they are passionate about. The clinic has a limited number of seats, so students should rank the clinic as their first choice for the highest chance of being

considered.

Yoojin Lee '26, a 1L who attended the information session, was drawn to the Supreme Court Litigation Clinic because of the broad range of cases. She said she is interested in big tech and antitrust law but hasn't seen these topics addressed in other current clinics. In fact, Professor Wang encouraged students to bring their own interests into the clinic because they may play an important role in finding relevant cases for which they could petition for certiorari.

Professor Wang offered a few pieces of advice for interested 1Ls hoping to maximize their chances of securing a highly-coveted spot in the clinic: "Do well in your classes and find opportunities to refine your writing abilities." He assured the 1Ls in the room that it is okay not to know what exactly they want to do within the legal field—a much-needed reminder for any 1L, not only those hoping to dabble in Supreme Court litigation.

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Ranking 1L Section Softball Team Names

Stephen Foss '25
Social Media Editor



Decisions by committee are not easy. To make matters worse, when that committee is made up of T-14 law students (who know everything about everything), settling on a solid softball team name is all but impossible. But you did it! You and your section mates picked a name. And some of them suck. So, let's talk about it.

These rankings are definitive and final. I have sought input from every corner of the Law School to compile these rankings. The criteria are simple: vibes.¹ I don't know what exactly makes a good softball name, but, as former Supreme Court Justice Potter Stewart famously said when trying to define hard-core pornography, "I know it when I see it."²

1 If you don't agree with your section's ranking, and you have a chip on your shoulder because your section got ranked dead last your 1L fall, join the *Law Weekly* so you can write next year's article.

2 *Jacobellis v. Ohio* (1964). See also *Ted Lasso* (Season 1) (before it went downhill).

First Place: *The Acqu-Hitters* (Section A)

This is a rock-solid name. The pun is seamless, not too much of a reach, and not a mouthful. I like it. This name showcases a mastery of the English language and a grasp of the basic concepts of softball—which is what most members of the NGSL also possess.

Second Place: *Hoos on First* (Section F)

This is a great UVA softball team name. Excellent, even. With references to the school nickname and the classic Abbott and Costello bit, this name is class personified. Throw in some parentheses to emphasize your section letter (i.e., "(F)irst") and you may have had a title shot.

Third Place: *The Hit 'N Runners* (Section H)

This is a very good softball name. It makes sense contextually and has a tasteful balance of legal and softball puns. Furthermore, it is also instructive and informative, which is helpful for first time softballers.

Honorable Mention: *Limited Liability Marlins* (The LL.Ms)

The longer you stare at this name the sillier it be-

comes and the less sense it makes. It's adorable, the intention is there, but it doesn't really make sense. It's fine. There is a legal concept involved, there is a baseball team name, and they're smashed together. But something is missing. But I think it's really cute.

Somewhere in the Middle: *Legal-Es* (Section E)

This name is lacking in the softball department, but it's sufficiently charming and will probably look good on a t-shirt. It should be noted that, when this name was submitted, the team captain misspelled the word "legal," which, besides being hilarious, is incredibly worrying.

Grand Slam Jury

This is nicely done. It kind of seems like something ChatGPT would churn out if you prompted it to make up a softball name for law students, but it totally works on all the arbitrary levels I am judging this on. The main problem with this name is that it doesn't roll off the tongue.

J'accuse

I get it. I understand the reference. I don't like it very

much, but trusted advisors assure me that this is a great name. As a former section J man, I wish this name resonated more. Besides being fun to say, it leaves me wanting.

Default Judgment (Section D)

Look, you checked some boxes, you hit some puns like all names should. However, you somehow managed to fill these check boxes while choosing the most unexciting concept from the least interesting class.³ That's where you've lost points. And it kind of looks ugly? Again, vibes.

Almost in Last: Benchwarmers (Section B)

This name is overused, underwhelming, middling, meh. "The Section B Softball Team" would have been better. This is the type of name that someone whose favorite condiment is mayonnaise would pick.

Basically Last: Intent to Harm (Section I)

I might not get it. Truly, I may be missing something. The pun might be going over my head, but I have no idea

3 No disrespect to Civil Procedure, big Michael Collins fan.

what Section I is going for here. Did you just regurgitate the last thing you heard in class by accident? As far as I can tell, this name has nothing to do with softball, sports, or the letter I (besides there being an I). Is this a mission statement? Again, maybe I'm missing something. Congratulations on not being dead last—don't let it go to your head.

Dead Last: Sec C Hoos (Section C)

You are all probably wonderful people, but really? The lot of you got together and decided this was the one? Did you think you nailed it? You did, didn't you? After Section C of the Class of 2025 dominated the 1L softball scene, it's a shame to see their progeny stoop to this. Maybe there is some background to this name that I don't know about and this section is crazy hot.⁴ This name is kind of funny, though. But not really.

4 Unlikely. The median LSAT for the Class of 2026 was a 171.

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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

Liberals Who Are Bad At Using Canva v. The Federalist Society at UVA Law
76 U.Va 4 (2023)

BROWN, J., delivers the opinion of the court. FLANAGAN, J. dissents.

Practitioners familiar with the Court of Petty Appeals probably think they've seen this case before. Someone suing the Law School's most prolific—dare I say, notorious—ideological organization? Hardly an hour goes by without someone complaining about something FedSoc does, either loudly in ScoCo or in a public GroupMe chat,¹ so surely, this Court must have some precedent to work with.

Admittedly, this Court has weighed in on suits involving FedSoc before. Oftentimes, these cases are less than flattering. And in these cases, these opinions are frequently written by yours truly. See, e.g., *Hungry People v. Law School Student Orgs*, 75 U.Va 12 (2022) (Brown, J.) (“I didn’t want to name names, but I’m looking at you, FedSoc.”)

So, setting aside the facts of the present case, followers of the Court would be forgiven for assuming that the die has already been cast with respect to our decision today. A suit against FedSoc? In an opinion written by the Court’s snarkiest² and

tied-for-gayest³ justice, who also happens to be such a Hillary Clinton stan that he has a framed print of her in his apartment? Their defeat seems certain.

But, my dear colleagues—this is not that case. The Court, for reasons set forth below, finds for FedSoc.

at least, *most* do.

Inexplicably, one student group in particular—respondent FedSoc—seems to have no problem producing the most immaculately beautiful designs for every single event they host, ones that would positively goop and gag the creators of Canva.

hoping to deny FedSoc the opportunity to keep producing superior graphic design content—sought injunctive relief in the District Court of Petty Complaints. The District Court granted petitioners’ request, relying heavily on precedent against FedSoc, both in popular

First, there is the oft-repeated refrain that “1Ls always lose.” This is a core value of our jurisprudence. See *2Ls v. 1Ls*, 74 U.Va 2 (2021) (Tonseth, C.J., dissenting) (“[T]he implication that 1Ls always lose continues to be the bedrock of this esteemed Court.”) And it is fair to assume that 2Ls and 3Ls, on average, are far less likely to give a sh*t about their involvement in FedSoc than their 1L peers do. See *1L Gunners v. Everyone Else*, 324 U.Va. 22 (2019) (noting that 2Ls and 3Ls are more inclined to “loung[e] around” than do anything remotely related to school). So, taken to its logical conclusion: If those who care most about FedSoc are 1Ls, then the organization must lose too.

But undergirding the Court’s approach towards 1Ls—that they always lose—is the absolute hilarity of doing so. 1Ls’ sisyphian attempts to win in the Court of Petty Appeals are so incredibly entertaining. And that’s why, time and time again, we deny them victory. But this analysis of the “1Ls always lose” doctrine is illustrative for the instant case. If the true purpose of deny-

“Is there ever a petty and/or gossip scenario in which FedSoc may come out on top?”

I. Background and Issues Presented

Petitioners are students who care deeply about something most would find easily forgettable: a well-designed event flier.⁴ As anyone in a student organization knows, advertising events around the Law School is hell.⁵ The worst part of all is having to design the flier itself. There’s a reason people go to law school, and it’s because they lack the requisite creative talent to accomplish such tasks. Or

These stunning posters infuriate me. *Who* at this law school has the wherewithal to make such splendors?⁶ And *why* am I not blessed with the same gifts whenever I am forced to feebly make advertisements for my own student organizations, stumbling on Adobe and Canva like a goddamn fool? It just isn’t fair.

And so, petitioners⁷—

⁶ I am informed by Chief Justice Morse that this person actually does exist, and that he’s a 3L. But that kind of defeats the purpose of the article, so the Court will engage in willful blindness here. Hasn’t stopped us before!

⁷ Yes, it’s probably clear at this point that “petitioners” really means “me.” But the Court may exercise jurisdiction over cases that include its justices as quasi-parties. See *Virginia Journal of International Law v. Virginia Law Review*, 76 U.Va 3 (2023) (Sandu, J., concurring in part, dissenting in part) (“Furthermore, this Court’s jurisdiction is over the conflicts and concerns of law

³ Another self-appointed title I gleefully share with Justice Allard.

⁴ You know the ones I’m talking about—the ones that surreptitiously take up space on the little pegboards, in between the 10,000 *VLR* and *VJIL* mastheads plastered around the school like war propaganda.

⁵ I am 24 years old, and I genuinely do not trust myself to use thumbtacks without injuring myself.

¹ Guilty!

² Self-appointed title.

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Faculty Quotes

C. Nicoletti: "At the time, the fastest way from Virginia to Texas was through New York. Not sure why this is, I think it has to do with...boats?"

X. Wang: "The students here seem oddly athletic compared to my students at Northwestern."

J. Setear: "Everyone should go see the *Barbie* movie...it's very good, and I'm very touchy about my masculinity."

F. Schauer: "I have views on television chefs. But you didn't pay to hear me talk about television chefs. But then again, maybe you did."


M. Gilbert: "Did you all notice this in the reading? You're like, 'nope, didn't do the reading, not on call.'"

J. Duffy: "The judge has 100 percent of the power, and you have exactly 0 percent of the power."

J. Harrison: "The Brits, they will eat anything. I think it's to demonstrate they are not the French - they eat bad things to prove it."

M. Collins: "Let's just stipulate that, in a way, I am always apologizing for my poor handwriting."

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



Virginia Law Weekly

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COPA

continued from page 4

ing 1Ls victory is *entertainment*, then this Court must ask: What would be the *funniest* outcome of the instant case?

The answer is simple: FedSoc winning is clearly funnier. To reward the organization that already has “won” at the Law School in much duller metrics—e.g., clerkship success rates; clout among faculty; being able to bring lawyers from SPLC-designated hate groups to Grounds and getting away with it—is absolutely hysterical. It is the exact sort of perceived “unfairness” among the Law School’s ideological organizations that motivated petitioners’ Complaint to begin with. And denying them relief at the last stage of litigation is, sadly, truly amusing.

III. Conclusion

The Court reverses the lower court and remands this case for further proceedings. (AKA—FedSoc, you have to keep producing your beautiful posters, because they are positively entrancing).

FLANAGAN, J., dissenting.

The majority’s decision today has been poisoned by a misunderstanding at the very root of the case. Petitioners sought the wrong form of injunctive relief when they petitioned the District Court to ban the one-of-a-kind craftsmanship of FedSoc’s Pamphleteer of Unusual Skill (hereafter, the PUS). Thankfully, we have broad authority to craft remedies, even if they surpass the wildest dreams of all parties. *See, e.g. Aggrieved 2Ls v. Roots Bowl Thieves*, 74 U.Va 11 (2022) (requiring the Roots Bowl thief conglomerate to hand-deliver lunch to their victims, even though plaintiffs only sought financial remuneration). So, it would be within our remit to instead compel the PUS to prepare equally splendid posters for all student groups who require their creative services.

It is obvious that the PUS has a monopoly power when it comes to an eye for design in the Law School. Petitioners have proffered ample evidence of the Liberals’ inability to choose an appropriately sized font, awkwardly sized graphic art, and low-definition photographs.

Introducing such evidence to the record is, perhaps, superfluous: The ubiquity of athleisure, Ruth Bader Ginsburg-themed decor, Madewell jeans, and baseball caps in the Law School stand on their own for the creative leanings of the pre-law community.⁸ For PUS to restrict the use of their artistic talents only to FedSoc’s purpose is a vertical alliance which is causing clear anticompetitive harm to the Law School community.

This type of anticompetitive exclusive dealing by the PUS is subject to Rule of Reason analysis. Are there any procompetitive benefits from allowing FedSoc to impair the ability of its rival organizations to draw crowds at their events? None has been introduced into the record, which is probably because no one expected this to become an antitrust case. Ignoring that, however, is consumer welfare

8 Indeed, one study shows that 67 percent of law students “listening to music” in the library on a given day are actually just listening to white noise. Likewise, when the average law student is asked if they see themselves as “creative,” eight out of ten will begin to describe the “well-crafted brief,” and the other two will mention “stress baking.”

maximized by allowing the PUS to churn out merely one piece of craftsmanship a week? Obviously not: it is a well-established principle that “the hallways of the Law School could use more eye candy.” *Students v. Dean Blazer*, 56 U.Va 21 (2004).

The majority’s point that FedSoc winning is “clearly funnier” is well-taken. But, wouldn’t it be a bit funnier for this Court to run ramshod over recent (disturbing) First Amendment jurisprudence and just force some skilled Republican pamphleteer to prepare dozens of simply perfect posters a day, all in the name of competition?



Counsel's Counsel

Dear Jane: Over the summer, one of my friends was invited to join VLR. At the time, I was thrilled for my friend. She worked hard last year and deserved to be recognized and rewarded for her success with a spot on VLR. I personally had zero desire to be on VLR. In fact, I quit the Unified Journal Tryout halfway through the weekend.

The problem started soon after we got back to school. A week into the semester, my friend told me about the VLR Outline Bank. I had heard of other organizations having member-only outline banks, like Virginia Law Women and FedSoc. I didn’t realize VLR also had its own outline bank. I guess I shouldn’t have been surprised that year after year, gunners pass down their best outlines to help the next generation.

I asked my friend to send me an outline for Securities Regulation from the outline bank. I explained that I have been confused in class and could really use some extra help. I asked for the outline

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HOT BENCH



Professor Xiao Wang

Interviewed by Nikolai Morse '24

Hello, Professor Wang! Welcome to UVA and thanks for sitting down with the *Law Weekly*. Although, as I understand it, you went to UVA for undergrad, so this is really more of a welcome back.

Yes, I did go to UVA for undergrad and had a great time here in Charlottesville. In fact, I lived on the Lawn, right near the Rotunda.

As most of us know, you have returned to lead the Supreme Court Litigation Clinic. But you also worked in private practice in Washington D.C. for a few years after law school. How did you make the transition from private practice to academia?

I did both trial and appellate work, but I was eager to get more experience as first chair in appellate matters, so over time I sought out more pro bono appellate work. Once I had a few successes, clients would reach out to me, and courts appointed me more regularly without me having to seek out those opportunities as actively. It became clear to me that this was the kind of work I was really interested in devoting myself to long-term, and so I started looking for clinic positions and joined Northwestern to do just that.

You mention that once you had some success in your pro bono work, more of those assignments began to flow your way. Is there any case in particular that you think of as a turning point in that respect?

Yes, there was a case in the Sixth Circuit called *United States v. Lee*,¹ where I represented a client who was challenging the sentence the district court had imposed as being substantively unreasonable. It is difficult to overstate how rare it is for this kind of a challenge to work. District judges are given a high degree of deference for their exercises of discretion in sentencing. Before I took the case, only about fifteen out of over a million such challenges had succeeded at the federal level. The Sixth Circuit took over a

¹ 974 F.3d 670 (6th Cir. 2020).

year to decide the case, but our win made it sixteen instead of fifteen.

That’s incredible. Did you consider working for a public interest litigation group, or somewhere that you could do this kind of work other than academia?

I did, but I have also had an interest in conducting research and publishing legal scholarship on issues relevant to appellate litigation. Around the same time as I started to have success in my pro bono appellate work, I was getting published in prominent journals such as the *California Law Review Online* and *Michigan Law Review Online*. Being a clinical professor seemed like a natural fit for my desire to keep litigating and pursuing my research.

Well, we are very glad to have you here at UVA Law. What goals do you have for the Supreme Court Litigation Clinic?

Professor Daniel Ortiz did a fantastic job running the SCOTUS clinic here, and it is in a strong position. Building a clinic up to this level takes vision and a lot of hard work. It requires a high level of entrepreneurship and engagement from your professors, students, and staff. My hope is to build on that foundation. First, I hope to continue building out the Ap-

pellate Network and leveraging that for our clinic students’ success. Second, I am excited to bring the En Banc Institute to UVA Law. It is a program that helps to prepare attorneys who will be arguing in front of a Circuit Court sitting en banc. That will give clinic students the opportunity to argue against litigators at the highest level of appellate practice. Hopefully, one day we could even host the Fourth Circuit sitting en banc. I don’t think that has ever been done at a law school before, and it would be an incredible experience.

Is there anything you would like to tell students who are interested in both the Appellate Litigation Clinic and the SCOTUS clinic?

To a certain extent, they will flow together. I will work with Scott Ballenger and Cate Stetson closely. In some sense, there is not a bright line between the work you do as a clinic member for one vs. the other. But there are two differences worth mentioning. First, in the SCOTUS clinic, I will be trying some creative ways to find more cases for students to work on. Because the federal government is not appealing cases they have lost below with as much frequency, there is a bit of a void in federal cases the Supreme Court is granting cert on. That is being filled by state cases, a number of them being brought by state solicitors

general. We will be looking at ways to get involved in those state cases, which should be exciting. Second, while appellate clinics operate almost as an independent law firm, by the nature of Supreme Court practice we will work with law firm partners who are part of the Supreme Court bar. For example, right now we’re working with Covington and Vinson & Elkins. It helps to have additional voices in the room and makes for an engaging, collaborative process.

Terrific. Alright Professor, now for the lightning round.

Oh boy.

Favorite restaurant in Charlottesville?

Mas. It was the first place I had tapas while I was an undergrad here.

Virginian or Biltmore?

The Virginian always gave off a genteel vibe, while Bilt was more fratty but also more chill. My friends and I mostly hung out at what was then called Buddhist Biker Bar, now Crozet Pizza.

Favorite season?

Chicago: non-winter. Here: right now.

Favorite coffee spot?

Twisted Tea Bazaar.

DEMOCRACY

continued from page 1

tive put it, “No such power was ever given to the courts. They have simply taken it.”⁸

Ohioans were not alone. Of the twenty-six states that today have ballot initiative or referendum processes in their constitutions, twenty-one enacted them between 1898 and 1918, Professor Wang explained. “You see this sort of popular resentment of the Supreme Court—this idea that these people might interpret the law, but we don’t have to adhere to every one of their court cases. We can have a voice in this.”

But in spite of the tradition of popular constitutionalism in some states, challenges to direct democracy have proliferated in recent years. For example, Amendment 4 in Florida—adopted by 65 percent of voters⁹—

8 C. B. Galbreath & Clarence E. Walker, *Fifty-second Day*, in *Proceedings and Debates of the Constitutional Convention of the State of Ohio 1087, 1091* (E. S. Nichols, ed. 1912).

9 Brennan Ctr. for Just., *Voting Rights Restoration Efforts in Florida* (Aug. 7, 2023), <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-florida>.

COUNSEL

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in a moment of desperation. She seemed sympathetic; we all know SecReg is a challenging class. She told me she would look through the bank and send me an outline.

A week went by and my friend did not send me an outline. I reached out again with a friendly reminder. “Sure, yeah, will do,” she responded. We’re now four weeks into the semester, and I still haven’t gotten the outline. She mentioned something about having to check the Managing Editor’s lengthy “rulebook.” Do I keep asking her to send me a VLR outline? Or should I accept defeat and pay the \$10 dues to get access to the FedSoc outline bank?

- Outline or Out of Line

Out of Line: I understand why you think you want an outline from the VLR Outline Bank. After all, who wouldn’t want an outline titled “CivPro Outline_GOD,” or a National Security outline with all of the answers to the cold calls already filled in?

Unfortunately, I’m not shocked that someone on VLR wouldn’t send you an outline. VLR doesn’t share

sought to end felony disenfranchisement “upon completion of all terms of sentence.”¹⁰ Within less than a year, the Florida Legislature adopted a new law that continued to withhold the right to vote from felons until they paid all outstanding legal financial obligations, without providing a reliable means of determining these obligations—effectively limiting the scope of Amendment 4.¹¹ Even more astoundingly, in Mississippi, after 73 percent of voters approved an initiative legalizing medical marijuana, the Mississippi Supreme Court struck down Mississippians’ constitutional right to vote in ballot initiatives altogether.¹²

10 Fla. Const. art. VI, § 4.

11 Brennan Ctr., *supra* note 9.

12 The Mississippi ballot initiative procedure, adopted in 1890, limited the total number of signatures that could be counted from each of the state’s five Congressional districts to one-fifth of the total number of required signatures. After the 2000 Census, Mississippi lost a congressional seat, leaving it with only four. The Mississippi Supreme Court held that this rendered the state constitution’s ballot initiative procedure inoperable. See *Initiative Measure*

their office door or their purified water with VJIL. They didn’t even give their newest editorial board members the latest merch, VLR-embossed Lululemon sweat-shirts. A journal that doesn’t share these basic necessities of life would never donate a pristinely-formatted Word document with pages of tables reciting the holdings for all of the unassigned notes cases.

The bigger question is: why are you taking SecReg? You clearly aren’t a gunner; you didn’t even make it to the writing component of the journal tryout. Did someone in the transactional group at your law firm tell you during OGI that you need to take the class to succeed in Big Law? I know add-drop has already ended, but you need to get out now.

If it is too late to drop the class, I don’t think your only solution is paying the \$10 FedSoc dues. You don’t need FedSoc on your resume—there isn’t a single appellate judge in any of the eleven judicial circuits who is hiring a clerk that didn’t even bother to join a specialty journal. But if you are willing to shell out some cash for an outline, I would suggest paying \$14 to access the Virginia Law Women outline bank. (The extra four dollars accounts

Professor Wang believes that these efforts to stymie popular initiatives have undermined the public’s confidence in government. “It totally makes sense why most people are disillusioned and disengaged.” But Professor Wang, undeterred, suggested that direct democracy can supplement the courts’ role in constitutional interpretation. “The way that we understand [the Constitution’s] relationship to us, what we owe it and what it owes us, how we read it—that constantly changes.”

Noting that defining the Constitution is an ongoing conversation, Professor Wang suggested that legislative change, judicial reform, and direct democracy can all contribute. In closing, Professor Wang implored students to remain involved in that conversation. “Please, for the time that you’re here and the time that you’re out of here, never forget that part of you that wants to see policy change. Use it to make a difference.”

No. 65: *Mayor Butler v. Watson*, 338 So. 3d 599, 607-08 (Miss. 2021).

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for the gender pay gap.) You might be a man, but I’m certain that the women of VLR will take pity on you given your desperation.

You can also refocus your efforts on getting an outline from a member of a specialty journal or a different student organization. I can’t imagine someone on VLBR or VJOLT not sharing an outline. The Tax Journal will probably give you an outline and a Spindrift. VELJ will give you an outline as long as you promise to recycle it after finals. Many other student orgs, including SBA and ACS, have free outline banks. While I can’t vouch for the quality of these outlines, something is better than nothing.

I’m sure you’re feeling let down by your friend. You really shouldn’t blame her though. The Managing Editor runs a tight ship out of the new VLR office, and they clearly didn’t include “sharing is caring” on their long list of rules. Good luck finding an outline. - Jane Doe, J.D.

For a serious response to your serious inquiries, please access the anonymous submission form using the QR code on page 4.

Sudoku

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

Solution

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

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