



VIRGINIA LAW WEEKLY

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

A Look

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Professor Panel Discusses Impeachment

Phil Tonseth '22
Staff Editor

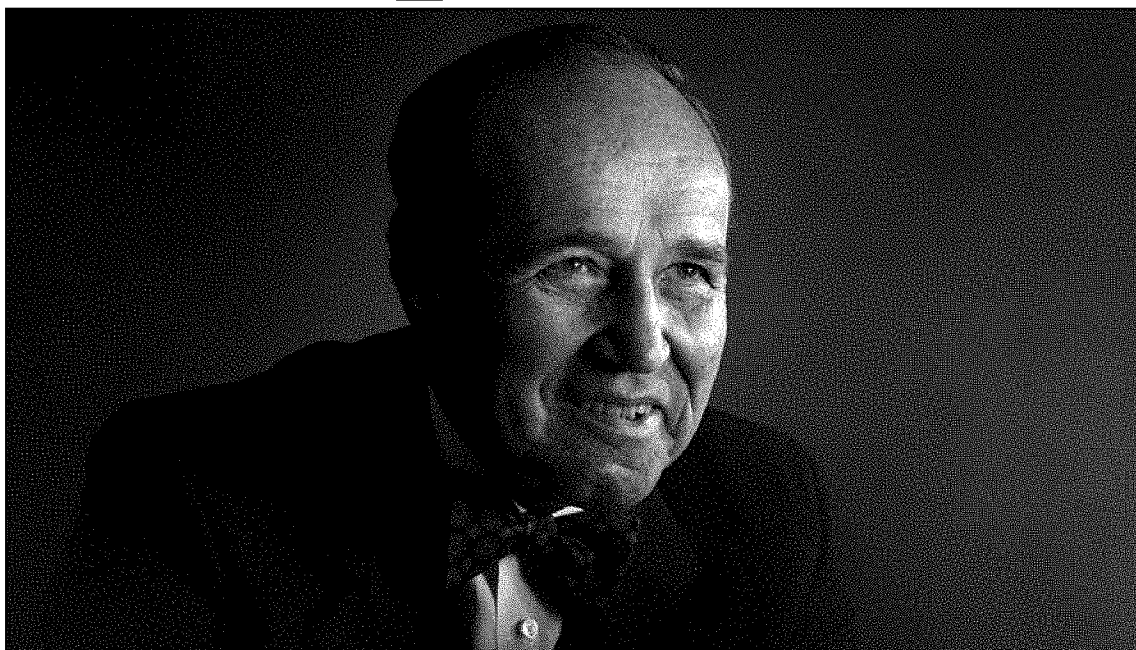
"Congress has set forth a process that we can't possibly predict." This theme pervaded the panel discussion of the current impeachment process within the House of Representatives, hosted by Virginia Law Democrats on October 2, 2019. Professors Ashley Deeks, Deborah Hellman, and Saikrishna Prakash spent forty-five minutes applying their expertise to the areas of national security, campaign finance, and presidential privilege in light of the current impeachment process. This discussion was followed by a fifteen-minute question and answer session. It's fair to say more questions were left open than were answered, not due to lack of knowledge on the topic, but rather because of the nearly constant matriculation of information from Washington D.C. and the unpredictable nature of the relevant actors.

To set the stage, Professor Deeks ran through the basics of presidential power in foreign affairs. Drawing from the Constitution, the President maintains broad powers and discretion in foreign affairs, serving as the sole actor for the country. The structural advantages inherent to the office: secrecy, speed, and control over intelligence, have only been enlarged by Congress's additional delegation of power to the Executive through various statutes. President Trump's current, unfettered power as the sole voice in foreign policy for the U.S., while necessary to execute the president's authority, is being challenged for its appropriateness and necessity within the scope of the whistleblower complaint.

As a preeminent expert on national security law, Professor Deeks transitioned the discussion to the classification of powers of the president as compared to the powers of the Judiciary and Congress to check the executive in this realm. As President Trump is able to classify or declassify documents at his discretion, thus allowing the White House to retain certain "code word" access files, inherent difficulties exist for congress-

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Remembering Mortimer Caplin '40



UVA Law icon Mortimer Caplin '40. Photo courtesy law.virginia.edu.

Sarah-Jane Lorenzo '21
Staff Editor

The Law School community gathered on Saturday to celebrate the life and legacy of Mortimer Caplin '40, who died this summer at 103. Caplin was a dedicated alumnus and professor emeritus who served as a beachmaster for the U.S. Navy during the Normandy invasion, sought to bring ease to tax season as IRS Commissioner in the early 1960s, and co-founded the Washington, D.C. law firm Caplin & Drysdale.

University of Virginia President James Ryan delivered opening remarks, and reflected on some of Caplin's earliest contributions to the University: as a member of the university's boxing team, Caplin won an NCAA boxing title with a broken bone in his left hand. The words of his boxing coach continued to inspire him throughout his career—"Punch hard, punch first, and keep on punching."

Caplin excelled academically and graduated first in his class from the Law School. His talent quickly led him back to Virginia, where he was a young law professor when Gregory Swanson, the first black student to attend UVA, applied for admission. Gregory Swanson's nephew, Evans Hopkins, shared that Caplin's advocacy on Swanson's behalf was powerful.

When Swanson applied to the Law School, no black man had ever been admit-

ted to an all white southern school. Law school faculty engaged in a spirited debate over Swanson's application, and Caplin spoke strongly in Swanson's favor. Although he was new to the faculty at the time and speaking up was risky, Caplin understood the importance of commitment to diversity. As the Law School's first Jewish professor, discrimination was not foreign to him: despite graduating first in his class and serving as editor-in-chief of the *Virginia Law Review*, Caplin was repeatedly turned down by New York firms while searching for a job.

Perhaps inspired by Caplin's impassioned advocacy, law faculty voted unanimously in favor of Swanson's admission. The University's Board of Visitors rejected the school's decision and a legal battle ensued. When Swanson entered the Law School as a student, Caplin was one of his professors. Years later, a classmate that Swanson first befriended in Caplin's class—Robert F. Kennedy—recommended Swanson's employment at the IRS, where Caplin was then serving as Commissioner. Throughout his lifetime, Caplin remained dedicated to preserving Swanson's story: in his 90s, he authored an online blog devoted to the Gregory Swanson case.

Wherever he went, Caplin was committed to his community. With his wife Ruth, he opened his home

as a classroom for children in Charlottesville when the Governor of Virginia shut down state public schools during the massive resistance to federal desegregation orders following *Brown v. Board of Education*. Caplin's son, Michael, remembered that his father always "shared what he had with anyone who needed it."

At work, Caplin was known for sharing his energy with all who crossed his path. Caplin & Drysdale attorney Scott D. Michel '80, noted that Caplin relished being a disrupter and enjoyed asking hard questions. Late into his 90s, Caplin continued swimming a mile each day and heading into the office. If asked about his age, Caplin liked to quote the witticism that, "age is a question of mind over matter—if you don't mind, it doesn't matter." As Michel said, "Mort didn't mind, and it didn't matter."

Caplin believed that every generation can rise to greatness. Through his many contributions to the Law School, he sought to help thousands of students make the world a better place. Law School Dean Risa Goluboff reflected on Caplin's spirit of giving and generosity and noted that gifts given in furtherance of his "legendary commitment to public service" continue to provide so many opportunities for students and faculty at the Law

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around north grounds



Thumbs up to midterms this week. ANG both needed a good cry and reason to use ANG's Costco membership for more tissues since ANG hasn't grocery shopped since before school started.



Thumbs down to the Harley Davidson owner who parked outside of WB. Nobody cares how "cool" your bike is; that's not what bike racks are for.



Thumbs up to the daily Docket email taking over ANG's meal prep plan. With lunch each day determined by the upcoming lecture, ANG can focus on more pressing concerns, like trying to catch all of the snakes in ScoCo.



Thumbs down to professors who aren't cancelling class the Thursday and Friday after fall break. ANG wouldn't have gone to class anyway, because ANG is ANG, but at least cancel class so ANG doesn't have to pretend to feel bad about it.



Thumbs up to the law students precariously climbing on the roof of the patio at the Gunners show at Coupe's on Friday. ANG admires your courage to test Virginia's use of contributory negligence as a bar to recovery.



Thumbs sideways to Dean Davies and Wellness Wednesday. ANG's 1L scurvy has been put off for at least another week thanks to the oranges. But that scurvy would have been great for ANG's pirate costume ANG's been putting together.

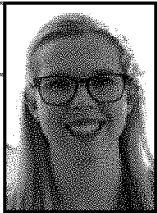


Thumbs down to the "coffee" machines in MyLab. ANG has had many a questionable drink in ANG's life and many such drinks at Bilt, but the concoction dripping from those devious devices are something else.

Roundup of Recent Supreme Court Cases

Last week, the Student Legal Forum hosted its annual Supreme Court Roundup,

Taylor Eliceui '20
Features Editor



where professors gather to discuss important cases from the last term. Professor Dick Howard has been moderating the panel for a long time—so long that he can't remember when the tradition started. This year, Professor Howard was joined by Professors Leslie Kendrick and Rich Schragger and, for the first time, an election law expert non-faculty member, Brian Cannon. Cannon, a William & Mary School of Law graduate, is the executive director of One Virginia 2021, a non-profit dedicated to ending gerrymandering in Virginia.

Professor Howard began the panel with a discussion of the patterns and personalities that shaped the last term. Professor Howard noted that the term was not a "blockbuster" because the Court did not decide many hot button issues and decided cases on narrow grounds. It was also a particularly divided term. The Court only issued twenty-nine unanimous decisions, about 38 percent of its total decisions. Professor Howard thinks the term represented the Court in transition and can be identified as the term where Chief

Justice Roberts truly took charge, serving as the ideological center of the Court and casting the deciding vote in two of the most important cases—*Dep't of Commerce v. New York* (the census case) and *Rucho v. Common Cause* (the gerrymandering case)—one decision with the liberals and one decision with the conservatives. Surprisingly, Justice Kavanaugh played an unexpected role in the balance of power and voted with Chief Justice Roberts in 94 percent of cases, putting him closer to the ideological center of the Court. Additionally, Justice Thomas wrote the most (337 pages) and Justice Ginsburg worked the fastest (producing decisions in seventy-one days, on average).

Professor Howard also mentioned other particularly important cases and offered his predictions on the upcoming term. Along with the census and gerrymandering cases, Professor Howard identified *Flowers v. Mississippi* (overturning the sixth conviction of Curtis Flowers when the prosecution used its peremptory strikes to discriminate on the basis of race)¹ and *Apple, Inc. v. Pepper*, where Justices Breyer, Ginsburg, Kagan, Kavanaugh, and Soto-

1 If you haven't, please listen to *In the Dark* and learn about the absolute injustice the prosecution has perpetrated against Flowers.

mayor allowed an antitrust action against Apple to proceed. In this upcoming term, Professor Howard identified the consolidated cases on whether Title VII of the Civil Rights Act prohibits discrimination on the basis of sexual orientation, *New York State Rifle and Gun Ass'n v. New York* (the first Second Amendment case in over a decade), and the Deferred Action for Childhood Arrivals (DACA) case, as the most important cases of this upcoming term. Finally, Professor Howard predicted that *Roe v. Wade* will not be overturned this term, and any cases changing the precedent will occur slowly and incrementally.

Professor Kendrick took the microphone next and discussed *Iancu v. Brunetti*, which gave her several opportunities to say the word "FUCT." The petitioner challenged a portion of the Lanham Act, which prohibits the government from granting trademark protection to "immoral or scandalous trademarks" and the denial of his application for a trademark over FUCT. The petitioner alleged that the prohibition was viewpoint discrimination in violation of the First Amendment, and a majority of the Court agreed. The dissenting members of the Court criticized the decision for opening the floodgates to immoral or scandalous trademarks without any sort of limiting prin-

ciple. Professor Kendrick also discussed the decision within the context of First Amendment jurisprudence, which has been expanding, and questioned if it's necessary for the First Amendment to reach this far.

Continuing the First Amendment theme, Professor Schragger discussed *American Legion v. American Humanist Assn.*, also known as the Bladensburg Cross case. The Court ruled that the government could continue to maintain a 40-foot cross in Bladensburg, Maryland without violating the Establishment Clause. After *American Legion*, it's unclear how the Establishment Clause limits what the government can say. The case cast doubt on any purpose-based test under the Establishment Clause, because the Court found that the meaning of the cross had become "secularized" over time and associated with honoring the deceased in World War One rather than religion. Professor Schragger concluded that *American Legion* raises the possibility that the Supreme Court will revisit settled Establishment Clause issues, like prayer in school. He also questioned how the Court will handle these cases, where the prayer in question was once a part of civic society and a long-standing tradition until the Court found it unconstitutional.

Cannon concluded the

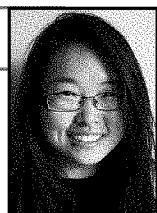
panel with a discussion of *Rucho v. Common Cause*, where the Court held that partisan gerrymandering claims are non-justiciable within federal courts. The decision was a blow to academics and lawyers who spent the last fifteen years trying to come up with tests to measure partisan gerrymandering after Justice Kennedy requested a test in the 2004 decision *Vieth v. Jubelirer*. While the case was a loss for anti-gerrymandering advocates, Cannon noted that the case wouldn't have created the precedent necessary to end partisan gerrymandering because it only would have outlawed partisan gerrymandering where the legislators specifically admitted that they drew districts for partisan advantage. Legislators could simply stop admitting their partisan goals, and gerrymandering could continue unabated. After *Rucho*, the gerrymandering fight will continue at the state level, where advocates have made significant progress. Cannon noted that the 2023 House of Representatives will be the first House where more than half of the members come from states that have outlawed partisan gerrymandering under their state constitutions. Cannon is hopeful that Virginia will join that list.

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How to Become More Cultured on a Law School Budget: Arts and Drama Performances in C'ville for Free!

As the last Sunset Series draws to an end and October rolls into Charlottesville,

Grace Tang '21
Lifestyle Editor



you may be wondering what to do with all that free time at your disposal other than chilling at wineries all weekend. As law students, we have limited cash flow at our disposal.¹ Therefore, attending cool events around the city should not break the bank. After months² of dedicated research, I have found a variety of art performances throughout the fall and spring with huge discounts available to law students. By attending the events below, not only do you get to indulge in fantastic performances, but you also get an amazing opportunity to support arts and music in Charlottesville.³

1 My short course on finance and public equity is clearly paying off. Also, jealous if you are not part of the "we" mentioned above and you can jet off to Ibiza on the weekends (if so please take me in your suitcase).

2 In dog years.

3 What I call a win-win situation.

Virginia Film Festival (October 23-27)

Now in its 32nd year, the Virginia Film Festival is among the nation's most acclaimed regional film festivals and one of the most highly anticipated cultural events in the region. With over 150 films and special guests spread out across five days, viewers can watch everything from *Just Mercy*, adapted from Brian Stevenson's book about the country's system of incarceration, to foreign films from around the world, LGBTQIA+, dramas of all kinds. Attending the festival is also a great opportunity to experience the different theatres Charlottesville has to offer. Many locations are at the Downtown Mall or on campus.

UVA Drama Performances (Fall and Spring)

The UVA Drama program has produced some fantastic actors such as Sarah Drew '02 and Tina Fey '92. Maybe you'll see the next Tina Fey when you attend a UVA Drama performance on campus and watch the drama students perform. The fall and spring seasons of the UVA Drama program include performances of plays, musicals, and dance recitals. With intriguing titles like "Lung," "She kills

monsters,"⁴ and "Once Upon a Mattress,"⁵ the drama program has some great shows in the works. Free parking provided.

UVA Concert Series (Fall and Spring)

The UVA music program has a fantastic array of musical performances. These are definitely worth attending, especially because so many extremely talented specialist groups and artists come through Charlottesville. Unlike the drama program, concert performances only have one show or two shows at a specific day for a specific time. Some of the remaining shows in Charlottesville for the upcoming fall season include a jazz ensemble, Romantic Titans—Mendelssohn and Strauss, The Magid Chronicles performed by the Zlezmer ensemble, and UVA Chamber Singers. This is a great chance to see some beautiful performance halls and build up your tastes in different styles of music.

4 The play is about dungeons and dragons (Professor Setear should check this one out).

5 A reimagined retelling of the classic fairy tale Princess and the Pea.

THE BEST PART \$\$\$ (Drumroll) GETTING IN FOR FREE

At first, I thought it was a steal to purchase discounted student tickets for performances, as student tickets generally cost \$10-12 compared to much higher prices the public pays (e.g. most musical performances cost \$50 for the public).

However, I soon discovered the open secret that students can actually get into all of the events mentioned above for FREE through the ART\$ program on campus. As law students, we are eligible to attend every event for free (if shows are not sold out).⁶ Each stu-

6 Generally, 90% of shows will have availability for free tickets, especially if booked in

advance. student is limited to one ticket per event, however, you can get free tickets for multiple events in the same category. If you wanted to see six films at the Virginia Film festival or three plays this semester, you are welcome to do so.

To obtain free tickets, access artsandsciences.virginia.edu/boxoffice/ and on the webpage, click on the top right blue box that says "Free UVA Student Tickets" for access to the events calendar and reservation of free tickets. I hope to see more UVA Law students at arts performances this year!

gt5ay@virginia.edu

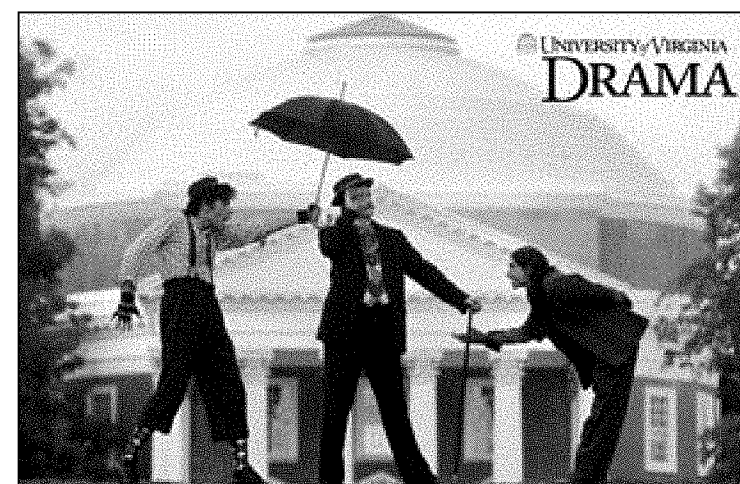


Photo courtesy UVA Department of Drama.

CAPLIN

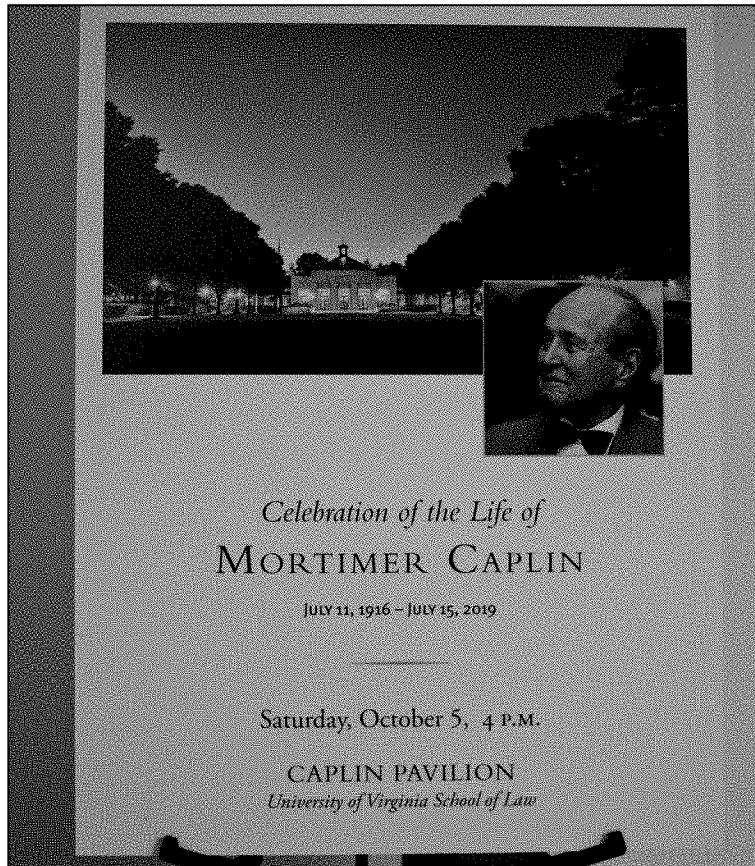
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School each year.

Friends and coworkers described Caplin as humble and respectful, with a constant smile and a twinkle in his eye. His son Michael said that Caplin's outlook was always bright and his zest for life was contagious. "His every day was designed by the passionate pursuit of the common good."

President Ryan noted that Caplin extolled the virtues UVA strives to promote. "If you're looking for an example of great and good," he said, "look no further than Mort Caplin."

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The UVA community gathered on Saturday to celebrate the distinguished life of Mortimer Caplin '40 in the eponymous Caplin Pavilion. Photo credit Kolleen Gladden '21.

IMPEACHMENT

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sional oversight. Even with certain congressional Committees maintaining security clearances and receiving classified briefings, the White House and Presidency often exert executive privilege to protect certain documents. Identifying a major crux in the current inquiry, Professor Prakash noted the Supreme Court has not fully fleshed out the issue of executive privilege,¹ has not dismissed this privilege, nor completely defined its full extent. The gaps between the branches of federal government on executive privilege and the extent to which it protects communications is one major issue to be addressed in this inquiry relating both to national security and presidential powers.

Relatedly, Professor Deeks addressed the risk the impeachment inquiry would have for U.S. national security writ large. With the Department of State, Department of Justice, and Congress focused on this matter, their concentration will not be on external adversaries including North Korea, Russia, and Iran. The time for an adversary to test U.S. foreign policy and strength would naturally follow from this distracted focus, thus increasing the

¹ Originally conceived by George Washington with regard to the Jay Treaty, as discussed in *United States v. Nixon*, 418 U.S. 683 (1974).

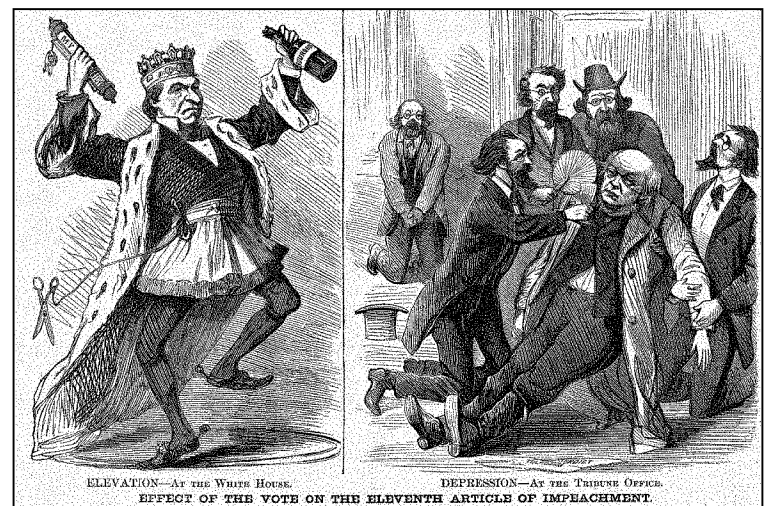
risk to the nation as a whole during this process on both a domestic and international scale.

Professor Hellman then turned the conversation to how the alleged bribe offered can be construed as a violation of campaign finance laws. Although impeachment covers the crimes of treason, bribery, and high crimes and misdemeanors, Professor Hellman focused on bribery as her example to dissect the duplicity of the legal and political fight within the greater impeachment inquiry. Whether President Trump solicited a bribe is a question to be decided by Congress, but for a bribe to occur, there had to be a trade between two unequal types of things. Whereas withholding appropriated aid for a better foreign rights record does not constitute a bribe, as both things are political in nature, withholding foreign aid for opposition research does not

meet the same threshold. Continuing this example, opposition research would be a form of campaign contribution, as it is inherently something of value. Thus, opposition research received as a bribe would violate campaign finance laws. Is this an impeachable offense? Does it fall within a high crimes and misdemeanor definition? Or, is there a necessary public benefit to receive the information from the investigation on the Biden family? The method Congress uses to determine impeachment and judge the aforementioned questions, if campaign finance crimes are taken into account for impeachment, must be apolitical and objective, because politicians will naturally believe their own reelection is beneficial to the public.

Taking into account all of the national security, cam-

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Andrew Johnson revels and *New York Tribune* Editor-in-Chief Horace Greeley dispairs after the Senate impeachment trial resulted in President Johnson's acquittal in this 1868 political cartoon. Photo courtesy harpweek.com.

Breaking the Glass Ceiling in M&A

"There's no cookie cutter approach to being a lawyer in this field," Moderator and Covington & Burling attorney Charlotte

Melissa Privette '22
Staff Editor

May stated in her opening remarks during the Women in M&A panel on Tuesday, October 1. The event, held by attorneys from the American Bar Association's Women in M&A Subcommittee, was sponsored by Virginia Law Women and Virginia Law & Business Society and organized by Marit Slaughter of the Office of Private Practice.

Every two years, the ABA surveys over 20,000 lawyers in North America, across over twenty-five law firms, to measure the number of women in various roles and practice areas. According to the most recent study in December 2018, women make up almost half of the entry-level legal professionals in North America. However, when looking at the mergers and acquisition (M&A) practice area specifically, women only comprise 41 percent of all junior associates in North America, and only 16 percent of senior equity partners. This event was geared at encouraging more women to consider M&A practice.

The event kicked off by explaining what exactly M&A is. M&A typically involves working on private equity transactions or the purchase or sale of a public or private company. In public

M&A, the target is publicly traded, which means there are different rules in terms of disclosure and structuring of the transaction, which would look different from the perspective of a private company, especially one that is closely held by a few investors or a family.

The panelists expressed how the work they do is unique and exciting. Skadden partner Kady Ashley described working on "a panoply of things," including a hostile takeover in which her client received an unsolicited offer and was engaged in a proxy fight over its board, resulting in a purchase by another company. Allison Schiffman, a special counsel at Covington & Burling, said, "M&A is very broad," and that no two deals are the same. A deal can be just a sale of assets, equity, or even a joint venture, when both companies contribute assets to form a new entity. "As the M&A lawyers, we're really running the deal," Schiffman explained.

Each panelist also discussed why they chose M&A over other practice groups. In Schiffman's case, she didn't like writing briefs but enjoyed writing in general. She participated in M&A training during her time as a summer associate at a firm and then worked in-house for a year prior to joining a firm full time. She chose to practice M&A because it was "where I could really feel I was a part of what my clients were doing."

Katherine Keeley, a senior associate at Hogan Lovells, came to UVA knowing that she wanted

to do corporate law after having worked in real estate for three years before law school. "I wasn't certain I wanted to be a lawyer forever," she recalled. She felt that working in a practice that required her to use business knowledge would keep her options open in case she wanted to go back to that field. "M&A, of the corporate practices, is the most creative practice," she told the room. It allows an attorney to work across multiple industries and areas and is a very social practice. M&A attorneys must coordinate with specialist groups over the course of the deal.

Julia Kim, an associate at Sullivan & Cromwell, had a unique path to the M&A practice. Having spent three years as a public school teacher, she initially believed she wanted to practice immigration law but ultimately decided to do corporate work. She pointed out that she was drawn by the prospect of each deal being unique, saying, "For someone like me who has a diverse range of interests, I thought the field really suited me."

Ashley, who works in D.C., said that while D.C. is known more for its litigation work than corporate, she had wanted to try both areas and realized that she didn't want to do something as combative as litigation. She said that when clients come to her for help with a deal, she is "doing something productive for their business. It's very collaborative—you do get to know your clients and their businesses very well." Clients often will come to

her with other issues unrelated to M&A. "You are the trusted advisor," she added.

The panelists also covered common misconceptions about the M&A practice's lifestyle. "M&A gets a bad rap for lifestyle. It's not well deserved," Keeley remarked. Contrary to popular belief, M&A lawyers are not on planes 24/7 and it is possible to have a family. It would perhaps be more accurate to say that litigation involves more travel than M&A, and for longer periods of time. "If you a litigator, there's a risk you will be away for weeks," she went on to say. Most of M&A work is in an office and consists of calls and conferences. As an attorney achieves more seniority, there is more travel, but mainly for client development purposes. Keeley recalled that when she was just beginning as an associate, the most she traveled was maybe once a year. As with any practice, M&A has its ups and downs. It is busy when you're staffed on a deal about to close, which will lead to late nights and sometimes late mornings. The times where the job is busy are more condensed, and attorneys have a lot more free time when they aren't staffed on a closing deal.

Kim also acknowledged the challenges of working in such a dynamic practice group, saying, "You're helping your clients through a really pivotal point in their timeline." However, the advances in technology has helped attorneys bring work home and create flexibility in the face of unpredictability. "You need to

be good at managing unpredictability, but at the same time, it is manageable."

Ashley spoke about how law firms are beginning to offer benefits to new mothers, like reduced hours and greater flexibility on when and how they work. She also drew a contrast between the time it takes to close a deal and the life cycle of a case. "Our deals start and end in a reasonable amount of time," she said, while litigation can last for years.

The panelists also sought to dispel any fears of not being up to speed on financial knowledge from discouraging women from entering this practice. That said, Schiffman suggested that any aspiring attorney "take any accounting classes you possibly can no matter what you want to do." Whether doing transactional work or litigation, being well versed in accounting will help you to understand your client's business. She also observed that the accounting person at your client might decide to call you, knowing that you'll understand their jargon, which is one way a new attorney can add value. "Always absorb the knowledge being given to you," she advised, encouraging the attendees to ask questions and "make it your mission to learn on the job."

Keeley agreed that accounting is a useful skill that applies to litigators too, and urged students not to be intimidated despite a lack of background or knowledge. "You learn corporate work

M&A page 6

LAW WEEKLY FEATURE: Court of Petty Appeals

The Court of Petty Appeals is the highest appellate jurisdiction court at UVA Law. The Court has the power to review any and all decisions, conflicts, and disputes that arise involving, either directly, indirectly, or tangentially, the Law School or its students. The Court comprises four associate justices and one Chief Justice. Opinions shall be released periodically and only in the official court reporter: the Virginia Law Weekly. Please email a brief summary of any and all conflicts to mes5hf@virginia.edu

Classmates v. Over-Enthusiastic Class Discussion Volunteer d.b.a Gunners
323 U.Va 142 (2019)

PICKETT, J., and LUÉVANO, J., delivered the opinion of the Court, in which SHMAZZLE, C.J., ELICEGUI, LUK, SCHMID, JONES, JJ. join.

JUSTICES PICKETT and LUÉVANO delivered the opinion of the Court.

I
Despite UVA Law’s reputation for collegiality and friendliness, there remain some students who recklessly misinterpret the school’s unwritten rules and wish to trespass upon classroom interactions to which there is no implied license and no invitation. Given the lack of understanding of the Covenant of the Cold Call, colloquially known as “Minding Your Own Business,” the Court will restore order by condemning the actions of Over-Enthusiastic Class Discussion Volunteers and defining when and how cold calls can be trespassed upon.

II
On October 3, 2019, plaintiff John Jacob Jingleheimer Schmidt (hereinafter ‘JJJS’) suffered a common law school misfortune—he was cold called. JJJS, having been cold called just last class, mistakenly believed he was safe “at least until November.”¹ He was so confident in his safety, in fact, that he had chosen to read ahead for Civil Procedure² instead of reading for

1 JJJS alleges, and this Court finds as fact, that his professor used a randomized system and (almost) *never* cold called someone twice in a row.

2 And catch up on the new episodes of the Great British Baking Show...but this fact is

Torts.
As JJJS searched through his book in a panic to find the paragraph the professor was asking him about, something flickered in the corner of his eye. At first, he thought it would be a fellow student directing him to the mysterious paragraph,³ as is the typical UVA Law way. But as he glanced over, he quickly realized that it was the section’s

“The Covenant of the Cold Call, colloquially known as ‘Minding Your Own Business.’”
- JJ. Pickett and Luévano

Over-Enthusiastic Class Discussion Volunteer (hereinafter “The Gunner”) who had made the motion. The Gunner stared JJJS in the eyes and, with an expression akin to that of Scar’s before pushing Mufasa off the ledge into a herd of stampeding wildebeests,⁴ raised his hand to the sky. The professor called on The Gunner, who relieved JJJS of his duties, but the damage was done. Their classmates had witnessed a repeated, reckless disregard for the Covenant of irrelevant to the issue at hand.

3 Which, it turns out, was in a footnote. This would constitute a separate violation under the Covenant of the Cold Call, which recommends that professors avoid questions pertaining to footnotes, dissents, and other wildly unfair material found in a casebook. However, the plaintiff has not alleged that complaint today.

4 See *The Lion King* (1994). Not the new one, though. It’s just not the same.

Cold Calling.
After class, the students quickly gathered together to file a complaint on behalf of JJJS against The Gunner and those like him.⁵

III
The Covenant of Cold Calls, again known as Minding Your Own Business, provides that fellow students may intervene in a cold call *only* when

the professor opens it up to the class or in order to subtly suggest the correct answer to their on-call classmate next to them. The Covenant strictly prohibits students from inserting themselves into an ongoing cold call, particularly in order to demonstrate their own close reading abilities and self-perceived mastery of the legal issue in question.

The Covenant of Cold Calls is as old as the Cold Call itself, and it is a principle that has been passed down from Peer Advisors to 1Ls for centuries as part of Common Knowledge. First laid out in the case before a fellow court, *Elle Woods v. Vivian Kensington*, 317 Harv. 11, 98 (2001), the Covenant of Cold Calls was established as a general standard against making your fellow students look stupid in front of their colleagues. It has since been refined to a set of

5 The Gunner is also facing criminal charges for “Impersonating a Police Officer” or “Being a Cop,” as filed by his fellow classmates.

rules defining the act of Minding Your Own Business. *McLovin’ v. Professors Who Don’t Cold Call in Alphabetical Order*, 159 U.Va. 13, 3 (2007), first recognized the widely followed rule that classmates will always forget another’s cold call (or at least pretend to) and, if asked after class by the person on call, “Was it as bad as it felt?” always respond with “No! You did great! Plus

I was barely paying attention.”
Restatement Twelve of Law School Etiquette expanded this doctrine to protect on-call students from classmates infringing upon their right to answer the question, even after taking a long pause or saying nothing in the hopes that the professor forgets they were on call. Finally, the recent case of *1L Gunners v. Everyone Else*, 324 U.Va. 22, 24 (2019), established that, “emotional distress is a harm within the risk of attending law school.” However, in *Caesar v. Brutus*, 114 U.Va. 19, 31 (1950), this Court clearly carved out an exception for emotional harm at the hands of sectionmates

“Like family, the bond between sectionmates is forged in the fire of 1L, and they are expected to have and protect each others’ backs.”)
The Gunner’s actions were clearly in violation of the Covenant of Cold Calls. Not only did he fail to wait for the professor to open the cold call to the rest of the class, but he also maliciously trespassed upon the cold call of another and willfully embarrassed a sectionmate. While The Gunner attempted to assert a defense of Trying to Move the Class Along, we find that this is the job of the professor, and that there is no place for a student in this duty. The Gunner should have acted like he was similarly confused about the case and comforted JJJS in the aftermath of the bloodbath with words such as, “that was totally unfair” and, “that has to be a tort, we should sue.”

IV
We hold in favor of the plaintiffs and award emotional damages in the form of a round of drinks at Bilt for JJJS and his pals,⁶ which is the only proper way to respond to a brutal day of cold calls and make JJJS whole.

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6 OR if JJJS is not a drinker, we remand this case to the lower court in order to find the non-alcohol equivalent.

Faculty Quotes

E. Yale: “I’ll try not to be annoying. It might be difficult.”

G. Rutherglen: “How can the rest of the world be wrong and only myself be right?”

D. Leslie: “It doesn’t matter, I don’t have to be truthful here!”

M. Schwartzman: “I’m always riding on my wife’s coattails.”


M. Gilbert: “Sometimes

in my classes, people look like they’re confused, and sometimes they just look like they’re in pain.”

R. Mason: “Happy birthday. You’ll find your 1099-form in the card.”

G.E. White: “I would never think to throw a party in the early evening without alcohol.”

Heard a good faculty quote? Email editor@law-weekly.org



Virginia Law Weekly

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Club Spotlight: Older Wiser Law Students (OWLS)

I was thirty-four years old the day I began my second career here at UVA Law. Having skimmed the demographic

Peter Cirka '21
Guest Writer



profiles of various schools' incoming classes, I had applied knowing I'd be among the oldest students of any law school's incoming class. I had discovered that, typically, half of first-year law students nationwide were twenty-six or older and one out of every five was at least thirty. Even better, I had detected an especially healthy presence of older students at many of my target schools. For example, Northwestern and Temple reliably reported 1L median ages at or above twenty-seven. Both also reported age ranges that typically reached into the forties and fifties. Most promisingly, I learned of a student organization called Older Wiser Law Students (OWLS) that existed at most schools to facilitate social events and professional guidance for students like myself.

When I was accepted at UVA, I was thrilled and grateful for the opportunity to start my second career at one of the country's elite law schools. But I also knew that UVA's student body tended towards the younger side as compared to broader trends. In fact, our

incoming 1L median age is historically around twenty-four, and our age range rarely reaches beyond the mid-thirties. So, I moved to Charlottesville, navigated orientation exercises, and began the first semester with mixed feelings. Professionally, I had chosen the best place possible. But on a personal level, I knew I would probably meet far fewer students near my age than I might have elsewhere.

All the more reason, I thought, to swoop in and join UVA's chapter of OWLS as soon as I was settled in. Better yet, I guessed from the slimmer numbers that I might find an especially tight-knit group (or, at the very least, one that was skilled at knitting). Having already spied a student mailbox owned by "OWLS at UVA Law," I circled the courtyard at the September Student Activities Fair eagerly. Imagine my consternation, then, when I asked around and learned that the UVA OWLS had actually died off years ago. Sadly, I was told that the mailbox in ScoCo was an empty nest—a mere memorial of some forgotten age when OWLS had prospered at UVA—neglected but, much like the dial-up modems and flip phones of its former owners' childhood homes, curiously not yet discarded. There was a mailbox, but no Parlia-

ment.¹

My disappointment passed quickly enough. I had landed in Section J, which included not only several students in their late twenties, but a fellow tricenarian. Even better, I quickly realized that, all the way down to the "K-JDs," my section mates were exceptionally mature. That initial thrill and gratitude I had felt for the chance to attend UVA sustained easily throughout 1L year, undampened by the fact that I stuck out a bit. But a twinge of dissatisfaction persisted. In many ways, a uniquely young character is a great trait for a law school to have. It is humbling to learn alongside some of the brightest young people in the country—people in their early twenties who are thinking, speaking, and writing at a level higher than most mature professionals in any field. But on the other hand, there is a type of perspective that can only be gained through life experience and only appreciated by others who have likewise ventured beyond the walls of academia for some years. I wondered, "With the OWLS retired, what else does our Law School's community do for older students seeking the type of solidarity I sought—beyond hoping those students are lucky enough to find it in

their (randomly assigned)² sectionmates?

I learned that, in some narrower respects, the community was already doing a great job. I connected with UVA Law families and Virginia Law Veterans—thriving organizations whose mailboxes were dust-free. Both groups commonly, though of course not necessarily, draw older students. But given the more niche missions of Families and Vets, there seemed room for an organization that could serve as more of a 'big tent' able deliver social events, academic resources, and career guidance for older students from any walk of life. To that end, along with the hard work of several other founding board members, I headed up the official resurrection of the OWLS at UVA Law.

Energized by some low-key but high-energy self-funded events last spring, including a self-funded SuperbOWL party, the OWLS are soaring in their first official year. We kicked off with a September happy hour at Kardinal Hall, and look forward to hosting several more around town. We've also established a mentorship program, which bud-

gets for 1Ls to grab coffee and lunch throughout the year with one of our 2L or 3L members. In October, we hosted a special Career Services event called "Working Your Work Experience," where Kevin Donovan and Annie Kim generously gave their time to dish specific advice on how to effectively present a prior career in resumes, cover letters, and interviews. And, since some puns are just irresistible, we've already cemented the SuperbOWLS party as our annual flagship event.

We are often asked if there is an "age cutoff." The answer is a resounding, "No!" Student organizations celebrating various aspects of diversity have a proud tradition of inviting students to join their communities as allies, regardless of whether every student shares that identity. In that tradition, the OWLS welcome all students, of any age, who believe that a law school's environment and the field of law itself is enhanced by students that bring distinct personal and professional experiences to the law school classroom.

First and foremost, the OWLS celebrate diversity of experience itself. After all, as Oliver Wendell Holmes put it, "The life of the law has not been logic; it has been experience." The common law has always looked backward before daring to forge incrementally forward—so, of course, it must have something to look at in the first place. Lawyers, judges, and legislators do not lock themselves away in libraries or chambers to consult wholly logical or theoretical axioms from which to infer some abstract notion of "the law." Rather, they move through the world itself—personally navigating successes and failures, logging wins and losses, reckoning with war and peace, finding love, and enduring loss—before they purport to advocate, adjudicate, or legislate that world into (fingers-crossed) a better position than the one in which they found it. The OWLS strive to embody Holmes's reflection. We have merely, perhaps, frontloaded our experiential chapters more than most. We'd like the UVA Law community to know that we are your colleagues and students who, before even realizing that we envisioned a future in the law, went out into the world and learned trades, founded businesses, taught, became parents, studied great art and literature, or served their country, to name only a few of the endeavors proudly populating the resumes of our very own OWLS here at UVA. And most of all, this time, we're here to stay!

If you're interested in joining the OWLS list serve, GroupMe, softball team, or any of our great events, President Peter Cirka can be reached at pcc3hq@virginia.edu.

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HOT BENCH



Jameil Brown '21

2L Education Chair for BLSA, Career Development Chair for Lambda, and a member of VLR's editorial board.

Hi Jameil and welcome to Hot Bench! Let's get the ball rolling with some fun questions. What's something most people don't know about you?

Most people don't know that I am a horrible cook. I've never sent myself to the hospital or burned anything down, but it's not great.

Do you have a pet peeve?

Candy wrappers on the floor. I don't know why it bothers me, but if I see one in class, I will shift my books to block my vision. Maybe it's because I don't eat candy.

You don't eat any candy?

I literally don't eat sweets. I don't have the taste for it. I never ate my own birthday cake growing up.

Do you drink your coffee black?

I don't drink coffee, but drinking is different from eating sweets. I like sodas and sweet teas.

A "sweet tea" man! Any strong opinions about brewing it?

You can't put sugar in iced tea. If a restaurant has iced tea, it does not have sweet tea. Give me sweet tea or give me death.

How much sweet tea do you drink?

That doesn't need to be public information. It's an abundance.

Alright, keep your secrets. Can you tell us where you're from?

Near Austin, Texas—Leander to be specific.

Tell us something about Leander!

It's one of the fastest growing cities in the nation. A new subdivision pops up every time I go back. In 1990, the welcome sign said population is 3,300. As of 2017, we have over 50,000 people.

I hear you're headed back there this weekend. Are you attending an event?

I'm going back to Princeton for THRIVE, a semi-regular Black alumni conference. The last one was held when I was a junior in college. It's exciting to go back as an alumni. There will be a lot of talks and networking receptions, panels about student life and careers, and conversations about being an alum in this context.

When did you start thinking about law school?

I started thinking about it around my sophomore year of college. I was a computer science engineer for two hot seconds and I found I didn't have a strong intellectual passion for it. I began taking classes with the Woodrow Wilson School of Public and International Affairs. I started gearing my internships in that way too.

Let's do a lightning round!

Favorite food?

French fries. I love a good steak fry—the body can scoop up a good amount of ketchup.

What is your favorite place for steak fries in C'ville?

Red Robin has steak fries, but it feels cheap to use a chain. The fries are bottomless though.

Favorite place in Charlottesville?

The BLSA office. We have a lot of fun in there.

Anti-Stress Hobby?

I find sleeping fun. I have nerdier answer—I'm actually a huge fan of the marching arts—Drum Corps, Winter Guard, and any Corps style marching bands. In the fall and winter, I'm usually live-streaming it as I study.

Interesting! How did you get into the "marching arts" as it were?

I was a big marching band nerd in high school and I never shook it. I played the trumpet.

Do you have a favorite

Drum Corps?

It's hard, probably the Boston Crusaders.

Favorite word?

Intersectionality—I think it's important and not taken seriously enough.

What is your least favorite sound?

Crickets are an awful sound.

What's one movie that left an impression on you?

Moonlight.

If you could make one rule that everyone had to follow, what would it be?

Consider other perspectives.

If you could change anything about the Law School, what would it be?

I wish the average experience of someone who doesn't fit the typical UVA mold were a little stronger.

What do you hope to do with your law degree?

I have dreams and goals about diversifying the legal profession and those goals are better accomplished in certain positions like law firm partnerships. I think we should ask ourselves: Why are Black people not in the pipeline and not making it to the partner levels?

What's your favorite thing about the Law School?

The fantastic Career Services Offices and I'm really happy I came here for that.

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M&A

continued from page 3

on the job,” she commented. A lot of law schools (not UVA) don’t have robust corporate curriculum. Here, we are fortunate enough to have a plethora of classes that are geared toward future corporate lawyers, such as corporations, income tax, corporate tax, and securities, as well as practitioner-taught classes, and classes taught by Darden professors.

The event concluded with the panelists providing candid advice for anyone hoping to pursue a career in M&A. Ashley remarked that junior associates who “get it” stand out quickly and that partners are constantly trying to find these associates and give them more responsibility early on. Since much of M&A work is done on small teams, Keeley pointed out that “there’s no place to hide. You are a crucial part of the team and everyone has a role.” Each panelist expressed their hopes that more women will consider this field. It does seem that the tide is turning and more women are getting into M&A. Ashley shared that on one deal, she noticed “there are 15 men and me in this room.” Just recently, she worked on a deal with a female general counsel, a female chief legal officer, a female CEO, and a female senior associate.

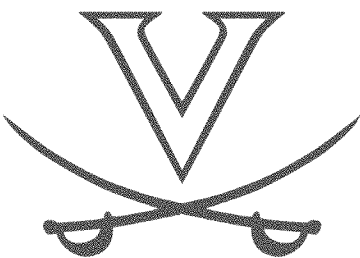
mp3vu@virginia.edu

IMPEACHMENT

continued from page 3

paign finance, and presidential powers issues brought up by the panel, it is clear that impeachment rests on both political and legal pillars. This was both enlightening and slightly frightening. The mental exercises of detailing potential avenues for prosecution, defense, and raising unanswered questions on impeachment generally implored the audience to think past the media portrayals of the current impeachment inquiry. As stated by Virginia Whorley ’22, “it was refreshing to hear about the impeachment inquiry from the perspective of law professors that have experience in areas of the law playing a role in it and to learn what questions they are asking as the process moves forward.” Although nobody knows where the process will take the American public, it is safe to say that we as a citizenry are in uncharted territory.

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Cartoon By Raphael



THE DOCKET

TIME	EVENT	LOCATION	COST	FOOD?
WEDNESDAY – October 9				
11:00 – 13:00	Voter Registration Drive	Hunton Andrews Kurth Hall	Free	---
12:00 – 13:00	Virginia Sports and Entertainment Law Society Meeting	WB 103	Free	Provided
13:00 – 14:00	Crash Course on the Equal Justice Works Conference and Career Fair	WB 121	Free	---
THURSDAY – October 10				
11:00 – 13:00	Voter Registration Drive	Hunton Andrews Kurth Hall	Free	---
17:30 – 20:00	Indigenous People’s Day Celebration: ‘Sweet Country’ Film Screening	Kluge-Ruhe Aboriginal Art Collection	Free	Refreshments provided
18:00 – 19:30	Three Voices: A Poetry Reading and Conversation	Fralin Museum of Art (Bayly Building)	Free, rsvp at museumoutreach@virginia.edu	---
18:00 – 20:00	Human Dignity and the Rule of Law Film Series Presents: A Screening and Discussion of “Gattaca”	Purcell	Free	Provided
FRIDAY – October 11				
11:30 – 13:00	Professor G. Edward White’s ‘Law in American History’ Book Panel	Caplin Pavilion	Free	Provided w/ RSVP
15:00 – 16:30	IWL Roundtable Sessions: The Use of Wisdom in Language Teaching	New Cabell Hall	Free	---
15:15 – 17:15	East Asia Center: ‘Red China’s Green Revolution’ Book Talk	Rous/Robertson 403	Free	---
SATURDAY – October 12				
8:00 – 9:00	2019 Community Bridges 5K	Chemistry Building	Varies, register online	---
11:00 – 12:00	Looking Inward Meditative Art Tour	Fralin Museum of Art (Bayly Building)	Free, register at museumoutreach@virginia.edu	---
SUNDAY – October 13				
15:30	Anyango Yarbo-Davenport Recital	Old Cabell Hall	Free	---
MONDAY – October 14				
17:30	Brian Caputo Jazz Trio	Oakhurst Inn	Free	---
TUESDAY – October 15				
19:00	Men’s Soccer: Virginia vs. James Madison	Klöckner Stadium	Free w/ student ID	---

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