



VIRGINIA LAW WEEKLY

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

A Look

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Wednesday, 2 October 2019

The Newspaper of the University of Virginia School of Law Since 1948

Volume 72, Number 6

Bonfire for 3Ls a Blazing Hit

Taylor EliceGUI '20

(italicized text)

Features Editor

M. Eleanor Schmalzl '20

(ordinary text)

Editor-in-Chief

UVA Law's Class of 2020 members celebrated their 3LOL lifestyles this past Thursday by attending the annual 3L Bonfire. The event, put on by the Student Bar Association (mainly 3L Graduation Committee heads Rachel Staub and Tim Sensenig), was well attended and enjoyed by many. And while what happens at the 3L Bonfire, stays at the 3L Bonfire, the *Law Weekly* is here to provide an exclusive look into an exclusive party.¹

Transportation to the event went in waves, with one group of buses leaving at 6:30 and the second leaving around 7:35. *The bus ride was a throwback to college date party/formal days, which was a good dose of nostalgia to start off the night and put 3Ls in the mood to party. I particularly enjoyed hearing so many conversations swirling around me, as my classmates caught up and joked with each other.*

As a late-bus baller, my bus-mates and I rolled onto the scene after the sun had gone down and the path to the event was unclear. The bus dropped us off at the bottom of a hill and wished us good luck as we wandered up a path, only to find that we had to cross through some woods to actually get to the fire, booze, and s'mores. *The more timid amongst us (AKA me) were terrified of ticks, but I am pleased to report that almost all of us made it through unscathed. For those 3Ls you don't see in class the rest of the semester, you can blame it on the Lyme disease they may or may not have contracted on this treacherous hike through the brush.*

The first and most important part of the event was the food. Classic Southern comfort food was on the menu, with fried chicken, mac n' cheese, mashed potatoes, slaw, and more. As a late arrival, I assumed the food would be cold, but I

1 Only the Class of 2020 and significant others who entered with the UVA Law Class of 2020 allowed.

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Yay for Neigh

Foxfield Gallops Back into Law School Social Calendar



The horses, too hot to trot, walk to the starting gate. Photo credit Grace Tang '21.

Jacob Jones '21

Events Editor

The Foxfield Races are a bi-annual event where families go to enjoy tailgating and horse races while law students, put in their own special corner, set up canopies and enjoy each other's company. With over 137 followers on Twitter,¹ the races are clearly the most exciting thing that happens in rural Albemarle County. According to Wikipedia, the event has been criticized as the "pinnacle representation of the upper middle class [sic] nature of UVA's student demographic."² It's hard to disagree, but it's also hard to argue that the chance to go outside, have fun with friends, and watch horses is a bad thing. So, with that in mind, law students said "yay for neigh," and galloped on over in semi air-conditioned

1 138 followers to be precise. To be fair, the event has over 3,000 thumbs ups on Facebook. This is probably because the older crowd uses Facebook a lot more than Twitter. It's probably for the best that older folks stick to Facebook over Twitter. See <https://twitter.com/realDonaldTrump>.

2 This part of the Wikipedia article does not have a citation, in violation of clearly established Wikipedia rules. In the future, those looking for a source on the matter can look to this footnote. I am hereby criticizing Foxfield as the pinnacle representation of the upper middle-class nature of UVA's student demographic. This is like, citation-ception.

buses to the event.

Students, mostly 1Ls, started showing up around 9 a.m. for the races that didn't start until around 1 p.m.³ The ones who arrived at 9 a.m. probably didn't get to see much of the races, but the event turned out to be more of an excuse to party.

Students were dressed according to the standard of the early 1900's. UVA Law boys reverted back to their true form, wearing the preppiest shirts imaginable.⁴ Wikipedia, the source of all knowledge, says that people typically dress in a "Southern, aristocratic style," a description that made me a little uncomfortable.⁵ There were all sorts of pastel colors, with salmon shirts, light pink shirts, slightly brighter pink shirts, light blue shirts, and sometimes boys were daring and wore light green. In order to stand out among a sea of pastel, men had to really up their game. Some wore cowboy hats, some newsboy hats, and one even wore a barbershop hat. The best of the bunch went with the bow tie and suspenders look. UVA Law women dressed in much livelier colored dresses with flowers, horses, and other cool patterns that looked pretty

3 Shout out to the 1Ls for organizing and bringing food and beverages, even though we kind of made them. Sometimes you get *saddled* with that kind of responsibility.

4 See, e.g., "UVA Law Boys," Libel 110, Youtube.

5 Yikes.

snazzy.

Once the horse races started, all bets were off. But the bets were sort of on, as students picked a horse and cheered for it without any background knowledge about the race.⁶ Without any meaningful guide for which horse they should choose, students made their decisions based on random factors, such as how small the jockey was, how swole a horse looked, or whether the horse looked pretty in general. In the end, since the law students weren't near the finish line and couldn't hear the speaker, the cheering was for naught. Apparently, these races are done in the "Steeplechase" format. This is horse-person speak for a hurdle race. The "jockeys" are people who ride the horses. Apparently, horseracing is like the legal profession, where special words are made up for concepts that there are already common names.

There was plenty of excitement aside from the races. Two people who were just horsin' around⁷ were told that, nay, they could not do that by the dedicated officers of the Albemarle County Sheriff's Department, and so they reined themselves in with long faces after jockeying for position.⁸

6 Picking a horse was a *spur* of the moment decision.

7 "Hey, aren't you the horse from Horsin' Around?"

8 That's five horse puns in one sentence for you neighsay-ors.

FOXFELD page 2

around north grounds



Thumbs up to the the people who organize where ANG drinks every week. Even if it's not Bilt or Crozet, ANG appreciates being herded into a new exciting location like the sheeple ANG is.



Thumbs down to the new liners on the windows in Purcell. Fishbowls aren't fun when you can't see inside them. And how is ANG supposed to decide whether to go to a lunch event based on the food now?!



Thumbs up to the heat at Foxfield. ANG loves that the end of September is full of 90 degree days with the sun at full blaze and can't wait for those nice fall days come December.



Thumbs down to 1Ls who are talking about outlines already. ANG needs to have a word with your PAs. ANG will be forced to rip the pages out of the textbook of any 1L ANG catches outlining.



Thumbs up to cell service at Foxfield. Luckily ANG wasn't forced to actually interact with people at and could instead figure out which porcelain doll ANG is going to add to ANG's collection.



Thumbs sideways to Dean Dugas's reminder emails about the course lottery. On the one hand, a reminder email! On the other, including the actual dates of the lottery in his email would've been nice. B+.



Thumbs up to Building Services for taking complaints of snakes in WB seriously and investigating. ANG prefers the snakes in the Gunner Pit to this reptilian type.



On that note, thumbs down to the giant snake on the sidewalk past the Jeffersonian on Monday. ANG prefers to confront ANG's fears in the classroom (cold calls) instead of on ANG's walk to class.

Make Antitrust Cool Again: Antitrust in the Digital Economy

“My challenge for today is to convince you that being an antitrust lawyer is cool,” said

Donna Faye
Imadi '22
Staff Editor



Chris Hockett '85 in his opening remarks at the “Antitrust in the Age of Technology” event sponsored by Law, Innovation, Security, and Technology (LIST) on Wednesday, September 25, 2019.

“I think I’ll take an antitrust class now. I like the way he explained it. It’s a lot of systems thinking. I think I might be good at it,” said Claire McDowell '22, at the end of the lecture. So, was the mission accomplished at the event? Read on, and perhaps it’ll be mission accomplished for you as well.

Hockett is a former partner at Davis Polk’s Northern California office and global head of the firm’s antitrust practice. He was greeted by a packed room of UVA Law students eager to learn about the evolving and exciting opportunities within antitrust law. Hockett’s remarks focused especially on the new forefront of antitrust enforcement in an age where tech companies have significant power in both data and privacy over consumers and small businesses.

The event began with Pro-

fessor Nachbar’s introduction of Hockett. Professor Nachbar characterized the event’s purpose as being twofold: First, to “convince you that being an antitrust lawyer is cool.” And second, to introduce “the problem of antitrust in tech,” providing a presentation on an issue—big tech—that “examines the soul of antitrust.”

Hockett then began his presentation. He first framed the tension in the antitrust debate through the backdrop of the four largest tech companies: Google, Amazon, Facebook, and Apple (referred to as GAFA). He characterized how the emergence of GAFA is “leading to concerns about [their] economic and political power” today.

Hockett underscored that, as a result of GAFA’s rapid growth in scope and size within the last ten years, “bipartisan interest has emerged in examining the power” that these mega-tech companies wield within society and a vibrant democracy. “There are presidential candidates who are urging changes in antitrust laws and intensified antitrust enforcement against platforms,” Hockett said, further explaining that their “animosity” toward tech platforms has resulted in even a new word to describe the social/political backlash to tech’s influence—a word called “Techlash.”

The platforms’ “responses to

antitrust critiques is that they succeed because they are efficient and innovative—offering extremely valued service to customers. Some for zero to little prices,” Hockett said. He notes that their perspective is such that “they succeeded not because they are doing anything wrong or harming competition . . . and they shouldn’t be punished [for that success].”

Here lies the tension. Are tech companies harboring too much power? Or is their power justified because they’ve acquired it through “innovative and productive practices?” Should the government be regulating or breaking up the power of these giant tech companies regardless of the means by which they acquired power, because the effects of their power are too great? Hockett later elaborates on this debate by first presenting the traditional framework of antitrust jurisprudence for the last forty years. Then, he contrasts the “traditional framework” with the new transformative “Brandeis movement” that has emerged in recent years.

Intensifying antitrust regulation is opposed to the dominant theory of “consumer welfare,” which emerged from the “Chicago School of Thought” beginning in the 1970s/1980s (see “The Antitrust Paradox by Robert Bork”). Hockett explained that this prevailing

school of thought led to the decline of U.S. antitrust enforcement because its economic theory acts on the presumption that “it is wrong to evoke antitrust against firms just because they are big.” Essentially, according to this theory, “punishing a firm’s success is the opposite of what antitrust should do. Rather, it should be reserved on protecting consumer welfare standards.” As further explained by Hockett, “consumer welfare standards are things such as prices and quality.” This Chicago School Theory has been the prevailing view within antitrust enforcement since the 1970s. It emphasizes that the free market and capitalism—not government regulation—will best correct market forces and regulate the size/scope of companies.

This prevailing standard for

the last forty years has led to a significant decline in antitrust enforcement and typically “defendant friendly” courts, says Hockett. But this may change in the future as it’s now being challenged in the context of intensified scrutiny of tech companies. The “rapid rise in size, scope, and perceived political power of tech platforms, data privacy issues, concerns of disruption to incumbent players and industries” have all contributed to this increased scrutiny of tech. The concerns about “fake news” and “increasing social and political divisions and other corrosive online content,” have been at the center of our socio-political discourse, all contributing to how some are now arguing that the techlash presents a new opportunity to shift the way antitrust regulation is carried out.

Hockett presents the questions that these issues in big tech pose: In light of techlash, “should we abandon the ‘con-

ANTITRUST page 5



Chris Hockett '85 speaks in (no longer fishbowl) Purcell Reading Room about his experience as an antitrust lawyer. Photo Credit Donna Faye Imadi '22.

FOXFIELD

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Like a pool lifeguard without much else to do, the dedicated sheriffs put an end to two friends who were just having fun. Can’t we just let the players play? Other sources of excitement included hearing over the speaker that one “Mr. Rishi Kumar” had lost his wallet ten minutes after arriving. Plus, there were ponies, a bouncy castle race, and a tractor ride. Come to think of it, a bunch of law students didn’t really fit in with the self-styled “Fall Family Day,” which is probably why the law students were in the far corner of the field. Still, the families could stand to get off their high horse, because law students were well behaved.

By around 1:30 p.m., with most of the horse races seemingly done, the students who had been at the races since morning were mostly gone. While SBA informed us that there would be no cell service and we could not Uber, that turned out to be false. People tired from the heat, sun, and certain other factors like too much “lemonade” began leaving in droves. Plus, the fried chicken had long run out. By approximately 2:30 p.m., most people had left, too impatient to wait for buses. And so everyone else packed up, went home, and recovered to enjoy the last day of Ivy Garden pools being open.



Molly Cain '20 and Sam Pickett '21 enjoying the Foxfield festivities. Photo Credit Grace Tang '21.



Jonah Panikar '21, Jacqueline Foley '21, and Zane Clark '21 looking back at it for the camera. Photo Credit Grace Tang '21.



Above and below: horses are led to track for the races. Photo Credit Grace Tang '21.



Horses take a minute alone to get in the zone. Photo Credit Grace Tang '21.

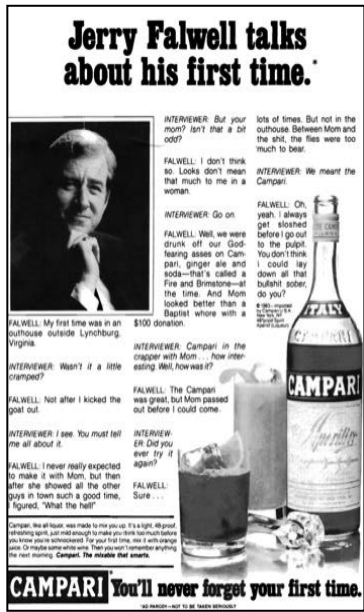
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Comic Relief? The Supreme Court Decision That Saved Political Satire

On September 20, the self-proclaimed Patron Saint of Political Cartoons, Roslyn Mazer, and the Dean of Vice, Leslie

Raphael Cho '21
Cartoonist-in-Chief

Kendrick, (their words not mine) hosted a discussion on *Hustler Magazine, Inc. v. Falwell*. Mazer was counsel to the American Association of Editorial Cartoonists during the case and served as the FTC Inspector General from 2015 to 2018. Patrick Oliphant, a Pulitzer Prize winning editorial cartoonist, was also in attendance



The original "interview" with Jerry Falwell featured in Hustler magazine at issue in *Hustler Magazine, Inc. v. Falwell*.

because the event celebrated the donation of his archives to UVA's Albert and Shirley Small Special Collections Library. While the attendees ate their grilled salmon and tofu salads, Mazer and Dean Kendrick discussed the hilarious history and significance of the *Hustler Magazine, Inc. v. Falwell* case.

The story of *Hustler Magazine, Inc. v. Falwell* began in 1983 with a parodical advertisement for Campari in *Hustler Magazine*. The original Campari ad featured interviews with public figures describing their "first time" drinking Campari. The *Hustler* parody used the same format but included a satirical interview with Jerry Falwell, a prominent Southern Baptist pastor and televangelist. In the "interview," Falwell casually claims that his "first time" was with his mother while "drunk off our God-fearing asses on Campari" and that his "Mom looked better than a Baptist whore with a \$1000 donation." Falwell was not pleased.

Soon after the ad was published, Falwell sued *Hustler Magazine* for libel, invasion of privacy, and intentional infliction of emotional distress. The District Court granted summary judgment for *Hustler Magazine* on the invasion of privacy and libel claims, but the jury awarded Falwell \$150,000 on intentional infliction of emotional distress. The Fourth Cir-

cuit affirmed the decision on appeal, causing *Hustler Magazine* to file a writ of *certiorari* with the Supreme Court.

However, Mazer was fighting an uphill battle. The established media outlets were hesitant to support *Hustler Magazine*, and the Rehnquist Court had rejected eighty percent of First Amendment claims. Rather than trying to bypass the Scalia-Rehnquist wall, however, Mazer appealed to their love of U.S. history. Drawing on her contacts in the political cartooning world, Mazer added an appendix of cartoons in her legendary brief. She included historical cartoons from Thomas Nast, who was instrumental in the collapse of Boss Tweed, as well as submissions from modern cartoonists such as Patrick Oliphant.

Ultimately, Mazer's gambit paid off with the Court reversing the Fourth Circuit judgment in a unanimous decision. The Court held that "public figures . . . may not recover for . . . emotional distress . . . without showing that the publication contains false statement of fact which was made with actual malice." Dean Kendrick stated that the decision "strikes at the heart of what the First Amendment is about" and continues to hold "historical and doctrinal significance." The hosts also explained that the case represented an "inversion of the traditional political frame-

work" for liberal and conservative judges on First Amendment claims.

Throughout the event, Mazer injected comic relief (sorry, I had to) into the discussion with political cartoons and anecdotes. In one instance, she displayed a cartoon submission which depicted a butler speaking to the Chief Justice. The cartoon read, "Justice Rehnquist, will you be wearing your hooded white or your black robe today?" Mazer strategically omitted this cartoon in her brief, invoking the ire of the illustrator. She also noted that in Justice Rehnquist's high school yearbook, he wrote that his favorite activity outside of class was cartooning. And that, in an interview with Justice Scalia, he stated, "I have a cartoon by Pat Oliphant in my man-cave."



Cartoon by Pulitzer Prize winning editorial cartoonist Patrick Oliphant, who recently donated his archives to the UVA Law Special Collections Library, in response to the decision in *Hustler agazine, Inc. v. Falwell*.

Law Weekly's Greatest Hits

The Law Weekly looks back at how major law school events were covered in decades past. We're pretty good at what we do and sometimes we take the time to toot our own horn.

Foxfield is a longstanding UVA tradition, but it has not always been without controversy. It's a time of year when 1Ls get comfortable enough to worry about truly important things, like bus schedules, alcohol supplies, and how late in the year it is acceptable to wear seersucker.

In 2003, the President of the First Year Council took the time to offer advice and introduce the other members of the Council:

"Guys, get out those seersucker suits and girls, warm up your sundresses—we're headed to the races [I]f you plan on drinking, do not drive ... [B]elieve it or not, a full day of mint juleps and screwdrivers in the dehydrating sun has been known to affect one's judgment. So plan accordingly ... As Co-Vice Presidents, Kate Duvall (B) and Nick Margida (D), are devoted to making your Thursday forgettable, with kegs in the courtyard and cheap booze at Bar Review." Hill Hardman, "**Foxfield and the New First Year Council**," *Virginia Law Weekly*, Friday, September 26, 2003.

Kate Duvall was once responsible for making Thursdays forgettable with kegs? We would ask her what it was like, but if she did a good job, she won't be able to tell us.

"Thumbs down to the SBA for the Foxfield's bus debacle. Too many confusing emails led ANG to book a mule." ANG, "**around north grounds**," *Virginia Law Weekly*, Friday, September 23, 2005.

It's true that not all the buses will actually allow you to be at Foxfield while the horses are racing, but at least SBA no longer sends out "[t]oo many confusing emails."

"Thumbs down to leaving Foxfield in an ambulance." ANG, "**around north grounds**," *Virginia Law Weekly*, Friday, October 1, 2004.

What happened may be lost to history, but leaving anywhere in an ambulance is not ideal. Hopefully it was significantly faster than the buses.

"The tailgating was better than I expected. There was much better food, and much more alcohol than I thought we'd have. We didn't run out of drinks, and I thought that we probably would. I was surprised that we didn't," said first-year Jack Edwards ... Many of the law students actually watched the horse races—a change from years past ... However, first-year Julie Jordan found out the hard way that it's not good to pay very close attention to the horses. 'Don't stand too close to the fence because

However, Mazer also gave the audience a somber reminder that journalists and cartoonists are increasingly under threat. She listed acts of literal violence, threats of litigation, and the decline of newspapers to emphasize that free speech must be continually reinforced. As the discussion began to close, Mazer left the audience with a pertinent quote from Mr. Oliphant—"In thirty-five odd years of watching and caricaturing public figures, I have increasingly felt that the figures are lampooning themselves and that the business of satire is continually and deliberately being undercut by the subjects."

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BONFIRE

continued from page 1

was pleasantly surprised to still find everything a nice lukewarm temperature. *I am a Wayside devotee and thus was quite pleased with the selection. There was more than enough food for everyone and I can confirm that at least one member of the Class of 2020 consumed at least six pieces of fried chicken.* The booze was second on the list of top priorities, which I found to be a bit of a letdown. The Bold Rock was foamy (and no, I don't think it was just because I don't know how to pour beer from a keg), but supposedly the Bud Light was a good alternative for those fancier than I. *For those of us without standards, the drink options were just fine. I always appreciate an event with a cider keg, because who doesn't love alcoholic apple juice? I was also excited to snag another Class of 2020 cup, which I actually read this time. The slogan is a bit depressing—"My sun sets to rise again." Considering that we're all about to join a career known for a not so great quality of life, maybe it's fitting? Nothing like a bit of impending doom to go with an otherwise lovely evening.* The food cancelled out the alcohol and existential dread, making the consumption situation a net neutral.

The s'mores were a big hit, at least for the folks who could handle standing close to the blazing fire to get a good marshmallow roast. *I had to summon all of my courage to get good coal access. At several points, I contemplated just lighting my marshmallow on fire to get it over with, but I toughed it out*

and was rewarded with a delicious s'more. As a redhead, I didn't mind the heat of the flames, and I got close enough for a nice golden brown 'mallow to enjoy with some grahams and Hershey's chocolate. After a successful roast, I checked my face to make sure my eyebrows were still intact and enjoyed the delicacy I had just created. *My biggest complaint of the evening was very much my own fault—I really should have gone for the second s'more.*

As I looked around the bonfire site, I loved seeing so many classmates and friends reconnecting with sectionmates, laughing about old times, and enjoying each other's company as this crazy thing called law school starts to come to an end. *The darkness made it a little difficult to actually see who people were, which limited my socialization to a degree, because I couldn't see well enough to know who to say hi to. I just took to wandering around in the dark and striking up conversations with whomever I stumbled across.* Griffin Peebles '20 put everyone's feelings best in his message to the Class of 2020 GroupMe after the bonfire, saying: "I love you all. So glad to spend the last 2 and a half years with y'all. I'm so proud of each and every one of y'all. P.S. come to Bilt." So, while the bonfire was a great event as the Class of 2020 starts to wrap up law school, we also have a lot more fun to have and things to do, so don't count us out yet.

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LAW WEEKLY FEATURE: Court of Petty Appeals

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

Students Involved v. Sarah Davies (in her official capacity)
323 U.Va 125 (2019)

CALAMARO, J., delivered the opinion of the Court, in which SHMAZZLE, C.J., RANZINI, ELICEGUI, LUK, and SCHMID, JJ. join.

JUSTICE CALAMARO delivered the opinion of the Court.

There are times when a case comes across the docket that defines a generation. These generation defining moments, such as *Students v. Eight Cartons of “Firehouse” Submarine Sandwiches, More or Less* (68 COPA 976 (2018)) or *Students v. Simpson Thatcher Hats* (67 COPA 553 (2017)), shaped our Law School society for better or for worse. *This* is one of those cases. The opportunity and ability of a person, without regard to race, creed, orientation of any kind, gender, religion, or ability, to answer the holiest call of nature in the privacy of a bathroom stall is a right without equal in the American, indeed even the *human*, experience. The case before us addresses that issue head on, and our great Court of Petty Appeals must rule on it fairly and without prejudice, a monumental task attempted only by a handful of courts in the past.

Before the Court is a class-action suit brought by student plaintiffs against the administration of the Law School, stating that they have “failed to provide adequate privacy protections in every bathroom on the School premises.” Specifically, the bathroom stall doors have giant cracks around the frame, otherwise known as “sight lines.” These sight lines, the plaintiffs argue, infringe on their privacy, and make for extremely awkward interactions when one student is trying to deposit their “natural packages” while another student walks in and makes

eye contact with the first student. Although the administration has not responded to these charges, we can assume their two arguments in failing to secure privacy for the students involve monetary hardship as well as the “benefit” of using stall door sight lines to determine which stalls are occupied and which are empty.

Despite the School’s defenses, we as a Court unanimously hold that the School

“It is well known that everyone poops.” - J. Calamaro

administration has committed a gross violation of privacy, as well as a *gross* violation of privacy, by not utilizing readily available sight line covers, and uphold the trial court’s remedy of installing them by the end of the semester. It is well known that everyone poops,¹ and the Court today holds that this great institution of humanity be honored by completion of this remedy in a swift and timely manner.

Infringement of Privacy

Since the dawn of humanity, the need for privacy has separated us from the wild animals of nature.² Privacy in the privy has long been an especially treasured right, and was heightened at the invention of the toilet and floating ballcock by Thomas Crapper.³ Who among us hasn’t sought out a private space to

- 1 See generally Tarō Gomi, Everyone Poops (1993).
- 2 See Adam and Eve.
- 3 See, Wikipedia.

cry after a particularly tough cold call and found the bathroom stalls to be inadequate due to the massive sight lines in the doors?⁴ Our Founding Fathers knew this was a struggle worth protecting and sought to immortalize that protection in the Fourth Amendment, which states “the right of the people... to sit in their outhouses in peace.”⁵

Although the term “outhouses” has been constant

cause for concern and strife in the lower courts, the Court of Petty Appeals affirms today that the term rightfully refers to all forms of bathrooms, including the stalls within. Indeed, outhouses were the first stalls, and even during our founding, cracks in the outhouse doors were avoided at all costs. It wasn’t until the beginning of the twentieth century when stall doors were manufactured en masse that sight lines were widened. This, of course, was meant to cut costs by literally cutting corners. To this the Court says no more!

It is this Court’s view that, although sight lines in the doors help others determine which stalls are open as the defense argues, this is not enough of a benefit to offset the harm caused to those inside. Instead, we see sight lines as a blatant attempt to cut costs for the School by

- 4 This is simply conjecture—the majority has never done this.
- 5 The Constitution, somewhere.

providing doors that only minimally protect the privacy of those doing their duty inside. The Founding Fathers knew that these rights were not equal, and that the rights of the one inside the stall far outweighed the rights of the bathroom newcomer. Indeed, we see this in the Federalist Papers when Paul Revere famously wrote in response to Hamilton’s suggestion of building outhouse doors with larger sight lines,

“One goes on land, two out to sea,⁶ and all should be done in privacy.”⁷

It is clear to the Court that the University of Virginia School of Law, founded by our nation’s Founding Father, an avid user of outhouses, has lost its way. These stalls would have been unacceptable then and remain unacceptable now. The Constitution could not be clearer on this topic, and the Justices are all in agreement on the prohibition of sight lines in bathroom stalls.

6 Referring to plumbing which, in that day, deposited waste out to sea.

7 See Federalist Papers No. 2

Costs

The defense states that procuring sight line covers would come at great expense and hardship. However, a cursory look at Amazon shows that a single set of sight line covers is only \$34.99. Although this Court is not privy to the number of privies in the School, a quick back-of-the-envelope math shows that, even if there are 100 stalls, the cost would only be \$3499 to procure these covers. The Court will not rule on whether to include installation costs, but it can safely state that this is a reasonable cost for the School to incur in order to save students from the awkward experience of making eye contact with an interviewer while sitting on a porcelain throne.

Thus, the Court upholds the lower court’s ruling against the School, and order them to order sight line covers. It is our duty to preserve the last truly private space in this cold world that the Constitution sought to protect, so that we may do our duty in peace. This is what the Founding Fathers would have wanted, and is now what the American people demand.

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Faculty Quotes

T. Nachbar: “You had no idea dentists are so nefarious but in fact they are rampant antitrust violators.”

M. Schwartzman: “In this case, they run into a buzzsaw. A buzzsaw named Alito.”

L. Kendrick: “We’re all headed in the same direction; at the end of the day, we’re all dead.”


M. Collins: “The Plaintiff claims that a stranger knocked him onto the railroad tracks. I

think the stranger’s name was Jack Daniels.”

F. Schauer: “I’ll let you go five minutes earlier because it’s my wife’s birthday and I have something for her.”

A. Coughlin: “What did they have back then, like broomsticks or hand-to-hand? Or muskets?”

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



Virginia Law Weekly

COLOPHON

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ANTITRUST
continued from page 2

sumer welfare standard” to regulate the industry? If so, “what are the potential unintended consequences” of abandoning the standard? “Is changing antitrust laws or the enforcement approach the right remedy?” These are all questions he presents as unanswered and full of opportunity for young lawyers to grapple with, learn about, and solve.

The “techlash” side of the debate is clear in the political sphere: candidates such as Elizabeth Warren and Amy Klobuchar (as well as Ted Cruz), seem to vocally believe that the “consumer welfare standard” is no longer working, Hockett noted in his presentation.

He then identified the new transformative view of anti-

trust as the “New Brandeisians.” He explained, their vision is one which “calls to the populist roots of antitrust law”—mirroring the antitrust framework prior to the 1970’s Chicago School of Thought—more similar to the “protection of competitors” framework that came with the break-up of Standard Oil Co. in 1911. Rather than focused on protecting consumer welfare standards such as “price fixing,” they are focused on protecting the ability of “competitors” to enter the market.

The goal under this “New Brandeisians” framework is “to disburse political and economic power of large firms,” Hockett explained. Actors under this believed framework “reject focus of consumer welfare and price effects,” weighing the harm to the “competitive process” rather than consumer welfare. The big

worry for the “New Brandeisians” is the “winner-take-all market dynamics” that megatech platforms have created, Hockett says. He painted a picture of this by introducing the framework of Lina Khan’s Yale Law Journal article “Amazon’s Antitrust Paradox,” which introduces the prevailing frameworks of a newly envisioned set of rules for the future of antitrust.

These two views: The “consumer welfare standard” view, emphasizing deregulation, in contrast to the new view that the government needs to intervene to protect competitors (the New Brandeisians), are the backdrop of the emerging debate over whether and how the government should intervene with dominant tech giants that wield significant power over data, security, and the market.

When asked about the challenges that greater regulation may impose, Hockett explained that “you have a diversity of enforcers and these companies are global in scale, so having to comply with the most strict interpretation of the strictest law is going to affect how they do business everywhere, and that means it’s going to be a challenge.”

Because these companies harbor massive amounts of data and have the capability to influence and filter the realities of our perceived lives, these tech giants have power over billions of peoples’ privacy and perceived choices in the marketplace. Isabelle Perfetto ’22 commented on what solutions we may be able to devise

and whether antitrust is the key to the solution: “People are so focused on breaking up these tech companies, but they don’t even know if that will fix what they are worried about. Maybe other solutions such as privacy law might be more appropriate?”

There is no prevailing solution at the moment, as Hockett stated. That’s a big reason why he posits that antitrust is cool. “Antitrust is a hot sector now, and this application of antitrust in technology is really interesting. I am teaching a class on it, and I’d like to have more people take it and come learn.”

Hockett will be offering his course on antitrust starting this November, entitled “Antitrust in the Digital Economy.”

J.R. Isaacson ’22 seemed convinced by the end of the lecture of at least one thing that Hockett relayed: “I like that he said that ‘being a lawyer pays you to learn and especially in the antitrust arena.’ I will take away that . . . I’d like to be paid to learn.”

Regarding the future of antitrust, Hockett closed his remarks stating: “The paint is not dry on this. We haven’t even finished applying the paint. It makes it a specially interesting topic to spend time on because it’s changing every day. That’s not like most of the things you study in law school.”

Critical to the debate of antitrust are things that most of us in law school do every day: such as checking our phones, logging into our Macs, or scrolling on Facebook/Insta-

gram for the tenth time in a day. But as seen through this lens of antitrust, these everyday interactions with technology have big potential to symbolize a greater shift in society than what the simple interface with your technology would lead you to believe. Whether we choose to regulate those “everyday” services differently (through a change in antitrust enforcement starting with big tech) has the potential to reshape our economy, social discourse, and political processes.

Perhaps greater quality and variations of services offered by more platforms could improve our relationships with technology, if more tech competitors were able to enter a more equitable market. Or, perhaps, greater regulation could impose negative effects on consumers of tech, creating disruption in the lives of consumers who are perfectly happy with the status quo of convenience and capacity.

If you take an antitrust class, maybe you’ll write the next chapter in this unwritten script of how society deals with these tensions in big tech and help lead the way into our understanding of the multiple potential realities.

One thing’s for certain, antitrust is something to think about next time you pull out your phone—and an issue to watch out for in the coming 2020 election.

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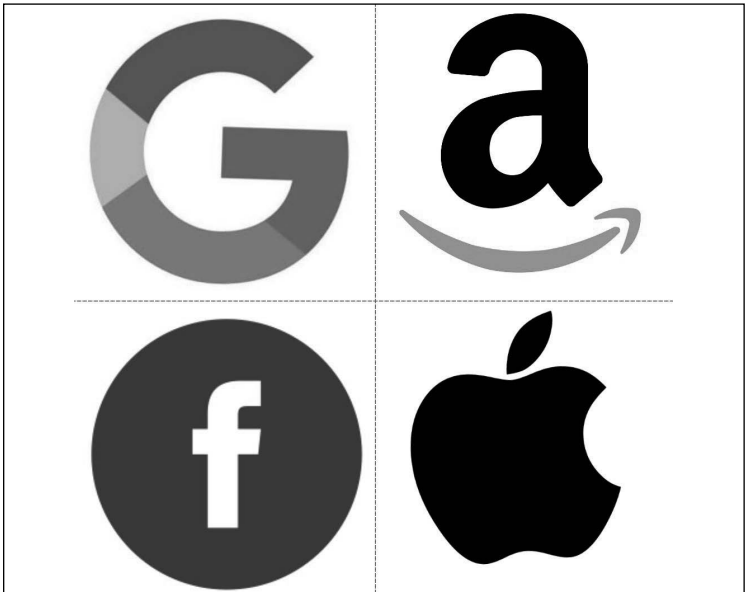


Photo courtesy of medium.com.

HOT
BENCH



Katherine O’Neal ’22

1L First Year Council President and Disabilities Rights Advocate

Hi Katherine, and thanks for joining us on the Hot Bench! Where are you from?

I moved around a lot. The longest place I stayed in is Asheville, North Carolina. That’s where I feel most comfortable.

Can you tell us something about Asheville?

It’s kind of a hippie town. There was a guy who would dress up in a nun costume and ride a ten foot tall pink bicycle.

Where did you go for undergrad?

University of Alabama, it was great. I’m a big football fan. I definitely needed to get out of Tuscaloosa after three and a half years though.

What did you do between graduation and law school?

I graduated in December 2018, so I spent about eight

months napping.

When did you start thinking about law school?

When I was little, I wanted to be a politician before I saw the error of my ways. But anyway, you need to be a lawyer to be a good politician, so I became interested in the law. For a while though, I wanted to be a doctor, but it’s hard to pass chemistry when you’re colorblind.

Now that you’re here, what are some of your plans?!

Short term? Don’t fail out. Obviously. Long term, my idea dream job is working in entertainment law for the NFL or Disney. I would love to do transactional work for those companies.

Let’s switch tracks a little and talk about the First Year Council (FYC). What motivated you to run?

I ran on a platform of unity. As FYC President, I want to crowdsource and step out of the Law School bubble to see what other graduate programs are doing to support their first years. It’s a lot easier to accomplish things when you have a wider perspective. My big platform was that , to help ourselves, we need to step outside of ourselves.

What’s one initiative from other graduate programs that you’re looking to implement?

The SilverCloud app. It’s basically a self-guided therapy app and there are specific programs for treating anxiety or depression. A lot of people tell

me they don’t have time to see someone, so this will be really useful in the Law School environment, because we’re always going and going.

I hear that you and Jill Quigley (’22) are starting a club for students with disabilities. Can you tell us more?

We want to create a student group to support disabled and chronically ill students and to educate allies. Disabilities can vary from learning disabilities to physical disabilities. We hope this group will help the administration and our peers to understand our experiences and needs. At this point, we’re trying to write our constitution.

What inspired you to advocate for students with disabilities?

I became disabled and chronically ill my first semester of college. I never had any health issues the first eighteen years of my life and, to be hit with that suddenly, I gained a unique perspective. Since I have this voice, why wouldn’t I use it?

Are you comfortable talking about your disabilities?

Yes, I would rather be open than have people be concerned or assume things. It’s much easier to give a five-minute explanation than to have to re-inform people later on. I have six autoimmune and autonomic diseases. Basically, my white blood cells attack my tissues, joints, and organs, and my nerves don’t work, and I have an undiagnosed neurological issue.

What’s one thing people might not know about your disabilities?

It’s hard to communicate the amount of pain I’m in, because I may look okay on the outside. The medicines that I have to take can also make me feel bad. For example, I take a drug that was typically used in chemotherapy and it makes me really sick once a week. I hurt all the time and I get really tired. I get sick if I eat any food. It’s a hard balance, because the medicines I take harm me to help me.

Let’s do a lightning round!

Favorite food?
Tiramisu, 100%.

Favorite place in Charlottesville?

Honestly, I really like my townhouse. Just laying there with my dog, it’s my homebase and I feel really comfy.

Anti-Stress Hobby?

I watch a lot of Netflix. The Real Housewives in particular.

Favorite word?
Cantankerous.

What is your least favorite sound?

People gulping water. I don’t know why, there’s just something about that noise, especially in class.

Where’s a place you’ve never been, but would like to go?

I really want to go to California. I’m looking at the LA market and I would like to go before I commit to working there.

What do you like to do for fun?

I’m a classically trained musician, so that’s my go-to. Oboe and English Horn are my primary instruments, and I’m a trained singer. I was on a music scholarship for a bit before I retired.

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

I really like the Birdcage, it’s my favorite movie. I think it says a lot about taking someone as they are. It’s also extremely funny.

If you won the lottery, what would you do with it?

Other than pay off loans, I would probably put it in a trust for my family. I don’t like spending money. It stresses me out.

If you could pick one song to play in the background of your life, what would it be?

“Diet Soda Society” by The Maine—It’s an all-occasion song that my friends and I listened to all the time. Personally, I think it’s a bop.

What’s your favorite thing about the Law School?

That I don’t feel like I’m competing academically with anyone. We’re all building each other up. We’re all going to pass collectively as a group. It’s nice.

kro7uh@virginia.edu

Week 3

Softball Scores

Cartoon By Raphael

Co-Rec
Sermon on the Mound over Nettie Light (12-1)
The Nerd Herd over F-Bombers (by forfeit)
The Leftovers over Habeas Porpoise (9-7)
Inglawrious Batters over The Apples (8-6)

Open
Humongous Melon Heads over Batmen (13-12)

1Ls:
Section A over Section B (24-8)
Section C over LLMs (12-5)
Section D over Section J (17-10)
Section E over Section G (17-4)
Section H over Section I (6-5)



THE DOCKET	TIME	EVENT	LOCATION	COST	FOOD?
	WEDNESDAY – October 2				
	13:00 – 14:00	Interviewing with Public Service Employers	WB 128	Free	---
	17:00 – 19:00	Supreme Court Roundup	Caplin Pavilion	Free	---
	17:30 – 20:00	Innocence Project Presents: Wrongful Conviction Day Film Screening	WB 102	Free	Provided
	THURSDAY – October 3				
	13:00 – 14:00	ACS and Law Dems: The 2020 Census, Gerrymandering Cases, and Other Developments in Election Law	WB 103	Free	Provided
	20:00 – 22:00	Department of Drama presents: LUNGS	Helms Theater	Free for full-time students	Provided
	FRIDAY – October 4				
	9:00 – 17:00	Dressing for Success Drop-in Day	Career Development Office	Free	---
	12:00 – 13:00	Coffee and Careers	WB 127	Free	Provided
	13:00 – 14:00	Human Rights Internship Panel	WB 104	Free	Provided
	20:00 – 21:30	Multimedia Concert	Old Cabell Hall	Free	---
	20:00 – 22:00	Department of Drama presents: LUNGS	Helms Theater	Free for full-time students	---
	SATURDAY – October 5				
	14:00 – 16:00	Department of Drama presents: LUNGS	Helms Theater	Free for full-time students	---
	16:00 – 19:00	Celebration of the Life of Mortimer Caplin	Caplin Pavilion	Free	---
	SUNDAY – October 6				
	13:00	Women's Field Hockey: Virginia v. Old Dominion	Copeley Road Turf Field	Free	---
	MONDAY – October 6				
	12:00 – 14:00	Discrimination in the Workplace: Title VII and Sexual Orientation	Purcell	Free	Provided
	17:30 – 18:30	Virginia Law and Business Society In-House Career Panel	Purcell	Free	Provided
	TUESDAY – October 7				
	11:30 – 12:45	Fed Soc: Statutory Federalism and Criminal Law	WB 105	Free	Provided
	13:00 – 14:00	Corporate 101 Panel	WB 104	Free	Provided

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Solution

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8	9	8	4	1	5	6	7	1
6	4	1	7	9	8	8	1	5