Virginia Law Weekly

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

A Look Inside:

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Preparing for Journal Tryouts? Check Out the New Changes

Christina Luk '21
Editor-in-Chief

The University of Virginia School of Law's journal tryout program has always been unique from journal tryouts at other schools. For one thing, we have a unified tryout that all journals, including the *Virginia Law Review*, use to select its members. Most schools have a separate tryout for each journal or one tryout for specialty journals and another for law review. Second, our tryout, as 1Ls may have noticed, happens in the middle of the Spring semester. Our peer schools, on the other hand, throw their 1Ls into the crucible immediately after spring finals, which is a bit like asking someone to run a marathon after a friendly triathlon. My favorite thing about the our tryout program though, and arguably the best thing about it, is that it only takes a single weekend. Unlike the one to two week long ordeal that our peers at other schools suffer, our tryout is quick if not easy.

However, this year, the Journal Tryout is taking place across two weekends instead of one. According to Jess Feinberg '21, outgoing Membership & Inclusion Editor for *VLR* and the Tryout Administrator, the reason is two-fold. First, the move to two weekends is in good faith meant to relieve stress and to allow for more breaks and flexibility. The second half of the tryout gives a full three days (Friday-Sunday) for the writing component, a change that encourages students to take breaks. Second, that built-in extra time will hopefully help folks with special accommodations to spend up to twice as long on the tryout, whose final day overlaps with Wednesday classes.

1Ls will work on the Editing Component the first weekend, capped at eight cumulative hours, and they will have the second weekend for the Writing Component, which requires them to read 250 pages of materials or fewer and write an eight page paper. 2Ls and 3Ls will note that this is both a shorter writing assignment and a lighter reading load—a twenty and seventy page reduction from last year and the year before, respectively. On top of these changes, 1Ls will be allowed for the first time in Tryout history to use the searchable online Bluebook.

Other major changes include a revamp of the Journal Tryout Toolkit, a comprehensive

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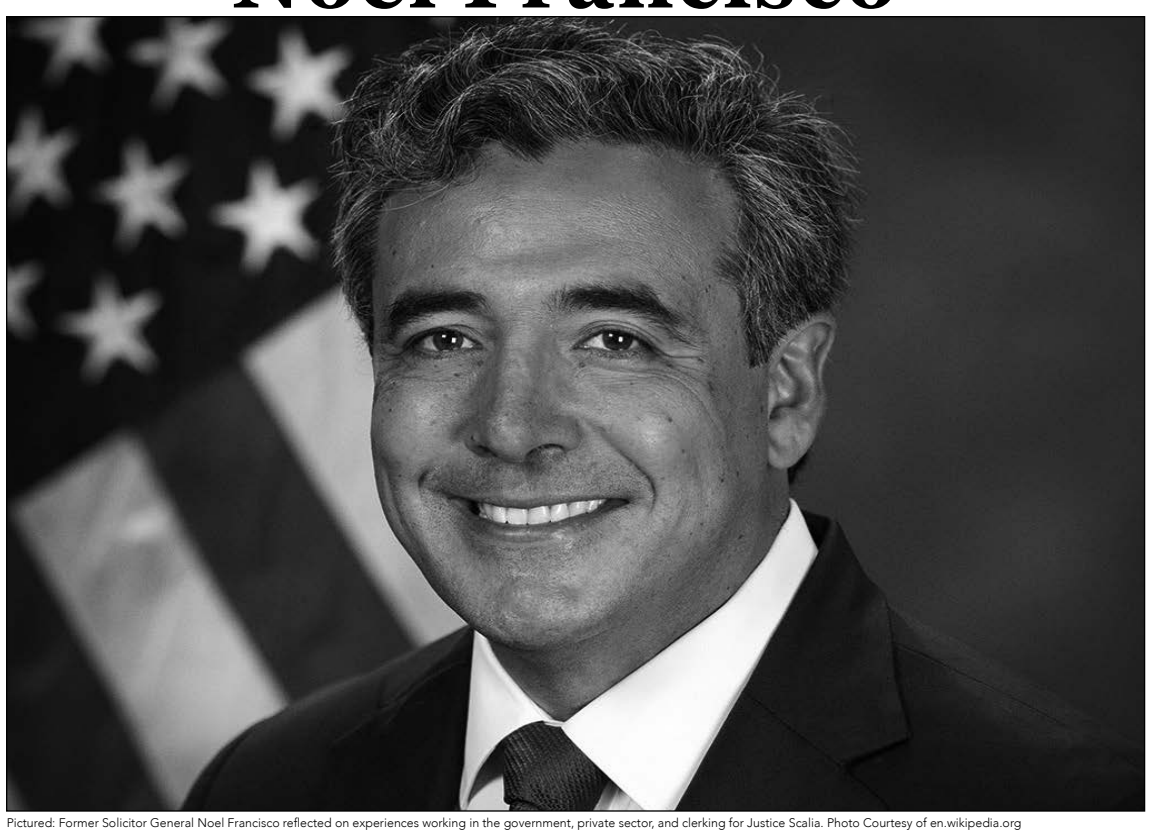
A Fireside Chat with Former Solicitor General Noel Francisco



Pictured: Former Solicitor General Noel Francisco reflected on experiences working in the government, private sector, and clerking for Justice Scalia. Photo Courtesy of en.wikipedia.org

Devon Chenelle '23
Staff Editor

On Wednesday, February 3rd, the UVA Law Federalist Society hosted "A Fireside Chat with Former Solicitor General Noel Francisco." For the event, Professor Scott Ballenger (BA '93, JD '96) interviewed Francisco on his wide-ranging career.

Professor Ballenger began the talk by introducing Francisco, noting they met "twenty-five years ago," in "Justice Scalia's chambers" while serving together as co-clerks. Appropriately enough, the talk began with a recollection of Francisco's time as Scalia's clerk. Francisco described a situation when Justice Scalia "had written a dissenting opinion . . . a classic Scalia dissenting opinion," and gave it to his clerks to look at. The clerks told the Justice "if you tone down the rhetoric, you might get other justices to join it." But when Scalia gave a re-draft of his opinion to the clerks, he had "actually jacked up the rhetoric," remembered Francisco, as Scalia said "sometimes, I've just gotta be me." That, Francisco said, is his "favorite story of Justice Scalia, and what probably epitomizes what he's about."

Explaining Scalia's reasoning, Francisco noted that Scalia was "engaging in a debate across time," and "his goal was to persuade others." As proof of Scalia's success, Francisco explained that at the start of Scalia's tenure "he was one of the only strict textualists on the court," and "now there's probably a textualist majority of five."

After a few years in the private sector, Francisco was selected for a position in the Bush administration, which he described as "one long stint, with two jobs." The first of those jobs was as Associate Counsel to President Bush in the Office of Counsel to the President. Francisco said, "What's exciting about working in the White House's counsel office, you're in the middle of the action." Francisco noted that "the best place to hang out in the West Wing was right outside of Karl Rove's doors," because "Rove would have a line of celebrities walking in-and-out." During that time, he met Bono and Bruce Willis.

After working in the Office of Counsel to the President, Francisco moved to the Office of Legal Counsel, which involved fascinating legal work. He highlighted a case involving an inquiry into whether "an appointment at the Vatican violated the foreign emoluments clause," where "it was a really interesting set of issues that in all those years had not gotten any significant treatment from OLC or from anyone else."

Francisco began working for the White House again when he was appointed Principal Deputy Solicitor General for the United States on January 23, 2017, and was confirmed by the Senate as the Solicitor General on September 19, 2017. Francisco described the Solicitor General's office as the "entity within the DOJ that represents the U.S. in almost all cases before SCOTUS," but, he noted "it can play a much broader role within the Executive Branch, as basically, the Department looks to the Solicitor General to provide advice on how to pursue the major pieces of litigation being carried on on behalf of the federal government." He described his role as the Solicitor General as seeing "whether these policy positions can be reasonably defended," and asking whether there is "a reasonable argument I can make to defend the president's policies."

In addition to his extensive background working for the government, Francisco also has an impressive track record in the private sector, where he currently works as a partner at Jones Day. Reflecting on the differences between the private and public sectors, Francisco said, "I think when you're in private practice, you have the opportunity to see a much broader range of issues," because "often in government your position and strategy is locked in," while "when you're on the private side, you have to be a lot more creative."

Francisco concluded his talk with advice for young lawyers on finding a balance between your work and personal life. "I think that the most important thing for every lawyer to do is to understand who the client is and how to serve that client," said Francisco. And, "When you're a young lawyer, your clients really are the more senior lawyers you're working for, [and] your job is to make them look good."

The most successful attorneys, Francisco thinks, "Are those who understand the role they're supposed to play." Lastly, Francisco noted that despite his successful and high intensity

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around north grounds

Thumbs up to the new free money Congress might give out for having children. ANG's furbabies (squirrels) had better qualify or ANG will sue under either the Equal Protection Clause or the Wildlife Fairness Equitable Doctrine.

Thumbs down to Stephen Parr's emails about the Law School's inclement weather policy. Not that ANG ever goes to class, but for once, ANG feels like it's wrong to tease students with the possibility of class cancellations when everyone knows classes will just be held on Zoom.

Thumbs up to DOGE (coin). ANG is going to reinvest all of ANG's BigLaw summer earnings into imaginary Internet money that comes with a meme.

Thumbs down to Tom Brady. You just don't get to win that much.

Thumbs up for sunny weather. ANG enjoys ANG's continuing descent into feral-ness, but it is starting to disturb the local youth.

Thumbs down to people wearing full suits, including boujie pocket squares and cufflinks—but not shoes—in class. While ANG loves to maximize comfort especially in formal attire, ANG recognizes ANG's feet smell, as other students should too.

Thumbs up to guitar-smashers everywhere. Regrettably, ANG has been advised that it is unprofessional to shoutsing "YEA I GUESS/THE END IS HERE" and then scream when concluding moot court oral arguments.

Thumbs down to the prospect of Valentine's Day during COVID. ANG's failure to cuff via the Internet is only compounded by all of the forest animals spending six more weeks hibernating. Thanks for nothing, Punxsutawney Phil.

KEYNOTE
continued from page 1

career, he has still been able to strike a balance. "You know, I work hard, but I don't think it's been unmanageable," said Francisco, noting, "I go to my children's sporting events, I go golfing once or twice a week with my daughter," and "I think clients recognize we need to have lives as well." This law student found those to be inspiring words from someone far busier and more successful than himself, and hopes others will find them helpful as well.

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dnc9hu@virginia.edu

Scan this QR Code to Access the Virtual Diversity Pledge!

SCAN ME

Diversity Week Celebrates 15th Anniversary

Dana Lake '23
Staff Editor

Kathryn Querner '22
Executive Editor

This week, February 8-12, UVA Law is celebrating its 15th annual Diversity Week. The ideals promoted during this week-long event are summed up in the Diversity Pledge:

"As a member of the UVA Law community, I hold that . . . Every person has worth as an individual. Every person is entitled to dignity and respect, regardless of class, color, disability, gender identify, nationality, race, religion, sex, or sexual orientation. I affirm that prejudice has no place in the UVA Law community—now or ever."

Diversity Week began as an initiative by Lambda Law Alliance in 2006, in response to an act of hate against two UVA Law students. The incident of intolerance occured at the Foxfield Races—two openly gay UVA Law students were verbally and physically harassed by a fellow student. This high-profile incident drew widespread outrage from the community. Lambda saw an opportunity to draw on the community's unified shame toward the act of hate, and established Diversity Week as a celebration of and devotion to respecting our differences.

The initiative behind Diversity Week was published as a letter to the editor from Lambda in the *Law Weekly*, signed by a number of UVA Law professors, students, and student organization chairs.[1] Lambda implored, "If UVA Law gains a reputation for intolerance, we lose valuable insights and perspectives when minority students choose to go elsewhere . . . UVA Law is special. All students ought to share fully in the privilege of participating in its rich traditions and strong sense of community."[2]

These sentiments remain as salient today as they were then, as core values of love, tolerance, and community are under siege by widespread, hateful, and intolerant political messages. To continue UVA Law's tradition of rejecting intolerance, Diversity Week offers a number of events to honor and celebrate the diversity within our community.

The week of events started out strong on Monday with the BLSA and WOC's panel "A Black Lady Courtroom." Four judges from every level of the judicial system, including a member of Virginia's Supreme Court, discussed what it means to be a Black woman in the law.

Tuesday continued as the busiest single day of Diversity Week, with three events spread throughout the day: There was a panel on "Perspectives on Diversity in Big Law" at 12:30 p.m., featuring minority attorneys from half a dozen Big Law firms; it was followed by a common read event based around the book *The New Jim Crow* and the experiences of Black criminal law practitioners at 5:00 p.m.; and the day wrapped-up with a Lambda and HLA event at 6:30 p.m. discussing the ramificatons of the COVID-19 crisis on the queer community.

Diversity Week's inaugural keynote takes place on Wednesday at 12:30 p.m. with Robert Grey. Grey is the president of the Leadership Council on Legal Diversity and senior partner at Hunton Andrews Kurth. As the first person of color to serve as chair of the ABA House of Delegates, Grey is a national leader in bringing diversity and inclusivity to the legal profession and every student is encouraged to listen-in on his session.

Thursday's events include a dinner talk and Q&A on the transition to public interest from private practice. Additionally, there is a focus on diversity in private practice at 5:00 p.m.

Friday concludes with a reading and reflection session at noon, centered around the experiences of minority students here at the Law School. Students have the opportunity to share their reflections with the panel organizers to foster discussions rooted in the everyday reality of being a minority at UVA. Every student is invited to attend and contribute.

In between the spiritual growth, horizon-expansion, and networking, participants have several opportunities for a catered dinner from local restaurants. The first thirty registrants for sessions Tuesday through Friday will be treated to meals from restaurants like Mahana Fresh, Pearl Island, Pachamama Peru, and Mochiko Charlottesville. Check out the brochure emailed on February 4 for details. Law Students can also grab friends and join in a virtual diversity trivia on Wednesday, hosted by SBA. There are prizes for first and second place and the event will be via Twitch. Finally, there is a free t-shirt for every student who signs the Diversity Pledge. It's a sharp design, and they are available for pickup in Hunton Andrews Kurth Hall.

This year's Diversity Week features a wide array of speakers and topics, combined with a variety of accessible panel times and ways to participate. There is a place for every student to get involved this week. Celebrating and respecting diversity is critical to fostering an inclusive and welcoming UVA Law community. To affirm a commitment to diversity, please sign the Diversity Pledge. This year, the Diversity Pledge will be virtual in order to minimize contact and ensure social distancing. Be a part of the tradition and sign at: https://forms.gle/3pDE3vctymuvcsZx6.

Let's work together to contribute to UVA Law's efforts to promote respect and diversity.

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dl9uh@virginia.edu
kmq8vf@virginia.edu

1 "Letter to the Editor: Community Must Be Supportive of All Students," *Virginia Law Weekly*, Vol. 59. Number 5, September 29, 2006.

2 *Id.*

A Bear Gives Injustice A Hard Stare

Anna Bninski '23
Staff Editor

Among the DVDs gracing the shelves of the Arthur J. Morris Law Library is the 2017 film *Paddington 2*. Seeking some start-of-semester tranquility and anticipating marmalade-related escapades, I checked it out, little reckoning that a PG children's-movie sequel would not only rend my heartstrings but also critique miscarriages of justice in the UK's penal system.

(For those unlucky enough to never have encountered Paddington, here's a rundown: He is a small, self-possessed Peruvian bear who first appeared in a 1958 novel by Michael Bond. Having stowed aboard a ship and subsisted on marmalade for the voyage, he arrived in London and was adopted by the Brown family, whose neighbors mostly take in stride the arrival of a talking bear. Hijinks precipitated by Paddington's literalism, limited knowledge, strong moral sense, and extreme interest in marmalade ensue. Does that sound twee? It is. But it's also wonderfully written, warmhearted, and very funny.)

Since Paddington was firmly ensconced with the Brown family at the end of *Paddington*, released in 2014, one could be forgiven for expecting that with any immigration issues resolved, the young bear would not be facing legal troubles in the sequel. Alas for Paddington, that is not the case.

The film opens with Paddington (ably voiced by Ben Whishaw) trying to find the best possible present for the 100th birthday of his Aunt Lucy, who lives in the Home for Retired Bears in Lima. However, things quickly go south when Paddington, attempting to interrupt an incident of breaking and entering, is mistaken for the thief of a valuable pop-up book.

Paddington is convicted, largely on the testimony of a washed-up actor named Phoenix Buchanan (played by Hugh Grant, who seems to be having the time of his life chewing through scenery). While the viewer may be certain that Buchanan's testimony is suspect, a more pressing legal problem overshadows the progress of justice in Paddington's case.

Those familiar with 28 U.S. Code Section 455(a) will recall that (a) "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

While, of course, United States federal law is not applicable, rest assured that the UK operates with a corresponding principle of judicial recusal: "A judge must step down in circumstances where there appears to be bias, or, as it is put, 'apparent bias'. Judicial recusal is not then a matter of discretion . . . The test for determining apparent bias is now established to be this: If a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the judge was biased, the judge must recuse himself: see *Porter v Magill* [2002] 2 AC 357 at [102]." *Mengiste and another v Endowment Fund for the Rehabilitation of Tigray and others*, [2013] EWCA Civ 1003; [2013] WLR (D) 337.

The judge presiding over *Regina v. Paddington Brown* had, some short time prior to the case, encountered Paddington at the bear's place of (brief) employment: a barber's shop. A series of ursine mishaps led to the judge leaving with a bizarre marmalade-smeared tonsure. This surely qualifies as an "involvement with one of the parties in the past," which Lady Justice Ardern, in the opinion cited above, identified as one of the circumstances that can require judicial recusal. The opinion also placed considerable stress on optics: "Courts need to be vigilant not only that the judiciary remains independent but *also that it is seen to be independent* of any influence that might reasonably be perceived as compromising its ability to judge cases fairly and impartially." (Emphasis added.)

Regina v. Paddington Brown, by this standard, fails as an exercise of judicial power. Not only was I, as a viewer, aghast at the apparent judicial bias, but the ten-year sentence imposed on Paddington shocks the conscience. It is also unclear why Paddington, who is a young bear, was tried as an adult; although the age of criminal responsibility in the UK is ten, anyone under eighteen should be tried in youth court, and even offenders age eighteen to twenty-give are imprisoned in age-specific detention, not "a full adult prison." *Age of Criminal Responsibility*, https://www.gov.uk/age-of-criminal-responsibility, retrieved February 3, 2021.

Because this is a family film, Paddington's time of imprisonment is comparatively brief and includes a pastiche of the *Great British Baking Show*. But despite that levity, the film also explores how incarceration severs the social ties, leaving inmates feeling forgotten by their loved ones and understandably jaded about the inefficacy of the criminal justice system. No matter how much Paddington's perseverance and will to see the best in others improve conditions in the prison, the fact remains: He's a young creature unjustly removed from everyone he knows and loves, whose fictional plight can and should provoke thought about how people, not just bears, are treated by our institutions.

Opining that *Paddington 2* is good is not a hot take (I see you, record-breaking 100% Fresh rating on Rotten Tomatoes). But if your semester needs a heartwarming interlude with just enough legal intrigue to be written off as highly relevant research in common law systems, this movie is for you.

There are also actual movie still available here: https://www.moviestillsdb.com/movies/paddington-2-i4468740/KrikWa

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amb6ag@virginia.edu

Pictured: The most educational resource available in the Arthur J. Morris Law Library. Photo Courtesy of Anna Bninski '23.

Antitrust at a Crossroads: The Biden Administration

Donna Faye Imadi '22
Current Events Editor

The Biden-Harris Administration inherited an era of antitrust akin to that at the turn of the early 20th century. Except, rather than the industrial era, it is the new technological dynamism in the economy challenging our leaders to craft a path forward in a pandemic-ridden business climate. How does the Biden Administration intend to chart a path forward? From Federal agencies, Congress, and the Executive Branch, here are some key developments to watch in 2021.

The Agencies | DOJ & FTC

Expert Leadership in Antitrust with DOJ AG Merrick Garland and BigTech Investigations continued...

The Biden Administration's DOJ and FTC, two apolitical antitrust enforcement agencies, are inheriting major monopolization cases against Google and Facebook, with probes also open into Apple and Amazon. If regulatory action is not taken in Congress to clarify our antitrust laws, these agencies may be at the helm of setting precedents that will transform the application of antitrust law in the 21st century, wherein new technologies are redefining our understanding of market structure. The five cases[1] include three against Google and two against Facebook. These are the biggest antitrust cases that the government has considered in the past quarter-century (since the *Microsoft* case). At a time when antitrust law is at a crossroads, with a philosophical debate[2] questioning the efficacy of the consumer welfare standard, the arguments that animate and determine the outcome of these cases have great potential to reshape the economic theories and concepts applicable to antitrust in a tech-driven future.

Further, the nomination of Merrick Garland as Attorney General marks only the second time in DOJ history where the AG has had extensive experience in antitrust. Incoming AG Garland taught antitrust law at Harvard University and has a reputation as a well-balanced expert. In his recent 2019 opinion as a judge on the U.S. Court of Appeals for the D.C. Circuit in *Marshall's Locksmith Service v. Google*, he affirmed the dismissal of claims against Google, Microsoft, and Yahoo! by applying the Communications Decency Act's Section 230 immunity provisions; though it has also been said[3] he holds a view deferential to the directive of the legislature's intentions and not purely economic analysis. Incoming AG Garland is forecasted to bring a balanced lens, likely guiding the DOJ to pursue well-developed cases in legal and policy principles.

Congress | Senate Judiciary and House Judiciary Subcommittee on Antitrust

Chairwoman Amy Klobuchar and the Antitrust Law Enforcement Reform Act

As Democrats control the House and Senate, the potential for legislative reform on antitrust is sky-high. Amy Klobuchar's appointment as the Chair of the Senate Judiciary Subcommittee on antitrust is setting a tone for greater antitrust scrutiny, with her sweeping proposed reform bill, "Antitrust Law Enforcement Reform Act,"[4] referred to as the biggest overhaul of antitrust laws in forty-five years. Senator Klobuchar, who has a reputation[5] for advocating stronger antitrust enforcement, reflects the prospects of tenacious leadership that will be strong enough to rally political-will in pushing antitrust reform legislation, coinciding with the advent of a Democratic-controlled Congress. Chairwoman Klobuchar may even conduct investigations into BigTech and other concentrated industries, akin to the House Subcommittee in 2020, which led to a sweeping 450-page report.[6] Notably, the Republican-minority issued a companion[7] report agreeing with Democrats on increasing agency funding, data portability and interoperability, reforming the burden of proof in merger cases, and clarifying the role of market definition in antitrust inquiries.

The Executive | The Biden-Harris White House

A Populist-Paradigm, potentially in the form of an Antitrust Czar

The Administration has been vocal in their advocacy of bringing a diversity and equity lens[8] to many of their policy efforts. Action on reviewing impacts of algorithm bias, antitrusts and labor, and introducing a civil-rights lens to competition policy, will be influenced by the forthcoming FTC Chair (yet to be announced). Further, the Administration has entertained proposals for a hyper-specialized office: an "Antitrust Czar," who may oversee the coordination and information sharing back-and-forth between the agencies. The prospect of such a conduit may be arguably beneficial in increasing coordination, yet has potential to be harmful if viewed as politicizing and duplicating the efforts of the apolitical agencies.

2021 at a Crossroads

Antitrust has become a central concern, not least due to worries over economic concentration and income inequality. Implications of the concentration of power in the hands of a few companies controlling information,

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1 https://news.bloomberglaw.com/antitrust/what-to-expect-in-antitrust-policy-enforcement-from-biden-administration

2 https://www.lawweekly.org/front-page/2019/10/2/make-antitrust-cool-again-antitrust-in-the-digital-economy

3 https://www.law.com/thelegalintelligencer/2021/01/22/attorney-general-nominee-merrick-garlands-antitrust-experience/

4 https://www.cnbc.com/2021/02/04/klobuchar-unveils-sweeping-antitrust-bill-laying-out-her-vision-as-new-subcommittee-chair-.html

5 https://www.klobuchar.senate.gov/public/index.cfm/2020/3/klobuchar-introduces-legislation-to-deter-anticompetitive-abuses

6 https://www.google.com/url?q=https://www.skadden.com/-/media/files/publications/2021/01/2021-insights/competition_in_digital_markets_450_pages.pdf?la%3Den&sa=D&source=editors&ust=1612836072683000&usg=AOvVaw2hvmb_gWh766ppqv0e6sYN

7 https://www.google.com/url?q=https://www.skadden.com/-/media/files/publications/2021/01/2021-insights/buck_report_companion_report.pdf?la%3Den&sa=D&source=editors&ust=1612836089687000&usg=AOvVawokBYL6t_kL5usRqW3T8aF8

8 https://www.c-span.org/video/?507733-1/communicators-social-media-tech-issues-2021

Feeling Judgey: Which Bread Rises to the Top?

Phil Tonseth '22
Production Editor

When I originally agreed to write this article, I planned to shell my way through all of the reasons why turtles are underappreciated and make wonderful pets. Then, I played Stan Birch '22 in Mario Kart and was hit with too many shells to be willing to subject myself to further torture of talking about turtles again.[1] Therefore, let's talk about something everyone loves, carbs. Since nobody has really gone out to eat in over a year now, I believe it's my civic duty to remind the masses which chain restaurants have the best bread that you can hopefully partake in soon.

10) Cheddar Bay Biscuits – Red Lobster

Personally, I'm not a fan of Red Lobster. It seems like an upscale version of Long John Silvers, except you eat at a table instead of in your car. Nonetheless, apparently their cheddar biscuits are delicious, to the point that they serve over one million a day. They've honestly only made this list because Will Mcdermott '22 believes they're better than both Outback and Olive Garden bread, and I had to publicly shame him for such a horrible take. On a positive note, their recipe is easily accessible so you can still enjoy them while being COVID compliant at home.

9) McDonald's Hamburger Buns

This is a risky play here. Most people either love or hate McDonald's, and those who love it usually only eat their fries. Their buns, while average, are highly versatile—ranging from holding hamburgers and chicken patties to fake fish thingies. Their sign shows they've served over ninety-nine billion sandwiches, which seems like the type of math I'd use to calculate damages in torts. I'd give this bun a solid, yet underwhelming grade.

8) Subway Bread

Welcome to the "great culinary-philosophical dilemmas of our time," a.k.a. whether the bread used at Subway meets the standard for bread under Irish law. Spoiler alert, there's too much sugar content per weight of flour in it, meaning per Ireland law, Subway sandwiches are served as confectionaries.[2] I'd argue the only sweet thing about Subway's bread is that I can get a five-dollar foot-long, hence the volume per price ratio is the only reason it lands this high on my ranking.

7) Cheesecake Factory Bread x2

Coming in hot with two options, Cheesecake Factory is the surprise addition to this list. I'm not sure if anyone at the Law School has been to the Cheesecake Factory since middle school, but if so, it's probably because their bread is far superior to their actual cake. Serving both white and brown bread and packing the leftover bread to go for you is a clutch idea.

6) Carrabba's Bread and Oil

Sliced Italian bread truly isn't anything to write home about, but the addictive herb-seasoned olive oil dip is what propels this bread up the charts. Although I never found Carrabba's to be "fine dining" when I was growing up, like Leah Deskins '21, the overall aura of their bread appetizer is quite fancy amongst their peers.

5) Zaxby's Texas Toast/ Panera Bread

For both of these places, they offer sides of bread despite the fact bread could be the vast majority of the meal you are ordering the side for (i.e. soup in a bread bowl, sandwich) . . . I'm not sure how to adequately judge their bread, but since both of these breads 'slap,' they deserve their elevated position.

4) Cracker Barrel Biscuits and Corn Muffins

Con: You have to request your assorted bread basket. Pro: Serving both biscuits and corn muffins, these delectable treats can be loaded with jam, honey, or butter and enjoyed while casually sitting back on one of their signature rocking chairs. If this isn't the type of life you long for, I feel sorry for you.

3) Outback Honeywheat Bushman Bread

Sweet and savory. Soft yet crispy. A whole loaf of bread served while impaled with a knife on a chic cutting board. Having to compete with the Bloomin' Onion devalues it to the general public, but this bread is nothing to sleep on. My biggest complaint is that they don't give you enough, a.k.a. endless bread a la Olive Garden.

2) Texas Roadhouse Rolls

If I die of a heart attack by forty, it will solely be due to my overconsumption of these rolls and the associated honey butter. Do I really go to Texas Roadhouse for anything other than the bread? Absolutely not. Do I ask my waiter there to refill my roll basket literally anytime I see a waiter walk by? Absolutely yes. Will I serve these rolls as an appetizer at my wedding? You bet.[3]

1) Olive Garden Breadsticks

Michael Berdan '22 summed these breadsticks up perfectly, asking, "Are their breadsticks really great, or are you just intoxicated by their unlimited abundance, and the quaint Italian neighborhood restaurant atmosphere?" I'd argue all three, because when you're there, you're family. I love you Olive Garden, please come to C'ville <3.

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pjt5hm@virginia.edu

1 Mainly red and green shells, but of course the one time I was leading, Stan hit me with the dreaded blue shell of death.

2 https://www.theguardian.com/world/2020/oct/01/irish-court-rules-subway-bread-is-not-bread

3 If for some reason, whatever woman who unwittingly decides to marry me reads this, you're welcome. Everyone will love our wedding solely because of this.

Pictured: The most generous family you could ever have. I mean, who else offers endless salad and breadsticks? Photo Courtesy of en.wikipedia.irg

LAW WEEKLY FEATURE: Court of Petty Appeals

The Court of Petty Appeals is the highest appellate jurisdiction court at UVA Law. The Court has the power to review any and all decisions, conflicts, and disputes that arise involving, either directly, indirectly, or tangentially, the Law School or its students. The Court comprises eight associate justices and one Chief Justice. Opinions shall be released periodically and only in the official court reporter: the Virginia Law Weekly. Please email a brief summary of any and all conflicts to cl3eh@virginia.edu

Froz T. Snowman v. Student Administration
73 U.Va 15 (2021)

Pickett, J., delivered the opinion of the Court, in which Deskins, Calamaro, Luévano, Jones, Re, Querner, and Luk, C.J., join. Tonseth, J., concurs in part, dissents in part.

Justice Pickett delivered the opinion of the Court.

I. Introduction

Growing up in the Midwest, I had the privilege of experiencing some of the best days known to humankind: Snow Days. When the news would arrive that we had the day off from school, I would rush to get dressed in my warmest clothes before venturing outside to frolic with my neighbors. There would be sledding and snowball fights, followed by hot chocolate by warm fires. But, snow days in 2020/2021 are different. As the world has been forced online, it seems that there is never an excuse not to be working. And as schools embrace online learning, the question becomes: Why give people a snow day when we can all just attend class from the comfort of our own homes? That question is what brings us here today.

II. Facts

On Sunday, January 30, 2021, snow fell upon Charlottesville, Virginia. In the lead up to that day, student Froz T. Snowman received an email that described the Law School's inclement weather protocol. It indicated that classes could be canceled in the event of a snow day, or that they could all be moved online. Feeling as nostalgic for snow days of old as Conservatives are for Antonin Scalia dissents, Snowman sued UVA Law, hoping to enjoin them from moving classes online instead of giving students the snow day they deserve.

III. The Peter Pan Covenant

The Peter Pan Covenant, widely known as You're Never Too Old to Have Fun, provides that a student at rest stays at rest unless acted on by an outside force. When it snows, students default to rest. They deserve to curl up inside with a good book or movie and hot cocoa, or to go outside and have fun. And so, a snow day makes perfect sense—let students stay at rest before pushing them back into the exhausting world of law school.

Respondents today (UVA Law) seek to overturn the Peter Pan Covenant, claiming that there is no right to rest or to have fun. They've already taken Spring Break and spread it out over the whole semester, but they aren't done yet. They want all fun gone.

But the Peter Pan Covenant is as old as the Cold Call. For as long as there has been misery, there has been fun, and the Peter Pan Covenant has always been this Court's way of enforcing ~some~ kind of work life balance. And so today we reiterate the legality and importance of the doctrine. If UVA Law finds the weather bad enough to cancel in-person classes, it must cancel classes of all kinds. Let the kids play.[1]

IV. Standing

Unfortunately for Snowman, however, I am taking Federal Courts this semester. So, I have standing on my mind. And in this case, I can't find standing for Snowman. There are two major issues with Snowman's case. First, UVA Law didn't put all hybrid classes online on Monday. It only put hybrid classes online that started before 10:00 a.m. And people who take in-person classes before 10:00 a.m. don't, to be frank, deserve standing in any case. This Justice is not an early riser and I object to any show of favor toward early risers. Plus, as the concurrence points out, it mostly affected 1Ls and 1Ls always losing is a staple underpinning of the Court of Petty Appeals. If we let 1Ls win, then we are opening the door to a slippery slope of giving 1Ls rights.

The second issue is that this case is based on a hypothetical. I don't know a lot about standing, but I do know that courts generally shouldn't decide hypothetical cases on hypothetical issues. Something about separation of powers and Article III. If I could decide hypothetical cases, though, I would absolutely #FreeBritney. So, until UVA Law actually moves all classes online because of the snow, I simply can't make a ruling.

V. Conclusion

While I have sadly ruled against Snowman in this case, I would like to make my position perfectly clear. IF UVA Law cancels all in-person classes, but does not give us a snow day, then a law student would be able to sue and they would win in this case. But sadly, that hasn't happened yet. And if it does, I look forward to seeing you all out in front of the Law School for a socially distant snowball fight.

Tonseth, J., concurs in part, dissents in part.

"I do not join the Court's opinion because I am not sure what it means."[2] These hallowed words by my former colleague on the Supreme Court ring equally as true in this case. From my humble vantage point atop my ivory tower, I cannot stand for this attempted besmirchment of justice. Jurisprudentially, there are almost as many holes in Justice Pickett's opinion as there are emails from Diddy Morris in my junkmail folder.[3] Justice Pickett "tells us, by a process of retrospective crystal-ball gazing posing as legal analysis,"[4] that Froz T. Snowman lacks standing. Standing shcmanding. However, Froz's farcical pseudo-legal analysis is just plain bad. Therefore, I half-heartedly concur.

Since over one-third of every UVA Law's graduating class works in New York City, how about we apply some New-York-specific law and see how the Petitioners like those apples?[5] Section 4528 of the New York Civil Practice Law and Rules states that "any record of the observations of the weather, taken under the direction of the United States weather bureau, is prima facie evidence of the facts stated." In the case at hand, however, petitioners fail to rely on the required weather data from a certified bureau to establish the prima facie case.[6] If Froz is attempting to use the weather data from the events of the snow day, which occurred on Sunday, and apply it to the following day of class, then the petitioners' desired outcome would be a classic case of judicial overreach. Further, after a cursory look at LawWeb, there are only two Monday morning classes that were detrimentally affected prior to the School opening up at 10:00.[7] Because

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> "They've already taken Spring Break and spread it out over the whole semester, but they aren't done yet. They want all fun gone."

1 The concurrence claims that I am attempting to attend school even less than a normal second semester 3L. He is correct.

2 *Edwards v. Arizona*, 451 U.S. 477, 101 S. Ct. 1880 (1981) (J. Powell, concurring).

3 Yes, I still filled these out, but Google auto-sorted them anyways.

4 *Missouri v. Frye*, 566 U.S. 134, 132 S. Ct. 1399 (2012) (J. Scalia, dissenting).

5 While I personally love big apples, I will only eat granny smith apples. Sue me.

6 Tbh, I have no idea what "prima facie case" even means, still. Let's hope I'm never a litigator.

7 R.I.P. to the 1Ls who have ConLaw at 8 a.m. on a Monday. Woof.

Faculty Quotes

R. Harmon: "Do some homework. Figure out who Yertle the Turtle is."

R. Verkerke: "I love how many cat familiars are invading your screens! We have so many cats attending our seminar."

J. Harrison: "Poof! There goes the general law."

E. Kitch: "Say we were studying mushrooms. It would take a lifetime to study them all! But we won't do that. It's more like we're studying the theory of mushrooms."

C. Barzun: "It's just two minutes of sort've . . . torture."

J. Cannon: "Golf course owners say, 'It's green! It has trees! How could it not be for a conservation purpose?'"

S. Prakash: "I think Jefferson would say to your point 'intended schmintended.'"

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

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Virginia Law Weekly
580 Massie Road
University of Virginia School of Law
Charlottesville, Virginia 22903-1789

Phone: 434.812.3229
editor@lawweekly.org
www.lawweekly.org

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COPA

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"1Ls always lose" is a founding doctrine of the Court of Petty Appeals, I find no merit in these petitioners being able to argue their case successfully.

As a sheer matter of principle, and dare I say laziness, Justice Pickett would attempt to implement a snow-day solely to avoid attending class, even though he only Zooms from home.[8] This inclination to cancel classes goes against prior precedent advocating for more snacks from the school, additional access to Seminar rooms, and decreased tuition due to the transition from in-person classes to Zoom. Rivaling Veruca Salt in sheer audacity, the majority demands all of these treats from the Law School, for a reduced price, while also apparently attending school even less than a normal second-semester 3L. If this makes sense to any lawyer beyond Rudy Giuliani, God help us and this profession. Time for Froz T. Snowman and his problems to melt away.

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shp8dz@virginia.edu
pjt5hm@virginia.edu

8 Two points should be made here: a) Justice Pickett and I have an RBG/Scalia relationship off of the Court & 2) he's a 3L, do you expect anything less?

Response to a Letter to the Editor

Corpus Linguistics and Legal Interpretation Part 2: An Imperfect Tool

Rachel Martin '23
Staff Editor

(The following was written as a reply to Professor John Setear's Letter to the Editor, appearing in the *Law Weekly*, Volume 73, Edition 14, responding to the author's article "Corpus Linguistics and Legal Interpretation: A (Very Brief) Introduction," Volume 73, Edition 13.)

Dear Professor Setear,

Thank you for taking the time to engage with my article. I actually agree with a lot of what you said—as I mentioned at the end of my article, corpora and other linguistic tools are not going to be a panacea for all the woes of legal interpretation. Due to space constraints, I admittedly had to simplify things quite a bit and gloss over a lot of the complications and qualifications (hence the "(Very Brief)" in the title). I cannot give a full account of all said complications here, but I would like to take the opportunity you have provided to make a few more general comments.

As a general matter, I think that anything purporting to be an interpretation of a written text should probably at least *start* with said text, even if in many or most cases the process *cannot end* there. (It often cannot end there because language is, after all, inherently ambiguous to some extent. However, I would say a finding of irreducible linguistic ambiguity in a given situation is itself valuable.) And inasmuch as one starts with the text, I think it better to take account of all the tools at one's disposal and their strengths and flaws, rather than to blindly bow down before the divining rod of the dictionary and the whims and caprices of its compilers.

Corpora and other linguistic tools are merely that—tools. Corpora provide a way to compile and search naturally occurring language and were built to aid in the study and teaching of languages.[1] Tools such as corpora are neither inherently good nor bad, neither inherently conservative nor progressive. As one illustration, data from the Corpus of Founding Era American English (COFEA) has recently been used to argue that the phrase "bear arms" was, at the time of the founding, used overwhelmingly in a military or collective, not individual, sense.[2]

As you rightly pointed out, choosing a relevant and representative database can be a thorny issue, and depends at least in part on what question you are asking. If one wants to know more about the terms of art used in the diamond trade, then a general, "balanced" corpus designed to be representative of the English language as a whole[3] would probably not be very helpful. However, even in specialized trades, much of the language used might be termed "ordinary"—e.g. "dog" in a veterinarian manual or animal control statute—and in these cases a general corpus may suffice.

Philosophical differences on what to prioritize also come into play. Languages change over time.[4] One may favor contemporary ordinary meaning on the principle that legal language should be understandable to the contemporary ordinary people whose behavior it is aimed at. Another may favor a variant of original meaning on the principle that judges should follow what was actually enacted by the voice of the people through the legislature and leave any changes to the same. What side of this debate one falls on affects what questions one asks and what corpus or parts of a corpus[5] are relevant to answering them. I do not intend to weigh in on the debate between originalism, living constitutionalism, and other such '-isms', as my initial impressions[6] are that they all have some degree of merit and fault, and I do not pretend to have the wisdom or experience to proclaim some sort of ideal mix. However, whatever side one takes, I would encourage transparency about what one is doing and take care in avoiding the many methodological pitfalls that could lead to confirmation bias.[7]

1 While some recent corpora, such as COFEA, were at least inspired by potential legal applications, and others compile legal texts, these are recent developments and not the norm.

2 *See, e.g.*, Neal Goldfarb, *Corpora and the Second Amendment: "bear arms" (part 1), plus a look at "the people,"* LAWnLinguistics (Apr. 29, 2019).

3 I would be remiss in my duty if I did not mention that how to properly balance general corpora is also a matter of debate.

4 Consider the word "gay" or, as you pointed out, "federalist."

5 One can either choose between historical and contemporary corpora, or take a corpus like the Corpus of Historical American English (COHA), which spans from 1810–2009, and sort and compare results by decade.

6 Being in only my third week of Constitutional Law.

7 Such as searching for "firearm," "carry," and "vehicle," if one wants to know whether "carry a firearm" more commonly means "transport by vehicle" or "have on one's person." *See* Stephen C. Mouritsen, *The Dictionary is Not a Fortress: Definitional*

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HOT BENCH

Austin George '23
Interviewed by Jonathan Peterson '23

Hi Austin! Thanks for joining us on Hot Bench this week. Who are you, where are you from, and how did you end up at law school?

I'm Austin George, I'm a 1L originally from Alabama, but I moved to Georgia, so both are home for me. Funnily enough, I've wanted to do tax law since I was in high school.

How did you get started with Taekwondo?

I started when I was five because it was mandatory in my family. My grandfather came to the U.S. from Korea in 1965, and he began the tradition. Back when he started learning in 1946, Taekwondo was reserved for adults. So, he had to beg to just to get beaten up by adults. When he was born, relations between Korea and Japan were strained. His father went to Japan to work, where he ended up dying. My grandfather grew up in Japan and, when he came back to Korea after World War II, he only spoke Japanese. Everyone at school bullied him. He didn't even know enough Korean to explain his situation. Essentially, he got so angry about being called a "Japanese bastard" that he wanted to beat up the kids doing it, so he learned Taekwondo. By the time he came to the U.S. he was a Master, and was one of the first Grandmasters in the U.S. He had his children study Taekwondo, starting at the age of five. His children did the same, so, it's been a tradition in my family now for three generations.

What's Taekwondo's history like?

Taekwondo's history is interesting; it isn't very old in terms of its actual formation. Of course, the principles and foundations are ancient, it's rooted in karate and tang soo do, which I believe was actually Chuck Norris's foundation. One of the original founders, Choi, had to flee due to a gambling debt he owed a wrestler. He trained in karate while in Japan and, upon returning to Korea, Choi had a reputation in martial arts and the wrestler left him alone.

That led to an idea: If martial arts can empower a small man, maybe it can empower a small nation. Korea then founded World Taekwondo as its most prominent martial art. My grandfather did not have high opinions of Choi, who ended up unhappy with the direction Taekwondo was headed. Choi felt he was not getting the recognition he deserved, so he formed ITF (International Taekwon-do Federation) in North Korea. A relative of Choi's formed the other branch of ITF which basically didn't agree with World Taekwondo but didn't want to be involved with North Korea.

Chuck Norris?

Well, Chuck Norris and my grandfather were actually good friends. My grandfather moved to California and, at that time, Norris was a motorcycle cop there. Norris actually sought out my grandfather to work on his wheel kick.

What's the difference between World Taekwondo and ITF?

In the mid-60s, World Taekwondo would put on demonstration teams, and they still do to this day. Now, they do these incredible routines with high kicks, flips, even some dancing. When my grandfather was doing demonstrations, he was smashing rocks with his head. It was impressive, but in a totally different way—it was much more about displaying strength and pain tolerance. As World Taekwondo advanced, they wanted to make sparring both pleasing to an audience and safer for the combatants. ITF is really focused on combat, not so much flash and spin.

What does a World Taekwondo practitioner do?

Most people focus on one or two competitions. I specialized in sparring and forms. As a kid, I was better at forms, but as I've gotten older I've become more interested in sparring. I think starting at such a young age hurt me, I was always sparring kids older in class which hurt my confidence. But my parents were really hard about good technique, so I tended to do well in forms.

Good tournament stories?

I was still a blue belt and I'd never practiced forms so hard for a competition. For some reason, my mom told me not to forget that I needed to practice. I swear to this day she cursed me. At the tournament, I forgot everything. I got dead last. I was so mad that I decided I had to win sparring. I'd never gone into sparring with that attitude before, and that tournament was the first time I ever knocked somebody out, and I won sparring too. I didn't win sparring often, so to get last in forms and first in sparring, that always stuck out to me.

Did you ever want to quit?

Yeah, actually, I hated Taekwondo as a kid. That changed in high school. I started training with my uncle and I guess there's a difference between training your nephew and training your son. He was just a more fun teacher. I'd always had an unspoken agreement with my mom that, when I graduated high school, I could do what I wanted with Taekwondo. But, by the time I went off to college, I loved Taekwondo. It'll be a part of me forever.

And, as credit to my mother because I did just say she wasn't a fun teacher, she was much more balanced with my training than her father was with her. She competed in the 1988 Olympic trials. She was the 1989 collegiate athlete of the year in forms and sparring. At one point she was ranked #1 in the world in forms despite splitting her time. She trained for hours every day as a kid, I only trained twice a week. She loves Taekwondo, but not in the same way as I do. She still does it now but that's in part because it's what she knows. I feel lucky to say that I still do Taekwondo because I truly love it and want to keep pursuing it. My mom didn't even want me competing past black belt—all she wanted was for me to experience competition at each belt-level. But now, I know I'll compete again, and that's my choice. I feel like I'm able to make that choice because my mom was balanced in my training.

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ajg4pk@virginia.edu

CORPUS PT. 2

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Of course, quantifying how common words are in a given context will only take one so far. A meaning that is less common is by definition used sometimes. Beyond doing frequency analyses using corpora, there are whole subfields of linguistics, such as syntax, semantics, and pragmatics, that relate to how words link together and have their meanings altered by their specific contexts. And even taking all of these subfields into account, one could never say with absolute certainty that there is some inherently "right" meaning in any given instance, especially with something like a statute that was written and approved by multiple people to be applied to multiple contexts. Language, like people, is messy, which is part of its beauty. Corpus linguistics is just one tool, empirically based but still imperfect, to test some of our assumptions about what "ordinary meaning" is, and I would not suggest that it should be the only or final word on who wins or loses in court.

Sincerely, Rachel Martin

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rdm9yn@virgina.edu

Fallacies and a Corpus-Based Approach to Plain Meaning, 2010 B.Y.U. L. Rev. 1915, 1957–58 (2010).

ANTITRUST

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media, and access to business opportunities have sparked vigorous social debates over cancel culture, free speech (*see Parler v Amazon*)[9], and other issues that influence society far beyond the bounds of the Sherman and Clayton Acts. Cast in this light, the potential of a White House czar on antitrust[10] and proposed "reality czar"[11] may not be coincidental. Rather, it reflects the relationship between the two arenas where economic power is a gateway to social/political influence over the construction of our realities.

A new season of "antitrust populism" may be on the horizon, but is not yet written in the stars. Time will tell whether or not Executive agencies, Congress, or the Executive will have the first word on the way forward.

Dfi3un@virginia.edu

9 https://www.politico.com/news/2021/01/11/parler-amazon-antitrust-suit-457579

10 https://www.law360.com/articles/1347585

11 https://www.nytimes.com/2021/02/02/technology/biden-reality-crisis-misinformation.html

JOURNAL TRYOUTS

continued from page 1

PDF of important dates, rules, and information about the tryout process and the participating journals. The biggest change from last year is an expanded table of contents and the inclusion of new "checklists" to help 1Ls keep track of the many moving parts in the Tryout. There is an Honor Code Checklist for the confidentiality rules and one checklist each for the Editing and Writing Components. The Toolkit this year also features "Easy Access Materials" at the beginning of the packet for easy reference.

These and other changes were made in response to feedback solicited from last year's participants. When asked what the most common complaints were, Feinberg commented, "Most of the feedback was about very discrete things, like how the Honor Code Rules were scattered throughout the Toolkit, which is why they've been collected as a Checklist this year." Thinking on the feedback a little more, Feinberg shared that a number of people really enjoyed the topic from last year, "which was great news, and something I'm trying for again this year."

Other changes have been more subtle. For example, this year's Toolkit has more information about *VLR's* Holistic Review, the process by which half of *VLR's* new members are chosen. According to the Toolkit, seven *VLR* members will sit on the Member Selection Committee, which decides on new members by considering their Editing Component scores, Writing Component scores, personal statement, and very limited grade information. The selection happens across three rounds, and limited grade information is provided about the fifty finalists. When asked about the new inclusion, Feinberg responded that it was in the interest of transparency. "In the past," she shared, "not knowing how the Holistic Review process works gave students a lot of stress. And since we already shared a lot of the same information with 2Ls last spring, when we found out the semester would be pass/fail, it makes sense to just be transparent about it moving forward."

So who exactly makes these changes? There is a Unified Journal Tryout Committee composed of the heads of each journal, and this committee usually makes decisions. Due to the pandemic, however, and the Office of Student Affairs' reluctance to involve too many students before an official decision was made about Spring Break, Feinberg worked with Dean Davies to come up with a contingency plan that eventually became the current tryout process. As for the Toolkit, Feinberg spent over twenty hours tweaking, rewriting, updating, and reorganizing the document over Winter Break. And she has made major strides in improving the document. Having personally read the Toolkits from all three years (why), I can assure the 1Ls that this is the most readable one to date. Plus, there are all these nifty new hyperlinks that make the document especially navigable.

For the 1Ls who are about to embark on the tryout process, Feinberg had this advice to give. As the outgoing Membership & Inclusion Editor, she encouraged everyone to submit a personal statement to *VLR*. She shared, "I wasn't sure when I was writing mine what *VLR* was looking for. I can't speak to what this year's Membership Selection Committee will do, but I can say that last year, we looked for the perspective you would bring to help us round out the journal and for people we would want to work with. You don't need to write about saving the world. Just give us something honest and authentic." Feinberg also had more general advice as the Tryout Administrator. For those of you only using the online bluebook, Feinberg recommends putting in the effort to read through the rules and to perhaps take handwritten notes as an alternative to tabbing it—whatever will help you familiarize yourself with the rules. As for the writing component, "there's an abundance of time, take breaks, it's not the same gauntlet anymore!"

It's undeniable that this year's Journal Tryout will be different. It's also undeniable that a lot of thought and care have gone into these changes. Whether or not all these changes are here to stay will depend on feedback from this year's tryout, to be collected in a survey sent out later this spring. So to all the Tryout participants this year, I wish you good luck!

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cl3eh@virginia.edu

The Docket

Time	Event	Location	Cost	Food?
	Wednesday – February 10			
12:30 – 13:30	Diversity Week Keynote with Robert Grey, President of the Leadership Council on Legal Diversity	Zoom	Free	Available for First 30 RSVPs
20:00 – 21:00	Diversity Week Virtual Trivia with SBA Programming	Zoom/Twitch	Free	☹
	Thursday – February 11			
11:00 – 14:00	LexisNexis Office Hours	Zoom	Free	☹
17:00 – 18:00	Diversity Week: Perspectives on Diversity in Public Interest	Zoom	Free	Available for First 30 RSVPs
19:00 – 20:00	Therapeutic Thursday Yoga	Zoom	Free	☹
19:00 – 20:00	Cavalier Daily Information Session	Zoom	Free	☹
	Friday – February 12			
All Day	PILA Grant Application Deadline	Zoom	Free	☹
11:00 – 12:00	Federalist Society Annual Symposium: Originalism Under Fire	Zoom	Free	BYCFA
11:30 – 12:30	ACS Journal Tryout Panel	Zoom	Free	☹
12:00	Diversity Week: Reading and Reflection	Zoom	Free	Available for First 30 RSVPs
17:00 – 18:00	Journal Tryout Bluebooking Session	Zoom	Free	☹
	Saturday – February 13			
09:00 – 13:00	Winter Farmers Market	IX Art Park	Free	Available for Purchase
	Monday – February 15			
09:00 – 10:00	Meditation Monday	Zoom	Free	☹
11:00 – 12:00	The Private Sector's Role in Cybersecurity Challenges	Zoom	Free	☹
18:00 – 19:30	UVA Law Journals Open House / Happy Hour	Zoom	Free	☹
	Tuesday – February 16			
12:30 – 13:40	Law and Economics Workshop, Adi Leibovitch (Hebrew University of Jerusalem)	Zoom	Free	☹

SUDOKU

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