



VIRGINIA LAW WEEKLY

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

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Wednesday, 10 March 2021

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

Volume 73, Number 19

Crossfire: The Adequacy of Antitrust Law

Donna Faye Imadi '22
Current Events Editor

On March 3rd, UVA Law's Federalist Society ushered in the forthcoming Spring season by hosting a vibrant discussion on the ever-blossoming topic of "The Adequacy of Antitrust Law: Is Big Tech too Big?"

On one hand, Jessica Vu¹ advocated yes - with a spin. Big Tech is not subject to antitrust discipline due to inherent size; rather, the anticompetitive practices of Big Tech are the impetus for reining in their power under the Sherman Act. On the other hand, Daren Bask² advocated for viewing antitrust law in the eyes of the "consumer welfare standard" (a standard which assesses welfare by the metric of price to consumers). Bask's case hinged on the concern that antitrust reform aimed at Big Tech would have consequences across the economy and is unnecessary for ensuring preservation of consumer welfare.

Moderating the debate, Professor Paul Mahoney quickly passed the baton to Professor Thomas Nachbar, who laid the groundwork for issues animating antitrust in Big Tech. Professor Nachbar elaborated on what the law is, leaving ideas about what it *will be* or *should be* to Vu and Bask.

Professor Thomas Nachbar | Multisided platforms and network effects

"Antitrust law is about competition and largely ignores issues pertaining to social harms," Professor Nachbar opened. He further introduced the broad debate over the 'consumer welfare standard' and whether antitrust should be used as a tool to address harms beyond "increased prices" to consumers. He left this an open question, as it currently animates the debate within the broader field.

With this theme in the fray, Professor Nachbar narrowed his presentation to Big Tech. He explained how the Supreme Court decision in *Ohio v. American Express*, "was the first opportunity for the U.S. Supreme Court to address antitrust harms in complex multisided-platforms, adopting an economic understanding with an emphasis on collective pricing of complementary

1 Current Chief Counsel to Senator Marsha Blackburn (R-Tennessee), where she advises on Senate Judiciary Committee issues.

2 Senior Research Fellow at the Heritage Foundation

Justice Through Education: Reclaiming Our Democracy



Speakers pictured from left to right: Erika Wilson (Photo Courtesy of <https://law.unc.edu/people/enika-k-wilson/>), Rachel Moran (Photo Courtesy of <https://www.law.uci.edu/faculty/full-time/moran/>), David Hinojosa (Photo Courtesy of <https://lawyerscommittee.org/staff/david-hinojosa/>).

Sai Kulkarni '23
Culture Editor

On March 2, CARE at UVA Law hosted an event with three distinguished scholars and advocates to discuss the role of education, citizenship, and diversity in fighting back against the problems that led to the insurrection on January 6, 2021. Professors Erika Wilson of the University of North Carolina School of Law and Rachel Moran of University of California, Irvine School of Law, as well as Mr. David Hinojosa of the Lawyers Committee for Civil Rights Under the Law, framed the discussion by focusing on how school lines creating de facto segregation can lead to events like that of January 6th. Our own Professor Kimberly Robinson was a fantastic moderator, who introduced plenty of important points of her own.

Before going any further, I want to note that the talk was both highly informative and interesting. The event lasted an hour, but I ended up with over four pages of notes because I wanted to make sure I noted all of the essential points they were making. I came away from the event more educated and with a desire to take a class from Professor Robinson in the future.

The discussion was focused on the idea of a "shared fate" between all Americans: the idea that we are all in this together and helping our fellow citizens is key to our success as a nation. All of the panelists pointed to the breakdown

of this concept, with educational segregation as a major cause behind the divisions and hatred leading to the insurrection (and broader society today). Each panelist presented a number of problems and solutions initially, followed by a brief Q&A session. Rather than attempting to cover all of the numerous issues presented by the panelists, I think focusing on the main ideas proposed by each, along with their proposed solutions, will give readers the best taste of the event.

Mr. Hinojosa opened with the idea that learning together helps kids understand, respect, and accept one another's differences. He focused on the dual problems of re-segregation and the lack of proper civic engagement in schools. He pointed out that we are not only re-segregating schools by site location, but by housing, transportation, and school choice as well. Essentially, private and charter schools are allowed to self-segregate; even schools that are targeted at one group (i.e., Black students) perpetuate segregation through isolation. Mr. Hinojosa also noted that increasing school funding won't solve everything. Better state laws outlining support for civic education are needed. High stakes testing drives what is being taught, so pulling back from that approach can promote the kind of educational and civic engagement needed to re-assert the idea of a shared fate.


Professor Moran of UCI fo-


cused on racial inequities in education and how the education system is unequipped for the age of disinformation. Racial inequity, she pointed out, prevents students from becoming active participants in our democracy. Students with fewer resources are not given the help needed to earn good paying jobs, relegating them to the margins of the economy and politics. Professor Moran argued that even the kids who "escape" segregated schools [she used this descriptor with clear reservations] are denied access to social networks enjoyed by some of their classmates, which can be stepping stones to the middle class.


With regards to the other problem, she points out that the pandemic showed how inept the schools are for the social media age. There is no discussion about educating consumers about the information on social media. The inability to discern between fact and lies on the internet was a major contributing factor to the insurrection. Thus, she advocated for including discussions of important issues into the curriculum. Professor Moran even proposed having Big Tech enter into classrooms to teach about both private and public information (especially on data mining and privacy) and educate students to be better producers of content.


Professor Wilson focused on the opposite side of school segregation and the entitle-


around north grounds


 Thumbs up to Harry and Meghan spilling the beans to Oprah. ANG often vents ANG's displeasures to the forest creatures, but ANG can never command such a rapt and loyal audience as the Royal Family can.


 Thumbs sideways the Boston Tea Party. ANG is confused about why Americans revolted against the British Monarchy, only to still obsess over their royalty two centuries later.

 Thumbs up to the \$1,400 check ANG is about to receive in the mail. ANG is now accepting offers to adopt any law student who would like to be adopted as ANG's child, helping ANG get additional stimmy money.

 Thumbs down to journal tryouts. ANG loves sitting in the dark hunched over ANG's desk. The fun ended too soon.

 Thumbs up to Chief Justice Roberts calling out the eight other Supreme Court Justices for their opinion that will end up "turning judges into advice columnists." ANG always thought ANG could have a weekly column in *Cosmopolitan*, now ANG can do that and be a lawyer too.

 Thumbs down to so many students running for positions in the SBA. While ANG knows that SBA is a front for nefarious acts, ANG is confused why so many people want a worthless line on their resume.

 Thumbs up to the one-year anniversary of COVID-19 shutting down life as we know it. ANG always told people that life was better with fewer friends and social interactions, and now people finally believe ANG.

 Thumbs down to Burger King saying "Women Belong in the Kitchen" in their celebratory ad for International Women's Day. ANG won't openly advocate for firing anyone, whom-ever approved this campaign should have their employee badge placed next to a Whopper in their rightful place, the trash can.

DEMOCRACY

continued from page 1

ment it creates. She pointed out that segregation concentrates advantage by creating predominantly white and affluent schools. Symbolic messaging, she emphasized, is important. The idea that in a racially diverse area there are stratified, segregated schools can foment a feeling of entitlement, winners, and losers due to the allocation of resources. The racial isolation and economic isolation create a segmented society with some idea of a hierarchy and harms the idea of the “shared fate.” It prevents us from focusing on the needs of children collectively and keeps parents focused on the needs of only their own child.

Inequality skews more privileged people towards their own view of where they belong in a democracy, and leads them to support voter suppression (and participate in events like the insurrection). Professor Wilson’s idea of a practical solution is based on her research in school district lines: she wants to eliminate the commitment to community funding and boundaries. More succinctly, she wants more creative funding mechanisms and to get away from property taxes being the main funding source for schools.

The three panelists brought up a lot of important ideas when thinking about how education can play a role in the

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So You Want to be a Woman in Government?

The first ever *Women in Government Day* hosted by Virginia Law Women (VLW) happened virtually last week, offering a public sector version

Dana Lake '23
Production Editor



of the highly celebrated *Women in Big Law* event VLW puts on every year. If you were unable to attend and feel like the door to a government salary has already closed on you, fear not. This intrepid reporter attended the event (and got her meal reimbursement) to bring you the tips and strategies to landing your dream government position, shared by the professionals.

Tip number one: Working for the government is not a guaranteed nine-to-five gig. Sarah Albrecht, the Associate Deputy Director of the Conscience and Religious Freedom Division for the Department of Health and Human Services (HHS), corrected that misconception. As a government lawyer, you’re likely to be in an office filled with overachievers. “Whoever said *go to the government, you’ll have a nine-to-five...no you won’t*,” Albrecht clarified, not without some humor. Depending on your role, you may be expected to be available 24/7, a far cry from the dichotomy traditionally as-

serted between private practice and the public sector. It isn’t all drudgery, of course. Albrecht finds much of her work deeply rewarding, and often she will have projects she is excited to work on. “You have to define what work-life balance means to you,” she explained. To her, that means not beating herself up for working passed five on a project she is deeply invested in.

Tip number two: Both federal and state government employers are looking for people with experience. That doesn’t mean K-JDs are automatically relegated to private practice; practical experience can come from clinics, public interest firms, pro bono work, or feeder programs like DOJ Honors. Tara Allison, a trial attorney with the Criminal Section of the Department of Justice (DOJ) Civil Rights Division, was hired through the Honors program after clerking. Michelle Kallen did take the private practice route, working specifically for firms with robust pro bono programs. “I looked for firms without caps on pro bono hours, which is how you can tell they are serious about the work,” she explained. Kallen was able to build up her appellate resume through pro bono projects, which prepared her for her current role as Deputy Solicitor General in the Virginia Office

of the Attorney General.

Tip number three: Focus on applying to whatever interesting opportunities you hear about, and don’t wait for the “right time” to make a change. Kallen shared how her current job was her dream role, but she hadn’t expected to land it so soon. “It’s better to make the switch when you want to, instead of waiting until you need to” she cautioned. Even if your current job is going well, if it isn’t the work you want to do more than anything else, it’s worth checking around to see what other opportunities are available. When an interesting job opens up, throwing your resume in the ring can lead to places you never expected. Chiona Chukwu '12 is the Deputy General Counsel at the House Committee on Oversight and Reform, but she began her government career working for a public interest firm. Her advice? Don’t be afraid to apply to smaller places.

Tip number four: Being a woman in government doesn’t necessarily put you at a disadvantage, and you shouldn’t limit what careers you pursue based solely on your gender identity. Though the appellate level is weighted heavily toward cis men, all four women attorneys that participated in the panel have found success with minimal problematic episodes. That doesn’t

mean there aren’t problems, of course, but at least for these women working in government, it hasn’t been the old-school toxic alpha male show so many women suffer through professionally. Some of the attorneys found they had an easier time smiling through getting yelled at by judges than their male colleagues did. The top strategy for responding to a tense courtroom situation? Stay professional and try to genuinely answer the questions being shouted at you.

Tip number five: Keep your network open. This is probably the most dreaded instruction to receive, but this reporter has yet to attend a career-oriented event that doesn’t hammer it home. Most jobs aren’t posted. If you want to be kept in the know on opportunities, you need to put in the background work. That means forwarding interesting articles to old bosses, keeping up with the personal developments of former coworkers, and putting birthdays in your calendar. It means developing genuine friendships when you can, because those friends are the people who will send *you* opportunities and interesting articles in turn. The most important aspect to being a good friend? Don’t just reach out when you need something.

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In the Zoom Where it Happens: Students Attend Faculty Workshop

Anyone familiar with the UVA Law Docket will recognize

Jacob Smith '23
Professor-Liasion Editor

Christina Luk '21
Former Editor-in-Chief

the label “Faculty Workshop.” It denotes a special event just for faculty where our esteemed professors get together to talk about secret professor things.¹ These secrets eventually get published in some form, such as a journal article or a book, and then that publication goes on to change the world. But what exactly happens in these secret professor meetings? How do we get from point A, a really cool idea, to point B, a ground-breaking piece of legal scholarship? On Tuesday, March 2, students were invited to find out.

Tuesday’s event was the first of its kind and was hosted by the Academic Placement Committee, which assists folks who are interested in going on the academic teaching market. The event opened, as all events open nowadays, on Zoom. Noon rolled around and students began to populate onto a black screen, eager to discuss Professor Michael Livermore’s upcoming article, “Where Nature’s Rights Go Wrong,” which discusses what is at stake when legal scholars generalize envi-

ronmental rights too broadly. Professor Livermore welcomed everyone to the workshop and he explained that workshoping is an important part of the scholarly process.

The workshop took place in three big chunks. First, there was the introduction where Professor Livermore discussed how the project came to be. Then, there was his presentation about his article. The event concluded with a Q&A, where students got to participate in the peer review process by asking questions and making suggestions. While this editor hopes that Professor Livermore got something out of speaking with us, it was clear from the posture of the event that this was largely for the benefit of students and to give students a better understanding of what scholarship looks like in the academy.

Professor Livermore introduced his project by framing its stakes. Different countries around the world have tackled environmental rights in different ways. In 2008, Ecuador amended its constitution to give legal rights to Nature itself, recognizing it as an entity with “the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.”² Professor Liver-

more’s article, co-written with a previous student of his, takes a deep dive into why Ecuador’s constitutional amendment has not been as successful as commentators hoped back in 2008.

For one thing, policies and laws that tackle environmental protection have often come at it from the perspective of individual human interests, such as the right to clean air or water. Nature’s rights, by contrast, are the rights of a group – what Professor Livermore calls a “biological aggregate.” But how do we define such a group? And, is there a way to persuasively articulate and defend this group’s interests? These are the twin dilemmas at the theoretical heart of “nature’s rights.”

Professor Livermore gave a great presentation unpacking these dilemmas. If we want to give nature rights, it’s tempting to start with the sentient experience of individual animals. During the discussion portion that followed Professor Livermore’s presentation, one participant wondered why that wasn’t enough. Intuitively, it does make sense that animals would have an interest in surviving and feeling pain, and individual human experience is foundational to our regime of human rights.

The problem is that biological aggregates also seem to deserve protection for their own sakes. Professor Livermore proposed a thought experiment: Is it worse to kill a hun-

dred pigeons in New York City or the last hundred of a rare species of bird in Brazil? We would say the Brazilian birds deserve much more protection, because we see something especially heinous in the eradication of an entire species. But why are “rare” birds worthy of more concern? If we are looking exclusively at individual experience, the interests of all birds are equally important. To recognize the importance of rare birds, we need to protect the interests of a species, apart from the interests of that species’ members.

While we are comfortable comparing the interests of human groups, say for example a corporation, biological aggregates are different in important ways. Human groups can express preferences and litigate to protect their rights. We can compare the interests of human groups by thinking about what would happen if they could bargain or if they were forced to deliberate behind a Rawlsian veil of ignorance. Biological aggregates lack the kind of subjective preferences we attribute to people, which makes it difficult to apply a bargaining framework. A Rawlsian framework is hard to implement, precisely because it requires the thinker to conceptualize the relative likelihood of being a biological aggregate, as opposed to an individual biological entity. It is not obvious how to calculate that probability.

As we moved into the discussion portion of the event, alternative approaches were examined. We could, for example, ask what is good or bad for the biotic community as a whole. But the biotic community is difficult to separate from human activity, and it is still appropriate to acknowledge the interests of smaller entities like species. Protecting biodiversity was another idea suggested during the discussion. Professor Livermore responded that we need a normative justification for the significance of biodiversity, why biodiversity is more than “just strands of DNA.” If we are going to make humans worse off for the sake of biodiversity, we should be able to justify our decision.

All in all, this event was eye-opening. Not only was it a great opportunity to learn about an interesting and important field of law, but it was also a great experience in academic dialogue. For students who are interested in future events from the Academic Placement Committee, Professors Cathy Hwang and Richard Schragger will be hosting an informational “So You Want to be a Law Professor” event next Wednesday, March 17 at noon, when they will discuss their careers and introduce students to the process of becoming a law professor.

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¹ Just your run of the mill cutting-edge theories that will go on to redefine an area of law, no big.

² Constitution of the Republic of Ecuador Oct. 20, 2008, ch. 7, art. 71.

Pets of Quarantine: Holly and Chunk

After almost one year of quarantine, most people have either learned to live alone, or altered their life circumstances to find “safe” friends.

Phil Tonseth '22
Editor-in-Chief



While Love in the Time of Corona featured how many different couples are thriving in their romantic pursuits during “these trying times,” this feature is for those who choose to shop an animal shelter instead of Tinder for companionship. Like this pandemic, love still lives on, so we welcome you to learn about and meet all of the new furry friends adopted during quarantine, and potentially to add a new member to your own family. This is Pets of Quarantine.

This week’s guests are Holly Chaisson '23 and Chunk, a handsome and majestic cat.

Hey ya’ll! I’ll go to you first, Holly. What inspired you to adopt?

My mom is a wildlife biologist by trade, so I grew up with animals. I think at one point our family had twenty-one pets (a menagerie of cats, dogs, rats, fish, snakes, hamsters, rabbits, and one mean gerbil). I adopted my first cat (Midnight) when I was seven years old and had her for a wonderful seventeen years be-

fore I lost her in January 2020. After some time passed, I realized how much having a pet around impacted my well-being for the better, so I figured I’d browse Petfinder just to see if there might be another cat I’d want to welcome home.

What exactly drew you Chunk particularly? Did you look for a specific breed, age, or different characteristic?

I was looking for a cat who was a little older and with a calmer temperament because looking after a high-energy kitten in a D.C. studio apartment sounded like hell on earth. Other than that, I was pretty open to any and every cat who needed a home. It was really Chunk’s adoption page that drew me in. His profile on Petfinder was sparse and included only a picture of him looking like a disgruntled Jabba the Hutt and a description labeling him a “large and loveable guy.” And his name. I laughed for ten minutes at how incredibly fitting it was and put my application together once I had regained composure.

Was it love at first sight?

Absolutely. And as I later found out, I was the first person to apply. The volunteer who did my home visit for the shelter praised my quick thinking because Chunk ended up being quite the hot commodity when he went live on the City Kitties adoption page.

Chunk, you’re up. Getting straight to the point,

what is your favorite thing about living with Holly?

It’s probably a tie between the unlimited snacks and being able to mercilessly taunt my enemies in the Pav dog

wondering if I should change his name.

My sponsoring organization, City Kitties, auctioned off naming rights to me in exchange for a donation to the



Pictured: Chunk, a very handsome young man. Photo courtesy of Holly Chaisson '23.

park from my window.

Holly, how difficult of a houseguest is Chunk?

In some respects, he’s probably as high maintenance as cats come. Breakfast must be served promptly at 4am and he expects you to brush him whenever the mood strikes him. Failing to do either triggers a round of incessant yelling until I give in. On the plus side, Chunk is very tidy. He ensures no crumbs are left behind and takes extra care to hide all of his toys under the dryer so we don’t trip on them.

Chunk, have you made an appearance in class yet? Or are you more of a lay-on-Holly’s-lap-during-class type of cat?

I popped into Holly’s Con Law class last week for the riveting discussion on Constitutional theory and got a shoutout from Professor Hellman.

Have you learned anything so far, besides that law students should take more cat naps?

“Foreseeability goes to breach, not duty.” (Shoutout to El Toro’s dad, GEW, for hammering this home during Friday Torts).

Slight follow up, but also unrelated. What spawned your name? My orange cat is about twenty-five pounds himself, so I’m



Pictured: True Love. Photo courtesy of Holly Chaisson '23.

shelter. I don’t remember who named me, just that I have a slight grudge against them.

Okay, so do you fight with the vet over being labeled “obese”?

Yes. My vet doesn’t seem to understand that my curves are natural and as a growing boy, I really do need four square meals a day plus snacks.

Are you a cat that loves table scraps? What’s your favorite so far?

I consider table scraps essential to my balanced diet. I love yogurt and rotisserie chicken.

Holly, how has Chunk changed your life for the better, or worse? Knowing cats, this could go either way.

Chunk has been a constant source of entertainment and emotional support. Whether it’s watching him somersault around the apartment for no apparent reason, taking a break from reading to play fetch, or even just giving him a big squeeze after I’ve tried (unsuccessfully) to teach myself the Rule Against Perpetuities for the 70th time, having Chunk in my life has been critical to maintaining my sanity during Zoom School of Law. He has also been an excellent space heater at night during this surprisingly snowy winter (for which I am thankful because the insulation in my Pav apartment is a bit wanting, to say the least).

Speaking of food, is Chunk more of a kneader (AKA making biscuits with your paws), or a scratch pad type of cat?

One hundred percent a fellow quarantine baker.

Okay, Chunk, let’s see if you can focus long enough to do a lightning round!

Cardboard box, or squishy cat bed?

Neither, I prefer to sleep in Holly’s bed or on top of the dryer.

Favorite spot to sunbathe?

My roommate Olivia’s bed, preferably when it’s unmade.

Laser pointer or string?

String.
What’s the name of your favorite toy, or do you prefer to play with trash like my cats?

Geoffrey the Rat. But I do love a good bottlecap to bat around.

Biggest pet peeve?

Coffee.
What time at night do you prefer to do the ‘zoomies’ and run around the apartment wildly?

3:45am, right before breakfast.

On a scale of one to ten, how sassy would you describe yourself?

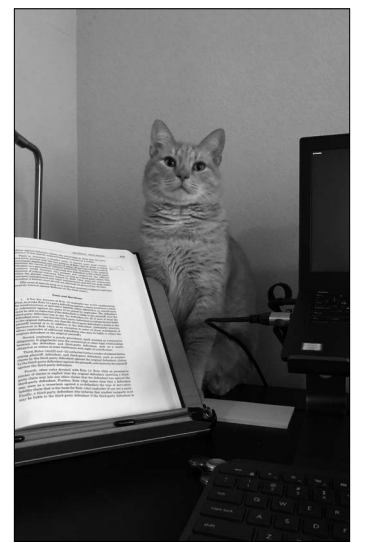
A solid nine.
Lastly, soft or crunchy treats?

Crunchy, I’m trying to bring my tartar problem under control.

Holly, are there any parting thoughts about Chunk you’d like to share, or further convincing you think your readers will need to follow in your paw prints to adopt?

I will say that every person at UVA that I’ve introduced Chunk to (even diehard dog lovers) has either gone on to adopt their own cat or been seriously tempted to do so. If anyone is on the fence about adoption, I’d be happy to make an introduction so Chunk can work his magic.

I’ve always loved cats, especially chonkers. Now I want another one. Many thanks to Holly and Chunk for joining us on Pets of Quarantine and sharing their coronavirus experience. Are you a pet owner that adopted a furry friend during quarantine? A roommate that’s taken on an additional role as a surrogate pet parent for your classmate’s pet? Or an existing pet owner that’s grown even more attached to your best friend? Love comes in all shapes and sizes, and we want to hear about it! Email pjt5hm@virginia.edu if you or someone you know might like to be featured on Pets of Quarantine.



Pictured: A dedicated law student. Photo courtesy of Holly Chaisson '23.

Break Beats E.P., The Justice System

I’ve never written a music review before, apart from my blog series on Wagner’s *Der*

Will Palmer '21
Special Projects Editor



Ring des Nibelungen, so I went on over to Pitchfork to see how the professionals do it. Turns out all you need is a thesaurus, self-confidence, and, ideally, ears. I’ve got two out of the three, so things should work out fine. Let me get myself another delicious malt beverage and we’ll get started.

Alright, I’m back. Do you ever think about how many beers you’ve had in your life? Like, total? Because I just did, and I sincerely wish I hadn’t. I didn’t recycle more than 20% of those bottles.

Yikes.
The lesson I’m taking from this is that I should switch to liquor, and probably also get my liver checked out.

Where was I? Ah, right. Crushing this word count. Did you guys know that Beluga whales can understand sign language? I have no idea if that’s true or not, but it’s plausible. Making up facts is fun. That’s why so many members of Congress do it.

Moving on. Before I got distracted with whale facts (as one is wont to do), I was introducing my review of The Justice System’s *Break Beats E.P.*, released on February 1st

of this year. I’m sure the members of the group are extremely pleased that I spent 200 words rambling about classical opera cycles and glass recycling before I got to talking about their album. That’s my bad. I’m like Mozart with a piano: Sometimes, I just gotta play. Or maybe that was Beethoven. You know what I mean.

Break Beats follows in the footsteps of *Pardon Our Execution*, released in October 2020. *Beats* effectively builds upon the foundation laid in *Pardon*, presenting a mix of social critiques and ruminations on life as a modern law student. While much of the commentary found in the E.P. is presented in the guise of comedy, the lyrics have an insightful, raw edge that seizes the listener’s attention and refuses to let go.

A cursory Google search informed me that the doctrine of fair use permits the use of copyrighted material as a vehicle for criticism or commentary to the public, which is pretty legit. Looks like the cats in TJS are safe from the long, uh, arm of the law—for this, at least.

I should note that the *Break Beats E.P.* may not be appropriate for all audiences; those of a certain political persuasion may get their proverbial undergarments in a twist (particularly regarding the mildly incendiary lyrics of *Revenge*

JUSTICE page 6

LAW WEEKLY FEATURE: Court of Petty Appeals

The Court of Petty Appeals is the highest appellate jurisdiction court at UVA Law. The Court has the power to review any and all decisions, conflicts, and disputes that arise involving, either directly, indirectly, or tangentially, the Law School or its students. The Court comprises 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 pjt5hm@virginia.edu

Costanza v. Wambsgans
73 U.Va 19 (2021)

BERDAN, M., delivered the opinion of the Court, in which QUERNER, PETERSON, TANG, BIRCH, PICKETT, BNINSKI, WUNDERLI and TONSETH, C.J. join.

JUSTICE BERDAN delivered the opinion of the Court.

Facts

Today, this august court confronts a paradigmatically UVA sort of question, to wit: what are the demands of collegiality when faced with an absolutely stellar opportunity to flex on everybody?

Appellants, a group of as yet unemployed 2Ls, sought injunctive relief and punitive damages against the respondent class, comprising all 2Ls who have submitted summer-job announcement posts to LinkedIn containing any of the following phrases, or variants of them:

- “I am extremely excited to announce”
- “I am humbled and thrilled to announce”
- “I am elated and flabbergasted to share the news”
- “I am borderline orgasmic to announce”

For example, as we read in the compendium of posts provided by appellants at trial, 2L Chad Brotherton wrote on February 11th, 2021, “I am extremely way thrilled and excited to announce that I will be absolutely crushing it this summer for the New York office of Paid, Sachsocash, and Souldrainer, LLP.” This post circulated not only to Mr. Brotherton’s LinkedIn friends (connections? What’s it called? Does anyone know how to actually use LinkedIn?), but also to secondary and tertiary connections, as friends “liked” Mr. Brotherton’s post, and the “likes” showed up on their

friends’ feeds. Appellants portray these layers of announcements from friends, foes, and randos as a veritable deluge of cringy announcements any time LinkedIn is accessed.

It is important to keep in mind the context of these announcements. The law school is enduring, along with the rest of the world (with the apparent exception of Texas, North Korea, and UVA’s fraternities and sororities), during the ongoing pandemic. School continues to be conducted mostly online, students are isolated and starved for social attention, and the job market is suffering. Appellants note that some of the posts in question graciously acknowledge all

ners v. *Gunners*, 231 U.Va. 172 (2002); *Normi v. Tryhard*, 31 U.Va. 111 (2000); *Trump v. UVA Law Vets*, 44 U.Va. 101 (1968). In each of these cases, this court upheld students’ rights to flex on everybody, citing several fundamental ideals that have been long-cherished by UVA Law as an institution and its student body. I will consider each of them in turn.

In *Gunners*, new Law Review members were making the announcement in one of three ways: (1) adding the VLR Myspace page to their Top 8, (2) making the VLR theme song their profile song using their sweet HTML skills, or (3) clumsily alluding to it in an unrelated question in a

and asked to be emancipated, respectively. These futureless, lonely, barren alumni were promptly laughed out of the courtroom, since they no longer had standing, given that they were in disbarment proceedings.

In *Trump v. Vets*, the court confronted the complaints of none other than Future-Former President Donald J. Trump, then a student at Wharton School of Business. Trump filed suit against both the Law Vets and the admissions department, alleging that the admissions office unfairly discriminated against draft dodgers like himself, instead admitting students who brought up their status as vet-

ey, but Mr. Trump had been denied admission primarily because he wrote his application in all caps, in Sharpie. The Law Vets’ perhaps heavy-handed leveraging of their military service was explicitly supported by the court as well, with the presiding judge holding that “If you fought it, flaunt it.”

These three cases leave little daylight to condemn the employed students’ LinkedIn posts. Bragging, posturing, and insincere declarations of gratitude are all part and parcel of the LinkedIn community. To believe you can go on LinkedIn without being doused with corporate showboating is a nonsensical fantasy that ignores all evidence, much like believing that Fed-Soc is a nonpartisan debate organization. Law students themselves are famous for animalistic lust for prestige, and this finds a ready platform for expression on LinkedIn. The noted collegiality of UVA Law students in particular doesn’t mean they won’t brag about their progress in climbing the corporate ladder. They just typically try to avoid stomping on any fingers.

The judgment of the lower court is **affirmed**.

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“Law students themselves are famous for animalistic lust for prestige, and this finds a ready platform for expression on LinkedIn.”

these things, particularly the poster’s sensitivity to the fact that many of their peers remain jobless, before announcing their breathless excitement to “Not be one of those jobless chumpsicles.”

As of the date of this opinion, the relevant posts by UVA Law students number in the tens of thousands. Peculiarly, many of the appellants have, since the time of the lower court trial, been offered and accepted jobs for this summer, and immediately written LinkedIn posts about it. This undermines their standing in the case, and creates a conflict of interest, as they are now members of the respondent class. Only a handful of the original plaintiffs remain.

Analysis

There are three appropriate analogs for the types of posts at issue here. See, e.g. *Gun-*

survey they posted in a bulletin.’ The court held that all these uses were “...within the bounds of collegiality, since bragging about doing unpaid labor for overpaid professors, in exchange for a gold star on your resume, was just as likely to inspire eyerolls as admiration.”


In *Tryhard*, a collection of recent alumni filed suit against graduating 3Ls who posted on the social media site Livejournal about their induction into The Order of the Coif.™ The alumni alleged extreme emotional distress and sought pecuniary damages, since the Livejournal posts were read by the alumni’s employers, significant others, and children, who promptly fired them, abandoned them,

1 They were called *bulletins!* Blast from the past, right?

erans on every single page of their law school application. Trump argued that his bone spur stories, combined with a handsome donation from his father to the Federalist Society at UVA, should have been enough to secure him admission and passage through all his classes. After all, it was apparently enough for Wharton. The court found against Mr. Trump’s allegations of discrimination, noting that UVA had on many, many, many occasions admitted plenty of awful people with too much mon-

Faculty Quotes

<p>C. Barzun: "What happens in 1803? TJ goes on a spending spree and doubles the country in a day."</p>	<p>A. Woolhandler: "I hope that everyone has played Monopoly sometime!"</p>
<p>R. Goluboff: "I'm the Dean. You've got to not violate any rules. That's the really important thing."</p>	<p>M. Collins: "I know you don't want war stories from me...who knows what war that would even be for me."</p>
<p>A. Bamzai: "You all may have learned that we have this thing called the Constitution..."</p>	<p><i>Heard a good professor quote? Email editor@law-weekly.org</i></p>
<p>L. Solum: "The president, and...? NO ONE! I'm sorry. I did that in a tricky way."</p>	



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PIECE of the PIE REWARDS

JOIN TODAY AND START EARNING POINTS TOWARD FREE PIZZA

1 = 10 ORDER POINTS

60 = GO FREE PIZZA

FREE KINDNESS WITH EVERY ORDER

DEMOCRACY

continued from page 2

divisions that underlie our society. In the Q&A session, they discussed how interschool tracking (AP kids vs. non-AP kids) and charter school funding mechanisms can also undermine the “shared faith idea.”

I admit that the vast majority of this article was me recounting the findings and proposals of these esteemed scholars. Unlike the vast majority of what I’ve written for the *Law Weekly*, there are no hot takes to be written here. The sad reality is that we are at a time of deep division and educational segregation. Though schools are no longer under the official policies defeated by *Brown v. Board*, we still find ourselves separated from one another at a young age due to administrative workarounds. The two problems of civic disengagement and school boundaries causing de facto segregation are intertwined. I hope my fellow law students, who will shape the policies of tomorrow, take the discussion I distilled above and internalize it. Reshaping how we approach curriculum, funding, and the boundaries of education could be essential to the future of our Republic.

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CROSSFIRE

continued from page 1

products.” This is significant, he went on, because although multi-sided platforms are not limited to Big Tech, they do characterize the nature of these companies’ operation (Google, Facebook, Amazon, Apple).

So, what are multisided platforms? In the context of social media, they are platforms with two groups: Users [group #1] and Advertisers [group #2], connected by the platform intermediary site [i.e., Facebook, Google]. Another more palpable example is Uber. There are riders [group #1], and drivers [group #2], the Uber app connects the two.

Professor Nachbar continued, these “two-sided platforms are characterized by indirect and direct ‘network effects,’” which influence the amount of users on both sides of a platform. The greater the number of users on one side, the more likely others will join that same side of the platform, which is a direct network effect [the more friends you have on Facebook, the greater likelihood you will join it, as opposed to MySpace]. This direct network effect creates more users on one side of the platform. The benefit of those direct effects in group 1 influences the reward reaped across the platform by group #2 [the advertiser side] because more people will see advertisements. Thus, advertisers reap benefits across the two-sided platform [an indirect network effect].

He then explained how this two-sided structure complicates

the antitrust inquiry of consumer harm across the platform and calculus of market power, citing issues that arise in a winner-take-all market structure. Then, Professor Nachbar passed along this sketch to Vu and Baskt to color in.

Jessica Vu | *Sherman Act enforcement against conduct, not structure*

Vu did not argue that “Big is bad.” She meticulously cast her view within the scope of the Sherman Act, arguing that antitrust laws need to be enforced against Big Tech firms’ *conduct*, not merely as a result of their *structure*, stating that “[the] crime is taking action that hurts competition”, not that they are “too big.” She maintains that the consumer welfare standard is predominant, but that consumers *are* being harmed if one measures the cost as decreased choice [acquisition of potential competitors], quality [as measured by privacy degradation], and innovation.

Vu furthered that enforcement is justified in light of measures by 48 state Attorneys General (AG) and the Federal Trade Commission suing Facebook, and two recent lawsuits against Google by the Department of Justice and 11 state AGs. She continued that these complaints “illuminate anti-competitive conduct, such as anticompetitive agreements, copying, self-preferencing, revenue-sharing agreements, exclusive contracts,” allegedly deployed to restrain competition. Although many of these allegations are not traditionally seen

as anticompetitive on their own, innovative theories of harm or greater legislative guidance may be required to mitigate these harms. “There is no special exception for the tech industry because they exist online. Just because it’s hard to physically realize their power,” she said.

Overall, her view was that, “these lawsuits are not punishing businesses,” rather they are “punishing businesses for the *conduct* of breaking antitrust laws.” Her bottom line: “Big Tech threatens the free market and competition. Consumers/businesses stand to suffer in absence of action.”

Daren Baskt | *Stick to tradition. Beware of “a cure worse than the disease.”*

Countering, Daren Baskt represented that antitrust should be focused on consumer welfare, as defined by Robert Bork’s writings in the *Antitrust Paradox*. By determining antitrust inquiries in strict economic terms (measured by impact on price), he argued, antitrust will be less-prone to unpredictability and the social-policy preferences of judges.

“Antitrust is the wrong tool for addressing bias/censorship concerns,” Baskt said. Further, he warned “reform aimed to reach exclusively Big Tech will lead the federal government to use antitrust as a ‘weaponized’ tool ‘across every industry.’” Citing Justice Scalia’s opinion in *Verizon v. Trinko*, Baskt voiced concern that new legislative proposals punish “being Big,” and may disincentivize innovation. He identified proposals

that would make it difficult for start-ups to have “exit-options” and shifts in burdens-of-proof as particularly problematic.

Baskt concluded that any “policy issues should be specifically, narrowly drafted to fit the harm,” not create broad antitrust reform. The U.S. is the world’s tech leader. “Why should we threaten that leadership?” he ended.

Consensus Borne of Debate?

If Baskt concedes that Big Tech has been engaging in unlawful conduct, then it’s possible that “the green light to the federal government to reshape entire industries,” as he put it, is not necessary to discipline Big Tech. Rather, as Vu put it, citing *Northern Pacific Railway*, Section 2 of the Sherman Act is sufficient to reign in Big Tech to allow “unrestrained interaction of competitive forces” to “lead to the best allocation of our economic resources, lower prices, highest quality, and greatest material progress...”

At this time, it is competition in the marketplace of ideas and competing policy preferences that are animating the antitrust debate. In the spirit of antitrust, we must hope that the loudest voice in the room does not stifle others, but that the most “meritorious” proposals will chart the path ahead.

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HOT BENCH



Tiffany Mickel '22

Interviewed by Jack Brown '23

Hello Tiffany! Thanks for taking the time to speak with us today.

Where are you from?

My parents were in the Army, so I have lived in various places. I’ve lived in North Carolina, Georgia, and Germany, but the longest I’ve lived anywhere has been in Virginia. This is where I consider home.

And where did you go to undergrad?

Although I adore Virginia universities, I wanted to study at a college out-of-state. I attended MIT to study engineering. My favorite subject was math in high school and working to become an engineer felt like the natural thing to do.

How did you go from engineering to law school?

Around my senior year of college, I realized that I didn’t want to be an engineer in the classical sense, so I transitioned to the business side of

engineering. I worked for Boeing for a year in its financial office and then moved to D.C. to work in management consulting. The consulting industry is really interesting and foretells what I think it will be like at a firm where associates focus on building relationships with clients as they work to solve their problems.

After consulting for a few years, I decided to attend law school. It took me a while to figure out where I wanted to see myself. I knew I wanted a graduate degree. And in the legal field you’re always learning and evolving, which really appealed to me. I also admired the intellectual challenge I knew it would present.

How is getting a STEM-degree different from getting a law degree?

The most obvious difference is that most law students just don’t like math. But once you get past that sort of line in the sand where people either love or hate numbers, you find that there are more similarities than differences. In both, you have to think critically about really tough problems and look to the core principles to answer those questions. While engineering is grounded by tangible aspects of the natural sciences, the legal theories that explain the nature of law are more abstract.

Do you know what field you want to work in after graduation?

Right now, I’m thinking of pursuing intellectual property transactions, but I am excited

to see what else is out there. This summer I’ll be joining Gibson Dunn, which has a free market system to allow its associates the ability to explore many different practice areas. Even though lawyers are inclined or encouraged to eventually specialize in an area, I really like the interdisciplinary aspect of the law. A big reason why I settled on an engineering degree was also because of how diverse the work can be and how much freedom you have to experience your varying interests. So although I’m leaning towards transactional law, at the end of the summer we’ll have to see how I enjoyed it.

Is there one piece of advice you would tell yourself coming in?

Sometimes 1Ls freak out about cold calls, but just remember that it’s unlikely that your peers will remember if you had a bad (or good) one. If you stay committed to doing the work and dissecting the reading material the way your professors encourage, you’ll have plenty to contribute to the discussion. First semester 1L, I, too, was really nervous about cold calls and participating in class generally. But, if you have done the work, push yourself to share your thoughts with the class because you certainly have something valuable to contribute.

What are some of the student organizations you’re involved with?

This past year, I was the Membership Chair of BLSA

and the Events Co-chair for Virginia Law Women. Both organizations are committed to connecting students with attorneys to give us a snapshot into the day-to-day lives of practicing attorneys. I am also a part of VLR, whose mission I also value. My advice would be to join organizations where you really believe in what they’re pursuing. And, if you have the time and want to participate, consider serving on their executive board.

How have you been able to balance all these extracurricular responsibilities with coursework?

It’s important for me to know what expectations there are upfront so I can plan and manage my tasks ahead of time. Most roles and courses will lay out your expectations for the duration of the semester or year. But if they don’t, make sure to speak up and ask so that you can meet deadlines and plan out your semester accordingly. Also, make sure to be very vocal when you have a lot of responsibilities so that you don’t double book.

Lighting round! Favorite phrase?

Raison d’être (translates to “the most important reason or purpose for someone/something’s existence”)

Last movie you saw in theatres?

Bad Boys for Life

Song to hype yourself up before studying?

Work, by Rihanna ft. Drake

One rule you think everyone should follow?

Quiet, hypoallergenic pets should be allowed in the office/workplace

Who are some people you’d love to have dinner with and why?

Michelle Obama and Rihanna. Both excelled in so many areas and it would be incredible to learn what lessons they’ve picked up in rising to the top of entertainment, politics, and philanthropy.

Do you want to give any shoutouts?

I’d like to give a shout out to the BLSA, VLW, and VLR exec boards!

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JUSTICE

continued from page 3

on the *Red Bench*). If you listen to the *Break Beats E.P.* and begin to feel defensive, immediately go to the nearest phone and call the wham-bulance. Tipper Gore will be there in minutes.

Jet Setting and J Termin' sets a relaxed tone that makes the E.P. easy to sink into—it's the type of song you'd put on and catch yourself bobbing your head to while driving. The rapport between Promissory Illstoppel and 12(b)(6) creates a playful back-and-forth that adds to the immersive nature of the track; the listener almost feels like they're in a conversation with the artists.

Revenge on the Red Bench is sure to be the most hotly-debated Justice System track to date. I won't spoil any of the song's hilarious and hard-hitting critiques, but rest assured that it's not something you'd want your Trump-supporting uncle to listen to. Unless you want to fight him.

The third track, *Post-Finals Wine*, shifts gears to present a more melancholic reflection on end-of-finals emotional ennui. It's a song that's both relatable and an excellent thematic counterbalance to the comical sensibilities of *Jet Setting* and *Ten Rules of Zoom School*.

Ten Rules of Zoom School rounds out the E.P. with a return to TJS' roots in law-school-centric satire. I quite enjoyed it—in fact, I've played it more than any other track

on the album save *Revenge* — but your mileage may vary depending on your fondness for remote learning and/or the Notorious B.I.G.

I guess I'm a music critic now, so here are my (limited) criticisms. I think that *Jet Setting* could have used a shorter intro, given that it already follows a disclaimer track. While I'd never claim to be an expert, I did think that there were some occasional issues with sound mixing, which made a few lines difficult to understand. I find this to be entirely forgivable, though, given that TJS produced the album remotely over winter break during a pandemic. There are one or two lines from the E.P. that I can think of wherein the expression of the song's message came at the detriment of a consistent lyrical flow—but the punchlines hit so well that I barely noticed (and I'm writing a review of the thing).

I'm pleased to say that the *Break Beats E.P.* is well worth a listen. It succeeds not only as an entertaining rap album, but also as a vehicle for meaningful discussion and contemplation of real issues, both societal and personal.

The Justice System is dedicated to making the *Break Beats E.P.* totally free—send a DM to @the.justice.system on Instagram to get a copy of your own.

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Our Cartoonist-in-Residence is graduating!
Email Editor@lawweekly.org if you are interested in taking up the mantle.

THE DOCKET

TIME	EVENT	LOCATION	COST	FOOD?
WEDNESDAY - March 10				
12:00	Deadline for Squire Patton Boggs Foundation Scholarship Applications	Email ayale@law.virginia.edu	Free	⊕
17:00 - 19:00	New York Day	Zoom	Free	⊕
17:00 - 18:15	The Decline of Mercy in Criminal Justice and Public Life	Zoom	Free	⊕
18:00 - 19:00	Pokemon League	The End Games, 143 Zan Road, Charlottesville, VA 22901	Free	⊕
THURSDAY - March 11				
10:30 - 17:00	Private Tours of Kluge-Ruhe, Aboriginal Art Museum	400 Worrell Drive, Charlottesville, VA 22911	Free but Reservations Required	⊕
12:00 - 1:30	Philadelphia DA Krasner	Zoom	Free	⊕
18:00 - 19:00	Indigenous Art Perspectives on Nuclear Fallout	Zoom	Free	⊕
19:00 - 20:15	Learn about Conservation Landscaping with Piedmont Master Gardeners	Zoom	Free	⊕
FRIDAY - March 12				
8:00	VLW March Notes and Comments Pool Opens	Online	Free	⊕
12:30 - 13:50	Faculty Workshop: Thomas Nachbar	Open to Faculty via Zoom	Free	⊕
SATURDAY - March 13				
09:00 - 13:00	Winter Farmers Market	IX Art Park	Free	Available for Purchase
MONDAY - March 15				
12:30 - 14:00	JLSA Cooking Class with Chef Hila Alpert	Zoom	Free	⊕
Tuesday - March 16				
16:00 - 17:00	Careers & Internships in International Trade, Customs, and Export Controls Law	Zoom	Free	⊕
12:00 - 13:00	COVID-19 and the Future of Health Care	Zoom	Free	⊕

SUDOKU

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Solution

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