Virginia Law Weekly

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DICTA: Professor White Previews Upcoming Book on Justice Jackson

G.E. White
David and Mary Harrison Distinguished Professor of Law

When I first broached the subject of a book on the Supreme Court Justice Robert Jackson to an editor with whom I have worked previously, she said I ought to consider why a book on Jackson would appeal to contemporary audiences. I found her response a bit disconcerting. Jackson was the primary architect and the chief Allied prosecutor in the Nuremberg trials, where the victors in World War II sought simultaneously to try Nazi leaders for war crimes and establish the legitimacy of Anglo-American procedural safeguards in criminal trials. He had written a dissent in *Korematsu v. United States* in which he maintained that the incarceration of Japanese-Americans on the West Coast for much of the Second World War, combined with the policy of not incarcerating German- and Italian-Americans, was a clear violation of the Equal Protection Clause. And he wrote opinions that have shaped modern constitutional law. His framework for evaluating the legality of executive actions laid out in *Youngstown Sheet & Tube v. Sawyer* is still a fixture of constitutional law classes and judicial opinions alike; and his conclusion in *Johnson v. Eisentrager* that enemies of the United States detained outside its borders in wartime lacked the power to challenge their confinement in civilian courts served as a justification for the post-9/11 policies in Guantanamo Bay.

But there was a good deal more to Jackson's life and career. When he was appointed to the Court in 1941, he was the last Justice to serve who had primarily "read for the law" before being admitted to a

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Lambda and ACS Host SCOTUS Panel Discussion

Photo Credit: Mason Davenport '25

Caitlin Flanagan '24
Staff Editor

On Wednesday, September 5, Lambda Law Alliance and the American Constitution Society (ACS) kicked off the new school year with their co-sponsored "Supreme Court Roundup," a lunch-time recap of several pivotal Supreme Court decisions handed down over the summer. The panelists were Professors Bertrall Ross, Craig Konnoth, and Cale Jaffe '01.

Professor Ross, an expert in election law and the democratic responsiveness of political processes, described the Court's holdings in both *Moore v. Harper*[1] and *Allen v. Milligan*.[2] Although these decisions have been heralded as victories for voting rights, Professor Ross cautioned against overstating the promising implications of both. On *Moore*, although the Supreme Court did endorse the justiciability of partisan gerrymandering claims, Professor Ross questioned whether the decision may have come down differently if the Court had been reviewing a state supreme court which had, in fact, struck down the legislature's maps for racial gerrymandering (as North Carolina's Supreme Court did before the April 2023 reversal).

Professor Ross likewise doubted the likelihood of the Court's continued willingness to apply Section 2 of the Voting Rights Act, despite its application to Alabama's redistricting plan in *Allen*. Although the constitutionality of Section 2 was not expressly at issue in the case, Professor Ross focused on Justice Kavanaugh's concurrence, which expressed curiosity as to whether Section 2 might in fact be susceptible to an Equal Protection challenge. Professor Ross likewise quoted Justice Thomas' dissent, where the Justice notes the "uncommon clarity" with which the majority's conclusion "lay[s] bare the gulf between our color-blind Constitution, and the consciously segregated districting system currently being constructed in the name of the Voting Rights Act" (internal quotes omitted).[3] Because *Students for Fair Admissions,* handed down just weeks after *Allen,* credited a color-blind theory of the Constitution, Professor Ross suggested that the current Court may, upon reconsideration, strike down the Voting Rights Act for violating the Fourteenth Amendment.[4]

303 Creative v. Elenis was covered by Professor Konnoth, who was personally involved in the underlying litigation and writes on LGBTQ+ civil rights law.[5] He emphasized that though Smith had not yet designed any wedding websites, the Supreme Court still granted the case certiorari and concluded that it would be unconstitutional under the free speech clause of the First Amendment for Colorado to hypothetically compel wedding website designers to create websites for same-sex weddings. Professor Konnoth explained that *303 Creative* is the latest in a line of Supreme Court cases which have considered LGBTQ+ civil rights. Yet, while *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston (1995)* and *Boy Scouts of America v. Dale (2000)* found that First Amendment expressive freedoms trump anti-discrimination law in the context of private associa-

1 600 US _ (2023).

2 599 US _ (2023).

3 Id., (Thomas, J., dissenting).

4 *Students for Fair Admissions v. President* and *Fellows of Harvard College*, 600 US _ (2023).

5 600 US _ (2023).

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around north grounds

Thumbs up to EIC Morse who is "trying to become more of a gossip person this year." ANG lives for the drama.

Thumbs down to cookies being gone by 2PM on Fridays. ANG believes 1Ls need to save some for people who *can* actually sleep in.

Thumbs sideways to UVA's football team. ANG finds some twisted comfort in relinquishing hope this early in the season.

Thumbs up to young love at bar review. ANG can't wait to see the graduation babies.

Thumbs down to unscrupulous 1Ls hogging the parking lot until after dark for the entirety of the grace period. Wait your turn, children.

Thumbs up to construction workers plowing through the Great Wall of China. ANG also hates red tape. And walls.

Thumbs sideways to KDon's "KevHoo" vanity plate on his red convertible. ANG both respects and is unnerved by the shameless self-promotion.

Thumbs down to the ever-lengthening bathroom lines. ANG suspects the 1Ls are an ambitiously hydrated bunch.

Thumbs up to the start of softball season. ANG delights in sweaty, struggling nerds stumbling around the bases.

Thumbs down to fantasy football season. ANG thinks the Law School is becoming a Mojo Dojo Casa House in the hands of 3L boys with too much free time.

Thumbs down to COVID. That's it.

OGI Screener from Hell

Ethan Brown '25
Features Editor

A few weeks ago, the class of 2025 participated in On-Grounds Interviews, a tradition as old as... well, I'm not exactly sure, but presumably as old as something that was born in the early 1990's[1]. On-Grounds Interviewing, or OGI as it is affectionately known to UVA Law students,[2] is the annual ritual of law firms descending on Charlottesville[3] to recruit rising 2Ls for summer associate positions that will eventually (read: hopefully) turn into permanent offers after graduation.

OGI is basically sorority rush, insofar as that: (a) it involves a lot of small talk; (b) people make seemingly significant decisions based on snap judgments; and (c) it deserves to be the topic of a high-quality HBO Max documentary.[4] Each firm selects candidates to invite back for callbacks based partially on how they perform in a rapid fire 20-minute screener call, which typically involve attorneys from the firm asking only four or five questions of the student before moving on to the next applicant.

What questions do the firms ask? Luckily for anyone interested in private practice, every firm (in my experience, at least) asked the same few questions with shockingly little variation. After responding to them more than twenty times, my responses are permanently seared in my subconscious. I will never be able to hear the words "1L," "litigation," "internship," or "meaningful" again without going into anaphylactic shock and writhing uncontrollably.

But the temptation was strong, almost irrepressibly so in some interviews, to act up and go off-script. So, if you're a 1L curious about getting your hands on an incredibly snarky cheat sheet for OGI next summer, read on. Remember to thank me when you don't have to see OPP for a single counseling appointment this year because with these bad boys, you're good to go until next July.

"Why are you interested in our firm?"

Biglaw_lawyer69 said on Reddit that your office in my target market is "fine." You're high enough on the Vault rankings that I get enough of an ego boost from working for you but low enough that I'm not intimidated. Your logo and font choice are pretty solid. I also heard that you give out free merch to students who receive an offer, and my wireless phone charger broke last week.

"How have you liked living in Charlottesville?"

Insert thirty-second charming anecdote about how much you like: (a) Bodo's; (b) hiking; or (c) alt-right rallies. Mention the "great food scene for a small city" thing because it's the only thing anyone seems to know about Charlottesville. Then quickly switch gears and add a fifteen-second pitch for why you want to live in an actual city after law school just in case your interviewer is suspicious of your decision to live in the mountains for three years.

"What made you want to go to law school?"

A crippling desire to bug my father just a little bit for always complaining about lawyers when I was growing up. An inability to let go of the prestige-chasing that has driven most of my young adult life. The joy of joining the same profession as such legends like Rudy Guiliani. The chance at being able to affix "esquire" to my email signature.

"We know that many firms have stellar opportunities. How are you keeping them all straight?"

I'm not. Which one are you again?

"What is your least favorite part about law school?"

Finals are stressful![5]

"Do you have an idea of what you'd like to practice?"

I'm not sure about corporate/transactional work because I still do not really know what a "contract" is. I guess that leaves litigation and regulatory work, but I know those are extraordinarily competitive slots in my target market of interest. You see my predicament?

"Where do you see yourself in ten years?"

I dunno, dead from climate change probably?

"What are you looking for in a firm?"

I'm looking for a dynamic, team-driven environment with opportunities for personal growth, professional development, and meaningful social connection. I love being a part of something bigger than myself to provide high-quality work to important clients—

1 For example, our elderly EIC.

2 It is begrudgingly known as OGI to every person outside of UVA Law who instead refers to the recruiting process as On-Campus Interviewing (OCI).

3 Yes, I know OGI is virtual now but that really doesn't fit the metaphor as well.

4 I recently watched Bama Rush, and phew. She needs a redo.

5 It's funny because I actually said this during a screener. Good job, Ethan. What original content!

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state bar, having spent only one year in a special program at Albany Law School. Jackson had not attended college, either. He would spend the first twenty-one years of his career in general practice in Jamestown, New York, a relatively small community with a modest number of law firms. Yet by 1938, when Jackson was 46, he was Solicitor General of the United States; by 1940 was Attorney General in the Roosevelt administration; and by 1941 had been appointed to the Court.

So I thought there was a good deal in Jackson's career that might interest audiences. The principal reason I wanted to do a book on Jackson, however, was that he was a compulsive writer, who recorded his experiences as he encountered them, and a packrat, who kept records of his communications with others over the course of his career. In the late 1980s, Jackson's son and daughter donated most of his professional and personal papers to the Library of Congress. Those papers included two extensive documents detailing much of Jackson's life, an "autobiography" he wrote in 1944, and an oral history memoir, consisting of a series of interviews with the Columbia University oral history project in 1952 and 1953, which Jackson completed editing just before his sudden death from a heart attack in October 1954. They also contained files of his Supreme Court cases and other cases with which he was involved in private practice or government service, correspondence with his son, daughter, and numerous public figures, and diaries from his time at Nuremberg.

I wanted to do a book in which I recounted Jackson's reactions to experiences in his life and career he thought important, drawing on his Library of Congress papers, and then stepped back to suggest what those reactions said about Jackson as a lawyer, an intellect, and a person. The book was delayed for two years while the Library of Congress was closed because of the pandemic, but when it reopened, I was able to make use of the Jackson Papers through the help of student assistants and the law library. That enabled me to construct a narrative of Jackson's life and career, featuring Jackson as commentator, that extended from his youth in western New York through his service at Nuremberg.

That narrative did not include, however, much of Jackson's time on the Court, with one exception. After a falling out with Justice Hugo Black, he left an account of the incident that I found candid but also somewhat self-serving. There were, however, files of his cases, many of which contained successive drafts of Jackson's opinions. I decided that I could piece together an account of Jackson's service on the Court by employing a combination of descriptions of what the files contained and my analysis of Jackson's opinions in the cases. I also decided that I should devote some time to Jackson as a writer: he is widely regarded as one of the most gifted writers to serve on the Court and during his career wrote six books, one when he was Solicitor General, two in connection with his service at Nuremberg, two as lectures he was asked to deliver by the Bar Association of the City of New York and Harvard University, and the last an incomplete biography of Franklin Roosevelt. Finally, I thought I should devote a concluding chapter to my assessments of Jackson as a lawyer, a judge, and a person. Jackson died in the apartment of his unmarried secretary, Elsie Douglas, and his relationship with Elsie and his wife, Irene Gerhardt Jackson, are clearly important elements in understanding him, although there is tantalizingly little evidence in the Jackson Papers.

I think of the book as a "portrait" of Jackson rather than a biography: one might be tempted to call it "Jackson on Jackson, with White looking on." It has been an absolute pleasure to research and write. I don't expect it to be out anytime soon: I'm just revising the latest draft after getting critical comments from colleagues, readers, and student assistants. I'm not all that sorry to have it around for a while yet.

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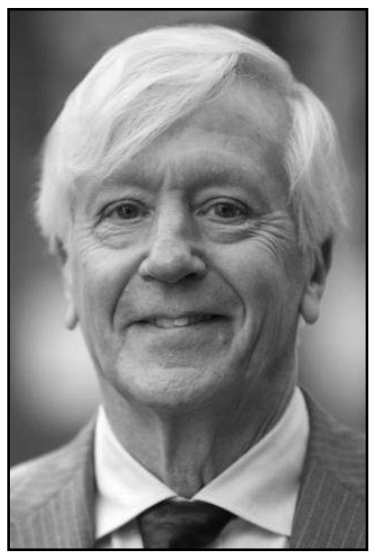
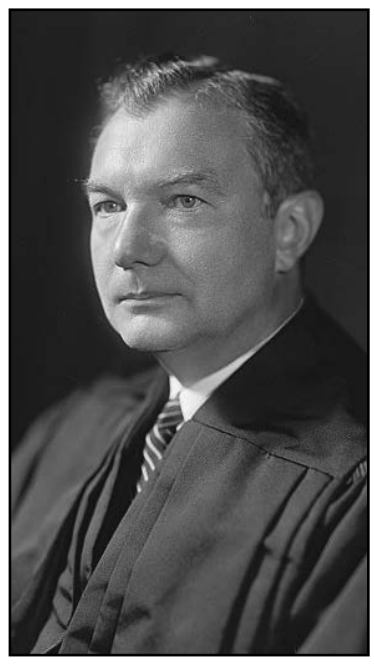


Pictured: Professor G.E. White
Photo Credit: UVA Law



Pictured: Justice Robert Jackson
Photo Credit: Harris & Ewing, photographer, https://www.loc.gov/item/2016862701/

Let's Mock and Roll: Mock Trial Greets New Members

Brooke Boyer '26
Staff Editor

On September 5, UVA Law's Mock Trial Association kicked off the year with a general interest meeting for prospective new members in Slaughter 292. Students learned about what Mock Trial is, its numerous benefits, and what to expect as a member, while eating Chick-fil-A nuggets to their heart's content. If you didn't make it to the meeting but are nonetheless curious about Mock Trial, no worries! Read on to learn more about what the organization looks like at UVA Law.

Vice President of Membership Malia Takei '25 began the meeting by diving into an explanation of what being a member of the Mock Trial Association at UVA Law entails. She described it as an opportunity to "play lawyer" in fake trials prior to actually becoming one. Members build cases in a team consisting of four advocates, establish the facts of the case, file necessary pretrial motions, make opening statements, and make legal arguments and present them before a "judge." They also object, and utilize admissible experts, witnesses, and exhibits to back up those arguments. Finally, members conclude their arguments with a closing statement. The trials, which follow the rules of evidence and case law, closely emulate the real thing.

If you're a confused 1L like me and unsure of the distinction between Mock Trial and Moot Court, don't fret. Malia made sure to clarify the key differences between the two. While Moot Court takes place at the appellate level in front of a panel of judges, Mock Trial takes place at the trial level with an audience of a single judge and jury. Another important difference is that Moot Court is best described as competitive legal research and writing which includes solely disputes of law, while Mock Trial is essentially competitive storytelling that includes disputes of both fact and law. Finally, Moot Court is most often concerned with civil procedure and constitutional law, while Mock Trial involves the fields of evidence, tort, and criminal law.

Next, Malia combated the widespread myth that

Mock Trial is solely for those interested in pursuing litigation. The organization is undoubtedly helpful for those who aspire towards careers primarily in the courtroom because of the hands-on, practical trial experience it provides. However, law students of all interests will reap the benefits that Mock Trial has to offer. It teaches trial advocacy, allows members to hone their public speaking skills and overcome the intimidation of speaking in front of an audience, and strengthens the skill of persuasive story-telling. It provides invaluable experience for students wanting to enter either the public or private sector.

Mock Trial is also a wonderful way to make new friends! Since members must work together in teams to build and support arguments in trial, teammates are able to bond throughout the process. Aside from meetings and competitions, mixers and other social events are hosted as a way for members to get to know one another outside of the courtroom and in a more personable setting.

New members do not have to worry about not having gained experience in mock trial at their high schools or undergraduate universities. In fact, absolutely no experience is required before becoming a member of the Mock Trial Association. The four mandatory bootcamp sessions led by Army JAG school coaches are designed to teach members everything they need to know before the Skills Showcase, including pretrial and courtroom etiquette on September 13, statements on September 18, direct and cross examinations on September 27, and evidence on October 4. The JAG coaches, who are themselves law students, guide new members through each step and answer questions along the way.

After completing each of the four bootcamp sessions, new members will be able to show off their newly gained knowledge at a Skills Showcase on October 13 and 14.

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I Know What You Did Last Summer

Stephen Foss '25
Social Media Editor

"Oh my gosh, so good to see you! How was your summer? Nice, yeah, that's so great. Yeah. Oh, okay, and do you know what you're doing next summer? Oh my gosh, that is seriously so great." This quote is not directly attributable to anyone, but it was overheard in the Law School hallways and shouted into ears at Bar Review enough over the past three weeks to last a lifetime. This article will serve as a send-off (until this time next year) for the overdone, beaten-to-death, exhausted phrase: "What did you do this summer?"

Gabriel Mahoney '25 spent his summer as an intern in the criminal section at the Washington, D.C. Office of the Attorney General. Mahoney spent most of his time doing legal research and drafting motions for criminal cases, producing internal memos, and helping with investigations. Mackenzie Kubik '25 also spent her summer in the nation's capital, where Kubik was a judicial intern on the U.S. District Court for the District of Columbia where she spent most of her time, "observing court proceedings, doing legal research and writing, and gossiping with my co-interns (not necessarily in that order)." Nolan Edmondson '25 worked as a 1L Summer Associate for Kasowitz Benson Torres in New York City. "I was staffed on several research matters relating to securities litigation, labor and employment law in New York State, and New York City tenant's rights." Edmondson said. "I had the opportunity to be second-chair for an organization that specializes in representing Manhattan tenants in actions against their landlords and wrote a memo on the possible challenges to a particular landlord's defense for rent back payments. That memo was eventually turned into a motion to dismiss."

Emily Dioguardo '25 worked for the Equal Employment Opportunity Commission Washington Field Office. "I was in the enforcement unit, which meant that I would conduct initial interviews and draft the charge of discrimination for the potential charging parties. I would then monitor that party's case until it either got closed or passed on to an investigator." When Dioguardo was not working, she was, "grabbing a bagel from Call Your Mother, whining about cover letters, or using my mom's Starbucks app to grab coffee."

Henry Nowland '25 worked as a judicial intern in the chambers of the Honorable Judge Lance Africk on the U.S. District Court for the Eastern District of Louisiana in New Orleans. Nowland worked closely with Judge Africk and his clerks to draft memos and court orders, and attended most of the trials and hearings that were held during his time in chambers.

In addition to their summer jobs, four of these five 2L's also ran the gauntlet that is OGI. Further, these generous and all-knowing 2Ls were kind enough to share their wisdom with you, dear reader. Although OGI may get a bad reputation, not all reviews were negative. "Interviewing was much less painful than I thought it would be!" Dioguardo said. "OGI itself is difficult in that the days are long, and you have to be 'on' 24/7. But I found most of the interviews really enjoyable (for context, I *love* talking about myself)."

When asked about his experience, Mahoney shared, "The interview process was overwhelming at times but also a little bit funny. You get pretty good at answering the same couple of questions in a two-week period."

As the saying goes, different strokes for different folks[1]. To that end, Kubik emphasized the importance of showcasing what makes you different. "I spent most of my time in interviews talking about a fellowship I did after college where I studied tea. I would recommend trying to highlight anything in your resume that might be unusual, even if those experiences aren't at all related to law. Attorneys are (usually) human too, and just like the girls you take to Mission[2] on your hinge dates, they're tired of hearing how you 'actually have a real impact on politics' as a Hilltern.™" When asked to offer a "must-do" to current 1Ls, Kubik was quick to add, "Take career advice from the Law Weekly."

Despite being told by His Majesty OPP to cut it, Mahoney kept a line about how he raises chickens on his resumé, "I think it was brought up in nearly every interview. It's obviously the most transferable skill out there to being a junior associate, so it seemed pretty clear to me why it dominated the conversation during my interviews."

In the same vein of committing OPP taboos, Nowland shared that he did OGI while on vacation in South America. "I took a callback from the floor of a hostel in Suriname. If it remains fully virtual in the years to come, take advantage."

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1 My thanks to Noland Edmondson '25 for this insightful mantra that he, and he alone, coined.

2 It is unclear if this was a shot at the author of this article or single people in general, but at the Law Weekly we do not condone date shaming.

LAW WEEKLY FEATURE: Court of Petty Appeals

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

Students for Fair Socialization
v.
Student Bar Association
76 U.Va 2 (2023)

COLEMAN, J., delivered the opinion of the court. RICE, J. concurred in judgement. MOORE, J. dissented.

We hear this case on appeal after the Governor from the State of SBA issued a halt on bar reviews, the constitutionality of which was affirmed by the lower court. The trial judge cited the dramatic rise in COVID cases among the student population as a sufficient justification for the unprecedented move. However, the trial court did not disturb the many other gatherings that are permitted, from classes to student organization meetings. Because of this inconsistency, we have been able to see the blatant attack on two fundamental rights at the Law School: those of inebriation and socialization. Accordingly, we reverse and issue an injunction that bar reviews must continue in spite of COVID.

Up front, this Court would like to address the standing issue. SBA has not actually restricted bar reviews. However, the apprehension of some students that bar review may be curtailed with the rising COVID numbers is a cognizable injury. SBA poses a credible threat, and for that reason, this Court will entertain the petitioner's complaint.

Some may know that the words "socialization" and "inebriation" are nowhere to be found in our Academic Policies. This is of no concern, since I choose to include them in my substantive honor analysis. Our constitutional order was fundamentally changed when the Honor System was established in 1842. And with that, the Framers protected some inalienable rights by putting them outside of the Honor Code's ambit. To an intelligent student in 1842, the Honor Code protected his rights to socialize and drink. This is because these rights were deeply rooted in our school's history and tradition. After all, Thomas Jefferson himself developed the wine industry in the region. And this Law School has consistently been ranked as the best for quality of life. Those isolated pieces of historical evidence convince me. Accordingly, the rights to inebriation and socialization are codified within substantive honor as if they were explicitly granted rights.

Our precedent informs us that laws may burden these fundamental rights if they are neutral and generally applicable. But this is obviously not the case. The regulations at issue were written with bar reviews in mind, and they do not apply to the many other gatherings that characterize the law-school experience. In sum, it is obvious that classes are being treated more favorably than bar reviews. This is abhorrent from the perspectives of an 1842 student and the modern student alike.

Yet another important consideration is the negative impact this ruling would have on 2Ls and 3Ls, relative to 1Ls. 2Ls and 3Ls are better positioned to enjoy bar review for several reasons. They care less about grades, have more disposable income after summers with firms, and have larger networks of friends to enjoy the night with. A restriction of bar review limits their ability to exploit these blessings as jealous 1Ls look on. Decisions by state actors that fail to privilege 2Ls and 3Ls over 1Ls receive strict scrutiny under this Court's jurisprudence. I don't find the respondent's reasoning compelling, so it fails my version of strict scrutiny, plain and simple.

The State cannot assume the worst when people go to tie one on at bar review and the best when people go to class. Such thinking is antithetical to a society based on disordered libertinism and will find no safe haven in this Court. SBA must continue putting on bar reviews no matter what.

Rice, J., concurring in the judgment.

I concur in the judgment, but I believe that the SBA's attempt to curtail bar reviews is more aptly evaluated under the Free Exercise Clause of the First Amendment. That is, our precedent tells us that government restrictions cannot be neutral or generally applicable, and thus trigger strict scrutiny, whenever they treat any comparable sober activity more favorably than the exercise of public intoxication.

The above principle makes clear the outcome in this case. Here, SBA treats some comparable activities more favorably than bar review inebriation—permitting, among other things, face-to-face meetings with professors during office hours to go on. Indeed, this court is aware of no SBA restriction on getting a bit toasted before attending one of these sessions, in order to get the courage to ask the question you've been too afraid to ask since the first day of class. Yet, SBA would ban this same transfer of knowledge for the mere reason that the transaction occurs in poorly ventilated bar filled well-over capacity and heated to the ripe temperature of ninety-eight degrees.

Further, the SBA provides no explanation as to why it could not safely permit drunken law students to scream and breathe into the faces of their disinterested peers at a one-inch distance after backing them into a corner at Rapture.

Strict scrutiny requires the State to employ the least restrictive means to advance their interests, and I am unconvinced that the long-employed tactic of 1Ls neglecting personal hygiene in order to maximize their time in the Law Library is insufficient to encourage social distancing in a public setting.

Whereas the State has not carried its heavy burden of demonstrating that

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> "The rights to inebriation and socialization are codified within substantive honor as if they were explicitly granted rights."

Faculty Quotes

B. Sachs: "What if [your client] didn't tell you he's working with a group of serial killers – and they love the woods!"

M. Gilbert: "Do you all know who Professor Nelson is? I know, you're all like, 'yeah, we wish he were teaching the course' Me too. I would sit in the audience and learn so much from him."

J. Duffy: "We won because they caved and gave us everything we wanted. It was sad."

A. Woolhandler: "Alright, we got through the damn ratemaking case."

J. Harrison: "One of my great grievances is you can't buy very large corporations on QVC."

M. Livermore: "We care about kids more than they care about us."

A. Bamzai: "Let's say we have a contract to steal the computers out of the IT department."

J. Mahoney: "What an incompetent boob of a developer!"

M. Collins: "He's a sly dog, James Madison...He snookered a few people I think, and we have to live with it."

T. Nachbar: "This might be hard for you to believe, but I have friends."

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

Virginia Law Weekly

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the challenged restriction satisfies strict scrutiny, and the tolerance of the student body would be irreparably harmed by the loss of their drinking rights for even a minimal period of time, petitioners are entitled to injunctive relief.

Moore, J., dissenting.

Today's decision is a first: Never before has this Court entered an injunction arguably *encouraging* the spread of a disease. This Court has always decided simple, petty disputes among members of the student body and against the school administration. Indeed, this Court's original grant of subject matter jurisdiction is to adjudicate petty disputes over petty matters. Not, as the majority seeks to do here today, to lay down public health policy for the entire Law School. Accordingly, I would issue an injunction pausing bar reviews until further notice.

To be sure, bar review plays an integral part in the Law School experience. Bar review has long been a place where law students come together to unwind, socialize, and watch 1Ls drunkenly try to make out with their sectionmates. Bar review serves as an important source of connection and provides community to a diverse student body. I do not take lightly the decision to pause bar review, but, under the present circumstances my hands are tied.

Some might say this dissent is motivated by the fact I am currently suffering from a bout of COVID that I got from the first bar review. They are correct. But my unease ultimately does not arise out of concern for public health and student safety. Instead, I ground my reasoning in the long-standing history and tradition of FOMO.[1] Indeed, I seek to enjoin future bar reviews until I can once again personally partake in them. Last weekend, my Instagram Stories feed was filled with my fellow BLSA members cutting up at Look Hoos Back. The only thing harder than dealing with that FOMO is breathing through my nose.

Nothing could be more petty than enjoining all future bar reviews out of spite. Therefore, I must (disrespectfully) dissent.

1 *McGinnis v. The Fear of Missing Out*, 242 U.S. 320 (2018). ChatGPT assures me this is a real court case.

FedSoc Host Professors for Judicial Ethics Discussion

Nikolai Morse '24
Editor-in-Chief

On Thursday, September 7, 2023, the Federalist Society at UVA Law hosted a discussion titled "Perspectives on Judicial Ethics." The discussion featured Professor Josh Blackman and UVA Law's own Professor Amanda Frost.

Professor Blackman is the Centennial Chair of Constitutional Law at the South Texas College of Law Houston. He is also an adjunct scholar at the Cato Institute and a Nonresident Scholar at the Georgetown Center for the Constitution. He has authored three books, five dozen law review articles, and countless blog posts.

Professor Amanda Frost is the John A. Ewald Jr. Research Professor of Law at the University of Virginia School of Law. She focuses her scholarship on the fields of immigration and citizenship law, federal courts and jurisdiction, and judicial ethics. She has been cited by over a dozen federal and state courts, and she has been invited to testify on the topics of her articles before both the House and Senate Judiciary Committees. Before joining UVA, Professor Frost was at the American University Washington College of Law.

The professors discussed various topics, including whether Congress has the power to effectively regulate the Supreme Court, the merits of current legislative proposals, and the efficacy of the Supreme Court's self-governance thus far. Given the past year's focus on potential ethics violations by members of the Supreme Court (most notably Justice Clarence Thomas' acceptance of private travel and other forms of hospitality), the event was timely and, understandably, well-attended.

The event's moderator, Connor Fitzpatrick '25, opened the discussion by prompting the professors for their views on whether Congress has the ability to impose a code of conduct on the Supreme Court.

Professor Blackman began by posing a thought experiment. He asked to imagine you were James Madison, tasked with drafting the Constitution. Would you design the courts the way they had? Would you give them life tenure, knowing people could work past 90? Would you give the Supreme Court power to effectively reshape policy, so long as five lawyers agree? Professor Blackman concluded, "probably not." Professor Blackman also concluded, however, that although we might design the system differently knowing what we now do, any discussion of ethics reform must account for the relevant history.

Turning to the issue of Congress' authority, Professor Blackman noted that there were two options before Congress. One option would be for Congress to write a set of rules and order the Supreme Court to abide by them. The other option would be for Con-

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HOT BENCH

Maggie Rossberg '24
Interviewed by Sally Levin '24

Hi Maggie! Let's start with a little background about yourself. Where are you from, where did you go to undergrad, and how did you end up coming to law school?

I am from Crozet, VA, which is a place, not just a bar on the Corner. I went to UVA for undergrad, so I am a Double Hoo. Well, I like to say that I am a hopeful Double Hoo because I have to graduate law school first.

I actually started off in the nursing school in college but took every chance I could to take classes unrelated to nursing. That was a sign that I should make a change. I ended up majoring in American Studies with the hope of going to law school one day. First, I wanted to get out in the working world and prove to myself that it was a worthwhile endeavor. I worked on the Hill and then for a nonprofit in Washington, D.C. Through both of those experiences, particularly the nonprofit, I got to meet a lot of federal prosecutors and see them do their jobs, which drove home that law school was what I wanted to do.

You clearly love Charlottesville and UVA. What makes this place so special to you?

It is hard to describe why it is special, because it is a feeling. I love Charlottesville for a lot of reasons. It offers many of the benefits of a big city, namely great restaurants and activities, like hiking and wineries. But you don't have the downsides of living in a large place. I guess sometimes the traffic on 29 is bad, but that's only for an hour each day.

I also think UVA is a really special school. You get a lot of the charm of a southern school with great academics and history. The Lawn and the Rotunda are UNESCO World Heritage sites. The last time I checked, there are only ten UNESCO sites in the whole United States. Charlottesville is a convergence of a lot of wonderful things.

You mentioned loving the restaurants here. What are your top three Charlottesville restaurants?

My top restaurant is Tavola. I love Italian food, and their selection is so good. The ambiance is also great because it is casual yet refined. The wine selection is unbelievable. Go and talk to their sommelier, Caleb. He is knowledgeable, and I've learned a lot about wine from him. My favorite dishes are the pomegranate cosmopolitan, the burrata, the bucatini all'amatriciana, the eggplant, and I like an affogato for dessert. C&O is my second favorite. That is a classic Charlottesville restaurant with delicious French food. My mom worked as the pastry chef there when I was little, so I have a lot of childhood memories of sitting at the secret bar downstairs and drinking Shirley Temples.

Third is Lampo. I love pizza, and the Neapolitan style is the best of them all. Lampo is great because it is affordable and delicious. It feels like you are in a little bistro in Italy with how small and intimate it is.

This is your last year in Charlottesville before you start your career. What are your 3L goals?

Before law school, I got advice from a friend who had just graduated that I shouldn't get involved in any extracurriculars and should just focus on school. I think part of that advice was good. Law school isn't like undergrad where you need to prove your leadership abilities. I took it to the extreme, however, and didn't get involved in anything. As a 1L, I just focused on school, made friends, and played on my section softball team. I wasn't involved in a single club, not even Virginia Law Women.

As a 3L, I am becoming more invested in this community via organizations and things that I care about. I am the president of Agape, a new Christian organization. Agape is an openly affirming and theologically diverse organization. I feel really passionately about it and am excited to be involved. Last year, I did the Innocence Project clinic and am continuing my involvement as a pro bono team leader this year. I am also trying new activities, like Barrister's United pickup soccer and tennis lessons with friends. I can't go back and change 1L Maggie, but I'm expanding my horizons to have my finger on the pulse at the Law School. I'm calling it my involved era.

Lightning Round:

Your Go-To Dessert? The best chocolate chip cookies. I have been browning butter for years.

Favorite Grand Slam Tournament? Wimbledon. I went to the club where it is held this summer and would die to be a member there. It is impossible. You need to know three people who will vouch for you.

Most Interesting Law School Class? Con Law II: Religious Liberty with Professor Schwartzman. The doctrine is complex but very relevant.

Favorite Member of the Royal Family? The Princess of Wales. I will happily engage in a nuanced conversation about Megan and Harry with anyone who wants to discuss it.

Best Taylor Swift Era? *1989*, but *Lover* is a close second.

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OGI

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and I'm not afraid to put in the work or get my hands dirty in the process. I want to learn from the best and hit the ground running from day one of my summer program.[6]

"Do you have any questions for us?"

Actually, yes, I do—how much does the firm consider the quality of my questions when evaluating my candidacy? Because I feel like anything I ask you sounds unbelievably trite, and you can't possibly enjoy answering the same question of "wHy DiD yOU choOsE tHiS fIRm?" twenty times over. But to cover my bases, I'll ask anyway. And I promise to look unbelievably enraptured when you say you chose your firm for its unique culture, strong work opportunities, and exceptional investment in associate development!

6 I'll let the reader decide whether or not this is AI-generated.

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gress to order the Court to adopt a more robust code of ethics. According to Professor Blackman, there is little precedent to support Congress taking the first path. Professor Blackman noted that the second option was the type of bill that had been floated by sponsors such as Senator Sheldon Whitehouse (D-RI), and was mirrored by the Supreme Court releasing its statement on ethics and principles a few months ago. In order to avoid both partisan dynamics and separation of powers concerns, Professor Blackman expressed a hope that the Court would release a code of ethics of its own volition, soon.

Professor Frost, in contrast, noted that she thought the text and history of the Constitution suggested that "Congress has a great deal of authority over the Supreme Court." Professor Frost distinguished between Congress' authority to oversee and regulate the court and its ability to influence the substance of the Supreme Court's decisions, which the Constitution's text and structure are designed to prohibit. Professor Frost noted that the Constitution only provides for a Supreme Court, leaving out lower courts entirely. This, Professor Frost explained, was a power given to Congress as part of a compromise crafted by James Madison. Questions such as how many Justices sit on the court, the requisite quorum to issue a decision, the budget of the court, and various other details were left to Congress. Pushing back on Professor Blackman's statement that Congress cannot impose anything on the courts, Professor Frost pointed out that Congress has required every Justice to take an oath of office. Finally, Professor Frost agreed that she would far prefer to see the Supreme Court promulgate its own code of ethics, than for Congress to impose one.

The panelists discussed various other topics, including the efficacy of the current regulation of lower federal courts, the role of public perceptions of legitimacy in the proper functioning of the judicial system, the proposed independent Congressional commission to govern the judicial ethics rulemaking process, and whether a middle ground might be amending the existing disclosure acts.

After a lengthy and interesting question and answer session, each professor offered their closing thoughts in response to a question which asked them to assess the extent to which public perceptions of legitimacy were shaped by courts taking positions which were at odds with popular policy, regardless of the legal merits.

Professor Blackman agreed that for the public at large, these issues were personal and, similarly, that the public took reports like those from ProPublica seriously. However, Professor Blackman suggested that this was the very purpose of life tenure: to insulate judges from these external pressures. Professor Frost framed these issues within the broader context of legitimacy. However, she said that the Court at times committed what she views as self-inflicted injuries, which opens the Justices up to criticisms that they lack the legitimacy to decide very difficult, sensitive issues, when they themselves are not living to the highest ethical standards.

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SCOTUS

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tions, the two more recent decisions, *Masterpiece Cakeshop* and *303 Creative*, seem to address public accommodations.[6]

Professor Konnoth posited that the Court's application of its expansive definition of constitutionally protected speech has cast neutrality "out the window," with reference to *Rumsfeld v. Forum for Academic and Institutional Rights* (2006). The Roberts Court in *Rumsfeld* held that colleges and universities could be compelled to allow military recruiters to access students in order to receive federal funding, even where such institutions were opposed on "free speech" grounds to endorsing the military's official "don't ask, don't tell" policy of barring open members of the LGBTQ+ community from service.[7] Professor Konnoth finally cautioned that the *303 Creative* outcome is an exemplary instance of the importance of coordination amongst co-litigants, as the Colorado Attorney-General's Office and the American Civil Liberties Union did not mutually agree to some factual stipulations that were ultimately "fatal" to Colorado's position.

Finally, Professor Jaffe, who researches environmental law, discussed *Sackett v. EPA*, with which he too was personally involved.[8] Professor Jaffe described the Court's conclusion in *Sackett* as a "massive retrenchment" of the impact of the Clean Water Act, which will now only apply to wetlands which have a "continuous surface connection" to other waters of the United States. He emphasized the Court's "remarkable" willingness to "toss" decades of regulations determining the scope of the Clean Water Act. Even the Court's willingness to consider *Sackett* surprised Professor Jaffe. As many commented in response to *West Virginia v. EPA (2022)*, *Sackett* seemed like it should have been an "easy case" under the extant regulations as they have been interpreted.[9] The two cases, he said, signal a turn in the Court's attitude towards federal environmental and administrative law. *Sackett* is a defining case in its particular environmental law context, he said, but perhaps even more notable as an example of Justice Thomas' and Justice Gorsuch's broader mission to contract federal regulatory authority.

6 *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 US 557 (1995); *Boy Scouts of America v. Dale*, 530 US 640 (2000); *Masterpiece Cakeshop v. Colorado C.R. Comm'n*, 584 US _ (2018).

7 547 US 47 (2006).

8 598 US _ (2023).

9 597 US _ (2022).

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MOCK TRIAL

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It serves as an opportunity to solidify the skills learned at bootcamp and proudly put them into practice. The Mock Trial Association also competes in a myriad of tournaments each year. The Cavalier Classic Intramural Tournament takes place at UVA Law and is open to all members. However, additional extramural tournaments are available for 2Ls, 3Ls, and other members who have fully completed the Skills Showcase. In the past, members have traveled to tournaments in Washington D.C., New York City, Houston, and Puerto Rico.

Although Mock Trial is a central activity for many students at the Law School, President Anthony Truisi '25 emphasized that members can make it as much or as little of a time commitment as is needed amid busy class schedules, involvement in other organizations, and the hustle and bustle of everyday life. The organization is meant to be low pressure and not intended to add undue stress to already-full agendas. Participation in extra tournaments is therefore not required (but if you have the time, it's a great experience!).

That covers it! The registration deadline for Mock Trial unfortunately passed on September 11. However, if you have further questions about becoming involved in the future, reach out to Malia at nfm4de@virginia.edu or Anthony at fmh6ns@virginia.edu.

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