



VIRGINIA LAW WEEKLY

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

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Welcome Back from SBA President

Jasmine Lee '20
Guest Writer

Welcome back to a new year and a new semester! I hope you all had relaxing and fun winter breaks. I speak for all of SBA when I say that we are really excited for the events and programming we have in store for you all this semester. Just this week we are having the first of what we hope becomes an annual tradition, Coffee with the Dean. This is an informal opportunity for students to talk with Dean Goluboff about the Law School community. A goal of mine during my time as SBA President has always been to foster a UVA Law community that is both transparent and inclusive to all members of the student body. I believe that more opportunities for us to come together, especially with members of the administration, can help facilitate that type of environment.

As the semester progresses, SBA will be looking to organize more events for the Law School community. SBA Socials and Barristers (tickets on sale this week!) are traditional favorites that bring us together. As you get excited for events like those, be on the lookout for new events from SBA. We are always looking for new ways to enhance the student experience. If you have an idea, please feel free to reach out to me or another member of SBA!

In a few weeks, we will have elections to announce the new SBA board. In my remaining time as President, I hope to continue to get to know as many of you as I can. I will be holding weekly office hours in the SBA Office from 12:30-1:30 P.M. Please stop by to chat or ask questions! I'm also especially happy to talk with anyone who is interested in getting more involved in SBA.

I hope this semester is exciting and enriching for everyone. For my fellow 3Ls, it's hard to believe we are in our last semester already. It seems like just yesterday we were start-

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Schools Tinker With Speech

Fifty years after the landmark case, what rights do students have now?



Mary Beth Tinker delivered the keynote address in Caplin Pavilion for an event commemorating the fifty year anniversary of *Tinker v. Des Moines*. Photo credit Kolleen Gladden '21.

M. Eleanor Schmalzl '20
Editor-in-Chief

Lena Welch '20
New Media Editor

On Friday, January 24, several Law School organizations, including the *Virginia Law Review*, hosted an open discussion about free speech "inside the schoolhouse gates." Fifty years ago, the Supreme Court issued *Tinker v. Des Moines*, discussing student speech rights and schools' ability to limit student speech in the classroom. Since *Tinker*, circuits have split on questions surrounding the important balance between allowing student speech and protecting the learning environment, and it is unclear what protections students still have regarding their speech in and out of classroom settings today. The symposium participants explored several current topics related to *Tinker*, and Ms. Mary Beth Tinker herself gave the keynote address.

In her keynote, Mary Beth Tinker detailed her journey through the time of the *Tinker* case. As a shy child growing up, Tinker never thought she would be a kid to make a big statement in high school. However, after seeing stories of hatred and war, she ended up doing just that when she stood with a few other classmates by wearing a black armband in protest of the Vietnam War. The school suspended her and a few of her classmates also wearing the arm bands, and these students challenged this punish-

ment in court. After a battle in the district court, Tinker and her classmates lost. They lost again on appeal. But the Supreme Court reversed 7-2, finding that their armbands did not impair the learning process to a level where the school system could limit the students' rights to wear them. Instead, school officials can only limit student speech when that speech can interfere with the learning process. Since that time, courts have been left to figure out the details of students' free speech in schools, and lots of questions have resulted.

Before *Tinker* spoke, Professor Frederick Schauer kicked off the event. He detailed the First Amendment cases we have seen over the last fifty years and the importance of preserving speech as our nation becomes ever more divided. Schauer reminded the audience that this time is not just an important anniversary of the *Tinker* case, but an important issue to keep discussing as schools face issues with where to draw lines in speech interference. As social media and other platforms grow outside the classroom, school administrators must face the challenge of protecting students and the learning environment. And with political parties flipping on their viewpoint of the issue over the last several decades, there are complex dynamics at stake.

The first panel, comprised of distinguished scholars Mary-Rose Papandrea, Emily Gold Waldman, Timothy

Zick, and Manal Cheema '20, explored the aftermath of *Tinker*: Is it even still good law? These scholars discussed the standards applied to student speech following *Tinker*. Currently, schools are provided a great deal of deference. As long as interference with school is a reasonable, foreseeable consequence, whether by the student speaker's own actions or by another student's, the school is able to censor the speech. The scholars contemplated the application of this standard in online and off-campus settings as well as in the instance of compelled speech.

The panelists also highlighted Confederate flag cases as an example of a content ban that is likely to survive. School districts have added prohibitions against Confederate flags in their dress codes, and while these bans are likely to be challenged, the scholars have not seen a challenge win. Rather, they used this example to point out the potential bad outcomes of a content ban, although most people would agree with the ban against Confederate flags.

The second panel featured Mary Anne Franks, Susan Kruth, LaTarndra Strong, and Anna Cecile Pepper '21, and was moderated by Professor Rich Schragger. The panelists discussed unpopular student speech and ways to handle it. These scholars also discussed the Confederate flag cases as an example

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around north grounds

 Thumbs up to the Law School administration for treating last semester's Sports Law students like junior associates. ANG didn't expect ANG's classmates to do this much work for this little pay yet, but studying for a sports law final only to 1) hear it was the same exam as last Spring's Common Law II exam AND 2) be told after the fact that it's a pass/fail class is foreboding for ANG's big law career.

 Thumbs down to professors who hold un-scheduled class on a Friday to make up for the "missed" one on MLK Day. ANG had plans that afternoon to wallow in self-loathing for yet again returning for another semester, but now must push those back an hour.

 Thumbs up to Lizzo playing the flute during her opening performance at the Grammy's. ANG also has useless talents, but these only helped ANG get into UVA, not rock out on a world stage.

 Thumbs down to UVA basketball this year. ANG is used to scoring this low on ANG's finals, but didn't expect the basketball team to adopt this strategy to try to win games.

 Thumbs up to the life and career of Kobe Bryant. ANG is a typical hoarder, but any attempt to throw something away always starts with a fade-away jumper and a "Kobe" yell. Bless up.

 Thumbs down to Gunners gunning in the first week of class. ANG tried gunning once, but was told ANG did not have the proper carry permit. ANG wonders where these gunners have gotten theirs.

 Thumbs up to restaurant week in C'ville. ANG appreciates all the food left alone on the free food table because ANG's peers are out spending some thing called "money" on food.

Panel Discussion: Does Harvard Discriminate?

This week, the Federalist Society gave UVA law students the opportunity

Nate Wunderli '22
Staff Editor



to learn about *Students for Fair Admissions v. Harvard* from the

lead prosecuting attorney's, Will Consovoy. Our own Professor George Rutherglen also offered his remarks on the case and its future.

The facts: Between 2007 and 2013, Harvard as well as several other top-tier institutions had a remarkably consistent percentage of Asian American students, usually between 15 and 18 percent. Harvard uses several categories to determine the eligibility of candidates, one of which is a personality score, in which Asians scored the lowest among the different races. Conversely, Asian Americans often had the highest academic scores and scored well in the other categories for admission. Adding to the conundrum, the personal score is decided in two ways, one of which is administered by alumni, the other by the admissions department. The alumni, who actually met with the prospective students, gave Asian Americans higher scores, on average, than their peers. The admissions department, who rarely met

with any of the students, gave far lower scores for Asian Americans, leading to their overall lower personal score. As you can imagine, the lower personal scores lead many Asian Americans to be denied admission into Harvard who would otherwise be qualified.

Consovoy argued that there are only two possible explanations (besides discrimination): It is a statistical anomaly or Asian candidates really do have worse personalities than other races. The results were statistically significant, and since we all generally agree that Asians do not have worse personalities than other races, it seems that Harvard discriminates against Asian Americans. Whether this is a result of racial stereotyping, implicit bias, or something else no one can be certain of, but in Consovoy's mind there is definitely something amiss.

Consovoy argued that a better way to ensure a diverse student body without discriminating would be to eliminate race from the equation entirely and instead focus on socio-economic status as a factor in admissions. Using this model, he says, will create a more diverse campus than affirmative action policies do. Opponents to this argue this might limit fundraising by hurting legacies and

decrease the black minority representation at Harvard and other schools with similar systems (although the number of other minorities such as Hispanics likely would go way up). Interestingly, although Consovoy and Students for Fair Admissions lost in the District Court, Harvard has since upped its percentage of Asians to around 23 percent and issued warnings against labeling Asian applicants as quiet and other similar stereotypes.

Professor Rutherglen, a proponent of affirmative action, offered a different perspective in line with the District Court opinion. Professor Rutherglen expressed his concern about embedding tendencies of discrimination in our high institutions, but he also said that although the results of the personality score and its effect on admissions were statistically significant, it was not large enough of a difference to warrant a judgment against Harvard's policies, because there are other factors at play which could account for the difference. One of these factors is that Asian American students tend to receive worse teacher and guidance counselor recommendations, which may be evidence showing Harvard does not discriminate, but other people who affect admissions have racial biases

which in turn affect the final result. Another could have to do with legacies. According to Federal Judge Allison Burroughs's ruling, of which Professor Rutherglen more or less agrees with, Harvard's admissions policies may not be perfect, but they are very high quality in promoting excellence and diversity and certainly enough to pass Constitutional muster. He also noted that this case was lacking key witnesses for the prosecution such as Asian Americans who had the credentials but did not get in. Professor Rutherglen concluded by saying that the District Court's opinion was quite bullet proof and will be difficult to challenge on appeal.

Ultimately, this case provides an important backdrop to rethink how we as a nation do school admission's processes. Should we stick to affirmative action as a way to promote diversity and inclusion? Or has affirmative action run its course and the time has come to move on to something better, such as looking at socio-economic factors, as Consovoy suggests? These questions are critical to determining the future of higher education, creating equality of opportunity in our society, and are questions the Supreme Court has revisited since affirmative action was instituted

about fifty years ago. So far, in cases such as Regents of the University of California v. Bakke and, more recently, in Fisher v. University of Texas, the court has upheld affirmative action. In Fisher, however, the majority opinion held that colleges must prove that race-based admissions policies are the only way to meet diversity goals. Consovoy would argue that not only is there a different way but there is a more effective way by looking at socio-economic factors. The Supreme Court has even foreshadowed that the time for affirmative action will eventually come to an end in cases such as Gratz v. Bollinger and Grutter v. Bollinger, where Justice Ginsburg wrote, "one may hope, but not firmly forecast, that over the next generation's span, progress toward non-discrimination and genuinely equal opportunity will make it safe to sunset affirmative action."

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Feb Club: When Life Gives You a Leap Year, Make Every Day Count

"Life goes by pretty fast. If you don't stop and look around once in a while, and

Taz Jones '20
Guest Writer



do whatever you want all the time, you could miss it." — Eric Cartman

sum on cryptocurrency and the illicit exotic parakeet market; you're a 3L and you haven't left the couch or called your mom in at least two weeks. Sounds like you could use some fresh air. Also, you should really call your mom back.

Enter: Feb Club—a tradition unlike any other. UVA Law's oldest¹ customary

¹ The author has provided The Virginia Law Weekly with no historical records or other evidence to corroborate this claim.

event series brings together the entire Law School community under the banner of festive theme parties to ensure that we all survive the winter without missing a good time or twenty-nine. There's only one rule for Feb Club: All are welcome, and all are expected to be in good spirits. Ok, that's two rules, but no one ever went to law school because they're good at math.

We hope that all students and faculty will join us for this year's installment—Feb Club: 20/20 Visions. We make literally almost no

promises, with one exception: The camaraderie and collegiality that makes UVA Law so special will be on full display, and you won't regret that study break. Was that two reasons? Dammit.

We're pleased to share, below, the full schedule of events for Feb Club 2020, and we encourage you likewise to follow along on Facebook and TikTok² for more detailed updates regarding each planned event. As always, attendees can expect a wide range of social engagement opportunities sponsored by an equally diverse roster of student organizations and particularly fun-loving classmates.

Questions? Comments? Eh, don't worry about it. We'll see you on February 1.

Your Feb Club Fun Director,
Taz Jones, '20

wtj9aw@virginia.edu

² The editors note that, contrary to the author's assertions, at present there exists no TikTok account associated with UVA Law Feb Club.

ing our Law School journeys, with a thrilling solar eclipse no less. Having experienced a "last semester ever" in Charlottesville during my fourth year of undergrad, my big recommendation to all of you is to truly enjoy Charlottesville. If there is a restaurant you've always wanted to try, check it out. If you still want to explore a winery, take a nice afternoon and go. If you haven't been to the national park right next door to us, grab some friends, get in a car, and go! I doubt you'll regret any of those memories you make this year.

2Ls, congrats on being half-way done with Law School! It's been great watching you all grow into true leaders throughout the Law School. I'm beyond excited to see what else you all will do. 1Ls, a huge congrats to you as well for finishing your first semester! That is without a doubt a great achievement and I hope you took time over break to let that sink in. You've learned so much since August and still, you're just getting started. Enjoy spring semester and all the possibilities it brings for you!

jtl3gm@virginia.edu

2/1 Saturday	LAMBDA PRESENTS: Over the Rainbow ft. The Gunners	8:00 PM 306 Alderman
2/2 Sunday	OWLS Super Bowl Shindig	5:30 PM Reason Brewery (1180 Seminole Trail #290)
2/3 Monday	Maria's Bachelor Watch Party	7:30 PM 2432 Arlington Blvd Apt C4
2/4 Tuesday	Jerseys and 40's	8:00 PM 2428 Arlington Blvd Apt F3
2/5 Wednesday	VELLA / VSELS Basketball Watch Party and Pong Tourney	7:00 PM 2401 Arlington Blvd Apartment 26
2/6 Thursday	FedSoc Presents: Trickle Down G&T's (80's theme)	8:00 PM Pav Clubhouse
2/7 Friday	JD/MBA Mixer	TBA TBA
2/8 Saturday	Barrister's Ball	8:00 PM Jefferson Theatre
2/9 Sunday	JPA Manor Presents: The Last Waltz	4:00 PM 2207A Jefferson Park Ave
2/10 Monday	Jenny Lewis Presents: Charlottesville Rodeo & Livestock Show	8:00 PM 2102 Arlington Blvd Apt. 1
2/11 Tuesday	Camp Cottle & Cain	7:30 PM 2422 Arlington Blvd Apt B-2
2/12 Wednesday	The Wedding of the [New] Decade	8:00 PM Coupe's
2/13 Thursday	VLW and VWS PRESENT: Palentine's Day	7:30 PM Pav Clubhouse
2/14 Friday	HLA Safe Sex Valentine's Day Mixer w/ Medical School	10:00 PM Fitzroy
2/15 Saturday	Libel in Paradise: A Single's Retreat	9:00 PM 306 Alderman
2/16 Sunday	Stay Hot Soulful Sunday @ JPA Manor	TBA 2207A Jefferson Park Ave
2/17 Monday	Heartland Hoos Present: Meme Club	8:00 PM 1605 Brandywine Dr.
2/18 Tuesday	Lone Star Lawyers Present: Boot Scootin' Boogie	7:00 PM Livery Stable
2/19 Wednesday	Dürty Klüb	8:00 PM Durty Nelly's
2/20 Thursday	Sydney and Karina Present: Pittbull's GlobalAWzation -- Mr. Worldwide Jurisdiction	9:30 PM Pav 310
2/21 Friday	Dad Klüb	3:00 PM 1916 Thomson Road
2/22 Saturday	BAR GOLF!	2:00 PM The Corner
2/23 Sunday	LALO and SALSA Present: Siesta con SALSA	12:00 PM Ivy Clubhouse
2/24 Monday	JD/LLM Mixer	8:00 PM TBA
2/25 Tuesday	Fat Tuesday Celebration	8:00 PM 127 Ivy Dr, Apt 6
2/26 Wednesday	Speakeasy Soirée	8:00 PM 125 Ivy Drive, Apt 8.
2/27 Thursday	Turtleneck Cocktail	7:00 PM 956 Huntwood Lane
2/28 Friday	BLSA Presents: Decades Dance Party (2010-2020)	TBA TBA
2/29 Saturday	DAS KLÜB	10:00 PM RAPTURE

The Law Weekly Presents: the 2020 Feb Club calendar.

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of content bans, which Kruth advocated against, but also as a ban against symbols of hate, which Strong works hard to eliminate through her organizing. This panel highlighted the importance power plays in the world of speech protections, pointing out those whose speech is protected or who can assert their rights tend to be people of privilege. Additionally, the panel discussed walkouts and other forms of protest, with Pepper highlighting her scholarship as it relates to student speech outside the schoolhouse gates.

Despite all these questions left in the post-*Tinker* era, *Tinker* herself works now as an advocate for human and child rights. She was driven to speak up by all the images of hatred and war that she saw as a kid, and she wants to prevent this hatred and violence in the future to improve our world's future. She believes

the kids are the future, but also the present, and we need to focus on and listen to them now. While *Tinker* hinted at believing there is need to limit student speech in certain instances, she urged us to fight for the voices of those that are not always heard. On her own experience speaking out that day with that black armband in high school, *Tinker* told the audience: you may be nervous and scared to stand up for things you care about, but a little bit of courage goes a long way. So while we may not know what the future holds for student speech in an era of technology and growing political divide, we do know there are people like *Tinker* seeking protection for those not always able to fight for themselves.

When asked about the event, Maggie Booz '20 commented, saying, "We started planning the symposium last March, shortly after we started our positions on the managing board. We initially

decided that we wanted to do an event centered on free speech, since it's an issue that all sides of the political spectrum care deeply about. After running some initial ideas by Vice Dean Leslie Kendrick, we decided to do an anniversary symposium on *Tinker v. Des Moines*—nobody was addressing it, and we felt that it was an issue relevant to students' lives that people would be excited to write about. We then opened the pool for submissions over the summer, and were very fortunate to be able to select two excellent student pieces by Manal Cheema and Anna Cecile Pepper in August. We solicited articles from free speech experts, and then spent the fall editing and publishing the pieces. Around the same time, Mika was incredibly fortunate to secure Mary Beth *Tinker* as our keynote speaker. Meanwhile, we planned panels, invited free speech experts to speak on the panels, and planned the logistics of the event."

Former *Law Review* Editor-in-Chief Laura Toulme '20 said, "The *Tinker* Symposium was a great event. It certainly was a high-note to go out on as EIC. Many people and organizations were instrumental in making the event possible. As Professor Schwartzman highlighted in his introduction of Ms. *Tinker*, we were lucky to have such a broad array of student organizations supporting the event. I thought that really spoke to the importance of the topic. And it certainly wouldn't have

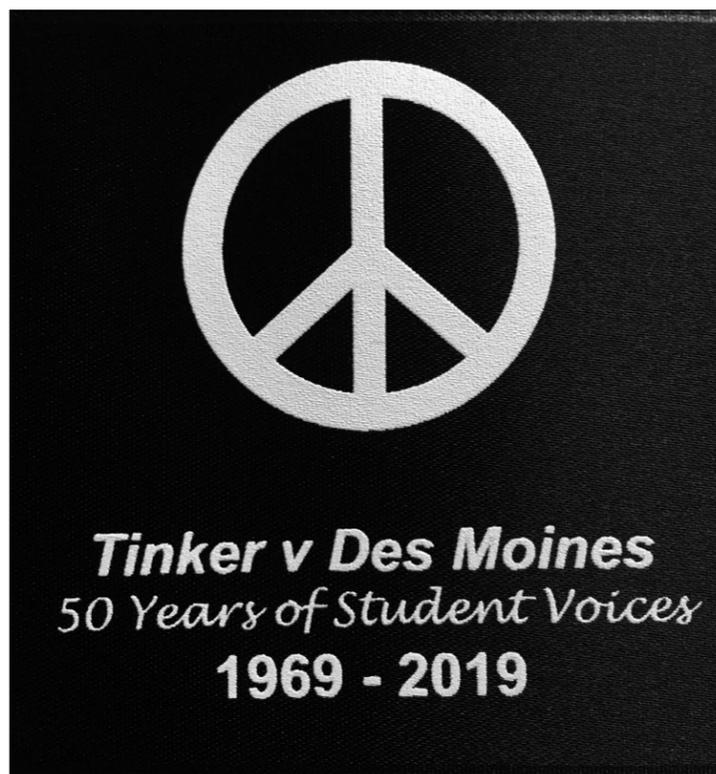
been as successful without the Karsh Center's support. Finally, our outgoing Online Department—Ben Lucy '20, Maggie Booz '20, and Mika Carlin '20— and Managing Editor—Kareem Ramadan '20—worked all year in the lead up and especially during the event to make sure everything went smoothly." She also thanked Professor Schauer, Vice Dean Kendrick, Professor Robinson, and Professor Schragger for being there to bounce ideas off of for speakers and panelists to participate in the event.

Finally, she said "Hearing first hand from Mary Beth

Tinker was probably the highlight for me. Her actions helped forge current First Amendment rights, which is incredible. My favorite part of her speech was her discussion of taking off her armband in the principal's office. You don't have to be the most courageous person to make a difference—even a little bit of courage can change history. It's also rare to have heavily female participation on conference panels, so it was really exciting to see all of the brilliant women who participated—especially our two student authors, Anna Cecile



Panelists discuss the implications of *Tinker* issues surrounding unpopular forms of student speech. From left to right: Anna Cecile Pepper '21, LaTandra Strong, Susan Kruth, Mary Anne Franks, and Professor Rich Schragger. Photo credit Kolleen Gladden '21.



A replica of the arm band at issue in *Tinker v. Des Moines* commemorating the fifty year anniversary of the Supreme Court case. Photo credit M. Eleanor Schmalz '20.

Drew's Corner: A Chicken Sandwich Review and Absolutely Nothing Else

This is a chicken sandwich review column. This is definitely not a column about the

Drew Calamaro '21
Satire Editor



fact that Robert F. Kennedy Jr., a UVA Law alum, is the chairman of a nonprofit organization called Children's Health Defense that is **one of two organizations funding 54 percent of anti-vaccination advertisements on Facebook**, where they (allegedly!) target vulnerable women and parents of young children as well as minority groups¹ to spread doubts about

1 <https://sciencebasedmedicine.org/robert-f-kennedy-jr-s-harlem-vaccine-forum-a-disastrous-antivaccine-forum/> (if you think I'm giving you



Figure 1: chicken allegedly from 29177 Telegraph Road, Southfield, MI. Photo courtesy twitter.com.

vaccines. No, this is simply a column reviewing the Popeyes chicken sandwich. Last spring semester's chicken sandwich rankings will be provided at the bottom of this article.

This column is indeed about the Popeyes chicken sandwich and the fact that I refuse to eat it and how I sincerely hope Robert Kennedy Jr. doesn't, either. This is because there have been issues with the preparation of the sandwich. As shown in *Figure 1*, a sandwich in Michigan was found to be raw in the center, while *Figure 2* shows employees prepping sandwiches over a trash can.

Let us hope and pray that Robert Kennedy Jr. does NOT buy a chicken sandwich from these locations. That is because the Children's Health

legal citations you're in the wrong place, nerd).



Figure 2: chicken sandwiches allegedly from the 9581 Braddock Road location in Fairfax, VA. Photo courtesy twitter.com.

Defense website's "Science Library" has a "study"² that purports to show an association between antibiotic usage and autism. Given his organization's seemingly anti-antibiotic stance that they spread (like a disease) to others, I CERTAINLY hope that Bobby Jr., a UVA Law alum, does NOT buy a Popeyes sandwich and contract *Listeria*, a bacteria found in raw chicken and the third leading cause of death from foodborne illnesses. I can only assume he would refuse antibiotics if he contracted *Listeria*, despite his age causing him to be at greater risk of severe symptoms, and we don't want that to happen.

I am not saying that I sincerely hope Robert Kennedy Jr. contracts *Listeria*. What I AM saying is that I am NOT going to eat that chicken sandwich while these pictures continue to pop up on the internet almost as frequently as the anti-vax ads from the Children's Health Defense orga-

2 Read: Internet survey. I am not kidding. They conducted a self-reported INTERNET SURVEY and called it a study. "Study" abstract found here: <https://childrenshealthdefense.org/wp-content/uploads/Bittker-2018-Acetaminophen-antibiotics-ear-infection-breastfeeding-vitamin-D-drops-and-autism-an-epidemiological-study.pdf>.

nization that Robert Kennedy Jr. chairs.³ By the way, the ads from Children's Health Defense also sometimes endorse books, seminars, and other products. Am I implying that Robert Kennedy Jr., an alum from the University of Virginia School of LAW, is profiting off of the pockmarked backs of children who weren't vaccinated and contracted measles? No, because the Children's Health Defense organization is a nonprofit, just like the NCAA is, so they definitely can't profit off of sick and dying children. I am also not implying those things because I am simply reviewing the Popeyes chicken sandwich. This is a chicken sandwich review.

Many will clutch their pearls and say "Drew, I know you are the satire editor, but you shouldn't be making jokes about illnesses. Death and illness are not funny topics to joke about because words matter." To which I say, I agree, words definitely matter and I do not take the issue of reviewing the Popeyes chicken sandwich lightly. I also think that words matter so much that when you target uninformed and vulnerable parents through online ads and tell them that "vaccines are the

3 <https://www.sciencedirect.com/science/article/pii/S0264410X1931446X?via%3Dihub#bo200>.

cause of their child's chronic illness"⁴ including autism, there should be severe repercussions. Words matter SO much that I will also say that I hope Robert Kennedy Jr. does NOT go to the Popeyes locations I highlighted above, buy a sandwich teeming with Hepatitis A because it was prepared over a trashcan, eat it alone in the car like a sad loser, contract Hep A from that sandwich, and then go to work at his anti-vax nonprofit and infect the entire board of directors with the Popeyes Hep A since none of them are vaccinated. Illness isn't funny, and the thought of the board of an anti-vaccination organization getting seriously ill from Hep A because they aren't vaccinated is definitely NOT funny, either.

You know what else isn't funny? The fact that Robert Kennedy Jr.'s organization spreads misinformation about the measles by stating that because the death rate of measles is now supposedly less than 1 in 200,000, the risks of the measles vaccine now outweigh

4 See: the entire Children's Health Defense website; quote taken from <https://www.sciencedirect.com/science/article/pii/S0264410X1931446X?via%3Dihub#bo165>.

LAW WEEKLY FEATURE: Court of Petty Appeals

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

Students v. Over-Eager Administration 369 U.Va 75 (2020)

PICKETT, J., delivered the opinion of the Court, in which LUK, J., CALAMARO, DESKINS, and LUÉVANO, JJ. join. SCHMID, J., filed a concurring opinion.

JUSTICE PICKETT delivered the opinion of the Court.

I

Despite UVA Law’s reputation for being the most relaxed of the so-called “T14 Law Schools,” there remain some who seek to stoke students’ law school-induced anxiety, no matter the time of year. Given the insistence of the administration in disturbing students’ substantive due process right to privacy during Winter Break, the Court will restore order by condemning their actions and defining when and how students may be contacted during breaks from school.

II

On January 6, 2020, plaintiff Lay Z. Boi woke up at 2 p.m., excited for another day of doing absolutely nothing and trying to pretend he had never made the questionable decision to attend law school. And yet, as he rolled over to check his phone, he saw the familiar e-mail notification entitled “Daily Docket.” This edition showed one of Boi’s classmates, Johnny Bravo, smiling on the cover, touting his most recent success and attributing it to “not sleeping until 2 p.m.” Boi felt as seen as a lady of the house who had decided to take a bath that night, the heat of which was detectable with an infrared heat sensor.¹

Boi had had enough. Despite his attempts to forget the trauma of fall semester, the Daily Docket reminded

¹ Shout out to Criminal Investigations for this joke.

him every single weekday that he was a law student and that, as he attempted to rest, there were those who would never stop. He decided that his reasonable expectation of privacy in having an unbothered Winter Break had been violated, so he filed suit in the Court of Petty Appeals.

III

The right to privacy during Winter Break provides that students shall be contacted during Winter Break *only* if a grade has been posted to

can homes, just as this right to privacy prevents emails from the administration from being quartered in the email inboxes of innocent students around the country. And the Fourth Amendment’s protection of people in their persons and effects means that no one should be attacked in their own home by the vicious cyberbullying implicit in the Daily Docket. The right was first articulated, however, in the case of *A Few Good Men v. A Few Good Women*, 265 U.Va. 12, 97 (2015), where the Court

SCORSESE 30, 45 (2019), established the exception that “students may receive emails about grades and classes, but they should find out such information within a reasonable amount of time and not after four weeks of anxiety induced waiting.”

The administration’s actions were clearly in violation of the right to privacy during Winter Break. The Daily Docket does not inform students of emergencies, nor does it provide information about grades or classes. It is an essential and useful tool

make Boi and his classmates whole after their privacy was so forcibly trespassed upon by the tyranny of authority.

JUSTICE SCHMID, concurring.

I am in agreement with the majority and Judge Sam “Sam’s Club” Pickett in their rejection of the bombardment of students’ inboxes with Daily Docket emails, as well as its proper reverence for the continued vitality of the Third Amendment. I write separately to exercise my right as a

Petty Judge of this Petty Court to grouse about whatever I want. This concurrence is aimed squarely at the University’s use of UVA Alerts. In theory, the UVA Alerts are an important and necessary tool to communicate urgent news to the University community. In reality, well.... Let’s just say many alerts are reminiscent of that last paragraph you write when you’re running out of time on a four-hour final exam and you just let the words flow onto the page in whatever haphazard way they tumble out of your brain. What follows are some of the greatest hits of the UVA Alerts.

(1) A recent alert warned us, “Battle Building reported in area of AVOID the area.” (2) Late last July, while 1Ls

3 A nickname I have stolen from our beloved newspaper tyrant, Chief Justice Shmazzle.

“The Daily Docket reminded him every single weekday that he was a law student and that as he attempted to rest, there were those who would never stop.” - J. Pickett

SIS (which rarely happens), or if they have become enrolled in a class whose waitlist they were on. The right strictly prohibits the administration from harassing students with emails, particularly those which tout the success of others and seem to scorn students who prefer to spend their breaks curled up with hot chocolate and a movie. The right is particularly unforgiving of emails containing information that is neither relevant nor necessary.

The right to privacy during Winter Break is as old as Common Knowledge itself, and it is a right that can be found in the penumbra of our Constitution’s most important amendments—III and IV. The Third Amendment prevents soldiers from being quartered in Ameri-

found that Winter Break is discrete and insular time period, which should only be trespassed upon if there is a compelling administrative interest. It has since been refined to a set of rules defining when students may be contacted. *Students v. UVA Alerts*, 365 U. Va. 15, 25 (2016), recognized the reluctant rule that UVA may contact students in the event of an emergency, though it did remand to lower courts for a determination of how many emails the administration was allowed to send in a span of five minutes.² Finally, the most recent case of *Young Robert DeNiro in “The Irishman” vs. Old Robert DeNiro in “The Irishman,”* 188

² The limit was one that the University has repeatedly ignored.

during the school year, but a tragic reminder of students’ law school demons during the sainted period of Winter Break.

IV

We hold in favor of the plaintiff and award emotional damages in the form of another week off of school for Boi and the rest of the Law School. By “excluding” a week of school, we help

Faculty Quotes

T. Nachbar: “When I say ‘fun’ as a lawyer, I mean someone else is at extreme peril and you are not.”

M. Schwartzman: “It happens to me in the soup aisle. It might happen to you somewhere else.”

M. Gilbert: “When they get smooshed on the road, we pay to scrape em up. It’s all law and economics.”

M. Collins: “I realize that’s an impossible hypothesis, why would someone in California ever go to Florida?”

G. Rutherglen: “The law just disintegrated into doctrinal anarchy.”

J. Setear: “Some orangutan was adjudged a person and released from the zoo. I don’t know where—probably the Netherlands.”

Have a good professor quote? Email editor@law-weekly.org



Virginia Law Weekly

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were consumed with OGI stress,⁴ we were comforted in the assurance that “the incident,” whatever it may be, “in area of Fontaine Ave. has been cleared.”

(3) Last spring, an email was dispatched alerting us that “Bice House reported in area of.”

(4) To my knowledge, at least two recent alerts were entirely blank.

(5) Lastly, who can forget when the UVA community was on the lookout for a suspect with the following characteristics unknown: age, eye color, hair color, height, race, sex, and weight.

It is regrettably true that I have no control over the UVA Alert system. However, I am a firm believer in the power of the Court of Petty Appeals and its members to indirectly effect change through publication, one petty rant at a time.

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CHICKEN

continued from page 3

the benefits.⁵ Never mind that before the measles vaccine, it’s estimated that every single person surviving to adulthood contracted the measles as a child—about 3-4 million per year. Of the 500,000 officially reported annual cases, 400 to 500 people died, 48,000 were hospitalized, and 1,000 people contracted encephalitis (swelling of the brain) EVERY year. Contrast that with the year 2000, where we had zero reported cases of measles in twelve months for the first time in history. Am I saying that Robert Kennedy Jr. is a real-life version of Lord Farquaad from Shrek because his organization heavily implies that vaccine deaths may be worth the risk? Absolutely yes, yes I am.

⁵ The site is careful to say that there is a “probability” that vaccines are the cause of what looks like every disease under the sun... <https://childrenshealthdefense.org/news/getting-the-measles-in-modern-day-america-not-nearly-as-dangerous-as-portrayed/>.

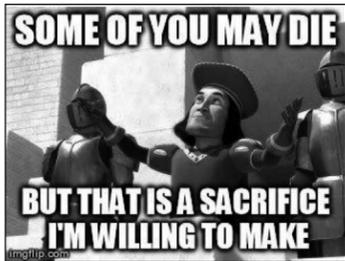


Figure 3. Photo courtesy knowyourmeme.com.

You may be saying to yourself in this moment “Hey, maybe Robert Kennedy Jr. has a point... maybe vaccines aren’t that safe.” That is because you are so smart, and you need more proof before making a decision. That is utterly reasonable. Take a look at Figure 4 you smart, vaccinated legal scholar, you. Or you could just ask yourself, “did I get measles when I was a child?” and look in the mirror to make sure you’re alive—that’s what I do every morning.

What is my point with all of this? Perhaps my point is that the University of Virginia School of Law should revoke Robert Kennedy Jr.’s Juris Doctorate due to his powerful name and position as chairman of an organization that is arguably (potentially, allegedly, maybe—this larger point

is all in jest!) responsible for the illness and deaths of children due to its anti-vaccination stances pushed in online advertisements and movies.⁶ Maybe I am saying that Robert Kennedy Jr. should also be put in jail once we pass a constitutional amendment that says “If you have ever been the chairman of a non-profit organization that bought anti-vaccination ads, then you are a treasonous, misinformed, and dangerous individual who should be put in jail for the damage you have done to our herd immunity and to the children who did not receive vac-

⁶ https://www.vice.com/en_us/article/43k8pp/anti-vaxxers-and-robert-f-kennedy-jr-are-secretly-rolling-out-another-propaganda-film.

cines as a direct result of your efforts.”

It might sound like I am saying those things, but I am definitely NOT. I am simply saying that I rate the Popeyes chicken sandwich as 300 percent problematic, since that is the level of increase in unvaccinated children in the U.S. since 2000, and 1/1 trashcans for taste, since that is what they use as prep s t a t i o n s in Fairfax, Virginia. Perfect for the garbage bin, just like Robert Kennedy Jr.’s anti-vax stances. See you next time.

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Comparison of 20th century annual morbidity and current estimates vaccine-preventable diseases

Disease	20th Century annual morbidity (2)	2016 Reported cases (3)	Percent decrease (%)
Smallpox	29,005	0	100
Diphtheria	21,053	0	100
Measles	530,217	69	>99
Mumps	162,344	5,311	97
Pertussis	200,752	15,737	92
Polio (paralytic)	16,316	0	100
Rubella	47,745	5	>99
Congenital rubella syndrome	152	1	99
Tetanus	580	33	94
Haemophilus influenzae	20,000	22*	>99

Figure 4: Morbidity versus current cases. Is this enough proof for you? Or should we go back to the 20th century? Photo courtesy ncbi.nlm.nih.gov.

⁴ Don’t worry, current 1Ls, it’s going to be great! See, e.g., *Class of 2019 v. 2016-2017 Peer Advisors*, 329 U.Va. 1 (2019) (collecting comforting lies told by PAs and other 2Ls and 3Ls about the first year of law school).

HOT BENCH



Quinn Conrad '22

Hi Quinn, and welcome to Hot Bench! Where are you from?
Baltimore, Maryland.

What are your favorite places to hang out or eat in Baltimore?

There’s a really cool bookstore near Hampton and an SPCA that I like to go to.

Did you work or volunteer with the SPCA?

No, but we’re always trying to adopt. Actually, we just adopted a kitten over the summer—it was free cat adoption month. His name is Chaos, and he’s crazy.

You’re done with one semester of 1L, congratulations! What are some of your favorite Law School memories so far?

My section is very close and we do a lot together. Also, my three friends and I will get together and bake for everyone’s birthday; we

make them whatever treat they want. It’s been really fun, and we’ve made everything from Texas chocolate sheet cake to cream puffs. One day, we made homemade biscuits with honey-butter glaze and a quiche. While baking, there’s one friend who wants to eat more than he wants to bake and another guy who samples everything, so we have to make double what we bring to class.

Favorite book read?

My all-time favorite is *The Alchemist*; I was surprised by the ending, and the story line really resonated with me. It’s really inspiring.

Secret Hidden Talent? Other than baking?

I can say the alphabet backwards in less than 2 seconds. (verified)

You are about to get into a fight, what song comes on as your sound track?

“Got Each Other” by The Interrupters.

How long would you live in a zombie apocalypse?

If my lifespan was judged by killing zombies in *Call of Duty*, then not long at all. But, I take notes when I watch 2012 or end-of-the-world movies, so I think I could last a week. *Bird Box*? I got a lot out of *Bird Box*.

What is a superstition

you believed in or still believe in?

I still lift my feet over railroad tracks, I don’t know what it means, but I still do it. Actually, I have no idea what that superstition actually does

If part of your life were made into a movie, what part of it would be made?

I think probably my first year at VMI, and my first year as a movie would be a mix of one of those real military movies but also *The Benchwarmers*. I was the only girl in my group; we were doing hill sprints and had to buddy carry each other up the hill. Nobody wanted to pair up with me because I was a girl. So I grabbed this six-foot guy and sprinted up the hill. Then everybody was like “okay, Conrad,” they didn’t even notice until I was halfway up.

Can you say something in Chinese?

我的名字是康妮，我最喜欢的中国菜是biang-biang面。(My Chinese name is KangNi, my favorite Chinese dish is biang-biang noodles).

During VMI, you studied international studies and Chinese, what was that experience like?

Academically, the I.S. department had some of my favorite professors. The Chinese department was very small, and I was only

the second or third class to graduate, so I was very close with my Chinese professor too.

What is something you want to do or try this year?

If I could learn how to navigate my way around Slaughter Hall this year, that would be a win for me.

What do you do to relax?

I like hiking a lot, and I buy a lot of greeting cards. When I get stressed out I send them out to people, writing to friends and people I haven’t talked to in while.

Now that you’re not training, what is your workout routine like?

I probably run 4-5 days a week and lift four days a week, and dedicate one day to do something fun like a swim, hike, or bike.

What is a favorite food, or comfort food?

Maybe Chinese food, because I order it with my sister and we spend time together.

All of your siblings are/were in military school or are planning to join after college, how did that come about?

Our fun fact is that someone from our family in every generation has served since the Revolutionary War. I don’t know how it got traced back that far, but somebody in our family

found it. Serving our country was inherent in the way we were raised, we had an awareness about it, but we weren’t pushed into it or anything. Growing up, my dad would always tell us stories of his training, it was really awesome to grow up learning about his experiences.

We thought it was just going to be our brother, but now all three of us will be serving.

If you could be born in a different era, what would it be?

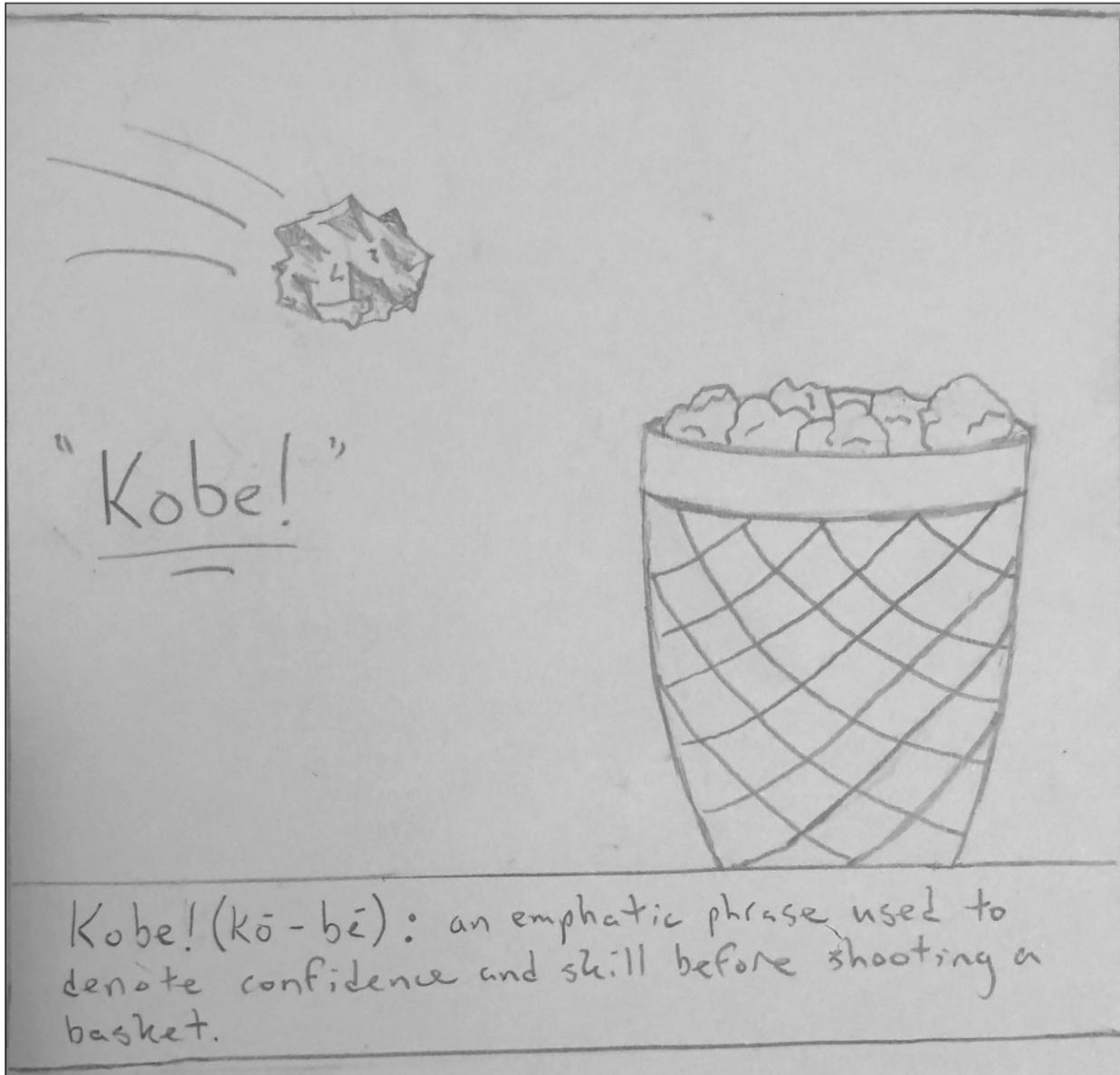
Oh man, I’m not sure; *Back to the Future* is the most confusing movie and I cannot sit through it. Hmm, Jane Austen is one of my favorite authors, so it would be cool to go back to that time period, but probably not as a woman!

Favorite place traveled to?

That one’s hard, because Israel is one of the coolest places I have been too (during iTrek). I really liked China; I studied abroad in Shanghai and did Spring Break in Nanjing. Chendu, Xi’an, Hangzhou, Hong Kong, and Beijing are all great cities as well. But I love the French Riviera too.

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Cartoon By Raphael



TIME	EVENT	LOCATION	COST	FOOD?
WEDNESDAY – January 29				
10:00 – 11:00	Professors and Pastries	Purcell	Free	Provided
13:00 – 14:00	Litigation Strategies for a New Era: Lecture by Judge John B. Nalbandian '94	Caplin Pavilion	Free	Lunch provided
17:30 – 18:00	Midway Toast	Caplin Pavilion	Free	Provided
18:30 – 19:30	Liberated Learners: Education and Starting a New Life after Prison	Zehmer Hall (School of Continuing and Professional Studies)	Free, register online	---
THURSDAY – January 30				
9:00 – 19:00	Healing Hate: A Public Health Perspective on Civil Rights in America	Caplin Pavilion	Free, registration required	Provided with registration
11:00 – 16:30	Red Cross Blood Drive	WB Lounge	Free	---
13:00 – 14:00	Read-In: The Words of Martin Luther King, Jr.	WB 152	Free	---
FRIDAY – January 31				
9:00 – 11:00	VLW General Body Meeting	WB 102	Free	Provided
9:00 – 17:00	Healing Hate: A Public Health Perspective	Pinn Hall Conference Center Auditorium	Free, registration required	Provided with registration
9:00 – 17:00	Arbitration Day	Purcell	Free	Provided
SATURDAY – February 1				
10:00 – 20:00	The Art of Tomie Deng	107 W Main St	Free	---
SUNDAY – February 2				
13:00	Matty Metcalfe	Pippin Hill	Free	---
MONDAY – February 3				
11:30 – 12:30	Achieving Access: Local and National Insights on Our Health Care Crisis	WB 103	Free	Refreshments provided
11:30 – 13:00	Diversity Week Kickoff Fair	Hunton Andrews Kurth Hall	Free	Provided
13:00 – 14:00	Journal Info Session	Caplin Auditorium	Free	---
TUESDAY – February 4				
11:30 – 13:00	VJIL: International Law & the Machine Learning Age	WB 101	Free	Provided
12:00 – 12:55	Renting in New York	WB 154	Free	Provided
13:00 – 14:00	Regrouping After Frist Semester	WB 152	Free	---
15:45 – 17:45	Diversity in the Judiciary	Caplin Pavilion	Free	---

THE DOCKET

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Solution

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