B. A Police Department May Indirectly Initiate the Criminal Process If Threats Lead to Criminal Penalties Down the Line.

While the above cases demonstrate the Ninth Circuit does not apply the Eighth Amendment Cruel and Unusual Punishments Clause before the criminal process is initiated, there are courts within the Ninth Circuit and in other circuits that have applied the Eighth Amendment to cases where the process of criminalization is held to be indirect. *See e.g., Johnson v. City of Grants Pass*, 50 F.4th 787, 806 (9th Cir. 2022) (a "circuitous" path to criminalization cannot evade the Eighth Amendment analysis); *Fitzpatrick v. Little*, No. 1:22-CV-00162-DCN, 2023 WL 129815 (D. Idaho Jan. 9, 2023) (while the Eighth Amendment does not apply outside the criminal context, "eventual" criminal sanctions can implicate *Martin* and *Jones*); *Phillips v. City of Cincinnati*, No. 1:18-CV-541, 2020 WL 4698800 (S.D. Ohio Aug. 13, 2020) (plaintiffs had standing to bring an Eighth Amendment claim on the basis of imminent future harm where the city had a history of issuing trespass orders warning individuals they would be subject to arrest if they remained at their camping site); *see also Jones v. City of Los Angeles*, 444 F.3d 1118, 1129 (9th Cir. 2006), *vacated as a result of settlement*, 505 F.3d 1006 (9th Cir. 2007) (the criminal process "may begin well before conviction… at arrest… at citation… or even earlier"); *but cf. Shipp v. Schaaf*, 379 F. Supp. 3d 1033, 1037 (N.D. Cal. 2019) (acknowledging the Eighth Amendment can be implicated through "indirectly" imposed criminal consequences, but declining to extend *Martin* where there was no evidence the city enforced temporary camp closures via citations or arrests).

The Ninth Circuit has held that the Cruel and Unusual Punishments Clause applies to civil citations that, later, become criminal offenses. *Johnson v. City of Grants Pass,* 50 F.4th 787, 807 (9th Cir. 2022). Plaintiffs, individuals experiencing homelessness, brought an Eighth Amendment claim against the city for issuing civil citations that later resulted in criminal penalties. *Id.* Under

a scheme of city ordinances, individuals experiencing homelessness could be issued civil citations for camping in public. *Id.* If violated twice, the citations could lead to an exclusion order. *Id.* If the exclusion order was then violated, the individual could be cited for criminal trespass. *Id.* at 806-807. The court found this "circuitous approach" to criminalization could not "so easily avoid[]" the Eighth Amendment analysis under *Martin*. *Id.* The court pointed to a Fourth Circuit decision, which held unconstitutional a two-pronged statutory scheme criminalizing drunkenness. *Id.* at 807 (*citing Manning v. Caldwell for City of Roanoke*, 930 F.3d 264 (4th Cir. 2019) (en banc). The statutory scheme began with preliminary civil sanctions and led to eventual criminal penalties. *Id.* at 807. The Fourth Circuit held that the fact that a city's statutory scheme operated in two steps did not change the Eighth Amendment analysis. *Id.* The Ninth Circuit applied this reasoning to hold, "imposing a few extra steps before criminalizing the very acts *Martin* explicitly says cannot be criminalized does not cure the anti-camping ordinances' Eighth Amendment infirmity." *Id.* at 808.

Mere threats of arrest under a statute may implicate the Eighth Amendment when there is evidence of actual enforcement. *See Coalition on Homelessness v. City & Cnty. of San Francisco*, No. 22-CV-05502-DMR, 2022 WL 17905114 (N.D. Cal. Dec. 23, 2022). In *Coalition on Homelessness*, the Northern District of California preliminarily enjoined defendants from "enforcing or threatening to enforce" certain laws prohibiting individuals experiencing homelessness from sitting, lying, or sleeping on public property. *Coalition on Homelessness*, No. 22-CV-05502-DMR, 2022 WL 17905114. The court found the Eighth Amendment was implicated where officers issued citations and made arrests, but also where officers separately ordered individuals experiencing homelessness to "move along" under threat of citation and arrest without first providing viable access to shelter. *Id*. In its order enjoining the defendants, the court

did not explain its rationale for including threats of arrest in its Eighth Amendment analysis. *See id.* It seems possible that, given the court's references throughout its order to instances in which the defendants imposed criminal penalties, officers' threats implicated the Eighth Amendment because of their apparent likeliness to be acted on.

Whether a police department's practice of threatening individuals with arrest leads to criminal sanctions down the line is a fact specific analysis. However, it is plausible that, like in *Grants Pass* and *Coalition on Homelessness*, officers may issue orders to individuals experiencing homelessness under threat of arrest that later result in criminal penalties. For example, police departments may have a practice of following threats of arrest with the issuance of trespass orders, which if violated result in criminal citations. Further, if officers log or run individuals' names as part of the process of asking individuals to move sleeping locations, officers may arguably use the practice of waking individuals as a means to initiate the criminal process. Further investigation would be needed to determine if the practice results in indirect criminalization.

CONCLUSION

Under Ninth Circuit precedent, it seems unlikely that a police department's practice of officers waking individuals and ordering them to move under threat of arrest, without the imposition of criminal penalties, amounts to a violation of the Eighth Amendment. However, if the facts are such that the threats lead to criminal penalties down the lines, the practice may be argued to be part of an indirect approach to criminalization of homelessness, implicating the Eighth Amendment Cruel and Unusual Punishments Clause.

Applicant Details

First Name	**Chloe**
Last Name	**Dyer**
Citizenship Status	**U. S. Citizen**
Email Address	**cdyer@jd24.law.harvard.edu**
Address	**Address** Street **1610 Massachusetts Ave #11** City **Cambridge** State/Territory **Massachusetts** Zip **02138** Country **United States**
Contact Phone Number	**740-856-1492**

Applicant Education

BA/BS From	**Ohio Wesleyan University**
Date of BA/BS	**May 2018**
JD/LLB From	**Harvard Law School** **https://hls.harvard.edu/dept/ocs/**
Date of JD/LLB	**May 23, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Harvard National Security Journal** **Harvard Environmental Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Steiner, Jacob
Jacob.Steiner@usdoj.gov
Millat, Caitlin
cmillat@law.harvard.edu
Freeman, Jody
freeman@law.harvard.edu
617-496-4121

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Chloe Elizabeth Dyer

1610 Massachusetts Ave #11, Cambridge MA 02138 | cdyer@jd24.law.harvard.edu | +1-740-856-1492

June 12, 2023

The Honorable Jamar K. Walker
United States District Court
Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to express my interest in a clerkship in your chambers for the 2024-2025 term. I am currently a rising 3L at Harvard Law. Enclosed please find my transcript, resume, and writing sample. The writing sample is a motion in limine that I wrote during my 1L summer internship with the Public Integrity Section in the Department of Justice, seeking to exclude the prior arrest record of the government's witness. You will also be receiving letters of recommendation separately from the following people:

Professor Jody Freeman Harvard Law School freeman@law.harvard.edu (617) 495-3097	Lecturer on Law Caitlin Millat Harvard Law School caitlinmillat6@gmail.com (321) 217-5614	Jacob Steiner Department of Justice, Washington D.C. Jacob.Steiner@usdoj.gov (202) 924-5829

In addition, the following professor is happy to serve as a reference:

Professor Becca Goldstein
University of California, Berkeley School of Law
rgoldstein@berkeley.edu
(617) 584-0116

Several of my law school experiences have developed my legal research and writing skills. In my clinics, I have been able to conduct extensive research, including on novel legal issues and underdeveloped areas of law, as well as laws in foreign jurisdictions. In my roles subciting for both the *Harvard National Security Journal* and *Harvard Environmental Law Review*, I have been able to hone my technical and substantive editing skills. As a research assistant for Professor Becca Goldstein, I had the opportunity to provide research and writing for her upcoming book. My 1L summer at the Department of Justice fostered my ability to use my research and writing skills in a time-sensitive environment, having to edit briefs and provide answers to often-complex legal questions within a tight timeframe. I hope to be able to apply these skills as a clerk in your chambers.

I would be honored to have the opportunity to interview with you. I am happy to provide any additional information that may be helpful. Thank you for your time and consideration of my application.

Sincerely,

Chloe Dyer

Chloe Elizabeth Dyer

1610 Massachusetts Ave #11, Cambridge MA 02138 | cdyer@jd24.law.harvard.edu | +1-740-856-1492

EDUCATION

Harvard Law School, Cambridge, MA, J.D. Candidate — May 2024

Activities: *Harvard National Security Journal*, Staff Editor
Harvard Environmental Law Review, Subciter
Professor Jody Freeman, Teaching Assistant
Professor Rebecca Goldstein, Research Assistant
Environment & Energy Law Program, Research Assistant
Heyman Summer Internship Program
Admissions Fellow (volunteer with the Admissions Office to work with prospective and admitted students)
Women's Law Association

Ohio Wesleyan University, Delaware, OH, B.A. *summa cum laude* in Spanish, Pre-law — May 2018

Honors: Phi Beta Kappa
Meek Leadership Award (awarded to graduating seniors who have demonstrated exceptional leadership)
Ohio Campus Compact Charles J. Ping Student Service Award (statewide award for community service)
Research Grants: Ireland, 2017; Mexico, 2016; U.S.-Mexico border, 2015 & 2017
Study Abroad: University of Granada, Granada, Spain, Spring 2017
Thesis: *A Line in the Sand: Personal Narratives of the U.S.-Mexico Border*

EXPERIENCE

Morrison & Foerster LLP, Washington D.C. — Summer 2023
Summer Associate
Primarily will be working in the Investigations & White Collar Defense and National Security practice groups.

Food Law and Policy Clinic, Cambridge, MA — Spring 2023
Clinical Student
Researched South Korea laws on food waste, including conducting interviews with stakeholders. Assisted with Spanish-language sources on food waste regulations in Peru. Conducted research on Worker Protection Standard compliance and pesticide exposure among farmworkers, and assisted with interviewing subject area experts.

Democracy & Rule of Law Clinic, Cambridge, MA — Fall 2022
Clinical Student
Assisted the nonpartisan nonprofit Protect Democracy prepare for potential litigation by conducting extensive research and preparing memoranda on federal and state voting rights laws. Researched and summarized findings on the constitutional sheriff movement for inclusion in a report published in partnership with the National Task Force on Election Crises.

Department of Justice, Criminal Division, Public Integrity Section, Washington D.C. — Summer 2022
Legal Intern
Researched and wrote a motion in limine and assisted with editing other motions and memoranda. Conducted legal research on Fourth Amendment and Brady/Giglio material, Sixth Amendment and Speedy Trial Act issues, standards for plea agreement acceptance and plea withdrawals, and continuances. Provided cases that were cited and quoted in briefs. Reviewed and categorized evidence. Assisted with cite checking. Observed court proceedings.

Human Rights Foundation, New York, NY (Remote)
Research Associate — 2019 – 2021
Political Regime Intern — 2018 – 2019
Conducted research for the Legal & Policy team on democratic backsliding and state repression tactics, and analyses of current events such as elections, demonstrations, or arbitrary arrests. Drafted policy briefs, reports, essays, and memoranda on global crises and human rights abuses, including detention conditions in Egypt, universal jurisdiction prosecutions of grave crimes in Syria, and economic deterioration in Venezuela. Initiated the development of a rigorous methodology for a political regime classification index. Provided support during the 2019 Oslo Freedom Forum in Norway, including vetting speaker candidates.

PERSONAL

Ballet dancing, participating in National Novel Writing Month, training my Dachshund mix, backyard chicken keeping

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Record of: Chloe E Dyer
Current Program Status: JD Candidate
Pro Bono Requirement Complete

JD Program

Fall 2021 Term: September 01 - December 03

)00	Civil Procedure 2 Greiner, D. James	P	4
)01	Contracts 2 Kennedy, Randall	P	4
)06	First Year Legal Research and Writing 2B Millat, Caitlin	P	2
)03	Legislation and Regulation 2 Freeman, Jody	H	4
)04	Property 2 Mann, Bruce	H	4
	Fall 2021 Total Credits:		18

Winter 2022 Term: January 04 - January 21

)59	The Craft of Lawyering Lee, William	CR	2
	Winter 2022 Total Credits:		2

Spring 2022 Term: February 01 - May 13

)24	Constitutional Law 2 Jackson, Vicki	H	4
)02	Criminal Law 2 Lanni, Adriaan	H	4
)06	First Year Legal Research and Writing 2B Millat, Caitlin	P	2
370	Policing in America: The Good, the Bad and The Ugly Umunna, Dehlia	H	2
)05	Torts 2 Davis, Seth	P	4
	Spring 2022 Total Credits:		16
	Total 2021-2022 Credits:		36

Fall 2022 Term: September 01 - December 31

)00	Administrative Law Freeman, Jody	H	4
)49	Democracy and the Rule of Law Clinic Schwartztol, Larry	H	3
)79	Evidence Schulman, Emily	P	4
7000W	Independent Writing Goldstein, Rebecca	H	1
2994	Legal Tools for Protecting Democracy and the Rule of Law in America Schwartztol, Larry	H	2
3159	What should we believe? Hellman, Deborah	CR	1
	Fall 2022 Total Credits:		15

Winter-Spring 2023 Term: January 01 - May 31

2195	Negotiation Workshop Verbeke, Alain Laurent	CR	4
	Winter-Spring 2023 Total Credits:		4

Spring 2023 Term: February 01 - May 31

2049	Criminal Procedure: Adjudication Lanni, Adriaan	H	4
8038	Food Law and Policy Clinic Broad Leib, Emily	H	3
2455	International Criminal Law Kalpouzos, Ioannis	H	3
2583	Policy Advocacy Workshop Broad Leib, Emily	H	2
	Spring 2023 Total Credits:		12
	Total 2022-2023 Credits:		31

Fall 2023 Term: August 30 - December 15

2050	Criminal Procedure: Investigations Whiting, Alex	~	4
3243	Governing Digital Technologies Zittrain, Jonathan	~	1
3038	Space Law and Policy Swiney, Gabriel	~	2
2249	Trial Advocacy Workshop Sullivan, Ronald	~	3
	Fall 2023 Total Credits:		10

Fall 2023 - Winter 2024 Term: August 30 - January 19

8003	Criminal Prosecution Clinic Corrigan, John	~	5
2328	Criminal Prosecution Clinical Seminar Corrigan, John	~	3

continued on next page

Assistant Dean and Registrar

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arvard Law School

Record of: Chloe E Dyer

ate of Issue: June 6, 2023
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age 2 / 2

	Fall 2023 - Winter 2024 Total Credits:		8
	Spring 2024 Term: January 22 - May 10		
)48	Corporations Ramseyer, J. Mark	~	4
)86	Federal Courts and the Federal System Fallon, Richard	~	5
)39	Veterans Law and Disability Benefits Clinic Nagin, Daniel	~	3
520	Veterans Law and Disability Benefits Clinical Seminar Nagin, Daniel	~	2
	Spring 2024 Total Credits:		14
	Total 2023-2024 Credits:		32
	Total JD Program Credits:		99

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Assistant Dean and Registrar

HARVARD LAW SCHOOL
Office of the Registrar
1585 Massachusetts Avenue
Cambridge, Massachusetts 02138
(617) 495-4612
www.law.harvard.edu
registrar@law.harvard.edu

Transcript questions should be referred to the Registrar.

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In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.

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A student is in good academic standing unless otherwise indicated.

Accreditation

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

Degrees Offered

J.D. (Juris Doctor)
LL.M. (Master of Laws)
S.J.D. (Doctor of Juridical Science)

Current Grading System

Fall 2008 – Present: Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

Dean's Scholar Prize (*): Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

Rules for Determining Honors for the JD Program
Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.
May 2011 - Present

Summa cum laude	To a student who achieves a prescribed average as described in the Handbook of Academic Policies or to the top student in the class
Magna cum laude	Next 10% of the total class following *summa* recipient(s)
Cum laude	Next 30% of the total class following *summa* and *magna* recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

Prior Grading Systems

Prior to 1969: 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67(B-), 60-64 (C), 55-59 (D), below 55 (F)

1969 to Spring 2009: A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

Prior Ranking System and Rules for Determining Honors for the JD Program
Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.
Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

1969 to June 1998	General Average
Summa cum laude	7.20 and above
Magna cum laude	5.80 to 7.199
Cum laude	4.85 to 5.799

June 1999 to May 2010
Summa cum laude General Average of 7.20 and above (exception: *summa cum laude* for Class of 2010 awarded to top 1% of class)

Magna cum laude	Next 10% of the total class following *summa* recipients
Cum laude	Next 30% of the total class following *summa* and *magna* recipients

Prior Degrees and Certificates
LL.B. (Bachelor of Laws) awarded prior to 1969.
The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).

Assistant Dean and Registrar

June 15, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to enthusiastically recommend that you hire Chloe Dyer to be your law clerk. I supervised Chloe during her summer 2022 internship at the Public Integrity Section ("PIN") of the Department of Justice, where I serve as a trial attorney. PIN investigates, prosecutes, and advises on public corruption and election crimes cases across the country. We rely heavily on interns to conduct legal research and analysis, draft memoranda and pleadings, and prepare resources for internal use. PIN expects a high degree of professionalism from interns, who assist on our most sensitive and complex matters.

Chloe excelled as a legal intern. From the outset, it was clear that Chloe had a sharp legal mind and quickly grasped the questions she was asked. During her internship, Chloe researched tough legal questions, including on the interplay between a prosecutor's Brady/Giglio obligations and data recovered from a cell phone seized pursuant to a search warrant. Chloe demonstrated her clear understanding of this complicated issue and distilled her thorough research into a concise and clear memo. Chloe also drafted a motion in limine to preclude evidence of a victim's criminal history, which the assigning attorney praised as being well-organized and clear. One attorney was so impressed by her abilities—including asking probing questions that were later raised by more senior attorneys—that he began specifically requesting to work with Chloe. Other attorneys complimented Chloe's ability to ask the right clarifying questions, pivot gracefully to new issues, and complete work in a timely manner.

In addition to her considerable legal abilities, Chloe is exactly the type of person you will want in your chambers. Chloe brings to the table a perfect blend of Harvard smarts and Midwestern nice. She is friendly, positive, easy to talk to, mature, and always professional. Although most of her assignments were solo projects, Chloe took the initiative to consult her fellow interns about the tough legal issues—a skill that will undoubtedly serve her well as a law clerk. Chloe is also incredibly thoughtful: always asking about my work trips and keen to swap dog stories. I also find it impressive that Chloe has found the time and energy to be active in her school and local communities. Chloe founded her undergraduate's chapter of the Food Recovery Network and advocated for the creation of a student organization at Harvard dedicated to fostering discussion of the role of prosecutors in criminal justice reform. And she has participated in multiple clinics and journals in law school. Without a doubt, she will be a positive presence in your chambers and find opportunities to engage with your community.

In short, you cannot go wrong by hiring Chloe as your law clerk. I noticed the clear upward trend in Chloe's grades, a sign that she continues to work hard and refine her analytical and writing skills. Chloe is well-traveled, both domestically and internationally, and would no doubt thrive in a courthouse anywhere in the country. She is hoping to pursue a public interest career and would benefit immensely from the training and mentorship associated with a clerkship. I am confident that Chloe has a promising and impactful career ahead of her and that a clerkship in your chambers will be just the first of many achievements.

If you have any questions, I am more than happy to discuss Chloe's application with you in further detail and can be reached at Jacob.Steiner@usdoj.gov or 202-924-5829.

Sincerely,

Jacob Steiner
Trial Attorney, Public Integrity Section
U.S. Department of Justice

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing on behalf of Chloe Dyer, who has applied for a clerkship position in your chambers. I am currently a Climenko Fellow and Lecturer on Law at Harvard Law School, where I teach Legal Research and Writing and a seminar on Education, Equity, and Democracy. In August 2023, I will begin as a tenure-track associate professor of law at Arizona State University, Sandra Day O'Connor College of Law, where I will teach Education Law and Civil Procedure, among other courses. I cannot recommend Ms. Dyer for the position enough–I can say without hesitation that she will make a first-rate law clerk. Ms. Dyer is a joy to be around and work with, with unwavering optimism and desire to learn and improve. She has consistently shown a pattern of accomplishment and initiative-taking, and I have no doubt that will continue in your chambers.

I have gotten to know Ms. Dyer both personally and professionally over the past two years, initially as a student in my Legal Research and Writing class at Harvard Law School. Ms. Dyer struck me early in our first-year course as someone with a level of passion for the material and a desire to master the art of legal writing: she regularly attended office hours, where she asked nuanced and interesting legal questions about the class and about my scholarship, and echoed that intellectual curiosity in the classroom. I learned early on that Ms. Dyer has a demonstrated pattern of determination, work ethic, and drive that has led her to success throughout her life. Those traits manifested themselves in my legal research and writing class, where Ms. Dyer's work improved drastically throughout the year.

As a technical matter, Ms. Dyer is a polished and thoughtful legal writer. Her writing is clean, precise, and accurate: she is able to distill complex ideas into coherent narratives that accurately comport with the legal landscape. Her writing too is eminently readable: she is able to produce work that both experienced attorneys and laypersons can engage with. As a former federal district and appellate law clerk, I know well the responsibilities that attend working in chambers, such as analyzing motions, briefs, and legal papers, preparing bench memos, and drafting opinions. Ms. Dyer's writing ability is consistently stellar, and I have no doubt that she will be able to produce top-quality and reliable work product with minimal supervision.

But Ms. Dyer is more than just her writing abilities and demonstrated technical excellence. Rather, some of the most fulfilling conversations Ms. Dyer and I have had have been about her deep and abiding interest in civil rights work. She has significant experience in this field, having worked for the Department of Justice as well as for the Human Rights Foundation, among other pursuits. It is my understanding that her long-term goals are to serve as an impact litigator or government employee working on civil and human rights issues, and I can think of no better place for her to begin than in your chambers.

Ms. Dyer's credentials aside, I would be remiss not to highlight what I think is perhaps Ms. Dyer's greatest trait: her humanity. She is generous, intellectually curious, and warm, qualities which allow her to develop strong relationships with her colleagues and professors. She is easy to get along with, and I have had many fantastic conversations with Ms. Dyer about all manner of things, legal and otherwise. I am acutely aware of the importance of positive chambers culture, having had the privilege to work in two wonderful chambers myself, and am certain that Ms. Dyer will be a tremendous addition and supportive colleague to all. I very much look forward to our time together, and imagine that others around her feel the same.

It is without hesitation–and with profound encouragement–that I recommend Ms. Dyer for a clerkship serving in your chambers. Please feel free to contact me directly at caitlinmillat6@gmail.com or 321-217-5614 if you would like to further discuss Ms. Dyer.

Sincerely,

Caitlin Millat

Caitlin Millat - cmillat@law.harvard.edu

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to strongly recommend Chloe Dyer for a clerkship in your chambers in 2024-25, following her graduation from Harvard Law School in May 2024. Chloe knows her legal doctrine, has a sharp analytic mind, and is a clear and persuasive writer. She is also a great collaborator and team player and has excellent communication skills. Chloe is detail-oriented, diligent, and mature, with a calm and cool temperament that will serve her well as a clerk.

I know Chloe well. She was a student in both my 1L Legislation and Regulation course and my upper-level Administrative Law course, and she served as my Teaching Fellow during her 2L year. Chloe also came to office hours to discuss both the course material and her career plans, so I had a chance to get to know her informally.

Chloe received Honors on her Legislation and Regulation exam. Her answer to the long issue-spotter displayed her comprehensive knowledge of the tools and techniques of statutory interpretation we had studied. In analyzing the hypothetical statute that I had drafted, she made strong textual and structural arguments and invoked canons of construction where appropriate. She discussed the relevance of legislative history adeptly, with sensitivity to the modern Supreme Court's dim view of it, managing to show that she knew how to use it, but need not. Chloe also wrote an excellent essay in response to the exam's policy question, which provocatively asked whether the concept of legislative supremacy was a useful legal fiction. She used the prompt to pivot to a comparison of the strengths and weaknesses of textualism versus purposivism.

Based on her strong performance in Legislation and Regulation, I asked Chloe to serve as one of my Teaching Fellows for the incoming 1L class. Each TF is responsible for a "pod" of about ten students. I count on the TFs to hold weekly review sessions, provide feedback on a midterm exercise, and generally monitor and quell student anxiety. Chloe did a terrific job in this role. She participated in brainstorming sessions to help me improve the course, spent hours giving students individualized feedback on their mid-term exercise, and was helpful and responsive to many other requests from students for advice and support. I really appreciated Chloe's commitment to her students, and her congenial approach to working with the other TFs, which I also experienced as a commitment to me and the teaching enterprise.

While serving as my TF, Chloe also took my administrative law class where, once again, she wrote an impressive exam. To put her performance in context, this was a class of 115 highly competitive students, and the exam is an 8-hour takehome that is known to be challenging. This year, the exam consisted of three short questions, a long issue spotter, and an open-ended policy question. On the short questions, which focused on developments in administrative law, Chloe stated a clear thesis, adopted a point of view (as I had asked students to do) and made a compelling argument from her perspective. On the issue spotter, she masterfully demonstrated her knowledge of the Administrative Procedure Act, the adjudicative and regulatory process, and doctrines of judicial deference (from *Skidmore* to *Chevron* through the Major Questions Doctrine). She beautifully handled one complicated issue about whether any agency ought to get deference when many agencies overlap in their regulatory authority. On the exam's policy question, which concerned how one might go about addressing serious problems in the social security benefits system, Chloe was creative and concrete in proposing solutions, drawing on the materials we had covered throughout the semester. In my notes on Chloe's exam coversheet, I wrote comments like, "coherent, nuanced, pragmatic, and thoughtful." It was a very good exam.

You have Chloe's transcript so I will not review her other grades here, except to note that they are mostly Honors, and her performance is getting stronger as her law school career proceeds, which is a promising trajectory.

Chloe has told me that she wants to clerk so that she can become the best legal advocate, rigorous thinker, and persuasive writer that she can be. She is planning a career in public interest litigation, for which she feels clerking is essential preparation.

On a more personal note, Chloe is one of the humblest and kindest people you could hope to meet. She is an unusually thoughtful and interesting person, having grown up in rural Appalachian Ohio, where, as she describes it, her family lived in a "geodesic dome on a gravel backroad" where she was homeschooled until she left for college. Partly because of that background, Chloe has a wide variety of interests which makes her interesting to be around.

In sum, Chloe will be a terrific clerk and a wonderful addition to chambers, and I recommend her to you most highly.

If I can be of any further assistance, please do not hesitate to call.

Sincerely,

Jody Freeman
Archibald Cox Professor of Law
Director, Environmental & Energy Law Program

Jody Freeman - freeman@law.harvard.edu - 617-496-4121

Jody Freeman - freeman@law.harvard.edu - 617-496-4121

Chloe Elizabeth Dyer
1610 Massachusetts Ave #11, Cambridge MA 02138 | cdyer@jd24.law.harvard.edu | +1-740-856-1492

WRITING SAMPLE
Drafted Summer 2022, with additional writing added afterward to expand on legal questions that I found particularly interesting and wanted to research further.

Used with permission from the Public Integrity Section of the Department of Justice.
Names and locations have been changed, and some factual details and background have been omitted, to protect confidentiality.

My two supervisors provided some general feedback on the original draft, which I incorporated.
Otherwise the writing and research are entirely my own.

THE UNITED STATES' MOTION IN LIMINE TO EXCLUDE EVIDENCE OF VICTIM'S PRIOR DISMISSED CHARGES AND CONVICTION FROM CROSS-EXAMINATION

The Government moves to preclude cross-examination of Jane Smith regarding dismissed criminal charges and one conviction stemming from two incidents, both of which occurred over ten years ago, pursuant to Federal Rules of Evidence 402 and 403, as well as 608 and 609. These incidents are irrelevant to the case at issue, and cross-examination regarding them would not be probative of Ms. Smith's veracity as a witness, would distract the jury, and would be unduly prejudicial. Accordingly, these incidents should not be admitted, and any cross-examination on them should be barred.

I. Factual Background

There are two incidents which Defendants may want to raise during cross-examination of Ms. Smith, who is the victim in this case and the government's primary witness. The first incident occurred in State X in 1988, when Ms. Smith was approximately 20 years old and charged with carry/discharge of a firearm in a vehicle. This charge was dismissed and did not result in a conviction.

The second incident occurred in State X in 2010. Ms. Smith was charged with a traffic violation for impermissibly crossing a divided highway, and two charges related to driving under the influence of alcohol. In this state, both of those two charges will typically be charged for the same incident of driving while under the influence of alcohol, although a defendant can only be convicted of one offense and the punishment is the same for both offenses *[citation omitted for confidentiality]*. The charge for crossing a divided highway is an infraction, while the charges

related to driving under the influence are misdemeanors. Ms. Smith was convicted of one driving under the influence charge, and the other two charges were dismissed.

II. Applicable Law

It is a basic principle that "[i]rrelevant evidence is not admissible." Fed. R. Evid. 402. The court has discretion to exclude relevant evidence "if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403.

The court has discretion to limit cross-examination of witnesses. *See, e.g., United States v. Bensimon*, 172 F.3d 1121, 1126–27 (9th Cir. 1999). While the Confrontation Clause guarantees a defendant the right to cross-examine witnesses, this right is "[s]ubject always to the broad discretion of a trial judge." *United States v. Larson*, 495 F.3d 1094, 1101 (9th Cir. 2007) (quoting *Davis v. Alaska*, 415 U.S. 308, 316 (1974)). "Federal Rules of Evidence 608 and 609 limit a defendant's ability to impeach an adverse witness with his prior criminal record during cross-examination." *United States v. Colbert*, 116 F.3d 395, 396 (9th Cir. 1997). The court may consider such issues as prejudice, relevance, or confusion of the issues in determining limitations on cross-examination. *See, e.g., United States v. Larson*, 495 F.3d 1094, 1101 (9th Cir. 2007). The admissibility of Ms. Smith's dismissed charges is governed by Federal Rule of Evidence 608, and her misdemeanor DUI conviction is governed by Federal Rule of Evidence 609.

a. Federal Rule of Evidence 608

The admissibility of extrinsic evidence (other than criminal convictions) regarding a witness's character for truthfulness is addressed in Federal Rule of Evidence 608(b), which provides that "extrinsic evidence is not admissible to prove specific instances of a witness's

conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of" the witness. Fed. R. Evid. 608(b).

The court's discretion whether to admit impeachment evidence under Rule 608(b) is guided by the reasons articulated in Rule 403, including introducing "unfair prejudice, confusing the issues, misleading the jury, undue delay, [or] wasting time." Fed. R. Evid. 403; *see United States v. Abrahamson*, 816 Fed.Appx. 172, 173 (9th Cir. 2020) ("The district court retains broad discretion to exclude relevant evidence" under Rule 403 factors when evaluating Rule 608(b)).

b. Federal Rule of Evidence 609

Prior convictions can only be used to impeach a witness if they are admissible under Rule 609. Rule 609(a)(2) provides that a witness can be impeached with evidence of prior convictions "if the court can readily determine that establishing the elements of the crime required proving — or the witness's admitting — a dishonest act or false statement." Fed. R. Evid. 609(a)(2). This is intended to apply to "crimes that involve some element of misrepresentation or other indicium of a propensity to lie and [to exclude] those crimes which, bad though they are, do not carry with them a tinge of falsification." *United States v. Foster*, 227 F.3d 1096, 1100 (9th Cir. 2000) (quoting *United States v. Ortega*, 561 F.2d 803, 806 (9th Cir. 1977)). The court has consistently interpreted crimes involving dishonest acts or false statements to refer to *crimen falsi* such as perjury or fraud. *See, e.g. United States v. Brackeen*, 969 F.2d 827, 839-21 (9th Cir. 1992).

In addition, the rule includes a time limit. Rule 609(b) applies "if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later." Fed. R. Evid. 609(b). Evidence of such a conviction is only admissible if "its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect." Fed. R. Evid.

609(b)(1). The court must "make findings of specific facts and circumstances on the record to support the introduction of the prior conviction" under Rule 609(b), for instance, if a witness misrepresented himself on the stand and the prior conviction could directly contradict that testimony. *United States v. Bensimon*, 172 F.3d 1121, 1125 -1126 (9th Cir. 1999).

Situations where the admissibility of a prior conviction is appropriate, however, are uncommon. The Ninth Circuit has given weight to the advisory committee's notes on Rule 609(b), which state "convictions over 10 years old will be admitted *very rarely and only in exceptional circumstances*," as "[t]he intended scope of Rule 609(b) would be defeated if a [witness] could be impeached with a stale, prior conviction." *United States v. Bensimon*, 172 F.3d 1121, 1126–27 (9th Cir. 1999), *see also United States v. Rodriguez-Landa* 2019 WL 653853, 11 (C.D. Cal. 2019) (placing importance on the advisory committee's note regarding the presumption against admissibility of convictions more than ten years old.) "If a party seeks to admit evidence of a conviction that is over ten years old, the proponent of the evidence bears the burden of demonstrating that the evidence's probative value substantially outweighs its prejudicial effect." *United States v. Mercado*, 2020 WL 999842, 3 (N.D. Cal. Mar. 2, 2020).

III. <u>Discussion</u>

In this case, each of the two sets of evidence – the dismissed charges, and the conviction – are each governed by a separate rule. Rule 608(b) applies to the two dismissed charges, as neither charge resulted in a conviction which would be governed by Rule 609. Rule 609 does apply to Ms. Smith's single DUI conviction.

a. 1988 and 2010 Dismissed Charges

The 1988 dismissed charge for carry/discharge of a firearm in a vehicle, and the 2010 dismissed traffic infraction and DUI charge, are governed by Rule 608(b). Under Rule 608(b),

instances of specific conduct may only be inquired into on cross-examination if they are "probative of the character for truthfulness or untruthfulness" of the witness. Fed. R. Evid. 608(b). The existence of dismissed charges is not probative of Ms. Smith's character for veracity, as the charges do not show any component of falsity. Therefore, under Rule 608(b), these prior charges are inadmissible.

The court has been cautious of allowing allegations alone to be used to impeach a witness, even though there is no categorical bar on introducing arrests or charges that did not lead to conviction under Rule 608(b). *United States v. Norita*, 2010 WL 1752673, 12 (D. N. Mar. I. Apr. 7, 2010). "[A]n arrest, standing alone, is simply an accusation, not evidence of anything…evidence merely of an arrest is not admissible." *Id.* Excluding allegations, rather than proven conduct, avoids creating a "mini-trial" within the trial. *United States v. Singh,* 995 F.3d 1069, 1080 (9th Cir. 2021) (upholding the district court's decision to limit cross-examination of a witness for alleged involvement in a murder-for-hire scheme to avoid a mini-trial on the issue).

Precluding cross-examination on such issues follows the Rule 403 guidance, protecting against "unfair prejudice, confusing the issues, misleading the jury, undue delay, [or] wasting time." Fed. R. Evid. 403. Specifically, admitting evidence of a witness's prior arrests, when the witness was not proven guilty of any specific conduct, risks misleading the jury to draw unfounded conclusions about the witness's conduct. A dismissed charge in and of itself does not show that the witness did, in fact, do anything, other than be arrested by police. The witness may not have engaged in any illegal behavior at all. However, if a jury is aware that a witness was charged, the jury may unfairly assume that the witness did actually engage in the criminal conduct that he or she was charged with.

Finally, it is worth highlighting that if any of these charges had resulted in conviction, those convictions would be likely deemed inadmissible under the ten-year time limit imposed by Rule 609(b). Considering that dismissed charges are less serious than actual convictions, it would be illogical to permit their admission when, if they had not been dismissed, they would be precluded, thereby holding dismissed charges to a higher standard than criminal convictions.

b. 2010 DUI Conviction

Ms. Smith's singular conviction for driving under the influence more than a decade ago is inadmissible pursuant to Rule 609. Rule 609(b) applies to any conviction when more than ten years have elapsed since either the date of the conviction, or date of release from confinement, whichever comes later. Ms. Smith's DUI conviction falls squarely within the scope of Rule 609(b), as Ms. Smith was convicted of the DUI eleven years ago, and did not serve any term of imprisonment for the conviction. Such a conviction can only be admitted if the potential probative value *substantially* outweighs the prejudicial effect of introducing the evidence. Fed. R. Evid. 609(b). Under this Rule, the conviction should be precluded, as it has no significant probative value but would unfairly prejudice the witness.

A DUI conviction is not probative of a witness's veracity. Driving under the influence is not a crime that involves dishonesty or false statements, and consequently is not indicative of Ms. Smith's character for truthfulness. Even if the conviction was more recent, and the time limit of Rule 609(b) did not apply, it would still be considered inadmissible under Rule 609(a)(2) as not probative. The Ninth Circuit has held that DUI convictions within the ten-year span are not admissible as impeachment evidence. In *United States v. Edwards*, 156 Fed.Appx. 954 (9th Cir. 2005), two police officers, who were the Government's primary witnesses, had both been convicted of DUIs, and one had lied about whether he had been drinking when he was stopped and

subsequently arrested. The district court had granted the Government's motion *in limine* to preclude the officers from being cross-examined on the DUI convictions. The Ninth Circuit affirmed the district court's ruling, noting "[w]e agree with the government that the officers' misdemeanor DUI convictions are simply irrelevant to their credibility." *Id*. at 956. In that case, the witness engaged in far more egregious conduct than Ms. Smith did, by not only driving under the influence but also *lying about it*, but the Ninth Circuit still found that those convictions were inadmissible and not indicative of the witnesses' truthfulness. It follows that a DUI conviction, without an accompanying lie, is also inadmissible and irrelevant to a witness's credibility. *See also United States v. Garcia* 2021 WL 4594774 (N.D. Cal. 2021) (the court granting the Government's motion *in limine* to exclude a prior DUI conviction of a police officer witness, determining the DUI conviction did not bear on the officer's truthfulness); *United States v. Avery*, 2011 WL 13136810, 5 (C.D. Cal. 2011) (holding that prior DUI convictions, as well as other misdemeanor violations such as driving without a license or with a suspended license, are not convictions involving dishonesty or false statements and would not be admissible under Rule 609).

Additionally, there are no extraordinary circumstances that would justify overcoming the presumption that stale, prior convictions are inadmissible. In order to admit evidence of a conviction despite the time limit of Rule 609(b), the court must make specific findings that the probative value of the conviction *substantially* outweighs its prejudicial effect. Fed. R. Evid. 609(b)(1). For instance, a court may allow otherwise inadmissible evidence if it is crucial to a party's case. *See United States v. Herrera*, 2016 WL 11637163, 12 (C.D. Cal. 2016) (the court denying the government's motion *in limine* to exclude a witness's extensive history of convictions for a variety of crimes, including multiple counts of fraud from over ten years ago, to impeach a witness when the defendant's defense hinged on showing that the witness was a career conman).

There is no such reason to allow Ms. Smith's single DUI conviction to be raised by the Defendants in this case. It has no bearing on any of the facts at issue, or even relevance to any aspect of the case.

Permitting cross-examination of Ms. Smith on a prior DUI conviction that occurred over ten years ago would risk distracting or confusing the jury by introducing irrelevant and outdated conduct that has no bearing on Ms. Smith's anticipated testimony. Such cross-examination would unfairly prejudice the Government without being in any way probative of Ms. Smith's truthfulness as a witness. For these reasons, cross-examination regarding Ms. Smith's prior conviction, as well as prior charges, should be precluded.

Applicant Details

First Name	**Kennedy**
Middle Initial	**A**
Last Name	**Eagle**
Citizenship Status	**U. S. Citizen**
Email Address	**kennedy.eagle@richmond.edu**
Address	**Address** Street **1415 Valley Avenue** City **Winchester** State/Territory **Virginia** Zip **22601** Country **United States**
Contact Phone Number	**5404810578**

Applicant Education

BA/BS From	**University of Virginia**
Date of BA/BS	**December 2020**
JD/LLB From	**University of Richmond School of Law** **http://www.nalplawschoolsonline.org/content/OrganizationalSnapshots/OrgSnapshot_235.pdf**
Date of JD/LLB	**May 20, 2024**
Class Rank	**30%**
Law Review/ Journal	**Yes**
Journal(s)	**Public Interest Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Wingfield, Danielle
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8046623135
McGowan, Mary
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Norris, Luke
lnorris@richmond.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

1415 Valley Avenue
Winchester, Virginia 22601

June 9, 2023

The Honorable Jamar K. Walker
United States District Court, Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510-1915

Dear Judge Walker:

I am a rising third-year student at the University of Richmond School of Law writing to apply for a term clerkship in your chambers beginning in 2024. I am a lifelong resident of the Commonwealth and plan on practicing in Virginia.

This past summer, I had the honor of serving as a judicial intern to the Honorable Thomas T. Cullen in the Western District of Virginia. Working under the tutelage of a federal judge solidified my appreciation for the judicial process and gave me significant insight into the role of a judicial clerk. In this role, I honed my research and writing skills through work on three separate opinions.

As a law clerk with the Advocates for Justice and Education, I worked first-hand with students and parents substantially impacted by litigation. Finally, prior to law school, I developed strong research and writing skills working as an in-house counsel intern for Prince William County Schools. In this position, my organization strategy allowed me to effectively manage litigation support for outside counsel on numerous matters.

At Richmond law, I have focused on balancing a strong academic foundation with extracurricular involvement. I have developed a proficiency in detail-oriented editing as a Manuscript Editor on Richmond's Public Interest Law Review. After organizing last year's competition and successfully competing externally, I was elected to serve as the President of the Trial Advocacy Board.

I have enclosed my resume, writing sample, transcripts, and three letters of recommendation. I hope to have the privilege to interview with you regarding this opportunity. Thank you for your consideration.

Sincerely,

Kennedy Eagle

Enclosure

KENNEDY A. EAGLE

kennedy.eagle@richmond.edu
(540) 481-0578

Current Address
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Richmond, VA 23220

Permanent Address
1415 Valley Avenue
Winchester, VA 22601

EDUCATION

University of Richmond School of Law **Richmond, VA**
Candidate for Juris Doctor May 2024

- GPA: 3.59 Rank: Top 30%
- Dean's Scholar-Full Tuition Merit Scholarship
- *Public Interest Law Review*, Manuscript Editor
- Trial Advocacy Board, President
  - National Trial Competition, Texas Young Lawyers Association Region 5 Semifinalist

The University of Virginia **Charlottesville, VA**
Bachelor of Science in Education, Youth & Social Innovation; GPA: 3.58 December 2020

- Moot Court, Member
- Washington Literary Society and Debating Union, Member
- Kappa Delta, Member

EXPERIENCE

SandsAnderson, P.C. **Richmond, VA**
Summer Associate Summer 2023

- Forthcoming

Blankingship & Keith, P.C. **Fairfax, VA**
Summer Associate Summer 2023

- Forthcoming

The Honorable Thomas T. Cullen, Western District of Virginia **Roanoke, VA**
Judicial Intern Summer 2022

- Drafted opinions regarding expert and hybrid witness testimony applying Fourth Circuit factors of admissibility.
- Researched and drafted opinions on supervisory liability in pro se prisoner § 1983 claims.

Advocates for Justice and Education **Washington, D.C.**
Law Clerk Summer 2022

- Performed intake with prospective clients regarding public and charter school failure to provide students with required services.
- Assisted in filing due process state complaints, requesting records, and informing parents of their child's educational rights.

Prince William County Schools, Office of Division Counsel **Bristow, VA**
Legal Intern Summers 2019 and 2020, February – August 2021

- Composed legal research, policy briefs, and memorandum for delivery to the School Board regarding Title IX, FERPA, FOIA and other relevant topics.

ADDITIONAL INFORMATION

Proficient in Spanish speaking, writing, and reading.

UNIVERSITY OF RICHMOND

Student No: ***-**-9306 UR ID: 25615838 Date Issued: 22-MAY-2023
AEEE

Record of: Kennedy Anne Eagle Page: 1
Issued To: Kennedy Eagle
Parchment DocumentID: TWV1A3ZL

Course Level: Law
Only Admit: Fall 2021

Current Curriculum
Juris Doctor
College : School of Law
Major : Law

SUBJ	NO.	COURSE TITLE	CRED	GRD	PTS	R
INSTITUTION CREDIT:						
Fall 2021						
LAWR	513	CONTRACTS	4.00	B+	13.20	
LAWR	514	TORTS	4.00	A-	14.80	
LAWR	515	CIVIL PROCEDURE	4.00	A-	14.80	
LAWR	517	LEGAL ANALYSIS & WRITING I	2.00	A-	7.40	
LAWR	520	LEGAL RESEARCH I	0.00	S	0.00	
LAWR	522	PROF. IDENTITY FORMATION I	0.00	S	0.00	
Ehrs: 14.00 GPA-Hrs: 14.00 QPts: 50.20 GPA: 3.58						
Spring 2022						
LAWR	503	CONSTITUTIONAL LAW	4.00	A-	14.80	
LAWR	506	CRIMINAL LAW	3.00	B+	9.90	
LAWR	516	PROPERTY	2.00	A-	7.40	
LAWR	518	LEGAL ANALYSIS & WRITING II	2.00	A-	7.40	
LAWR	519	LEGISLATION AND REGULATION	3.00	B+	9.90	
LAWR	521	LEGAL RESEARCH II	1.00	A	4.00	
LAWR	523	PROF. IDENTITY FORMATION II	1.00	P	0.00	
Ehrs: 16.00 GPA-Hrs: 15.00 QPts: 53.40 GPA: 3.56						
Fall 2022						
LAWE	599	EVIDENCE	4.00	A	16.00	
LAWE	629	EMPLOYMENT LAW	3.00	B+	9.90	
LAWE	699	CIVIL RIGHTS HISTORY	3.00	B+	9.90	I
LAWR	598	TRIAL ADVOCACY	2.00	P	0.00	
LAWR	605	PROFESSIONAL RESPONSIBILITY	2.00	B+	6.60	
Ehrs: 14.00 GPA-Hrs: 12.00 QPts: 42.40 GPA: 3.53						

********** CONTINUED ON NEXT COLUMN **********

SUBJ	NO.	COURSE TITLE	CRED	GRD	PTS	R
Institution Information continued:						
Spring 2023						
LAWE	602	BUSINESS ASSOCIATIONS	3.00	P	0.00	
LAWE	631	CIVIL LITIGATION FUNDAMENTALS	3.00	A-	11.10	
LAWE	644	LABOR LAW	3.00	A-	11.10	
LAWE	697	THE DEATH PENALTY	2.00	B+	6.60	
LAWE	699	CIVIL TRIAL ADVOCACY	3.00	A	12.00	I
LAWE	699	EFFECTIVE STUDENT LEADERS	1.00	P	0.00	I
Ehrs: 15.00 GPA-Hrs: 11.00 QPts: 40.80 GPA: 3.70						
Fall 2023						
IN PROGRESS WORK						
LAWE	625	CRIMINAL PROCEDURE: ADJUDICATN	3.00	IN PROGRESS		
LAWE	627	DVERSTY, EDUCATION, EMPLOYMENT	3.00	IN PROGRESS		
LAWE	630	LEGISLATIVE ADVOCACY	2.00	IN PROGRESS		
LAWE	664	VIRGINIA PROCEDURE	3.00	IN PROGRESS		
LAWE	707	FAMILY LAW	3.00	IN PROGRESS		
In Progress Credits 14.00						
Spring 2024						
IN PROGRESS WORK						
LAWE	606	WILLS AND TRUSTS	4.00	IN PROGRESS		
LAWE	616	CHILDREN AND THE LAW	3.00	IN PROGRESS		
LAWE	643	INTERNATIONAL LAW	3.00	IN PROGRESS		
LAWE	686	CIVIL RIGHTS LITIGATION	3.00	IN PROGRESS		
LAWE	730	SPANISH LEGAL SKILLS	2.00	IN PROGRESS		
In Progress Credits 15.00						

********** TRANSCRIPT TOTALS **********

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	59.00	52.00	186.80	3.59
TOTAL TRANSFER	0.00	0.00	0.00	0.00
OVERALL	59.00	52.00	186.80	3.59

********** END OF TRANSCRIPT **********

Kristen A. Ball, University Registrar

OFFICE OF THE UNIVERSITY REGISTRAR
UNIVERSITY OF RICHMOND, VIRGINIA 23173
(804) 289-8639
email: registrar@richmond.edu / website: www.registrar.richmond.edu

COURSE CREDIT
As of Fall 2008, the undergraduate divisions of the School of Arts and Sciences, the Robins School of Business, and the Jepson School of Leadership Studies converted from semester hours to units. A 1-unit course is equivalent to 3.5 semester hours. For all other schools (and the above schools prior to Fall 2008), course credit is awarded on the semester hour system. Credit is determined by a variety of factors, including contact time with a faculty member in a formal setting and expectations of independent study work through a nominal 15-week semester.

GRADING SYSTEM: since 1966

A+	4.0	
A	4.0	Excellent range
A-	3.7	
B+	3.3	
B	3.0	Good range
B-	2.7	
C+	2.3	
C	2.0	Average range
C-	1.7	
D+	1.3	
D	1.0	Poor range
D-	0.7	
F	0.0	Failure
I	0.0	Punitive Incomplete (make-up grade may appear to right of "I")
M	0.0	Withdrew Failing
V	0.0	Failure, excessive absence
H	---	Honors
P	—	Pass
S	—	Satisfactory, non-academic credit
U	—	Unsatisfactory, non-academic credit
W	—	Withdrew Passing
X	—	Grade unavailable
Y	—	Non-punitive Incomplete (make-up grade may appear to right of "Y")
Z	—	Audit
TR	—	Transfer

- Effective Fall 2008 and between Spring 1989 and Summer 1992, an approved undergraduate course taken for graduate credit is designated by a course number below the 500 level followed by a G.
- Prior to 1966 the 3.0 system was used, A=3 etc.
- Prior to Fall 1986, "0" designated failure for excessive absence, and except for Law, "+/-" did not affect the GPA. Prior to Fall 2002, "+/-" did not affect the GPA of Graduate Business students.
- Effective Summer 1992, graduate courses are transcripted separately from undergraduate courses.
- Prior to Summer 1992, courses numbered above the 400 level are graduate level unless otherwise indicated.
- Prior to Spring 1989, an approved undergraduate course taken for graduate credit is designated by a 400-level course number.

SCHOOL OF LAW
- Effective Fall 2014, faculty policy provides for assignment of a mean grade of 3.3 in all classes.
- Prior to Fall 2014, faculty policy provides for assignment of median grades of B in all first-year classes.
- Prior to Fall 2001, faculty policy provides for assignment of median grades of B• in all first-year classes.
- Prior to Spring 1992, faculty policy provides for assignment of median and mode grades of C+ in all required classes.
- The law degree was the Bachelor of Laws (LLB) through 1969, Juris Doctor (JD) thereafter. LLB recipients have been given the option to exchange the LLB designation for the JD.
- Effective 2016: 87 hours required for graduation.
- 1993 – 2015: 86 hours required for graduation.
- 1973 - 1992: 90 hours required for graduation.
- 1942 - 1945: 80 hours required for graduation.
- 1975 - Pres: Grading scale outlined above except A+ and D• are not awarded.
- 1972 - 1975: D = 55 - 61, F = Below 55.
- 1938 - 1972: A = 80 - 100%, B = 70 - 79, C = 62 - 69, D = 60 - 61, E = 50 - 59, F = Below 50, with 84 hours required for graduation.

COLLEGE/SCHOOL NAMES
Prior to 1992, undergraduate liberal arts students were enrolled in and graduated from Richmond College or Westhampton College. Since Fall 1992, undergraduate students are enrolled in the School of Arts and Sciences, The E. Claiborne Robins School of Business, and the Jepson School of Leadership Studies. Richmond College and Westhampton College now serve as the undergraduate colleges.

Effective Fall 1994, the name of the University College changed to the School of Continuing Studies. Effective Fall 2012, the name of the School of Continuing Studies changed to the School of Professional and Continuing Studies.

Effective Fall 2022, the name of the T.C. Williams School of Law changed to the School of Law.

ACCREDITATION
The University of Richmond is accredited by the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) to award baccalaureate, masters, and juris doctor degrees. Questions about the accreditation of the University of Richmond may be directed in writing to the Southern Association of Colleges and Schools Commission on Colleges at 1866 Southern Lane, Decatur, GA 30033-4097, by calling (404) 679-4500, or by using information available on SACSCOC's website (www.sacscoc.org). The University also is approved by the Virginia State Board of Education to offer teacher licensure programs. Various departments and divisions have more specialized accreditation. Included in this category are the chemistry program, accredited by the American Chemical Society; and the undergraduate teacher preparation programs and graduate certificate in teacher licensure program, accredited by the Teacher Education Accreditation Council. In addition, the Robins School of Business is accredited by the Association to Advance Collegiate Schools of Business International (AACSB) at the undergraduate and graduate levels, and the School of Law is fully accredited by the recognized standardizing agencies in the United States, on the approved lists of the American Bar Association, and a member of the Association of American Law Schools.

REPEATED COURSES
Repeated courses are noted to the right of the quality points earned for that course as follows:

I = earned hours included; calculated in GPA
A = earned hours excluded; calculated in GPA
E = earned hours excluded; not calculated in GPA

Consult the appropriate catalog for information on course repeat policies.

TRANSCRIPT VALIDATION
An official transcript is printed on secure paper with a blue background. When photocopied, the word COPY will appear. Further authentication may be obtained by calling the Office of the University Registrar.

GRADE POINT AVERAGE CALCULATION
The grade point average is calculated by dividing the total number of grade points earned by the total number of GPA hours. The grade point average is represented to two significant decimal points and truncated, not rounded. Transfer work does not calculate in the grade point average.

CONTINUING EDUCATION UNITS (CEUs)
The continuing education unit is used to recognize participation in non-credit classes, courses, and programs. The University of Richmond assigns CEU credit based on the SACSCOC's *C.E.U.: Guidelines and Criteria*. Such non-credit courses are designated as "CE" level and have an "M" or "N" attached to the course number. They are graded as satisfactory/unsatisfactory and cannot be used to satisfy any requirements in any degree program.

RELEASE OF INFORMATION
This transcript cannot be released to any third party without the written consent of the student in accordance with the Family Educational Rights and Privacy Act of 1974 (the Buckley Amendment). The message "Issued to Student" will be noted on the transcript when the transcript is provided directly to the student.

THE INFORMATION CONTAINED IN THIS TRANSCRIPT IS CONFIDENTIAL AND SHOULD NOT BE RELEASED WITHOUT THE STUDENT'S WRITTEN CONSENT

UNIVERSITY OF VIRGINIA
OFFICE OF THE UNIVERSITY REGISTRAR
P.O. BOX 400203
CHARLOTTESVILLE, VA 22904-4203
www.virginia.edu/registrar

Kennedy Anne Eagle

Date Printed **02/07/2023**

Issued / Mailed To:

KENNEDY ANNE EAGLE

National Id: *****9306
Birthdate: 01/21/XX

Degrees Conferred

Confer Date: 12/18/2020
Degree: Bachelor of Science in Education
Major: Youth and Social Innovation

Transfer Credits

Transfer Credit from Lord Fairfax Cmty College
Applied Toward Arts & Sciences Undergraduate
Transfer Credit Total: **44.00**

Beginning of Undergraduate Record

2017 Fall

School: College & Graduate Arts & Sci
Major: Arts & Sciences Undeclared

COURSE NUMBER		COURSE TITLE			GRADE	CREDITS
ENWR	1510	Writing and Critical Inquiry			A-	3.0
Course Topic:		Writing about Culture/Society				
PLIR	1010	International Relations			A-	3.0
RELC	1210	Hebrew Bible/Old Testament			A-	3.0
SPAN	1060	Accelerated Elementary Spanish			B+	4.0
Curr Credits		13.0	Grd Pts	46.500	GPA	3.577
Cuml Credits		13.0	Grd Pts	46.500	GPA	3.577

2018 Spring

School: College & Graduate Arts & Sci
Major: Arts & Sciences Undeclared

COURSE NUMBER		COURSE TITLE			GRADE	CREDITS
ECON	2010	Principles of Econ: Microecon			A-	3.0
PLCP	3330	Politics of Latin America			A-	3.0
PPOL	3230	Pub Policy Challenges, 21st C			B	3.0
PSYC	2600	Intro to Social Psychology			C	3.0
SPAN	2010	Intermediate Spanish			A-	3.0
Curr Credits		15.0	Grd Pts	48.300	GPA	3.220
Cuml Credits		28.0	Grd Pts	94.800	GPA	3.386

2018 Summer

School: College & Graduate Arts & Sci
Major: Arts & Sciences Undeclared

COURSE NUMBER		COURSE TITLE			GRADE	CREDITS
SPAN	2020	Advanced Intermediate Spanish			A-	3.0
Curr Credits		3.0	Grd Pts	11.100	GPA	3.700
Cuml Credits		31.0	Grd Pts	105.900	GPA	3.416

2018 Fall

School: College & Graduate Arts & Sci
Major: Arts & Sciences Undeclared

COURSE NUMBER		COURSE TITLE			GRADE	CREDITS
GSGS	3220	Making Culture Visible II			S	1.0
SPAN	3010	Grammar and Composition I			A-	3.0
SPAN	3030	Cultural Conversations			A	3.0
SPAN	3200	Intro Hispanic Linguistics			B+	3.0
SPAN	3300	Texts and Interpretation			B	3.0
SPAN	3410	Survey Span Lit II (1700-Pres)			B	3.0
ZFOR	3512	International Study			N	0.0
Course Topic:		Study in Spain, Valencia				
ZFOR	4501	Cultural Engagement			N	0.0
Course Topic:		Cultural Engagement				
Curr Credits		16.0	Grd Pts	51.000	GPA	3.400
Cuml Credits		47.0	Grd Pts	156.900	GPA	3.411

2019 Spring

School: College & Graduate Arts & Sci
Major: Arts & Sciences Undeclared

COURSE NUMBER		COURSE TITLE			GRADE	CREDITS
COMM	3410	Commercial Law I			A-	3.0
ECON	2020	Principles of Econ: Macroecon			C	3.0
EDLF	3150	Intro Chld Growth & Developmnt			A-	3.0
EDLF	3170	Introduction to Adolescence			A	3.0
WGS	2898	Sexual Violence Prevention			A	3.0
Curr Credits		15.0	Grd Pts	52.200	GPA	3.480
Cuml Credits		62.0	Grd Pts	209.100	GPA	3.428

2019 Summer

School: College & Graduate Arts & Sci
Major: Arts & Sciences Undeclared

COURSE NUMBER		COURSE TITLE			GRADE	CREDITS
EDLF	4995	Directed Research			S	2.0
Curr Credits		2.0	Grd Pts	0.000	GPA	0.000
Cuml Credits		64.0	Grd Pts	209.100	GPA	3.428

2019 Fall

School: Curry School of Ed & Human Dev
Major: Youth and Social Innovation
Major: Spanish
Concentration: Linguistics and Philology

COURSE NUMBER		COURSE TITLE			GRADE	CREDITS
COMM	3420	Commercial Law II			B+	3.0
EDHS	2840	Intro to Youth & Social Innov			A	3.0
EDLF	3000	Research for Youth Development			A	3.0
LPPS	3360	From Inequality to Action			B	3.0
SPAN	3000	Phonetics			A	3.0
Curr Credits		15.0	Grd Pts	54.900	GPA	3.660
Cuml Credits		79.0	Grd Pts	264.000	GPA	3.474

2020 Spring

Academic disruption due to global pandemic. Default grading option for all undergraduate classes: CR=C or higher/GC=C- to D-/NC=no credit. Students able to select A-F grading option prior to knowing final grade. Dean's List suspended for term.

School: Curry School of Ed & Human Dev
Major: Youth and Social Innovation

COURSE NUMBER		COURSE TITLE			GRADE	CREDITS
EDHS	1120	Found of Community Engagement			A	3.0
EDLF	2080	Fundamentals of Statistics			A-	3.0
EDLF	3200	Exam Effects Social Innovat			A+	3.0
EDLF	3460	Race, Identity, Development			A	3.0
LAW	7103	Education Law Survey			CR	3.0
PSYC	3590	Research in Psychology			S	2.0
Curr Credits		17.0	Grd Pts	47.100	GPA	3.925
Cuml Credits		96.0	Grd Pts	311.100	GPA	3.535

UNIVERSITY REGISTRAR

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THE INFORMATION CONTAINED IN THIS TRANSCRIPT IS CONFIDENTIAL AND SHOULD NOT BE RELEASED WITHOUT THE STUDENT'S WRITTEN CONSENT

UNIVERSITY OF VIRGINIA
OFFICE OF THE UNIVERSITY REGISTRAR
P.O. BOX 400203
CHARLOTTESVILLE, VA 22904-4203
www.virginia.edu/registrar

Kennedy Anne Eagle

Date Printed **02/07/2023**

COURSE NUMBER	COURSE TITLE	GRADE	CREDITS	COURSE NUMBER	COURSE TITLE	GRADE	CREDITS

2020 Fall

Academic disruption due to global pandemic. Default A-F grading option for all undergraduate classes. Students able to select CR=C or higher/GC=C- to D-/NC=no credit grading option prior to knowing final grade. Dean's List suspended for term.

School: Curry School of Ed & Human Dev
Major: Youth and Social Innovation

AAS	3853	Race and Real Estate in the US	A-	3.0
EDLF	2050	What the Innovators Do	A	3.0
EDLF	4000	Dream it, Design it, Do it	A	3.0
PSYC	3991	RM: Grp Process & Facilitat II	A	2.0

Curr Credits	11.0	Grd Pts	43.100	GPA	3.918
Cuml Credits	107.0	Grd Pts	354.200	GPA	3.578

End of Undergraduate Record

UNIVERSITY REGISTRAR

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May 30, 2023

The Honorable Jamar K. Walker
United States District Court
Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510-1915

RE: Judicial Clerkship Applicant – Kennedy Eagle

Dear Judge Walker:

I am writing this letter in enthusiastic support of Kennedy Eagle's application for a clerkship in your chambers.

I had the privilege of having Ms. Eagle in my Civil Rights History Upper Writing Required Course in Fall of 2022. I have further become acquainted with Ms. Eagle in her capacity as my Research Assistant. In both capacities, I've been able to observe Ms. Eagle's dedication to the study of law. I have been most impressed with Ms. Eagle's abilities, and I am confident she will be an exceptional law clerk and outstanding attorney.

In my course, I was struck by Ms. Eagle's ability to comprehend the subject matter and her preparedness. Her reasoned comments indicated that she had spent an extensive amount of time grappling with very rigorous assignments. Ms. Eagle has consistently demonstrated a strong work ethic and a commitment to excellence in all her academic endeavors. As a Research Assistant, she is highly organized. She also has a keen intellect and an impressive ability to analyze complex legal issues.

In addition to Ms. Eagle's academic achievements, she is a Dean's Scholar, earning her a full tuition scholarship. Ms. Eagle also serves as a staff member of the Public Interest Law Review and chair of the Trial Advocacy Board Interscholastic Competition.

Not only is Ms. Eagle a strong law student, but I have experienced a student who is respectful to the learning space and has a pleasant personality. I fully recommend Ms. Eagle without reservation and am confident that she would be an excellent addition to any judicial clerkship. She has the knowledge, skills, and dedication necessary to excel in this position.

For any additional information, please do not hesitate to contact me via email at danielle.wingfield@richmond.edu or by phone at 804-662-3135.

Sincerely,

Danielle Wingfield, JD, PhD
Assistant Professor of Law

Faculty
203 Richmond Way
University of Richmond, VA 23173

law.richmond.edu

June 2, 2023

United States District Court

RE: Recommendation for Kennedy Eagle

I am providing this recommendation in support of Kennedy Eagle's application for a federal clerkship. I have the utmost confidence that Kennedy's legal skills and experience, as well as her congenial personality and outstanding character, would support your work and ensure the confidentiality and integrity of the Court.

Kennedy interned in the Office of Division Counsel for the Prince William County Public Schools for several years before entering law school and impressed everyone with her legal acumen, industriousness, and work product, which surpassed that of previous clerks from several excellent law schools. She has continued to excel throughout law school and has incredible promise as an attorney, which I am sure you will observe should she be provided with a clerkship.

Kennedy came to the Office of Division Counsel prior to the summer of 2019, offering to volunteer as an intern. Since the office had not yet hired a summer law clerk, we provided Kennedy with a paid internship. While I hate to use jargon in a letter of reference, Kennedy, then a college student, simply "blew us away" with her performance. She returned the following two years as an intern who performed at the level of a third-year law student.

During her tenure with our office, Kennedy researched a wide variety of legal topics, given that the field of education law encompasses a wide variety of legal issues relating to employment, state and federal civil rights statutes, FOIA, Title IX, local government, constitutional due process, and equal protection, etc. She also spent extensive hours providing litigation support for our outside counsel in a number of state and federal lawsuits. Thus, she became familiar with pleadings, the rules of procedure and evidence, and the discovery process. I am sure this experience enhanced her subsequent law school performance and her recent service as a judicial intern in the Western District of Virginia.

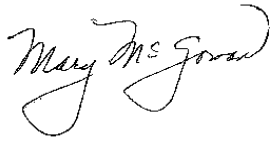
I want to stress, however, that in addition to Kennedy's legal skills and experiences, the most important assets she would bring to your office are her congenial personality and unlimited energy. She is indefatigable and always willing to take on whatever legal task she is assigned. These assets assure that Kennedy can work collaboratively and enthusiastically with any team.

I was a litigator in private practice for 35 years before joining the PWCS Office of Division Counsel in 2016. During my career, I handled many cases in Virginia's federal district courts and the Fourth Circuit Court of Appeals, as well as Virginia's trial and appellate courts. As a partner

Mary McGowan, Esq.
Office of the Division Counsel
P.O. Box 389, Manassas, VA 20108 • www.pwcs.edu • 703-791-8303

in the law firm of Blankingship and Keith, I also worked closely with multiple law students who went on to state and federal clerkships, including at least two who are now sitting judges. Please accept my assurance that Kennedy Eagle is an outstanding candidate for a judicial clerkship.

Sincerely yours,



Mary McGowan

May 30, 2023

The Honorable Jamar K. Walker
United States District Court
Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510-1915

Re: Judicial Clerkship Applicant - Kennedy Eagle

Dear Judge Walker:

I am delighted to write a letter of recommendation for Kennedy Eagle. Kennedy was my student in Employment Law, and is currently my student in Labor Law. I have also gotten to know Kennedy outside of class in the larger law school community. She's an incredibly promising law student, and I think she would excel in a clerkship!

Kennedy is a joy to have in class. She is always well prepared, knows the cases inside and out, and is ready to field hypotheticals and think through the implications and foundations of legal doctrines. Many law students can digest and learn a case before coming to class. Kennedy does this incredibly well, but is also ready to apply the case to other factual or legal scenarios. She's quick on her feet and evinces clear thinking and reasoning skills. On top of all of this, Kennedy is good-natured and funny. She is a strong communicator and a very good writer. I am not surprised at all that Kennedy's GPA places her in the top third of her class.

Kennedy has also been developing her legal analysis skills in various forums. She is the competition chair for the Trial Advocacy Board and works on the *Public Interest Law Review*. And she has already worked in a variety of legal settings—as a judicial intern, summer associate at a law firm, a legal intern for a school district, and a law clerk for an educational rights non-profit. That's a broad array of legal experiences for a 3L—and it speaks to Kennedy's energy and ability to work effectively in multiple legal settings. Indeed, Kennedy's interest in law runs deeper; she was on moot court as an undergraduate at the University of Virginia and an active member of their debating society. Kennedy also has the interpersonal skills to excel as a clerk. She works well with others. She comes to office hours and asks good questions, while being respectful of my time. She is always smiling and laughing with her fellow students.

In sum, I think that Kennedy is an excellent law student, who displays great promise, and who seeks out challenging opportunities to hone her legal skills. I think she would be a great clerk, and I hope you'll give her a chance. Please do not hesitate to reach out to me via email (lnorris@richmond.edu) or phone (814-558-6764) if you have any further questions or would like to speak about Kennedy's candidacy.

Sincerely,

Luke P. Norris
Associate Professor of Law

Faculty
203 Richmond Way
University of Richmond, VA 23173

law.richmond.edu

Kennedy Eagle
1415 Valley Avenue • Winchester, Virginia 22601
(540) 481-0578 • kennedy.eagle@richmond.edu

Writing Sample

I prepared this memo as part of my coursework in Legal Writing and Analysis II. My professor provided feedback, but it is otherwise solely my own work. In writing this memo, I was asked to prepare a memorandum in support of the Plaintiff's Motion for Summary Judgment. The Plaintiff alleged that Caring About Neighbors, in operation of their homeless shelter, "Our Place," committed violations of the Fair Housing Act by discriminating on the basis of race and national origin.

UNITED STATES DISRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

HOUSING OUR PITTSBURGH EQUITABLY,	)	
ILEANA GARCIA,	)	
and	)	
MARSHALL JAMISON,	)	
	)	
Plaintiffs,	)	Civil Action No. 22-00072
	)	
v.	)	
	)	
CARING ABOUT NEIGHBORS,	)	
	)	
Defendant.	)	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Plaintiffs Housing Our Pittsburgh Equitably ("HOPE"), Ileana Garcia, and Marshall Jamison respectfully request that this Court grant summary judgment in the above-named matter. Caring About Neighbors ("the Defendant") unlawfully discriminates against persons who are not Caucasian, natural-born American citizens in their operation of the homeless shelter, Our Place, in direct violation of the Fair Housing Act ("FHA"). 42 U.S.C. § 3604(a) (2022). The FHA makes it unlawful to "make unavailable or deny. . . a dwelling to any person because of race, color, . . . or national origin." *Id.* The Defendant has conceded that it denied accommodations to Plaintiffs Jamison and Garcia on the basis of their race and national origin, respectively. Compl. ¶¶ 14-15; Answer ¶¶ 14-15. Further, the undisputed facts show that Our Place is a dwelling for purposes of the FHA. Accordingly, the Plaintiffs' Motion for Summary Judgment should be granted because there is no genuine issue of material fact as to the Defendant's violation of the FHA.

STATEMENT OF FACTS

Caring About Neighbors operates a homeless shelter, Our Place, in the Pittsburgh area that only admits Caucasian, natural-born American citizens. Compl. ¶¶ 8, 11; Answer ¶¶ 8, 11. Our Place will not permit persons of any other race, color, nor national origin to shelter at Our Place. *Id.*

On December 20, 2021, Marshall Jamison, an African-American man, sought shelter at Our Place. Compl. ¶ 15; Answer ¶ 15. However, upon his arrival, the front desk attendant refused to admit him to the shelter because of his race, stating there was "no room at the shelter for people like him." *Id.*

Ileana Garcia was born in Mexico but has lawfully resided in the United States since she was 7 years old. Compl. ¶ 14; Answer ¶ 14. On December 17, 2021, Ms. Garcia sought shelter at Our Place, and the front desk attendant denied her access on the basis of her Mexican national origin, telling her that "Our Place is only for Americans." *Id.*

These acts of discrimination were not isolated incidents. Rather, the Defendant specifically instructs its Our Place volunteers to only allow Caucasian, natural-born American citizens to shelter at Our Place. Compl. ¶ 12; Answer ¶ 12. They have even gone so far as to tell volunteers at training that "Our Place only serves white people born and raised in the U.S.A." Compl. ¶ 13; Answer ¶ 13.

HOPE is a fair housing organization located in Pittsburgh, Pennsylvania. HOPE assisted Mr. Jamison and Ms. Garcia in finding shelter after Our Place turned refused them shelter. Thus, HOPE incurred expenses due to Our Place's discriminatory practices, and HOPE seeks to enjoin this behavior in the future.

While Our Place has adopted discriminatory admittance policies, the facility has adopted welcoming and permissive policies for its Caucasian, American occupants. Our Place allows residents to stay for up to 42 days in any 12-month period. Compl. ¶ 10(a); Answer ¶ 10. Our Place has ten bedrooms with two twin beds each, and the facility guarantees occupants the same room and bed each night. Compl. ¶ 9, 10(b); Answer ¶ 9, 10. Our Place provides occupants with a bulletin board to customize their space and a storage cabinet for personal belongings for the duration of their stay. Compl. ¶¶ 10(c)-(d); Answer ¶ 10. Occupants may come and go as they please for any reason, including to visit with outside guests, and may also spend time in Our Place during the day if they contribute to the shelter community by completing a rotating list of chores. Compl. ¶¶ 10(h)-(i); Answer ¶ 10. Our Place invites occupants to eat dinner cooked by shelter volunteers in a common dining area each night. Compl. ¶ 10(e); Answer ¶ 10. Additionally, Our Place allows residents to receive mail. Compl. ¶ 10(j); Answer ¶ 10.

The Plaintiffs filed their Complaint on February 21, 2022 seeking to enjoin this discriminatory behavior and recover damages. *See* Compl. The Defendant filed its Answer on February 22, 2022 in which it conceded that it had discriminated on the basis of race and national origin against Plaintiffs Jamison and Garcia, respectively. Answer ¶¶ 14-15. Further, because the undisputed facts show that Our Place is a dwelling for purposes of § 3604(a) of the FHA, the Plaintiffs now move for summary judgment.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *Hines v. Consol. Rail Corp.*, 926 F.2d 262, 267 (3d Cir. 1991).

The moving party bears the initial responsibility for explaining the basis for their motion to the court and identifying the parts of the record that illustrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 318 (1986). The burden then shifts to the non-moving party to prove that there is a genuine issue of material fact, and they must present sufficient evidence from which a reasonable jury could return a verdict in the non-moving party's favor. *Pignataro v. Port Auth. Of N.Y. & N.J.*, 593 F.3d 265, 268 (3d Cir. 2010); *United States v. 107.9 Acre Parcel of Land in Warren Twp.*, 898 F.2d 396, 398 (3rd Cir. 1990). The court must make all reasonable inferences in the non-moving party's favor. *Pignataro*, 593 F.3d at 268. However, when the non-moving party is still unable to demonstrate that there is a genuine issue of material fact under this deferential standard, summary judgment should be granted for the moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254-255 (1986). A "motion for summary judgment will not be defeated by 'the mere existence' of some disputed facts, but will be denied when there is a genuine issue of material fact." *Am. Eagle Outfitters v. Lyle & Scott Ltd.*, 584 F.3d 575, 581 (3d. Cir. 2009

ARGUMENT

I. THE PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT SHOULD BE GRANTED BECAUSE THE UNDISPUTED FACTS SHOW THAT OUR PLACE IS A DWELLING FOR PURPOSES OF § 3604(a) OF THE FHA

Summary judgment should be granted because Our Place is a "dwelling" for purposes of the FHA. § 3604(a). The FHA makes it unlawful to "make unavailable or deny . . . any dwelling to any person because of race, color, . . . or national origin." § 3604(b). A "dwelling" for purposes of the FHA is a "building. . . occupied as, or designed or intended for occupancy as, a residence by one or more families. . .." *Id*. § 3602(b). This statutory definition turns on the undefined term "residence." *See id*. The Housing and Urban Development implementing regulations have adopted the same statutory definition and similarly have not further defined

"dwelling" or "residence." 24 CFR § 100.20 (2022). Therefore, the Third Circuit has adopted a two-part test to determine whether a facility is a dwelling for purposes of the FHA. *See United States v. Columbus Country Club*, 915 F.2d 877, 881 (3d Cir. 1990) (creating a two-part dwelling test to determine whether a facility is a dwelling for purposes of the FHA).

Under that test, a facility is a dwelling when (1) "the facility is intended or designed for occupants who 'intend to remain in the facility for any significant period of time'"; and (2) the occupants "'view the facility as a place to return to during that period.'" *Lakeside Resort Enters., LP v. Bd. of Supervisors of Palmyra Twp.*, 455 F3d 154, 158 (3d Cir. 2006) (quoting *Columbus Country Club*, 915 F.2d at 881). Our Place's 42-day maximum intended stay clearly demonstrates that the facility was intended or designed for occupants who intend to remain at the facility for any significant period of time. Further, Our Place's welcoming and permissive policies allow the facility's occupants to view the facility as a place to return to during their stay. Thus, because the undisputed facts show that Our Place satisfies both prongs of the Third Circuit's test, the facility is a dwelling and summary judgment is appropriate.

A. Our Place's 42-day maximum intended stay shows that the facility was intended or designed for occupants who intend to remain at the facility for any significant period of time.

Our Place satisfies the first prong of the two-part dwelling test because it's 42-day maximum intended stay shows that the facility was intended or designed for occupants who intended to remain at the facility for any significant period of time. A facility is intended or designed for occupants who intended to remain at the facility for any significant period of time when the maximum intended stay at the facility is longer than a "temporary sojourn or transient visit." *Columbus Country Club*, 915 F.2d at 881. A temporary sojourn or transient visit is akin to a "stay at a motel or bed and breakfast." *Lakeside*, 455 F.3d at 159. Our Place's 42-day

maximum intended stay is longer than a typical stay in a motel or bed and breakfast and, thus, is longer than a temporary sojourn or transient visit.

Our Place's maximum intended stay is longer than the maximum intended stay that the Third Circuit held to be sufficient in *Lakeside Resort Enterprises, LP v. Board of Supervisors of Palmyra Township*, 455 F.3d 154, 158 (3d Cir. 2006). In *Lakeside*, the court held that the facility's maximum intended stay of 30 days was longer than a temporary sojourn or transient visit. *Id.* The court also held that the facility's shorter 14.2-day average length of stay was longer than a temporary sojourn or transient visit because 14.8 days is longer than a typical stay at a motel or bed and breakfast. *Id.* Our Place's 42-day maximum intended stay is longer than the 30-day maximum intended stay in *Lakeside* and significantly longer than the 14.8-day average stay. *See id.* Thus, Our Place's maximum stay is longer than a temporary sojourn or transient visit because it is longer than a typical stay at a motel or bed and breakfast. *See id.*

Our Place's 42-day maximum intended stay is substantially longer than the 3-day maximum intended stay that this court held to be akin to a temporary sojourn or a transient visit in *Smith v. The Salvation Army*, No. 13-114-J, 2015 WL 5008261, at *1, *4 (W.D. Pa. Aug. 20, 2015). In *Smith***,** the facility's maximum intended stay for occupants who were not residents of the local county was 3 days. *Id*. This court held the 3-day maximum stay to be akin to a temporary sojourn or transient visit because a 3-day stay is akin to a typical stay in a motel or bed and breakfast.[1] *Id*. However, Our Place's 42-day maximum intended stay is 14 times longer than the 3-day stay in *Smith* and is much longer than a typical motel or bed and breakfast stay. *See id*.

[1] I still think it is helpful to address the 30 day dicta and to explain why that reasoning is not applicable to this case. A footnote is an efficient way to present that information without using much space or detracting from the primary argument in the section.

Because Our Place's 42-day maximum intended stay is longer than a temporary sojourn or transient visit, the facility is intended or designed for occupants who intend to remain for any significant period of time.

B. Our Place's welcoming and permissive policies for its Caucasian, American occupants allow the facility's occupants to view the facility as a place to return to during their stay.

Our Place satisfies the second prong of the two-part dwelling test because Our Place's welcoming and permissive policies for its Caucasian, American occupants allow the facility's occupants to view the facility as a place to return to during their stay. Occupants view a facility as a place to return to when the facility's policies allow the occupants to treat the facility like a home. *See Lakeside*, 455 F.3d at 159. A facility's policies allow the occupants to treat the facility like a home when the facility assigns beds in a designated room; allows occupants to personalize their space; permits occupants to store their belongings; invites occupants to come and go as they please; invites occupants to stay at the facility during the day; organizes communal meals; and allows occupants to receive mail at the facility. *See Lakeside*, 455 F.3d at 159-160 (assigned bed in a designated room; personalize their space; eat communal meals; receive mail); *Defiore v. City Rescue Mission of New Castle*, 995 F. Supp. 2d 413, 418-19 (W.D. Pa. 2013) (free to come and go as they please); *Smith*, 2015 WL 5008261, at *6 (stay at the facility during the day; store belongings).

Our Place's policies allow the occupants to treat the facility like a home because Our Place guarantees the occupants the same bed each night in a room with only one other resident. Our Place provides a cork bulletin board which is intended for them to personalize their space and a cubby in their room to store any possessions for the duration of their stay. Our Place permits occupants to leave at any time and for any reason and remain at the facility during the day provided that they complete a list of rotating chores. Our Place invites occupants to eat in a

common dining room for dinner which is provided and cooked by CAN volunteers. Our Place also allows occupants to receive mail at the facility.

Our Place's welcoming and permissive policies create a much more home-like environment than the policies at the facilities in *Lakeside*, 455 F.3d at 159-60, and *Defiore v. City Rescue Mission of New Castle*, 995 F. Supp. 2d 413, 418-419 (W.D. Pa. 2013). In *Lakeside*, the court held that the facility's policies did allow the occupants to treat the facility like a home when occupants returned to their rooms at night and were able to customize their space. *Lakeside*, 455 F.3d at 159-60. The occupants ate meals together, received mail at the facility and were permitted to receive visitors. *Id.* The facility in *Lakeside* did not permit occupants to come and go as they pleased. *Id.* Because of that restriction, the court held that the facility was "barely" home-like enough. *Id*. It was only sufficiently home-like because they allowed visitors in since occupants were not able to leave to go visit with guests. *Id.* Our Place similarly allows occupants to return to their rooms at night, customize their space, and store their belongings in their room. Further, Our Place is more home-like than the facility in *Lakeside* because, unlike *Lakeside*, it does not restrict residents' ability to come and go from the facility at will. *See id.* Instead, Our Place's occupants are able to come and go from the facility at any time during the day or night to visit with guests, to obtain food, to run errands, or for any other reason. Additionally, occupants are invited to eat meals together and may receive mail at the facility.

Our Place's policies create a much more home-like environment than the legally sufficient policies in *Defiore*, 995 F. Supp. 2d at 418-19. In *Defiore*, the court held that a reasonable jury could find that the facility's policies allowed the occupants to treat the facility like a home when occupants could return to their rooms at night and received mail at the facility. *Id.* Occupants were not able to customize their space, and they had to adhere to the activity

schedule of the facility by attending mandatory meetings and church services. *Id.* Despite these significant restrictions, the court still held that a reasonable jury could find that these policies were legally sufficient to create a home-like environment. *Id.* Our Place's policies are significantly more permissive than those at the facility in *Defiore*. *See id.* Our Place guarantees its occupants can return to their bed and room every night and are able to customize their space. Our Place allows occupants to store their belongings in their room during their stay. Our Place invites occupants to come and go as they please for any reason and at any time. Further, Our Place does not require its occupants to adhere to any schedule or attend mandatory meetings. Our Place invites its occupants to eat communal meals together and allows them to receive mail at the facility.

Our Place's policies differ completely from the restrictive policies that did not create a home-like environment in *Smith*, 2015 WL 5008261, at *6. The *Smith* court held that the facility's policies did not allow the occupants to treat the facility like a home when the facility did not guarantee occupants the same bed or room every night and only provided a dormitory-style room with 6 bunk beds. *Id.* The facility did not allow occupants to customize their space, nor did the facility permit them to store their belongings. *Id.* The facility would discard anything left behind. *Id.* The facility did not allow occupants to come and go as they pleased; the facility did not permit occupants to leave their designated sleeping space during the night; and the facility required the occupants to be in the facility by 6:00 pm and leave the facility by 8:00 am every day. *Id.* at *1, *6. The facility did not allow the occupants any flexibility to leave and visit with outside guests or do anything outside of the facility during those times. *Id.* The facility did not permit occupants to receive mail during their stay. *Id.* Our Place's policies permit the occupants to treat the facility like a home more than those in *Smith* because Our Place guarantees

occupants the same bed every night in a room shared with only one other resident. *See id.* Further, Our Place invites occupants to customize their space and store their belongings during their stay. Our Place allows occupants to come and go as they please at any time and for any reason, including to visit with outside guests. Our Place also permits occupants to stay in the facility during the day provided they contribute to the community by completing rotating chores. Our Place invites occupants to eat communal meals together and to receive mail at the facility during their stay.

Therefore, Our Place's 42-day maximum intended stay clearly demonstrates that the facility was intended or designed for occupants who intend to remain at the facility for any significant period of time. Further, Our Place's welcoming and permissive policies allow the facility's occupants to view the facility as a place to return to during their stay. Thus, because the undisputed facts show that Our Place satisfies both prongs of the Third Circuit's test, the facility is a dwelling and summary judgment is appropriate.

CONCLUSION

The Plaintiffs' Motion for Summary Judgment should be granted because the undisputed facts show that the Defendant violated § 3604(a) of the FHA at its Our Place homeless shelter. The Defendant conceded that it denied accommodations to Plaintiffs Ms. Garcia and Mr. Jamison on the basis of their national origin and race, respectively. Further, the undisputed facts show that Our Place is a "dwelling" for purposes of the FHA. Our Place's 42-day maximum intended stay shows that the facility was intended or designed for occupants who intend to remain at the facility for any significant period of time. Further, Our Place's welcoming and permissive policies allow the facility's occupants to view the facility as a place to return to during their stay. Accordingly, the Plaintiffs respectfully request this Court grant the Plaintiffs'

Motion for Summary Judgment as there is no genuine issue of material fact regarding the Defendant's violation of the FHA.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed, first class mail, postage prepaid, this 15th day of April, 2022, to attorney for Defendant, Yvonne Jones, Jones & Fellstrom, P.C., 456 Grant Avenue, Pittsburgh, PA 15217.

_____

Lily J. Kim (PA Bar No. 5555)
STEVENS STEIN KIM, P.C.
987 Centre Avenue
Pittsburgh, PA 15217
Attorney for Plaintiffs

Applicant Details

First Name	**Andre**
Middle Initial	**J**
Last Name	**Earls**
Citizenship Status	**U. S. Citizen**
Email Address	**gps7un@virginia.edu**
Address	**Address** Street **2101 Arlington Blvd, Apt 424** City **Charlottesville** State/Territory **Virginia** Zip **22903-1663** Country **United States**
Contact Phone Number	**2068772582**

Applicant Education

BA/BS From	**Wiley College**
Date of BA/BS	**May 2018**
JD/LLB From	**University of Virginia School of Law** **http://www.law.virginia.edu**
Date of JD/LLB	**May 1, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Virginia Journal of Law & Technology**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Lile Moot Court**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Jaffe, Caleb
cjaffe@law.virginia.edu
(434) 924-4776

Gocke, Alison
agocke@law.virginia.edu
(434) 243-8545

Gilbert, Michael
mgilbert@law.virginia.edu
434-243-8551

This applicant has certified that all data entered in this profile and any application documents are true and correct.

André J. Earls

401B Valley Rd. Ext., Charlottesville, VA 22903 • (206) 877-2582 • gps7un@virginia.edu

June 1, 2023

The Honorable Jamar K. Walker
Walter E. Hoffman U.S. Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker,

I am a rising third-year student at the University of Virginia School of Law writing to express my interest in a 2024-2025 clerkship position in your chambers. I believe my extensive experience in public service, which includes significant research and writing, combined with my pro bono work with the Black Law Students Association at UVA Law, position me well to serve as your law clerk. After I graduate from law school, I am interested in litigation practice. To that end, I am a 2L summer associate at the Richmond office of Hunton Andrews Kurth LLP and will extern for Judge Roderick Young (E.D. Va.) this fall. I plan to make my legal practice in Virginia.

Through seven years of high school and collegiate debate, I developed strong written and oral advocacy skills, including the ability to think critically and build favorable arguments that bolstered my position. In my work as a journalist, public relations staffer, and specialist in political communications, I put these skills to work in practical, real-world situations. I most recently served as the Communications Director for Virginia Attorney General Mark Herring. In this role, I prepared the Attorney General for debates, tailored his messaging for voter outreach, and developed voter material for print and digital messaging.

I have included my résumé, transcript, letters of recommendation and a writing sample with my application. I would welcome the opportunity to interview with you either in person or virtually. Thank you for your time and consideration.

Sincerely,

André J. Earls

André J. Earls

2101 Arlington Blvd. Apt. 424, Charlottesville, VA 22903 • (206) 877-2582 • gps7un@virginia.edu

EDUCATION

University of Virginia School of Law, Charlottesville, VA
J.D., Expected May 2024
- *Virginia Journal of Law & Technology*
- Black Law Students Association
- Norton Rose Fulbright/UVA BLSA Pro Bono Service Trip

Northwestern University, Evanston, IL
M.S., Journalism, September 2019
- Medill DC, Morning Consult Extern

Wiley College, Marshall, TX
B.A., Mass Communication, May 2018
- Class of 2018 Salutatorian (GPA: 4.0)
- Student Government Association, Executive Vice President
- The Great Debaters of Wiley College

EXPERIENCE

Hon. Roderick C. Young, U.S. District Court (E.D. Va.), Richmond, VA
Incoming Judicial Extern, Fall 2023

Hunton Andrews Kurth LLP, Richmond, VA
Incoming Summer Associate, Summer 2023

Hon. Claude V. Worrell, 16th Judicial Circuit of Virginia, Charlottesville, VA
Judicial Intern, Summer 2022
- Drafted bench memorandum on issues remanded from Court of Appeals in novel marital property case
- Advised the judge on responses to motions to dismiss
- Screened candidates for concealed carry permits

University of Virginia School of Law, Charlottesville, VA
Research Assistant for Professor Danielle K. Citron, Summer 2022
- Conducted research on the intersection of informational and decisional privacy
- Researched information for opinion pieces ahead of the Professor's book release
- Conducted comparative corporate data privacy research

Mark Herring for Attorney General, Leesburg, VA
Communications Director, February 2021 – June 2021
- Coordinated with national press and secured an endorsement from *The Washington Post*
- Worked with research firms to prepare the Attorney General for interviews and debates

United States Representative Abigail Spanberger, Washington, DC
Staff Assistant, June 2020 – February 2021
- Answered constituent calls relating to the Congresswoman's legislative agenda

Kamala Harris for the People, Des Moines, IA
Field Organizer, October 2019 – December 2019
- Drafted campaign issue memoranda used to educate voters

Washington Football Team, Richmond, VA
Contributing Writer, Summer 2018; *Public Relations Intern*, Summer 2016
- Compiled NFL statistics and assisted in drafting articles for team website
- Worked with public relations office to draft team statements

Andre J. Earls

01/30/2023

Beginning of Law Record

2021 Fall

School:		School of Law		
Major:		Law		
LAW	6000	Civil Procedure	B	4.0
LAW	6002	Contracts	B-	4.0
LAW	6003	Criminal Law	B-	3.0
LAW	6004	Legal Research and Writing I	S	1.0
LAW	6007	Torts	B	4.0

2022 Spring

School:		School of Law		
Major:		Law		
LAW	6001	Constitutional Law	B	4.0
LAW	6005	Lgl Research & Writing II (YR)	S	2.0
LAW	6006	Property	B	4.0
LAW	6104	Evidence	B	3.0
LAW	7090	Regulatn of Political Process	B+	3.0

2022 Fall

School:		School of Law		
Major:		Law		
LAW	7112	Energy Regulation and Policy	B+	3.0
LAW	7187	Law of Pub-Priv Partnerships	B+	3.0
LAW	7202	Poverty,Law &Access to Justice	B-	3.0
LAW	7679	Parent Choice in K-12 Ed (SC)	A-	1.0
LAW	9354	Privacy Law & Theory Seminar	B+	3.0

2023 Spring

School:		School of Law		
Major:		Law		
LAW	7012	Design Demcrcy:Participation.		3.0
LAW	7072	Prof Resp/Public Interest Law		2.0
LAW	9073	Government Ethics: Conflict		3.0
LAW	9330	Educ in US Prisons Seminar		3.0
LAW	9331	Border Policy and Politics		3.0

End of Law School Record

WILEY COLLEGE Marshall, TX 75670

3/14/2018

ID : 100301
Name : Andre Juwan Earls
SSN : xxx-xx-2960
Address : 6604 Sweetbay Court
mobile, AL 36618

Undergraduate Division
Advisors : Jeffrey B. Hedrick
Ms. Candace Michelle Dominique
Sherlynn Byrd Hall

Course Number	Title	Crs Eqvl	CR	Type	Grade	Rpt	Hrs Att	Hrs Ern	Hrs Gpa	Qual Pts	GPA
2013-2014 Academic Year : Advanced Placement											
Organization : Advanced Placement											
AP 01	Government & Pol US	POLS 2301	AP		CR		0.00	3.00	0.00	0.00	
AP 02	Statistics	BUS 3321	AP		CR		0.00	3.00	0.00	0.00	
			Term Totals :				0.00	6.00	0.00	0.00	0.0000
			Career Totals :				0.00	6.00	0.00	0.00	0.0000
2014-2015 Academic Year : Fall											
ENGL-1301	English Composition I		RG		A		3.00	3.00	3.00	12.00	
GESS-1300	Academic Success MCOM/SOC		RG		A		3.00	3.00	3.00	12.00	
HIST-1301	United States History I		RG		A		3.00	3.00	3.00	12.00	
KINE-1110	Fundamentals of Health Fitness I		RG		A		1.00	1.00	1.00	4.00	
MATH-1310	Survey Of Mathematics		RG		B	*	3.00	3.00	3.00	9.00	
MCOM-1311	Intro To Mass Communication		RG		A		3.00	3.00	3.00	12.00	
			Term Totals :				16.00	16.00	16.00	61.00	3.8125
			Career Totals :				16.00	22.00	16.00	61.00	3.8125
2014-2015 Academic Year : Spring											
CISC-1300	Introduction to Computing		RG		A		3.00	3.00	3.00	12.00	
ENGL-1302	English Composition II		RG		A		3.00	3.00	3.00	12.00	
HIST-1302	United States History II		RG		A		3.00	3.00	3.00	12.00	
KINE-1111	Fundamentals of Health Fitness I		RG		A		1.00	1.00	1.00	4.00	
MATH-1330	College Algebra		RG		A		3.00	3.00	3.00	12.00	
RELI-1301	Survey Of Religion & Philosophy		RG		A		3.00	3.00	3.00	12.00	
			Term Totals :				16.00	16.00	16.00	64.00	4.0000
			Career Totals :				32.00	38.00	32.00	125.00	3.9063

Page : 1 of 5

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REGISTRAR

WILEY COLLEGE Marshall, TX 75670

3/14/2018

ID : 100301
Name : Andre Juwan Earls
SSN : xxx-xx-2960
Address : 6604 Sweetbay Court
mobile, AL 36618

Undergraduate Division
Advisors : Jeffrey B. Hedrick
Ms. Candace Michelle Dominique
Sherlynn Byrd Hall

Course Number	Title	Crs Eqvl	CR Type	Grade	Rpt	Hrs Att	Hrs Ern	Hrs Gpa	Qual Pts	GPA
2014-2015 Academic Year : Summer I										
MCOM-3322	Mass Media in Diverse Society		RG	A		3.00	3.00	3.00	12.00	
					Term Totals :	3.00	3.00	3.00	12.00	4.0000
					Career Totals :	35.00	41.00	35.00	137.00	3.9143
2015-2016 Academic Year : Fall										
BIOL-1401	Introduction To Biological Science		RG	A		4.00	4.00	4.00	16.00	
BIOL-1401	Introduction To Biological Science		RG	A		0.00	0.00	0.00	0.00	
MCOM-2321	Mass Media Writing		RG	A		3.00	3.00	3.00	12.00	
MCOM-3313	Basic Copy-Editing And Graphic I		RG	A		3.00	3.00	3.00	12.00	
RELI-2301	Introduction To Ethics		RG	A		3.00	3.00	3.00	12.00	
SPAN-2301	Elementary Spanish I Nul		RG	A		3.00	3.00	3.00	12.00	
					Term Totals :	16.00	16.00	16.00	64.00	4.0000
					Career Totals :	51.00	57.00	51.00	201.00	3.9412
2015-2016 Academic Year : Spring										
Subterm : Traditional										
ENGL-2311	World Literature I		RG	A		3.00	3.00	3.00	12.00	
MCOM-2312	Mass Communications Law and I		RG	A		3.00	3.00	3.00	12.00	
MCOM-3314	Television Production		RG	A		3.00	3.00	3.00	12.00	
MCOM-3344	Multimedia Reporting		RG	A		3.00	3.00	3.00	12.00	
MCOM-4341	Public Relations Campaign		RG	A		3.00	3.00	3.00	12.00	
SPAN-2302	Elementary Spanish II-BL		RG	A		3.00	3.00	3.00	12.00	
					Subterm Totals :	18.00	18.00	18.00	72.00	4.0000
					Subterm Career Totals :	69.00	75.00	69.00	273.00	3.9565
					Term Totals :	18.00	18.00	18.00	72.00	4.0000
					Career Totals :	69.00	75.00	69.00	273.00	3.9565

Page : 2 of 5

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REGISTRAR

WILEY COLLEGE Marshall, TX 75670

3/14/2018

ID : 100301
Name : Andre Juwan Earls
SSN : xxx-xx-2960
Address : 6604 Sweetbay Court
mobile, AL 36618

Undergraduate Division
Advisors : Jeffrey B. Hedrick
Ms. Candace Michelle Dominique
Sherlynn Byrd Hall

Course Number	Title	Crs Eqvl	CR Type	Grade	Rpt	Hrs Att	Hrs Ern	Hrs Gpa	Qual Pts	GPA
2016-2017 Academic Year : Fall										
Subterm : Traditional										
ENGL-2301	Advanced English Composition		RG	A		3.00	3.00	3.00	12.00	
ENGL-2350	Modern College Grammar		RG	A		3.00	3.00	3.00	12.00	
HUMA-2300	Humanities		RG	A		3.00	3.00	3.00	12.00	
MCOM-3355	Public Relations Research		RG	A		3.00	3.00	3.00	12.00	
MCOM-4314	Mass Comm Theory & Research		RG	A		3.00	3.00	3.00	12.00	
SPCH-2300	Speech Communication		RG	A		3.00	3.00	3.00	12.00	
	Subterm Totals :					18.00	18.00	18.00	72.00	4.0000
	Subterm Career Totals :					87.00	93.00	87.00	345.00	3.9655
	Term Totals :					18.00	18.00	18.00	72.00	4.0000
	Career Totals :					87.00	93.00	87.00	345.00	3.9655
2016-2017 Academic Year : Spring										
Subterm : Traditional										
CRIJ-2332	Introduction to Corrections		RG	A		3.00	3.00	3.00	12.00	
MANA-3121	Ethical Leadership Seminar (JR)		RG	A		1.00	1.00	1.00	4.00	
MCOM-4301	Internship In Mass Communicatic		RG	A		3.00	3.00	3.00	12.00	
MCOM-4340	Digital Editing Techniques		RG	A		3.00	3.00	3.00	12.00	
MCOM-4342	Event Planning and Management		RG	A		3.00	3.00	3.00	12.00	
PSYC-2300	Intro to Psychology		RG	A		3.00	3.00	3.00	12.00	
	Subterm Totals :					16.00	16.00	16.00	64.00	4.0000
	Subterm Career Totals :					103.00	109.00	103.00	409.00	3.9709
	Term Totals :					16.00	16.00	16.00	64.00	4.0000
	Career Totals :					103.00	109.00	103.00	409.00	3.9709

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Undergraduate Division
Advisors : Jeffrey B. Hedrick
Ms. Candace Michelle Dominique
Sherlynn Byrd Hall

Course Number	Title	Crs Eqvl	CR Type	Grade	Rpt	Hrs Att	Hrs Ern	Hrs Gpa	Qual Pts	GPA
2016-2017 Academic Year : Summer II										
Subterm : Traditional										
MATH-1310	Survey Of Mathematics		RG	A	R	3.00	3.00	3.00	12.00	
					Subterm Totals :	3.00	3.00	3.00	12.00	4.0000
					Subterm Career Totals :	103.00	109.00	103.00	412.00	4.0000
					Term Totals :	3.00	3.00	3.00	12.00	4.0000
					Career Totals :	103.00	109.00	103.00	412.00	4.0000
2017-2018 Academic Year : Fall										
Subterm : Traditional										
MCOM-3311	Radio Production Lab 1		RG	A		3.00	3.00	3.00	12.00	
MCOM-3321	Feature And Editorial Writing		RG	A		3.00	3.00	3.00	12.00	
MCOM-3354	Public Relations Writing		RG	A		3.00	3.00	3.00	12.00	
THTR-2300	Introduction to Theatre		RG	A		3.00	3.00	3.00	12.00	
					Subterm Totals :	12.00	12.00	12.00	48.00	4.0000
					Subterm Career Totals :	115.00	121.00	115.00	460.00	4.0000
					Term Totals :	12.00	12.00	12.00	48.00	4.0000
					Career Totals :	115.00	121.00	115.00	460.00	4.0000
2017-2018 Academic Year : Spring										
Subterm : Traditional										
MCOM-1301	Forensics Practicum II		RG	WIP		3.00	0.00	0.00	0.00	

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Undergraduate Division
Advisors : Jeffrey B. Hedrick
Ms. Candace Michelle Dominique
Sherlynn Byrd Hall

Course Number	Title	Crs Eqvl	CR Type	Grade	Rpt	Hrs Att	Hrs Ern	Hrs Gpa	Qual Pts	GPA
2017-2018 Academic Year : Spring										
MCOM-4399	SpTp:Documentary Production		RG	WIP		3.00	0.00	0.00	0.00	
				Subterm Totals :		0.00	0.00	0.00	0.00	0.0000
				Subterm Career Totals :		115.00	121.00	115.00	460.00	4.0000
				Term Totals :		0.00	0.00	0.00	0.00	0.0000
				Career Totals :		115.00	121.00	115.00	460.00	4.0000
				Division Career Totals :		115.00	121.00	115.00	460.00	4.0000

Degree Information :
(1) 'Bachelor of Arts' Date Conferred :
Major(s)
Mass Communications

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REGISTRAR

Northwestern University
633 Clark Street
Evanston, IL 60208
United States

Name: **Earls,Andre Juwan**
Student ID: **3089602**

Unofficial Transcript

Print Date: 09/16/2019

Degrees Awarded

Degree: Master of Science in Journalism
Confer Date: 09/06/2019
Plan: Editorial Journalism Major

Beginning of Journalism Grad Record

2018 Fall (09/27/2018- 12/15/2018)

Program: Editorial Journalism
Plan: Editorial Journalism Major

Course		Description	Attempted	Earned	Grade	Points
JOUR	400-0	Foundations of Video	1.000	1.000	A	4.000
JOUR	400-1	Journalism Methods	1.000	1.000	B	3.000
JOUR	401-0	Ethics & Law of Journalism	1.000	1.000	A	4.000
JOUR	402-0	Frameworks for Modern Jour	1.000	1.000	B	3.000

			Attempted	Earned	GPA Units	Points
Term GPA	3.500	Term Totals	4.000	4.000	4.000	14.000

2019 Winter (01/07/2019- 03/23/2019)

Program: Editorial Journalism
Plan: Editorial Journalism Major

Course		Description	Attempted	Earned	Grade	Points
JOUR	400-3	Foundations of Interactive	1.000	1.000	A	4.000
Course Attributes:		Attendance at 1st class mandatory				
JOUR	421-4	News Reporting	1.000	1.000	B+	3.300
Course Topic:		Video				
Course Attributes:		Attendance at 1st class mandatory				
JOUR	490-0	Special Topics	1.000	1.000	B-	2.700
Course Topic:		Sports Reporting Seminar				
Course Attributes:		Attendance at 1st class mandatory Registration is By Application Only				
JOUR	490-0	Special Topics	1.000	1.000	B	3.000
Course Topic:		The Vote: Rigging Elections, s				

			Attempted	Earned	GPA Units	Points
Term GPA	3.250	Term Totals	4.000	4.000	4.000	13.000

2019 Spring (04/01/2019- 06/15/2019)

Program: Editorial Journalism
Plan: Editorial Journalism Major

Course		Description	Attempted	Earned	Grade	Points
JOUR	403-0	Sports Marketing	1.000	1.000	A-	3.700
JOUR	413-0	TV News Producing & Perform.	1.000	1.000	B-	2.700
JOUR	490-0	Special Topics	1.000	1.000	B+	3.300
Course Topic:		Advanced Sports Reporting				

			Attempted	Earned	GPA Units	Points
Term GPA	3.233	Term Totals	3.000	3.000	3.000	9.700

2019 Summer (06/24/2019- 09/01/2019)

Program: Editorial Journalism
Plan: Editorial Journalism Major

Course		Description	Attempted	Earned	Grade	Points
JOUR	438-1	Capstone: Washington Reporting	2.000	2.000	B-	5.400
Course Attributes:		Course meets in Washington DC				
JOUR	438-2	Washington DC Practicum	1.000	1.000	P	0.000
Course Attributes:		Course meets in Washington DC				

			Attempted	Earned	GPA Units	Points
Term GPA	2.700	Term Totals	3.000	3.000	2.000	5.400

Journalism Grad Career Totals						
Cum GPA	3.238	Cum Totals	14.000	14.000	13.000	42.100

End of Unofficial Transcript

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to offer my enthusiastic recommendation for Andre Earls, who has applied for a clerkship in your chambers. I came to know Andre as a student in my class on Professional Responsibility/Legal Ethics during the Spring 2023 semester. Andre stood out to me as an eager participant, a naturally collaborative thinker, and a mature professional. I am confident he will become a strong leader in the legal community over the course of his career.

The structure of my Professional Responsibility class gives me a unique opportunity to assess students as they progress throughout the semester. In addition to a final exam, students are graded on their performance on multiple collaborative assessments. Andre excelled on these collaborative projects. He came to class prepared and engaged. As a result, he was able to play a leading role in the class discussion. He listened attentively and thoughtfully to his peers, building off of their ideas to refine his own. His final, written answers on these assessments demonstrated just how well Andre had used the collaborative process.

Even outside of these collaborative assessments, Andre proved himself to be a natural team player and team leader. He was quick to speak up during traditional class sessions. He was an early and frequent volunteer, and his insightful questions always helped to drive the lectures forward.

Coming out of the pandemic, I have noticed that some of our student organizations have suffered. When it comes to planning public events, a lot of institutional memory has been lost. But perhaps because of his significant work experience, Andre demonstrated impressive organizational skills as a student leader. It is here where he really shines. With the UVA Chapter of the Black Law Students Association, Andre took charge in planning a visit from the Honorable Roger L. Gregory, currently the Chief Judge on the U.S. Court of Appeals for the Fourth Circuit. As a former law clerk to Judge Gregory, I attended the event and can attest that it was a rousing success: well-organized, well-attended, and well-run.

Overall, I came away greatly impressed by Andre's maturity, sincerity, and good nature. He is a steady contributor and respectful listener. Andre is kind, gracious, thoughtful, and generous to his colleagues. He is a joy to be around. Because of these traits, I have no doubt he would be a great addition to any judicial chamber.

Sincerely,

Cale Jaffe
Professor of Law, General Faculty
Director of the Environmental Law & Community Engagement Clinic

Caleb Jaffe - cjaffe@law.virginia.edu - (434) 924-4776

June 13, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing on behalf of André Earls to support his application to become your law clerk. I taught André for a semester in my Energy Regulation and Policy class. During the semester, I came to know André as a friendly and amiable addition to the classroom; an active class participant; and a leader amongst his peers. I think André's warm personality and ability to get along well with others will make him a congenial addition to your chambers.

André is a natural leader. He had an active career as a public servant before coming to law school, working on a variety of political campaigns and involving himself in the concerns of his community. I have seen him adopt that same service mindset in law school, where he has taken on leadership positions in both the Black Law Students Association and the American Constitution Society. Importantly, in my eyes, André's involvement in these organizations has been community-oriented: I have seen André use his role in these groups to build friendships and support networks amongst his peers. Over the last semester, I witnessed the crucial role that BLSA plays for African American law students at the University of Virginia School of Law. During particularly difficult moments, André used his position in BLSA to ensure that his fellow classmates had the resources and the support system they needed. André is the kind of person who spends his time lifting others up.

André is also intellectually curious and a hard worker. When he showed up in my Energy Regulation class on the first day, André told me that he had not taken any coursework akin to my energy law and policy class. But he believed it would be an interesting and important topic, and he thought that he should spend his time in law school challenging himself to learn new things. Energy law is a technically intricate class. It can be particularly difficult for those who have not taken administrative law or environmental law. Nonetheless, André came to class prepared every day, clearly working hard to orient himself to the complexities of the doctrine. While André was not the highest performing student in my class, he was one of the most diligent. I think that kind of dedication and commitment will ultimately serve him well in his legal career.

Over the long term, André sees himself working in public service. I think a clerkship in your chambers would be a tremendous opportunity to set André on that path. I hope you consider him as a candidate. If you have any questions about André's application, I would be happy to talk further. My cell phone is 443-472-2036.

Sincerely,

/s/

Alison Gocke
Associate Professor of law
University of Virginia School of Law
580 Massie Road
Charlottesville, Virginia 22903
Phone: 434-243-8545 | Fax: 434-982-2845
Email: agocke@law.virginia.edu

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend with great enthusiasm André Earls for a clerkship in your chambers. André is smart and determined, and he's also brimming with warmth and charisma. His record shows a range of impressive accomplishments and experiences, and he has my strong recommendation.

I got to know André in the spring of 2022 when he enrolled in my course titled Regulation of the Political Process. The class covers everything from the Voting Rights Act to campaign finance, and it emphasizes 1st and 14th Amendment doctrine. I had 72 students, about half of whom were first-year students, including André. The other half consisted of an intimidating cast of upper-level students, including the Editor-in-Chief of the Virginia Law Review and several other editors as well. I thought André was outstanding in the group. His engagement and sharp insights were clear to me in the classroom and during my office hours. He submitted a fine exam and received a B+.

André is a first-generation law student, and he and his wife had a baby during his first semester of law school. Needless to say, these circumstances put him at a disadvantage. His grades are improving, and I fully expect that trend to continue. Separate from academics, he has worked hard to accumulate valuable experience and make the most of his time in law school. He is a member of the Virginia Journal of Law & Technology and the Black Law Students Association, and he has interned for Virginia district judge Claude Worrell. He has performed pro bono service and also served as a research assistant for Professor Danielle Citron, one of our highest-profile faculty members.

I was impressed by André on the first day of class in January 2022, and I've been impressed by him in every interaction since. He is a strong candidate and a very kind person, and I hope you will consider him.

Sincerely,

Michael Gilbert

Michael Gilbert - mgilbert@law.virginia.edu - 434-243-8551

WRITING SAMPLE

André Earls
2101 Arlington Blvd. Apt. 424
Charlottesville, VA 22903
(206) 877-2582

This writing sample is an excerpt from a memorandum I wrote for my legal research and writing course during my first semester at the University of Virginia School of Law. The memorandum was based on a fictional fact patten that examined whether a parent company could assign an employee's non-compete agreement to a third-party company, and whether that third party company could then enforce it. We represented the employee, Chris Hopper, discussing the likelihood that Casco Bay Communications (CBC) would be able to assign to Cygnus Media Group (CMG) and CMG's ability to enforce the non-compete agreement under the jurisdiction of Maine. For the purposes of this writing sample, I have only included the assignability portion of the discussion section in the memorandum.

MEMORANDUM OF LAW

TO: Partner, Legal Writing Fellow
FROM: André Earls, Section H
DATE: November 23, 2021
RE: Chris Hopper; assignability of non-compete agreement to Cygnus Media group

DISCUSSION

In general, Maine law allows a contract to be assigned given two conditions: (1) assignability is acceptable unless the substitution of a right of the assignee for the right of the assignor would materially change the duty of the obligor, or materially increase the burden or risk imposed on him by his contract. *OfficeMax Inc. v. County Qwick Print, Inc.*, 709 F. Supp. 2d 100 (D. Me. 2010); (2) if the nature of service is general, and not personal and if a party "expressly consent(s) to the assignment" of their employment contract. *Katahdin Ins. Group v. Elwell*, 2001 Me. Super. LEXIS 180 (Me. Super. Ct. July 9, 2001). To show that the nature of service is personal and thus not enforceable, a party would have to prove that the contract involved "personal credit, trust, or confidence". *Salmon Lake Seed Co. v. Frontier Trust Co.*, 153 A. 671, 673, 130 Me. 69 (1931). Maine law further defines a personal services contract as one involving the "exercise of individual skill and judgment, which can be performed only by the person named." *Pinkham v. Libbey*, 93 Me. 575, 577, 45 A. 823, 824 (1900).

In our case, Hopper probably won't be able to establish that his job would've materially changed because although he quit, his colleagues continued in their exact same positions. He also won't be able to establish that his contract was personal in nature because while Hopper's tasks may require some degree of individual skill, it's clear that they could easily be performed by another party and that he could reasonably be replaced. Finally, given that pro-assignability jurisdictions meet Maine's assignability conditions of non-compete agreements not being personal in nature and not materially changing the duties and responsibilities of employees,

Maine is most likely to side in favor of assignability. Therefore, although it is a close call, Hopper's noncompete agreement will probably be found to be assignable.

Maine law uses scope of contract's reasonability to determine whether a corporation has a legitimate business interest that justifies enforcing a covenant not to compete. Specifically, the Supreme Judicial Court has ruled on reasonability using three core guidelines: (1) protecting an employer from business competition is not enough, (2) enforcement may be reasonable when an employee has substantial contact with his employer's customers, and finally, (3) a non-compete covenant could be enforceable if an employer has access to confidential information including customer lists and is in a position after leaving his employer to take advantage of that information. *Chapman & Drake v. Harrington*, 545 A.2d 645 (Me. 1988). Maine's Supreme Judicial Court has not, however, ever ruled on the reasonability of a noncompete agreement in the radio broadcasting context. But courts outside of Maine tend to use three main factors in analyzing the reasonability of enforcing a noncompete agreement: (1) how directly the former employee is competing with the former employer, (2) whether the former employee is attempting to misappropriate goodwill built for them by the former employer, and (3) how important, or irreplaceable the former employee was to the former employer. There are strong arguments to be made in Hopper's favor that (1) his departure to start a podcast didn't pose a legitimate enough competition threat to warrant enforcement solely on competition grounds, (2) Hopper didn't misappropriate goodwill that he earned through WBHE's merit and (3) Hopper's talents were not unique enough, nor was he important enough to WBHE's The Morning Brew to constitute a legitimate business interest. Therefore, a Maine court would probably find that Hopper's noncompete agreement is not enforceable.

I. A Maine court will likely find that Chris Hopper's contract is assignable to Cygnus Media Group, Inc.

As stated above, Maine law allows the general assignability of non-compete agreements unless the substitution of a right of the assignee for the right of the assignor would materially change the duty of the obligor, or materially increase the burden or risk imposed on him by his contract. *OfficeMax Inc. v. County Qwick Print, Inc.*, 709 F. Supp. 2d 100 (D. Me. 2010). The only exception that Maine law carves out for assignability is for personal service contracts that involve "personal credit, trust, or confidence". *Id*. Even personal service contract assignability isn't conclusively an exception. As decided by a Maine Superior Court in 2001, *Katahdin* states that "although an employee's duty to perform under an employment contract generally is not delegable, a covenant not to compete generally is assignable." *Katahdin Ins. Group v. Elwell*, 2001 Me. Super. LEXIS 180 (Me. Super. Ct. July 9, 2001). Maine also allows for assignability when the assigned party consents.

Although we could determine with reasonable confidence that Maine generally allows the assignability of non-compete agreements where consent has been obtained, Maine's Supreme Judicial Court has never ruled directly on the issue of unilateral assignability of a noncompete agreement. The state is largely silent on the issue outside of the *OfficeMax* and *Katahdin* cases. When we compare Maine's stance on assignability to other jurisdictions that have decided cases more extensively on the issue, pro-assignability jurisdictions seem to line up better with Maine's stance. Thus, Maine would probably rule in favor of assignability in Hopper's case.

A. Pro-assignability jurisdictions argue that non-compete agreements are valuable business assets that should be sellable, that non-compete agreements are not personal in nature, and that the assignability of non-compete agreements does not materially change the duties and responsibilities of the assignee.

Cases from other jurisdictions are split on the issue of assignability of non-compete covenants. States in favor of assignability offer up three key reasons: (1) non-compete agreements are valuable business assets that should be sellable (2) the non-compete agreements in their cases were not personal in nature and (3) assignability of the non-compete agreements didn't materially change the duties and responsibilities of the assignee.

The first factor argues that it's necessary for non-compete agreements to be assignable as part of an asset sale of a business. If these assets were not able to be assigned, that would substantially decrease the valuable of the company being sold. A case in Illinois, *AutoMed Techs., Inc. v. Eller*, involves the plaintiff, AutoMed Technologies which purchased a subcontractor service from a corporation. An employee of the subcontractor claimed that he was merely working for the subcontractor and couldn't be held liable for any breaches of contract by serving in an advisory role to other subcontractors. However, the court in this case ruled that the employee's covenant not to compete was assignable because "the confidential information and good will protected by such agreements are typically critical components of an asset purchase. A rule prohibiting assignment would frustrate many acquisitions." *AutoMed Techs., Inc. v. Eller*, 160 F. Supp. 2d 915 (N.D. Ill. 2001). It then gives a public policy implication, pointing toward Illinois state law as a justification for assigning covenants: "Without any Illinois precedent holding that restrictive covenants may never be assigned without consent; we are unwilling to anticipate new public policy restrictions on contract rights." *Id*. Thus in order to stay consistent and uniform in the sphere of business contract and negotiations, the critical component of non-compete agreement assignability must be preserved.

Secondly, assignment has been found to be permissible when the contract is general and not personal in nature. In the case of *Managed Health Care Associates v. Kethan*, the defendant was

an at will employee of MedEcon, which was bought out by MHA, a group purchasing organization of hospital equipment. Kethan worked as a sales representative and continued to do so as an employee of MHA, despite signing the non-compete agreement that was assigned to him upon the asset purchase of MedEcon. The court in this case ruled that the non-compete was assignable. Their reasoning stated, "that a contract is generally assignable" … "unless provisions are such as to show that one of the parties reposes a personal confidence in the other, which he would have been unwilling to repose in any other person" *Managed Health Care Associates Inc. v. Kethan*, 209 F.3d 923 (6th Cir. 2000) The court further articulated that Kethan's services were not personal in nature because he was an "at-will employee who was free to resign at any time." *Id*. "Consequently, the noncompetition clause does not require any affirmative action on the part of Kethan and is thus assignable." Therefore, as long as the non-compete agreement concerned an employee with responsibilities that were general, and not personal in nature, it should be freely assigned.

Finally, courts have ruled in favor of assigning non-compete agreements when there is no material change in the contract. In *Reynolds and Reynolds Co. v. Tart*, the defendant worked for Jordan Graphics Inc., which was bought out by Reynolds and Reynolds Co., a stationary sales company. Tart's job was to recruit sales workers for Reynolds, and he later sought to get out of employment of the company after failure to consent to the non-compete clause after the asset transfer from his previous company. The court held that while personal contracts cannot be assigned, this non-compete was legally assignable because "contracts may be assigned when the character of the performance and the obligation will not be changed." *Reynolds and Reynolds Co. v. Tart*, 955 F. Supp. 547 (W.D.N.C. 1997). The court argues that "though Reynolds proposed to reduce compensation, change benefits and increase obligations [it] would not change

the fundamental character or the employee's situation, for these are all modifications that Jordan itself could have made and, in several respects, did make under the at-will contract." *Id*. If the non-compete agreement doesn't materially alter the contract in any way, it should be freely assignable.

B. Anti-assignability jurisdictions argue that the non-compete agreements being assigned were personal in nature and that the assigned party did not expressly consent to the terms of the signed agreement.

Anti-assignability jurisdictions give substantial weight to the autonomy of the employee, ruling against the assignability of a non-compete in cases where the employee did not consent. In *Traffic Control Services Inc. v. United Rentals Northwest Inc.*, Burkhardt was employed by construction rental equipment company NES, who had him sign a non-compete agreement in exchange for a $10,000 payout. He did so with the understanding that they would not be sold to a parent company, specifically United. When NES was sold to United, Burkhardt left for their competitor in the construction supply sales industry, Traffic Control Services Inc., because he didn't like the character of United Company, specifically their customer service. The court in this case sided with Burkhardt, giving him the autonomy to make his own personal decision: "when an employee enters into a covenant not to compete with his employer, he may consider the character and personality of his employer" when determining whether he wants to commit to a covenant not to compete in the future. *Traffic Control Servs., Inc. v. United Rentals Nw., Inc.*, 87 P.3d 1054 (Nev. 2004). In instances where the employee did not consent to the non-compete agreement, anti-assignability jurisdictions tend to rule in their favor.

Secondly, jurisdictions that don't allow for non-compete agreements to be assigned do so because while the assignee originally consented to signing the original contract not to compete,

they didn't expressly consent at any point during or after the asset sale to having their covenant re-assigned. W. Lawrence Hess was an insurance agent with his company Hoaster which was later bought by Gebhard & Co. He signed a non-compete agreement with Hoaster, and the case provides undisputed evidence that Hoaster "never discussed the covenant with him or asked him to agree to its assignment". Hess was later forced out of the company upon Hoaster's complete sale of assets to Gebhard and agreed to work for a competitor. Gebhard attempted to enforce the covenant, and Hess subsequently filed suit. The court in this case ruled the non-compete agreement unassignable not only due to the personal nature of the service, but also because the restrictive nature of the personal covenant, that the "express consent of the employee" is necessary. *Hess v. Gebhard & Co.*, Inc., 808 A.2d 912, 921 (Pa. 2002).

C. Maine law is most likely to align with pro-assignment jurisdictions because they similarly hold that non-compete agreements should be freely assignable, and are general, not personal in nature.

Maine law is most likely to align with pro-assignment jurisdictions because these jurisdictions most cleanly align with Maine's 'freely assignable' ideology, and they share Maines's view on assignability contracts being general, and not personal in nature. First, Maine would most likely align with the principle outlined in *AutoMed Techs., Inc. v. Eller*, stating non-compete agreements should be 'freely assignable' because they make the asset sale of a business more desirable. In *AutoMed*, the case articulates that "Any vestiges of personality are further mitigated when the business is acquired in its entirety, as a going concern", and WBHE was in fact acquired in its entirety. In instances where a corporation has been entirely purchased, Maine's policy position seems to be like that of Illinois in that Maine is silent on stepping in to stop corporations that have purchased smaller corporations from freely assigning non-compete

agreements. Similarly, *Katahdin* states that "covenants not to compete are freely assignable in these jurisdictions". *Katahdin Ins. Group v. Elwell*, 2001 Me. Super. LEXIS 180 (Me. Super. Ct. July 9, 2001).

Most states share Maines's hesitancy to assign contracts that are personal in nature, but for a contract to be considered for personal services, it can't be a job responsibility that can be interchanged, or that anyone else could do. *See, e.g., Managed Health Care Associates Inc. v. Kethan*, 209 F.3d 923 (6th Cir. 2000). It's clear that in this case Hopper started out at WBHE as a junior producer, and despite a promotion to senior producer and getting select opportunities to contribute on the station, he never escaped his role as a full-time senior producer. Using the test produced by Managed Health Care that asks us whether the 'confidence reposed' by WBHE into Hopper is one that could not be placed in anyone else. Because it would be difficult to imagine that WBHE wouldn't be able to find another producer to produce The Morning Brew, Maine would probably allow Hopper's contract as a producer and a part time contributor on the Morning Brew to be freely assigned under this standard.

Finally, Hopper's duties as a producer didn't materially change, and he wasn't incumbered with a heavier contractual burden upon assignment of the contract. CMG explicitly that the new employee contracts that they would signing '*mirrored'* the old contracts, only explicit difference being a 10% raise on their current salaries. A pay bump not only negates a heavier contractual burden, but it also lightens the load. It would be hard for a Maine court to rule that the assignability of this non-compete would be abusive in any way under its current standards, or that there was any material change within the assignment after the asset sale. The assignment of the non-compete is seemingly reasonable, and therefore an assignment friendly jurisdiction like Maine would have no reason not to allow it.

Applicant Details

First Name	**Noah**
Last Name	**Eckberg**
Citizenship Status	**U. S. Citizen**
Email Address	**neckberg@jd24.law.harvard.edu**
Address	**Address** Street **1800 Massachusetts Ave Apt 31** City **Cambridge** State/Territory **Massachusetts** Zip **02140**
Contact Phone Number	**6514681186**

Applicant Education

BA/BS From	**Duke University**
Date of BA/BS	**May 2019**
JD/LLB From	**Harvard Law School** **https://hls.harvard.edu/dept/ocs/**
Date of JD/LLB	**May 23, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Harvard Civil Rights-Civil Liberties Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Tobin, Susannah Barton
stobin@law.harvard.edu
617-496-3673
Charles, Guy-Uriel
gcharles@law.harvard.edu
Klarman, Michael
mklarman@law.harvard.edu
617-495-7646

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Noah Eckberg
651-468-1186 | neckberg@jd24.law.harvard.edu
1800 Massachusetts Ave, Apt 31, Cambridge, MA 02140

June 12, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a rising third-year student at Harvard Law School writing to apply for the next available clerkship in your chambers after I graduate in 2024. I am interested in clerking for you specifically because of both your history as a public servant prior to joining the bench and your leadership as an LGBTQ+ member of the judiciary, allowing law students like me to know that our professional aspirations will not be inhibited by our sexual orientation.

Attached please find my resume, law school transcript, writing sample, and letters of recommendation from the following individuals:

- Professor Guy-Uriel Charles, gcharles@law.harvard.edu, 617-998-1742
- Professor Michael Klarman, mklarman@law.harvard.edu, 617-496-2050
- Assistant Dean Susannah Barton Tobin, stobin@law.harvard.edu, 617-496-3673

Two particular experiences have helped refine my skills in legal research, analysis, and writing. As a research assistant to Professor Michael Klarman, I have had the privilege of editing a Bancroft Awarding-winning historian's book chapters and class assignments. I am also conducting primary source research for Professor Klarman as he embarks on the next major project of his career. The second experience that has honed skills applicable to a federal clerkship is my work as a member of the Board of Student Advisers. As part of this position, I serve as a teaching fellow for First-Year Legal Research and Writing, guiding students through each stage of the process as they craft legal memos and appellate briefs.

I would welcome any opportunity to interview with you and would be honored to contribute to the important work of your chambers. Thank you for your time and consideration.

Sincerely,

Noah Eckberg

Attachments

Noah Eckberg

651-468-1186 | neckberg@jd24.law.harvard.edu
1800 Massachusetts Ave, Apt 31, Cambridge, MA 02140

EDUCATION

Harvard Law School, Cambridge, MA
Candidate for J.D., May 2024
- *Harvard Civil Rights-Civil Liberties Law Review*, *Subciter*
- HLS Lambda (LGBTQ+ student affinity group)

Duke University, Durham, NC
B.A., *magna cum laude* in Political Science, Minor in History, May 2019
- Phi Beta Kappa
- Angier B. Duke Memorial Scholar (Duke's flagship merit scholarship, covering full tuition and fees)

EXPERIENCE

Board of Student Advisers, Harvard Law School, Cambridge, MA | *Member*, July 2022 – May 2024
- Serve as teaching fellow for First-Year Legal Research and Writing and mentor to 13 first-year students
- Selected for honor society through process that accepted fewer than 10% of applicants in 2022 cycle

Dorsey & Whitney, Minneapolis, MN | *Summer Associate*, May 2023 – July 2023
- Rotate through three groups, gaining exposure to litigation, regulatory affairs, and transactional work

Professor Michael Klarman, Harvard Law School, Cambridge, MA | *Research Assistant*, September 2022 – Present
- Review and edit book chapters and constitutional history course materials
- Summarize secondary sources and identify primary sources to study history of race in American sports

Professor Guy-Uriel Charles, Harvard Law School, Cambridge, MA | *Teaching Fellow*, August 2022 – Present
- Serve as one of three fellows assisting in teaching Civil Procedure to 80 students in fall 2022 and 2023
- Teach discovery unit and host review sessions and office hours on all other topics

Zalkind Duncan & Bernstein, Boston, MA | *Law Clerk*, August 2022 – December 2022
- Researched legal questions and drafted documents for plaintiffs in 10 employment discrimination cases
- Assisted in litigation in federal and state courts and the Massachusetts Commission Against Discrimination

Ben Crump Law, Minneapolis, MN | *Summer Associate*, May 2022 – July 2022
- Served leading civil rights attorney (past cases include George Floyd, Trayvon Martin), handling trial preparation through victim compensation, distilling factual narratives for both legal and public persuasion
- Evaluated legal standing for cases by conducting initial investigation and gathering evidence

Tenant Advocacy Project, Harvard Law School, Cambridge, MA | *Training Director* & *Team Leader*, April 2022 – Present; *Student Attorney*, September 2021 – Present
- Serve public housing clients, drafting reasonable accommodation requests and representing in hearings
- Lead team of 10 members, overseeing cases and guiding student attorneys through administrative process

McKinsey & Company, New York, NY | *Business Analyst*, July 2019 – August 2021
- Served clients in healthcare, banking, consumer goods, and private equity industries, as well as public sector
- Operated as part of team to manage COVID-19 contact tracing for major city government, reporting on data to city officials and personally overseeing program to provide residents with housing, food, and healthcare resources
- Crafted company-wide strategy for health insurer with low-income clients to address social determinants of health
- Acted as sole analyst on COVID-19 response for Center for U.S. Health System Reform, drafting insights for hundreds of teams across North America on healthcare regulatory and legislative changes at outset of pandemic
- Completed six separate due diligences on potential commercial banking industries, leading over 60 expert interviews

INTERESTS

Musical theater, college basketball, legal history, Mediterranean food

Harvard Law School

Date of Issue: June 6, 2023
Not valid unless signed and sealed
Page 1 / 2

Record of: Noah Eckberg
Current Program Status: JD Candidate
Pro Bono Requirement Complete

JD Program

Fall 2021 Term: September 01 - December 03

1000	Civil Procedure 7 Charles, Guy-Uriel	H	4
1002	Criminal Law 7 Kamali, Elizabeth Papp	H	4
1006	First Year Legal Research and Writing 7A Tobin, Susannah	P	2
1003	Legislation and Regulation 7 Rakoff, Todd	H	4
1004	Property 7 Smith, Henry	P	4
	Fall 2021 Total Credits:		18

Winter 2022 Term: January 04 - January 21

1051	Negotiation Workshop Franklin, Morgan	CR	3
	Winter 2022 Total Credits:		3

Spring 2022 Term: February 01 - May 13

1024	Constitutional Law 7 Gersen, Jeannie Suk	P	4
1001	Contracts 7 Coates, John	P	4
2068	Employment Discrimination Churchill, Steve	H	2
1006	First Year Legal Research and Writing 7A Tobin, Susannah	P	2
1005	Torts 7 Sargentich, Lewis	P	4
	Spring 2022 Total Credits:		16
	Total 2021-2022 Credits:		37

Fall 2022 Term: September 01 - December 31

2050	Criminal Procedure: Investigations Crespo, Andrew	P	4
8012	Employment Law Clinic Churchill, Steve	H	3
2070	Employment Law Workshop: Advocacy Skills Churchill, Steve	H	2
2079	Evidence Rubin, Peter	P	2
3172	From Crisis to Opportunity: Leadership in Post-Pandemic Urban America Castro, Julian	CR	1
	Fall 2022 Total Credits:		12

Winter 2023 Term: January 01 - January 31

2249	Trial Advocacy Workshop Sullivan, Ronald	CR	3
	Winter 2023 Total Credits:		3

Spring 2023 Term: February 01 - May 31

2453	Constitutional History II: From Reconstruction to the Civil Rights Movement Klarman, Michael	H	3
2035	Constitutional Law: First Amendment Field, Martha * Dean's Scholar Prize	H*	4
2164	Legal History: American Legal Education Coquillette, Daniel	H	2
2394	Prison Law Weiss, Samuel * Dean's Scholar Prize	H*	3
	Spring 2023 Total Credits:		12
	Total 2022-2023 Credits:		27

Fall 2023 Term: August 30 - December 15

3216	Advanced Constitutional Law Feldman, Noah	~	4
2028	Comparative Constitutional Law Jackson, Vicki	~	4
2459	Labor History and the Law Weinrib, Laura	~	2
2234	Taxation Brennan, Thomas	~	4
	Fall 2023 Total Credits:		14

Spring 2024 Term: January 22 - May 10

2086	Federal Courts and the Federal System Fallon, Richard	~	5

continued on next page

Assistant Dean and Registrar

HARVARD LAW SCHOOL VE RI TAS LEX ET JUSTITIA OFFICE OF THE REGISTRAR

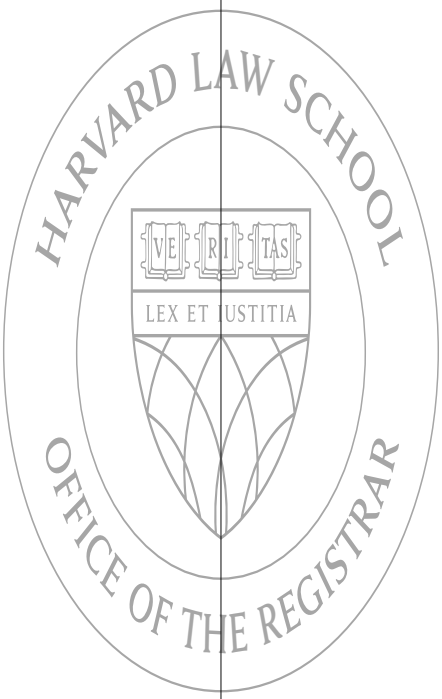
Harvard Law School

Record of: Noah Eckberg

Date of Issue: June 6, 2023
Not valid unless signed and sealed
Page 2 / 2

2169	Legal Profession: Understanding the Plaintiff's Attorney Rubenstein, William	~	3
		Spring 2024 Total Credits:	8
		Total 2023-2024 Credits:	22
		Total JD Program Credits:	86

End of official record



Assistant Dean and Registrar

HARVARD LAW SCHOOL
Office of the Registrar
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A student is in good academic standing unless otherwise indicated.

Accreditation

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

Degrees Offered

J.D. (Juris Doctor)
LL.M. (Master of Laws)
S.J.D. (Doctor of Juridical Science)

Current Grading System

Fall 2008 – Present: Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

Dean's Scholar Prize (*): Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

Rules for Determining Honors for the JD Program
Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.
May 2011 - Present

Summa cum laude	To a student who achieves a prescribed average as described in the Handbook of Academic Policies or to the top student in the class
Magna cum laude	Next 10% of the total class following *summa* recipient(s)
Cum laude	Next 30% of the total class following *summa* and *magna* recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

Prior Grading Systems

Prior to 1969: 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67(B-), 60-64 (C), 55-59 (D), below 55 (F)

1969 to Spring 2009: A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

Prior Ranking System and Rules for Determining Honors for the JD Program
Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.
Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

1969 to June 1998	General Average
Summa cum laude	7.20 and above
Magna cum laude	5.80 to 7.199
Cum laude	4.85 to 5.799

June 1999 to May 2010
Summa cum laude General Average of 7.20 and above (exception: *summa cum laude* for Class of 2010 awarded to top 1% of class)

Magna cum laude	Next 10% of the total class following *summa* recipients
Cum laude	Next 30% of the total class following *summa* and *magna* recipients

Prior Degrees and Certificates
LL.B. (Bachelor of Laws) awarded prior to 1969.
The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).

Assistant Dean and Registrar

June 06, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It gives me great pleasure to recommend Noah Eckberg for a clerkship in your chambers. I have known Noah since the fall of 2021, when he joined my forty-person section of First-Year Legal Research & Writing (LRW). We worked together closely over the full-year class, meeting regularly in conference to discuss his writing and in office hours to talk about law school, career goals, and basketball (a sporting interest we share). Based on Noah's skill, temperament, and generosity of spirit, I hired Noah to be a member of the Board of Student Advisers, the group of teaching fellows in LRW, and asked him to be part of my own teaching team. He has excelled in that role as well, providing outstanding pedagogical and pastoral guidance to his students. With his combination of incisive analytic ability, collaborative pedagogical skill, and warm personality, Noah would make an excellent law clerk. Let me say a bit more about each of these qualifications.

Noah's academic talent was evident from the first time I met with him in his one-l fall; he is a quick thinker, a thoughtful interlocutor, and a relentless researcher. As he adjusted to the structure of legal writing, he showed initiative, purpose, and receptivity to feedback. He writes with grace and clarity and shows careful attention to detail. I was particularly impressed by Noah's thoughtful reaction to earning a Passing grade on the high end of our strict curve; I knew he would be disappointed because he is a strong student who just missed an Honors. Instead of complaining or evincing frustration, he set up a meeting to talk with me about my feedback and how he could continue to improve. That purposeful attitude has served him well in a number of high-pressure jobs, including at McKinsey and (as a summer intern) Bridgewater Associates, and I know it would help him excel as a law clerk. Noah's legal analytic skill was especially evident in what I consider to be the hardest first-year course, Civil Procedure; as a result, Professor Guy-Uriel Charles (writing under separate cover) invited him to become a teaching fellow for the course this year.

In addition to his high intelligence and clarity of expression, Noah is an uncommonly empathetic person, and that combination of characteristics has made him an exceptional teaching fellow in both Civil Procedure and First-Year Legal Research & Writing. Quite simply, Noah's students adore him. They trust his judgment, find his explanations helpful (sometimes more helpful than those provided by the instructors!), and rely on his thoughtful check-ins. Here are two representative comments from his teaching evaluations in legal writing:

• "Noah was great and gave very good feedback on my outlines and memo drafts. It feels like he's been an editor before, because he knows how to present helpful info."

• 'Noah gave such specific feedback on my outline and gave me a clear vision of what I needed to do for both memos. He was knowledgeable about all my questions and if he didn't know he would refer me to Susannah and never lead me astray!"

In these quotations, you can see why Noah will be an outstanding law clerk. He is thorough, careful, and mindful of what he knows and doesn't know. As an instructor, I trusted Noah to give his students helpful guidance that didn't tip over into spoon-feeding and to help me identify students who needed additional help or who were facing challenges outside the classroom. His judgment about when and how to intervene is impeccable, and he frequently improved our lesson plans by flagging topics on the students' minds that deserved more attention. One notable example comes to mind: I was teaching the tricky concept of theory of the case in appellate brief writing, and we were discussing different ways to explain the idea. Noah suggested analogizing the theory of the case to a chorus in a song; one's argument is in the lyrics, but the chorus or refrain should always be the overarching theory. That framing really hit home for the students, and they referred to it regularly throughout the rest of the semester. I have heard similar stories from his civil procedure students; Noah is always thinking of new ways to explain tough concepts so that they will stick.

Finally, Noah's generous spirit and broad range of reference will make him an asset in chambers. Perhaps because of his love of basketball (and Duke basketball in particular, where he helped run the famous student campground outside Cameron Indoor Stadium before games), Noah is a consummate team player. He is supportive of his colleagues, always ready to pitch in when needed, and possessed of a gentle sense of humor. In our weekly teaching meetings, I established a tradition of ending on a high note by asking each teaching assistant to share what they were looking forward to that day. Answers could range from a plan to get ice cream with a friend to going to a concert or just reading a book for pleasure. As the semester got busier, I forgot one day to close the meeting with our tradition. We started to get up from the table and Noah stopped us, saying, "Nope. We can't leave yet—we haven't said what we're looking forward to, and there has to be something!" We all broke down laughing and then returned to form by sharing our happy plans for the day. Noah is also well-read and deeply interested in history; he digs deep into legal questions and keeps his eye on the human stories behind each case. I have complete confidence in his ability to render skilled assistance in the resolution of the challenging matters before your court.

In short, I couldn't recommend Noah more highly. Please don't hesitate to let me know if I can share any more information about this talented candidate.

Sincerely,

Susannah Barton Tobin - stobin@law.harvard.edu - 617-496-3673

Susannah Barton Tobin
Managing Director, Climenko Program
Assistant Dean for Academic Career Advising

Susannah Barton Tobin - stobin@law.harvard.edu - 617-496-3673

June 01, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is my pleasure to recommend Noah Eckberg to clerk in your Chambers. I have had the privilege of both teaching Noah and having him serve as my Teaching Fellow for my Civil Procedure class. I asked Noah to serve as my Teaching Fellow not just because he did extremely well in Civil Procedure class, which he did. But also, because when I interacted with him throughout the semester—when I called on him in class, when he came to office hours, and when we interacted in other settings outside of class—I found him to be consistently thoughtful, earnest, diligent, and thoroughly delightful. Having now worked with over the course of the year, I can say that he is even more impressive than I thought.

I meet with my Teaching Fellows regularly and provide them an opportunity to collectively teach one unit of the class. Noah possesses many amazing qualities that are irrepressible and undeniable. First, he is a very detail-oriented person. He came to our meetings with a detailed plan, which he would update depending upon what took place in our meeting. Importantly, he would follow the updated plan. Second, I loved the fact that he was self-sufficient. One key reason that I hire Teaching Fellows is because I want to provide additional points of contact for my students; I want them to expand my reach with my students. This means I need individuals who can take the imitative to engage the students, understand their struggles, and communicate those things to me.

Noah is as responsible as they come. He scheduled and held independent office hours with the students. He reviewed difficult topics with them. And he did a great job communicating with me with about to their struggles and challenges. I should also add that he was confident enough to talk about his struggles and challenges. I found that quite impressive.

Third, Noah takes criticism and suggestions in stride. He is very easy to talk to. He is open to feedback. Indeed, he invites critical feedback. This makes it very easy to work with him. I don't have to tell him twice how I want him to do things. Additionally, he's an excellent writer. He takes the writing craft very seriously and works very hard at it. Consequently, his written work product is extremely impressive.

In sum, Noah Eckberg will be a great clerk. He has all of the superior intellectual tools that a judge seeks in a clerk. He is very smart and a fabulous writer. His research skills are fantastic. His analytical abilities are second-to-none.

He also has the necessary characteristics that judges are looking for. He is mature, works very hard, is a self-starter, and takes advice very seriously and diligently. There is no task that you can give him that he would not perform with aplomb. He is perfectly at home with numbers, history, science, and of course law.

Last, though certainly not least, he is a gem of a human being. He cares about the world, and he cares about people. He is serious about making the world a better place. He has strong values and principles. At the same time, he is very open minded. He does not surround himself simply with like-minded others. He is comfortable with people who disagree with him. He can see the many sides of a problem without being paralyzed by indirection and indecision. There is no doubt in my mind that he will be a stellar clerk and an unbelievable lawyer. To reiterate, it is my pleasure to recommend him to you and I do so very no reservations whatsoever.

Sincerely,

Guy-Uriel Charles
Charles Ogletree, Jr. Professor of Law

Guy-Uriel Charles - gcharles@law.harvard.edu

June 02, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write in support of the clerkship application of Mr. Noah Eckberg, who was a student in my Constitutional History II class ("From Reconstruction to the Civil Rights Movement") in the spring of 2023 and worked as my research assistant for most of the 2022–23 school year. Noah is a smart, meticulous, and hard-working young man, possessed of a pleasant manner and a delightful personality. I am confident he will make an excellent judicial law clerk.

Noah volunteered to work as my research assistant this past academic year, and I feel very fortunate that he did so. In that capacity, he has helped me prepare footnotes for an article I had written and did several proofreading/cite-checking assignments for materials I was preparing for my Constitutional Law and Constitutional History classes. Currently, he is reading and writing a memo for me on a book about the classic East-West All-Star games in the old Negro Leagues (1930s–40s), which pertains to my current research project—a book on race and sports in American history.

Noah has been an incredible research assistant. His attention to detail is extraordinary, and his eagerness to help invigorating. While reviewing some of his proofreading assignments, I jotted down some notes—in the hope that should Noah later ask me for a letter of recommendation, such as this one, I would have some useful detail to provide.

Noah is so attentive to detail, that he detects inconsistent usage of em and en dashes in the materials. He also noticed inconsistent use in the materials of hyphenation in the word "officeholding" and found many inconsistent capitalization of various terms in the materials.

Here's another good illustration of his extraordinary attention to detail—from an assignment on the 14th Amendment in my Constitutional History class:

> Page 1, paragraph 4: I understand that this may have been intentional given that this is one of the first ten amendments, but I wanted to call out (in case this was inadvertent) that "Fifth Amendment" in brackets utilizes the word "Fifth" rather than "5th," by contrast to mentions of the 14th Amendment throughout (which use the number rather than the word). If this was intentional, I should note that footnote 3 on page 12 refers to the 9th Amendment twice and 10th Amendment once using numbers rather than words.

Here's one example of a very good stylistic suggestion Noah offered:

> Page 6, paragraph 3: The sentence that begins "Between 1865 and 1869…" may read more clearly if the bracketed portion ("in no northern state…") is moved to the end of the sentence. I understand if you would prefer to keep it as is given that the bracketed portion is meant to highlight the "miniscule black population," but I wanted to flag nonetheless since the sentence required re-reading to understand fully.

Here is an excellent illustration of Noah's willingness to go the extra mile to be helpful:

> Page 26, paragraph 3: In the bracketed portion of the first sentence, "amendment" may need to be capitalized for consistency with the other instances of the use of "proposed Amendment" in the assignment. I will flag the other instances of non-capitalization below, but, in case you would prefer that this not be capitalized throughout, here are the instances in which "proposed Amendment" is capitalized (from portions you have written) [omitting Noah's list of a half dozen instances of non-capitalization—which saved me the trouble of searching for them myself; in my experience, not many research assistants would have done this without my asking them to do so].

In additional to his proofreading and footnote-writing assignments, Noah identified and edited an article on the original understanding of the Fourteenth Amendment for use in my revised Constitutional History materials and suggested where in the reading materials it would most appropriately be placed (while offering additional options should I disagree with his initial suggestion). When submitting assignments, Noah always offered to do additional work that might be necessary in finalizing them. He always kept me apprised as to where he was in terms of completing assignments, told me when he expected to finish, while at the same time offering to drop other matters and finish more quickly if I needed him to do so. For example, quoting from one of Noah's emails to me: "Though I have a few commitments over this upcoming weekend, my plan is to get the documents with all potential edits to you by mid-to-late next week. Of course, if you need me to send these materials sooner, I will absolutely adjust to do so." It is hard to imagine a more accommodating and helpful research assistant.

As noted, Noah was a student in my Constitutional History class this past semester. He was attentive in class, participated occasionally in after-class discussion, and wrote a strong exam, earning an Honors grade for the course. On the three questions on the exam, Noah earned, respectively, grades of 3.65 (an "A-"), a 3.45 (right on the border line between a "B+" and an "A-"), and a 3.4 (a high "B+). These normalized scores translated into a solid Honors grade, placing Noah roughly in the top 30 percent of the class.

Michael Klarman - mklarman@law.harvard.edu - 617-495-7646

To give you a better sense of Noah's exam, please allow me to reproduce several of his answers to the "compare and contrast" questions on the answer (this was Question II). I have always felt that these sorts of questions—as opposed to the essay questions—best enable me to assess the students' mastery of the course material.

One of these questions asked the students to compare "the South's pupil placement laws of the 1950s with San Francisco's laundry ordinances of the 1880s." Noah responded, "Both were facially-neutral laws that were used for racial discrimination, though the Court treated them differently. The South's pupil placement laws allowed evasion of Brown, and San Francisco's ordinances discriminated against Chinese. However, the Court upheld the pupil placement laws against a facial challenge (Shuttlesworth), while the Court struck down the San Francisco system and its use to discriminate (Yick Wo)."

Another such question asked the students to compare and contrast "Senator Joseph McCarthy's speech in Wheeling, West Virginia, in 1950 with President Grant's speech to the reunion of the Army of the Tennessee in 1875." In response, Noah wrote that "both emphasized an enemy for political gain. McCarthy fabricated an allegation that he knew of 205 communists in the State Department to bolster his national profile and harm Democrats. Grant emphasized a common Catholic enemy to unify Republicans that were fracturing on Reconstruction and gain an advantage in upcoming elections."

In response to a question asking the students to compare and contrast "the 1866 midterm elections with the 1936 presidential election," Noah replied: "Both were landslides, but they differed in the centrality of salient issues. Republicans won a massive victory in the 1866 elections, which was seen as a referendum on the 14th Amendment. In 1936, FDR was re-elected by a wide margin but chose not to discuss the court, though the victory bolstered his court-packing confidence."

Yet another of these questions asked the students to compare and contrast "the position of the Japanese American Citizens' League on litigating against Japanese-American internment in the early 1940s with the position of the American Jewish Congress on challenging school prayer in the 1950s." Noah responded: "Both groups did not want to litigate in favor of their interests for fear of backlash. The Japanese American Citizens' League feared generating additional discrimination by litigating against internment in the early 1940s. The American Jewish Congress declined to challenge school prayer in the 1950s for fear of opposing domestic anti-Communism in a decade of fervent religiosity."

To take one final example, one question asked the students to compare and contrast "the foreign-policy implications of American slavery in the 1860s with the foreign-policy implications of American racial segregation in the 1950s" To this question, Noah ably responded: "Progressive racial attitudes on both issues had foreign-political benefits. In the 1860s, making the Civil War a war about slavery neutralized the chance of Great Britain and France recognizing the South (and potentially intervening), as those countries were anti-slavery. In the 1950s, ending racial segregation was beneficial to reassuring the developing world that capitalist democracy was not synonymous with white supremacy."

In sum, Noah's answers to the compare-and-contrast questions on the Constitutional History exam were thoughtful, well-written, economical (the students were given only about 50 words per comparison as their word limit), and demonstrated impressive mastery of the course materials.

Noah has been an active participant in the intellectual and extracurricular life of Harvard Law School. He is a teaching fellow for first-year legal research and writing, and I know how highly the director of that program, Susannah Tobin (who is a close friend of mine), thinks of Noah. He has been a research assistant to me and a teaching fellow to another of my colleagues. He is also a member of Harvard Law School's branch of Lambda Legal and is an editor on the Harvard Civil Rights–Civil Liberties Law Review.

Noah has also manifested an admirable commitment to public interest work during his time at Harvard Law School. He has played a significant role in the law school's Tenant Advocacy Project, and he spent one summer working for Ben Crump Law helping to prepare civil rights cases, especially those involving victim compensation for mistreatment within the criminal justice system.

In the fall, I invited Noah to lunch as a small thank-you for all of the research work he had done for me during that semester. I enjoyed our time together immensely. Noah is direct, genuine, thoughtful, cheerful, and a good conversationalist. Whether talking about current affairs, the law, American constitutional history, or Duke basketball, Noah has interesting things to say and a delightful manner in which to say them. I cannot help but note that he is one of the most polite, respectful, and considerate students I have come across in years. He would be a delightful presence in judicial chambers.

Noah and I also had interesting email exchanges throughout the spring semester, as he and I both watched documentaries on race and basketball over the last sixty years (on Bill Russell, Kareem Abdul-Jabbar, Magic and Bird, etc.). What struck me in these conversations was Noah's infectious intellectual curiosity, his keen desire to become better informed about the racial history of the United States, and his eagerness to be helpful with regard to a project that he deeply believes in (my current book project on race and sports in American history). At one point, Noah actually offered to write up memos on the documentaries that he was watching—an offer I much appreciated but declined! (I have too much fun watching the documentaries myself!)

In sum, Noah possesses all of the qualities of a superb judicial law clerk. He is smart, hard-working, dependable, resourceful, polite and respectful, cheerful and amiable. I envy the fortunate judge who has Noah in chambers for a year as law clerk. I recommend him to you with great enthusiasm.

Yours sincerely,

Michael Klarman - mklarman@law.harvard.edu - 617-495-7646

Michael Klarman

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Noah Eckberg

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WRITING SAMPLE

Drafted Summer 2022

Used with permission from supervising attorney.
Names have been changed to protect confidentiality.

MEMORANDUM

To: Supervising attorney
From: Noah Eckberg
Date: June 17, 2022
Re: Assessing government liability for drowning in Casper-Alcova Irrigation District canal

QUESTION PRESENTED

Jesse Smith's estate would like to file suit in the United States District Court for the District of Wyoming for the drowning deaths of Mr. Smith and his dog in a Casper-Alcova Irrigation District (CAID) canal. The death was on Bureau of Land Management (BLM) land, and CAID had a right-of-way for its irrigation canal. The canal had only one sign which read "Siphon Poison Creek 22.2 ML / CFS" and lacked fencing to prevent entry into the canal. It is unclear whether CAID agents or BLM agents placed the sign and decided on the lack of fencing around the canal. Will a federal court determine that CAID can be held liable for negligence committed on property granted through a right-of-way?

BRIEF ANSWER

Probably not. A federal court will most likely determine that CAID cannot be held liable for negligence committed on property granted through a right-of-way because although federal regulations assign liability to grantees of a right-of-way, CAID has governmental immunity under Wyoming law. Based on current information, this immunity holds. If, however, the date of issuance is earlier than July 1, 1979, or if the exact terms of the right-of-way provide for liability, additional analysis is necessary to determine if CAID remains immune.

FACTS

This case is about the drowning of Jesse Smith and his dog in a Casper-Alcova Irrigation District canal. The canal was in Natrona County, Wyoming, on federal land administered by the

Bureau of Land Management (BLM), and the land was granted to CAID through a right-of-way. Though there were no witnesses to the incident, authorities believe that Mr. Smith entered the water to save his dog. Despite a pump under the surface moving millions of gallons of water per minute, an observer viewing the surface of the water would see little indication of any pump. The pump is believed to be the cause of Mr. Smith and his dog's drowning deaths. The canal lacked any fencing and had one sign on one side of the canal reading "Siphon Poison Creek 22.2 ML / CFS." It is unclear where Mr. Smith entered the canal or if the sign would have been in view at the time of his entrance.

DISCUSSION

The court will likely determine that CAID cannot be held liable for Mr. Smith's death. Federal regulations assign liability to grantees of rights-of-way, 43 CFR § 2807.12(a), but limit liability for government actors as grantees to the extent that applicable law allows at the time of the issuance of the grant, 43 CFR § 2807.12(b). The applicable Wyoming state law provides governmental immunity to public irrigation districts like CAID as public corporations through the Wyoming Governmental Claims Act (WGCA). *See Krenning v. Heart Mountain Irr. Dist.*, 200 P.3d 774, 778 (Wyo. 2009). The WGCA went into effect on July 1, 1979, Wyo. Stat. Ann. § 1-39-101, making this date potentially dispositive in determining whether Mr. Smith can hold CAID liable, *see* 43 CFR § 2807.12(b). This memo will first explain how liability functions under a right-of-way agreement and Wyoming state law, after which it will establish the exact nature of CAID's legal ownership of the granted land. Last, this memo will describe why CAID likely qualifies for governmental immunity, all contributing to a determination that Mr. Smith's estate likely cannot hold CAID liable.

I. Federal regulations assign liability to grantees of rights-of-way, and Wyoming state law allows for irrigation canal owners to be held liable for negligence.

A right-of-way agreement on federal land allows the Secretary of the Interior to grant federal land to people and entities for special projects provided that the land is continuously used for the purpose granted. *See Aldrich Enterprises, Inc. v. United States*, 938 F.2d 1134, 1139 (10th Cir. 1991) (citing *Kern River Co. v. United States*, 257 U.S. 147 (1921)). Federal regulations assign liability to grantees of rights-of-way. 43 CFR § 2807.12(a) ("if you hold a grant, you are liable to the United States and to third parties for any damage or injury they incur in connection with your use and occupancy of the right-of-way"). Still, such regulations allow for strict liability only for "foreseeable" events. 43 CFR § 2807.12(b). For government actors, federal regulations limit liability "to the fullest extent law allows at the time that BLM *issues* [the] grant" (emphasis added). *Id.* Even if an actor lacks the legal power to assume full liability, "BLM may require [the grantee] to provide a bond, insurance, or other acceptable security to… repair damages or make restitution to the fullest extent of [their] powers," 43 CFR § 2807.13(a), including "cover[ing] any losses, damages, or injury to human health, the environment, and property incurred in connection with… use and occupancy of the right-of-way," 43 CFR § 2807.13(b)(2).[1]

In most cases, the owner of an irrigation canal may be held liable for negligence. The Supreme Court of Wyoming has previously stated that "the owner of an irrigating ditch is bound to exercise reasonable care and skill to prevent injury to other persons from such ditch, and he will be liable for all damages occurring to others as a result of his negligence or unskillfulness in constructing, maintaining, or operating the ditch." *Pine Creek Canal No. 1 v. Stadler*, 685 P.2d 13, 17 (Wyo. 1984) (quoting *Howell v. Big Horn Basin Colonization Co.*, 81 P. 785, 790 (Wyo. 1905)). Additional actors can be secondarily negligent for actions contributing to a larger

[1] Because of this provision in the federal regulations, it may be worth determining if CAID had any such insurance policy or if the BLM had any such requirement for CAID.

failure. *See, e.g., Pine Creek Canal No. 1*, 685 P.2d at 15 (assigning liability to a secondary actor, the landowner, for actions contributing to a larger failure of an irrigation ditch).

II. The land granted through a right-of-way agreement to CAID likely functions as an easement, making the assignment of liability potentially dependent on agreement's terms.

To determine ownership of land granted through right-of-way agreements for irrigation, the Tenth Circuit relies upon the law of the state in which the property resides. *See Aldrich Enterprises*, 938 F.2d at 1138 (citing 28 U.S.C. § 1346(b)). The exact nature of ownership under a right-of-way agreement is not clear, though the right-of-way most likely acts an easement. The nature of ownership is significant because it may alter the exact terms related to the assignment of liability.

However, neither the Supreme Court nor the Tenth Circuit have ruled recently on the nature of ownership of land granted through rights-of-way for canal use. The Supreme Court in *Kern River*, a 1921 case about a canal granted through a right-of-way agreement, stated that the "right of way intended by the act… was neither a mere easement nor a fee simple absolute, but a limited fee on an implied condition of reverter in the event the grantee ceased to use or retain the land for the purpose indicated in the act." *Kern River Co.*, 257 U.S. at 152. However, the decision in *Kern River* rested on *Rio Grande W. R. Co. v. Stringham*, 239 U.S. 44 (1915), which the Court reconsidered in *Great N. Ry. Co. v. United States*, 315 U.S. 262 (1942). In *Great Northern Railway*, the Court found that the General Railroad Right-of-Way Act (the 1875 law in question) in both *Stringham* and *Great Northern Railway* granted only an easement. *See Bijou Irr. Dist. v. Empire Club*, 804 P.2d 175, 181 (Colo. 1991); *see also BNSF Ry. Co. v. Box Creek Mineral Ltd. P'ship*, 420 P.3d 1661, 169 (Wyo. 2018). Though the 1875 law in question in both *Stringham* and *Great Northern Railway* concerned railroads, the 1875 law also contained identical language to the portion of the General Revision Act of 1891 concerning canals at issue

in *Kern River*. *See Bijou Irr. Dist.*, 804 P.2d at 181. Given that "easements are reviewed under the same principles that have been established for the interpretation of contracts," *Davison v. Wyo. Game & Fish Comm'n*, 238 P.3d 556, 560 (Wyo. 2010), beginning with the plain language of the agreement, *Claman v. Popp*, 279 P.3d 1003, 1013 (Wyo. 2012), the assignment of liability in Mr. Smith's case may differ based on the exact terms granting the easement to CAID.

III. A federal court will likely rule that CAID cannot be held liable, assuming the right-of-way was issued after the Wyoming Governmental Claims Act went into effect.

Beyond federal law, Wyoming law provides governmental immunity to public irrigation districts. *See Krenning*, 200 P.3d at 778. Public irrigation districts are "public corporations" for purposes of the Wyoming Governmental Claims Act (WGCA), *see id.*, providing irrigation districts governmental immunity under the WCGA, *id.* at 781. To make such a determination, *Krenning* distinguishes between "public utilities" and "public corporations" for purposes of assigning liability, focusing specifically on whether the entity serves "only a limited class of individuals" (public corporation) or if the entity supplies water "to or for the public" (public utility). *Id.* at 781-82. Because Wyoming law allows "only those lands that benefit from irrigation works" to be members of an irrigation district, irrigation districts include only a subset of the overall public, making them public corporations. *Id.* at 782 (citing Wyo. Stat. Ann. § 41-7-203).

CAID likely has governmental immunity under WGCA based on *Krenning*. However, if CAID received its right-of-way grant prior to the implementation of the WGCA on July 1, 1979, Wyo. Stat. Ann. § 1-39-101, Mr. Smith's estate can argue that CAID can be held liable because there was no governmental immunity at the time of the *issuance* of the right-of-way, *see* 43 CFR § 2807.12(b). Such timing may ultimately be dispositive in determining whether CAID can be held liable. Note that the irrigation canals in *Pine Creek Canal No. 1* and *Howell* were

constructed prior to 1979, which may have allowed ditch owners to be held liable in both cases. *See Pine Creek Canal No. 1*, 685 P.2d at 20; *see also Howell*, 81 P. at 791-92. Still, a court must consider other factors, such as the proportion of the public benefitting from a canal, to determine if governmental immunity applies. *See Krenning*, 200 P.3d at 781. If CAID can be held liable, Mr. Smith's estate could potentially receive compensation for his wrongful death and that of his dog (as property). *See* 43 CFR § 2807.13(b)(2). Whether CAID would be strictly liable will also depend on the factfinder's determination as to whether the series of events was "foreseeable." *See* 43 CFR § 2807.12(b).

Additionally, regardless of the exact determination of the nature of ownership of canal land granted through a right-of-way, it is unlikely that the federal government could be held liable. Given that federal regulations assign liability to the grantee of a right-of-way, 43 CFR § 2807.12(a), there is little reason to believe that the specific agreement granting CAID the right-of-way would say otherwise. Mr. Smith's estate can evaluate the exact agreement granting CAID the right-of-way to determine if there is any difference in the assignment of liability in this instance, *cf. Davison*, 238 P.3d at 560, but differences may be unlikely given federal regulation directly relevant to the matter.

CONCLUSION

Mr. Smith's estate likely cannot hold CAID liable for the drowning deaths of Mr. Smith and his dog in the CAID canal.

Applicant Details

First Name	**Abraham**
Middle Initial	**S.**
Last Name	**Eichner**
Citizenship Status	**U. S. Citizen**
Email Address	**eichnera@umich.edu**
Address	**Address** Street **222 Vance Street** City **Chapel Hill** State/Territory **North Carolina** Zip **27516** Country **United States**
Contact Phone Number	**9194481768**

Applicant Education

BA/BS From	**Carleton College**
Date of BA/BS	**May 2018**
JD/LLB From	**The University of Michigan Law School** **http://www.law.umich.edu/currentstudents/careerservices**
Date of JD/LLB	**May 3, 2024**
Class Rank	**School does not rank**
Does the law school have a Law Review/Journal?	**Yes**
Law Review/Journal	**No**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Campbell Moot Court** **1L Oral Advocacy Competition**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Mendelson, Nina
nmendel@umich.edu
734-936-5071

Koernig, Kristin
Kristin.koernig@hq.doe.gov
(202) 586-3593

Buchsbaum, Andrew
buchs@umich.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

June 02, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a rising third-year student at the University of Michigan Law School and am writing to apply for a clerkship in your chambers for the 2024–2025 term.

At Michigan Law, I have worked hard to develop my legal skills and have earned a 4.02 grade point average. I further developed my legal writing for the Campbell Moot Court competition, in which I reached the quarterfinals, and by writing a paper on cost-benefit analyses under the Clean Air Act that I hope to publish as a note. Prior to law school, I managed two successful city council races at once in Raleigh, which helped me learn to solve problems under time pressure. I then ran the legislative office for Minority Whip Jay Chaudhuri in the North Carolina Senate, where I honed my research and writing skills by drafting legislation such as the End Racial Profiling in Traffic Stops Act. I believe that my experiences would allow me to contribute to your chambers.

I seek an appellate court clerkship because I enjoy the process of legal analysis and writing, particularly on novel legal issues. I also believe a clerkship in your chambers would help prepare me to pursue environmental prosecutorial work due to your background in white-collar prosecution.

I have attached my resume, law school transcript, undergraduate transcript, and a writing sample. My letters of recommendation will be sent by:

• Professor Nina Mendelson: nmendel@umich.edu, (734) 936-5071
• Professor Andrew Buchsbaum: buchs@umich.edu, (734) 763-0404
• Ms. Kristin Koernig, Esq.: kristin.koernig@hq.doe.gov, (202) 586-3593

Thank you for your time and consideration.

Respectfully,
Abe Eichner

ABE EICHNER

222 Vance Street, Chapel Hill, NC 27516
919-448-1768 • eichnera@umich.edu

EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL — Ann Arbor, MI
Juris Doctor GPA: 4.02 (historically top 1%) — Expected May 2024
Honors: Dean's Scholar
Certificate of Merit (top grade) in: Legislation and Regulation; Criminal Law; Environmental Crimes
Activities: Quarterfinalist in Campbell Moot Court Competition; Semifinalist of 1L Oral Advocacy Competition; Treasurer of Environmental Law Society; Peer Tutor
Note in Progress: *The EPA Regulates Greenhouse Gases More Than You Think: Climate Co-Benefits Under the Clean Air Act*

CARLETON COLLEGE — Northfield, MN
Bachelor of Arts in Political Science, *Magna Cum Laude* — June 2018
Honors: Phi Beta Kappa, Dean's List, National Merit Scholar
Activities: First Team DIII All-American, Captain, GoP Ultimate Frisbee; Organizer, Students for a Livable Wage

EXPERIENCE

SOUTHERN ENVIRONMENTAL LAW CENTER — Chapel Hill, NC
Legal Intern — May 2023 – Aug 2023

US DEPARTMENT OF ENERGY, OFFICE OF THE GENERAL COUNSEL — Washington, DC
Legal Intern — May 2022 – July 2022

- Wrote series of memos assessing the risk a recent Fifth Circuit decision poses to Energy Policy and Conservation Act (EPCA) enforcement actions before ALJs, recommending that the DOE defend against a Seventh Amendment challenge by arguing EPCA enforcement action do not sound in common law
- Drafted motions for summary judgment and discovery requests for constructive discharge and FOIA cases
- Assisted draft of motion for summary judgment for challenge to EPCA energy conservation rulemaking on short-cycle dishwashers
- Wrote memo concluding that DOE could use Other Transaction Authority to make grants under the Bipartisan Infrastructure Law

NC SENATE MINORITY WHIP JAY CHAUDHURI — Raleigh, NC
Legislative Assistant — Dec 2019 – July 2021

- Researched and drafted the End Racial Profiling in Traffic Stops Act
- Worked with constituents to solve issues with state government by coordinating between state agencies as Senator Chaudhuri's only staffer, including resolving more than 300 claims for unemployment benefits

DAVID KNIGHT FOR RALEIGH CITY COUNCIL — Raleigh, NC
Campaign Manager — Mar 2019 – Oct 2019

- Managed campaign to defeat incumbent with a first-time environmentalist candidate
- Researched and prepared candidate for debates on city issues including public transit and environment

PATRICK BUFFKIN FOR RALEIGH CITY COUNCIL — Raleigh, NC
Campaign Manager — May 2019 – Oct 2019

- Won race for open seat with first-time candidate

ADDITIONAL

Volunteer: Raleigh Housing Justice Team Leader at Carolina Jews for Justice, 2020 – 2021
Interests: Ultimate Frisbee, Chess

Control No: E196648101 Issue Date: 05/30/2023 Page 1

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Eichner,Abraham
Student#: 06447601

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2021		**(August 30, 2021 To December 17, 2021)**						
LAW	510	003	Civil Procedure	Nicholas Bagley	4.00	4.00	4.00	A
LAW	530	002	Criminal Law	Barbara Mcquade	4.00	4.00	4.00	A
LAW	580	004	Torts	Scott Hershovitz	4.00	4.00	4.00	A-
LAW	593	011	Legal Practice Skills I	Nancy Vettorello	2.00		2.00	H
LAW	598	011	Legal Pract:Writing & Analysis	Nancy Vettorello	1.00		1.00	H
Term Total				**GPA: 3.900**	**15.00**	**12.00**	**15.00**	
Cumulative Total				**GPA: 3.900**		**12.00**	**15.00**	
Winter 2022		**(January 12, 2022 To May 05, 2022)**						
LAW	520	003	Contracts	Kristina Daugirdas	4.00	4.00	4.00	A
LAW	540	003	Introduction to Constitutional Law	Don Herzog	4.00	4.00	4.00	A
LAW	569	002	Legislation and Regulation	Nina Mendelson	4.00	4.00	4.00	A
LAW	594	011	Legal Practice Skills II	Nancy Vettorello	2.00		2.00	H
Term Total				**GPA: 4.000**	**14.00**	**12.00**	**14.00**	
Cumulative Total				**GPA: 3.950**		**24.00**	**29.00**	

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The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Eichner,Abraham
Student#: 06447601

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2022		**(August 29, 2022 To December 16, 2022)**						
LAW	410	001	Clean Energy & Climate Chg Law	Howard Learner	2.00	2.00	2.00	A
LAW	751	001	Accounting for Lawyers	James Desimpelare	3.00	3.00	3.00	A
LAW	791	002	Environmental Crimes	Michael Fisher Warren Harrell	3.00	3.00	3.00	A
LAW	793	001	Voting Rights / Election Law	Ellen Katz	4.00	4.00	4.00	A
LAW	900	393	Research	Patrick Barry	1.00		1.00	S
Term Total				**GPA: 4.000**	**13.00**	**12.00**	**13.00**	
Cumulative Total				**GPA: 3.966**		**36.00**	**42.00**	
Winter 2023		**(January 11, 2023 To May 04, 2023)**						
LAW	608	001	Advanced Legal Research	Shay Elbaum Kate Britt	2.00	2.00	2.00	A
LAW	657	001	Enterprise Organization	Edward Fox	4.00	4.00	4.00	A+
LAW	679	001	Environmental Law and Policy	Rachel Rothschild	4.00	4.00	4.00	A+
LAW	842	001	Envt'l Law:Gaps&Uninten Conseq	Andrew Buchsbaum	3.00	3.00	3.00	A
LAW	900	393	Research	Patrick Barry	1.00		1.00	S
Term Total				**GPA: 4.184**	**14.00**	**13.00**	**14.00**	
Cumulative Total				**GPA: 4.024**		**49.00**	**56.00**	
Fall 2023		**(August 28, 2023 To December 15, 2023)**						
Elections as of:		05/30/2023						
LAW	630	001	International Law	Karima Bennoune	4.00			
LAW	677	001	Federal Courts	Gil Seinfeld	4.00			
LAW	693	001	Jurisdiction and Choice Of Law	Mathias Reimann	4.00			
LAW	797	001	Model Rules and Beyond	Bob Hirshon	3.00			

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The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Eichner,Abraham
Student#: 06447601

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University of Michigan Law School Grading System

Honor Points or Definitions

Through Winter Term 1993		Beginning Summer Term 1993	
A+	4.5	A+	4.3
A	4.0	A	4.0
B+	3.5	A-	3.7
B	3.0	B+	3.3
C+	2.5	B	3.0
C	2.0	B-	2.7
D+	1.5	C+	2.3
D	1.0	C	2.0
E	0	C-	1.7
		D+	1.3
		D	1.0
		E	0

Other Grades:

F Fail.

H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.

I Incomplete.

P Pass when student has elected the limited grade option.*

PS Pass.

S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)

T Mandatory pass when student is transferring to U of M Law School.

W Withdrew from course.

Y Final grade has not been assigned.

* A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

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Any questions concerning this transcript should be addressed to:

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University of Michigan Law School
625 South State Street
Ann Arbor, Michigan 48109-1215
(734) 763-6499

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CARLETON COLLEGE

NORTHFIELD, MINNESOTA 55057

Abraham Stein Eichner ID: 1948408 D.O.B.: 11 Jun
Major: Political Science/IR
Minor:

			CRED ATT	CRED CMPL	GRADE PTS	TERM GPA	CUM GPA
Fall Term 2014							
HIST	100 American Antebellum Slavery	A-	6	6	22.02		
MATH	121 Calculus II	A	6	6	24.00		
SPAN	101 Elementary Spanish	A	6	6	24.00		
	Term Totals:		18	18	70.02	3.89	3.89
	Cumulative Totals:		18	18	70.02		3.89
Winter Term 2015							
ARTH	102 Introduction to Art History II	S*	6	6	0.00		
GEOL	115 Climate Change in Geology	A-	6	6	22.02		
GEOL	115L Climate Change Geology Lab	L	0	0	0.00		
POSC	160 Political Philosophy	A-	6	6	22.02		
	Term Totals:		18	18	44.04	3.67	3.80
	Cumulative Totals:		36	36	114.06		3.80
Spring Term 2015							
ECON	110 Principles of Macroeconomics	A	6	6	24.00		
PE	227 Ultimate Frisbee:CUT&GOP	S	0	0	0.00		
POSC	122 Politics-Amer:Liberty & Equal	A	6	6	24.00		
SOAN	111 Introduction to Sociology	A	6	6	24.00		
	Term Totals:		18	18	72.00	4.00	3.88
	Cumulative Totals:		54	54	186.06		3.88
Fall Term 2015							
HIST	233 Cultr of Empr: Byzntm,843-1453	A-	6	6	22.02		
POSC	120 Democracy and Dictatorship	A-	6	6	22.02		
POSC	150 Pol Thght Malcom X & MLK Jr	A	6	6	24.00		
	Term Totals:		18	18	68.04	3.78	3.85
	Cumulative Totals:		72	72	254.10		3.85
Winter Term 2016							
MATH	215 Introduction to Statistics	A	6	6	24.00		
POSC	245 Politics Middle East (1918-67)	A-	6	6	22.02		
PSYC	110 Principles of Psychology	A	6	6	24.00		
	Term Totals:		18	18	70.02	3.89	3.86
	Cumulative Totals:		90	90	324.12		3.86
Spring Term 2016							
ENGL	160 Intro to Creative Writing	B+	6	6	19.98		
MATH	245 Applied Regression Analysis	A-	6	6	22.02		
PE	227 Ultimate Frisbee:CUT&GOP	S	0	0	0.00		
POSC	284 War and Peace in N. Ireland	A	6	6	24.00		
	Term Totals:		18	18	66.00	3.67	3.82
	Cumulative Totals:		108	108	390.12		3.82

Abe Eichner
eichner.abe@gmail.com

Emy J. Farley, Registrar

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