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THE GAVEL

VOLUME 69, ISSUE 5

THE STUDENT NEWSPAPER AT CLEVELAND-MARSHALL COLLEGE OF LAW

February 2021

Black Lives Matter All The Time

Michael Watkins
Gavel Contributor

In 1976, Dr. Carter G. Woodson created Black History Month long after creating Negro History Week in 1926. At the time of its implementation, Negro History Week was only celebrated the second week of February. Woodson knew that the historical contributions of African Americans exceeded the small time frame of one week, and as a result, Negro History Week later became a complete month when African American innovation would be celebrated throughout the U.S.

Upon this expansion, Black history month has centered a diverse array of programs, media campaigns, and academic exploration to educate citizens on the complex and meaningful intricacies of American History. Black History Month continues to be an important and integral celebration and intellectual experience that supports the dismantling of systemic racism. But is this enough?

In 2013, Black Lives Matter began as a non-profit organization dedication to stopping police brutality against black people. Led by Opal Tometi, Alicia Garza, and Patrisse Cullers (pictured), they started this organization on one principal belief that black liberation goes well beyond any time frame or date set. Tometi, Garza, and Cullers all intend for the lives of black and brown people to be validated, valued, and appreciated ALL the time.

Noelle Trent, director of interpretation at the National Civil Rights Museum, says,

"There's no one season for it. It's continuous."

The Black Lives Matter movement ignited great change in 2013, and has been expressed daily as African Americans across the country actively fight to reconstruct damaged systems, and heal from the constant oppression and repression Black Americans face everyday.

At the beginning of the COVID-19 pandemic, more than just a deadly virus transpired in our country. This pandemic made decades of systemic racism, police brutality, disproportionate medical access for African Americans, and white supremacy even more clear and transparent.

Since COVID-19, millions of people around the world have peacefully protested for the equality of minority persons and continued liberation of Black Lives.

Black history sheds light on hatred, racism, discrimination, and the many injustices in our country while also allowing historical figures to receive credit for their work and contributions.

Learning about the twisted ideologies that make up the fundamental components of the U.S. allows for deep understanding of the increasingly evident disconnect that has laid dormant in this nation. Increased knowledge of black history, for all people, fosters cultural appreciation and combats against xenophobia.

Each and every day, we should all be reminded that black history is American history. Constant awareness of the flaws of our land, and increased collaboration on ways to never repeat the atrocities of our country's people,



Photo by Michael Watkins
Photo showing the BLM Founders

(such as slavery, lynchings, segregation, and brutal violence) will allow for the recognition and healing necessary for a more unified nation.

Late Dr. Carter G. Woodson once said, "For me education means to inspire people to live more abundantly, to learn to begin with life as they find it and make it better." This statement still reigns true today as we all can undoubtedly say black lives do matter and in fact, matter all the time.

What Can You Do?

- Say Their Names & Assist in Stopping Police Brutality:
<https://interactive.aljazeera.com/aje/2020/know-their-names/index.html>

- Support Black Businesses:
<https://www.forbes.com/sites/elisabethbrier/2020/06/05/100-black-owned-businesses-to-support/?sh=15f2ad383660>

Former President Donald Trump's Second Impeachment

Jared Thomson
Gavel Contributor

On January 6, 2021, in the wake of the 2020 Presidential election, the extreme partisan tribalism rampant in American politics reached its boiling point.

Hundreds of Trump supporters stormed the U.S. Capitol while Congress was in session to certify the 2021 electoral votes. Some of the participants were armed with firearms and explosives.

It was later revealed that several alt-right groups had pre-planned and coordinated the attack.

The incident began on January 6th during a rally where Trump urged his supporters to protest at the Capitol and "fight" the results of the 2021 election that he alleged were fraudulent.

In statements that would later



Photo by Tyler Merbler / Creative Commons
Photo showing the U.S. Capitol being stormed

be referenced in his trial: he told the crowd, "You'll never take back our country with weakness" and "we fight like hell, and if you don't fight like hell you're not going to have a country anymore."

During the protest turned riot, Trump tweeted a couple of times asking for the protestors to remain

peaceful. At around 4pm, three hours after it started, he urged the protestors to go home after restating claims of a fraudulent election and ended with, "We love you, you're very special. ... I know how you feel but go home in peace."

The attack on the Capitol ultimately left five dead, including

a Capitol Police officer. Hundreds were left injured, including 140 Capitol Police officers.

The riot came to fruition after months of Trump alleging conspiracy theories of voter fraud leading up to and following the 2020 Presidential election.

Article of Impeachment in the House

Former President Donald Trump's actions and statements, before, during, and after the incident led to the House of Representatives adopting one article of impeachment against Trump for incitement of an insurrection.

The article was introduced on January 11, 2021 with 200 co-sponsors, and that same day

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Vaccine nationalism and how it affects you

Matthew Svancara
Gavel Contributor

As vaccines become approved and are starting to be distributed all over the western world, the issue of vaccine nationalism is coming into focus.

This issue highlights the area of richer and more developed countries controlling the supply and distribution of vaccines for Covid-19 and restricting them from leaving their country or supplying developing or poorer countries from receiving them.

The WHO set up a program called COVAX, with the main goal to give everyone equitable access to a vaccine for Covid-19, and end blunt vaccine nationalism. The program is set to be able to give over two billion doses of the vaccine by the end of 2021.

This would reduce the loss of life and the economic impact in developing countries. But since the start of the vaccine roll out, Dr. Tedros Adhanom Ghebreyesus, the WHO director-general, said 75

per cent of vaccine doses are being administered in 10 wealthy countries.

Tedros has also stated that, “It’s not right to vaccinate young, healthy adults in rich countries before health workers and older people in low-income nations.”

He has also stated that because of the unequal distribution of vaccines, the pandemic will be prolonged as well as its restrictions.

Instead of working together to fight and distribute the vaccine throughout the world, rich countries are competing with each other to distribute and prioritize their own populations. This has been highlighted in the last couple of weeks.

Last week, Canada was the first rich country in the world to take 1.9 million doses of vaccine from the COVAX WHO program.

The European Union was about to set up a hard border between Northern Ireland and the Repub-

lic of Ireland to prevent vaccines from the European Union going into the United Kingdom.

The EU eventually backed down because of the backlash from Prime Minister Johnson and Taoiseach Martin. The EU has also faced pressure from its own citizens and has passed regulations that have blocked vaccine exports to over 100 countries around the world.

Dr. Tedros has stated that there can be some solutions to overcome vaccine nationalism. Tedros has stated that there should be open sharing of vaccine manufacturing technology and the intellectual property of vaccines.

He has also stated that having open-sourcing of vaccine manufacturing and intellectual property rights of vaccines would help enable immediate use of the untapped production capacity in the developing world such as in Africa, Asia, and Latin-America.

The expansion of production would help to reduce the reliance of developing and poorer countries on the richer and more developed countries throughout the world for vaccine production and distribution. He has stated that this would achieve true health equality.

For the world to finally overcome the pandemic, the world would need to work as one to defeat it.

Vaccine nationalism could prolong the pandemic even though rich countries and developed countries vaccinate their populations. As we have seen in the last month with new variants and strains such as the UK strain and the South African strain, the longer Covid is prevalent in the world newer strains and variants could arise.

The entire world needs to be vaccinated and the hoarding of vaccinations by richer and more developed countries can be detrimental.

School shootings and safety in Ohio

Christine Mika
Gavel Contributor

School shootings are a tragic reality of modern education. One idea to promote safety is by arming school employees. As a former teacher myself, I can say that this was not a popular idea in the teacher’s lounge.

In response to a school shooting in Madison, Ohio, the local district voted to allow employees to be armed, if those employees underwent a minimum of 24 hours of training. Current Ohio law requires anyone who carries a gun in school to undergo a minimum of 728 hours of training.

Concerned parents sued, arguing that the 24 hours of training was not enough. The Butler County Court dismissed the lawsuit, but the 12th District Court of Appeals ruled that the armed school employees must receive the statutorily required 728 hours of training.

In response, Ohio’s Senate introduced Senate Bill 317 which would exempt school employees from the 728 hours of training. With this bill, the governing body of a school can authorize employ-

ees to have deadly weapons on school premises without going through the 728 hours of training.

During committee hearings, the Buckeye Firearms Association and the National Rifle Association testified in favor of the bill. More than 260 opponents testified against the bill, representing individuals and groups such as Moms Demand Action.

This bill passed the Senate in a vote of 21-11 but did not make it to a vote in the House before the 2019-2020 session ended.

In the meantime, the 12th District Court of Appeals case was appealed to the Ohio Supreme Court. Oral arguments were held on Tuesday, January 12, 2021. The Ohio Attorney General argued in support of the right for the school district to allow for limited training.

The Claymont City Schools also submitted an amicus curiae brief in support of their right to determine necessary training, even if below the 728 hours.

The parents (appellees) argued that the statute should be read as it is and require all school employees to undergo 728 of training.



Photo by Brock Spence / Creative Commons

The Fraternal Order of Police of Ohio, the Ohio Education Association, the Ohio Federation of Teachers, Experts in School Safety and Firearm Training, Teacher Educators and Educational Researchers, K-12 Teachers and Staff, the City of Columbus, the City of Cincinnati, and Professor Peter Shane (a professor specializing in statutory interpretation) submitted amicus curiae briefs in support of the parents.

With the amount of opponents who have testified against Senate Bill 317 and with the majority of

amicus curiae briefs filed supporting the parents, it would seem as though a broad swath of Ohioans would desire the Ohio Supreme Court to find that school districts must follow the required 728 hours of training.

However, if the Ohio Supreme Court does find in favor of the parents, do not be surprised if Senate Bill 317 is resurrected. With the Ohio Attorney General and legislators in support of school districts choosing their own training, a resurrected bill would likely pass.

Write for The Gavel: E-mail submissions to gavel@csuohio.edu

IMPEACHMENT

From page 1

House Speaker Nancy Pelosi gave an ultimatum to Former Vice President Mike Pence to invoke Section 4 of the 25th Amendment to assume the role of acting President or the House would proceed with the impeachment.

The House went one step further and passed a resolution, urging Pence to invoke the 25th amendment. The 25th Amendment allows Congress to establish a committee when a president is unfit to serve.

Section 4 of the Amendment states that the “declaration that the President is unable to discharge the powers of and duties of his office” is made by the Vice President and the majority of Cabinet members, or “another such body as Congress may by law provide.”

Pence, in a letter to Pelosi the following day, refused to do so. The article of impeachment then passed the House on January 13, 2021, one week prior to the end of Trump’s term.

The second impeachment trial began on February 9th, 2021. Chief Justice John Roberts chose not to preside over the trial as he had during the first impeachment, so the president pro tempore of the Senate, Senator Patrick Leahy (VT) presided in his place.

The impeachment was the first of its kind, as prior impeachments had all been the incumbent during the impeachment trial. Senator Rand Paul at the onset of the trial forced a vote to dismiss the impeachment charge, alleging it was unconstitutional to try a former president.

The motion was defeated in a 55-45 vote that included all Democrats, both independents,

and five Republicans. During the trial, the lead impeachment manager Representative Jamie Raskin, along with Representatives David Cicilline and Ted Lieu authored the article of impeachment and were assisted by Representatives Joquain Castro, Eric Swawell, Madeleine Dean and Stacy Plaskett in delivering the oral arguments for conviction.

At trial, they introduced unseen riot footage showing the attack on the Capitol, including security footage and models showing where rioters were in relation to senators.

They also played clips of video and audio as well as social media posts from before January 6th that they asserted showed Trump calling on his supporters to storm the Capitol. Video clips during the riot showed chants of protestors threatening violence against Mike Pence, whom they deemed a traitor, and members of Congress.

Trump’s defense was led by Michal van der Veen, a personal injury lawyer from Philadelphia. Trumps defense focused on the constitutionality of the trial, arguing that his speech is protected under the First Amendment.

The defense also showed clips from Trump’s January 6th rally and other events and claimed that the House manipulated the videos and remarks when making their case for conviction.

The defense asserted that Trump encouraged “peaceful and patriotic protests” rather than a violent siege of the Capitol to overturn the results of the election.

The defense also pointed out that the violence was premeditated and therefore the Jan. 6th rally



Photo by Kerstie Bush / Creative Commons
Photo showing storming of the U.S. Capitol

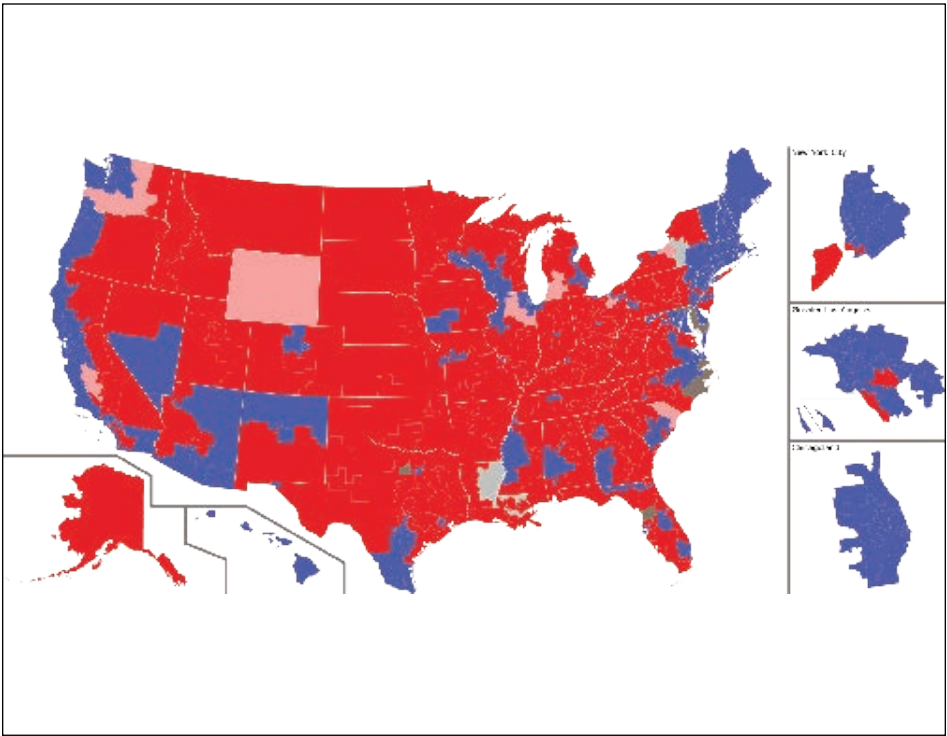


Photo by MAINEiac4434 / Creative Commons
Photo showing second impeachment House vote

did not cause the riot and asserted that Trump’s use of the word “fight” was purely metaphorical.

They also noted that no government was overthrown, therefore what happened was not within the definition of an insurrection.

At the conclusion of the trial, the Senate voted 57-43 to

convict Trump of inciting insurrection with seven Republicans voting to convict, making the largest bipartisan vote in the history of a US President.

The Senate was 10 votes short of the two-thirds majority required by the Constitution to convict Trump and he was acquitted.

CIMILaw Non-Traditional Law Student Association (NTLSA)

Katheryn Hach
Gavel Contributor

The CIMILaw Non-Traditional Law Student Association (NTLSA) seeks to represent under-represented members of the legal community through unique programming, speakers, and social events.

What’s a non-traditional student, you may ask? The truth is, if you’re wondering, you may be one. In general, NTLSA’s focus groups include, but are not limited to: part-time law students; “second career” law students who are new arrivals to the legal profession; “older” law students; first-generation law students, and more!

The idea for the group came about during the 2019-2020 school year, when it was especially evident that non-traditional student voices needed to be elevated - crucial COVID-19 town

halls were being planned in the middle of the day when many working students were unavailable to voice their concerns.

In CIMILaw’s endeavor to attend to the needs of the majority of the student body, the non-traditional student body was, and continues to be, left behind in very important ways.

It goes without saying that being a non-traditional student comes with its own networking, career-planning, and socialization drawbacks. NTLSA is here to help you spin those drawbacks into perks.

Follow NTLSA on Instagram (@cmlaw_ntlsa) for updates on events or reach out to NTLSA President, Katey Hach, at k.hach18@cmlaw.csuohio.edu for more information on how to get involved.



Write for The Gavel: E-mail submissions to gavel@csuohio.edu

Public Interest Lawyering at Cleveland-Marshall College of Law

Megan Grantham
Gavel Contributor

Cleveland-Marshall College of Law students have a new way to spend their Friday afternoons if they so choose; a new speaker series on Public interest lawyering is happening throughout the entire spring semester on Fridays at 2pm.

The series is hosted by Professor Joe Mead, who brings in a speaker each week to discuss their work and experience as a public interest lawyer.

Public interest lawyering encompasses lawyers who work both directly for the government as well as other legal services organizations. The featured speakers in the series throughout the semester have a wide range of unique experiences from different aspects of public lawyering around the country. The speakers are invited to speak about their area of work, their career paths, and challenges they face in the public interest sector.

Professor Mead, who teaches both at the law school as well as the Urban College at Cleveland State, has always had an interest in public interest lawyering, since attending law school at the University of Michigan.

Following graduation he had two federal clerkships, before joining the Department of Justice as a trial attorney in the civil division. In this role, he litigated cases all over the country involving constitutional challenges to federal laws.

"I defended Leg-Reg type cases, a lot of constitutional law, but always from the defense perspective – defending the government when somebody believed the government was violating the constitution," shared Professor Mead. He commonly worked with the White House and agency heads.



Photo by Cleveland-Marshall College of Law
Photo showing Professor Mead

After spending time with the Department of Justice, Professor Mead wanted to transition into academia, and joined the staff of Cleveland-Marshall in 2014, but did not want to give up his passion for litigating.

He accordingly began working with the ACLU of Ohio, despite the fact that he had been litigating against them for the past few years. "These are basically the same sort of cases, just from the other side. So bringing constitutional challenges to primarily state and local laws, but sometimes federal laws," said Professor Mead.

Professor Mead utilized his background and experience in public interest lawyering to work with the law school to begin not only the speaker series, which is open to any law student to attend each week, but also started a cause lawyering pop-up practicum, which

includes looking at public interest lawyering.

Professor Mead knew that students were interested in learning more about public interest litigation, and wanted to also dive into the interesting conversation going on right now about whether lawyers are responsible for the decisions their clients make.

Professor Mead said he wanted to explore "questions like, do DOJ lawyers have an obligation to not defend horrible policies? Do lawyers who challenge policies have any obligation to, like, not challenge an election if there's not a good faith basis for doing so?"

Professor Mead shared that he wanted to share his passion for public interest lawyering with the student body, and hoped students will gain something from it. "I really think that public interest law is a great career, it's kind of where I've made my career, and I really want to encourage students to at least consider it, and know what options are out there," said Professor Mead.

In terms of booking speakers for the series, Professor Mead explained that he tries to get people who have worked in a wide range of practice areas and types of organizations. He also noted that, "Almost all of these speakers I have worked with in some capacity, either as co-counsel or as a colleague." He explained that all speakers were excited to speak with students and share their experiences.

The speaker series has been going on for a few weeks now, and Professor Mead shared that he's incredibly appreciative at the level of enthusiasm he's seen from students who are interested in learning more about public interest lawyering. "I'm glad people are showing up, and I hope it inspires people to consider public interest law."

The United States Capitol under siege by rioters - a nation divided

Michael Dunham
Gavel Contributor

On January 6th, 2021, a riot broke out on Capitol grounds. President Trump had incited his supporters by social media to hold a rally in protest of the meeting of a Joint Session of Congress to certify the 2020 Presidential Election results.

Multiple Congressman and Senators objected to the Certification, which forced a debate in each House of Congress. While this debate was ongoing, President Trump was speaking from outside the White House. Trump had planned to lead the march to the Capitol, and speak to the crowd while Congress voted on the Certification.

While President Trump was speaking, a few Trump supporters fought with Capitol police. The Trump supporters then trespassed onto the building grounds, and broke into the Capitol building itself.

The police declared it an unlawful assembly as President Trump was getting ready to travel to the Capitol. The President returned to the White House instead. Congress

was then forced to recess the meeting as the basement was breached. The members of Congress had to barricade themselves in the Capitol, and flee for their lives.

Radicals came with zip ties and a noose to murder the Vice President and various leaders of Congress.

A man broke into the Senate Chamber, but left after being told to do so. Some protesters were not violent, and merely walked between the ropes while others broke objects. A woman tried to enter a secured area where senate leaders were barricaded inside.

Police then shot the woman, and it was pronounced later that she had died from her injuries. An officer was murdered by the rioters. Three other civilians died in the incident by police use of force.

The President then made a statement to his supporters to stop rioting, but it came too little too late. The National Guard was called in to preserve order. Shortly after the National Guard was called, the people left. A curfew was imposed over the Capitol. Over 20,000 troops were deployed for the Presidential inauguration.

The House responded to the riot by impeaching President Trump. The Impeachment is pending before the Senate currently with a trial set for February 8th, 2021.

A 2/3rds vote will be needed to convict and on a point of order all but five Republicans voted the trial of a former President Unconstitutional. 17 Republicans are needed to Convict. If convicted, Trump could be barred from holding office again.

On January 20th, 2021 Biden was sworn in as the President of the United States in front of the capitol. The sight was vastly different from previous inaugurations. The city was on lockdown, with National Guard units protecting the capitol from future riots.

The President Biden Justice Department has charged dozens of people for their part in this riot. It remains to be seen if former President Trump will be charged with Inciting the Riot. If so, it will raise an important first amendment question.

At what point does free speech cross the line into a crime?

Write for The Gavel: E-mail submissions to gavel@csuohio.edu

President Biden: Finally, Centrism Can Lead to Normalcy

Gabriella Russo
Gavel Contributor

Covid-19, insurrectionists at the nation's Capitol, leaving the World Health Organization, abandoning the Paris Climate Accord, all of these actions have one thing in common – these all occurred during Donald Trump's presidency.

In the November 2020 Presidential Election, Joseph Robinette Biden Jr. was elected President of the United States and on January 20th, 2021, President Biden was inaugurated into that sacred office as the 46th President.

In terms of what President Biden hopes to achieve during his time in office, Biden has a lengthy itinerary of standards to meet, and statutory practices to perfect; however, since Biden took office about one month ago, he has made a lot of leeway in his presidential agenda.

On day one of Biden's presidency, Biden signed numerous executive orders, some of which include rejoining the Paris Agreement on climate change. This was one of Biden's top campaign promises, and overall, the point of this international multilateral agreement was to combat the dangers of climate change internationally so that carbon emissions that cause global warming can be lowered.

Biden also attempted to better the arena of racial equity by ordering, "...his government to conduct equity assessments of its agencies and reallocate resources to, 'advanc[e] equity for all, including people of color and others who have been historically underserved, marginalized and adversely affected by persistent poverty and inequality.'"

In terms of Biden's Administration, there have been numerous historic firsts when it comes to the people who make up this body. Starting with Vice-President Kamala Harris who is the first female, Black, and South Asian American woman to become Vice President of the United States.

Both Biden and Harris have an all-female communications team including notably, Jen Psaki, who is the current Press Secretary. Pete



Photo by Biden for President / Creative Commons
Photo showing President Biden

Buttigieg, who is the Secretary of Transportation, is the first publicly out LGBTQ Cabinet secretary approved by the Senate, marking a major triumph when it comes to the rights of those in the LGBTQIA+ community.

General Lloyd Austin, the current Secretary of Defense, is the first Black person to be appointed to this Cabinet position. Deb Haaland has been nominated to head the Department of the Interior making this the first Native American Cabinet secretary in U.S. history, if confirmed. To wrap-up, CM Law alumni's own Representative Marcia Fudge has been nominated for the Secretary position of the Department of Housing and Human Services.

This unique Cabinet will be responsible for the vast majority of Americans and policies that directly impact Americans, so it is indicative of our country's diverse make-up that so many different people have been either nominated or confirmed to be the executive's right hand.

Current legislation that is pending includes the COVID-19 relief bill, which will

be hopefully getting through the barely Democratically held Senate by nature of a budget reconciliation bill. This would mean that no Republicans are needed to pass the bill, but only if necessary, since bipartisanship would be preferred.

The coronavirus relief package has been accumulated into a 591-page bill and encompasses individual stimulus checks. The bill is outlined to allow \$1.9 trillion of relief for schools, localities, and other entities who have been deeply impacted by the nature of this pandemic. This House bill which, again, was part of Biden's platform, would mean that an individual making less than \$75,000 annually would be given \$1,400.

This may not seem like a lot, but there are tons of CM Law students, faculty, and alumni who may benefit from these payments, especially when a family of four could receive up to \$5,600.

President Biden is also taking active steps with the vaccine to ensure that this country can be safe again going forward, and that Zoom School of Law can finally be closed for good.

Student and Parent Alliance at Cleveland-Marshall College of Law

Jillian Gosser
Gavel Contributor

"As I started my 1L year this fall, I anticipated I would encounter challenges as a parenting mom of three children. But I never predicted my children and I virtually learning together at home for the entire semester.

Between my kindergarten's 30 lessons a week, to keeping my middle schooler on task, I was rarely alone to study. I will always associate Torts with Disney princesses singing in the background. What a relief it was in December when that final exam was over.

In the end, being a mom uniquely prepared me to study under less-than-ideal circum-

stances. Now that my kids are back in school, I find myself with plenty of free time but, during class, miss those happy Disney songs."

- Laura, 1L

This is just one example of an incredible student and parent at CM-Law. Student Parent Alliance was formed in 2020 to aid current parenting students in law school, and make it more accessible for future parenting students.

The group has provided visibility for parenting students to the rest of the law school, and helped bring parenting students in different classes together.

Because of this group, awareness has been raised on

some of the unique struggles that students with children face while attending law school. It is extremely beneficial for students sharing similar life situations to have a safe space to talk about the highs and lows of raising a child while simultaneously working and going to law school.

The group also aims to connect parenting students with resources that are helpful for achieving success in law school. While these resources have always been in existence, sometimes they are difficult to find.

Through their diverse experiences, members of the group can often share ways that the law school has accommodated them so other students know what to

do if they have a similar situation.

As one of the founders and President of the group, one of the best parts has been meeting other students like me. The other parenting students inspire me all time.

Parenting students are leaders in the law school and will have a high level of success in their careers, because having so many responsibilities teaches time management, prioritization, and balance.

For more information about Student Parent Alliance, please contact me at j.gosser@cmlaw.csuohio.edu. Thank you!

-Jillian Gosser, SPA President

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First Amendment and Incitement: How Can we Rectify This Constitutionally?

Gabriella Russo
Gavel Contributor

On January 6th, 2021, a mass of insurrectionists attacked our Capitol in Washington D.C. House Democrats argued, repeatedly, that President Trump’s speech immediately prior to this insurrection attempt prompted the rioters.

The First Amendment would translate this offense to mean advocacy of imminent lawless action and the crime alleged is governed primarily by the case *Brandenburg v. Ohio* (1969).

Brandenburg produced a three-prong test when it comes to any alleged instances of advocacy of imminent lawless action with the test stating: (1) there must be express advocacy of law violation; (2) the advocacy must call for immediate law violation; and (3) the immediate law violation must be likely to occur.

When considering the application of this test to Trump’s actions the day of the insurrection, I spoke to Professor Kevin O’Neill, who teaches First Amendment among other courses here at CM Law, and is an expert in this field of constitutional law jurisprudence.

Professor O’Neill stated of the likelihood of an indictment being produced, “As for Donald Trump’s criminal culpability in an incitement prosecution, it’s possible. We all know that the third prong of *Brandenburg* (the imminence requirement) is usually the biggest obstacle.”

In response to potential

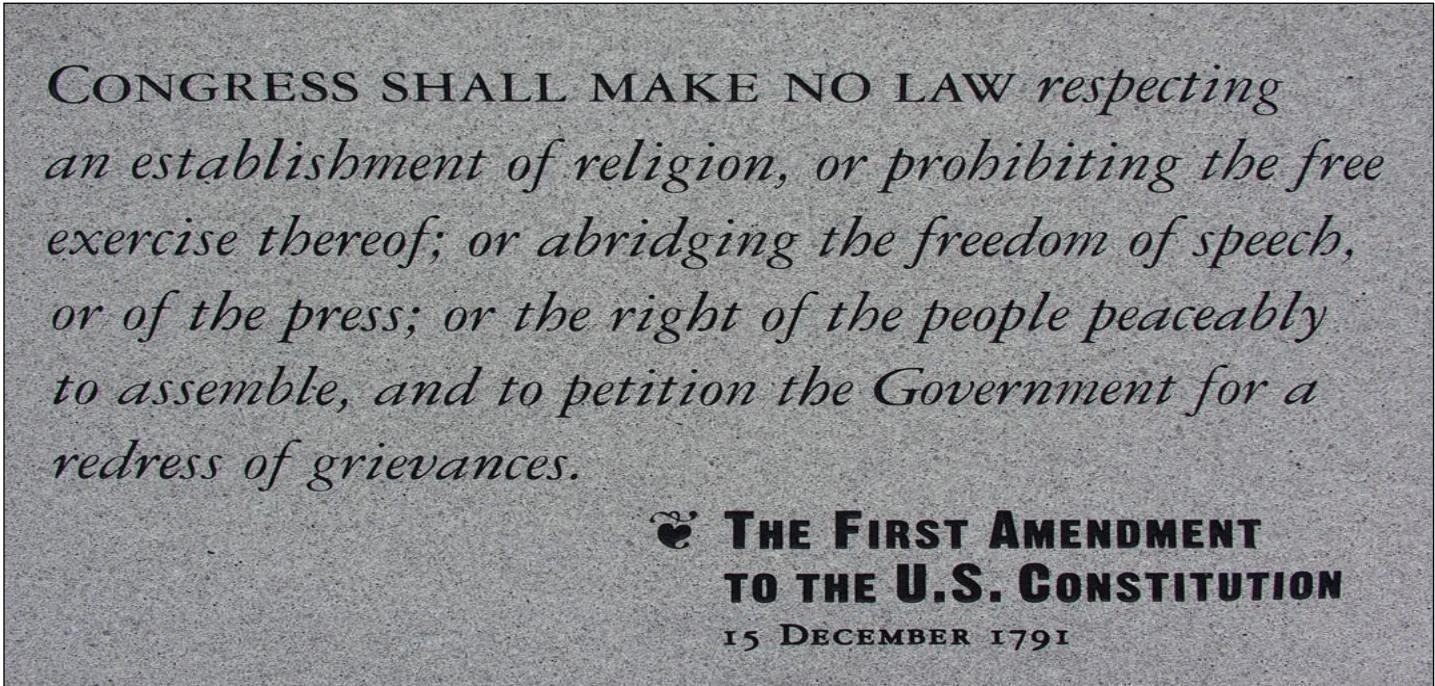


Photo by euthman / Creative Commons
Photo showing the First Amendment Clause

courses of action for the government, Professor O’Neill went onto say, “But the government might be able to satisfy that requirement in Trump’s case – because he exhorted the mob to proceed directly and immediately to the Capitol, with the goal of interfering with the counting of electoral votes.”

Professor O’Neill also draws an important distinction between another case called *Hess v. Indiana*, which took place when the defendant in *Hess* escaped conviction because he was advocating lawless conduct at some indefinite point in the future, thereby failing to satisfy *Brandenburg*’s imminence requirement.

Trump’s actions are distinguishable since Trump told his followers to go to the Capitol now, not an indefinite time in the future. Professor O’Neill said of

the challenges of this constitutional case,

“To my mind, the difficult element to satisfy in Trump’s case will be the first element, requiring express advocacy of law violation. He never expressly said, ‘Go and stop the electoral count.’ But juries are allowed to consider the CONTEXT of a defendant’s remarks – and here, Trump invited his mob to Washington on January 6, the day of the electoral count. And he addressed them immediately before the electoral count commenced. This was not a coincidence. It was perfectly timed to intimidate Congress at exactly the moment when it would be carrying out the counting of electoral votes.”

The timing of President Trump’s speech could be seen as strategic to constitutional law attorneys’ arguments who want Trump to be held accountable for

his word choice, but again the First Amendment and its breadth may still allow Trump to be protected.

Although advocacy of imminent lawless action is a kind of completely unprotected speech, prosecutors may still be hesitant to prosecute given the decision of the (second) Senate Impeachment Trial of Trump.

Professor O’Neill does state of the eventual end of the domestic terrorist attack by saying, “And when it was over with, legislators cowering in fear, Trump praised the mob, saying that he loved them and called them ‘special.’ In the end, I think that an incitement prosecution of Donald Trump would be challenging for prosecutors – but, as a matter of law, *Brandenburg* does not preclude a conviction.”

Cleveland State University’s National Lawyers Guild

Jillian Gosser
Gavel Contributor

We are excited to announce the revival of the National Lawyers Guild at Cleveland State University’s law school.

The NLG is the nation’s oldest and largest progressive Bar Associations, and the first to racially integrate. Our mission is to use law for the people, uniting lawyers, law students, legal workers, and jailhouse lawyers to function in the service of the people by valuing human rights and the rights of ecosystems over property interests.

This is called “Movement Lawyering,” which means taking direction from impacted communities, rather than imposing our leadership or expertise as legal advocates.

The NLG was formed in 1937 by progressive lawyers who wanted to uphold the New Deal as law.

Consequently, many of the NLG’s first clients were people in need. We recognize NLG’s work in many U.S. human rights issues, such as desegregation, dismantling of Jim Crow era laws, and fighting McCarthyism during the “Red Scare.”

NLG was particularly active during the Civil Rights movement. They defended activists during Freedom Summer, such as Dr. Martin Luther King Jr., and later notable members of the Black Panther Party. These included Stokely Carmichael and Angela Davis.

NLG considers liberation at home and abroad, and has supported Palestinian liberation,

fighting the blockade against Cuba, upheaving apartheid in South Africa, and the World Court’s declaration that nuclear weapons violate international law.

This same fervor and passion for human rights has been at the core of every project the NLG has undertaken throughout its 80-year history.

These days, the NLG is best known for their green-hatted legal observers at protests.

This summer, during the uprisings following the extra-judicial murder of George Floyd and Breonna Taylor. Legal observers made state and national headlines as they found themselves targets of police brutality themselves.

NLG has a rich history in Ohio, particularly surrounding labor organizing of the steel industry, and advocating for humane

treatment of incarcerated individuals.

CM-Law has its own connection to the NLG, with alumni Terry Gilbert, who sits on the executive board. Terry has been involved in prison reform, police accountability, and free speech in Cleveland for nearly fifty years.

If you are interested in joining a body of lawyers that tackles justice at its core, and uses the law to protect the rights of the people, follow us on:

- Instagram @nlg_csu
- Email us at nlgsu@gmail.com
- Search “guild” on Vikes Connect to get more information.

We’re here to build community, solidarity, and help each other through law school. Join us!

Mandatory COVID-19 Vaccinations - Who does it apply to?

Gianna Colucci
Gavel Contributor

“Public Health” refers to the promotion by public sectors of public health and safety for the entire population. These public health authorities are generally state and local agencies that operate under the state’s general police power.

This particular field of health focuses more on disease prevention and population protection, and less on medical treatment of individuals by “private actors,” such as hospitals or physicians.

Over the years, various threats to the public health have emerged. For instance, what began as smallpox and typhoid has evolved into threats of spreading HIV/AIDS, SARS, and now COVID-19. The question then begs: can the states use their general police power to mandate a COVID-19 vaccination in the name of public health?

An individual with an infectious disease like COVID-19 poses a threat to other members of the community. Should individuals within a community be forced by the government to be vaccinated for COVID-19 in order to minimize the risk of transmission to the public at large, or does this type of mandate exceed the state’s general police power?

It is my position that while, as a technical proposition, I believe that the state possesses the requisite authority to mandate a COVID-19 vaccination, they should not mandate the vaccination until accurate, reliable, and thorough research has been done in order to ensure that the side effects will not endanger the states’ constituents.

It is my belief that, technically, states can utilize their general police power for the purpose of mandating a COVID-19 vaccination in the name of public health. The origin of the states’ power to do so stems from their general police power.

State police power refers to the authority of a state to make laws to benefit and protect the health of their constituents. This power is derived from the 10th Amendment to the United States Constitution.

On occasion, an individual will challenge the breadth of their state’s general police power by raising an issue of whether or not a state regulation is Constitutionally permissible. This conflict requires courts to consider both the state’s interests and the individual’s Constitutionally protected interests, and weigh them against one another.

This is the approach that was utilized in the seminal case of *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). There, Mr. Jacobson was fined for not complying with

a vaccination/revaccination statute. Mr. Jacobson alleged that the statute invaded his bodily integrity (“liberty interest”).

This interest in bodily integrity was subsequently established in more current jurisprudence. However, the court in *Jacobson* found that this interest in bodily integrity was not absolute.

The court also found that the community had a self-defense right against the spreading of disease when deemed necessary. The court used a broad and deferential standard to uphold the vaccination/revaccination statute.

Although Jacobson was not a compulsory vaccination statute, but rather, involved an imposition of a monetary fine for failure to comply with the regulation, this broad deferential approach to the state’s general police power has been utilized to justify a state’s authority to implement statutes enforcing compliance with vaccination.

As such, I do believe that a COVID-19 vaccination COULD be mandated, particularly in light of the holding in *Jacobson* and its precedential value. However, just because the state can mandate such a vaccine does not mean that they should.

A COVID-19 vaccination is so brand new, and there is a lack of thorough and reliable scientific evidence/research on its potential side-effects, which could be incredibly dangerous to individuals.

Upon considering whether the state has the power to enact these mandatory vaccination statutes, and after reviewing the *Jacobson* decision, it is important to accentuate herein that compulsory COVID-19 vaccinations statutes would likely generate a “floodgate” of litigation challenging the constitutionality of such statutes.

This will undoubtedly call for a revisit to the *Jacobson* decision, and, therefore, consideration should be given as to what a potential modern day Supreme Court analysis would look like pertaining to this issue.

In Ben Horowitz’s (“Mr. Horowitz’s”) article entitled, “A shot in the Arm: What a modern Approach to *Jacobson v. Massachusetts* Means for Mandatory Vaccination During a Public Health Emergency,” he explains how the *Jacobson* court implemented a deferential/broad standard of review which must be abandoned in light of modern jurisprudence.

Mr. Horowitz suggests that the court would view this issue in terms of an individual’s right to refuse medical treatment, and that the right to refuse medical treatment is a fundamental right “deeply rooted in our nation’s history and tradi-



Photo showing Margaret Keenan, the first patient to receive the vaccination in the UK
Photo by AP News

tion.”

Fundamental rights trigger heightened scrutiny. Heightened scrutiny, a standard introduced in a United States Supreme Court case within the context of mandating sterilization for inmates, requires that a state have a compelling state interest, and that the regulation be necessary and narrowly tailored to achieve that compelling state interest.

The first prong requiring a compelling state interest is satisfied when the compelling state interest is articulated as protecting the lives of all citizens during a public health emergency.

The next question that would need to be addressed by the Supreme Court is whether the statute mandating a COVID-19 vaccination is necessary and narrowly tailored to achieving this state interest.

I would argue that the mandatory vaccination statute is necessary and narrowly tailored to the compelling state interest because there is no effective, less restrictive alternative for achieving the ultimate goal of halting the spread of COVID-19 and protecting the public’s health.

As we have witnessed thus far, mask mandates, social distancing, and curfews have not stopped the deadly spread of COVID-19.

In support of this argument, statistics help. Today, COVID-19 is spreading like “wildfire” all around the world and the death toll is consistently rising.

According to the Center for Disease Control, in the United States alone there have been 16,113,148 reported cases of COVID-19 since January 21, 2020.

Of these cases, a staggering 298,266 deaths have been reported. Id. In my opinion, the rapid spread of COVID-19 and the increasing death toll constitutes a public health emergency (a compelling state interest), and ineffective less restrictive alternatives (i.e. individuals not wearing masks in public,

not following curfew restrictions, or not social distancing) may permit the inevitable mandatory COVID-19 vaccination statutes to survive a heightened judicial scrutiny analysis.

One example of how to make a compulsory COVID-19 vaccination statute necessary or narrowly tailored to achieving the compelling state interest of protecting the public’s health during a public health emergency, would be to provide an “opt out” for individuals who have already been or who are currently infected with COVID-19.

This is because for individuals currently diagnosed with COVID-19, they cannot be vaccinated to make the illness “disappear,” and would still be deemed a threat to the public’s health since they are already infected.

In conjunction with the review of the states’ authority to enact mandatory COVID-19 vaccination statutes and the potential constitutional implications of these statutes, various biological frameworks shed light on the ethics of these statutes.

Beginning with Principlism, a bioethical framework founded upon the respect for individual patient autonomy, beneficence, non-maleficence, and justice, public health actions are not entirely at odds with this bioethical framework.

For instance, although this framework normally emphasizes the individual’s right to bodily autonomy, pursuing justice is a principle that supports public health action, such as mandating a COVID-19 vaccination, when the action is at odds with an individual’s liberty interests. Because maintaining an individual’s autonomy under the unique circumstances of a global pandemic could substantially harm the public’s overall health, public health action could take precedence if analyzed under Principlism.

In addition, Communitarian

The Hill We Climb - Amanda Gorman Speech

When day comes we ask ourselves,
where can we find light in this never-ending
shade?
The loss we carry,
a sea we must wade.
We've braved the belly of the beast,
We've learned that quiet isn't always peace,
and the norms and notions
of what just is
isn't always just-ice.
And yet the dawn is ours
before we knew it.
Somehow we do it.
Somehow we've weathered and witnessed
a nation that isn't broken,
but simply unfinished.
We the successors of a country and a time
where a skinny Black girl
descended from slaves and raised by a single
mother
can dream of becoming president
only to find herself reciting for one.
And yes we are far from polished.
Far from pristine.
But that doesn't mean we are
striving to form a union that is perfect.
We are striving to forge a union with purpose,
to compose a country committed to all cultures,
colors, characters and
conditions of man.
And so we lift our gazes not to what stands
between us,
but what stands before us.
We close the divide because we know, to put
our future first,
we must first put our differences aside.
We lay down our arms
so we can reach out our arms
to one another.
We seek harm to none and harmony for all.
Let the globe, if nothing else, say this is true,
that even as we grieved, we grew,
that even as we hurt, we hoped,
that even as we tired, we tried,
that we'll forever be tied together, victorious.
Not because we will never again know defeat,
but because we will never again sow division.
Scripture tells us to envision
that everyone shall sit under their own vine and



Photo by Patrick Semansky
Photo showing Amanda Gorman

fig tree
and no one shall make them afraid.
If we're to live up to our own time,
then victory won't lie in the blade.
But in all the bridges we've made,
that is the promise to glade,
the hill we climb.
If only we dare.
It's because being American is more than a
pride we inherit,
it's the past we step into
and how we repair it.
We've seen a force that would shatter our nation
rather than share it.
Would destroy our country if it meant delaying
democracy.
And this effort very nearly succeeded.
But while democracy can be periodically de-
layed,
it can never be permanently defeated.
In this truth,
in this faith we trust.
For while we have our eyes on the future,
history has its eyes on us.
This is the era of just redemption
we feared at its inception.
We did not feel prepared to be the heirs

of such a terrifying hour
but within it we found the power
to author a new chapter.
To offer hope and laughter to ourselves.
So while once we asked,
how could we possibly prevail over catastro-
phe?
Now we assert,
How could catastrophe possibly prevail over
us?
We will not march back to what was,
but move to what shall be.
A country that is bruised but whole,
benevolent but bold,
fierce and free.
We will not be turned around
or interrupted by intimidation,
because we know our inaction and inertia
will be the inheritance of the next generation.
Our blunders become their burdens.
But one thing is certain,
If we merge mercy with might,
and might with right,
then love becomes our legacy,
and change our children's birthright.
So let us leave behind a country
better than the one we were left with.
Every breath from my bronze-pounded chest,
we will raise this wounded world into a won-
drous one.
We will rise from the gold-limbed hills of the
west.
We will rise from the windswept northeast,
where our forefathers first realized revolution.
We will rise from the lake-rimmed cities of the
midwestern states.
We will rise from the sunbaked south.
We will rebuild, reconcile and recover.
And every known nook of our nation and
every corner called our country,
our people diverse and beautiful will emerge,
battered and beautiful.
When day comes we step out of the shade,
afame and unafraid,
the new dawn blooms as we free it.
For there is always light,
if only we're brave enough to see it.
If only we're brave enough to be it.

COVID-19
From page 7
ethics contains elements of the social contract theory. The social contract theory states that the individuals and their communities have an obligation to each other's interests and receive reciprocal benefits from one another.
This, too, could support public health action, such as mandating a COVID-19 vaccination, because the community is committed to preventing harm to its members.
Thus, if COVID-19 is spreading as rapidly as it is and is highly contagious, serious public health actions may be advocated for under this ethical framework to protect the community at large from contracting this deadly virus.
Furthermore, if the entire community is continuously ex-

posed to COVID-19, more and more people will become ill. The implication of this is that the productivity of the community will decline as people would be missing work due to this illness, thereby having a negative impact on the community at large.
Human rights ethics may argue against an invasive public health action such as the mandating of a COVID-19 vaccination. This bioethical framework states that the government has to guarantee a "minimal level" of health resources to individuals to enable participation in the economy.
Therefore, in order to motivate individuals to participate in culture and in politics, individual autonomy may need to yield to public health needs because a healthy community lays a founda-

tion for allowing individuals to have individual liberty in the first instance.
Thus, it would seem that offering COVID-19 testing and/or vaccination to all individuals, as opposed to compelling them to undergo vaccination, is more likely to be considered a "minimal level" of health resources, and that perhaps this framework would argue against an invasive COVID-19 vaccination mandate.
In summation, although Jacobson provides support for the conclusion that states could use their general police power to mandate COVID-19 vaccination, and although some of these mandates may survive strict scrutiny under a modern reanalysis, I do not believe such a new vaccine with undiscovered potential side-effects should

be mandated.
Additionally, various bioethical frameworks provide differing viewpoints on the ethics of this debate. I think Jacobson's analysis would not survive today because it gave too much deference to the states.
According to modern jurisprudence, heightened scrutiny would be triggered because of an individual's fundamental rights to refuse medical treatment, bodily integrity, and privacy.
Therefore, in accordance with current jurisprudence, I do not believe states should use their general police power to mandate COVID-19 vaccination, in the name of public health, until more research on the potential side-effects is completed and the safety of the vaccine is clearly established.