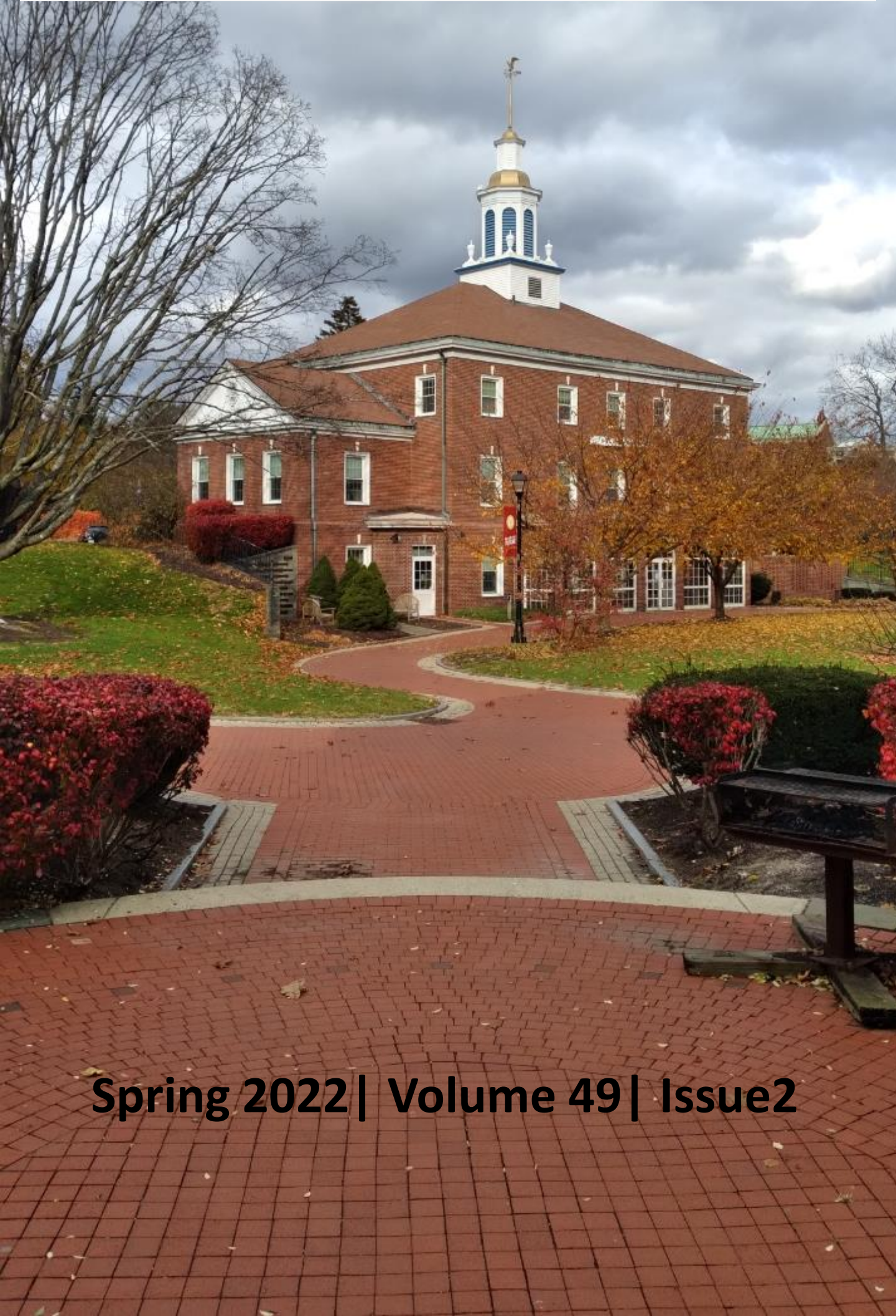


**LEX BREVIS**  
WNE School of Law Newspaper



**Spring 2022 | Volume 49 | Issue 2**



# Lex Brevis

## Contents

Spring 2022 | Volume 49 | Issue 2

**4** ***Driving While Undocumented***  
Jennifer Fields

---

**8** ***Is it Time to Give Teeth to PRA?***  
Bonnie Mannix

---

**10** ***Feeding False Statements***  
Jennifer Fields

---

**13** ***In Defense of Standard Time***  
Adam Caldwell

---

**15** ***A Collateral Waste of Potential***  
Joshua Szczepanski

---

**18** ***First Amendment Rights and the ACLU***  
Stephen Kubick

---

**20** ***Climate Change and the Environmental Law Coalition***  
Stephen Kubick

---

“Transparency is a hallmark of (effective) democracies. The Obama Administration prided itself on its commitment to create an “unprecedented level of openness in Government,...”- Is it Time to Give Teeth to the PRA?



“Baker opposes the bill because he is concerned that undocumented immigrants have no United States identifying documentation, so there will be no way to confirm their identity...”- Driving While Undocumented



# Know Your IX



**WESTERN NEW ENGLAND UNIVERSITY | WNE**

Title IX of the Education Amendments of 1972 states: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance."

On the 9<sup>th</sup> Day of each month, students are encouraged to wear their "Know Your IX" t-shirts in support of Title IX rights and sexual assault awareness.

Should you have any questions about the policy or training opportunities please contact Sarah C. Butterick, Title IX & Compliance Officer at [sarah.butterick@wne.edu](mailto:sarah.butterick@wne.edu) or at 413-782-1216.

# Driving While Undocumented

By: Jennifer Fields  
*Editor-in-Chief*

Undocumented immigrants, people in the United States without immigration or citizenship status, are deeply ingrained and involved in American communities. While they are not entitled to all the rights provided to U.S. citizens in the constitution, they are entitled to some, such as the right of freedom of speech and religion. In addition, undocumented immigrants are allowed to marry in the United States and are even entitled to take part in several benefit programs, as well as participate in public education.

The Supreme Court of the United States held in *Plyer v. Doe* if citizens have access to public education, even though it is not a constitutional right, undocumented immigrant children should have access to that education. SCOTUS's rationale was based on the 14th Amendment's Equal Protection Clause which prevents denying any person within the jurisdiction equal protection of the laws.

With regard to healthcare undocumented immigrants are eligible for public health care programs, like MassHealth Coverage. Undocumented immigrants can even receive some government housing assistance from rental assistance programs like Residential Assistance for Families in Transition (RAFT), Emergency Rental and Mortgage Assistance (ERMA) program, and Emergency Rental Assistance Program (ERAP).

While these undocumented immigrants, many of whom are essential workers, have been participating in some aspects of society, they are prohibited from obtaining a driver's license in 34 states. Having a driver's license is vital for many people who live in rural areas, where there is limited or no public transportation.



Driving also allows a person to commute to work in other regions, helping ease the burden of labor shortages in rural areas. It also provides the ability to drive to essential services, such as doctors appointments, while avoiding crowded public transportation. This helps reduce the risk of exposing others to contagious conditions and allows the ill and injured to access care in a timelier manner.



The Commonwealth of Massachusetts's House of Representatives in mid-February passed a bill that will allow undocumented immigrants to obtain driver's licenses. Before anyone rushes to the Registry of Motor Vehicles (RMV) however, the bill will need to pass in the Senate, and then head to Governor Charlie Baker, who opposes the bill.

Baker opposes the bill because he is concerned that undocumented immigrants have no United States identifying documentation, so there will be no way to confirm their identity. Some law enforcement agencies expressed concerns that this bill will force RMV workers to become experts in foreign documentation to prevent forgery.

Other law enforcement agencies, including Chelsea Police Chief Brian Kyes, President of the Major City Chiefs of Police Association, feel that officers need to know the identity of drivers and this bill will help ensure that all drivers on the road have passed RMV driving tests.

It is estimated by MassBudgets that 41,000 to 78,000 people would be able to get a license within three years of this bill passing. Connecticut lawmakers passed a similar law in 2015, allowing more than 50,000 undocumented immigrants to take drivers tests. Since passing that bill there has been a reduction of hit-and-run crashes and a decrease in arrests for driving without a license.

For an undocumented immigrant, an arrest for driving without a valid license could lead to deportation. Deportations, even if based on a criminal action, are civil issues with no right to counsel or a speedy trial.

Furthermore, deportation or removal proceedings are not considered to be a punishment, even though SCOTUS is currently determining if they can hold non-criminal immigrants in custody while they await their immigration hearing.

Punishment or not deportation can result in consequences crueler and more unusual than traditional criminal sentences. Having a valid driver's license and barring the RMV from asking applicants about their citizenship status enables those essential workers to commute without fear.

Safer driving conditions impact all members of society documented or not. Undocumented immigrants already benefit from government-funded programs like public education, health care, and rental assistance programs.

Allowing undocumented people limited access to privileges and rights citizens hold is nothing new. A driver's license may grant more freedom, but it is not an immigration documentation. It will not change their immigration status; it will not make people who are undocumented considered documented under the law.



THE CLASS OF 2025 PRESENTS...  
**GOLDEN BEARS  
GO GREEN**



**FRIDAY, APRIL 22, 2022**  
**8:00 P.M. - 10:00 P.M.**  
**COMMONWEATH LAWN**



@wnecouncil2025

Make sure you recycle and bring your own water bottle to campus





# 53rd Annual WNE Alumni Golf Tournament



Friday May 27th 7:00am - 4:00pm



Country Club of Wilbraham, 859  
Stony Hill Road, Wilbraham, MA  
01095, USA



# Is it Time to Give “Teeth” to the Presidential Records Act?

By: Bonnie Mannix  
*Staff Writer*

**G**overnment transparency encourages accountability and mitigates corruption. Following President Nixon’s Watergate scandal from 1972-1974, Congress passed the Presidential Records Act (PRA) of 1978, requiring proper preservation of presidential records before they are transferred to the National Archives and Records Administration (NARA). Even before the PRA, it was common practice for presidents to preserve their records.

In fact, document preservation dates back to George Washington, who was adamant that records be kept not only because “it would be good for his posterity”, but also because “people need to be able to know what their government had done.” It is by no means a new practice, nor unique to the United States. In addition to other nations’ practices, the International Court of Justice (ICJ) relies on historical records when dealing with complex matters where it is paramount to establish accurate and authentic factual accounts.

One significant challenge with the PRA is that it lacks an enforcement mechanism. Lack of enforcement is not attributed to an oversight, but rather, recognition of the trust placed in presidents, to act in good faith. It is the steadfast assumption of good faith that renders overt “policing” of the Act unnecessary.

Additionally, there are issues of practicality and reasonableness. It would be impossible to exercise 24-7 oversight of presidential actions with regard to records, not to mention, doing so would constitute extreme micromanagement.

That said, recent history has revealed the risk of reliance on good faith; there is no guarantee a sitting president will act in good faith. James Grossman, executive director of the American Historical Association, commented on Trump’s handling of documents: “These acts of destruction and noncompliance with the Presidential Records Act demonstrate blatant contempt for both the rule of law and the principles of transparency and accountability that constitute the bedrock of our nation’s democracy.”



If a president repeatedly chooses not to act in good faith with respect to record preservation, how can the public trust that he/she/they will act in good faith when it comes to other aspects of the job?



Transparency is a hallmark of (effective) democracies. The Obama Administration prided itself on its commitment to create an “unprecedented level of openness in Government,” and did so by encouraging participation and collaboration, and transparency. This is not to say that enhanced transparency automatically gives legitimacy to a presidential administration, or that transparency alone makes one presidential administration better than another, but that transparency should be a core element.

It is the government’s responsibility to serve the public, and thus, the public has the right to demand accountability, especially when there is a pattern of law-defying behavior. Despite its own shortcomings, the United States Agency for International Development (USAID) emphasizes the connection between lack of accountability and corruption, saying, “Countries with high levels of corruption, or which lack effective rule of law or accountability in government are more susceptible to conflict and social unrest...” While this statement is geared toward “developing” nations (USAID’s phrasing), it raises a widely applicable concept.

In early February 2022, NARA asked the U.S. Justice Department to investigate Trump’s handling of White House records, but there have been no further comments to date. Given that the U.S. has now experienced seemingly egregious breaches of the Presidential Records Act—by an individual who may seek re-election in 2024 no less—is it time to consider an enforcement mechanism and penalties?



# Feeding False Statements: The Vanilla Vigilante Strikes the Pantry Again

By: Jennifer Fields  
*Editor-in-Chief*

**O**n average America consumes over two billion Pop-Tarts a year, of all different flavors, some desert flavored like cake or s'mores and others fruit-inspired like strawberry and blueberry. The Strawberry Pop-Tart drew attention, from more than just children grocery shopping with their parents, after facing multimillion-dollar lawsuits from Plaintiffs Stacy Chiappetta and Elizabeth Russett.

The suits claimed that Kellogg, the maker of Pop-Tarts, was engaging in deceptive and misleading advertising practices, as the pastry contains a higher percentage of other fruits like apple and pear than it does strawberry, despite claiming to be a strawberry pastry and displaying the fruit on the packaging. Russett is suing over the Frosted Strawberry Pop-Tart, and Chiappetta over the Unfrosted Strawberry Pop-Tart.

Kellogg puts a disclaimer on their Blueberry pastry stating that it is "naturally and artificially flavored", which alerts potential consumers to its contents, but the strawberry flavor lacked such a disclaimer.

New York Attorney Spencer Sheehan, who represents Chiappetta and Russett, argued the use of the term "strawberry" without further disclaimer on the front of the box, constituted violations of state and federal consumer protection laws.

Russett stated she would not have purchased the Frosted Strawberry Pop-Tarts or would have expected to pay less for them, had she known Strawberry was not the main ingredient.



Kellogg complies with Section 403(q) of the Federal Food, Drug, and Cosmetic Act, which requires food products to list their nutrition facts as well as the ingredients contained within them. This information does unequivocally state that the product is made with pears and apples.

This information is readily available on the backside of every Pop-tart box, all a consumer has to do is read the label. The label even states in bold lettering that it is made of less than 2% of the following: dried strawberries, dried pear, and dried apple.



For a product with the word “frosted” in its name, containing sixty percent of one’s daily sugar intake and a quarter of one’s carbs, it should not be surprising it is not made of pure strawberries.

Sheehan on the other hand believes that “consumers deserve to know that when they see something labeled as ‘strawberry,’ it mainly contains strawberry”. He has also tried to hold other companies accountable for using the term “vanilla” in products where it was artificial vanilla flavoring instead of actual vanilla bean. He has filed over one hundred- twenty vanilla-related lawsuits earning him the nickname the “Vanilla Vigilante” as the NY Post described him.

He has filed so many lawsuits, about three per week, there is a chance that if you have ever had a snack, he has sued the company. He filed a lawsuit against the makers of Tostitos’s Chips, for their “hint of lime” chips, claiming they are not made with enough lime juice to constitute advertising that they are made with lime. . Sheehan sued over pudding cups, that stated they were made with “real milk” when they are made with fat-free skim milk. Some mislabeling may mislead consumers and be false advertising, but being a consumer requires some due diligence. The consumer is responsible for reading those labels and disclaimers and making purchasing decisions based upon them.



As, for Unfrosted Strawberry Pop-Tarts, a U.S. District Court Judge saw no deceptive advertising. The packaging and labeling on the front did not state what percentage of the product was made from strawberries, but the product did contain strawberries.

There was no promise or guarantee from Kellogg that the product contained a certain percentage of strawberry, so the case was dismissed. As for Ms. Russett's claims, regarding Frosted Strawberry Pop-Tarts, the litigation continues.



Consumers need to know what it is in their products and should not be misled or fed false statements, but consumers need to be cautious about reading the labels that already exist. If consumers are not happy about the content of the product, they have the power to find other products more akin to their desires



Hosted by:  
The Women in  
Business Club

# *Women in Business Luncheon*

April 7, 2022

Rivers Arena

12:30 - 2:00 p.m.

RSVP USING UNIVERSITY TICKETS  
QUESTIONS? CONTACT MICHAELA MCCORMICK  
MM576620@WNE.EDU



---

By: Adam Caldwell  
*Staff Writer*

---

**A** few days before the Spring Equinox, most of the United States will participate in a biannual ritual: the changing of the clocks. This spring, the time change will occur in the wee hours of Sunday, March 13. Suddenly, the sun will be setting around 7:00 PM here in Western Massachusetts, and we will all have an extra daylight hour at the end of the day to enjoy as we please. We give up an hour of daylight in the morning in exchange for this privilege, but as we march toward the summer solstice and the sun rises earlier and earlier, we do not miss that morning hour for very long.

In the autumn, we change the clocks in the reverse direction. We add an hour of daylight in the morning in exchange for losing an hour in the evening. Suddenly, our day feels like it's cut short. People struggle with this phenomenon. Losing an hour at the end of the day feels depressing, especially with the knowledge that the days will keep getting shorter until the winter solstice and then stay short for weeks afterward.

Every November, social media gets flooded with people complaining about this fact of life, and there are usually op-eds published by serious media outlets wondering why we can't just do away with this practice altogether and keep Daylight Saving Time (DST) in place all year. In the last four years, nineteen state legislatures have entertained proposals to make DST permanent.

Any changes to timekeeping by individual states would need to be approved by Congress, so our US Senator, Ed Markey, is the face of a bipartisan group of lawmakers who sponsor the so-called "Sunshine Protection Act."

People in favor of abolishing standard time often cite a couple of facts in making their argument. First, they argue that changing the clocks is bad for people's health. They discuss the fact that it is not optimal for the body's internal clock to be out of sync with society's clock. This is true, that it isn't optimal to suddenly be out of sync with society's clock.



However, these folks skip over the fact that what they're describing is a minor case of jet lag, and that countless people every year gladly experience far worse versions of it merely by traveling to a different time zone. Secondly, they argue that people would prefer for it to be light in the evening, since most of us aren't awake in the early morning anyway.

These people seem to me like they haven't actually thought about what it would be like for the sun not to come up until an hour later than it already does in the winter. Here in Springfield, we wouldn't fare too badly since we are on the Eastern side of our time zone.

However, that still means that the sun would rise after 8:00 AM for more than two months straight. Under the status quo, the latest sunrise of the year in Springfield is at 7:18 AM. We also need to spare a thought for folks who live on the western sides of time zones. For example, take the Grand Rapids metropolitan area in Michigan, home to some 1.1 million people. In Grand Rapids, with permanent DST, the sun would come up after 8:00 AM for 20 straight weeks. That's almost 40% of the year. The sun would come up after 9:00 AM for eight weeks.

Finally, it's important to point out that the US has tried permanent DST in living memory. At the height of the energy crisis in 1974, President Nixon signed the Emergency Daylight Saving Time Act into law, making DST permanent from January of that year through April of 1975. This was ostensibly done to conserve energy amidst the shortages, but it only added to the strains on the American people. Parents were fed up with their kids having to wait in the pitch dark for their school buses for months on end.

The construction industry lost countless hours of productivity given that they couldn't safely start work until midmorning. The Act also didn't do anything toward its stated aim of conserving energy, as people needed to expend energy in the extended predawn hours. In October of 1974, the experiment was scrapped, and the Act was repealed amid widespread discontent over the exceedingly late mornings

Politicians like Sen. Markey see people complaining on social media twice a year about changing the clocks. Being politicians, they see an opening to score cheap political points in a bipartisan way. Every spring and autumn, this cycle repeats, so far to no avail since 1974. I hope that this year, there is more pushback against this completely harebrained and failed idea.

I want everyone to take a step back and consider the ramifications to all of our lives if we decide to abolish standard time. Personally, I do not want to have to factor the coldest hours of the year into my daily schedule. I prefer it when the sun is already up when I roll out of bed in the morning, and I know many people feel the same way. Permanent DST would make that a far less common experience, and I think over time our collective mental health would suffer from having to wake up in the dark for so much of the year.

In closing, there is no "hack" or "one weird trick" to make the darkness of winter more palatable. The status quo is the best and most workable solution to the problem of reduced daylight hours in the winter. For folks who truly can't bear the darkness of winter closing in on them early in the evening and receding late in the morning, there is only one viable solution: move south.



# A Collateral Waste of Potential: Punishment After Prison

---

By: Joshua Szczepanski  
*Staff Writer*

---

**F**elony convictions have changed greatly since the time the common law was the last say on the issue. At that time, if someone was a felon, they were a murderer, a rapist, an arsonist, a burglar, or a violent person. The stigma society attached to them was likely warranted for the protection of the public.

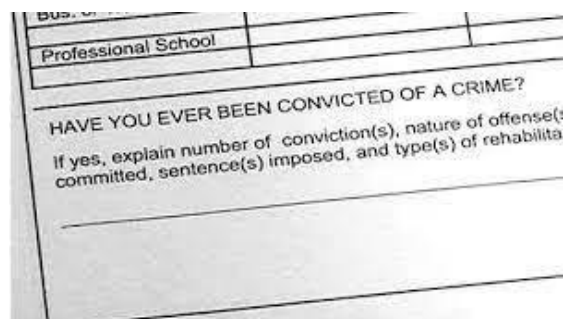
As felonies changed and more were added, the stigma they carried failed to change proportionately with them.

Today, even the most benign conduct can be classified as a felony simply with a legislative act. As of 2019, you could have run the risk of being charged with a federal felony if you left the country with more than \$5 in nickels under 31 U.S.C. § 5111(d)(2). Subsection 3(A) generally states that the Secretary of the Treasury's determination on how many nickels you can or cannot export is not reviewable in a court. Remove that; one person's decision is binding on how many nickels you can have on vacation.

You might think this is absurd and that no one would ever be charged with that; and you are likely right in almost all scenarios. However, I can tell you from experience, if you piss off the wrong customs agent on the wrong day and you have \$6 in nickels on your way out of the country, there's a good chance you will be arrested, leaving the system to sort it out later.

Did you know in Ohio in 2014, it was a felony to let an educational gun-use class out early when you finished teaching all the material but had not hit the ten-hour mark yet? I did not know that, but that did not stop me from being charged with it. In an 88-count indictment that you would have thought was for one of Al Capone's most trusted lieutenants, and not course instructor, the state argued how great of a danger I was for letting people out of class early.

Faced with a Hobson's choice, I was forced to plead guilty and became a felon. I had no idea what that was going to really mean over the next five years.



For five years, I had extremely limited opportunities. As I stood in front of a judge on January 12th of this year asking to have my conviction sealed, I argued that I had lost out on such remedial opportunities as driving for Uber or opening mail at a large insurance company. I was practically unemployable in Ohio; the box isn't banned there (the box refers to the question on a job application that asks if you have been convicted of a felony).

At every turn over in those five years, I met insurmountable hurdles while trying to re-establish myself as a productive member of society. I found myself having to convince a judge that these interests I had in sealing the conviction outweighed the State's interests in having it unsealed

I am still in awe at how hard of a sell it seemed and how serious the Judge still portrayed my offense to be. He made sure to tell me how different my sentencing would have been if he was on the bench when I pled. Maybe it was just tough love; he knew I was a law student and he told me on the record how good of a lawyer I was going to become.

But, how many people that are not law students and who are not going to make good lawyers go in front of Judges asking for this relief and are denied because they cannot meet this high threshold?

Are these people really a danger to you on your Uber ride? Are they really not worthy to open mail? Was I really not worthy of those things?

It's interesting to note under most circumstances in Ohio, if I had killed someone while I was driving a vehicle, I would have been charged with a misdemeanor.

Let that sink in for a moment. . .

The nature of felonies has changed, and it is time our response as a society changes with it. Collateral consequences of felony convictions are most times worse than the court-imposed sanctions and they are the largest single barrier for people to become productive members of society again.

People who have served their sentences, paid their debt to society, and yet continue to be punished and labeled as "others". I do not have the exact answer to this problem, but I have been told the only people that read this publication are law faculty, law students, and our parents. We are all smart people, and this is a problem worth collaborating together to make a positive impact.



# Still need to complete pro bono hours?

**Criminal Record Expungement and Sealing  
Virtual Event**

**Wed Apr 6th 12:30pm - 4:30pm**



**Register at this link:**

<https://mavirtualexpunge.com/expungement-and-sealing/>





# First Amendment Rights and the ACLU

Stephen Kubick  
*Staff Writer*

The ACLU of Massachusetts (ACLUM) runs a call center that WNE Law students can earn pro bono credit for. When I caught up with Sarah Pittman, the 3L who manages the call center for WNE students, and Bill Newman, the Director of the Western Massachusetts office of the ACLUM, they were both in agreement that the number one issue pertaining to calls that become ACLUM cases leading to actual litigation is First Amendment violations.

Indeed, the ACLU has been known as the defender of First Amendment rights since its inception. Per their website, they “are specifically committed to the proposition that the First Amendment’s guarantees (like those of the rest of the Constitution) apply to all, not just to those with whom we agree. At the same time, the ACLU also remains devoted to defending other fundamental civil rights and civil liberties, including equal protection of the law – as we always have been.”

When I was a freshman at Northwestern, my roommate used to have me over to his home in Skokie (he didn’t move far for college). The town was the site of a march by Nazis that the ACLU of Illinois actually represented, commemorated in the film “Skokie,” starring Danny Kaye, Eli Wallach, Carl Reiner, and Brian Dennehy. I just rented this film at the WNE Law library and highly recommend it for any defender of free speech.



The lawyer at the ACLU who defended the Nazi party members in Chicago, who wanted to exercise their freedom of speech was David Goldberger. We also have a staunch defender of the First Amendment at WNE Law, Harris Freeman, who is also a lawyer with the ACLUM and has a passion for immigration rights.

Recently, Michelle Goldberg wrote in the New York Times about the importance of the ACLU defending “awful” speech, such as that of the Nazis. Why would Jewish People want to defend Nazis rights? That is the subject of the film, available at the WNE Law library, which I do recommend. Danny Kaye is especially poignant as a holocaust survivor who, like many of the 30-40% Jewish population of Skokie, was prepared to take up arms if the Nazis were allowed to demonstrate in Skokie. I don’t think this is what we think of the ACLU as defending most of the time. In fact, the accusation is that they care about so-called “liberal” causes only, such as voting rights, LGBTQIA+ rights, labor rights and civil rights in general.

“A card-carrying member of the ACLU” was the label lofted at Michael Dukakis by George H.W. Bush during the 1988 Presidential Election, and that is the connotation of the organization.

But as Professor Freeman notes about WNE Law's own call center pro bono opportunity, many of the people who call in simply feel that their rights have been violated in some way, which can range from anything like tenant-landlord issues and township bylaw violations to rights in the workplace, housing rights and ultimately any human right imaginable. Calls can and do come in about COVID rights during mask mandates, etc.

I once had the opportunity to meet George H.W. Bush in Lincoln, Nebraska but declined the invitation. I did take the opportunity to meet Jimmy Carter in Pasadena, California (and Al Gore on Air Force 2 at the Burbank Airport when he ran in Y2K). I have been a card-carrying member of the ACLU of California and Louisiana before, but as of yet, neither Nebraska nor Massachusetts. And those are my First Amendment rights. Ms. Goldberg in her article referred to Mr. Goldberger of the ACLU as "lamenting. To be sure, she mentions how unlikely it would be for the ACLU to have defended rioters in Charlottesville, VA in August 2017.

Likewise, I cannot imagine the ACLU supporters coming to the defense of any the January 6, 2021, rioters in Washington, D.C., but Goldberg seems to side with Goldberger in saying that what is and remains kick-ass about the ACLU is its willingness to defend all free speech. When free speech results in deaths, as it did in Charlottesville and the January 6 riots, it is much more difficult to defend those actions, in retrospect. By contrast, the ACLU defended the rights of Nazi organizers from Chicago to demonstrate in Skokie, so that they could demonstrate in the future.

Had the Charlottesville or January 6 rioters been barred from their right to demonstrate

before demonstrating, perhaps the ACLU could have gotten involved beforehand and kept the rioters in check, which I do believe did add a much-needed layer of oversight in the Skokie case regarding any violence that could have ensued in Skokie without intervention.

In 2020, Goldberger himself discussed the case he won against Skokie. "The First Amendment principles that apply to prior restraints are straightforward. While any effort to censor by punishing a speaker after the fact is likely to violate the First Amendment, preventing the speech ahead of time is even more likely to violate the Constitution, even where the anticipated speech is profoundly offensive and hateful. Central to the ACLU's mission is the understanding that if the government can prevent lawful speech because it is offensive and hateful, then it can prevent any speech that it dislikes."

If you are interested in earning pro bono hours with the ACLUM call center, and perhaps taking a call that becomes a case that leads to actual litigation, please feel free to contact Sarah Pittman (sarah.pittman@wne.edu). I am still a card-carrying member of the ACLU of Louisiana from living there last year and serve as Treasurer of the ACLUM e-board at WNE Law, which is now an official Student Bar Association-recognized organization after being in probationary status. For more information on getting involved with us, please contact our e-Board President Sandra Schnaithman (sandra.schnaithman@wne.edu), or our Vice President, Skylar Nunn (skylar.nunn@wne.edu).

# Climate Change and the Environmental Law Coalition

---

Stephen Kubick  
*Staff Writer*

---

**A**nother disturbing statistic that Caplan mentions is that “[i]n 1910, the atmospheric concentration of CO<sub>2</sub> reached 300 parts per million (ppm) for the first time in more than 300,000 years. It averaged only 317 ppm in 1960 while Rachel Carson was penning *Silent Spring* – increasing merely 17 ppm over 50 years. The next 50 were less gentle. By 2010, the increase in CO<sub>2</sub> concentration was four times that, and on its way toward 417 ppm in 2021.”

The legal issues regarding climate change are many and were highlighted by WNE Law’s ELC event on March 21 that featured Vermont Law Professor and Environmental Attorney Jennifer Rushlow, from 3:30pm-5:30pm on Zoom, which may be archived.

One takeaway I had from seeing her speak during my 1L in a forum hosted by Professor Harris Freeman was that there was a lot going on in environmental law in the U.S., UK and the EU, but once you got out of that bubble, there was very little binding law. Internationally, there is a need for international treaties between nations to hold countries accountable and come up with solutions. The U.S., UK and EU cannot do it all by themselves; persuasive law isn’t enough

The goal to switch to production and sale of only electric cars by 2035 (or 2030 in California) will simply not be enough to turn the tide, so to speak. President Joseph Biden has been criticized for failing to deliver on his promises regarding combating climate change and global warming. He did call for incentivizing “climate-friendly building, grid and vehicle upgrades” in his State of the Union Speech.

The President also brought up making a “major, major effort to deal with global warming and changing the way in which we shift to renewable – renewable energy,” but in the context of pointing out that American production of crude oil “grew by 9.7 million barrels a day to 11.6 million,” to clarify that gas prices haven’t risen because of any slowing down of American energy production on his watch.



ELA E-board Members: Brendan McCarthy, Ashley Rivera, and Emily Gorney



Encouraging, however, was a speech by EU President von der Leyen, thanking President Biden for rejoining the EU and the Paris Accord, etc., on Earth Day 2021. The faith von der Leyen has in our President to follow through on his commitment to the environment, climate change and global warming is an indication that progress is being made and regulations will be – must be – put into place on a more global scale, rather than the patchwork of regulations that vary from neighboring country to neighboring country, depending upon the country’s leadership at any given moment. Global instability and climate instability seem to go hand in hand.

International treaties are desperately needed and hopefully von der Leyen can help make this a reality, rather than kicking the can down the road and accepting each missed environmental law opportunity as a new normal. Some estimates say it will be too late in even just ten years to reverse the exponential trajectory of the impact global warming is having, especially with regard to disadvantaged countries such as Sri Lanka. We will all be disadvantaged, including heavily populated American cities like New York, Houston and Miami, if nothing is done very soon.

It seems at times like the world of environmental law is a bit insular, but this is why the ELC at WNE Law is optimistic as it is being reanimated this semester – more law students not intending to work in environmental law, and more people not involved in the environmental justice movement are taking notice of the increasingly alarming statistics. If you would like to get involved with the ELC, please feel free to attend any of our upcoming meetings this semester and in the future. We will be having an Earth Day event and hope to see you there on April 22, 2022. For now, I leave you with Brendan’s favorite quote from Chief Seattle: “We do not inherit earth from our ancestors; we borrow it from our children.”



Email us at [LexBrevis@gmail.com](mailto:LexBrevis@gmail.com)  
and follow us on Instagram  
[@lexbrevis](https://www.instagram.com/lexbrevis)