

THE CAVALIER DAILY

Law students and professor seeking no-trespassing order, criminal charge for Kessler and other white nationalists

Neither U.Va. nor the Commonwealth's Attorney have openly granted the requests

By News Editor Jake Gold

University Law Prof. Anne Coughlin is working with two students to encourage a trespass warning and "burning objects" charge against organizers — including white nationalist Jason Kessler — of a torchlit rally on Grounds prior to last August's deadly Unite the Right rally. The trespass warning would be issued by the University, while the criminal charge would be investigated by University Police Department detectives and prosecuted by Albemarle County Commonwealth's Attorney Robert Tracci.

Alongside Coughlin, two law students — Adele Stichel and Rebecca Kimmel — are working to persuade UPD to prohibit Kessler and other prominent white nationalists from University property. Their work started in the fall, but became relevant again when Kessler **entered the School of Law library** and was met by protesters.

Kessler returned to the Law library Wednesday and was subsequently escorted out by police officers. A non-student protester, Eric Martin, was arrested for trespassing, according to an email statement from UPD.

Under **University policy**, a trespass warning can be issued by UPD Chief of Police for violations of Virginia criminal codes or University regulations. UPD can also create trespass warnings for individuals deemed to have engaged in "conduct that threatens the health, safety, or property" of a University community member.

The order could ban the named individuals from all University property. Violating the trespass warning — coming to Grounds or entering any University property — would constitute a Class 1 misdemeanor, punished in Virginia with less than 12 months imprisonment or with a fine less than \$2,500.

"I believe it is time for us to ask the University whether it plans to issue no-trespass orders, and if not, why not?" Coughlin said. "We issue no-trespass orders in a range of cases involving very minor criminal infractions. They are issued even when there isn't a criminal prosecution ... When a homeless person falls asleep in the library, or uses the bathroom, or causes a disruption, they'll get an NTO. Those NTOs may be appropriate. If they are, it seems to me — with the kind of record we have of the violent crimes that these people perpetrated — it seems like a very strong case for an NTO, and if the University administration disagrees, I think it's time for them to explain why."

Because the no-trespass order can be issued unilaterally by UPD, Kimmel said she doesn't understand why it hasn't yet come into fruition.

"They could have a no-trespass order today. They could've had it months ago," Kimmel said. "It just feels like we can't wait any longer."

On Wednesday, the Dean of the School of Law Risa Goluboff sent an email to students and faculty announcing the law library will be limited to law students, faculty and staff for the remainder of the semester, starting immediately. The policy applies to the final exam period and was initially set to begin Thursday morning. Another email from Goluboff says security at the Law library will be further increased and UPD patrols will become more frequent.

Both the University and UPD declined to comment on "potential litigation."

The trio also helped witnesses speak with UPD about the rally on Grounds Aug. 11, where marchers carried torches and other burning objects. Under Virginia codes, burning objects with the intent to intimidate is a Class 6 felony.

The specific law, Stichel said, is a descendant of the cross-burning statute — a practice associated generally with the Ku Klux Klan.

"Part of the significance of the criminal charges is that this statute exists for a reason," Stichel said. "It exists because the kind of behavior that Kessler engaged in is the kind of behavior the state of Virginia has decided is morally reprehensible over and above your standard assault charges, right. They are saying, 'This has a history, and that is part of what makes it especially horrifying and morally reprehensible and wrong.'"

Coughlin said the statute distinguishes between acts protected by the First Amendment and those that are not. She argues the march of torch-carrying white nationalists — where marchers stopped counter-protesters from leaving while some rallygoers attacked counter-protesters with flames — is not protected as free speech.

"We have a statute on the books, it's the successor of the old cross-burning statutes, that was precisely designed by the legislature in Richmond to separate out violence that can be punished from speech that cannot be punished," Coughlin said. "There came a moment on August 11, when I think the record's really clear that they crossed that line. They moved from speech and chanting to violence, when they surrounded the students, hemmed them in, made it impossible for them to leave, and so forth. The videotapes alone are incredibly powerful, and then the statements from the people that were there about how they felt."

Coughlin said facilitating an interaction between UPD and witnesses is important because some Charlottesville community members felt the police did not protect them during the rallies last August.

"For a variety of reasons, our work was helpful in reaching out to students and community members who were the survivors of the crimes that night — the people who were at the base of the statue, other people who were on the Lawn," Coughlin said. "For a

range of reasons, some of them were wary about talking to the police, some of them felt that the police had stood by and watched them be attacked and didn't do anything, and so my effort was to reach out to them as a member of the U.Va. community and to try to work to reassure them that it was safe for them to interact with law enforcement and could potentially be a very important effort against the neo-Nazis and the white supremacists."

The evidence would be passed onto Tracci, who could take the case to court. To Stichel's chagrin, Tracci has not yet brought the charges.

"I just want to know why," Stichel said. "And I want to know why beyond [Tracci] saying, 'I have to have probable cause to bring the case.' I'm a law student, I know you've got to have probable cause to bring the case. Or, 'I don't believe the elements of the statute are met,' I'm a law student, I've spent hours looking at the elements of the statute. I want to know, clearly on the law, in a detailed way, what it is that you need to bring this case, and what it is you think that's missing."

Kimmel said she didn't understand the holdup with the criminal case, either.

"We've been doing this for months," Kimmel said. "We didn't want any publicity around it, we didn't go public or tell anyone about it really, but at a certain point when there's nothing else for them, they don't need anything else to prosecute. So we kinda felt like we couldn't be silent anymore."

Tracci did not return repeated requests for comment.