

UVA LAW | 'Common Law' S2 E1: The Nonsmoker Revolution

RISA GOLUBOFF: Hello and welcome back to Common Law, a podcast from the University of Virginia School of Law. I'm Risa Goluboff, the dean.

LESLIE KENDRICK: And I'm Leslie Kendrick, the vice dean. Risa, I think we should just dive right in. Are you ready?

RISA GOLUBOFF: I'm ready. Are you ready?

LESLIE KENDRICK: Let's do it.

RISA GOLUBOFF: OK, so it's January 11, 1964.

[AUDIO PLAYBACK]

- This is a CBS News extra on smoking and health. The findings of the Surgeon General's committee.

[END PLAYBACK]

RISA GOLUBOFF: And President Lyndon B. Johnson's Surgeon General holds this really unusual press conference at the State Department in front of a packed crowd of 200 journalists, bureaucrats, and businessmen.

LESLIE KENDRICK: Now, at the time 70 million Americans-- that's about half the country-- were smokers. And Dr. Luther Terry had some unpleasant news for them delivered in a 387 page report by a blue ribbon committee.

[AUDIO PLAYBACK]

- Out of its long and exhaustive deliberation the committee has reached the overall

judgment that
cigarette smoking is a
health hazard of
sufficient importance
to the United States
to warrant remedial
action.

[END PLAYBACK]

RISA GOLUBOFF: And this is the first government document that basically says, hey smoking causes cancer.

LESLIE KENDRICK: This is a story in Sarah Milov, whose new book *The Cigarette: a Political History* traces the fate of tobacco in the United States in the 20th century. She says Dr. Terry's press conference marked a turning point in how Americans viewed and regulated smoking.

RISA GOLUBOFF: Even though we have this sense that, oh, in the *Med Men* era of mid century, everybody was smoking that's not exactly accurate. But what is accurate to say is maybe smokers weren't ubiquitous, but smoke was everywhere.

[MUSIC PLAYING]

LESLIE KENDRICK: Over 14 months, the committee had gathered data showing, among other things, that smoking was killing as many as 41,000 people a year-- more than car crashes. Sarah told us this work was remarkable for a couple of reasons. In appointing experts to the panel, Terry asked professional associations to weigh in, but he also gave the tobacco industry veto power over who would serve on the committee, then he went one step further.

RISA GOLUBOFF: And so when the 10 men-- and it was all men on the committee-- were finalized Terry insisted, because he knew would be such a matter of public debate, that 5 of the 10 be smokers and 5 of the 10 be nonsmokers. So this canonical document in public health was itself the product of a smoke filled room.

LESLIE KENDRICK: All the same, the committee's findings were unanimous. In no uncertain terms, Terry urged smokers to quit. He told children never to start. And above all, he pleaded with government agencies to do something about it.

RISA GOLUBOFF: The other thing about this moment that struck me, Leslie, was that Dr. Terry's press conference was held on a Saturday, because he wanted to make sure that his announcement wouldn't roil the markets. As Sarah told us, this shows how important tobacco was to national economy. Of course, it was also crucially important to national politics.

LESLIE KENDRICK: There was also the real and inescapable power, essentially, of Southern Democrats in Congress, many of whom represented tobacco growing districts or cigarette manufacturing areas. So it's fair to say that tobacco's presence in American political life in the 20th century was very outsized.

[MUSIC PLAYING]

RISA GOLUBOFF: As it turns out, in fact, despite the report's findings, there wasn't much government action on tobacco for years. In the immediate aftermath of the Surgeon General's news, Congress actually moved to curb the Federal Trade commission's plan to mandate strong clear Warning labels on cigarettes. A new federal law toned down that language and blocked the agency from touching the issue for four years.

LESLIE KENDRICK: I think one insight of the history of tobacco is it's not the science that stops people smoking. It's basically social activism. So what does this mean? Well, it means it's still going to be incumbent upon creative lawyers, and later social groups if you want to see any remedial action on tobacco.

[MUSIC PLAYING]

We're going to come back in a minute to our interview with Sarah Milov and explore some of that legal activism around tobacco, including, actually, its unintended consequences.

RISA GOLUBOFF: That's right, Leslie, we thought this would be a really great story to launch Season 2, which we're calling "When Law Changed the World."

LESLIE KENDRICK: If you've been following the show you know that last season we looked ahead to the future of law. We're kind of doing the opposite this time around, we're looking back and trying to understand how we got to where we are today on a lot of important issues.

RISA GOLUBOFF: So throughout the season we'll bring you stories about crossroads and legal history, diving

deep into some crucial moments when the law and lawyers made a real difference.

LESLIE KENDRICK: So I'm really excited about the season, Risa, and this opening episode, because I think they play so much to you as the legal historian and all of the expertise that you bring to that.

RISA GOLUBOFF: Well that's very kind, Leslie. I've been thinking as I look forward to all of our episodes that they're actually going to play to both of our strengths. There's a lot here about civil rights and civil liberties, about free speech and equality. So I think it's really going to bring out your expertise as well.

LESLIE KENDRICK: I'm excited.

RISA GOLUBOFF: Me too.

LESLIE KENDRICK: So why don't we get back now to our interview with Sarah Milov, who's an assistant professor of history here at UVA. And let's pick it up where you were asking her about the legal landscape that took shape right after the Surgeon General's report came out.

RISA GOLUBOFF: And a big part of your story is really about the interaction between federal agencies, bureaucracy, politics, and then the law, right? And not just the law, but also social activism. So tell us about the rise of that advocacy and that activism, where does that come from in 1964 and after?

SARAH MILOV: Right, so we've got a scenario in 1965 and 1966, where the government said, hey, smoking can kill you, but Congress is basically hamstringing the ability of any agency to do something about that, or so it thinks. Now, this might be of interest to law students out there, because it was the creative action of a very young-- a 27-year-old-- lawyer just a couple of years out of Columbia Law, whose name is John Banzhaf. He wrote a petition to the FCC, the Federal Communications Commission, with a very creative argument. He said that, look, there is so many hours every day given over to tobacco advertising.

Tobacco was the most advertised product on TV at the time. Tobacco, as the Surgeon General has said, is clearly a subject of public importance. We have this rule called the Fairness Doctrine that says that issues of public importance must receive free equal airtime. So if the tobacco industry is pumping hundreds of millions of dollars into tobacco advertising, well, then public health should get its own equal and opposite counter advertising.

RISA GOLUBOFF: This was a pretty radical and creative argument to be making.

SARAH MILOV: Absolutely. Absolutely radical and creative. So in a decision that took everybody by surprise-- probably Banzhaf himself, as well-- the commission basically says, yeah, this is a subject of public importance and the counter advertising won't get equal airtime, but-- they kind of made up a number here-- a 3 to 1 ratio. This still resulted in, by one estimate, \$80 million worth of free airtime for anti-tobacco advertising. So if any of you remember those kind of gritty truth advertisements of the late '90s and early 2000s these in the late '60s and early '70s were definitely the precursor to those.

RISA GOLUBOFF: This is your brain. This is your brain on drugs. Those kinds of things.

SARAH MILOV: Right, well--

RISA GOLUBOFF: Those were the later ones, right?

SARAH MILOV: Yeah, I think, actually, it was more shocking to see some of the early anti-tobacco ads. For example, you know, TV viewers in the late '60s would have probably been familiar with the show *Perry Mason*. And every week Perry Mason went up against a DA played by a man named Bill Talman. Bill Talman lost every week to Perry Mason. In this ad, which was shot with a hand-held camera in his backyard-- so it's this very personal scene.

WILLIAM TALMAN: This is the house we lived in. This building.

SARAH MILOV: You see his kids playing in a pool.

WILLIAM TALMAN: Barbie, looking after her brother, Timmy.

SARAH MILOV: He's talking through all that he has to lose.

WILLIAM TALMAN: Susan, our youngest. And my wife Peggy, who looks after all of us.

SARAH MILOV: And at the end of the advertisement, he says--

WILLIAM TALMAN: I've got lung cancer.

SARAH MILOV: If you're hearing this ad, that's because I've lost, basically, my biggest battle, yet.

WILLIAM TALMAN: So take some advice about smoking and losing.

SARAH MILOV: And when the ad ran Bill Talman was dead of lung cancer at age 53.

RISA GOLUBOFF: Wow.

SARAH MILOV: So this was a very, you know, affecting, affective type of thing to see on TV really to viewers who are not used to being addressed on that level. So now people remember these advertisements too. When government surveys were done in the early 1970s about essentially the efficacy of these advertisements, people said basically these advertisements registered with them to help them stop smoking.

RISA GOLUBOFF: So does that have a role in explaining the rise of social activism on this, or how does it fit, and where does it go from there?

SARAH MILOV: So the anti-smoking movement in the late '60s and early '70s, I'd say, it's useful to think of them as running on two initially parallel tracks. So you have John Banzhaf, who after his Fairness Doctrine coup, ends up leaving his white shoe law firm, one of whose clients was, in fact, Philip Morris. So he may not have been a totally welcome presence at the office.

RISA GOLUBOFF: They couldn't have been happy.

SARAH MILOV: Right. But he gets a job as a law professor at GW. He moves his operations to DC.

And he ends up using his students in a class that he called Unfair Trade Practices, basically to be a little social activists. And he was modeling himself off of Ralph Nader. Where Ralph Nader had his Raiders, Banzhaf had his Bandits.

RISA GOLUBOFF: So Ralph Nader was the father of consumer advocacy in the United States right around this time.

SARAH MILOV: Right. Also a young lawyer. Also successful in using kind of splashy and inventive legal tactics to garner attention that would eventually change people's attitudes toward big corporations.

And he ends up founding an organization called ASH, Action on Smoking and Health. And, initially, ASH was monitoring the extent to which news stations were being faithful to their obligations under the Fairness Doctrine. So a lot of what ASH does at first is basically making sure that the rules are being followed that ASH set in motion to achieve.

RISA GOLUBOFF: So presumably, that enforcement role is often undertaken by government itself, right? But here he was kind of volunteering to make sure that the enforcement was happening.

SARAH MILOV: That there was not as a robust consumer lobby, even though what they were trying to do was to countervail the power of very well organized business interests. So his law students end up pursuing the Banzhaf method in class in a variety of ways. Basically, he gives them assignments to launch an action against an agency. Now, an action could be a petition, a protest that you get the media out to cover, or maybe even a lawsuit. And some of these end up getting kind of a lot of attention. So part of the Banzhaf method is also to give your group a punny title, because why not?

RISA GOLUBOFF: Why not?

SARAH MILOV: So one of these groups was called CRASH. I do question the wisdom of this acronym for this particular issue. But it stood for Citizens to Reduce Airline Smoking Hazards.

RISA GOLUBOFF: Ooh, they should have thought that one through a little bit better.

SARAH MILOV: Yes, but you'll thank them, because this was part of a Banzhaf initiated petition to separate smokers and nonsmokers on airlines. And this ends up being perhaps the genesis of the modern nonsmokers rights movement. The goal of this petition essentially was to go beyond the consent based paradigm that even Banzhaf himself had relied upon with the FCC petition.

I mean, the whole idea behind the Fairness Doctrine-- and really a Warning label, too-- is that, OK, if we give you the information you are able to make a choice about what you decide to consume. Now, the idea behind the smoking section petition was that there are people who are affected by other people's decisions to smoke. And perhaps there is no place more enclosed where that decision is more effective to other people than an airplane.

RISA GOLUBOFF: And so you're actually regulating the behavior of the smokers, rather than simply giving information to smokers in the hopes that they will stop smoking. You, a smoker, can only sit in this section.

SARAH MILOV: You're regulating the behavior not only of the smoker but also--

RISA GOLUBOFF: The non-smoker.

SARAH MILOV: But also of the airline.

RISA GOLUBOFF: Right.

SARAH MILOV: And so the airlines end up trying to preempt this. They don't want to be told by the FAA, or the Civil Aeronautics Board, another agency that regulated air flight, what they can do on their flight. So they tried to preempt this, but they also didn't want to deal with the hassle of actually having to move bodies in seats and deal with squabbles between smoking and non-smoking passengers. So they basically wanted to cordon off a very small section of the airline for nonsmokers. It was easier for them to regulate nonsmokers in a more restricted way.

RISA GOLUBOFF: So am I the only one here who remembers being on an airplane with a smoking section?

LESLIE KENDRICK: Oh, I remember.

RISA GOLUBOFF: You do?

LESLIE KENDRICK: And, in fact, I was on a flight to Japan in the early 2000s. And it still had a smoking section.

RISA GOLUBOFF: And I remember thinking, even at the time, this isn't that effective. I mean, yeah, there are sanctions, but you're still in this one very small, enclosed space. And the smoke doesn't stay in one area of the plane.

SARAH MILOV: It was absolutely not affective. However, bans I have sought to achieve two things. First, somebody had submitted an even more stringent petition, Ralph Nader, to ban smoking overall in airplanes. But by kind of occupying this middle ground that, we'll just segregate smokers and nonsmokers rather than banning it totally, Banzhaf sought to make a more moderate position that also kind of meant he would be seen as the kind of champion of this cause.

The other thing that's important to keep in mind is even if it wasn't totally effective, by our standards of smell and sight today, it did remind people that they were nonsmokers. The way business had organized itself before was not on their side and that things could be done to change that. And so this was something that Banzhaf have sought to capitalize on.

For example, ASH bought ads in newspapers that told readers of the newspaper to send comments to the Civil Aeronautics Board in support of the ASH proposed rule. And, in fact, people did this. The CAB received more comments on this proposed non-smoking section than they'd received for any other question that had ever gone before the agency.

It filled five volumes in their record. So by the time that this becomes a rule, in part because of ASH's advocacy, people think, well, hell, it's about time. But that idea did not exist prior to kind of getting these wheels in motion.

RISA GOLUBOFF: It sounds like another concept that it highlighted for people was secondhand smoke. The idea that this is not just a liberty principle issue, where we're trying to effect smokers own choices that affect only themselves. But that this is a harm principle issue, where this is activity it imposes harms on third parties.

And, you know, it sounds like partly the science on that gets going. And then, there's also this framing of the concept that secondhand smoke kills. And if you don't smoke you're still exposed to these sorts of risks.

SARAH MILOV: Yeah. A couple of things are going on. First, Banzhaf does not succeed, because he puts ads in a newspaper and some highly motivated individuals respond to them by petitioning an agency. What is happening in parallel-- and this is kind of the other wing of the movement-- are grassroots, decentralized, chapter based activism in the name of the non-smoker.

RISA GOLUBOFF: So this is the second track that you were talking about?

SARAH MILOV: Yes. And so there's kind of a symbiosis between these chapter based, grassroots groups and ASH. And, in fact, there's also a symmetry in terms of their desire to use puns.

These chapter groups are called a GASP, Group Against Smoking Pollution. And these really start off super grassroots. The first GASP chapter was formed in 1971 by a woman named Clara [? Gohan, ?] who worked inside the home. And was basically motivated, at first, just to put up a nonsmoking sign in her own home, to declare her own home as off limits to smokers, which tells you people felt cowed by smoking. And I don't think gender--

RISA GOLUBOFF: But the smokers had the entitlement.

SARAH MILOV: Right. And I think the gender aspect of this is important here. Remember, it's not 50% or 42% of Americans that smoke. It's maybe half of men by the early 1970s, and 30% of women.

So Clara [? Gohan ?] in is motivated to stop smoking in her own home. And she's also very frustrated with the fact that she can't go out to eat with her family, because her daughter

has a tobacco allergy and there's no place they can sit in a smoke free environment. So she gets together with some of her friends-- again, largely women-- and they basically start a letter writing campaign to local doctor's offices, just asking them, hey, do you think that you'd maybe proclaim your waiting room smoke free.

Now, they write to 700 offices. They don't hear from very many, but 50 say, hey, sure. Good idea.

That's pretty good investment, at least in the beginning. By the mid-1970s these GASPs chapters have spread all around the country. And while they started in College Park, Maryland-- where the University of Maryland is-- while they kind of start off in well educated enclaves, they're by no means exclusive to those areas.

RISA GOLUBOFF: And I take it that the gender component is not only about who smokes and who's affected by smoke, but also the early 1970s. This is the moment of the feminist movement and the rise of second wave feminism. So I'm guessing there's a relationship there too.

SARAH MILOV: Yeah, the idea that these nonsmokers rights groups had very much built off of the goals of the civil rights movement, basically to frame themselves as an oppressed minority that could take action into their own hands. They also used the tactics of the feminist movement. But many of these women might not have identified as feminists.

And some of them didn't work outside the home. But what they were trying to achieve was very much in line with what feminists at the time were trying to achieve, which was a shift in consciousness. By speaking together about their shared oppression as nonsmokers you could make people believe that they were a category of people called nonsmoker, and thus entitled to rights.

RISA GOLUBOFF: Right. So it strikes me that there is a conceptual debt to the women's movement and civil rights. The idea that there are people with rights, and the categories of people with rights are not set at one time.

SARAH MILOV: Right.

RISA GOLUBOFF: There can be new categories of people with rights. And then, in addition, the kind of strategic debt that they are building on the strategies of these other movements in the way they go about trying to, not only call themselves people with rights, but actually have those

rights and enforce them in some way.

SARAH MILOV: Precisely. And, you know, some of this was really tendentious. For example, there was a publication that they disseminated called *The Nonsmokers Liberation Guide*. Clearly, it's got its debts to other rights movements happening at the time.

But some of the strategies for achieving liberation were maybe something a little less than revolutionary. One strategy was if you are somebody whose job requires you to speak in front of people, ask for the room to be non-smoking. It's a good idea.

But if you're the kind of person whose job asks you to speak in front of people that gives you a clue to probably the class background of a lot of people in this movement. So they're very much in debt to the civil rights movement and the feminist movement. But there was a grandiosity to the types of claims that we're making about the world historical importance of what they were doing, without kind of reflecting on the ways that their strategies ended up burdening those who were perhaps, you know, not as well situated as they were.

RISA GOLUBOFF: So they had privilege as well as--

SARAH MILOV: They had privilege.

RISA GOLUBOFF: Can you say a little bit more about the burdens of what they're looking for and what they're seeking to impose.

SARAH MILOV: So basically, their idea was that grassroots activity would succeed more at the local level. And they were absolutely right about that. By 1977 hundreds of cities around the United States had passed, what we would consider today, mild, but anti-smoking ordinances nonetheless separating where people could smoke. Which did further the movement's goal of moving the social default away from smoking.

But what this meant in practice was at least sometimes to criminalize smokers. That sometimes these laws were written in a way that allowed for potentially pretextual policing of smokers who were people of color. And so, for example, in Chicago there is a smoker's court established.

And one journalist visited the smokers court, because there was such a volume of these citations. And basically, everybody who was there was a person of color. And they were only there, not because they need to go to court for this level of offense, but basically they

couldn't pay their fine. So that's an example. And I think actually you still see that today in kind of the class stratification of who continues to smoke.

RISA GOLUBOFF: So one thing that strikes me in your book and in talking with you is we have conceptions today of what type of issue tobacco is. And from a legal standpoint, I think, people would say this is a products liability issue. This is an issue primarily for regulation by the federal government. And within the federal government it's an FDA issue.

And the other actors here are the states, and the state attorneys general settlement in the late '90s. But the story you're telling is one of-- the Surgeon General's involved, the FCC is involved, the FTC is involved, local governments are involved, you know, you see ordinances before you see action on the federal side. The issue has just evolved really over time. And the box that it fits in now seems maybe predetermined, but it wasn't at all during this entire evolution of the issue.

SARAH MILOV: Yeah. I mean it might surprise people to know now OSHA, Occupational Health, does not regulate workplace smoking. That is done at the state and local level. In part, that's because of the legacy of the nonsmokers rights movement having successfully worked through local law. I think a lot of people in the nonsmokers rights movement are very wary of federal regulation, because some of the truisms that held in the 1960s-- that is Congress is a friend to the tobacco industry continued to be true.

So I think you continue to see this in the way people within the anti-tobacco movement conceive of the movement's history. And this is still an issue, especially as you see the emergence of Juul and e-cigarettes as a new public health challenge.

RISA GOLUBOFF: So can you talk a little bit about where that stands in terms of regulation, and what kinds of lessons we might be able to apply to it?

SARAH MILOV: Yeah, I mean kind of like with tobacco earlier in the 20th century, now the Surgeon General calls vaping an epidemic. And there is a real desire by anti-tobacco activists to require that e-cigarettes are regulated at the local level just like cigarettes. So if you've got a local law, again piggybacking off the success of the local ordinance strategy, that if you've got a local law that says no smoking then that counts for e-cigarettes as well. Now, the vaping industry, piggybacking off the knowledge now that the way to fight local ordinances is through preemption, is trying the state house strategy at kind of neutering the ability of cities to restrict e-cigarettes in that way.

RISA GOLUBOFF: Do you think that the arguments against vaping won't be as successful, because there's not the same secondhand smoke aspect to it?

SARAH MILOV: I think that it took a very long time for evidence of secondhand smoke to emerge for tobacco. It took until the early 1980s. And it wasn't until 1986 that the Surgeon General came out with its own report on involuntary smoking. So actually, you know, it's going to take a while for us to know the second hand effects of vaping, but maybe one lesson of the nonsmokers rights movement is that social activism and success at regulating smoking can actually come before the science.

[MUSIC PLAYING]

LESLIE KENDRICK: That was UVA historian Sarah Milov. Her book, *The Cigarette*, is available now from Harvard University Press.

RISA GOLUBOFF: And what a book, what a conversation.

LESLIE KENDRICK: Really interesting.

RISA GOLUBOFF: So I was thinking, the first thing that came to my mind was we've titled our season "When Law Changed the World" and we're only in our first episode, but maybe that's the wrong title, because it strikes me that this conversation in her book is as much about when the world changes the law is when the law changes the world.

LESLIE KENDRICK: That seems completely right and completely characteristic of your approach to see the interaction between facts on the ground, people on the ground, lawyers, the whole system, and how that goes into changing the law. And then, legal change can itself have lots of impacts on everyone after that. But it's not it's not unidirectional.

RISA GOLUBOFF: It's not. It's dynamic. And it's what the law and society people would like say it's mutually constitutive. That the law and society around it are creating each other simultaneously, and there's this incredible dynamic between the two. And I think this book is such a good example of that.

LESLIE KENDRICK: And I think it's probably going to be a feature of the lot of the conversations that we have in this season, because it is just part of the way that the law works, and the way the world works. But this book really highlights it.

RISA GOLUBOFF: I agree.

LESLIE KENDRICK: So you're a legal historian. I teach torts and products liability. There's so much there to think about from both of those directions. And then, there's the Fairness Doctrine, which is just out of nowhere kind of first Amendment thing sweeps in.

RISA GOLUBOFF: It gets both your subject matter.

LESLIE KENDRICK: Super interesting. Right. So you know, for any listeners who are wondering why the Fairness Doctrine doesn't get utilized in similar ways today. It was abolished in 1987.

So in the '80s the Fairness Doctrine is abolished. And it no longer regulates broadcasts. It only ever regulated broadcast radio and television. Of course, in the '70s, that was a big deal. You didn't have proliferation of cable channels.

RISA GOLUBOFF: That was all there was. Right.

LESLIE KENDRICK: But, yeah, it does it doesn't exist anymore.

RISA GOLUBOFF: How did it get abolished? Speaking of law.

LESLIE KENDRICK: The FCC abolished it under the Reagan administration. But really interesting to see communications, and you know all of these different tools being used to address the issue of cigarettes. Things that you don't think about from today's perspective.

RISA GOLUBOFF: Yeah, the other thing that strikes me, of course, situated as I am, is the importance of lawyers to this story. And it's not that they're the only important actors, because the grassroots movements are-- there are so many key actors-- but John Banzhaf and the strategy he comes up with at the beginning. And then, the use of his law students leading into more grassroots activism. There are a lot of lessons in this story both for how lawyers can create change, you know, whatever kind of change they're interested in creating, and the importance of lawyers even beyond the litigation contacts, but how they interact with other forms of advocacy, and other forms of change making.

LESLIE KENDRICK: And I think that part of the story continues through the '90s, which was a part of the narrative that we didn't talk a whole lot about. But in the '90s, when lawyers at the FDA assert that tobacco is a product that they should be regulating under the purview of the FDA, you know, those are those are new legal claims that are being made that shift what

box tobacco goes into. And then, at the same time, you have the states attorneys general suits, where the head lawyer of various different states, upwards of more than 40 of them sued the tobacco companies claiming that the tobacco companies are responsible for the public health costs, the Medicaid costs, and Medicare costs that the states are paying because of tobacco related illnesses. And these are, again, legal moves, lawyers re-framing what tobacco is and re-articulating what the harms of it are.

RISA GOLUBOFF: And that's precisely what folks have been trying to do with gun control more recently. And they've run into roadblocks, because at the same time that lawyers trying to reform an industry learned lessons from the tobacco litigation, the tobacco anti-smoking movement, the industry itself learned similar lessons, right? And has figured out what moves they need to make in order to thwart the litigation that the gun control folks wanted to use.

LESLIE KENDRICK: But I think we're in a moment where we're seeing the rise of some additional lawsuits of this kind. So there hasn't been an enormous amount of success on the guns front. There's been lead paint litigation that's bounced around for a long time, and seems right now to be making a little bit more headway than it has.

There's been climate change litigation that's taken on the similar shape since the '70s, but we're seeing kind of an uptick of that. And there's been just an enormous amount of opioids litigation that looks very similar to the tobacco litigation, and is being taken on by local officials and state attorneys general, again, very much in the same vein as the tobacco litigation was. And we're starting to see some documents come out that have a little bit of the flavor of the kind of smoking gun documents that also were a feature of tobacco litigation. So I think it'll be interesting to see what happens with that.

RISA GOLUBOFF: It only just occurred to me-- smoking gun. You got the smoking and the gun right there in the same thing.

LESLIE KENDRICK: There you go.

RISA GOLUBOFF: So my hope is that every guest that we have this season will provide such perfect symmetry with your expertise in torts and first amendment, with my expertise in legal history and social movements, and may they all be quite this integrated. So that's it for Episode One, Season Two. Thanks for joining us on *Common Law*. We hope you'll stick around for more stories about when law changed the world, and vice versa.

LESLIE KENDRICK: If you're a fan or even a critic, please leave us a review on Apple podcast, Stitcher, or wherever you get your podcasts. It's the best way for listeners to find out about the show. You can also subscribe to the show on our website, CommonLawPodcast.com. Find all our previous episodes, and delve into some background on each topic. And be sure to tweet at us anytime at CommonLawUVA.

RISA GOLUBOFF: We'll be back in two weeks with eminent legal historian, Ted White, who will take us back in time to World War II and its aftermath.

TED WHITE: A powerful argument is made by African-Americans, who come back and say, I'm a veteran, and I'm still being treated as a second class citizen. I can't go to a movie theater. You know, I can't ride on a bus. Here I fought for my country, and that's just not fair.

LESLIE KENDRICK: *Common Law* is a production of the University of Virginia School of Law. Our team includes Roberto Armengol, Sydney Halleman, Virginia Kane, Mary Wood, and Alec Sieber. Special thanks to the Virginia Quarterly Review, where this episode was recorded. I'm Leslie Kendrick.

RISA GOLUBOFF: And I'm Risa Goluboff. See you next time.