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2010-2011 ANNUAL REPORT

Introduction

Established in 1997, The Journal of Legislation and Public Policy ("*JLPP*") is a nonpartisan periodical specializing in the analysis of state and federal legislation and policy. In particular, *JLPP* seeks to provide a forum for legislators, judges, legal academics, and lawyers to discuss contemporary legislative issues. The journal publishes three issues per year, and each issue consists of a mix of articles and student notes.

In addition to publishing these issues, *JLPP* hosts symposia and other events of public significance. During the 2010–2011 academic year, hundreds of students, alumni, and members of the public attended *JLPP*'s celebration of the legislative legacy of Senator Edward M. Kennedy. The event featured remarks delivered by **Justice Stephen Breyer, Caroline Kennedy, Kenneth Feinberg, Thomas Susman**, and **Nick Littlefield**. During the 2011–2012 academic year, *JLPP* will be hosting two events. On October 24, 2011, *JLPP* is excited to host New York State Court of Appeals **Chief Judge Jonathan Lippman**. The event, entitled Equal Justice at Risk: Confronting the Crisis in Civil Legal Services, will also feature **Judge Robert Katzmann** of the Second Circuit, **Alan Levine**, and **Helaine Barnett**. *JLPP* is also co-hosting a symposium on Internet Governance and Regulation on February 24, 2011.

We are happy to update you about *JLPP*'s successes this academic year and are excited to highlight our goals for the upcoming academic year. *JLPP* appreciates your continued interest and we hope you continue to stay in touch. We encourage you to reach out with recommendations and requests, and look forward to seeing you at our upcoming events.

Reviewing the 2010–2011 Academic Year

The Journal is comprised of a thirteen-member Executive Board, selected from the third-year journal members, third-year Articles and Notes Editors, and second-year Staff Editors. During the 2010–2011 academic year, *JLPP* had forty-two Staff Editors, including two NYU transfer students, twelve Articles Editors, and thirteen Notes Editors.

Student Notes

JLPP published six student notes over the past academic year. In keeping with the mission of the Journal, the notes spanned a large range of topics while addressing contemporary issues in legislation and public policy.

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Student Notes Published in 2010–2011 include:

- *Remittances and the Charitable Deduction: A New Approach to Encouraging Development in Mexico*, **Martin Chavez** (NYU Law Class of 2011, 2010–2011 *JLPP* Articles Editor)
- Defining the Scope of Extortion Liability after Scheidler v. NOW, Emily Elman (NYU Law Class of 2011, 2010–2011 JLPP Senior Notes Editor)
- The 2007 Collapse in Securitization: A Case for Regulatory Reform, Robert Gucwa (NYU Law Class of 2011, 2010–2011 JLPP Notes Editor)
- Forfeiture of Confrontation Rights Post-Giles: Whether a Co-Conspirator's Misconduct Can Forfeit a Defendant's Right to Confront Witnesses, Adrienne Rose (NYU Law Class of 2011, 2010–2011 JLPP Senior Articles Editor)
- *Refusing to Draw the Line: A Speech-Protective Rule for Art Vending Cases,* **Christen Martosella** (NYU Law Class of 2011, 2010–2011 *JLPP* Notes Editor)
- *How to Stop a Mole: A Look at Burrowing in the Federal Civil Service*, Lauren Mendolera (NYU Law Class of 2010, 2009–2010 *JLPP* Senior Notes Editor)

Articles

Over the course of the year, *JLPP* published fourteen articles in three issues on a wide range of substantive topics.

Volume 13, Issue 3 – Symposium Issue

Our first volume of the year, Volume 13, Issue 3, featured five articles on election reform. The issue advanced the discussion that began at a symposium *JLPP* co-hosted in 2010 with the Brennan Center for Justice entitled "Helping America Vote: The Past, Present, and Future of Election Administration." The symposium focused on legislative reforms intended to improve the current system of elections—including voter registration, voting technology, ballot design, voter ID laws, and the selection of election officials. The impetus for the topic was the 2008 election season, which brought an unprecedented level of attention to election administration in this country. Fraudulent voter registration, registration list purges, provisional voting, ballot design issues, and oversight by partisan officials all became hotly debated topics. These issues continue to be extremely timely as we approach the 2012 election. The symposium was made possible due to the generous support of the Brennan Center for Justice and the symposium funding committee at NYU School of Law. The event was open to the law

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school community, as well as the general public, and the audience included over eighty people, consisting of law students, both from NYU and other area schools, local practitioners, and NYU faculty.

The articles published include:

- *Measuring Election System Performance*, **Stephen Ansolabehere** (Professor of Government, Harvard University School of Government) and **Nathaniel Persily** (Professor of Law, Columbia Law School)
- The McCain v. Obama Simulation: A Fair Tribunal for Disputed Presidential Elections, Edward Foley (Professor of Law, Ohio State University Moritz College of Law)
- Registering the Youth Through Voter Preregistration, Michael McDonald (Associate Professor of Government and Politics, George Mason University) and Matthew Thornburg (Ph.D. Candidate, George Mason University)
- Losing Votes by Mail, Charles Stewart III (Professor of Political Science, Massachusetts Institute of Technology)
- What Can the United States Learn From Abroad About Resolving Disputed Elections?, **Steven Huefner** (Professor of Law, Ohio State University Moritz College of Law)

Volume 14, Issue 1

In our second issue, Volume 14, Issue 1, *JLPP* published a speech and four articles. Each year, the Brennan Center hosts the Living Constitution Lecture. In 2010, **Senator Tom Harkin** (D-IA) delivered this lecture and *JLPP* published his remarks. This issue also included four articles and, as with previous issues of *JLPP*, these articles addressed a wide variety of legislative and policy issues.

The articles published include:

- The Other Big Test: Why Congress Should Allow College Students to Borrow More through Federal Aid Programs, Jonathan Glater (Professor of Law, University of California, Irvine School of Law)
- In the Name of Watergate: Returning FERPA to its Original Design, Mary Margaret Penrose (Professor of Law, Texas Wesleyan School of Law)

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- "Civilizing" Drug Paraphernalia Policy: Preserving Our Free Speech and Due Process Rights While Protecting Children, **Thomas Regnier** (Adjunct Professor of Law, University of Miami School of Law)
- The Permanent Seat of Government: An Unintended Consequence of Heightened Scrutiny Under the Contract Clause, Evan Zoldan (Trial Attorney, United States Department of Justice, Civil Division)

Volume 14, Issue 2 – Dedication to Senator Edward M. Kennedy

In the final issue of the 2010–2011 academic year, Volume 14, Issue 2, *JLPP* commemorated the legacy of Senator Edward M. Kennedy. The dedication issue followed an event held at the law school on February 1, 2011, "Dedication to the Legislative Legacy of Senator Edward Kennedy," honoring the Senator's innumerable legislative and public policy accomplishments. The event was one of the most successful events of the year with hundreds of students, members of the faculty and administration, alumni, and other members of the NYU Law community in attendance.

The event featured remarks delivered by **Caroline Kennedy**, President of the John F. Kennedy Library Foundation and niece of the late-Senator Kennedy; **Justice Stephen Breyer** of the United States Supreme Court, who served as Special Counsel to the Senate Judiciary Committee and later Chief Counsel to the Senate Judiciary Committee when Senator Kennedy presided over the committee; **Thomas Susman**, Director of the Governmental Affairs Office of the American Bar Association, who previously served as an Assistant Adviser to Senator Kennedy on the Senate Judiciary Committee; and **Nick Littlefield**, Partner at Foley Hoag LLP, who served as Chief Counsel for Senator Kennedy on the U.S. Senate Health, Education, Labor and Pensions Committee. **Kenneth Feinberg** (NYU Law, Class of 1970), Administrator of the Gulf Coast Claims Facility and a former Chief of Staff to Senator Kennedy, also participated by delivering remarks via live videoconference due to inclement weather. The event was introduced by **Dean Richard Revesz** and a reception for all attendees followed the event.

Prior to the event, there was a student question and answer session with Justice Breyer. Remarks delivered by Caroline Kennedy, Thomas Susman, Nick Littlefield, and Kenneth Feinberg are available on the *JLPP* website. The remarks delivered by Justice Stephen Breyer will be published in Volume 14, Issue 3 of *JLPP* (forthcoming Fall 2011). The issue also features an essay by NYU Law Professor **Jerome Cohen**, entitled *Ted Kennedy's Role in Restoring Diplomatic Relations with China*. In addition to the remarks from the event, the journal also published several articles pertaining to Senator Kennedy's historic contributions and achievements.

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The articles included:

- Unfinished Business: The Employment Non-Discrimination Act (ENDA) and the K-12 Education Community, Stuart Biegel (Professor of Law, University of California, Los Angeles School of Law)
- Senator Edward Kennedy: A Lion for Voting Rights, Gilda Daniels (Assistant Professor of Law, University of Baltimore School of Law; NYU Law Class of 1990)
- *Health Reform and Ted Kennedy: The Art of Politics . . . and Persistence*, **Barry Furrow** (Professor of Law, Earle Mack School of Law, Drexel University)
- *Eliminating the Need for Caps on Title VII Damage Awards: The Shield of* Kolstad v. American Dental Association, **Michael Harper** (Professor of Law, Boston University School of Law)
- Substantial Limitations: Reflections on the ADAAA, Kerri Stone (Associate Professor of Law, Florida International University College of Law; NYU Law Class of 2000)

The 2011–2012 Academic Year

The 2011–2012 Executive Board is already hard at work to build on the momentum from the past year and to ensure that the upcoming year is a success. By expanding on last year's progress, we hope to further institutionalize successful practices and focus on building the Journal's reputation within the wider academic community. Additionally, we continue to search for new ways to improve the experience of all staff members and the continued high level of quality of our publication. During the 2011–2012 academic year, *JLPP* will have forty-six Staff Editors, including four NYU transfer students, thirteen Articles Editors, and fourteen Notes Editors.

Institutional Developments

Working with the Brennan Center for Justice

In addition to hosting a successful symposium and generating articles for a 2010–2011 issue, Journal members were able to establish a strong relationship with the Brennan Center for Justice. Given the over-lapping areas of interest between the Center and *JLPP*, we are enthusiastic about the beginning of this partnership during the 2010–2011 academic year and will work to continue to strengthen it during the 2011–2012 academic year.

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On April 29, 2011, the Brennan Center hosted a full-day symposium entitled "Accountability after *Citizens United*." In an effort to further this important discussion, *JLPP* will publish articles written by numerous symposium participants. A number of notable academics and practitioners, including U.S. Federal Election Commission **Chair Cynthia Bauerly**, have agreed to publish with our journal about this topic.

In addition to this opportunity to expand on the dialogue created by the *Citizens United* symposium, 2010–2011 marked the first year that *JLPP* published the "Living Constitution Lecture," a lecture hosted annually by the Brennan Center. In 2010, *JLPP* published the remarks delivered by **Senator Tom Harkin** (D-IA) in Volume 14, Issue 1. *JLPP* plans to publish the remarks delivered during the 2011 Living Constitution Lecture, currently scheduled for December 2011 in Volume 15, Issue 1. We hope to make publication of the "Living Constitution Lecture" an annual endeavor. Previous speakers have included Arizona Governor Janet Napolitano and Senator Sheldon Whitehouse.

Themed Issues

Volume 14, Issue 3 and Volume 15, Issue 2 will each have an overarching theme intended to tie the published articles together. By doing so, we are able to approach experts on a range of legislative issues and present them with a unique publishing opportunity, thereby attracting works of authors who would otherwise be less likely to publish in *JLPP*. Additionally, we hope these issues will provide opportunities to host events in conjunction with their release. Additionally, Volume 16, Issue 1, to be published during the 2012–2013 academic year, will focus on "Access to Justice."

Planned Issues

During the 2011–2012 academic year, JLPP plans to publish three issues.

Volume 14, Issue 3 – Triangle Shirtwaist Factory Fire Commemorative Issue

Volume 14, Issue 3, which will be the first issue published during the 2011–2012 academic year, will commemorate the 100-year anniversary of the Triangle Shirtwaist Factory fire. This issue's goal is to address a variety of modern legislative issues related to the historic event, which occurred only yards away from NYU School of Law.

Three articles will be published on this subject. **Saru Jayaraman**, a professor of public law in Brooklyn College's Department of Political Science and Executive Director of the Restaurant Opportunities Center of New York, will write about restaurant workers as the new class of immigrants dealing with harsh workplace conditions. **Alison Morantz** a professor at Stanford University Law School will write about the effect of unions on the enforcement of mine safety regulations. Finally, **Marcia McCormick**, a professor at St. Louis University School of Law will be writing about legislation that followed the

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Triangle Shirtwaist Factory fire, problems with non-enforcement, and the shift to current legislative and enforcement issues. She plans to focus on anti-discrimination issues with a case study emphasis on home care workers' legislation and enforcement. The issue will also feature two short essays. The first will be written by **Richard Greenwald**, Dean of St. Joseph's College, and the second will be written by **Ruth Sergel**, founder of the "Remember the Triangle Fire Coalition."

Volume 15, Issue 1

Volume 15, Issue 1, the second issue of the 2011–2012 academic year, will feature four articles. In keeping with the tradition of publishing issues on a wide range of topics, this issue does will not have a theme; however all four articles will focus on legislative and regulatory topics.

The first article is by Vincent DiLorenzo, Professor of Law at St. John's University, and is entitled *Principles-Based Regulation and Legislative Congruence*. The second article by Gerald Korngold, Professor of Law at New York Law School and adjunct faculty member at New York University School of Law, is entitled *Cutting Municipal Services During Fiscal Crisis: Lessons from the Denial of Services to Condominium and Homeowner Association Owners*. The third article is co-authored by Deniz Anginer, member of the Development Research Group at the World Bank, M. P. Narayanan, Cindy Schipani, and H. Nejat Seyhun, all of whom are Professors of Business Administration and Professors of Finance at the Stephen M. Ross School of Business at the University of Michigan. The article is entitled *Should Size Matter When Regulating Firms?: Implications from Backdating of Executive Options*. The fourth and final article is authored by NYU Law graduate Lawrence Schlam, Professor of Law at Northern Illinois University, and is entitled *Federalism and the Question of Uniform Laws: The Case of Third Party Custody "Standing" Provisions*.

Volume 15, Issue 2 - Citizens United Brennan Center Symposium Issue

Volume 15, Issue 2 will contain an assortment of articles discussing the United States Supreme Court's decision in *Citizens United v. Federal Election Comm'n*, 130 S. Ct. 876 (2010). The articles are the outgrowth of the Brennan Center's April 29, 2011 event entitled "Accountability after Citizens United." The event featured many notable speakers, including a keynote address delivered by **Cynthia Bauerly**, Chair of the Federal Election Commission. Many of the participants have expressed interest in publishing with *JLPP*, and a decision about which articles to accept will be made in early September.

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Student Notes

In Volume 14, Issue 3, JLPP plans to publish three student notes. These notes are:

- A Sign of Things to Come?: Drug Policy Reforms in Arizona, California and New York, Andrea Lofgren (NYU Law Class of 2011, 2010–2011 JLPP Senior Notes Editor)
- Suggestions to Solve the Injustices of the New York State Central Register for Abuse and Management, Molly Greer (NYU Law Class of 2012, 2011–2012 JLPP Notes Editor)
- *The Devil is in the Details:* 18 U.S.C. § 666 *After* Skilling v. United States, **Justin Weitz** (NYU Law Class of 2011, 2010–2011 *JLPP* Articles Editor)

In Volume 15, Issue 1, JLPP will publish one student note. This note is:

• The House of Cards is Falling: Why States Should Cooperate on Legal Gambling, Jamisen Etzel (NYU Law Class of 2011, 2010–2011 JLPP Managing Editor)

JLPP expects to publish additional student notes in Volume 15, Issue 2. Decisions regarding publication will be made in early September.

2011 Events

JLPP is planning two important events for the 2011–2012 academic year.

October 24, 2011: Equal Justice at Risk: Confronting the Crisis in Civil Legal Services

In conjunction with the Arthur Garfield Hays Civil Liberties Program, *JLPP* is proud to host an evening discussion about the importance of access to justice. New York State Court of Appeals **Chief Judge Jonathan Lippman** (NYU Law Class of 1968), a leader in the field of access to justice, will be speaking on the topic. The event will also include a panel discussion moderated by NYU Law School Dean Richard Revesz. In addition to Chief Judge Lippman, the confirmed panelists include **Judge Robert Katzmann** of the United States Court of Appeals for the Second Circuit; **Helaine Barnett** (NYU Law Class of 1964), former President of the Legal Services Corporation and Chair of the Task Force to Expand Access to Civil Legal Services in New York; and **Alan Levine** (NYU Law Class of 1973), partner at Cooley LLP and former Chairman of the Board of the Legal Aid Society.

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The journal also plans to solicit articles on this subject from academics and practitioners for inclusion in a themed issue to be published as Volume 15, Issue 3, the first issue of the 2012–2013 academic year.

February 24, 2012: Symposium – The Future of Internet Governance and Regulation

JLPP was awarded funding to co-host a symposium with the *NYU Journal of Law* and *Liberty* on the future of Internet governance and regulation. Participants will be invited to participate in late September. The symposium will consist of three panels discussing various aspects of Internet regulatory issues, including important policy topics such as net neutrality, the delivery of broadband Internet service to rural communities, and Internet censorship.

Future Events

A Symposium Committee will be formed in order to create a formal proposal for a 2012–2013 academic year symposium. The Senior Symposium Editor, who oversaw the Internet Governance and Regulation symposium application and will plan both of *JLPP*'s 2011–2012 events, and the Editor-in-Chief will lead a committee of Staff Editors to submit a proposal. This structure enables *JLPP* to benefit both from our institutional experience and our variety of viewpoints and ideas—a combination that we believe will lead to the production of a compelling proposal.

Previous Events

In addition to the highly successful event commemorating Senator Kennedy's legislative legacy, *JLPP* has held a number of symposia in the past, most recently in 2010. The Spring 2010 event was entitled *Helping America Vote: The Past, Present, and Future of Election Administration*. This event discussed numerous legislative reforms related to election administration and led to the production of material for Volume 13, Issue 3. Prior to that event, a Fall 2007 symposium was held, entitled *Leviathan's Network: Municipal Wireless and Civil Liberties*. It addressed unique legal questions raised by the municipal wireless market. Other past symposia topics include immigration reform, health care, and the Digital Millennium Copyright Act. *JLPP* hopes to continue holding symposia on a regular basis to address pressing legislative and public policy issues.

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JLPP's Increasing Reputation

JLPP articles have been cited with increased frequency throughout its existence. Listed below are the numbers of times *JLPP* articles have been cited in law reviews, texts, and bar journals accessible through Westlaw.

In addition, the journal has been cited by a number of courts, including twice by the United States Court of Appeals for the District of Columbia, the Southern District of New York, and the Supreme Court of North Dakota.

Institutional Developments

This exceptional work product and our ambitious plans reflect important institutional developments that are designed to create a strong intellectual infrastructure.

Academic year 2009–2010 marked the switch from traditional scheduled office hours for staff members to a more group-centered process for editing articles and notes. Rather than performing work on a variety of different articles during office hours, the new system assigns approximately six staff members to a specific article or note for each issue. The group then follows the piece throughout the production process, from initial edits, through C&S, concluding with a final read of the article or note. Each group was overseen by a third-year Executive Editor, who had the primary responsibility for editing the article and communicating with the author. This system not only better accommodates our limited office space, but also provides the second-year staff members with a better understanding of the full production process. In general, this production method has proven highly effective and both 2L and 3L Editors have been pleased with their individual contributions towards the development of each issue.

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Following the successful implementation of a note workshopping program during the 2009–2010 academic year, the 2011–2012 Executive Board is encouraging even more student writing. *JLPP* is hopeful to develop a legislative round-up that would be included in each issue. The round-up would spotlight specific legislative efforts, providing an objective review of proposed or stalled legislation as well as inform readers of the status of such legislation. *JLPP* is also considering publishing student-authored reviews of books relevant to the Journal's subject-matter.

Finally, for the second year in a row, the Journal conducted an exit survey of 3Ls asking for information about their post-graduate plans. Our hope is that this information can be acquired every year moving forward so that we can create a comprehensive alumni database. This would allow us to better inform alumni about new developments by *JLPP*. It would also provide an additional resource for current students looking to strategically network with alumni. This alumni network will also be used to invite former members to attend *JLPP* events.

Editors-in-Chiefs' Post-Graduate Plans

2008–2009 Editor-in-Chief Craig Davis is an associate in Latham & Watkins's San Francisco office. 2009–2010 Editor-in-Chief Laura Miller started in September 2010 at Quinn Emanuel in San Francisco. She will be clerking for The Honorable Richard Clifton of the Ninth Circuit in Honolulu for the 2011–2012 term. 2010–2011 Editor-in-Chief Sara Silverstein will be starting in October 2011 at Dewey & LeBoeuf in Washington, D.C.