



NEW YORK UNIVERSITY

# Journal of Legislation & Public Policy

ANNUAL REPORT 2019-2020

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## A NOTE FROM OUTGOING EDITOR-IN-CHIEF, DANIELLE SCHULKIN

Law school is hard but law school in the middle of a worldwide pandemic is even harder. Hurrah to the past and present Journal of Legislation & Public Policy members for simply enduring, and even doing so with grace and kindness.

There was so much we couldn’t control these past two years. But, despite those odds, the Journal became a haven—whether in-person or online—for a law school community that could provide shelter from the loneliness and fear that seeped into our lives.

I made a pitch to the Journal that we would lead with three values: fearlessness, kindness, and recognition. What I didn't expect was that those values would take on a far larger and more important role than the technicalities of running a law school journal. Thank you all for fearlessly shouldering the task of continuing to build this Journal in the face of a global pandemic, doing so with the kindness to yourself and to others that makes this journal community special, and all while recognizing the disparate impact on those who may not be as lucky.

To the future journal members: this Journal is yours now. You have the resources, the mentors, and the strength to build the Journal into what you want it to be. I don't think a week went by when I didn't do something wrong, but I also think a week didn't go by where I felt like the time spent was meaningful and that we were creating something that mattered (at least to a couple of people!).

There are many things I could highlight here: the symposiums we ran, the articles we published, the new programs we built. But I want to highlight my favorite part and the most enduring gift: the people. I know how lucky I am to have spent my time with people who I both admire and who I am lucky enough to now call my friends. Whether it was in the journal office, on the many coffee walks, or on zoom, spending time with you was one of the highlights of my law school experience and I will forever treasure the memories we made.

Thank you to everyone on this Journal. Thank you for putting in the work, even when it was annoying, and thank you for making law school just a little bit more friendly. I hope you carry this community with you wherever your future paths may lead.

As always, don't hesitate to reach out.

–Dani, Volume 22 Editor-in-Chief

## I. CITATIONS

*Legislation* was cited in three federal court and five state court opinions:

- *Inclusive Communities Project, Inc. v. Lincoln Property Co.*, 930 F.3d 660, 666 n.8 (5th Cir. 2019) (Haynes, J., dissenting from order denying rehearing en banc): denial of rehearing en banc a decision dismissing Fair Housing Act claims against property owner for its allegedly discriminatory treatment of holders of Section 8 vouchers. The court cited Robert G. Schwemm, *Segregative-Effect Claims Under the Fair Housing Act*, 20 N.Y.U. J. LEGIS. & PUB. POL'Y 709, 714 (2017).
- *Faber v. Ciox Health, LLC*, 944 F.3d 593, 598 (6th Cir. 2019): rejecting the merits claims of a purported class of patients asserting various common law claims against medical records provider for overcharging fees for access to medical records, but binding only the named plaintiffs and not absent class members. The court cited Barry L. Johnson, *Why Negligence Per Se Should Be Abandoned*, 20 N.Y.U. J. LEGIS. & PUB. POL'Y 247, 250 (2017).

- *Doe v. University of Nebraska*, 451 F. Supp. 3d 1062 (D. Neb. Apr. 3, 2020): dismissing § 1983 claim against individual defendants in a former student’s lawsuit against University following University’s unfavorable adjudication of a sexual assault claim that led to plaintiff’s expulsion. The court cited Samantha Harris & K.C. Johnson, *Campus Courts in Court: The Rise in Judicial Involvement in Campus Sexual Misconduct Adjudications*, 22 N.Y.U. J. LEGIS. & PUB. POL’Y 49, 112–13 (2020).
- *Asian Americans Advancing Justice–Los Angeles v. Padilla*, 254 Cal. Rptr. 3d 581, 585 (Ct. App. 2019): upholding a California statute that expands language access for California’s limited-English proficient voters. The court cited James Thomas Tucker, *Enfranchising Language Minority Citizens: The Bilingual Election Provisions of the Voting Rights Act*, 10 N.Y.U. J. LEGIS. & PUB. POL’Y 195, 209 (2006).
- *Attorney General v. District Attorney for Plymouth District*, 141 N.E.3d 429, 439 (Mass. 2020): defining the scope of district attorneys’ offices obligation to fulfill data requests under state public records and criminal offender records laws. The court cited James Jacobs & Tamara Crepet, *The Expanding Scope, Use, and Availability of Criminal Records*, 11 N.Y.U. J. LEGIS. & PUB. POL’Y 177, 186–87, 203–08 (2008).
- *TruGreen Ltd. Partnership v. Department of Treasury*, 332 Mich. App. 73, 95 n.8 (Mich. Ct. App. Apr. 10, 2020) (Shapiro, J., concurring): holding that a state use tax exemption did not apply to products used by lawn care company. The court cited Craig Hoffman, *Parse the Sentence First: Curbing the Urge to Resort to the Dictionary When Interpreting Legal Texts*, 6 N.Y.U. J. LEGIS. & PUB. POL’Y 401, 401 (2003).
- *Morrisey v. West Virginia AFL-CIO*, No. 19-0298, 243 W. Va. 86, 128 n.3 (W. Va. Apr. 21, 2020) (Hutchison, J., concurring): upholding the validity of West Virginia’s right-to-work law and finding that it did not violate the right of association, did not result in an unconstitutional taking and did not infringe upon any liberty interest under the state constitution. The court cited Alison Morantz, *Does Unionization Strengthen Regulatory Enforcement? An Empirical Study of the Mine Safety and Health Administration*, 14 N.Y.U. J. LEGIS. & PUB. POL’Y 697, 702 (2011).
- *State v. Booth-Harris*, 942 N.W.2d 562, 586 (Iowa 2020) (Appel, J., dissenting): Trial counsel had no duty to object to uniform instruction on eyewitness identification submitted to jury or to request a different instruction. The court cited Andrew E. Taslitz, “*Curing*” *Own Race Bias: What Cognitive Science and the Henderson Case Teach About Improving Jurors’ Ability to Identify Race-Tainted Eyewitness Error*, 16 N.Y.U. J. LEGIS. & PUB. POL’Y 1049, 1052 n.18 (2013).

*Legislation* was cited in 292 secondary sources from May 2019 until May 2020, including 170 citations in law reviews and journals and 116 citations in texts and treatises. The Journal was cited twice each in the Columbia Law Review, Harvard Law Review, NYU Law Review and Virginia Law Review, and three times in the Duke Law Journal.

*Legislation* was also cited in twenty new federal regulations, spanning from rules concerning election procedures under the National Labor Relations Act to new SEC net capital requirements for brokers and dealers. Finally, *Legislation* was cited in eight Supreme Court briefs, two Fifth Circuit briefs, one Third Circuit brief and one Fourth Circuit brief.

## II. PRINT PUBLICATIONS

### *A. Volume 22, Issue 1*

Issue 22.1 features four full-length scholarly Articles and one student Note:

#### Stablecoins in Cryptoeconomies: From Initial Coin Offerings to Central Bank Digitation Currencies

Article by Marco Dell'Erba, Assistant Professor of Law, University of Zurich, Fellow, NYU School of Law's Institute for Corporate Governance and Finance, Research Associate, Financial Regulation Laboratory of Excellence, University of Paris I Panthéon-Sorbonne

Edited by Stephen Nemec, J.D. NYU Law

This Article discusses stablecoins, a type of cryptocurrency that is more stable than most because stablecoins are pegged to fiat currency or otherwise backed by collateral. The Article discusses the features of stablecoins, the problems they present, and the uncertainty surrounding their regulation in the United States and Europe.

#### Campus Courts in Court: The Rise in Judicial Involvement in Campus Sexual Misconduct Adjudications

Article by Samantha Harris, Vice President for Procedural Advocacy at the Foundation for Individual Rights in Education (FIRE) & KC Johnson, Professor of History at Brooklyn College and the CUNY Graduate Center

Edited by Jordan Beres, J.D. NYU Law

This Article analyzes the recent wave of litigation involving college students accused of sexual misconduct who were tried in campus judiciaries. The Article summarizes this rapidly growing and evolving body of law by discussing changes in the way courts consider campus procedures; critiquing where courts have come up short; and discussing the judiciary's role in these issues going forward.

#### A Little Help from Our Friends: Moving Beyond Enforcement to Improve State and Local Government Compliance with Federal Securities Laws

Article by Heather G. White, Fellow, Taxation Law and Policy Research Group at the University of Western Australia Law School; practicing public finance lawyer affiliated with Nixon Peabody LLP

This Article surveys the state of financial disclosures in the American municipal bond market. The Article goes through those policies identified by the Securities and Exchange Commission as leading to insufficient financial disclosures in markets for these state and local bonds, and

identifies strategies to build increased compliance and stronger, more informed municipal bond markets for the protection of investors and municipal issuers alike.

### The Meaning of Leave Understanding Workplace Leave Rights

Article by Molly Weston Williamson, Director of Paid Leave and Future of Work and Senior Staff Attorney at A Better Balance

Edited by Zoe Palenik, J.D. NYU Law

This Article analyzes contemporary federal and state leave laws and provides a framework for policy analysis by describing and analyzing six leave rights: the right to leave, the right to reinstatement, the right to pay, the right to continuation of health insurance, the right not to be retaliated against, and the right not to be interfered with. The Article provides a framework and vocabulary for policymakers and analysts in the field of workplace leave.

### NIFLA v. Becerra: The First Amendment and the Future of Mandatory Disclosure Laws

Note by Victoria Hamscho, J.D. NYU Law, Associate at Public Policy and Law Practice K&L Gates LLP

Edited by Victor Haas, J.D. NYU Law

This Note examines the Supreme Court's decision in *NIFLA v. Becerra* and its impacts on the constitutionality of mandatory disclosure laws under the more exacting rational basis review that the Court applied to California's law requiring that crisis pregnancy centers communicate minimum informational requirements to those they counsel regarding abortion and other family planning options. The Note thoroughly examines the current state of the doctrine and identifies various potential consequences of the Court's decision.

### *B. Volume 22, Issue 2*

Issue 22.2 features three full-length scholarly Articles and two student Notes:

#### Consumer Finance and AI: The Death of Second Opinions?

Article by Nizan Geslevich Packin, Associate Professor at Baruch College, City University of New York; Affiliated Faculty at Indiana Bloomington's Program on Governance of the Internet and Cybersecurity

This Article presents an empirical study exploring automation bias in the realm of consumer finance, confirming that when making consumer finance decisions, including significant investment decisions, Americans significantly prefer following the recommendations of algorithms over those of human experts. The Article proposes reinvigorating the norm of getting

second opinions on significant consumer finance decisions, and suggests a series of policy proposals and nudges calibrated to encourage cultural changes in this direction.

See No Evil: A Look at Florida’s Legislative Response to Holding Hotels Civilly Liable for “Turning a Blind Eye” to the Sex Trafficking Monster Hiding Behind Closed Doors

Article by Lori Nazry Ross, J.D. University of Florida, Levin College of Law; M. Ed. University of Florida; B.A. University of Florida, Assistant Professor of Law at Barry University Dwayne O. Andreas School of Law

Edited by Victor Haas, J.D. NYU Law

This Article examines the impact of Florida Statute § 509.096, a law passed in 2019 requiring hotel and motel establishments to provide anti-trafficking awareness training and to educate their employees on how to detect and report trafficking. The Article assesses the impacts of the legislation and proposes some next legislative steps for Florida to continue curbing human trafficking in the state.

Filling the Federal District Court Vacancies

Article by Carl Tobias, Williams Chair in Law, University of Richmond School of Law

Edited by Jordan Beres, J.D. NYU Law

This Article analyzes the judicial selection process under President Trump. The Article finds that the Trump administration and Republican-majority Senate has rapidly appointed young, conservative appeals courts judges, while at the same time downplaying the need to fill vacancies in the district courts. The Article discusses the problems raised by the current administration’s judicial selection process and offers suggestions for remedying these problems.

The National Environmental Policy Act and the Value of Information

Note by Alan Masinter, J.D., 2019, New York University School of Law; current Legal Fellow, Clean Air Task Force

Edited by Stephen Nemec, J.D. NYU Law

This Note discusses the application of “value-of-information” analysis to stopping-point decisions that arise during the preparation of Environmental Impact Statements (EIS). This approach assesses the benefits and costs of gathering more information when deciding how much information an EIS should include.

The IDEA Demands More: A Review of FAPE Litigation after *Endrew F.*

Note by William Moran, J.D., 2019, New York University School of Law.

This Note conducts a comprehensive analysis of the citations of the *Endrew F.* case, a watershed decision interpreting the Individuals with Disabilities Education Act (IDEA) to require individualized education plans (IEPs) to adhere to more rigorous requirements, beyond a simple *de minimis* standard, for substantive adequacy. The Note reviews the post-*Endrew* case law and identifies a number of themes that have emerged since the 2017 decision, including qualitative and quantitative trends in litigation under IDEA.

### *C. Volume 22, Issue 3*

Issue 22.3 features three full-length scholarly Articles, one student Note, and one Comment written in response to our spring symposium:

#### Social Cost and Material Loss: The Dakota Access Pipeline

Article by Carla F. Fredericks, Faculty Director; Mark Meaney, Faculty Director; Nicholas Pelosi, Corporate Engagement Manager; & Kate R. Finn, Staff Attorney, all of First Peoples Worldwide

Edited by Zoe Palenik, J.D. NYU Law

This Article presents a case study of the Dakota Access Pipeline and the impact of unaccounted for social risk. Namely, the Article examines whether the controversy surrounding the DAPL's development on indigenous ancestral lands caused financial losses to DAPL's investors. To do so, the authors employ an event study methodology to examine the impact of specific events (e.g. the beginning of protests at the DAPL construction site) on DAPL's parent company's stock price. The Article also examines the project's cost to banks and community members.

#### The Legal Construction of Walls: *N.D. & N.T. v. Spain*, 2017, 2020

Article by Moira Paz, Fellow in International Law, Stanford Law School; Research Fellow, Center on National Security and the Law, Georgetown University Law Center, Washington, D.C.

This Article examines the trend in Western democracies toward building border walls as a means of migration control, arguing that the construction of these walls is just as much a legal construction as a physical one, and that the legal and physical aspects of these walls each informs the other. The Article highlights the tension that is created by this legal-physical apparatus with human rights law, and argues that increased attention should be paid to the key political and distributional questions that these walls implicate: which individuals should be protected, in what order of priority, by which states and on what terms, and which screening methods are acceptable.

#### The Viability of Change: Finding Abortion in Equality After *Obergefell*

Article by Melanie Kalmanson, J.D. Florida State University College of Law; and Riley Erin Frederick, J.D. Florida State University College of Law

Edited by Jordan Beres, J.D. NYU Law

This Article explains how Justice Kennedy’s majority opinion in *Obergefell* significantly changed the relationship between the Due Process and Equal Protection Clauses of the Fourteenth Amendment, by intertwining the two clauses so that they operate cooperatively. As a result of this synthesis, the Article argues, the door is open for the Supreme Court to finally ground the right to abortion in equal protection.

#### Disrupting Disinformation: Deepfakes and the Law

Comment by Anna Yamaoka-Enkerlin, B.A., University of Oxford; LLM, New York University School of Law

This Comment reviews the spring symposium’s discussions of the legal issues involved in the emergence of deepfake technology, and advocates for adoption of the “Disinformation Disruption Framework” developed by the DeepTrust Alliance to analyze proposed solutions to the local, organizational, and global threats that deepfake technology poses.

#### Cleaning Up Venue: Chevron Deference and the Venue Provision of the Clean Air Act

Note by Cris Ray, J.D., NYU Law; Associate, Cravath, Swaine & Moore

Edited by Stephen Nemec, J.D. NYU Law

This Note discusses the provisions of the Clean Air Act that specify the appropriate venue for challenging EPA rules: petitions challenging regional or locally applicable rules must be filed in the appropriate circuit court, while rules with a nationwide scope or effect must be filed in the D.C. Circuit Court of Appeals. This Note argues that courts should defer to the EPA’s determination that a rule has a nationwide scope or effect, and that deference is justified by the congressional purpose behind the Clean Air Act, general *Chevron* deference principles, and the policy benefit of maintaining nationally uniform regulations.

### III. *QUORUM*: LEGISLATION’S ONLINE COMPANION

To continue *Legislation*’s mission to provide timely and practical scholarship on important legal issues, *Quorum* publishes short pieces on a variety of topics from differing viewpoints. Throughout the 2019-2020 school year, *Quorum* focused on publishing three categories of pieces, including: (1) short overviews of legislation, policy developments, or events with legal or policy repercussions; (2) lengthy pieces with a deep level of legal or policy analysis; and (3) book reviews.



In an attempt to further the impact of the Journal, *Quorum* made a point to expand authorship beyond student authors to outside practitioners and scholars. Most notably, together with the Editor-in-Chief, Danielle Schulkin, and the Senior Symposium Editor, Lisa Femia, *Quorum* published several pieces from participants in the Journal's spring symposium on Deepfakes.

On the 2019-2020 Executive Board, Senior *Quorum* Editor Katherine McFarlane supervised content generation and production working primarily with eight 3L *Quorum* editors.

During the 2019-2020 school year, *Quorum* published sixteen new pieces:

- **Short Piece, *A New Way to Legislate: Enhancing the Powers of the Presidency and Congress***
  - Matthew Bergbower, Ph.D., Associate Professor of Political Science at Indiana State University
  - <https://nyujlpp.org/quorum/bergbower-enhancing-the-powers-of-the-presidency-and-congress/>
  - America's practicing democracy is crippled by institutional gridlock between Congress and the presidency. To accomplish big policy changes, major reforms to how we govern are needed.
  
- **Short Piece, *Ranked Choice Voting and the 2020 Democratic Primary***
  - Martin Ascher, J.D. '20, *Quorum* Editor
  - <https://nyujlpp.org/quorum/ascher-ranked-choice-voting-2020-democratic-primary/>
  - Martin Ascher explores several alternative voting systems and shares his thoughts on why "ranked choice voting" should be used in the 2020 Democratic primary and beyond.
  
- **Short Piece, *The 2020 Census and Beyond: Why Differential Privacy Should be Implemented to Protect Confidentiality***
  - Michelle Liu, J.D. '20, *Quorum* Editor
  - <https://nyujlpp.org/quorum/liu-why-differential-privacy-should-be-implemented/>
  - The proposed citizenship question in the 2020 Census sparked concerns about confidentiality and data security. Michelle Liu argues that differential privacy should be implemented to protect confidentiality in the 2020 Census and in all areas of data collection.
  
- **Book Review, *How the International Subtleties within Nancy MacLean's Democracy in Chains Explain U.S. Extraterritoriality***
  - Alina Veneziano, L.L.M. '19
  - <https://nyujlpp.org/quorum/veneziano-nancy-macleans-democracy-in-chains/>
  - This short study uses Nancy MacLean's *Democracy in Chains: The Deep History of the Radical Right's Stealth Plan for America* to trace the United States' use of extraterritoriality as a regulatory tool and examines the pervasiveness of ideology on this practice.

- **Short Piece, *First Data Sharing Agreement Under CLOUD Act Reassures Some, Leaves Others Concerned***
  - Austin Gillett, J.D. '20, *Quorum* Editor
  - <https://nyujlpp.org/quorum/gillett-first-data-sharing-agreement-under-cloud-act/>
  - In October of 2019, the U.S. and the U.K. signed the first executive agreement under the CLOUD Act. Austin Gillett discusses the CLOUD Act and outlines the debate among scholars on how the Act will impact privacy.
  
- **Short Piece, *Domestic Violence Survivors Justice Act: Potential Mitigation, Not Guaranteed Fix***
  - Remy Bogna, J.D. '20, *Quorum* Editor
  - <https://nyujlpp.org/quorum/bogna-domestic-violence-survivors-justice-act/>
  - In 2019, Governor Cuomo signed the Domestic Violence Survivors Justice Act into law. While a step in the right direction towards providing sentencing relief for domestic violence victims, Remy Bogna argues that the bill lacks the bite necessary to make it a meaningful tool for reform.
  
- **Long Piece, *Against Interpreting Dead Bills***
  - Daniel Himebaugh, Leadership Counsel for the Washington State Senate Republican Caucus
  - <https://nyujlpp.org/quorum/himebaugh-against-interpreting-dead-bills/>
  - The Supreme Court of Washington's recent opinion in a landmark environmental case shows how interpretive problems arise when courts use dead bills to determine the meaning of statutes.
  
- **Short Piece, *Analyzing the Commoditization of Deepfakes***
  - Robert Volkert (VP of Threat Investigation at Nisos) and Henry Ajder (Head of Threat Intelligence at Deeptracelabs)
  - <https://nyujlpp.org/quorum/volkert-ajder-analyzing-the-commoditization-of-deepfakes/>
  - Robert Volkert (VP of Threat Investigation at Nisos) and Henry Ajder (Head of Threat Intelligence at Deeptracelabs) present the key findings from their research investigating how deepfakes are being created, shared, and sold online. They aim to provide insight into how deepfakes are being used online, in order to better understand the legitimate and illicit economies that have developed around deepfakes technology.
  
- **Short Piece, *Manipulated Reality, Menaced Democracy: An Assessment of the DEEP FAKES Accountability Act of 2019***
  - Daniel Lipkowitz, J.D. '22, 2020 Legislation Competition Winner
  - <https://nyujlpp.org/quorum/lipkowitz-manipulated-reality-menaced-democracy-deepfakes-accountability-act/>
  - Daniel Lipkowitz, one of the winners of the 2020 Legislation Competition, explores Congresswoman Yvette Clarke's DEEP FAKES Accountability Act (H.R. 3230). While acknowledging the benefits of the legislation, he proposes two

modifications that would strengthen the bill and feasibly enhance bipartisan support for the bill in Congress.

- **Long Piece, *What if California Assembly Bill 5 Protected Collective Bargaining? An Antitrust Analysis***
  - Sara Spaur, J.D. '20, Managing Editor of Production
  - <https://nyujlpp.org/quorum/spaur-what-if-california-assembly-bill-5-protected-collective-bargaining/>
  - JLPP's Managing Editor of Production, Sara Spaur, engages in an antitrust analysis of California Assembly Bill 5 as it relates to collective bargaining. She analyzes whether this recently-enacted statute and conduct by workers covered by the statute could withstand antitrust scrutiny if Assembly Bill 5 had granted all workers that meet its definition of "employee," such as Uber drivers, the right to collectively bargain.
  
- **Short Piece, *Common Sense Parole Reform with the Power to Reshape Lives and Reduce Prison Populations: #LessIsMoreNY***
  - Rachel Cohen, J.D. '20, *Quorum* Editor
  - <https://nyujlpp.org/quorum/cohen-common-sense-parole-reform-lessismoreny/>
  - Currently pending with the New York State Senate Committee on Crime Victims, Crime, and Correction, the Less is More Act would eliminate incarceration for most technical parole violations. Rachel Cohen explains why reforming the New York State parole system in this way is "common sense" and encourages New York State legislators to approve the legislation.
  
- **Short Piece, *Through a Straw Darkly: Reflections on the NYU Conference "When Seeing Isn't Believing: Deepfakes and the Law"***
  - Matthew F. Ferraro, Attorney and Former U.S. Intelligence Officer
  - <https://nyujlpp.org/quorum/ferraro-reflections-on-nyu-deepfakes-conference/>
  - Matthew F. Ferraro, an attorney and former U.S. intelligence officer, reflects on JLPP's March conference, "When Seeing Isn't Believing: Deepfakes and the Law." He outlines his major takeaways from the conference and works to expand the discourse around the benefits, dangers, and solutions surrounding deepfakes.
  
- **Short Piece, *Fill the New York Federal District Court Vacancies***
  - Carl Tobias, Williams Chair in Law, University of Richmond School of Law
  - <https://nyujlpp.org/quorum/tobias-fill-the-new-york-federal-district-court-vacancies/>
  - New York faces openings in seven district judgeships, three of which are emergencies. Carl Tobias, Williams Chair in Law at the University of Richmond School of Law, urges President Trump, the chamber, and Senators Schumer and Gillibrand specifically to collaborate and promptly fill these vacancies over 2020.
  
- **Short Piece, *Primer: The Relevant Executive Regulatory Powers and Responses to COVID-19***
  - Thomas McBrien, J.D. '21, Incoming Senior *Quorum* Editor

- <https://nyujlpp.org/primer-the-relevant-executive-regulatory-powers-and-responses-to-covid-19/>
- COVID-19 is a nearly unprecedented pandemic requiring wartime-level mobilization from the public and private sectors. This piece explores the federal executive branch’s response through various statutory powers such as the Stafford Act and public health emergency powers.
- **Short Piece, *Open Letter to Yale Law Journal Denouncing Ableism and Eugenics***
  - Disability Allied Law Students Association at NYU School of Law
  - <https://nyujlpp.org/quorum/dalsa-open-letter-to-yale-law-journal/>
  - Members of the Disability Allied Law Students Association at New York University School of Law authored this letter in response to concerns about a forthcoming article regarding medical triaging in the time of the COVID-19 pandemic. As of the time of publication, it has been signed by multiple organizations and 150 students and individuals representing more than twenty-five law schools across the country.
- **Short Piece, *Foresight, Hindsight, and the Merits of a Comprehensive Approach to Protecting Political Campaigns from Cyberattacks***
  - Amy Larsen, Attorney and Co-Founder of Foresight2020
  - <https://nyujlpp.org/quorum/larsen-foresight-hindsight-and-the-merits-of-a-comprehensive-approach-to-protecting-political-campaigns-from-cyberattacks/>
  - Amy Larsen is the co-founder of Foresight2020, a nonpartisan cyber defense and preparedness training organization for political candidates and advisors. In her piece, Larsen explores the need for a comprehensive approach to protecting political campaigns from cyberattacks, with a hope that policymakers will eventually replace Foresight2020 in providing this training and preparation.

## IV. SYMPOSIA

Every year, the Journal provides a forum for engaging students, academics, and legal practitioners in thoughtful research and frank discussion of current legislative issues and public policy challenges. Above all, we aim to generate practical solutions for major national, state and municipal problems. During the 2019-2020 school year, the Journal hosted two symposia, one in the fall and one in the spring.

### A. FALL

In October 2019, the Journal hosted a panel discussion on the current state of federal clemency initiatives entitled “Freedom & Forgiveness: The Future of Federal Clemency Reform.” Moderated by Professor Rachel Barkow, the panel discussed current reform proposals, the First Step Act’s relaxed compassionate release requirements, initiatives by prior administrations, and proposals by the 2020 Democratic candidates. Panelists included: Michael Bosworth, Senior Counsel and Chief Compliance Officer at MacAndrews & Forbes Incorporated and former Deputy Assistant and Deputy Counsel to the President under President Obama; Caitlin Glass, Staff Attorney at the Office of the Appellate Defender; Ames Grawert, Senior Counsel in the

Brennan Center for Justice’s Justice Program; and David Patton, Executive Director and Attorney-in-Chief at the Federal Defenders of New York.

## B. SPRING

In March 2020, the Journal hosted a half-day conference on “deepfake” technology in partnership with the NYU Center for Cybersecurity. Deepfakes are realistically altered fake videos that make a person appear to have said or done things they never did. The videos have problematic implications for individuals, companies, the proliferation of “fake news,” state security, and trust in democracy.

With over 250 attendees, it was the Journal’s largest event in recent memory. Entitled “When Seeing Isn’t Believing: Deepfakes and the Law,” the event featured a keynote speaker, two panels, and a fireside chat. Dean Trevor Morrison also presented awards to the winners of the Journal’s 2020 Legislation Competition.

Kathryn Harrison, the Founder and CEO of DeepTrust Alliance, opened the event with a keynote speech and overview of deepfake technology. The first panel, “The Front Line: Big Tech, Fake News, and Private Industry’s Deepfake Detection Problem,” focused on the private companies and platforms on the front lines dealing with deepfake videos. Judi Germano, Distinguished Fellow at the NYU Center for Cybersecurity moderated the panel. Speakers included: Saleela Salahuddin, Cybersecurity Policy Lead at Facebook; Till Daldrup, Training Coordinator at the *Wall Street Journal*; Andrew Gully, Technical Research Manager at Google-Jigsaw; and Corin Faife, a journalist for WITNESS.

A fireside chat followed the first panel. Entitled “A Terrorist’s Tool: Global Implications of Deepfakes & Misinformation for International Security and Human Rights,” it addressed how terrorist organizations have used—and continue to use—misinformation and deepfakes to advance their agendas, threaten global security and impinge on human rights. The chat was moderated by Matthew Ferraro, Counsel at WilmerHale. Speakers included Mounir Ibrahim, VP of Strategic Initiatives at Truepic, Inc. and Emerita Torres, Director of Policy Research and Programs at The Soufan Center.

Concluding the event, the second panel, “Legislative Solutions, Individual Rights, and the Question of Government Intervention,” discussed various approaches to regulating deepfakes. It addressed the thorny legal issues implicated, such as privacy, free speech, and civil liberties. Topics included election security, national security, digital privacy, and constitutional protections. Moderated by Randal Milch, the Co-Chair of the NYU Center for Cybersecurity, the panel featured four speakers: Ben Wizner, Director of the ACLU Speech, Privacy, and Technology Project; Lindsay Gorman, Fellow for Emerging Technologies at the Alliance for Securing Democracy; Rob Volkert, VP of Threat Investigations at Nisos; and Noah Stein, Assistant Attorney General in the Bureau of Internet & Technology, New York State Attorney General’s Office.

## V. PODCAST

This past year, *Legislation* developed and launched the *LawsFlaws* podcast, providing an additional venue for the journal to engage with contemporary, fast-changing legal and policy questions, and doing so through the popular and accessible mode of audio recordings and interviews. In launching *LawsFlaws*, *Legislation* editors worked to build on scholarship in our established programs, with the podcast serving as an avenue for more in-depth analysis and discussions with experts whose presence is well-suited to the interview setting. A podcast is also an ideal space for gathering scholars and expertise on subjects where time is of the essence, and *Legislation* may want to gather their voices before a full Symposium can be arranged.

For the first episode, “An Introduction to Deepfakes,” we focused on the legal landscape surrounding deepfakes, working to provide context and a companion piece to our Spring 2020 symposium on that topic. On the technical side, Editor-in-Chief Dani Schulkin, Articles Editor Alex Rose, and Quorum Editor Rachel Cohen produced the episode, Managing Editor for Development Michael Quinn edited, and Staff Editors Naomi Wossen and Patrick Derocher assisted. Alex Rose also conducted the interview with Rutgers professor Britt Paris, whose research focuses on how groups of people develop and use information systems, the role their values play, and how that informs political activity.

On the 2019-2020 Executive Board, several editors played a role in developing, publishing, and promoting *LawsFlaws*, including Editor-in-Chief Dani Schulkin, Managing Editor for Development Michael Quinn, Senior *Quorum* Editor Katherine McFarlane, and Senior Symposium Editor Lisa Femia. Looking ahead, the 2020-2021 Executive Board has expanded the responsibilities of the Senior Executive Editors and Senior Symposium Editors to create a process and leadership structure to ensure that *LawsFlaws* will grow to be a robust part of *Legislation*’s contributions to legal scholarship. To that end, the 2020-2021 Executive Board has also created the 3L role of Intellectual Life Editor, to provide support for both Symposia and *LawsFlaws* going forward.

## VI. LEGISLATION COMPETITION

The Journal hosts an annual Legislation Competition open to NYU Law students. The competition promotes the intersection of law and legislation and encourages students to contribute scholarship that may affect policy change. This year, the competition was held alongside the Journal’s March 2<sup>nd</sup> symposium. The competition centered on the threat of “deepfakes,” fake videos that have been realistically altered and presented as truthful. Competition entrants evaluated Congresswoman Yvette Clarke’s DEEP FAKES Accountability Act, a bill that aims to combat the emerging video technology. Deepfakes have problematic implications for the proliferation of “fake news,” evidence at trial, and trust in democracy. Competition entrants were encouraged to propose amendments, introduce new sections, argue for alternatives to the bill, or substantively analyze why it should remain as is. Two winners were selected and received a cash prize and recognition at the Journal’s March symposium. Their submissions were also published in *Quorum*, the Journal’s online companion. Originally, the

Journal intended to organize an all-expenses-paid trip to Washington, D.C. for the winners to meet with lawmakers. Unfortunately, the trip was derailed by COVID-19.

The 2020 winners were Daniel Lipkowitz, a 1L, and Anna Yamaoka-Enkerlin, an LLM.

## VII. PRODUCTION PROCESS

### *A. Article Selection*

This section highlights the new article selection process that was created this year and the Content Committee's work in revising the Journal's Mission Statement and drafting the Journal's Diversity Statement.

This year, we created a normed process for reviewing articles that the Journal was considering for publication. First, we created an Article Selection Rubric that gave reviewers a normed framework for reviewing articles and ensured that the Journal consistently published quality pieces. The Article Selection Rubric evaluates the novelty of the topic, the quality of the writing, the level of policy advocacy/impact, etc. This scaled rubric outlines the quality indicators that relate to the article's scaled rating. In addition, AEs annotate the article and include substantive and stylistic notes that are a part of the evaluative process. The rubric was created to ensure that AEs and the SAE were reviewing the articles in the same way and were selecting articles around a common set of quality indicators.

After the reviewer rates the article using the scaled rubric, a final score is calculated, which determines whether the article will be recommended for production. The AE reads the article, annotates the piece, and then scores the rubric on the 15-point scale. An article receiving a score of 11 or higher is presumed to be publishable. After the article is scored, the reviewer writes a 5-6 sentence paragraph describing why the article should be published, the strengths and weaknesses of the article, and any other relevant notes. Next, the AE uploads the annotated article and the completed rubric into a folder that correlates with the AE's publication recommendation (to publish or not to publish). The SAE reviews articles that are placed in the "Recommended for Publication" folder and if the SAE agrees that the AEs decision, then the author is sent a contract with a week to accept our offer. All AEs track their publication recommendations on a tracker that is monitored by the SAE.

In addition to creating the article selection process, the Article Selection Committee created a draft of the Journal's Mission Statement and Diversity statement. For each statement, members of the Content Committee researched and compiled exemplar mission and diversity statements from other journals and organizations around the world. The members then reviewed these statements, highlighted the components that stood out to them, and collaboratively wrote the Journal's Mission Statement and Diversity Statement.

## *B. Editing*

The Journal's production process saw several changes this year that streamlined the production process and distributed the work among more members. First, we moved the macrotization step from after receipt of author's final edits to during Fourth Lines. Authors were pleased to see their piece in its final form at this stage, and it also assisted us in conducting Fourth and Fifth Lines, helping catch transcription errors before the printer proofs stage, where they are easier to fix. Second, the macrotization process, previously done by the EIC, is now done by the ME-P and SEE. This natural delegation of work sped up the production process. Third, Read Alouds had been conducted either on paper or on one computer in the Journal office, and were sometimes done by the EIC alone. We found that splitting up the issue into different pages, uploading these pages to SharePoint, and assigning pairs a range of pages allowed for higher-quality edits and the editors finished their Read Alouds much faster. It also allowed for Read Alouds to be conducted remotely and over the phone, which was crucial due to COVID-19.

Two additional developments are important to note. First, after one SE raised an issue of unattributed sources, we contacted the law library with respect to their ability to run a plagiarism check. We also developed a policy of conducting random checks for plagiarism during our production process. Second, we obtained an economic reviewer for a 22.3 piece with methodology that required expert review beyond our review process. We now have several contacts that can help with future review of pieces with economics.

## *C. Notes Program*

The Journal also formalized and built out the internal Notes program this year. Our Senior Notes Editor, Christie Mayberry, developed a series of internal programs aimed at helping Journal staff editors develop their own Note projects, with topics ranging from selecting a Note topic and advisor, researching and developing Note arguments, and offering personalized feedback to individual editors on their Notes projects. The increased internal efforts proved a huge success, with the Journal publishing more work from its own members than years past. The Notes program will continue to grow and develop from this baseline, and we are extremely excited to see what work comes from the program in future years.

# VIII. LAW SCHOOL ADVOCACY

The senior editorial Board, particularly Editor-in-Chief Dani Schulkin and Managing Editor of Development Michael Quinn, also devoted significant efforts to school-wide advocacy in the journal space. Dani and Michael's efforts focused specifically on the all-journal writing competition, the mechanism by which rising 2Ls join a journal. The Journal's advocacy focused on finding ways to make this process less burdensome on rising 2Ls, since the competition and its significant workload come right after the conclusion of 1L year and during a time in which many students are moving and starting their summer jobs. Dani and Michael started a conversation amongst the law school's journals about reducing the amount of work required for the competition, and working to move toward a structure for membership and recruitment that was more holistic, less zero-sum, and less onerous on the students seeking to join journals.



The conversation around writing competition reform was wide-ranging and considered a number of different possibilities for future writing competitions. The process compared writing competition/journal recruitment processes at peer law schools, and involved spirited discussions of the purpose, goals, and implementation of the writing competition amongst the various NYU journals. Ultimately, the conversation started by Michael and Dani resulted in a 50% reduction in the length of the Bluebooking exercise and an increase in the number of journals accepting the Lawyering brief in the place of the original Comment if applicants chose to do so. These changes have already made a significant difference in the recruitment process, and are only the beginning of a process which makes the writing competition a less stressful, burdensome process for applicants.

## IX. AWARDS & ACHIEVEMENTS

Each year, the Journal formally honors members of its graduating class. This year, we added a new yearly award—the Helen Hershkoff Visionary Award—to celebrate the leadership and mentorship of Professor Helen Hershkoff and her outstanding contributions to the legal field.

The new Helen Hershkoff Visionary Award is awarded to the graduating student who made an outstanding new and creative contribution to the Journal. This year’s recipient was Rebecca Scaife, our Senior Articles Editor. Rebecca developed the Journal’s first-ever Diversity Statement, which describes the Journal’s commitment to publishing articles by authors with diverse backgrounds and perspectives.

The Thomas Stoddard Award is awarded to the third-year editor who made the greatest contribution to the Journal. This year’s recipient was Sara Spaur, our Managing Editor of Production. Sara consistently exceeded her duties to ensure the production process ran smoothly. Colleagues were impressed by her dedication to the Journal and her willingness to put in extra work whenever necessary, and one even described her as “the Meryl Streep of Editors.”

The Flora S. and Jacob L. Newman Prize is awarded to the graduating student who has written the most outstanding note for the Journal. This year’s recipient was Lukasz Swiderski, Articles Editor, for his note “Peer Review as a Problem for the Law of Democracy.”

The Editor of the Year Award is awarded to a graduating student who made exceptional and substantive contributions to any part of our production process. This year’s recipient was Jordan Beres, Executive Editor. Jordan went above and beyond for every piece she edited, including rewriting sections of articles and standing firm on important substantive edits. She was a consistent presence in the journal office and was always willing and able to take on tough editing problems.

The Staff Editor of the Year Award is awarded to a second-year student who made an outstanding contribution as a staff editor on the Journal. This year’s recipient was Rachel Baron. Rachel was the one who first alerted us to an unattributed sources problem in an article in our second issue. When higher-level editors expressed doubts, Rachel remained firm in her belief

that the problem was significant, and a thorough review of the article confirmed her concerns. Rachel stayed involved and was incredibly helpful throughout the process of addressing the issue.

## X. FINAL NOTE FROM INCOMING EDITOR-IN-CHIEF, CHRIS SHENTON

I want to take this space to thank Dani and the entire outgoing JLPP Board for their outstanding work. They leave behind a legacy that will take a lot to live up to, and myself and the rest of the incoming Board are grateful for the opportunity to build on the work they've done, and excited for the challenge. One thing I have appreciated from the moment I got involved with JLPP is the journal's commitment to using its platform to do cool things and highlight thoughtful scholarship, in every facet of law and public policy. What's more, the journal community makes a commitment to doing that work together, to valuing the contributions of each member and making space for everyone's ideas and vision to thrive. I have felt that commitment made real in each and every aspect of my involvement with the journal so far, and I'm excited to have the opportunity to take the baton and deepen that work in my third and final year of law school.

Thanks so much to the Class of 2020. I know these are not at all ideal circumstances for you to head out into the start of your careers, but we look forward to seeing what you accomplish and to hearing from you soon. Thank you for your service – we'll take it from here.

–Chris, Volume 23 Editor-in-Chief