

Loyola Law Journal Newsletter

The latest in the Loyola Law Journal's news and announcements

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Loyola Law Journal

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Editor in Chief's Address

Volume 52 of the *Loyola University Chicago Law Journal* has been unlike any year prior. During the 2020–2021 school year, our staff moved our work online due to the global COVID-19 pandemic. No longer were we able to meet for Orientation and get to know each other in person. Staff members couldn't simply swing by the library to get a copy of a source. Editors couldn't turn to each other in the *Journal* Office to discuss Bluebook rules (or, more accurately, to commiserate over said rules). Our annual symposium wouldn't be held in the hallowed halls of the Corboy Law Center.

But we persevered. We moved meetings and trainings online. We worked with the incredible librarians and library staff to get copies of the materials we needed. We had countless Zoom calls and email exchanges, hashing out everything from our vision for the scholarship published in Volume 52 all the way down to the most minute details over which punctuation mark and font were correct for a cite. Our symposium, "The Criminal Justice System in Review: Accountability, Reform, & Policy," embraced the webinar format and brought together exceptional legal scholars to debate the most effective ways to improve the American criminal justice system.

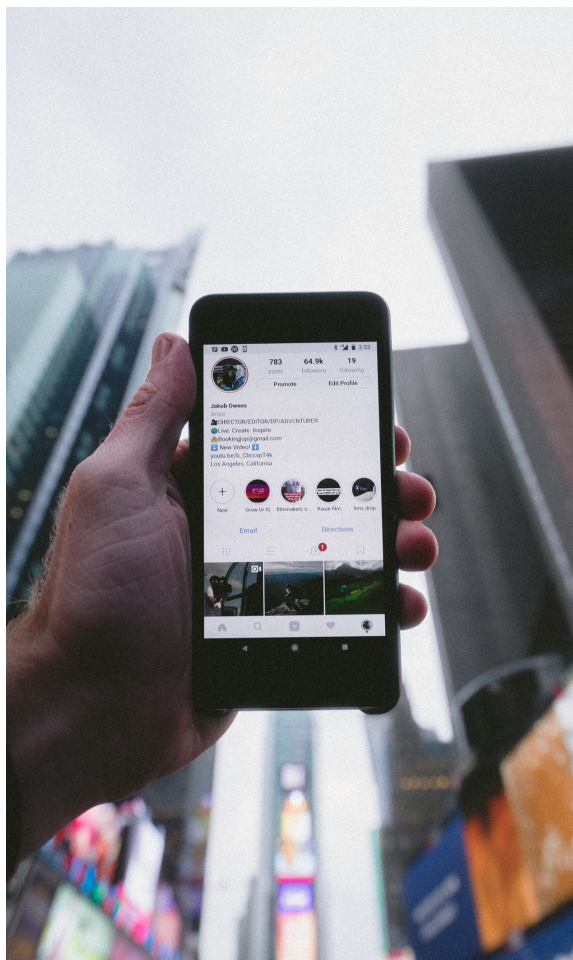
And the global pandemic has not stopped the brilliant minds of the thirty authors that have been or will be published in Volume 52. Over four print issues and one online, those authors wrote twenty-seven articles covering everything from tax, antitrust, and securities regulation to free speech, conditions of confinement, healthcare, criminal justice, and more.

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Issue I:

This Issue offers a variety of diverse articles and represents months of hard work on the part of both authors and staff members alike. We are proud to present scholarship that explores varied questions of the law, challenges historic legal perceptions, and moves these important conversations forward. Colorado Attorney General Phil Weiser opens this Issue with his essay on antitrust remedies for digital platforms, asserting that antitrust law is both adaptable and enduring, capable of dealing with the novel challenges presented by internet platforms and dynamic technology markets.

Our first article, by Professor Seth Oranburg, examines securities regulation in the context of social media. He contends that the SEC's ban on general solicitation, which perhaps once existed for good reason, may now be outdated given the ubiquity of social media. Professor Sarah Ryan then looks to the administration of a recently passed statute, the First Step Act of 2018, analyzing the dissonant results reached by federal district court judges when resentencing qualified individuals. She ultimately finds that Congress intended for broad judicial authority in resentencing under the Act and advocates for the adoption of such an interpretation by the courts. Next, Professor Crystal Grant writes about the disparate access to special education resulting from the federal government and state agencies' failure to standardize child find mandates, concluding that crafting regional solutions to this problem can eventuate more equitable access to special education.



In the immigration realm, Juan Caballero offers an empirical analysis of *Chevron* deference in immigration proceedings across the country, finding inconsistencies in *Chevron* application. Professor Courtney Anderson then explores the intersection of hate crimes and the Fair Housing Act through the lens of a failed HUD reporting system, arguing that HUD can and should mandate consistent reporting and data collection requirements to combat housing-related violence. Finally, we are thrilled to present a student note, written by Jackie McDonnell, examining a recent Supreme Court case, *Garza v. Idaho*. While McDonnell celebrates that *Garza* lowered the burden on defendants in proving ineffective assistance, she cautions that the decision may decrease the leniency and finality of plea bargain sentencings because of the likelihood of increased appeals.

Jacob E. Morse
Executive Editor, Lead Articles
Loyola University Chicago Law Journal



Issue II:

Each spring, the *Loyola University Chicago Law Journal* hosts a Symposium to discuss a pressing legal issue. Last year's Symposium, "Beyond the Numbers: Tax Policy and Practice in the U.S.," was cancelled due to the COVID-19 pandemic. But thanks to the commitment of our authors and *Law Journal* staff, we are proud to present you with an issue that achieves the goal of the Symposium and advances legal scholarship.

Although they could not present at the Symposium, four of the Symposium's panelists graciously agreed to write for Issue 2. Professor Emily Cauble posits that standard-based and substance-driven tax laws would be more forgiving of unsophisticated taxpayers. Professor Karen C. Burke argues that the new deduction for pass-through owners under § 199A of the Internal Revenue Code undermines the equity and efficiency of the tax system. Professor Adam H. Rosenzweig introduces an original metric, International Vertical Equity, to analyze equity in international tax regimes. Professor Christine S. Speidel uses the difficulty of care exclusion under § 131 to illustrate how the Code's ableist language fails people with disabilities and their family caregivers.



We are honored that two additional authors joined them in Issue 2. Alex Zhang establishes the need for a federal, subsidized paid-sick-leave mandate after analyzing the temporary mandates imposed by COVID-19 legislation. Professor Orli Oren-Kolbinger conducts empirical research and arrives at a counterintuitive and surprising result: tax judges in Israel favor tax authorities during economic downturns and favor taxpayers during economic upturns. Finally, we are thrilled to publish a Loyola University Chicago School of Law student in Issue 2. MacKenzie Durkin proposes holding defendants convicted of child pornography jointly and severally liable for the restitution owed to their victim.

Katrina E. Lutfy
Executive Editor, Conference Articles
Loyola University Chicago Law Journal



Issue III:

This Issue introduces four innovative articles and embodies months of hard work on behalf of both our authors and staff members. We are excited to again present scholarship that challenges the current legal landscape and provides concrete, thoughtful solutions.

This Issue begins with Professor Andrew Michaels exploring the intersection between retroactivity and the Appointments Clause. Michaels surveys the convoluted doctrinal landscape in this arena, analyzes *Arthrex, Inc. v. Smith & Nephew, Inc.*, and ultimately provides a framework for analyzing retroactivity in the Appointments Clause context that balances the need for a court's discretion and a desire to maintain consistency with foundational retroactivity principles. Next, Ramon Feldbrin challenges the long-accepted notion that our legal systems should have two general procedural categories: criminal and civil. After carefully tracing the historical roots of these procedural categories, he argues that this dichotomy is not capable of addressing every nuance in every case, but Feldbrin nonetheless seeks to create a common ground for proceduralists to rethink the current paradigm.



Professor Tiffany Li then presents the first comprehensive review of the implications of the COVID-19 pandemic in the privacy law sphere. Acknowledging that both public and private actors alike are using new technologies in response to the COVID-19 pandemic, Li seeks to open the conversation on how the privacy law landscape has changed in areas ranging from health care to education to government surveillance. Finally, Rachel Dalafave offers an empirical assessment of the efficacy of red flag laws. Dalafave's sobering, important work provides concrete numbers for a controversial topic, ultimately finding that red flag laws have a statistically significant effect on suicide rates—a finding that could garner bipartisan support for such laws moving forward.

Jacob E. Morse
Executive Editor, Lead Articles
Loyola University Chicago Law Journal



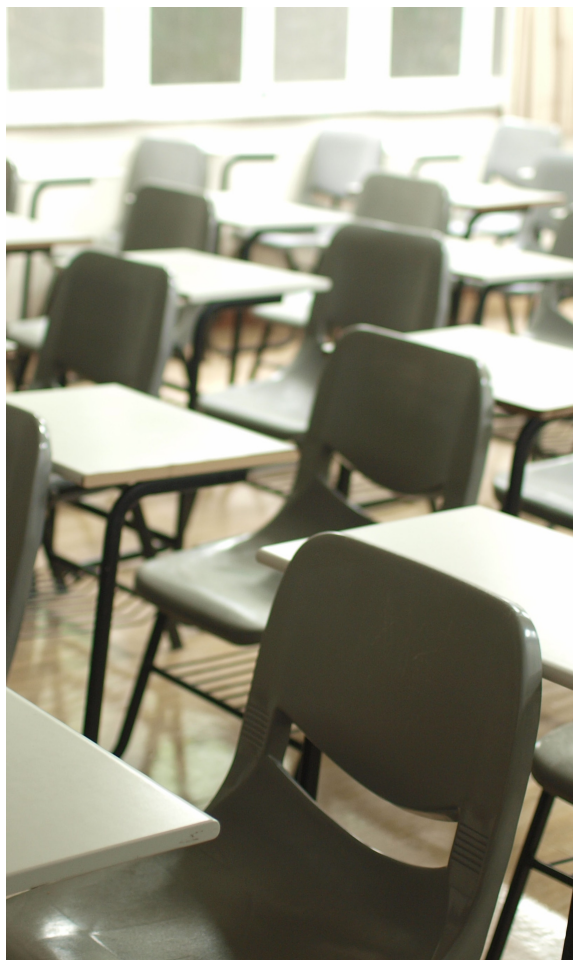
Issue IV:

Issue IV of the *Loyola Law Journal*, the "Illinois Issue," showcases Illinois law as well as articles written by current student members of the *Journal*.

Beyond a Reasonable Doubt: Juries Don't Get It written by the Honorable James A. Shapiro and Karl T. Muth. This article examines the "beyond a reasonable doubt" standard required in criminal trials and its history in American law how to assist jurors' understanding of the burden proof beyond a reasonable doubt.

The School FOIA Project: Uncovering Racial Disparities in School Discipline and How to Respond written by James Naughton. This article focuses on the Illinois Freedom of Information Act and its effect on racial disparities in schools. The author explains that the Illinois Freedom of Information Act can be used to gain information on discipline in schools which often reveals racial disparities, and best practices on steps to utilize the Act and how to process the data to make a difference in the community.

Disrupting Frivolous Defenses written by Professor Thomas Russell. Professor Thomas Russell's article focuses on Judge Milton Shadur, who spent thirty-seven years as a judge of the United States District Court for the Northern District of Illinois and explores his impact in the courtroom and how his decision in *State v. Riley* impacted the 7th Circuit, other circuits, and changed rules in other states.



Buried Alive: Gay v. Baldwin and Unconstitutional Solitary Confinement for Prisoners with Mental Illness written by Hannah May. It focuses on the upcoming Central District of Illinois case *Gay v. Baldwin* which will directly address the intersection of solitary confinement and mental illness.

Trust Betrayed: The Reluctance to Recognize Judicially Enforceable Trust Obligations Under the Indian Health Care Improvement Act (IHCA) written by Lauren E. Schneider. The focus of the article is on divergent approaches in the Eighth and Ninth Circuit Courts of Appeals regarding the judicial enforceability of federal trust obligations under the IHCA.

Katherine A. Piscione
Executive Editor, Illinois Articles
Loyola University Chicago Law Journal



Online Articles

The *Law Journal* is excited to be expanding our online presence by publishing shorter pieces on our website that analyze the current legal landscape and development of the law. In addition to the print articles, the *Journal's* online articles strive to engage diverse voices and provide authors with a platform to speak directly to their audience in a quicker and more accessible manner. The *Law Journal's* online edition also creates more scholarly publishing opportunities for our exceptional members who spend the majority of the fall semester drafting their student articles.

Moreover, the *Journal's* online presence creates transparency between our organization and the outside community. On our website, we make available every published *Journal* article, our membership information, *Journal* organizational documents, and upcoming *Journal* events. In making this information widely accessible, we hope to guide aspiring applicants on becoming a member of the *Journal* and inform all community members on our progress towards creating a more diverse, inclusive, and equitable organization. To learn more about the *Loyola University Chicago Law Journal*, please explore our website at: <http://blogs.luc.edu/lawjournal/>.

Jasmin A. Osman
Executive Editor, Online Articles
Loyola University Chicago Law Journal



Symposium

**The Criminal Justice System in Review:
Accountability, Reform, & Policy**
Friday, April 9, 2021, 9:00 AM to 3:00 PM

This one-day conference explored the various perspectives, drawbacks, benefits, and procedures related to our current criminal justice system. More specifically, the conference focused on the role of current and future policy disputes and challenges within the system. Panelists discussed several of the most important challenges in our system of criminal justice, such as police accountability, sentencing and wrongful convictions, federal consent decrees, and qualified immunity. The *Journal* would like to thank all of its speakers and moderators, including keynote speaker, Illinois Attorney General Kwame Raoul, for sharing their research, ideas, and how we move forward. The *Journal* would also like to thank the over 150 people who registered and attended the conference. A recording of this event will be uploaded to the *Journal* website soon.

Paxton J. Lozano
Executive Editor, Conference Management
Loyola University Chicago Law Journal



Diversity Equity & Inclusion

Loyola University Chicago Law Journal's Diversity, Equity, and Inclusion Working Group was formed in hopes of creating a more diverse, inclusive, and equitable publication both in terms of *Journal's* structure and our membership application process. The group was formed with the idea of beginning an investigation into the *Law Journal's* current, historical, and potential practices to promote diversity and inclusion across all aspects of our publication.

We distributed a survey asking about *Journal* membership and the application process and are analyzing the data collected in the survey and creating a formal report of our findings. For shorter-term goals, we have three major projects currently in progress. First, we are preparing short presentations to give to ILs and different affinity groups around campus. Second, we are preparing a short flyer to give out to ILs. We hope that this presentation coupled with the flyer will get the information about *Journal* out there sooner to ILs who might not know what *Journal* entails, how important it is for some jobs, and what the process for membership is like. Finally, we are preparing a citation workshop to address some of the hesitancy to apply and overall make our future members better prepared.

Jordan B. Shanesy
DE&I Working Group Member
Loyola University Chicago Law Journal



EIC's Address (Con't)

The key to all of Volume 52's success is the amazing group of people who constitute the *Journal*. Every single member contributed to the body of excellent scholarship that comprises this Volume. I am eternally grateful to our staff members, who diligently found and checked each source and navigated the pedantry of the Bluebook to perfect each footnote; to our article editors, who led teams of staff members in this process, troubleshooting the more challenging problems as they arose; to our student article editors, who guided staff members through the daunting experience of writing their own *Journal* articles; and to our executive board editors who mastered the Chicago Manual of Style and provided invaluable feedback to each author, while also keeping the *Journal* running smoothly. I am also grateful to our predecessors in Volume 51 and earlier, who paved the way for this Volume, establishing our reputation as a high-caliber publication. And, of course, this publication would not be possible without the guidance and support of our faculty advisor, Professor John Breen, and the support of the Loyola University School of Law faculty and administration.

I offer my deepest thanks to all the authors and staff, whose diligent efforts during difficult times made it possible to publish Volume 52, and I look forward to the future work of the *Journal* under the leadership of Volume 53's Executive Board.

Becky F. Bavlsik
Editor in Chief, Volume 52
Loyola University Chicago Law Journal

For questions, comments, or to submit articles to the *Journal*, please email law-journal@luc.edu.

For all current and past members of the *Journal* or current faculty and staff, please contact rbavlsik@luc.edu if you would like copies of any issues.

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