

GROVE CITY COLLEGE

JOURNAL OF LAW & PUBLIC POLICY



ARTICLES

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Initiatives to Increasing Board
Gender Diversity in the U.S. *Stephanie N. Shetler*

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Innovative or Originalist? *Peter J. Garthwaite*

To Boldly Go: International Space
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Volume 5

Spring 2014

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The *Grove City College Journal of Law & Public Policy* invites submissions of unsolicited manuscripts, which should conform to *The Bluebook: A Uniform System of Citation* (18th ed. 2005). Manuscripts should be submitted electronically in Microsoft Word™ format to LawJournal@gcc.edu.

The editors strongly prefer articles under 15,000 words in length, the equivalent of 50 *Journal* pages, including text and footnotes. The *Journal* will not publish articles exceeding 20,000 words, the equivalent of 60 *Journal* pages, except in extraordinary circumstances.

To facilitate our anonymous review process, please confine your name, affiliation, biographical information, and acknowledgements to a separate cover page. Please include the manuscript's title on the first text page.

Please use footnotes rather than endnotes. All citations and formatting should conform to the 18th edition of *The Bluebook*.

Selection takes place on a per-volume basis; thus, a piece is selected for a particular volume, but not necessarily a particular edition. Submissions are reviewed on a rolling basis, beginning in February and concluding when the volume is filled, typically around mid-October.

For additional information about the *Grove City College Journal of Law & Public Policy*, please email us at LawJournal@gcc.edu or visit us online at <http://www2.gcc.edu/orgs/GCLawJournal/> or search for us at HeinOnline.

*The views expressed within these articles are those of the authors and do not necessarily reflect the policies or opinions of the *Journal*, its editors and staff, or Grove City College and its administration.

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GROVE CITY COLLEGE

Grove City College was founded in 1876 in Grove City, Pennsylvania. The College is dedicated to providing high quality liberal arts and professional education in a Christian environment at an affordable cost. Nationally accredited and globally acclaimed, Grove City College educates students through the advancement of free enterprise, civil and religious liberty, representative government, arts and letters, and science and technology. True to its founding, the College strives to develop young leaders in areas of intellect, morality, spirituality, and society through intellectual inquiry, extensive study of the humanities, and the ethical absolutes of the Ten Commandments and Christ's moral teachings. The College advocates independence in higher education and actively demonstrates that conviction by exemplifying the American ideals of individual liberty and responsibility.

Since its conception, Grove City College has consistently been ranked among the best colleges and universities in the nation. Recent accolades include: The Princeton Review's "America's Best Value Colleges," Young America's Foundation "Top Conservative College," and U.S. News & World Report's "America's Best Colleges."

GROVE CITY COLLEGE
JOURNAL OF LAW & PUBLIC POLICY

The *Grove City College Journal of Law & Public Policy* was organized in the fall of 2009 and is devoted to the academic discussion of law and public policy and the pursuit of scholarly research. Organized by co-founders James Van Eerden '12, Kevin Hoffman '11, and Steven Irwin '12, the *Journal* was originally sponsored by the Grove City College Law Society. The unique, close-knit nature of the College's community allows the *Journal* to feature the work of undergraduates, faculty, and alumni, together in one publication.

Nearly entirely student-managed, the *Journal* serves as an educational tool for undergraduate students to gain invaluable experience that will be helpful in graduate school and their future careers. The participation of alumni and faculty editors and the inclusion of alumni and faculty submissions add credence to the publication and allow for natural mentoring to take place. The *Journal* continues to impact educational communities around the country and can now be found in the law libraries of Akron University, Regent University, Duquesne University, the University of Pittsburgh, and Pennsylvania State University. The *Journal* has been featured by the Heritage Foundation and continues to be supported by a myriad of law schools, law firms, and think tanks around the nation.

EDITOR'S PREFACE

Dear Reader,

Welcome to Volume 5 of the *Grove City College Journal of Law & Public Policy*! This edition holds particular significance to me since it is my last as a contributing student. I will certainly miss working with such talented peers on such a worthwhile project. This edition, however, represents something more than yet another successful year: it represents student achievement. A generation ago, a few energetic Grove City College students approached the former Dean Sparks about starting an undergraduate law journal. Grove City College, a small college in which only a tiny fraction of its 2,500 students had even seen a law journal, did not appear to be an ideal birthplace for a student-run academic publication. Even if the editors were able to muster enough articles for one edition, would there be enough left over for a second? Which faculty and alumni would serve on an editorial board to review them? How could a group of sub-twenty-two-year-olds propel forward a quality publication for any substantial length of time?

Yet, here is Volume 5. Rather, here are *we*. A generation later and we have made the dreams of those founding students a realization. Moreover, I am confident that the next generation of students will ensure that our current visions similarly blossom in the future. The *Journal* represents the journey of a bold idea that, with hard work, passion, and extraordinary support from the College and friends, became an enduring element of the College's academic life. Current students have never known the College without the *Journal*, and they are the students who are investing their own energies and fresh ideas into the publication. They don't realize that every word they type, every comment they scribble in a margin, and every citation they correct proves that students don't just learn; we teach. We don't only receive others' ideas; we create our own. We aren't stalling to prepare for our future; we are achieving our goals right now.

I am honored that I was able to serve as the editor in chief of a publication staffed by these driven, talented, and creative students. It is only with their commitment, and the support of the Grove City College faculty, friends, and alumni, that the *Journal* can continue to open the doors of academic discussion to undergraduates who are serious about contributing to the conversation surrounding law and public policy. I hope that our story encourages you to also take risks and embrace opportunity. At the very least, I hope you enjoy the culmination of the work of undergraduate students and their small college, and join me in looking forward to the bright future of the *Grove City College Journal of Law & Public Policy*.

A handwritten signature in black ink, reading "Julia L. Haines '14". The signature is fluid and cursive, with the first name "Julia" being the most prominent.

Julia L. Haines '14
Editor-in-Chief

FOREWORD

Dear Reader,

Welcome to the Volume 5 edition of the Grove City College *Grove City College Journal of Law & Public Policy*. The *Journal* is one of the few that is published as an undergraduate writing endeavor in our nation.

In past editions, undergraduate students, law students and practicing lawyers have offered articles. In this issue all articles are written by undergrads. And as you will note upon reading, we are treated to a potpourri of subjects and analysis. One writer submits her thoughts and proposals as a matter of policy toward increasing female representation on corporate boards. We will also see the effect of the first free speech case to reach the Supreme Court (interestingly over 100 years after the passage of the 1st amendment) and the current dynamic tension inherent with the tenets of national security. We will then take a look at court proceedings and the right and effect of media in the courtroom. From court proceedings we will intellectually zoom into outer space and examine emerging international law as it affects the sovereignty of nations beneath. Next, to a more subtle question we examine subjectivity in Supreme Court outcomes as we look at the concept of “evolving standards of decency”. The word evolving is subjective – what are the implications for dispassionate judicial review? And finally, an article on the doctrine of *Jus Cogens* as it is recognized in international law and as that doctrine applies in a pluralistic society.

All in all an intellectual smorgasbord on which to feast—please enjoy and ponder.



Richard G. Jewell '67 JD
President

