

## PREFACE

Legal principles must be diversely explored and contextualized across disciplines and perspectives. The opportunities law permits to improve society should be seized upon to foster social change where it is called for. At a fundamental level, that was the founding vision behind this proud addition to the academy, the *Wake Forest Journal of Law & Policy*.

We current editors stand on the shoulders of a creative and enterprising group of law students whose vision and persistence helped launch the *Journal of Law & Policy* two years ago. To our predecessors—especially Melanie Johnson Raubach, Angelia Duncan, Jennifer Hansen, and Elise Pallais—the presiding Board of Editors and Staff thank you for the inspired foundation you laid for our endeavors. We are honored to carry on your tradition.

Humbled by the zealous achievement of the *Journal's* founding members, it gives me great pride to introduce Volume 1's first issue. First, Blake Morant, Dean of the Wake Forest School of Law and gracious supporter of this publication, has authored a foreword reflecting on this journal's roots and forecasting its distinctive promise.

Next, this issue features a rich collection of essays each commemorating the fortieth anniversary of a seminal Supreme Court decision, *New York Times v. United States*, or the *Pentagon Papers* case. Decided in 1971, the decision affirmed the First Amendment's nearly absolute bar against government prior restraint of the press. Yet while press freedom from government restraint remains a bulwark of the American Republic, the landscape of journalism and information sharing in 2011 has evolved dramatically since 1971. Technological change is presenting new challenges for governments who have an interest in preserving secrecy, and opportunities for media who face contrary incentives. Forty years later, the *Pentagon Papers* decision presents fertile ground for renewed evaluation.

Those contributing to this Volume's essay series bring diverse perspectives on the *Pentagon Papers* case and the evolving information environment in which its rule is now applied. Floyd Abrams, the United States' preeminent First Amendment lawyer and co-counsel for the *New York Times* in the case, writes an essay reflecting on the idiosyncrasies of that historic litigation and calls into question the prevailing narrative of the Supreme Court's decision.

Charles Bierbauer, a longtime Senior White House Correspondent for CNN, details the lessons of that decision and those from the recent WikiLeaks controversy, and observes the influence of each on American journalism. Internet law expert Derek Bambauer distinguishes the WikiLeaks controversy from the

Pentagon Papers saga and argues that governments should consider censoring websites that leak harmful data. Jerome Barron, who has argued First Amendment cases before the Supreme Court himself, sketches a thorough analysis of the Justices' opinions in the subject decision before assessing legal issues in a potential prosecution of WikiLeaks founder Julian Assange. Finally, two North Carolina-based First Amendment litigators, Charles Marshall and Eric David, assess a new threat to press freedom—"Prior Restraint 2.0"—arising from the chilling effect to online journalism from civil litigation.

We are also very pleased to publish a trio of articles in this issue reviewing a variety of other timely and important topics. Jeffrey Jones revisits influential property law scholarship before positing a new theory of "property for personhood" that builds on social science research. Keith Bybee examines Justice Elena Kagan's confirmation hearings in order to address tensions between images of American judges. Lorraine Schmall critiques prevailing U.S. immigration policy in light of practical enforcement dilemmas.

Producing the inaugural editions of a journal presents special and sometimes unpredictable challenges. So many in this organization deserve great praise for their work this year to make this publication come to life. The *Journal's* faculty advisors, Associate Provost Jennifer Collins and Professor Shannon Gilreath, have been insightful counselors; their support is a credit to this journal. The editorial Staff, made up of second and third year law students, performed yeoman service with their many hours of careful editing. They have my sincere thanks for all their work. Articles Editors Alonzo Chisholm and Rachel Waters consistently went far above their own obligations to ensure proficient work among all the editors. Likewise, Executive Editors Michael Lennox and Katie Rector were apostles of editorial discipline and showed their intelligence and tireless dedication. Business Editor Matthew Schwarz was an excellent representative for us; his guidance and thoughtful actions were a tremendous help. Symposium Editor Alicia Luchetti, a *Journal* cofounder, assembled premier symposia and a colloquium, each enriching the intellectual life of this organization. Last, Managing Editor Michael Grippaldi has my profound thanks for his skilled administration of the *Journal's* operations. He was ever reassuring and unceasingly committed to our success.

To all others who have done so much to solidify our common vision for these pages, you have my heartfelt appreciation. Without further preamble, I give you Volume 1:1. Enjoy!

*James M. Bauer*  
*Editor-in-Chief*