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TRIBUTE

IMITATING THE 'BOYS' OF ALBANY: THE BIRTH OF THE VALPARAISO UNIVERSITY LAW REVIEW*

MICHAEL I. SWYGERT**

Twenty-five years after the birth of the *Valparaiso University Law Review*, it still seems remarkable that a group of seven law students,¹ not yet new entrants into the lawyering profession, should be delegated the responsibility of starting up, editing, and managing a professional law journal. Despite our (I was one of the seven) collective lack of sophistication, we were chosen by the faculty to put together a semi-annual legal publication that would be a credible, useful, and scholarly journal, one in which alumni, students, faculty, and administrators could take pride.² We were charged with the tasks of drafting, redrafting, and editing analytic, scope-length notes on worthy legal topics,³ while soliciting and editing scholarly "lead articles"⁴ authored by respected

* The author wishes to thank the student editors of the *Valparaiso University Law Review* for carrying on an institution that had its genesis at the Albany Law School at Union University in Albany, New York in 1875. The law review is an institution that Earl Warren once described as "the most remarkable institution of the law school world." *Messages of Greeting to the U.C.L.A. Law Review*, 1 U.C.L.A. L. REV. 1 (1953) (offered by the Chief Justice of the United States).

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1. Bruce G. Berner, Allen L. Landmeier, Robert D. Lee, George W. Valsa, Jr., Michael S. Virgil, Peter K. Wilson, and myself.

2. Why we were selected was never made clear. Perhaps it was the grades we made in our first year courses. None of us, to my recollection, had any significant journalistic or professional writing background. We were, however, hardworking, ambitious, and excited about accomplishing our delegated tasks.

3. See notes 52-59 *infra* and accompanying text.

4. See notes 60-69 *infra* and accompanying text.

academics, practitioners, and jurists.⁵ Had the faculty gone mad? Had a late evening romp at the Old Style⁶ ended in a dare? We were second-year law students and we were called by our faculty to become journalistic entrepreneurs and to launch a professional journal in the name of the Valparaiso University School of Law. Why should law students be called to this weighty responsibility?

The one-word answer is *imitation*. We were part of a nearly 100-year-long process of following the examples of those before. Initially, “boys,” to quote a nineteenth century commercial law journal, imitated the “men” of the then overwhelmingly male-dominated legal profession⁷ by starting up a student-edited law publication at Albany Law School of Union University in 1875.⁸ The new publication, *The Albany Law School Journal*, was reviewed by the professionally edited and privately published *Central Law Journal* as follows:

The boys at the Albany Law School have had the enterprise to start a law journal. Altogether it is quite credible. Of course, it is not a man’s law journal.⁹

Despite the *Central Law Review*’s patronizing and sarcastic review, the students at Albany had realized a unique notion—a student-edited, law-related journal that would not only chronicle law school events, but would also seek to be of general interest to the members of the profession.¹⁰ This “novel experiment,” again to quote the *Central Law Journal*,¹¹ consisted of putting together in one publication a few short articles, announcements of moot court dispositions at the school, various pieces of law school news, and attempts at humor.¹² An example of the last category (and a possible explanation why the

5. See notes 51-72 *infra* and accompanying text.

6. In the mid-1960s, it was not uncommon for several members of the Valparaiso Law School faculty to meet for discussions and “refreshments” at a favorite “watering hole,” the Old Style Restaurant across from the Courthouse in downtown Valparaiso. Certain law students were known on occasion to join the dialogue, the author of this article among them.

7. Robinson, *Women Lawyers in the United States*, 2 THE GREEN BAG 10, 12 (1890). Neither Harvard, Yale, nor Columbia law schools admitted women in the nineteenth century. *Id.*

8. Although no copy of the single volume of the *Albany Law School Journal* has been located, several commercial law journals reviewed this new, student-edited law review shortly after the time of its publication in 1875. See, e.g., *The Albany Law School Journal*, 3 CENT. L.J. 136 (1876), and Notes, 13 ALB. L.J. 31 (1876).

9. *The Albany Law School Journal*, 3 CENT.L.J. 136 (1876) (emphasis added).

10. Swygart & Bruce, *The Historical Origins, Founding, and Early Development of Student-Edited Law Reviews*, 36 HASTINGS L.J. 739, 764-65 (1985) [hereinafter cited as *Swygart & Bruce*].

11. *The Albany Law School Journal*, *supra* note 8, at 136.

12. Notes, 13 ALB. L.J. 31, 31 (1876). The *Albany Law Journal*, a successful commercial publication existing during the latter-half of the nineteenth century, is to be differentiated from the single volume of the *Albany Law School Journal*. See *Swygart & Bruce*, *supra* note 10, at 759

Albany Law School Journal lasted only one year) follows:

A man rushed excitedly into a lawyer's office last week and said:
 'A man has tied a loop in my horse's tail; can I do anything about it?'
 'Yes; go and untie it--fee \$5.'¹³

Despite such comic and comical efforts, the *Albany Law School Review* was a serious undertaking. That neophyte law students should attempt to do "man's" work was back handedly complimented by one reviewer who declared:

The editorial contributions are evidently for the most part in the storm-and-stress period. Each one of these boys is an immense aggregation of force which must needs [sic] work itself off in some direction; and it is much better that such electric batteries should be turned upon a novel experiment like this, than that they should expend their energies in stopping chimneys and robbing suburban hen-roosts.¹⁴

Indeed! Even the "boys" in New York City may have seen the advantages of law publishing. In 1885, almost a decade after the birth and death of the *Albany Law School Review*, six students of Columbia Law School produced the first issue of the *Columbia Jurist*,¹⁵ which, thereby, became the second student-edited legal periodical in the United States.¹⁶ The initial issue of the *Columbia Jurist* consisted of but four pages.¹⁷ Subsequent editions were longer. Like the editors of the earlier *Albany Law School Journal*, the editors of the *Columbia Jurist* imitated the successful commercial law journals of the day by including lead articles authored by "persons of acknowledged merit."¹⁸ Moreover, by using outside contributors from the academic and lawyering professions, the *Columbia Jurist* became the "forerunner of the modern university law review."¹⁹ The *Jurist* did not have an easy time, however.²⁰ One of the more respected and widely read commercial law periodicals of the

n.174.

13. Notes, 13 ALB. L.J. 31, 31 (1876).

14. *The Albany Law School Journal*, *supra* note 8, at 136.

15. A HISTORY OF THE SCHOOL OF LAW, COLUMBIA UNIVERSITY 103 (J. Goebel, Jr., ed. (1955) [hereinafter cited as A HISTORY OF COLUMBIA LAW SCHOOL]).

16. *Swygert & Bruce*, *supra* note 10, at 766.

17. 1 COLUM. JURIST 1 (1885).

18. *Id.* at 2.

19. A HISTORY OF COLUMBIA LAW SCHOOL, *supra* note 15, at 102.

20. *Swygert & Bruce*, *supra* note 10, at 767-69.

time, the *American Law Review*,²¹ decried the “amateurish” writing of the Columbia law students who had written an editorial opposing the proposed New York Field Code.²² The debate concerning the worthiness of student-edited and written law journals had begun.

The *Jurist* ceased publication after only three volumes.²³ The *Jurist*'s most lasting contribution to student-edited law reviews was its example. Its brief existence came to the attention of a Harvard Law School student, John Jay McKelvey, in the fall of 1886.²⁴ The *Jurist* motivated McKelvey to work with several other Harvard law students in putting together their own legal publication at Harvard.²⁵ Thus, Volume One, Number One of the *Harvard Law Review* came into existence, dated April 15, 1887, and numbering fifty-four pages.²⁶ In coming generations, thousands of law students throughout the country would be affected by this birth in Cambridge.

As Professor Jon Bruce of Vanderbilt Law School and I wrote a few years ago in reference to the birth of the *Harvard Law Review*: “To do something daring and to do it well requires talent and inspiration.”²⁷ In the creation of the *Harvard Law Review* talent and inspiration came together. Having brilliant students the likes of Joseph H. Beale, Jr., John H. Wigmore, Julian W. Mack, and later Samuel Williston, of course helped.²⁸ Although not the oldest

21. The quarterly *American Law Review* began publication in Boston in 1866 by Little, Brown & Co., and was edited by two eminent lawyers and scholars, John Chipman Gray and John Codman Ropes both Harvard Law School graduates of the class of 1861. A. SUTHERLAND, *THE LAW AT HARVARD: A HISTORY OF IDEAS AND MEN, 1817-1967*, 1 at 140 (1967). In the view of many, the *American Law Review* was the best of the nineteenth century, commercial American legal periodicals. See list of authorities and discussion in Swygert and Bruce, *supra* note 10, at 757-63, nn. 146-203. See also M. HOWE, *JUSTICE OLIVER WENDELL HOLMES: THE SHAPING YEARS: 1840-1870*, at 264 (1957).

22. Note, *Amateur Legal Journalism*, 20 AM. L. REV. 421, 422 (1886).

23. A HISTORY OF COLUMBIA LAW SCHOOL, *supra* note 15, at 103.

24. CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL 1817-1917, at 139 (1918) [hereinafter cited as CENTENNIAL HISTORY OF HARVARD LAW SCHOOL].

25. For a description of the various individuals, influences, and events which interacted to produce the first volume of the *Harvard Law Review*, see Swygert & Bruce, *supra* note 10, at 769-78.

26. 1 HARV. L. REV. 1, 1-54 (1887).

27. Swygert & Bruce, *supra* note 10, at 769.

28. Joseph H. Beale, Jr., Samuel Williston, and John H. Wigmore, of course, were later to become great academicians while Julian Mack became a renowned jurist, as well as an academic. Beale served as a distinguished Associate Justice of the United States Supreme Court. He also authored the “great” TREATISE ON THE CONFLICT OF LAWS (1935). Wigmore earlier had authored his monumental work titled, A TREATISE ON THE ANGLO-AMERICAN SYSTEM OF EVIDENCE (1904-05). Williston too authored a hugely influential treatise, THE LAW OF CONTRACTS (1920-22).

continuously published law review in this country,²⁹ and although, contrary to popular opinion, *not* the first student-edited legal periodical,³⁰ the *Harvard Law Review* quickly set the standard for subsequent imitation.³¹

Within twenty years after Harvard's birth, significant law journals and reviews that have survived through today had sprung up at Yale (1891),³² Pennsylvania (1896),³³ Dickinson (1897),³⁴ Columbia (1901),³⁵ Michigan (1902),³⁶ and Northwestern (1906).³⁷ In subsequent decades, law reviews and

29. The oldest, continuously published law review in the United States is the *University of Pennsylvania Law Review* which began publication in Philadelphia in 1852 under the name of the *American Law Register*. 100 U. PA. L. REV. 69 (1951). The *Register* was for nearly 44 years professionally edited as a commercial undertaking. *Id.* In 1895, the *Register* was transferred to the University of Pennsylvania Law School under the auspices of Dean Draper Lewis. *Id.* In 1908, its name was changed to the *University of Pennsylvania Law Review and American Law Register*. *Id.* Roscoe Pound described the *American Law Register* as the prototype of the "academic-professional type journal." Pound, *Types of Legal Periodicals*, 14 IOWA L. REV. 257, 264 (1929).

30. Although the *Harvard Law Review* is the oldest, continuously *student-edited* law review in the United States, it was not the first effort of American law students to produce legal periodicals. See notes 9-23 *supra*, and accompanying text.

The misconception that the *Harvard Law Review* was the first law school publication may be due to an error in an early history of the Harvard Law School which stated that the *Harvard Law Review* was "the first legal journal issued in a law school." 2 C. WARREN, HISTORY OF THE HARVARD LAW SCHOOL 440 (1908). *But see* F. HICKS, MATERIALS AND METHODS OF LEGAL RESEARCH 207 (3d ed. 1942).

31. See Swygert & Bruce, *supra* note 10, at 778-90.

32. The *Yale Law Journal* was one of four law school periodicals commenced by law students in 1891. The others were the *Counsellor* (New York Law School), the *Intercollegiate Journal* (school unknown), and *The Law Bulletin of the State University of Iowa*—none of which survived. F. HICKS, MATERIALS AND METHODS OF LEGAL RESEARCH 207 (4th ed. 1942).

33. See *supra* note 29 and accompanying text. See also Douglas, *Law Reviews and Full Disclosure*, 40 WASH. L. REV. 227, 228 (1965).

34. The name of Dickinson's publication originally was "*The Forum*." It was renamed the *Dickinson Law Review* in 1908. Editor's Note, 13 DICK. L. REV. 32 (1908).

35. Columbia law students made three attempts at starting up legal periodicals. The first, *The Columbia Jurist*, took place from 1885-87. See notes 17-23 *supra* and accompanying text.

The second was a monthly periodical called the *Columbia Law Times*, published from 1887 through 1893. *A History of the Columbia Law School*, *supra* note 15, at 103, 182. The *Columbia Law Times* editors in their initial issue apparently tried to imitate the then six-month old *Harvard Law Review* format and style. 1 HARV. L. REV. 209 (1887) (noting that the *Law Times* "is evidently modeled on our [Harvard's] Review").

The third, last, and ultimately successful attempt by Columbia students was the founding in 1901 of the *Columbia Law Review* in which the Columbia students thanked the student editors of the *Harvard Law Review* for "setting before us a standard to which we someday hope to attain ..." 1 COLUM. L. REV. 50 (1901).

36. The *Michigan Law Review* was originally faculty, *not* student edited. 1 MICH. L. REV. 1, 59 (1902). Despite faculty management, the publication followed the same basic format as its predecessors at Harvard, Yale, and Columbia. Students were involved but only as assistants to the faculty editors. E. BROWN, LEGAL EDUCATION AT MICHIGAN 1859-1959, 328, 331 (1959).

journals published at American law schools proliferated. Most were overseen by student editors. Today, at least 250 such journals and reviews affiliated with law schools are being published.³⁸ At many law schools including Columbia, Yale, Duke, Hastings, and Harvard, two, three, and sometimes four different journals are offered.

For the most part, these periodicals tend to be more alike than different. Nearly all contain a lead articles section, a practice that originated in 1829 in a publication titled *The United States Law Intelligencer and Review*, reportedly the first publication displaying the distinctive features” of today’s typical legal periodical.³⁹ Lead articles through the decades have effectively served law reform, practitioners, and the profession.⁴⁰ In 1888 one commentator on legal periodicals noted that the reader gains a greater benefit from the study of lead articles than from the study of text books because the authors “are specialists discussing a well defined object in view.”⁴¹ It is no wonder that virtually all student-edited law reviews feature lead articles. Most also contain student-written notes or casenotes based on substantial research efforts.

And so the process of imitation, a process begun when the “boys” of Albany imitated the editors of the mid-nineteenth century commercial law reviews, continued on into the twentieth century. This process which had its origins when Columbia law students around 1885 followed the 1875 example of Albany’s law students continued through the fall of 1966 when “Number 108” came into being.⁴²

37. After a student-edited law review attempt had failed at Northwestern (1893-1896), the faculty decided to start up and manage themselves a new legal periodical, one primarily designed to serve the Illinois legal community. MacChesney, *An Old Tradition—The Same Review But a New Name*, 47 NW. U.L. REV. iii, vi (1952); 1 ILL. L. REV. 39 (1906).

Imitating the basic format of the *Harvard Law Review*, the Northwestern publication was called the *Illinois Law Review*. See Edmunds, *Hail to Law Reviews*, 1 J. MARSHALL J. PRAC. & PROC. 1 (1967). See also Note, *Law Reviews and Legal Process: Herein of Past Services and Future Responsibilities*, 51 NW. U.L. REV. 2, 7 (1956).

Interestingly, one of the original student editors of volume one of the *Harvard Law Review* served as an associate faculty editor of the new *Illinois Law Review* published by the faculty of Northwestern—Dean John H. Wigmore. 1 ILL. L. REV. 39 (1906).

38. Cramton, “*The Most Remarkable Institution*”: *The American Law Review*, 36 J. LEGAL EDUC. 21, n.1 (1986); see also Rosenkranz, *Law Review’s Empire*, 39 HASTINGS L.J. 859, 860 n.9 (1988).

39. *American Legal Periodical*, 2 ALB. L.J. 445, 446 (1870).

40. See Swygert & Bruce, *supra* note 10, 787-90. See also L. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 547-48 (1973).

41. Note, *Leading Articles in Law Periodicals*, 22 AM. L. REV. 786, 786 (1888). See also Editorial, *Legal Journalism*, 9 ALB. L.J. 106 (1874).

42. Nearly all law reviews followed the early Harvard, Yale, and Columbia format. See, e.g., *Beginning the Second Fifty Years: A Glance at the First Fifty*, 51 COLO. L. REV. 5 (1979).

"Number 108" referred to a new publication which was given birth in Wesemann Hall, Porter County, Indiana. The number 108 was the number of student-edited law reviews asserted to be in existence with the publication of Volume One, Number One of the *Valparaiso University Law Review* in the fall of 1966. The *Editors' Comments* proudly proclaimed: "Yesterday, . . . seventy-nine years after the birth in Cambridge, there were 107 student-edited law reviews in the United States. Today, there are 108."⁴³

Why in the mid-1960s did the Valparaiso law faculty decide to select a handful of students to commence a law review at Valparaiso? The faculty must have believed that the time was right in the history and development of the Valparaiso University School of Law to imitate Harvard, Yale, Columbia as well as the 100 other law schools in the United States where, by 1966, students were editing law reviews and journals. The time was right in part because only three years earlier the School of Law had completed a new facility, Wesemann Hall, on the University's spacious East Campus. Unused offices were available for a law review staff. About this same period the size and quality of applications at Valparaiso were increasing.⁴⁴

Given adequate facilities and given the increasing pool of talent that the larger classes in part engendered, the faculty apparently felt that the time had come to imitate the better known schools in earnest. We were never informed (and I still have no knowledge) of how the faculty selected the seven of us who were delegated the responsibility for launching this new venture. Regardless, in the late fall of 1965, the faculty, by way of Dean Louis F. Bartelt and Professor Alfred W. Meyer (as I recall) contacted Bruce G. Berner, Allen L. Landmeier, Robert D. Lee, George W. Valsa, Jr., Michael S. Virgil, Peter K. Wilson, and me, inviting us to be members of the inaugural Board of Editors for what was hoped would be Volume One of the *Valparaiso University Law Review*.

Bob Lee, the only third-year student among us, was selected to be business

43. *Editors' Comments*, 1 VAL. U.L. REV. (1966). As editor-in-chief of Volume One, I was primarily responsible for the *Editors' Comments*. The number 108, as I recall, was based on my counting the law school publications published and available in 1966 according to our law library's records. The number did not include all the failed attempts at student-edited law reviews or those which were internal and not generally circulated.

It should be noted that footnote 3 to the *Editors' Comments* in issue one repeats the common misconception that the *Harvard Law Review* was the *first* student-edited legal periodical in the United States. 1 VAL. U.L. REV. v n.3 (1966). The record is now corrected. See notes 29 and 30 *supra* and accompanying text.

44. The 1964 entering law class at Valparaiso consisted of 63 students, approximately double that of the 1962 entering class of 32 students. *Comparative Admissions Data, 1963-1972* (Apr. 22, 1972) (on file at Valparaiso University Law Review offices.).

director. Bruce Berner along with Al Landmeier were made note editors. Pete Wilson was designated the articles and book review editor while George Valsa was named business manager. Michael Virgil assumed the duties of executive editor. I was assigned the editor-in-chief role. In our third year, John W. Yakimow, another member of our class, joined the Board of Editors and made significant contributions to our efforts.

Early on during the planning process we decided to attempt to “Harvardize” our prospective journal, that is, to imitate the format and style of the *Harvard Law Review*. To this end we scrutinized the contents of recent issues of that scholarly review from cover to cover. As a result, we reached some decisions.

First, we would, like Harvard, divide the review into two main sections. The front segment of each issue would consist of lead articles authored by outside authors, while the second section would contain student-written analytic research notes on worthy (we hoped) topics. This plan might be described as pure aspirational imitation. Moreover, we chose (again following Harvard’s example) *not* to have the student authors sign their notes. If Harvard’s student notes were anonymously written, so would ours. And, to make our snobbish point all the more, no one would know who *we*, the editors, were because, again, like Harvard, we would “bury” the masthead which set out our names by sandwiching it in the middle of the issue between the lead article and student note segments.⁴⁵

Finally, we chose to include essay-style book reviews at the end of each issue, also in imitation of Harvard. Professor Jack Hiller suggested that the reviewers and the books reviewed should offer interdisciplinary perspectives. We followed his suggestion. Indeed, Volume One’s entries concerned not only the law, but issues related to religion, history, sociology, and political science.⁴⁶ In doing so we embraced the perspective that law is related to,

45. 1 VAL. U.L. REV. 101, 338 (1966-67).

46. Book reviews in Volume One included a review of Loren Miller’s, *The Petitioners: The Story of the Supreme Court of the United States and the Negro*, published in 1966, and reviewed by then Valparaiso Law School professor Burton D. Wechsler (presently the Alumni Distinguished Teacher and Professor of Law at American University); John D. Feerick’s *From Failing Hands: The Story of Presidential Succession*, reviewed by Valparaiso University history professor Daniel R. Gahl; Norman F. Dacy’s controversial (among lawyers) book, *How to Avoid Probate*, reviewed by Indiana attorney and Valparaiso Law School alumnus, Delmar R. Hoepfner; a far-ranging review of Mark DeWolfe Howe’s *The Garden and the Wilderness—Religion and Government in American Constitutional History*, by Valparaiso law professor Jack A. Hiller; Donald Newman’s book, *Conviction: The Determination of Guilt or Innocence Without Trial*, reviewed by the Honorable Robert A. Grant, Chief Judge of the United States District Court for the Northern District of Indiana; and finally, a book by Jerald S. Auerbach, *Labor and Liberty: The LaFollette Committee and the New Deal*, reviewed by Valparaiso University political science professor, Victor F. Hoffmann, Jr. (who later became executive administrative assistant to United States Senator Vance

indeed is part of, the liberal arts.

Thus, we consciously opted to style our new law review in the Harvard mold, first because we thought others believed Harvard to be the best, and second, because "Harvardizing" had been the way of legal education--both in and out of the classroom.⁴⁷ Following Harvard's example in the classroom meant to use Harvard Law School Dean Christopher Columbus Langdell's inspired casebook-Socratic teaching method made popular at Harvard during the 1870s and thereafter.⁴⁸ The progression from textbooks to casebooks and from lecture-recitative to a Socratic teaching pedagogy was, and arguably remains, the most innovative development in the history of American legal education.⁴⁹

This phenomenon did not go unnoticed by our instructors in Wesemann Hall. For Valparaiso law faculty members in the 1960s (like those today) were skilled in the Langdellian arts, although each possessed a distinctive style. Collectively, they stretched our minds,⁵⁰ a process not always appreciated at the time. And, just as the initial student editors of the *Harvard Law Review* were inspired by the pedagogical skills and friendships of their teachers,⁵¹ so too were we, the first editors of the *Valparaiso University Law Review* inspired. Our mentors and friends included Dean Louis F. Bartelt, along with professors Charles W. Gromley, Jack A. Hiller, Col. Erwin Jones, Marshall J. Jox, Alfred W. Meyer, James Savage, and Richard Stevenson. And although they did not, with the exception of Professor Hiller,⁵² publish their own writings in Volume One of the *Valparaiso University Law Review*, they gave constant support and encouragement throughout our undertakings.

Of special importance were Professor Meyer's assistance and influence.

Hartke).

47. R. STEVENS, *LAW SCHOOLS: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S*, 117-23 (1983).

48. See A. REED, *TRAINING FOR THE PUBLIC PROFESSION OF THE LAW*, 369-88 (1921).

49. L. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 531 (1973). See also J. Frank, *Both Ends Against the Middle*, 100 U. PA. L. REV. 20, 21-22 (1951).

50. See e.g., Swygert, *Tribute to R. Stevenson*, 23 VAL. U.L. REV. (1988).

51. For example: supporting both the idea and the realization of the *Harvard Law Review* was Harvard Law School Professor James Barr Ames who was described as the editors' "best friend." Beale, *James Barr Ames: His Life and Character*, 23 HARV. L. REV. 325, 328 (1910). Ames became the review's chief advisor and "helper of the editors throughout his life." *Id.* at 328.

52. Professor Jack Hiller of the Valparaiso School of Law Faculty produced a marvelous review of Mark DeWolfe Howe's 1965 classic, *The Garden and the Wilderness--Religion and Government in American Constitutional History*. 1 VAL. U.L. REV. 422 (1967). In his review, Professor Hiller cited Lewis Carroll's *Alice in Wonderland*, Robert Frost's *Mending Walls*, Kierkegaard's *Fear and Trembling*, T.S. Eliot's *Murder in the Cathedral*, and Dunne's *Mr. Dooley on Ivrything and Ivrybody*, as well as more traditional legal authorities. 1 VAL. U.L. REV. 422 n.5, 425 n.17, 432 n.61, and 433 n.63 (1967).

He was the law review's first advisor. He had the great sense to inspire the editors without smothering. He never told us what to do or how to proceed. Indeed, he afforded us full editorial rein. Yet, he also gave greatly of his time when asked, which we did frequently, especially in seeking his critical reviews of various drafts of student notes.

Professor Meyer, moreover, was instrumental in helping us select relevant and timely note topics. He succeeded since several of his suggestions pertained to cutting-edge matters. His suggestions, for example, prompted Michael Virgil's excellent comment on whether nominal consideration (Blackacre for one dollar) was valid under a then tentative draft of the Restatement (Second) of Contracts.⁵³ Professor Meyer's assistance also was instrumental in developing Peter Wilson's note concerning impostors and fraudulent procurement of negotiable instruments under the Uniform Commercial Code.⁵⁴ Other student note topics in our initial issue included Bruce Berner's insightful treatment on federal habeas corpus problems,⁵⁵ and my effort dealing with problems of reciprocal buying and selling under the federal antitrust laws.⁵⁶

In our second issue (spring 1967), we published Allen Landmeier's thorough treatment on the discoverability of work product in diversity suits,⁵⁷ along with a comprehensive note on open price terms under the Uniform Commercial Code authored by David Peterson,⁵⁸ a piece subsequently cited in a leading commercial law casebook.⁵⁹

Other student notes published in Issue Two of Volume One included an analysis of a sophisticated method of valuating control blocks of securities in estates, a method known as "inverse blockage,"⁶⁰ and a discussion of a timely topic in copyright law concerning legal information retrieval systems.⁶¹

53. Note, *Restatement of Contracts (Second)—A Rejection of Nominal Consideration?*, 1 VAL U.L. REV. 102 (1966).

54. Note, *Impostors and Fraudulent Procurement of Negotiable Instruments—Does the UCC Resolve the Pre-Code Conflict?*, 1 VAL. U.L. REV. 139 (1966).

55. Note, *Federal Habeas Corpus—The Search for a Solution to the Prematurity Concept*, 1 VAL. U.L. REV. 155 (1966).

56. Note, *The Future of Reciprocity: A Study in Antitrust Decisional Technique*, 1 VAL. U.L. REV. 114 (1966).

57. Note, *Discoverability of Work Product in Diversity Actions*, 1 VAL. U.L. REV. 410 (1967).

58. Note, *UCC Section 2-305(1)(c): Open Price Terms and the Intention of the Parties in Sales Contracts*, 1 VAL. U.L. REV. 381 (1967).

59. SPEIDEL, SUMMERS & WHITE, *COMMERCIAL AND CONSUMER LAW* 747-56 (3rd ed. 1981).

60. Note, *Inverse Blockage—Valuation of Control Blocks of Listed Securities for Federal Estate Tax Purposes*, 1 VAL. U.L. REV. 340 (1967).

61. Note, *Legal Information Retrieval Systems and the Revised Copyright Law*, 1 VAL. U.L. REV. 359 (1967).

Although we put great effort into writing and editing our student notes, when it came to lead articles, we pulled out all stops. Tom C. Clark, Associate Justice of the United States Supreme Court, authored the initial article for Volume One, Number One, a piece titled "The American Jury: A Justification."⁶² Although only seven pages in print, we thought it propitious to begin the *Valparaiso University Law Review* with a piece by a Supreme Court justice.

The second article in issue one dealt with a widely published case involving Dr. Sam Sheppard, who had been convicted in Ohio for killing his wife.⁶³ The then assistant librarian of the United States Supreme Court, Edward G. Hudon, authored the article, which dealt with the clash of fundamental rights--free speech versus fair trial--involved in the case of *Sheppard v. Maxwell*,⁶⁴ as well as other free press--fair trial litigated controversies.

In the mid-1950s, one of the first large-scale empirically based legal research studies was undertaken by members of the faculty at the University of Chicago Law School, the Chicago Jury Project.⁶⁵ One of the researchers who worked under Professor Harry Kalven, Jr., the Project Director, was Dale W. Broeder. He contributed to Volume One, Number One, an article titled "The Impact of the Lawyers."⁶⁶ This piece discussed the ramifications of lawyers' behavior and demeanor on jurors' attitudes and decisions in actual trials witnessed by members of the Chicago research team.

Condominium law was just coming into its own in the mid-1960s and Valparaiso was fortunate enough (with Professor Alfred Meyer's assistance) to attract an article by an expert who literally had written *the* treatise on American condominium law, Patrick J. Rohan.⁶⁷ His article on condominium enabling documents was timely and undoubtedly useful for practitioners representing condominium developers and owners.⁶⁸

But of all the lead articles in issue one, the most prophetic piece, arguably, was authored by Monrad Paulsen, at the time a distinguished professor of law

62. 1 VAL. U. L. REV. 1 (1967).

63. Hudon, *Freedom of the Press versus Fair Trial: The Remedy Lies with the Courts*, 1 VAL. U.L. REV. 8 (1966).

64. 384 U.S. 333 (1966).

65. The final report of the Chicago Jury Project was published in 1966. H. KALVEN & H. ZEISEL, *AMERICAN JURY* (1966). See also H. KALVEN, H. ZEISEL & BUCHHOLZ, *DELAY IN THE COURTS* (1959).

66. 1 VAL. U.L. REV. 40 (1966).

67. P. ROHAN & RESKIN, *CONDOMINIUM LAW AND PRACTICE* (1965).

68. Rohan, *Second Generation Condominium Problems: Construction of Enabling Legislation and Project Developments*, 1 VAL. U.L. REV. 77 (1966).

at Columbia University who later became dean of the University of Virginia School of Law. Paulsen's comment, titled "Divorce--Canterbury Style,"⁶⁹ reported on what was, in the mid-1960s, still a rather revolutionary idea--no-fault divorce based on an emerging principle of marital dissolution known as irreconcilable differences.⁷⁰ My, times have changed since 1966.

Leading off our second issue which was published in the spring of 1967 was an address of Roscoe Pound, former Dean of Harvard Law School and eminent legal scholar. We published his address posthumously.⁷¹ Pound had delivered his remarks on jurisprudence on the occasion of the 100th anniversary of Valparaiso University in 1959 in the recently completed Chapel of the Resurrection. Upon finishing his address Pound reportedly gave the manuscript to Valparaiso University's president, Dr. O.P. Kretzmann, along with permission to publish the piece.⁷² Some eight years later the young Valparaiso Law Review became the appropriate vehicle.

To respond to what we, the editors, were sure was Pound's monumental and unfathomable jurisprudential wisdom, we enlisted none other than Professor Ronald M. Dworkin of Yale Law School (later to become a distinguished professor of jurisprudence both at Oxford University in England and at New York University).⁷³ As editor-in-chief, I took a few liberties with Professor Dworkin's piece, including naming it: "The Case for Law--A Critique," and then publishing it, all without Mr. Dworkin's final approval. He was not pleased and informed both Professor Meyer and me of his displeasure in a blistering letter.⁷⁴ Professor Dworkin especially took offense with the word "critique" that I had inserted in the title. I had used the ill-received word because in the body of his short response, Professor Dworkin had pointed out that "Pound's Valparaiso address ... is not a strong piece; it is more a restatement of old themes than a fresh adventure."⁷⁵ Well, it sounded to me

69. 1 VAL. U.L. REV. 93 (1966).

70. Professor Paulson's comment was based on the English-authored "Mortimer Report," sponsored by the Anglican Church. The report had suggested the substitution in divorce law of no-fault standards for traditional fault criteria. See PUTTING ASUNDER, S.P.C.K. LONDON (1966).

71. Pound, *The Case for Law*, 1 VAL. U.L. REV. 201 (1967).

72. *Editors' Comments, Never a Necessity*, 1 VAL. U.L. REV. v (Issue Two) (1967).

73. Since publishing in the *Valparaiso University Law Review*, Ronald Dworkin has been the author of some notable works, among them *Taking Rights Seriously* (1977), *A Matter of Principle* (1986), and *Law's Empire* (1983).

74. In his letter, dated June 22, 1967, Professor Dworkin accused me of "carefully inserting barbarisms and non-words." Later, on July 25, 1967, he retracted that charge: "It is my turn to apologize," he wrote. In between his two letters, Professor Meyer on July 7, 1967, and I on July 11, 1967, had each written to Mr. Dworkin apologizing for not first obtaining his approval of our minor stylistic changes before publishing his critique. (All correspondence in this incident is on file at the *Valparaiso University Law Review* offices).

75. Dworkin, *The Case for Law--A Critique* 1 VAL. U.L. REV. 215 (1967).

like Dworkin was critiquing Pound's address. Still, I committed a very serious error in not having Mr. Dworkin approve my title. I am happy to point out, however, that now, some twenty-five years later, my transgressions in reference to Ronald Dworkin's essay do not appear to have unduly damaged his career.

One other article in the second issue deserves mention, a piece authored by Chicago attorney and leading commercial law authority, William B. Davenport, titled "Bank Credit Cards and the Uniform Commercial Code."⁷⁶ Although today most of us take Visa and Master-Charge cards for granted, in the mid-1960s, the wide-spread use of bank-issued credit cards was only beginning to take place. The phenomenon spread to the Chicago area with the advent of the "Midwest Bank Card System," which Mr. Davenport helped put together in behalf of his client, the First National Bank of Chicago. His article, consequently, was not only timely, it also was authoritatively informative.

We did decide to incorporate a feature into the *Valparaiso University Law Review* that Harvard did not have—a brief *Editors' Comments* section near the beginning of each issue.⁷⁷ In fairness to both those who favored and those who might not have favored our new undertaking, we cited the literature both pro and con pertaining to student-edited law reviews in the initial *Editors' Comments*. We included the oft-cited piece by the late Yale law professor, Fred Rodell, titled "Goodbye to Law Reviews,"⁷⁸ in which Rodell declared that only two things are wrong with law reviews, form and content.⁷⁹ Needless to say we did not fully agree with Yale's captious professor in that we went ahead and published a second issue to Volume One.

On a more positive front, several months after Volume One, Number One of the *Valparaiso University Law Review* was published, a favorable, rather lengthy review of our product appeared in the *American Bar Association Journal*.⁸⁰ The editors were delighted. The reviewer declared that the issue was "extremely well done and a great credit" to those responsible.⁸¹ The reviewer seemed especially pleased with the four "scope note length" student notes, wishing only that the students who had authored the notes had signed their names.⁸² Well, it seemed that we had started off on the right foot. Our efforts at imitating the more visible law reviews in turn created a little visibility of our

76. 1 VAL. U.L. REV. 218 (1967).

77. See e.g., *Editors' Comments*, 1 VAL. U.L. REV. v-viii (1966); *Editors' Comments*, 1 VAL. U.L. REV. v-ix (1967).

78. Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38 (1936).

79. *Id.* at 38.

80. Arthur John Keefe, *Law Magazines*, 1967 A.B.A.J. 290.

81. *Id.* at 290.

82. *Id.*

own product. I suspect the faculty was pleased.

Interestingly, as far as we knew, members of the Valparaiso law faculty were not concerned about students making the publication decisions or otherwise running the publishing venture. Still, outside Valparaiso's hallways, other voices in legal education had raised doubts about students' role in overseeing the professional and scholarly literature of the law. The debate continues today over whether student-edited law reviews are beneficial for legal education and the legal profession.⁸³

In any event, student editors surely benefit from the law review experience. Indeed, for members of the Valparaiso University School of Law class of 1967 who took part in the inaugural issues of the *Valparaiso University Law Review*, we would agree that the student-edited law review is a remarkable institution. We learned lessons from our law review participation that no single law school course could have taught us. We learned about the critical importance of being precise; about the necessity of rewriting, rewriting, and rewriting; about proper citation form; about the discipline of proofreading; and, most of all, about the pleasure and camaraderie of lawyers-to-be working together.

While law school academic activities for the most part demand individual effort,⁸⁴ the law review experience is a cooperative venture. All of the editors and staff worked evenings, weekends, and during "breaks" to meet the challenge the faculty had bestowed upon us. We strove to project the pride we felt in ourselves and in our Valparaiso University Law School education. We wanted to let the world know that this little law school in Northern Indiana offered a

83. Pro: See, e.g., Cribbet, *Experimentation in the Law Reviews*, 5 J. LEGAL EDUC. 72 (1952); Edmunds, *Hail to Law Reviews*, 1 J. MARSHALL J. PRAC. & PROC. 1 (1967); Martin, *The Law Review Citadel: Rodell Revisited*, 71 IOWA L. REV. 1093 (1986); McKelvey, *The Law School Review 1887-1937*, 50 HARV. L. REV. 868 (1937); Nichols, *A Student Defense of Student-Edited Journals: A Response to Professor Cramton*, 1987 DUKE L.J. 1122; Richardson, *Law Reviews and the Courts*, 5 WHITTIER L. REV. 385 (1983); Traynor, *To the Right Honorable Law Reviews*, 10 U.C.L.A. L. REV. 3 (1962); Westwood, *The Law Review Should Become the Law School*, 31 VA. L. REV. 913 (1945); *The University of Detroit Law Journal's 40th Anniversary*, 34 U. DET. L.J. 247 (1957).

Con: See, e.g., Bard, *Legal Scholarship and the Responsibility of Law Professors*, 16 CONN. L. REV. 731 (1984); Cane, *The Role of Law Reviews in Legal Education*, 31 J. LEGAL EDUC. 215 (1981); Church, *A Plea For Readable Law Review Articles*, 1989 WIS. L. REV. 739; Cramton, *supra* note 38, at 8-10; Kelly, *Faculty Ponders Alternative Journal*, *Harv. L. Rec.*, Feb. 10, 1984, at 6; Mewett, *Reviewing the Law Reviews*, 8 J. LEGAL EDUC. 188 (1955); Murray, *Publish and Perish—By Suffocation*, 27 J. LEGAL EDUC. 566 (1975); Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38 (1936); Rodell, *Goodbye to Law Reviews—Revisited*, 48 VA. L. REV. 279 (1962).

84. This fact about legal education has been lamented. See Shaffer, *Moral Implications and Effects of Legal Education*; or: *Brother Justinian Goes to Law School*, 34 J. LEGAL EDUC. 190 (1984).

first rate legal education. Our school's law review, we hoped, would be a reflection of the knowledge and capabilities of the school's faculty and students.

After all, we had great mentors--Professors Hiller, Gromley, Bartelt, Stevenson, Meyer, Savage, Jones, and Jox. They had taught us well. And, they had supported us. When it was time to turn over the reins to our successor board, we were happy and thankful for the faculty's support. (As James Kavanaugh wrote in his book, *Celebrate the Sun*, when one's enterprise is nearing the end one should be able to look back and say: "I have been happy and I am very grateful."⁸⁵)

For myself, looking back twenty-five years (twenty-four of which I have spent in legal education), I believe that the seeds of my happiness in the teaching and lawyering professions were sown in large measure while working with my classmates and teachers in the matter of the birth of the *Valparaiso University Law Review*. True, our efforts represent a very small segment in a decades-long tradition of imitating those before. Yet, for us, the real significance of taking part in the birth of the *Valparaiso University Law Review* was the marvelous opportunity to further our education and to grow intellectually and socially. In this educational venture, the school's reputation may also have been advanced.⁸⁶

To the extent that the reputation of the Valparaiso University School of Law has been enhanced over the past quarter of a century by the presence and quality of its law review--and I have little doubt that the school's reputation has benefitted--then every student and every alumnus has been a beneficiary. Indeed, a student-edited law review in the end is an educational mechanism, but one that displays to the world the good works of the academy and, in the process, ably serves both legal education and the practice of law.⁸⁷

85. J. KAVANAUGH, *CELEBRATE THE SUN* 88 (1973).

86. "More and more, the law reviews are becoming the organs of university life in the field of law and jurisprudence. The advance in the prestige of the universities has been accompanied, . . . , with a corresponding advance in the prestige of their [law reviews]." B. CARDOZO, *SELECTED READINGS ON THE LAW OF CONTRACTS* vii, ix (1931).

87. Law reviews provide "an unparalleled service to the profession and an unquestioned educational service to their members." Martin, *supra* note 83, at 1108. For discussions of the impact of law reviews, see Maru, *Measuring the Impact of Legal Periodicals*, 1976 AM. BAR FOUND. RES. J. 227, and Shapiro, *The Most-Cited Law Review Articles*, 73 CAL. L. REV. 1540 (1985).

