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### Foreword

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## Foreword

Gerhard Casper†

The first issue of Volume 1 of *The University of Chicago Law Review* included a statement by Dean Harry Bigelow in which he said that “the responsibilities of the Review and the credit for it will belong to the students of the Law School.”<sup>1</sup> By comparison with other countries, one of the most startling characteristics of American legal scholarship is the fact that so much of it is published in student-edited periodicals. This phenomenon illustrates two aspects of the American law school. First, legal education at its best is viewed as education for membership in a learned profession. While this goal is not unique to the United States, the participation of students in the critical assessment of law and legal literature, which law reviews provide, is one of the distinctly American means for achieving the depth of understanding and fidelity to one’s materials that make up some of the essence of a learned profession.

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<sup>1</sup> Bigelow, *The Establishment of the University of Chicago Law Review*, 1 U. CHI. L. REV. 110, 111 (1933). The masthead, however, carried a cautionary disclaimer: “The Board of Editors does not assume collective responsibility for any statement in the columns of the Review.” 1 U. CHI. L. REV. at 110. An article by Alexander Polikoff, Editor-in-Chief of Volume 20, calls attention to the fact that the disclaimer was dropped beginning with Volume 2, Number 3. Polikoff, *Twenty Years at Hard Labor*, 2 U. CHI. L. SCH. REC. 12, 13 (1952). The Editor-in-Chief for Volume 2 was a student whose subsequent career has offered ample proof of his willingness to take responsibility—Edward H. Levi.

Second, the student-edited law review illustrates the American law school's relative distrust of narrow expertise. The uninhibited debate of legal institutions across specialties that characterizes American law and legal education is not restricted to those who, by faculty status or otherwise, claim to be experts. The law review is perhaps the most dramatic example of the critical review of expertise by generalists.

Since publication of the first *Harvard Law Review* in 1887, we have taken for granted "the basic notions of student editorial control of the whole, and student authorship of a portion," of law review contents.<sup>2</sup> We hardly ever pause to appreciate the uniqueness of the phenomenon by comparison with other countries and disciplines. In an article in Volume 19 of this *Review*, David Riesman—the lawyer turned sociologist, then a professor of social sciences at the University—described the law review as a "paradigm of impersonality combined with teamwork" and called for its study as a "yardstick for the legal profession and, by contrast, other professions as well."<sup>3</sup> "So far as I know, there is nothing in any other professional group which remotely resembles this guild of students who, working even harder than their fellows, manage to cooperate sufficiently to meet the chronic emergency of a periodical."<sup>4</sup> Riesman went on to say: "The resulting standards often become so high that the contributed articles by law teachers and practitioners are markedly inferior to the student work both in learning and in style and, in fact, often have to be rewritten by the brashly serious-minded student editors." At the end of this sentence those student editors, less serious than brash, added a starred footnote that reads: "Amen. [Ed.]"<sup>5</sup>

In the case of the University of Chicago, the founding of its own law review was delayed due to the demands imposed on a new institution. In a 1924 letter to the then President of the University, Dean James Parker Hall wrote: "For a number of reasons the University of Chicago Law School has never published a law journal, despite its obvious advantages. During the early years of the School our Faculty was small and the work incidental to organizing the School, creating good traditions of work among the students, and mastering our curriculum, left no time for such an enter-

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<sup>2</sup> Langbein, *HLR: 80 Years of Student Power*, 90 *CAMBRIDGE REV.* 295, 295 (1969).

<sup>3</sup> Riesman, *Some Observations on Law and Psychology*, 19 *U. CHI. L. REV.* 30, 43-44 (1951).

<sup>4</sup> *Id.* at 39.

<sup>5</sup> *Id.* at 40 & n.\*.

prise."<sup>6</sup> "Mastering the curriculum" was a matter of no small moment. The central issue was the role of legal education in a university setting. Each of the three men who may be viewed as the founders of the Law School—William Rainey Harper, Ernst Freund, and Joseph Beale—had distinct views on the subject. What prevailed in the end was a broad conception of legal education concerned with much more than "pure law."

The special strength and vitality of the Law School, its tradition as an institution, is expressed in the terse statement of purpose that can be found in the first *Law School Announcements*: "The purpose of the Law School is: (1) to afford adequate preparation for the practice of law as a profession in any jurisdiction in which the common law prevails; and (2) to cultivate and encourage the scientific study of systematic and comparative jurisprudence, legal history, and principles of legislation."<sup>7</sup> The founders of the Law School were agreed on what was to be given priority. "[T]he Law School regards it as its first and foremost vocation to train lawyers . . ."<sup>8</sup> They also believed that the new law school should be a model to others in taking seriously its role as a university law school. This latter goal was reflected in the admissions standard which, in the words of the first *Announcements*, "constitutes the school practically as a graduate school," equaling "the best institutions in the country" and surpassing "any other law school in the West."<sup>9</sup> The goal was also reflected in the value placed on "a thorough liberal education as an aid to the successful prosecution of professional studies, and in giving a higher meaning and interest to the practice of a learned profession."<sup>10</sup> Finally, it was reflected in the cultivation of scholarship—a task which the Law School considered "its duty to the University."<sup>11</sup>

After a cooperative prelude in which the University of Chicago joined Northwestern University and the University of Illinois in the publication of the *Illinois Law Review*,<sup>12</sup> *The University of Chicago Law Review* was established in 1933. The first issue was dedicated to the memory of Ernst Freund who had died earlier

<sup>6</sup> Letter from James Parker Hall to President Burton 1 (March 7, 1924).

<sup>7</sup> THE UNIVERSITY OF CHICAGO LAW SCHOOL, ANNUAL ANNOUNCEMENTS 3 (1902).

<sup>8</sup> THE UNIVERSITY OF CHICAGO LAW SCHOOL, ANNOUNCEMENTS 4 (1903).

<sup>9</sup> THE UNIVERSITY OF CHICAGO LAW SCHOOL, *supra* note 7, at 3.

<sup>10</sup> THE UNIVERSITY OF CHICAGO LAW SCHOOL, *supra* note 8, at 3.

<sup>11</sup> *Id.* at 4. On the founding and early history of the Law School, see F. ELLSWORTH, LAW ON THE MIDWAY (1977). See also R. STEVENS, LAW SCHOOL 39-40 (1983).

<sup>12</sup> Volumes 19 through 27 of the *Illinois Law Review* were edited jointly by faculty members at the three schools from 1924 through 1932.

that year. The dedication was most appropriate, not only because of Freund's seminal role in the first three decades of the Law School, but also because of his long-standing concern with governmental police powers, legislation, and administrative law. The *Law Review* commenced publication two months after Franklin Delano Roosevelt had assumed the presidency of the United States. The New Deal and its form of the administrative state received considerable attention in the early years of the *Review*. It also occupied itself with the implications of what in retrospect was the most consequential event of 1933—the Nazi seizure of power in Germany. When the distinguished political scientist Karl Loewenstein published his article *Dictatorship and the German Constitution: 1933-1937* in Volume 4, Loewenstein concluded with an ominous summary: "Paradoxically it is the most notable feature of the Third Reich that it has succeeded in organizing arbitrariness in the form of law."<sup>13</sup> The article suggests the broad view the *Law Review* has taken of what lawyers should be concerned about.

Over time, the student editors have had perhaps a more difficult task than those of any other law review in the country. As new fields of legal inquiry established themselves, members of the faculty developed the sense that certain areas of the law and interdisciplinary legal scholarship called for systematic attention, which a traditional law review by the very breadth of its function could not provide. The *Law Review* thus was joined by faculty-edited journals: in 1958 *The Journal of Law and Economics*, in 1960 the *Supreme Court Review*, in 1972 *The Journal of Legal Studies*, and in 1979 *Crime and Justice*. No law school in the country has an environment more challenging to faculty and student productivity than ours.

The *Law Review* is one of the best edited and most frequently cited reviews in the country. At times, the road to recognition was a rough one, however. In 1950, the Dean of the Law School received a letter from the *Harvard Law Review*, the first paragraph of which read as follows:

As you may know, it has for some time been the policy of the Harvard Law Review to make available reduced-rate subscriptions to the students of law schools having no legal periodical of their own. Due to the success of this program, we are

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<sup>13</sup> Loewenstein, *Dictatorship and the German Constitution: 1933-1937*, 4 U. CHI. L. REV. 537, 574 (1937).

again making the same offer available.<sup>14</sup>

The then Editor-in-Chief of *The University of Chicago Law Review* responded in part:

We have your letter of 20th inst. and reply in kind. Your gracious offer on your cut rate law review subscriptions for law schools having no legal periodical of their own was called to our attention by the Dean. We must confess that we were unaware of any policy in your law review, and are happy to hear that it exists. In view of the century-old history of your glorious journal, we can readily see why our meagre 17 year existence qualifies us for the status of a school with no legal periodical of its own.

Upon mature reflection, our board of editors has evolved a counter-offer which we trust you will find inviting. Our review has a bargain rate of \$2.00 per year. Our accountant informs us that if we were to merge with you, this rate could be cut to \$1.50 per year—all things considered. We propose such a merger. . . .

We realize that you would be reluctant to see the name, Harvard Law Review, go into oblivion. Here again, however, the spirit of compromise lends a solution. We could take the first half of our name and the last half of yours—so that the journal would be known as the University of Chicago Law Review.<sup>15</sup>

The letter was signed by the same brash editor who thought he should add his "Amen" to Professor Riesman's comment about the quality of professorial writing—Abner Mikva.

In conclusion, permit me to return to Riesman's article once more: "To be sure, the major law reviews have a rather amiable rivalry inter sese, as the boards of editors on the older reviews have a rather amiable rivalry with the records set up by earlier and deceased boards of editors. But there is little that is factitious about this school spirit; it is not whipped up by coaches (though here and there faculty advisors, public relations conscious, may play this role) or by cheer leaders, but is self-perpetuating."<sup>16</sup>

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<sup>14</sup> Letter from H. James Sheedy to the Dean of the University of Chicago Law School (Sept. 20, 1950).

<sup>15</sup> Letter from Abner J. Mikva to H. James Sheedy & James Vorenberg (Oct. 1950).

<sup>16</sup> Riesman, *supra* note 3, at 40. In Chicago's case, the "coach" for the first 26 volumes was Professor Ernst Puttkammer. At present that role is performed by Professors John

As our law review joins the ranks of “older” reviews, let us congratulate its editors, present as well as earlier, and marvel at their accomplishments and the self-perpetuation of a great American institution. Charles Fairman once wrote about the Supreme Court: “One who observed, perceptively, in the Supreme Court chamber would learn enough to chronicle the annals of America—political, economic, and social.”<sup>17</sup> The perceptive reader of the first fifty years of *The University of Chicago Law Review* can do the same. Let us hope future generations can say it also about the volumes to be published in the decades to come.

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Langbein and Bernard Meltzer.

<sup>17</sup> C. FAIRMAN, 6 HISTORY OF THE SUPREME COURT OF THE UNITED STATES 251 (1971).