

## AFTERWORD: HUMBLE GENESIS

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The editors of this 50th Anniversary Issue have asked me, as Editor-in-Chief of Volume 1, to describe the genesis of the *Law Review* and to contrast our earlier efforts with the modern *Law Review*, aptly described in the *Foreword* by Charles Ares<sup>1</sup> and the *Dean's Welcome* by Toni Massaro.<sup>2</sup> I am happy to do so.

When I enrolled in the College of Law in 1956, I had been told by several people, none of whom had any official connection with the school, that the College of Law was the “fifth best law school in the country.” Not “third,” not “seventh,” always “fifth.” Since 1956 was well before *U.S. News and World Report* undertook to “rank” law schools based upon statistics, all rankings were subjective, hence irrefutable. Law schools in those days enjoyed a ranking privilege similar to that enjoyed by the children of Lake Wobegon, “all of whom are above average.”

Had *U.S. News and World Report* gathered data and ranked schools back in the 1950s, however, it is doubtful that the University of Arizona College of Law would have fared nearly as well in the national rankings as it did in the provincial wisdom.

The law school was located in what is now the “Douglass Building.” That relatively tiny building had housed the College of Law for thirty years. It had two classrooms and a moot court room. There were no seminar rooms. Most of its space was taken up with about 30,000 books, and tables and cubicles for library use. There was no auditorium or other space appropriate for speakers and guest lecturers, but there was no felt need for such space anyway. I only recall one guest speaker in the three years I was there: Morris Udall gave a talk about the basics of litigation. The talk was held somewhere else on the University’s campus.

The newly renovated Rogers College of Law, in contrast to the old building, has multiple buildings containing about eight classrooms, three seminar rooms, two courtrooms (also doubling as additional seminar rooms) and two conference rooms. The library has about 400,000 volumes, ten group study rooms

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1. Charles E. Ares, *Foreword*, 50 ARIZ. L. REV. 11 (2008)
2. Toni M. Massaro, *Dean's Welcome*, 50 ARIZ. L. REV. 1 (2008)

and a computer lab. All this is for a student body less than twice the size of the 1959 student body.

One of the *U.S. News and World Report's* criteria of law school quality is the "selectivity" of the student body. One measure of selectivity is how many applicants are rejected in comparison to how many are admitted. The greater the proportion of rejections, the better the law school, presumably. Were the magazine now to apply this selectivity measure to the 1950s era College of Law, its computers would likely crash. The College could hardly have been less selective. It welcomed every applicant who "present[s] evidence of good character" and "holds a bachelor's degree from an accredited college or university."<sup>3</sup> One would even be admitted without a college degree if "he . . . has earned at least three-fourths of the credits acceptable for a bachelor's degree" with a grade point average "at least equal to that required for graduation in the institutions attended, and not less than 3.0000 (C)."<sup>4</sup>

Nor were there any scholarships to lure especially qualified students. On the other hand, Arizona residents paid no tuition and total fees were only \$91 per semester<sup>5</sup> so few Arizonans went to law school elsewhere, especially if they assumed, as I did, that the College of Law was one of the nation's best. And even if they had not been privy to the same ranking information as I was, or they disbelieved it, nearly all of the students in those days intended to practice law in Arizona and the reality of the College's national standing was far less important than how it was regarded in Arizona's legal profession, which was very highly.

I can't imagine what the *U.S. News and World Report* folks would have done with some other data about my classmates. At least a third of us flunked out.<sup>6</sup> Since such a high failure rate was a source of great pain to those who failed, I asked Dean John D. Lyons why the law school was not more selective in its admissions process, so as to reduce the number of failures. He replied that it was a matter of fairness; rather than use college grades and LSAT scores to exclude aspiring lawyers from the only law school in the state, he and the faculty preferred to give them a chance to prove their jurisprudential mettle by passing law school examinations. Implicit in that view was warranted skepticism about the predictive value of the LSAT<sup>7</sup> and college grades. Despite some merit in Dean Lyons' view, its implementation today would land any law school near the bottom of the *U.S. News* rankings—an outcome that is anathema to law school deans.

3. UNIV. OF ARIZ., UNIVERSITY OF ARIZONA RECORD: COLLEGE OF LAW ANNOUNCEMENT 1959-60-1960-61 6 (1959).

4. UNIV. OF ARIZ., UNIVERSITY OF ARIZONA RECORD: COLLEGE OF LAW ANNOUNCEMENT 1957-58-1958-59 6 (1957).

5. See *id.* at 12. Nonresident tuition was \$225 per semester. *Id.*

6. My current recollection, and that of two classmates, is that about half of our class failed to graduate because of low grades. In 1973, however, I recalled that about "a third of the class flunked out." Steven B. Duke, *John D. Lyons—A Student's Recollections*, 15 ARIZ. L. REV. 589, 589 (1973). The higher figure is somewhat supported by the fact that of more than 100 in our entering class, not more than 55 graduated. Of course, some of the class could have dropped out for reasons other than low grades.

7. Applicants were expected in the 1950s to take the LSAT but test scores were "not a criterion for admission." UNIV. OF ARIZ., *supra* note 4, at 7.

Although about half of all law school enrollments are now comprised of women, the College of Law in 1959 had only five females in a student body of 256.<sup>8</sup> The class of 1959 had only a single female, Emojean Girard.<sup>9</sup> The scarcity of women in the student body did not reflect any bias in the admissions process since, as noted, the College admitted virtually anyone with three years of college credits. In the legal profession itself, however, widespread gender discrimination kept many women from choosing a career in law.<sup>10</sup> I don't know whether the few female students who did attend the College of Law felt especially uncomfortable in its male-dominated environment but I would be surprised if they did not.

Faculty/student ratios figure prominently in the *U.S. News* rankings. In the 1950s, the College had a full-time faculty of ten and one or two part-time members (all of whom were white males). Today, the College has a full-time faculty of more than fifty and an adjunct faculty of nearly sixty.

Since faculty "scholarship" counts in the rankings,<sup>11</sup> the College of Law would be at a disadvantage there as well. In 1959, only four or five professors had published books or law review articles. Ralph Aigler, a late-in-life transplant from Michigan, was a prolific scholar who published casebooks on banking, bankruptcy and property.<sup>12</sup> Claude Brown had co-authored a casebook before moving to Arizona from Iowa. Jack Irwin published an article several years before joining the faculty.<sup>13</sup> Chester Smith was a special case. He had published three books, titled *How to Answer Law Examinations* (1946), *Survey of Trusts* (1949), and *Survey of Real Property* (1956).<sup>14</sup> He was just beginning, in 1959, to publish his *Legal Gem Series*, which comprised half a dozen or more soft cover books for students on various legal subjects.<sup>15</sup> Although these publications were of great value to students, I doubt that they would weigh very favorably in today's rankings game.

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8. UNIV. OF ARIZ., DESERT 124 (1959).

9. Ms. Girard remembers that there were five women in our entering class but she was the only one who graduated. After passing the bar, Ms. Girard opened up her own law practice in Tucson, sharing office space with another woman she met in the bar review course. Ms. Girard also served as Deputy Director of the Southern Arizona Legal Aid Society for seven years and was a Pima County Justice of the Peace for sixteen years. After retiring from the bench, she was active in the ACLU and organized a peace march in 2003. See Eric Sagara, *1,500 to 5,000 here Join International Antiwar Rally*, TUCSON CITIZEN, Jan. 20, 2003, at 1D.

10. When now-retired U.S. Supreme Court Justice Sandra Day O'Connor graduated third in her class at Stanford Law School in 1952, she had difficulty finding a job and was even offered a secretarial job by a prominent Los Angeles law firm. See Editorial, *O'Connor Leaves*, L.A. TIMES, July 2, 2005, at B20.

11. "Scholarship" per se is not evaluated in the ranking scheme, but it figures largely in the assessments by peers, lawyers, and judges, whose opinions are components of the ranking system.

12. See ARIZ. L. REV., *Contributors' Section*, 2 ARIZ. L. REV. 86 (1960).

13. John J. Irwin, Jr., *Secondary Boycotts Under the Taft-Hartley Act*, 5 S.C.L.Q. 223 (1952-53).

14. See ARIZ. L. REV., *supra* note 12, at 86.

15. These books were outgrowths of Professor Smith's annual summer bar review course. There were twenty-six subjects on the Arizona bar exam and Smith taught all twenty-six in his home during a course of six weeks or so.

A total of thirty-six courses were offered in the College, compared to about 145 courses or seminars offered today. None of the course descriptions offered then contained the words “economics,” “psychology,” “international,” “comparative,” “science,” “environmental,” or even “legislation.” The curriculum was primarily concerned with private law. There was no clinical program.

Another serious problem for the College in a modern ranking system would have been the absence of a law review. About seventy-five other law schools had them in those days. Virtually all law schools have reviews today; some schools even have eight or nine of them.

Dean Lyons told me that he had wanted to start a law review for years but several members of the faculty opposed the idea because they feared they would be pressured to write for it. Eventually, Dean Lyons overcame their objections and a law review was authorized for the 1958–59 academic year.

Since virtually no one in academia was privy to its creation, the first *Arizona Law Review* received few, if any, unsolicited articles. Dean Lyons himself solicited the articles that we published in the first two issues.

Given the faculty’s lukewarm interest in the enterprise, it was fortunately understood at the outset that our law review, like most others, would be student-edited. That fact, however, presented its own problems. While we students teemed with enthusiasm for the project, we had no idea what our responsibilities were and had little of the skill or knowledge necessary to carry them out. Professor Jack Irwin was our adviser, presumably because he had once published a law review article, but I don’t recall receiving any advice from him.<sup>16</sup>

We were ill-equipped for our editorial tasks. There were no seminars<sup>17</sup> or other places in the curriculum where students wrote papers for law school credit. If a student participated in moot court, which was optional, the student would write a brief, but with no help from faculty and little from more experienced or knowledgeable students. Fortunately, however, the College began publishing *Survey of Arizona Law* in 1957. Twenty or so students would each write a few pages summarizing recent decisions of the Arizona Supreme Court in a particular field. Second year students would write the commentaries and third year students would edit them. Such was our preparation for editing Volume 1.

Somehow, we discovered the *The Bluebook*<sup>18</sup> and, to the extent we understood it, inflicted it upon our authors. Apart from imposing citation formulae, we mostly checked spelling and grammar. We were too timid to suggest substantial changes, of either substance or style, to nonstudent authors. We

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16. Charles Ares reported that when he entered the Dean’s office in 1966, he discovered that “some members of the faculty had begun to participate substantially in the editorial process” and that this was soon reversed in his administration. *See* Ares, *supra* note 1, at 11. Except for the fact that our first articles were solicited by the Dean, this was not the case with the inaugural issue.

17. A possible exception: there was an “Estate Planning Seminar,” in which students wrote wills and trust documents for hypothetical clients.

18. *THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION* (Columbia Law Review Ass’n et al. eds., 9th ed. 1955).

assumed that such suggestions would be regarded as arrogantly insulting and highly inappropriate. I recall one author in particular who seemed to say the same thing three or four times. We decided just to delete most of the redundancy, hoping that the author wouldn't notice or, if he did, wouldn't object. On other occasions, we made small but vital changes without calling them to the author's attention. We probably rationalized our editorial shortcuts with the burdens of communication: we had no office, no telephone, no secretary, and no stationery. Our work preceded the invention of Xerox machines, electronic word processing, email, and fax. If an edited article had to be copied, it had to be retyped. Our word processors were manual typewriters, pens, and pencils. Since we had no office, we did our editing either in the library or in the student lounge.

When we finished editing the manuscripts, we sent them to a local printer who set them in type and printed galleys, which were long rolls of paper containing text followed by endnotes. I had no idea what we were supposed to do with the galleys but Assistant Editor Jack Pfister knew or found out and showed me. We assembled some cardboard, scissors, rulers, and glue. We cut out the text and the endnotes and pasted them onto the cardboard so that the text matched the notes, which were now footnotes. We sent the cardboard pages back to the printer who then produced page proofs that we proofread, corrected, and returned. Eventually, the first volume appeared.

As I look back at Volume 1, I am surprised that it resembles, even superficially, Volume 50. The most obvious difference is that virtually all of the articles and notes in Volume 1 consist of conventional doctrinal analysis. Economics, psychology, or statistics rarely intrude. Citations of other law review articles are scarce. Policy appears interstitially, usually camouflaged as doctrinal analysis. The perspective is neither global nor national. We were interested in the law in Arizona.<sup>19</sup> I never discussed this perspective with Dean Lyons but I suspect that he decided to make the *Review* of primary interest to Arizona practitioners because they were thought to be the likely subscribers to the *Review* and the taxpayers who would be supporting it.

There is still some Arizona flavor in Volume 50 but it is far more generic than its ancestor. The intellectual and doctrinal diversity in Volume 50 reflects the diversity and breadth in both the law school's curriculum and its student body. The parochial preoccupations of Volume 1 reflected the insularity of the curriculum and of the student body, the vast majority of whom intended to remain, and did remain, in Arizona as practitioners of mostly private law.

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19. A notable exception to some of the above observations about Volume 1 is the quaint comment by a member of the Arizona Board of Regents. Lynn M. Laney, *State Segregation Laws and Judicial Courage*, 1 ARIZ. L. REV. 102 (1959). This was a spirited defense of the U.S. Supreme Court's decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), holding that the "separate but equal" doctrine violated the Equal Protection Clause. *See id.* at 104. I think we editors felt that Laney was fighting a battle already won, at least in Arizona. A year or more before *Brown*, two Arizona courts had reached the same conclusion and those rulings had been accepted by the Maricopa County Attorney as governing law. *See* William O. Douglas, *Arizona's New Judicial Article*, 2 ARIZ. L. REV. 159, 159 (1960). Nonetheless, we welcomed an article that took the right position on a big issue with political reverberations.

Given the resources available to it, and the limited perspectives of the student body and the alumni, the College of Law in the 1950s performed its tasks well. The classroom experiences were rigorous. Aimed at instilling knowledge of legal principles and the capacity to “think like a lawyer,” most of the classes were quite successful. Even though some of the teachers mumbled and some fumbled, they still managed to convey the excitement of the law. Teaching, not scholarship, was their chosen occupation, and if you could pass their examinations, you would possess the mental equipment that, burnished with a modicum of experience, would equip you to be a good lawyer.

It would be unfair and unwise to judge the College of Law of 1959 or Volume 1 of the Law Review against the law schools and law reviews of the 21st century. Law, legal education and law reviews have all expanded in their breadth and complexity. No law school of half a century ago would be judged adequate by today’s standards, any more than an apprenticeship in a law office, the educational model of an earlier era, would compare favorably to the legal education offered by the College of Law in the 1950s.

As Dean Massaro observes in her *Welcome*,<sup>20</sup> there is much debate about the value of law reviews to practitioners and judges.<sup>21</sup> The negative of the argument contains a quantum of cogency. Half a century ago, a lawyer might well subscribe to a law review and read or skim each issue to keep abreast of developments. That is rarely the case any more, for at least three reasons: (1) lawyers have become narrowly specialized; (2) most law reviews are highly diverse in their coverage; and (3) articles have become much longer and more verbose. But the fact that law reviews are no longer perused like *Time* or *Newsweek* sheds little light on their contemporary value. To be sure, many articles re-plow the same ground as earlier ones, as if the earlier materials were unavailable, and footnotes are often a waste of time and paper. But as Dean Massaro notes, today’s law reviews have a much wider audience than practicing lawyers and judges. Moreover, the still-improving capacity of electronic research greatly increases both the reliability and the accessibility of law review articles and hence their potential value to both practitioners and scholars. If, as some contend, judges don’t read or even pay attention to law review articles, why are so many articles cited in court opinions? Why do court opinions more and more resemble law review articles?

Whatever the truth about the value of law reviews to the profession, one thing is indisputable: the law review experience is invaluable to the law student. Not only is the writing and the related editing experience rarely available to a student outside the law review, the experience of reading, evaluating, and editing the work of others, especially outside authors, is precious. Learning to deal with

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20. Massaro, *supra*, note 2, at 7.

21. For a typical contribution to the debate, see Richard A. Posner, *Against the Law Reviews*, LEGAL AFF., Nov.–Dec. 2004, at 58 (“[T]oo many articles are too long, too dull, and too heavily annotated, and . . . many interdisciplinary articles are published that have no merit at all.”). A pioneer in this debate famously opined, “There are two things wrong with almost all legal writing. One is its style. The other is its content.” Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38, 38 (1936).

quirky, egomaniacal authors and co-editors whose views differ from yours is a grown-up experience that translates almost directly into success in the practice of law—or politics. Even if no one reads law reviews but those who write and edit them, the law review was a brilliant 19th century educational innovation that is deservedly here to stay.

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