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Celebrating Thirty Years of the Pace Law Review

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Celebrating Thirty Years of the Pace Law Review

Michelle S. Simon *

Introduction

Thirty years ago, the *Pace Law Review* published its inaugural issue. After two years of planning and hard work, the student editors released Volume 1, Issue 1 with the simple goal of making a “valuable contribution to legal scholarship.”¹ With articles on international disputes,² state rule-making,³ and the use of history in judicial opinions,⁴ the first issue of the *Pace Law Review* set a standard for timely and relevant legal scholarship.

In 1980, the year of that inaugural issue of *Pace Law Review*, the average household income in the United States was \$21,060.⁵ The average home cost was \$116,780,⁶ and the prime lending rate was approximately 21%.⁷ About 17.9% of all Americans lived in poverty,⁸ and the poverty gap was approximately 12.4 billion dollars.⁹ And even

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1. Acknowledgement, 1 PACE L. REV. 1 (1980).

2. See, e.g., A.O. Adele, *Streamlining the System for Settlements of Disputes Under the Law of the Sea Convention*, 1 PACE L. REV. 15 (1980).

3. Jeffrey Parness & Christopher Manthey, *Public Process and State Judicial Rulemaking*, 1 PACE L. REV. 121 (1980).

4. Richard Allan Gerber, *Playing Tricks on the Dead: Jones v. Alfred H. Mayer Company, an Historical Inquiry*, 1 PACE L. REV. 59 (1980).

5. Bureau of Census, U.S. Dep’t of Commerce, *Taxes Ate Up Almost 23 Percent of Average Household Income in 1980*, DATA USER NEWS, Nov. 1983, at 6.

6. NANCY CONNER, BUYING A HOME: THE MISSING MANUAL 17 (Peter McKie ed., 2010). Price is adjusted for inflation to current dollar value.

7. SIDNEY HOMER & RICHARD SYLLA, A HISTORY OF INTEREST RATES 386 (4th ed. 2005).

8. STATISTICAL HANDBOOK ON THE AMERICAN FAMILY 252 (Bruce A. Chadwick & Tim B. Heaton eds., 2d ed. 1999).

9. WELFARE REFORM IN AMERICA 64 (Paul M. Sommers ed. 1982). The poverty

though the federal government stepped in to bail out Chrysler,¹⁰ unemployment hovered at 7.1%.¹¹

In 1980, there were approximately 500,000 lawyers in the United States, 12.4% of which were women.¹² In 1980, women were only 33% of all law students.¹³ Most lawyers in the United States worked in firms.¹⁴ The starting salary at large firms was approximately \$39,000.¹⁵ Stenographers, typewriters, and carbon copies were the norm in law offices.¹⁶ Written electronic communication between lawyers, if it occurred at all, required a cumbersome Telex machine the size of today's large photocopiers.¹⁷ There was no national cellular phone network in the United States,¹⁸ but a lucky few had telephones in their cars.¹⁹

Ronald Reagan was elected President in 1980,²⁰ and the Soviet Union was the nation's greatest enemy.²¹ To prove a point, the United States boycotted the summer Olympics in protest of the Soviet invasion of Afghanistan,²² while the Sony Walkman opened a new era in U.S. imports from China.²³ In 1980, an assassin took the life of John Lennon;²⁴ Óscar Romero was killed in an open-air Catholic Mass in El Salvador.²⁵ The United States cut off diplomatic ties with Iran over the

gap measures the amount of income required to raise the income of every low-income family to the poverty line. *Id.*

10. BARRY RITHOLTZ, *BAILOUT NATION: HOW GREED AND EASY MONEY CORRUPTED WALL STREET AND SHOOK THE WORLD ECONOMY* 39 (2009).

11. FERNANDO F. PADRO, *STATISTICAL HANDBOOK ON THE SOCIAL SAFETY NET* 237 (2004).

12. CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* 5 (2d ed. 1993).

13. *Id.*

14. *Id.* at 16-17.

15. *Id.* at 18.

16. See Michelle Ayers, *Technology Innovations Changed the Way Law is Practiced*, PENN L. WKLY., Jan. 10, 2000.

17. See, e.g., ROBERT P. SMITH & PETER ZHEUTLIN, *RICHES AMONG THE RUINS: ADVENTURES IN THE DARK CORNERS OF THE GLOBAL ECONOMY* 71 (2009).

18. BOB BATCHELOR & SCOTT STODDART, *AMERICAN POPULAR CULTURE THROUGH HISTORY: THE 1980s*, at 18 (2007).

19. MARK BEAULIEU, *WIRELESS INTERNET APPLICATIONS AND ARCHITECTURE: BUILDING PROFESSIONAL WIRELESS APPLICATIONS WORLDWIDE* 8 (2002).

20. MARLENE TARG BRILL, *AMERICA IN THE 1980s*, at 132 (2010).

21. RONALD REAGAN AND THE 1980s: PERCEPTIONS, POLICIES, LEGACIES 59 (Cheryl Hudson & Gareth Davies eds., 2008).

22. BATCHELOR & STODDART, *supra* note 18, at xv.

23. See, e.g., Advertisement, *NEW YORK*, Oct. 13, 1980, at 7.

24. BATCHELOR & STODDART, *supra* note 18, at xv.

25. THOMAS BOKENKOTTER, *CHURCH AND REVOLUTION: CATHOLICS IN THE STRUGGLE FOR DEMOCRACY AND SOCIAL JUSTICE* ch. 15 (1998).

hostage crisis,²⁶ and South Korean students took to the streets for democracy.²⁷ Shipyard workers in Poland went on strike, demanding the right of workers to be free from government control.²⁸

In 1980, Mount St. Helens erupted in Washington State, leaving fifty-seven people dead.²⁹ Earthquakes in Algeria and southern Italy killed thousands.³⁰ The United States Congress enacted the Comprehensive Environmental Response Compensation and Liability Act in an effort to clean hazardous waste sites and hold financially accountable the environmental contaminators who left behind waste that would poison generations to follow.³¹

Thirty years later, much has changed. But also, much has stayed the same. After thirty volumes and thirty years, *Pace Law Review* has continued the tradition of addressing contemporary legal issues and making a valuable contribution to legal scholarship.

I. The Role of Law Review in a Student's Legal Education

For many lay people, law review is a foreign and novel concept. What is a law review, they might ask. The simple answer, of course, is that law reviews are scholarly journals that contain articles relating to the law; they are the primary form of legal publication, providing a forum for legal scholars to express their views or concerns regarding the law. But a law review is and does much more than that simple answer conveys. A law review is not "just" a scholarly journal. Law reviews play an essential role in legal scholarship and they play a vital part in a law student's education, too.³²

Although most, if not all, law schools provide legal writing and research instruction to first year students, a well-rounded education includes more than classroom learning.³³ Participation in a law review

26. CAROL K. WINKLER, IN THE NAME OF TERRORISM: PRESIDENTS ON POLITICAL VIOLENCE IN THE POST-WORLD WAR II ERA 37 (2006).

27. BECKY SHELLEY, DEMOCRATIC DEVELOPMENT IN EAST ASIA 99 (2005).

28. STEVEN WAUGH, ESSENTIAL MODERN WORLD HISTORY 312 (2001).

29. ROB CARSON, MOUNT ST. HELENS: THE ERUPTION AND RECOVERY OF A VOLCANO 8, 53 (20th ed. 2002).

30. OFFICE OF TECHNOLOGY ASSESSMENT, U.S. CONGRESS WASHINGTON D.C., REDUCING EARTHQUAKE LOSSES 72 (1995).

31. Ronald L. Claveloux, *The Conflict Between Executive Privilege and Congressional Oversight: The Gorsuch Controversy*, 1983 DUKE L.J. 1333, 1334 (1983).

32. See Michael L. Closen & Robert J. Dzielak, *The History and Influence of the Law Review Institution*, 30 AKRON L. REV. 15, 15 (1996).

33. For example, Pace Law School requires students to complete an upper level

provides a student with the important reading, writing, research and editing experience that will be essential to success as a lawyer. Guided by the almighty Bluebook,³⁴ students gain practical experience writing their own articles and editing the work of others.³⁵ Law review members do so in an office setting, as part of a group, which in many ways imitates the life of a practicing attorney.³⁶ Editors meet each week for several hours to edit and discuss articles written not only by their peers, but also by judges, professors, and academics.³⁷

Law review also offers the unique pedagogical posture of students teaching other students. In no other scholastic setting is student instruction so prevalent.³⁸ Senior members of the review, rather than professors, train new members to research, write and edit.³⁹ Such peer education, where knowledge and skills are absorbed outside of the classroom in a collaborative atmosphere, can be an extremely effective learning tool.⁴⁰ Further, new members submit self-written pieces that are reviewed, critiqued and commented upon by others on the review.⁴¹ These are not professors distributing grades based on a school-mandated curve, but other students who strive to help their peers achieve the best writing product possible.

Additionally, membership on a law review can often be a defining experience for a law student. As part of a law review, students interact in a collaborative effort, which is often put in direct contrast with the competitive nature of law school.⁴² Students expand their social circles,

skills requirement, which can be satisfied by participation in an externship, simulation course, or in one of Pace's many clinics. See Pace Law School, *Lawyering Skills*, http://web.pace.edu/page.cfm?doc_id=23553.

34. THE BLUEBOOK, A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 19th ed. 2010).

35. See James W. Harper, *Why Student-Run Law Reviews?*, 82 MINN. L. REV. 1261, 1272 (1998).

36. See, e.g., Closen & Dzielak, *supra* note 32, at 24.

37. See, e.g., 30 PACE L. REV. 840 (2010). This issue includes articles by Professor Bennett L. Gershmann, the Honorable Judith S. Kaye, and former New York State governor Mario M. Cuomo. *Id.*

38. See, e.g., Closen & Dzielak, *supra* note 32, at 43 (contrasting student run law reviews to other scholarly journals).

39. See, e.g., Harper, *supra* note 35, at 1273 (noting that second year members oversee first year members).

40. See, e.g., Catherine C. Boudouris, *Peer-Tutoring: Positive Peer Interactions*, OHIO READING TCHR., Oct. 1, 2005, at 11.

41. See Closen & Dzielak, *supra* note 32, at 46.

42. See, e.g., MARTHA KIMES, *IVY BRIEFS: TRUE TALES OF A NEUROTIC LAW STUDENT* 49 (2007). Kimes' book discusses the highly competitive nature of law schools. *Id.*

meet new friends and faculty, and can even be introduced to a new aspect of the law, one which they may not have experienced within the school's given curriculum.⁴³ Not to mention, those students who work on the review's editorial board gain valuable leadership and managerial experience for use in the legal profession.⁴⁴

Students working on law review take part in shaping a legacy for their law school, for their fellow students, and for future students. Each year's group strives to improve on the contributions of their predecessors, knowing that at the end of the year they will be handing it over to new students, and the cycle continues. With this in mind, every year it is the students who are responsible for selecting for the review those who will be trusted with carrying on this legacy.⁴⁵ It is these law students who control every aspect of the review, from choosing articles to picking future members.

II. The Role of a Student-Edited Journal in a Learned Profession

Uniquely among the professions, students—not fully-trained members of the profession—act as gatekeepers of the scholarly discourse. Law students, not faculty, decide whether to accept or decline for publication an author's submission.⁴⁶ Lawyers-to-be, not lawyers, control some aspect of the flow of ideas about the law. The widespread use of on-line repositories, like the Social Sciences Resource Network, has changed this to some degree,⁴⁷ and search engines have significantly changed the methods in which lawyers perform research,⁴⁸ but the law review will always remain a useful informational and educational tool for law students and attorneys.

Law review articles provide answers to research problems, background information on a particular issue, leads to other legal sources and more.⁴⁹ Excellent scholarship can identify patterns, trends,

43. See, e.g., 28 PACE L. REV. 162 (2008). This entire issue discusses the enduring legacy of *Wood v. Lucy, Lady Duff-Gordon*. *Id.*

44. For example, President Barack Obama served as the editor-in-chief of the *Harvard Law Review*. See Mark Leibovich, *Massachusetts: Kingmaker, Heartbreaker*, N.Y. TIMES, Jan. 24, 2010. See also Closen & Dzielak, *supra* note 32, at 48.

45. See Closen & Dzielak, *supra* note 32, at 15.

46. See *id.* at 43.

47. See, e.g., Social Sciences Research Network, <http://www.ssrn.com> (last visited Aug. 28, 2010).

48. GARY MUNNEKE, CAREERS IN LAW 14 (2004).

49. See *id.* at 22.

controversies and new developments within the law. Law review articles add substance to existing knowledge and suggest avenues for further inquiry.⁵⁰

One of the most notable trends pertaining to law reviews is that they are relied upon by courts less than they once were.⁵¹ There have been several theories advanced in explanation, the most common being that law reviews have come to favor theoretical scholarship over practical or doctrinal work that is the mainstay of judges and practitioners.⁵² Another theory is the fact that with more law schools, there are more journals, and where there were always law schools, there are more journals. In other words, traditional law reviews have been augmented by journals at newer law schools, and many schools—old and young—host one or more specialty journals.⁵³

In March 2007, Yeshiva University's Benjamin N. Cardozo School of Law held a roundtable discussion with participation by law professors and judges from the Court of Appeals for the Second Circuit.⁵⁴ At this roundtable, several judges expressed strong negative feelings about the current usefulness of law reviews to the bench. Judge Robert Sack explained that "the bench now uses law reviews like drunkards use lampposts, more for support than for illumination."⁵⁵ Judge Dennis Jacobs stated, "[W]hen I was in law school, I even loved the smell of law reviews—the ink, the paper. It is always suspect when anybody speaks of the golden age of anything. But I do remember when a practitioner had an advantage by keeping up with law reviews."⁵⁶ To this day, I believe that "keeping up with law reviews" is a vital part of discharging one's duty as an active, engaged member of the profession interested in the law's past, present and future.

50. See, e.g., Richard H. Jones, *The Myth of the Idea/Expression Dichotomy in Copyright Law*, 10 PACE L. REV. 551 (1990).

51. *Id.*

52. Thomas Adcock, *Federal Judges Discuss Usefulness of Law Reviews*, N.Y. L.J., Mar. 16, 2007.

53. Adam Liptak, *When Rendering Decisions, Judges are Finding Law Reviews Irrelevant*, N.Y. TIMES, Mar. 19, 2007, at A8.

54. Adcock, *supra* note 52.

55. *Id.*

56. *Id.*

Conclusion

Thirty years after the publication of the first issue of the *Pace Law Review*, much has changed. But much has also stayed the same. As recently as 2008, the average household income in the United States was \$52,029.⁵⁷ In 2010, the average home costs \$263,400,⁵⁸ and the prime lending rate is approximately 0.25%.⁵⁹ About 13.2% of all Americans live in poverty.⁶⁰ The Federal Government stepped in to bail out Wall Street⁶¹ and after a steady rise, unemployment now hovers at 9.5%.⁶² In 2008, there were approximately 1,014,000 lawyers in the United States, 34.4% of which were women.⁶³ During the 2007-2008 academic year, women were approximately 46.7% of all law students.⁶⁴ Lawyers in the United States have been migrating towards small firms,⁶⁵ and the starting salary at large firms is approximately \$160,000.⁶⁶ E-mail makes instant global communication possible.⁶⁷ Communication between lawyers is just as likely to happen via Blackberry or a smartphone as face-to-face.⁶⁸

57. U.S. Census Bureau, State & County Quick Facts, <http://quickfacts.census.gov/qfd/states/00000.html>. This figure represents the median household income. *Id.*

58. U.S. Census Bureau, Median and Average Sales Price of New Homes Sold in United States, <http://www.census.gov/const/uspricemon.pdf>.

59. Jeannine Aversa, *Fed to Keep Rates at Record Lows as Risks Loom*, SEATTLE TIMES, June 21, 2010, http://seattletimes.nwsource.com/html/business/technology/2012172114_apusfedinterestrates.html.

60. U.S. Census Bureau, State & County Quick Facts, <http://quickfacts.census.gov/qfd/states/00000.html>. This data is for 2008. *Id.* This number has undoubtedly increased. In 2009 alone, there were reports that an additional 2.5 million people were living below the poverty line. Mike Swift & Steve Johnson, *More of Us Living Below Poverty Line: First Year of Recession Yields Grim Accounting of Loss Income, Employee Benefits*, SAN JOSE MERCURY NEWS, Sept. 11, 2009, at 1A.

61. See, e.g., Carl Hulse & David M. Herszenhorn, *Bank Bailout is Potent Issue for Fall Races*, N.Y. TIMES, July 11, 2010, at A1.

62. *Stimulus Saved/Created 91,000 Georgia Jobs*, ATLANTA BUS. CHRON., July 19, 2010.

63. U.S. Bureau of Labor Statistics, *Employed Persons by Detailed Occupations*, <http://www.bls.gov/cps/cpsaat11.pdf>.

64. G. ALAN TARR, JUDICIAL PROCESS AND POLICYMAKING 100 (5th ed. 2010).

65. See Carol J. Williams, *The Big Opportunities in the Legal Profession are at Small Firms*, L.A. TIMES, Feb. 15, 2010, available at <http://articles.latimes.com/2010/feb/15/local/la-me-little-law15-2010feb15>.

66. CHRIS SCHONBERGER ET AL., GRADSPOT'S GUIDE TO LIFE AFTER COLLEGE 166 (David J. Klein ed. 2010).

67. MARSHALL GOLDSMITH, GLOBAL LEADERSHIP: THE NEXT GENERATION 52 (2003).

68. MUNNEKE, *supra* note 48, at 14.

With Barack Obama as our President in 2010, the United States is engaged in a global war on terror.⁶⁹ The United States military has drones that can kill in Afghanistan based on the press of a few buttons in a remote video control center.⁷⁰ And Google has opened a new era in China.⁷¹ Violence has become commonplace in schools and on the streets; thousands of innocent people die each year.

In 2010, a catastrophic earthquake killed hundreds of thousands of people in Haiti.⁷² There were additional lethal earthquakes in 2010—in Chile, Mexico, and China.⁷³ The United States Congress dithered in the summer of 2010, while the biggest off-shore oil spill in United States history occurred off the coast of Mexico.⁷⁴ Who will clean the waste and hold financially accountable those whose need for oil (and profits) led to actions that will damage wildlife, industry and the health of generations to follow? The government may answer those questions eventually, but the solutions will be suggested, vetted, and reworked in vital conversations that will take place in law review articles and other scholarly publications.

While the use and substance of law reviews has changed over time, law reviews have remained a vital part of legal scholarship—for both law students and legal practitioners. For the law student, law reviews provide invaluable experience in legal writing, research, and editing, as well as the opportunity to develop and voice their own views through their own written works. And as for the practitioner, while law review articles have moved away from the practical, law review articles challenge the practitioner to go beyond the way the law has been to explore new ways of thinking and cutting-edge legal concepts. Times change and the world evolves, but law reviews will continue to make valuable contributions. The legacy of *Pace Law Review* lives on.

69. See Thom Shanker & Eric Schmitt, *For Pentagon Top Brass, No Fatigues at the Office*, N.Y. TIMES, Jan. 19, 2010, at A21.

70. See, e.g., Scott Shane & Christopher Drew, *Officials Say Iraq Fighters Intercepted Drone Videos*, N.Y. TIMES, Dec. 18, 2009, at A10.

71. See, e.g., David Pierson, *Google's Chinese License is Renewed: The Approval Comes as a Surprise after a Dispute with Beijing over Censorship*, L.A. TIMES, July 10, 2010, at 3.

72. See Simon Romero & Neil MacFarquhar, *Haiti's Poverty Thwarts a Counting of the Dead*, N.Y. TIMES, Jan. 12, 2010, at A12.

73. See Margaret Webb Pressler, *More than Usual, Not Really*, PITTSBURGH POST-GAZETTE, Apr. 19, 2010.

74. See Richard Fausset & Nicole Santa Cruz, *Oil Leak is Sealed, but Worry Seeps*, L.A. TIMES, July 16, 2010, at 1.