

## Celebrating Volume 50: The Early History of the *Washburn Law Journal*

James M. Concannon\*

The *Washburn Law Journal* today attracts articles from leading scholars and policymakers on topics of national and international interest. Issue One of Volume 50, for example, featured articles examining the Equal Protection Clause written by professors at six different law schools. The lead article by Professor William N. Eskridge, Jr. from Yale Law School was the thirty-third in a series of articles prepared for the annual Foulston Siefkin Lecture.<sup>1</sup> Volume 49 published a total of eighteen articles: three articles in Issue One discussing wind energy, ten articles in Issue Two's symposium, "The Future of Oil and Gas Jurisprudence II,"<sup>2</sup> and five articles in Issue Three on "Tribal Nation Economic and Legal Infrastructure." The prior year's *Journal* included eight articles from Washburn's symposium on "The Rule of Law and the Global War on Terrorism: Detainees, Interrogations, and Military Commissions," and devoted one issue to four articles on intellectual property law. Competition among students seeking to be published is intense today, and only the best student work is printed. Issue One of Volume 50 published two exhaustive senior notes, of twenty-nine and twenty-six pages, respectively, and two in-depth junior comments, covering thirty-two and thirty-eight pages, respectively. Volume 49 had five notes and six comments; Volume 48 included four notes and nine comments.

The mature *Washburn Law Journal* of today traces its lineage to humble beginnings. Both Kansas law schools were latecomers as publishers of law-school-based scholarly journals. Seventy-seven of 107 member schools of the Association of American Law Schools ("A.A.L.S.") already were publishing a journal when the *Kansas Law Review* first appeared during academic year 1952-53. When the first issue of the *Washburn Law Journal* was published eight years later, Washburn University School of Law became the ninety-second of 108 A.A.L.S. member schools to publish a journal.<sup>3</sup>

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\* Distinguished Professor, Washburn University School of Law. Professor Concannon served as Dean of Washburn University School of Law from 1988-2001.

1. Every year since 1978, the Wichita-based firm Foulston Siefkin LLP provides funding to the *Journal* to invite a respected author to prepare an article for publication and to visit the Washburn campus to deliver the Foulston Siefkin Lecture based on the article. The first lecturer was Professor Vern Countryman from Harvard Law School. Vern Countryman, *Consumers in Bankruptcy Cases*, 18 WASHBURN L.J. 1 (1978).

2. Articles from the first symposium on "The Future of Oil and Gas Jurisprudence" are published in Volume 34.

3. Member schools whose journals first appeared after 1960-61 include Creighton University, Loyola

The Kansas schools' late entry into modern legal publishing is explained in part by opportunities students at both schools had to publish short notes and case comments in the *Journal of the Bar Association of Kansas* after it debuted in 1932. Before that, each school had published legal materials, although the publications did not approximate a modern journal. From 1895-1911, students at the University of Kansas ("KU") published *The Kansas Lawyer* bi-weekly. It contained reports of activities of the KU Law School and its alumni, cases summaries, and, in many issues, articles by KU faculty members and members of the bar.<sup>4</sup> As early as 1921-22, the Washburn University Law faculty endorsed promotion of the school through publication of a law review or bulletin,<sup>5</sup> but nothing came of the suggestion. Several years before 1932, there were discussions between representatives of the state bar association and the deans of the two law schools about publishing a state bar journal similar to those being published by other state bars. However, it became evident that the schools did not feel "able to venture to take separately or jointly the responsibility of starting and keeping up a law journal in Kansas, though very willing to aid if the state bar or others will assume the burden and look out for the support needed to pay or assure printers' bills."<sup>6</sup>

Then, in January 1932, Dean Harry K. Allen published a twelve-page *Washburn Law School Bulletin*, containing summaries of cases and critiques he wrote during his work to compile Kansas annotations for the *Restatement of the Law, Property*. What Dean Allen described as "[f]avorable comment from the bar throughout the state" about the first issue "encouraged the continuance of the project."<sup>7</sup> The *Bulletin* would be restricted to "calm, dispassionate, and frank" comments on Kansas law and suggestions to improve it.<sup>8</sup> The second issue was dated June 1, 1932, but was distributed in advance of the annual meeting of the Kansas Bar Association ("KBA") on May 27-28. This issue expanded to twenty-eight pages. In addition to Dean Allen's analysis of property cases, it included the first part of what was to be a two-part article on torts by Professor Edward Osborn. Advertising sold to law book publishers and trust companies underwrote printing costs.

Dean Allen wrote in the June issue of the *Bulletin*, "Should the State Bar

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University-Chicago, Loyola University-Los Angeles, Rutgers University-Newark, St. Mary's University, Stetson University, University of Connecticut, University of Georgia, University of Idaho, University of Louisville, University of New Mexico, University of San Francisco, University of Santa Clara, University of Toledo, and Valparaiso University. Cumberland University in Tennessee never published a journal before the School of Law was sold to Samford University in Alabama in 1962.

4. M.H. Hoeflich & Lawrence Jenab, *The Origins of the Kansas Law Review*, 50 KAN. L. REV. 375, 379 (2002). Hoeflich and Jenab trace the history of earlier legal publications in Kansas which were not affiliated with a law school. *Id.* at 377-80.

5. Minutes from Washburn University School of Law Faculty Meetings (Sept. 24, 1921 & May 13, 1922) (on file at the Washburn Law Library).

6. Report of Committee on Tentative Plan for Kansas Law Journal, *Report of the Proceedings of the Fiftieth Annual Meeting of the Bar Association of the State of Kansas*, 1 J. KAN. B. ASS'N. 49, 79-81 (1932).

7. 1 WASHBURN L. S. BULL., No. 2, 1 (1932) (on file at Mabee Library Archives, Washburn University).

8. *Id.*

Association establish a state bar journal, the Washburn Law School will cooperate in every possible way.”<sup>9</sup> Publication of the *Bulletin* was one factor that spurred the KBA to publish its own journal. At the 1932 annual meeting, the chair of the bar’s study committee moved that the Executive Committee be authorized to publish a quarterly journal. The committee’s report noted Dean Allen’s publication of the *Bulletin* and observed that other issues might follow, “especially if no organ is provided by and for the state bar association.”<sup>10</sup> The Secretary of the KBA, clearly fearing that responsibility for editing the journal would fall on him, urged that the decision be postponed for a year, allowing time to explore whether faculty members at the law schools would accept editorial responsibility or whether the journal could be combined with the *Kansas Judicial Council Bulletin*, which had been published for the first time in May that year.<sup>11</sup> A. Harry Crane ’25 responded by noting that Washburn’s *Bulletin*, already “an entrance in this field, . . . gotten out for the first two issues, you will see, is very well gotten out.”<sup>12</sup> He successfully urged members to authorize the Executive Committee to proceed, if it saw fit, before the next annual meeting.

The first issue of the KBA *Journal* appeared in August 1932. The law schools agreed to cooperate and the KBA agreed to publish student notes and comments along with articles by faculty members. Dean Allen contributed case comments to Volumes 2 and 3. He included in Volume 2 three case summaries John P. Davis ’35 had prepared as class papers. James W. Taylor ’36 published a freestanding case note in Volume 3. Volume 4 included four student pieces. There were notes by Edgar K. Thiel ’36 on the privilege against self-incrimination and William C. Attwater ’36 on the doctrine of election of remedies and case comments by William Tinker, Jr. ’37 and W. Jay Esco ’36. During academic year 1935-36, each law school created a student editorial board “to create an even greater interest than exists in both of the law schools” in publishing in the *Journal*.<sup>13</sup> This was thought to be “another step forward in insuring the permanency of this publication.”<sup>14</sup> Washburn announced it would award one hour of credit to a student whose work was accepted for publication. One woman, Lorraine McMullen ’36, was a member of the first editorial board. Ten Washburn students each semester through 1939-40 served on the “Law Review Board.” For reasons that are unclear, the *Journal* discontinued the student boards in 1940.<sup>15</sup>

Law school enrollment declined sharply during World War II. While six

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9. *Id.*

10. Report of Committee on Tentative Plan for Kansas Law Journal, *supra* note 6, at 81.

11. *Id.* at 83.

12. *Id.* at 84.

13. Report of Committee on State Bar Journal, *Report of the Proceedings The Fifty-Third Annual Meeting of the Bar Association of the State of Kansas*, 4 J. KAN. B. ASS’N. 35, 65 (1935).

14. *Id.*

15. Report of the Editor of the Journal, *Proceedings of the Sixty-Sixth Annual Session of the Bar Association of the State of Kansas*, 17 J. KAN. B. ASS’N. 37, 52 (1948).

Washburn students published eight comments during academic year 1941-42, only four published comments between 1942 and 1945. The student board was reactivated during 1947-48 and for the first time a student was named Editor-in-Chief, Derbert Scott '48. Ordinarily, the Editor-in-Chief served only one semester, although a single student served for two semesters in three instances between 1947 and 1960<sup>16</sup> and a different student was appointed just for the summer semester in 1950 and 1951. In the fall of 1949, Editor-in-Chief Dean Gibson '50 and Associate Editor Thomas Hurst '50 attended the first national conference of editors of law reviews, held in Chicago.

Student interest in publishing in the *Journal* varied from year to year, and in some years more students from one law school published than from the other school. In November 1949, a student from each school submitted a case note on the same Ohio case. The *Journal* published both notes, adding an editor's note referring to the similar note in the other school's section.<sup>17</sup> The burden on the Law Review Board did not approximate the burden a board of editors faces today. For example, the staff for 1948-49 was responsible for only fifty-eight pages of the *Journal*, spread over four issues, and the next year's staff produced just thirty-nine pages. Some members of the bar complained that allocating even that number of pages to the schools was excessive.<sup>18</sup>

However, there were many substantial student pieces. Joseph W. Morris '47 had the distinction not merely of having his student article selected for publication in the *Journal* but also of having it published as the lead article. His discussion of the ability to transfer property to the grantor and another as joint tenants was prefaced by a rare editor's note that it "covers a very timely subject in Kansas and it is believed that it will prove of considerable value to the members of the Bar," perhaps becoming the subject of proposed legislation.<sup>19</sup> A 1948 comment by Roy O. Sage '49 prompted an amendment to the Kansas escheat statute.<sup>20</sup> In April 1953, Washburn reinstated the J.D. degree, awarding it to students who completed additional work beyond that required to receive an LL.B. One of two ways students could earn the J.D was to complete a bachelor's degree before starting law school, complete the required eighty-two credit hours of law studies with "distinguished excellence," and prepare a thesis. Students electing this option often published their senior

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16. They were James L. Berlin '53 in the spring and fall of 1952, Gene A. Powell '55 during academic year 1954-55, and William L. Parker, Jr. '57 during academic year 1956-57.

17. The Washburn student's case note was Olin M. Stansbury, Jr., *Torts—Prenatal Injuries—Right of an Infant to Sue*, 18 J. KAN. B. ASS'N. 159 (1958).

18. Report of the Editor of the Bar Journal, *Report of the Proceedings of the Sixty-Ninth Annual Meeting of the Bar Association of the State of Kansas*, 20 J. KAN. B. ASS'N. 31, 38 (1951). The utility of the law school sections was defended, in part, on the ground they made students more aware of the bar association and thus more likely to become active members after graduation. *Id.*

19. Joseph W. Morris, *May a Grantor Convey Property Directly to Himself and Another as Joint Tenants in Kansas?*, 15 J. KAN. B. ASS'N. 241 (1947).

20. Roy O. Sage, *A New Escheat Statute or a Legislative Oversight (G.S. 1947 Supp. 58-508)?*, 17 J. KAN. B. ASS'N. 102 (1948). Report of the Editor of the Bar Journal, *supra* note 18, at 38, credits the comment with prompting amendment of the statute.

thesis in the *Journal*. For example, the *Journal* published in two installments the thesis Mary Schowengerdt '57 prepared.<sup>21</sup>

Dean Schuyler Jackson, in November 1951, appointed a Washburn faculty committee, to investigate publication of a law review, either alone or jointly with KU,<sup>22</sup> but KU already was preparing to publish a separate review in 1952. In a February 1953 memorandum to the faculty, Professor Chester J. Antieau urged appointment of a new committee to investigate creation of a Washburn journal, but nothing came of the proposal. Washburn students continued to submit material for publication in the *KBA Journal* until 1960, as did students from KU.

John E. Howe arrived as Washburn's new dean in 1959 and one of his priorities was to improve the school's writing program.<sup>23</sup> There also were two new junior faculty members, Walter J. Navin, Jr. and Richard C. Allen. Robert L. Roberts '61 credits Navin and Allen for backing his and other students' initiative to publish a journal.<sup>24</sup> By late September that year, the Law Review Board reported that it planned to produce an intramural journal that would be mimeographed. The school's budget for academic year 1959-60 already was set and there was no line item to cover a more expensive form of publication. That was fine with the faculty, which insisted there be procedures in place to assure any publication bearing the school's name was a quality product. For the start-up year, the faculty mandated that the journal be distributed only within the school and that the volume not be numbered.<sup>25</sup>

Publication of even a mimeographed journal was a major increase in responsibility for a student board that previously had to produce only a modest number of pages for the *KBA Journal*. The Law Journal Board, with David Wheeler '60 and Roberts as Editor-in-Chief for one semester each, produced two issues. Subsequently, the two issues were spiral bound with a cover and Editors' Comment as Volume 0 of the *Washburn Law Journal*. The fall issue of thirty-eight pages included notes on movie censorship and conflicts between a general verdict and special questions, completed by 1959 graduates Frank Rice and Raymond Spring, plus an additional note and a case comment by current students. The spring issue of seventy-seven pages also included two case comments, a note by a December graduate, and a lead article discussing *Erie v. Tompkins* by Professor James Ahrens.<sup>26</sup> The article was reprinted, in a slightly expanded form and with a new title, in the more widely

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21. See, e.g., Mary Schowengerdt, *The United Nations as Juridical Personality*, 25 J. KAN. B. ASS'N. 275 (1957).

22. Minutes from Washburn University School of Law Faculty Meeting (Nov. 11, 1951) (on file with Washburn Law Library).

23. John E. Howe, *The Dean's Report to the Bar*, 1 WASHBURN L.J. 1, 5 (1960).

24. Telephone conversation between James M. Concannon and Robert L. Roberts, Editor-in-Chief, Volume 0 (February 14, 2011) (on file with author).

25. Minutes from Washburn University School of Law Faculty Meeting (Sept. 28, 1959) (on file with Washburn Law Library).

26. James R. Ahrens, *Erie v. Tompkins—The Brooding Omnipresence*, 0 WASHBURN L.J. No. 2, 1 (1960).

distributed third issue of Volume 1.<sup>27</sup>

Dean Howe's budget for academic year 1960-61 included funding to print the journal professionally. Professor Walter Navin was the faculty advisor. A Law Journal Advisory Committee, chaired by William Treadway and composed of five attorneys and two judges, including Kansas Supreme Court Justice Alfred Schroeder, provided guidance. Lowell Hahn '61 was named Editor-in-Chief. That year's Board of Editors published the first two issues of Volume 1, covering 325 pages. Law school enrollment was much smaller then. There were only thirty-seven graduates in academic year 1960-61. The student body totaled just 160 students in the fall of 1960. Yet, Dean Howe reported that some twenty-five students were engaged in writing comments or notes, "quite a change from two years ago."<sup>28</sup>

Volume 1 ultimately included four issues, published over two years by successive staffs. The issues published during academic year 1961-62 included 308 pages, plus an index. Thereafter, until 1966, two issues each year comprised a volume. The first issue of Volume 1 began with a nine-page "Dean's Report to the Bar."<sup>29</sup> The report was an annual feature in the *Journal* through Volume 20. There were articles by two Kansas practitioners. One was adapted from a paper on depositions John Shamberg '37 presented at the Washburn-Topeka Bar Association Annual Law Institute in October 1960.<sup>30</sup> The other, by recent graduate Frank Rice '59, was the first part of a two-part article on mental competency to stand trial under federal criminal procedure.<sup>31</sup> The issue included a major article by Professor Calvin Kuenzel of Stetson University College of Law, discussing jurisdiction over courts-martial.<sup>32</sup> There were two student notes and two case comments. The lead article in Issue Two by Professor Samuel Fahr of the University of Iowa, discussing dissatisfaction by lawyers with the social sciences,<sup>33</sup> prompted a response in Issue Four.<sup>34</sup> Professor Navin also published an article.<sup>35</sup> This Issue included four student notes, including one by Editor-in-Chief Lowell Hahn, and eight case comments.

There were two editors-in-chief during the *Journal's* second year. Zerne P. Haning '62 served during the fall semester, until his graduation. Gerald

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27. James R. Ahrens, *Erie v. Tompkins—The Not So Common Law*, 1 WASHBURN L.J. 343 (1961).

28. Letter from John E. Howe, Dean of Washburn University School of Law, 1959-60, to John G. Hervey, Adviser, Section of Legal Education and Admission to the Bar (Mar. 22, 1961) (on file at Washburn Law Library).

29. John E. Howe, *supra* note 23.

30. John E. Shamberg, *The Deposition—A Discovery Instrument in Kansas Civil Practice*, 1 WASHBURN L.J. 10 (1960).

31. Frank M. Rice, *Mental Competency to Stand Trial Under Federal Criminal Procedure*, 1 WASHBURN L.J. 91 (1960). Part two was published in Issue 2. Frank M. Rice, *Mental Competency to Stand Trial in Federal Criminal Procedure, Part II: The Constitutional Issues*, 1 WASHBURN L.J. 176 (1961).

32. Calvin A. Kuenzel, *Federal Court Jurisdiction over Courts-Martial*, 1 WASHBURN L.J. 25 (1960).

33. Samuel M. Fahr, *Why Lawyers Are Dissatisfied with the Social Sciences*, 1 WASHBURN L.J. 161 (1961).

34. Gilbert Geis, *The Social Sciences and the Law*, 1 WASHBURN L.J. 569 (1962).

35. Walter D. Navin, Jr., *State Criminal Jurisdiction over Federally Controlled Lands*, 1 WASHBURN L.J. 200 (1961).

Letourneau '62 succeeded him in the spring semester.<sup>36</sup> The final two issues of Volume 1 included six student notes and eleven case comments. Article authors included Justice Gordon Sloan '35 of the Oregon Supreme Court, Washburn Professor William Harvey, and former professor Roy Bartlett. Issue Four included book reviews for the first time, by Professors Navin and Allen. The *Journal* received requests to reprint in other legal publications one lead article and five student works from the first three issues of Volume 1.<sup>37</sup>

The subscription price was \$4 per year. For Issue One, 750 copies were printed. Circulation grew to 1,300 copies by Volume 5. The *Journal* was typeset and printed locally, and that created problems. Reports of delays in publication appeared as early as Volumes 3 and 4 and periodically through Volume 12, the last volume published locally.<sup>38</sup>

Volumes 2 through 4 featured articles by Professor Allen, Professor Walter H.E. Jaeger of Georgetown University, who at the time was revising the *Williston on Contracts* treatise, the Dean at Texas Southern University School of Law, and faculty members at St. Louis University, the University of Kansas, Valparaiso University, and the University of Michigan. Each of the three volumes published as a featured article the senior thesis of one of the *Journal's* editors, written to earn the J.D. degree rather than the then-standard LL.B.

Washburn became an active participant in the National Conference of Law Reviews. By Volume 3, Washburn was elected to a two-year term on the National Committee of Planning and Organization. In 1972 and again in 1976 Washburn was elected to the governing Executive Board of the Conference. Later, Washburn was selected to host the 27th Annual Meeting in Topeka on March 26-28, 1981.

A massive tornado struck Topeka on June 8, 1966, turning the law school building, Carnegie Hall, into rubble. That fall, the *Journal* staff for Volume 6 moved into Building 8, one of eight trailers brought to the campus to comprise Law Village, the law school's temporary home until its new building was completed in 1969. The staff ultimately erected a Law Journal Lamp outside Building 8. After the new building was completed, the Lamp was mounted on a plaque and placed outside the *Journal's* new office in

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36. Stanley E. Antrim '65 served as Editor-in-Chief for Volume 4 for the spring semester after first semester Editor-in-Chief William J. Hunsaker '65 graduated at mid-year. Since then, the need for continuity has led to the selection of students to be Editor-in-Chief only if they would be on campus for the full academic year.

37. *Obiter Dictum*, 1 WASHBURN L.J. 515 (1962); *Washburn Law Journal Beginning Its Third Season of Publication*, WASHBURN REV., Oct. 17, 1962 (on file at Mabee Library, Washburn University).

38. Publishing delays in Volume 12 were so severe that the *Journal* published an apology to a student author. *Obiter Dictum*, 12 WASHBURN L.J. iv (1973) (Issue Three). The student completed a note in which the student argued how an unsettled question should be resolved. While publication was delayed, the Kansas Supreme Court decided the issue in a different way. The student's note still was published but there was no opportunity for the student to revise the note in light of the decision. The next year, the *Journal* commissioned a national publisher of law journals. Also, for the first time, the dean provided permanent secretarial services for the *Journal*.

Room 106.<sup>39</sup> The inscription concludes, "Tradition has it that the lamp sheds the light of knowledge and insight upon all those who labor earnestly within." The plaque continues to hang outside the *Journal* office today.

The immediate aftermath of the tornado was an unlikely time to expand the *Journal*, but doing so expressed a commitment to continued improvement in spite of adversity. Enrollment had grown to 276 students and preliminary planning for a third issue had begun with the Volume 5 staff. The additional issue was added for Volume 6. It was a symposium on medical-legal issues and included nine articles. For the first time, the issue did not include student notes or comments. The next two volumes had symposium issues too. The topic in Volume 7 was International Law and Affairs, a topic covered rarely at the time, if at all, in journals published by midwestern law schools. Editor-in-Chief Winton Hinkle '68 acknowledged that "it must be fairly said, this issue of the *Journal* contains nothing that will be of immediate and practical value to our readers in the practice of law."<sup>40</sup> However, he argued, the topics were "of immediate and practical value to every concerned citizen."<sup>41</sup> The symposium included six articles. The *Journal* published articles by foreign lawyers and judges in Volumes 6 and 8 as well. The six-article symposium topic in Volume 8 was Civil Rights.

Faculty Advisor Bill Harvey persuaded then-Circuit Judge Warren E. Burger, for whom he had clerked, to permit the *Journal* to publish in Volume 7 the address on "Trial Advocacy" Burger presented to the American College of Trial Lawyers earlier that year.<sup>42</sup> There were unique student pieces both before and after the tornado, such as one George E. Erickson, Jr. '66 prepared on the 1945-49 Navy war crimes trials that involved charges of cannibalism, solely as acts of vengeance, by Japanese soldiers on the island of Chichi Jima, Bonin Islands.<sup>43</sup> Erickson's uncle had been the commanding admiral and convening authority for those trials, so Erickson had access to the original records and transcripts.<sup>44</sup> The *Journal's* innovation was recognized in 1967 when it was rated the best journal published by any of the universities of the Big Eight Mid-West Conference in a national survey of attorneys, judges, and academics conducted by the University of Denver.<sup>45</sup> Washburn's journal tied for 53rd among 102 journals nationwide, so the focus upon "Big Eight Mid-

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39. The *Journal's* office location has changed twice since Washburn Law's new building was constructed. It is currently located in Room 118, where it has been since an addition was made to the building in 1992. The Law Journal Lamp is hung outside Room 118.

40. *Obiter Dictum*, 7 WASHBURN L.J. 151 (1968).

41. *Id.*

42. Hon. Warren E. Burger, *Remarks on Trial Advocacy: A Proposition*, 7 WASHBURN L.J. 15 (1967).

43. George E. Erickson, Jr., *Note: United States Navy War Crimes Trials (1945-1949)*, 5 WASHBURN L.J. 89 (1965).

44. Letter from Professor William F. Harvey to James Concannon (August 2007) (on file at Washburn Law Library).

45. TOPEKA STATE JOURNAL Oct. 23, 1967 (on file at Topeka Public Library), quoting a recent article in THE DENVER POST. These articles appear to be based on results reported in Lowell J. Noteboom & Timothy R. Walker, *The Law Review—Is It Meeting the Needs of the Legal Community?*, 44 DENVER L.J. 426, 430 (1967).



West Conference” schools made the results seem better than they were. Still, it was a significant achievement for such a young journal.

Professor Harvey believes the academic credibility the *Journal* gave not merely Washburn Law School but the University as a whole was an important factor in the law school’s survival following the tornado when senior university administrators seemed ambivalent about the school’s future. “The Law Journal gave John Howe an ‘internal academic club’ with which he could ‘negotiate’ with a Harold Sponberg or a John Henderson and their ilk or kindred spirits in Washburn’s central administration . . . [S]everal years later John Howe said to me, ‘Bill, that was a major internal effect the Law Journal had.’”<sup>46</sup>

Professor Harvey was faculty advisor for three years, before leaving in 1968 to teach at Indiana University-Indianapolis. One year later, Professor David Ryan ’65 became faculty advisor. He continued in that role for eighteen years, for Volumes 9 through 26.<sup>47</sup> Volume 9 marked the selection of the first woman to be Editor-in-Chief, Mary A. Senner, ’70.<sup>48</sup>

The *Journal* was an integral part of Washburn’s writing program. More students were encouraged to write for the *Journal* and its pages came to be dominated by student work. For example, Volume 9 included eight notes and seventeen comments, constituting 46% of the Volume’s 484 pages. Volume 10 had fourteen notes, sixteen comments, and one student essay, filling 57% of the Volume’s 531 pages. By Volume 14, 220 new students were being admitted each year, and the percentage of published student material, sixteen notes and forty-five comments, exceeded 80% of the *Journal*’s total pages. Although funding from the Washburn Law School Association permitted the *Journal* to grow to 714 pages that year, it contained just 125 pages of articles other than student work, by far the smallest number since the *Journal* expanded to three issues annually. There were only two authors from outside Kansas. One was a Washburn graduate and the other was an Arkansas practitioner who discussed the new Kansas comparative negligence statute. Editor-in-Chief Harker Russell ’75 noted in Issue One that sixty-five second-year students were writing articles. “Our efforts to encourage participation by any student willing to contribute the time and effort necessary to prepare an article of publishable quality have been rewarded by record growth this year.”<sup>49</sup> In Issue Two, he described a decidedly local mission: “Hopefully this growth will enable the *Journal* to perform more effectively its twofold purpose—

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46. Letter from Professor William F. Harvey, *supra* note 43.

47. There have been only three faculty advisors for the past forty-two volumes. John Kuether advised the *Journal* for twelve years until his untimely death in 1999. Myrl Duncan became faculty advisor for Volume 39 and continues in that role today.

48. Indicative of the times, a reporter for the student newspaper, a woman herself, wrote, “The striking blond was all business” as she discussed publication of the journal. *Woman Edits Law Journal*, WASHBURN REV. Apr. 29, 1970 (on file at Mabee Library, Washburn University). Later, of the twenty-two Editors-in-Chief from the class of 1985 through the class of 2006, sixteen were women.

49. *Obiter Dictum*, 14 WASHBURN L.J. v (1964) (Issue One).

improving the student's legal research, writing and analysis skills and providing the Kansas bar with a useful, high quality legal publication."<sup>50</sup> The next year, Editor-in-Chief William Sidlinger '76 reported that 110 students were writing in the hope of being published.<sup>51</sup> Dean Raymond Spring '59 lamented that budget constraints limiting the size of the *Journal* made it "impossible to publish so much as half of those notes and comments that merit publication."<sup>52</sup> The pages devoted to non-student work dwindled to just ninety of 568 pages.

Case comments consistently averaged between five and six pages from Volume 9 through Volume 15. Notes grew from, on average, fifteen to seventeen pages to twenty to twenty-three pages. However, the burden of editing the work of so many different students taxed the capacity of the senior staff. As Volume 16 Editor-in Chief Michael C. Manning '77 saw it, "Deadlines were routinely slighted and editorial control lacked the thoroughness that is the hallmark of a reliable legal periodical; there were too many articles and too few editors with 48-hour days."<sup>53</sup> Beginning with Volume 16, the number of students invited to write for the *Journal* was reduced significantly. Manning's staff concluded that page constraints on comments had hampered in-depth analysis. In Volume 16, the average comment grew to almost eight pages with the additional space "provided for authors to engage in more detailed development and analysis of the case."<sup>54</sup> The senior note was expanded too, so it provided more thorough documentation. There was renewed emphasis on lead articles of interest nationally, recognizing that the *Journal* needed to become once again more than a local publication. Volume 16 featured articles by Professor Raoul Berger of Harvard Law School,<sup>55</sup> retired Supreme Court Justice Tom C. Clark,<sup>56</sup> and Justice William H. Rehnquist.<sup>57</sup> With funding again from the Washburn Law School Association, Volume 16 grew to 800 pages but the percentage of pages devoted to student work declined to 76%.

Volume 17 published a somewhat-more-manageable fourteen notes and twenty-five comments. Editor-in-Chief Vivian Wiberg '78 expressed the pleasure of the Board of Editors "with the favorable response of our

50. *Obiter Dictum*, 14 WASHBURN L.J. v (1975) (Issue Two).

51. *Obiter Dictum*, 15 WASHBURN L.J. iv (1976) (Issue One).

52. Raymond L. Spring, *Of Books, Fische and Terminals: The Dean's Report to the Bar*, 15 WASHBURN L.J. 415, 421 (1976).

53. *Obiter Dictum*, 16 WASHBURN L.J. vi (1976) (Issue One).

54. *Id.* at v.

55. Raoul Berger, *The Tug-of-War Between Congress and the Presidency—Foreign Policy and the Power to Make War*, 16 WASHBURN L.J. 1 (1976).

56. Justice Tom C. Clark (Ret.), *The Continuing Challenge of Advocacy*, 16 WASHBURN L.J. 243 (1977).

57. Justice William H. Rehnquist, *Sunshine in the Third Branch*, 16 WASHBURN L.J. 559 (1977). Justice Rehnquist also visited the Washburn campus to present his article. Michael Manning, *Rehnquist: Big Day for Law Student*, ARIZ. REPUBLIC, Sept. 18, 2005, available at <http://www.azcentral.com/arizonarepublic/viewpoints/articles/0918manning0918new0.html>.

subscribers to changes in the *Journal* format last year.”<sup>58</sup> The Board that year instituted a writing competition in which students could earn a position on the *Journal* staff even though they were not among the more selective group of students invited on the basis of grades.

The *Journal* was well on its way. The first article from the Foulston Siefkin Lecture was published the next year. Later, funding from endowment enabled the *Journal* regularly to publish multi-author symposium issues on cutting-edge topics.<sup>59</sup> The *Journal*'s evolution to the modern journal it is today resulted from both incremental change and innovation.<sup>60</sup> The editors and staffs from the *Journal*'s early years can take pride in the publication they helped to launch and what it has become today.

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58. *Obiter Dictum*, 17 WASHBURN L. J. v (1977) (Issue One).

59. For example, Volumes 37 through 43 each included articles by scholars and practitioners who visited Washburn to teach courses or participate in symposia sponsored by the Ahrens Chair in Tort Law. Professor Charlene Smith coordinated the program each of those years. Topics included: Tort Law in the Twenty-First Century; Torts and Sports; International Torts: A Comparative Study; Human Rights Law and Torts; Environmental Torts; Genomic Torts; and Genetically Modified Organisms.

60. The *Journal*'s evolution also has led to increased use by practitioners and courts. At the time this issue was published, the U.S. Supreme Court has cited the *Washburn Law Journal* six times. *Owen v. Independence*, 445 U.S. 622, 647 n.28 (1980); *Rummel v. Estelle*, 445 U.S. 263, 297 n.14 (1980); *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 105 n.13 (1979); *Gosa v. Mayden*, 413 U.S. 665, 671 n.5 (1973); *Relford v. Commandant*, 401 U.S. 355, 358 n.1 (1971); *Sch. Dist. of Abington Tp.. v. Schempp*, 374 U.S. 203, 238 n.6 (1963).

