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## Missouri Law Review--1913-1936-1986, The

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# MISSOURI LAW REVIEW

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## THE MISSOURI LAW REVIEW 1913—1936—1986

WILLIAM F. FRATCHER\*

Before 1887 there were a number of legal journals published in this country, but none was operated in conjunction with a law school. All were edited by experienced lawyers. Probably the best was the *American Law Review*. John Chipman Gray,<sup>1</sup> an able Boston lawyer, edited it 1866-70. He was followed by Oliver Wendell Holmes, Jr.,<sup>2</sup> 1870-73. John Davison Lawson<sup>3</sup> was assistant editor 1876-85 and editor 1910-17. The *Law Quarterly Review* in England was edited by the heir apparent to the baronetcy of Hatton.<sup>4</sup>

In 1887 a group of students at Harvard Law School elected an Editor in Chief from among themselves and started the *Harvard Law Review*, largely as a vehicle for publication of works of members of the Harvard Law Faculty, such as Dean Langdell and Professors Thayer, Gray, and Ames. It was fi-

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\* Student Editor, *Michigan Law Review*, 1935-36; member of the University of Missouri Faculty of Law at Columbia since 1947.

1. A.B. 1859, LL.B. 1861 Harvard; Major and Judge Advocate, U.S. Army, 1864-65; Professor of Law, Harvard, 1875-1913; author, *RESTRAINTS ON ALIENATION* (1883); *THE RULE AGAINST PERPETUITIES* (1886).

2. A.B. 1861, LL.B. 1866 Harvard; Captain, U.S. Army, 1861-64; Associate and Chief Justice, Supreme Judicial Court of Massachusetts, 1882-1902; Associate Justice, Supreme Court of the United States, 1902-32; author, *THE COMMON LAW* (1881).

3. LL.B. 1875 Osgoode Hall; LL.D. 1891 Missouri; LL.D. 1919 Toronto; Professor of Law, University of Missouri, 1891-1917; Dean, 1902-12, 1913-14; author, *THE AMERICAN LAW OF CONTRACTS* (1893).

4. Frederick Pollock, Barrister at Law 1871, Lincoln's Inn; Third Baronet of Hatton, 1888; Corpus Professor of Jurisprudence, Oxford, 1883-1903; author, *PRINCIPLES OF CONTRACT* (1876); *LEADING CASES DONE INTO ENGLISH* (1877); *THE LAW OF TORTS* (1887); Editor, *LAW QUARTERLY REVIEW*, 1885-1919. Sir Frederick's greetings to the *HARVARD LAW REVIEW* on its fiftieth anniversary were published after his death. 50 *HARV. L. REV.* 861 (1937).

nanced by the Harvard Law School Association and contained brief notes of cases from five to eight lines long, written by students.<sup>5</sup> The first volume contained seventeen articles, over a hundred of the short case notes and twenty-six book reviews. In the first number it was stated that "The REVIEW is not intended to enter into competition with established law journals, which are managed by lawyers of experience, and have already a firm footing with the profession."<sup>6</sup>

The idea of legal journals run in conjunction with law schools spread. Columbia University in the City of New York, which required only two years of residence for a law degree,<sup>7</sup> launched the Columbia Law Times in 1887.<sup>8</sup> The Yale Law Journal appeared in 1890, the Law Bulletin of the State University of Iowa in 1891, the Northwestern Law Review in 1893, the Cornell Law Journal in 1894, and the Michigan Law Review in 1901. About half of the new law school journals were started by students; the others were faculty operated.<sup>9</sup> As one of them put it, "Publication of a law review by any school is justified by the additional contributions to legal literature which it stimulates and the opportunities for better training to students which it affords."<sup>10</sup>

In 1907 the University of Missouri Law Department imposed a requirement of high school graduation for entrance.<sup>11</sup> In 1909 it became the School of Law.<sup>12</sup> With these increases in their education, maturity, and distinction, the Missouri law students were emboldened to publish, from time to time, a magazine entitled *The Docket*. The May, 1912, issue contained articles by Dean Lawson on the history of the law school and its collection of portraits, a brief article by his successor, Dean Hinton, on proof of suicide in Missouri, an extract from Dean Roscoe Pound's famous 1906 speech, "Causes of Popular Discontent With Administration of Justice," a short article by Forrest C. Donnell '07 on the problems of a young lawyer in the city, two articles by Robert W. Jones, a second-year student, on biblical and Roman law, and other like items. The *Docket* listed students serving as editor in chief, associate editor, business

5. Wigmore, *The Recent Case Department*, 50 HARV. L. REV. 862 (1937).

6. 1 HARV. L. REV. 35 (1887).

7. 1 HARV. L. REV. 252 (1887). Harvard had required three years since 1877. The University of Missouri Department of Law required two years residence for the LL.B. until 1901, when the course was extended to three years. W. FRATCHER, *THE LAW BARN: A BRIEF HISTORY OF THE SCHOOL OF LAW, UNIVERSITY OF MISSOURI-COLUMBIA* 11, 93 (1978), hereinafter "LAW BARN."

8. Note 5, *supra*. Columbia had a publication, the COLUMBIA JURIST, between 1885 and 1887. Albany Law School had an ALBANY LAW SCHOOL JOURNAL from 1875 to 1876. Swygert & Bruce, *The Historical Origins, Founding and Early Development of Student-Edited Law Reviews*, 36 HASTINGS L. J. 739, 763-69 (1985).

9. McKelvey, *The Law School Review, 1887-1937*, 50 HARV. L. REV. 868, 882 (1937); Stason, *The Law Review—Its First Fifty Years*, 50 MICH. L. REV. 1134 (1952).

10. 1 GEO. WASH. L. REV. 1 (1932), quoted in McKelvey, *supra* note 9, at 869.

11. LAW BARN 8. Harvard had required college graduation since 1871. *Id.* at 2.

12. *Id.* at 33.

manager, assistant manager, and assistant art editor.<sup>13</sup> The last title may suggest why *The Docket* could not be considered to be a serious scholarly legal publication: it contained pictures and had an artistically designed cover.<sup>14</sup> Moreover, the page size differed from that of the *Harvard Law Review* and the contents lacked the seriousness, the dignity, the formality, and the critical intensity of the mother of law reviews.<sup>15</sup>

On Monday, November 11, 1912, President A. Ross Hill presided over a meeting of the University of Missouri Faculty of Law held in the old Law Barn (now the Sociology Building). Dean Edward Wilcox Hinton and Professors Charles Kellogg Burdick, Grover Cleveland Hosford, Manley Ottmer Hudson, John Davison Lawson, Isidor Loeb, and James Patterson McBaine were present. Hinton, Burdick, Loeb, and McBaine held degrees from Columbia University in the City of New York.<sup>16</sup> Professor Hudson, a 1910 graduate of Harvard Law School, moved to discourage publication of *The Docket*. The motion carried. Professor Loeb then moved that a committee be appointed to investigate and report covering the possibility of establishing a Law Series of the University of Missouri Bulletin. This motion carried and President Hill appointed Professors Hudson, McBaine, and Hosford to the committee. The committee reported in favor of the project at a luncheon meeting of the Faculty of Law held on Friday, December 13, 1912. The recommendation was adopted.<sup>17</sup>

As contemplated by the decision of December 13, 1912, fifty Law Series issues of the University of Missouri Bulletin were published between November, 1913, and September, 1935, with a cumulative index, which is still useful, in the last. The first bulletin contained a leading article on entails by Manley O. Hudson.<sup>18</sup> The last contained a leading article on regulation and state taxation of utilities by Professor Robert L. Howard.<sup>19</sup> One of the best articles in the Law Series is that on conditional delivery of deeds by Professor Glenn A. McCleary.<sup>20</sup> High-ranking second and third year students were elected by the Faculty of Law to be student editors of the Law Series. They wrote notes on recent Missouri cases under the supervision of a faculty "editor in charge."<sup>21</sup>

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13. *Id.* at 101, 104.

14. *Id.* at 102.

15. See McKelvey, *supra* note 9 at 869-72 on the tendency of law reviews to follow exactly the form and style of the HARVARD LAW REVIEW.

16. LAW BARN 62, 63, 101.

17. *Id.* at 63, 104.

18. Hudson, *Estates Tail in Missouri*, U. MO. BULL. LAW SERIES NO. 1, 5-33 (1913).

19. Howard, *Gas and Electricity in Interstate Commerce*, U. MO. BULL. LAW SERIES NO. 49, 5-48; No. 50, 5-53 (1935).

20. McCleary, *Some Problems Involved in Conditional Delivery of Deeds*, U. MO. BULL. LAW SERIES NO. 43, 5-30 (1931).

21. Professor Charles K. Burdick, LL.B. Columbia, was editor in charge through No. 4 (June 1914). George C. Willson, Jr., a student, was, by this time, "assisting the editor in charge." Professor Manley O. Hudson, S.J.D. Harvard, was editor

Why wasn't the University of Missouri Bulletin Law Series a genuine law review? There are several reasons. First, the page size was non-standard. It was 8-½" x 5-¾." A law review must be 9-¾" x 6-¾." Deviation as to this had doomed The Docket. Second, it was non-standard as to mode of citation. Third, publication was irregular. Each issue declared "Published four times a year by the University of Missouri School of Law," but none was published in 1918, 1932, or 1934 and there were only one or two numbers in some other years. Fourth, it was restricted to articles on Missouri law and notes of decisions of Missouri courts.<sup>22</sup> When Professor Merrill Isaac Schnebly,<sup>23</sup> a well-known scholar, submitted an article that he had written, it had to be altered to concentrate on Missouri law.<sup>24</sup> With these limitations, scholars of distinction could not be expected to contribute to the Law Series.

On Monday, October 8, 1934, the University of Missouri Faculty of Law met in Room 101, Tate Hall, with Dean William E. Masterson<sup>25</sup> presiding and Professors J. Coy Bour,<sup>26</sup> Robert L. Howard,<sup>27</sup> Glenn A. McCleary,<sup>28</sup> and Lee-Carl Overstreet<sup>29</sup> present. "Mr. Howard moved that the School of Law publish a quarterly beginning in the Fall of 1935, the quarterly to be the usual

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in charge of Nos. 5 (Dec. 1914) through 14 (February 1917). Dean Eldon R. James, S.J.D. Harvard, was acting editor in charge of Nos. 15 and 16 (June and Dec. 1917), with Lue C. Lozier, a student and Percy A. Hogan, the law librarian, assisting. Professor Kenneth C. Sears, J.D. Chicago, was editor in charge of Nos. 17 (Nov. 1919) through 32 (Apr. 1925), with Mr. Hogan assisting at times. Nos. 33 (Nov. 1925) and 34 (Apr. 1926) had a Faculty Board of Editors consisting of Professors Guy V. Head, S.J.D. Harvard, Stephen I. Langmaid, LL.B. Harvard, and James W. Simonton, S.J.D. Harvard. Professor James Lewis Parks, LL.B. Columbia, edited Nos. 35 (Mar. 1927) through 38 (Apr. 1928). After Parks became dean, Professor Head edited Nos. 39 and 40 (Nov. and Dec. 1928). Nos. 41 (Apr. 1930) and 42 (Feb. 1931) list no faculty editor. K. Martin Kirschner '30, was Chairman of the Board of Student Editors for No. 41 and Joseph A. Lutz '31, served in the same capacity for No. 42. Nos. 43 and 44 (May and Sep. 1931) list only a Board of Student Editors without a chairman. No. 45 (also Sep. 1931) lists William H. Becker, Jr. (later a United States District Judge) as Chairman of the Board of Student Editors and James A. Finch, Jr. (later Chief Justice of Missouri) as a member of the Executive Committee. Nos. 46 and 47 (Nov. and Dec. 1933) contained no student contributions. William R. Collinson was Chairman of the Board of Student Editors for Nos. 48 (Jan. 1935) through 50 (Sep. 1935). Nos. 17 through 40 (1919-28) contained a section entitled Bar Bulletin. This was the official organ of the Missouri Bar Association and was usually edited by Professor Sears.

22. U. MO. BULL. LAW SERIES No. 1, 3 (Nov. 1913).

23. A.B. 1911, J.D. 1913 Chicago; J.S.D. 1926 Yale; Professor of Law, University of Missouri, 1926-28; University of Illinois, 1928-56.

24. Schnebly, *Operative Facts in Surrenders*, U. MO. BULL. LAW SERIES No. 36, 3 (Jan. 1927).

25. A.B. 1915 Texas; M.A. 1917, LL.B. 1920, S.J.D. 1926, Harvard; LL.D. 1928 London; author, JURISDICTION IN MARGINAL SEAS WITH SPECIAL REFERENCE TO SMUGGLING (1929).

26. A.B. 1917, LL.B. 1920, Missouri; S.J.D. 1925 Harvard.

27. A.B. 1917, A.M. 1918, LL.B. 1925, Missouri; S.J.D. 1933 Harvard.

28. B.A. 1917 Ohio Wesleyan; J.D. 1924 Michigan; S.J.D. 1936 Harvard.

29. B.A. 1922 Westminster; LL.B. 1925 Missouri; LL.M. 1941 Michigan.

style and type of law journals. The motion was carried."<sup>30</sup> Professor Bour opposed this move because he preferred a publication issued only when there was something worth publishing.<sup>31</sup> Professor Overstreet, who was designated as business manager of the new law review, issued an announcement that the Missouri Law Review would be standard 7" x 10" size, would be published in November, January, April, and June, and would

contain articles of general interest to students of the law, the legal profession and jurists. Special attention will also be given to legal developments within the state of Missouri. A Board of Student Editors, under the direction of a faculty supervisor, will prepare, for each issue, a series of notes and comments on recent cases of particular interest to the legal profession. One department will be devoted to book reviews. . . . The subscription price of the Missouri Law Review will be \$2.475 plus \$.025 Missouri Sales Tax, making a total of \$2.50 per year.<sup>32</sup>

This proved to be an accurate prediction.

The first volume of the Missouri Law Review, containing the issues of January, April, June, and November, 1936, demonstrated the soundness of the 1934 decision of the Faculty of Law. Among the thirteen leading articles was one designed to be part of Professor Percy Bordwell's<sup>33</sup> projected book, *A Preliminary Historical Treatise on the Law of Property*,<sup>34</sup> a study of criminal appeals in England,<sup>35</sup> and a major contribution by a leader of jurisprudential thought.<sup>36</sup> There were twenty one book reviews, three student comments, and sixteen student case notes. This volume listed as the Editorial Board Dean Masterson as Editor in Chief, Professor Howard as Case Editor, the other members of the Faculty of Law, and a group of students, some of whom had

30. LAW BARN 104.

31. *Id.* at 88.

32. Copy in MISSOURI LAW REVIEW files. The UNIVERSITY OF MISSOURI BULLETIN LAW SERIES resembled in appearance the bulletins issued by the College of Agriculture for the information of farmers. Like them, it was printed at university expense and distributed free of charge to interested persons. The announcement of a subscription price for the MISSOURI LAW REVIEW was, therefore an innovation. The subscription price has never been enough to cover the entire cost; there has always been some university subsidy. This is, in part, because copies of the law review are sent to publishers of other law reviews in exchange for copies of their journals, which are kept in the law library.

33. B.L. 1898 California; LL.B. 1904, LL.M. 1907, Ph.D 1908 Columbia; Professor of Law, University of Missouri, 1906-10; University of Iowa, 1910-51.

34. Bordwell, *Interests in Chattels Real and Personal*, 1 MO. L. REV. 119 (1936).

35. Orfield, *History of Criminal Appeal in England*, 1 MO. L. REV. 326 (1936). Lester B. Orfield, A.B. 1924, LL.B. 1927, Minnesota; M.A. 1928 Duke; S.J.D. 1929 Michigan; Professor of Law, University of Nebraska, 1929-47; Temple University, from 1947.

36. Patterson, *The Scope of Restitution and Unjust Enrichment*, 1 MO. L. REV. 223 (1936). This was Edwin Wilhite Patterson, A.B. 1909, LL.B. 1911, LL.D. 1936, Missouri, S.J.D. 1920 Harvard; Cardozo Professor of Jurisprudence, Columbia University.

served on the editorial board of the Law Series.

The Harvard Law Review was started in 1887 by a group of self-selected law students and has always been conducted by student editorial boards without faculty control. The student editors of Volume I included Joseph H. Beale, the future author of *Beale on Conflict of Laws*, John H. Wigmore, the future author of *Wigmore on Evidence*, and Samuel Williston, the future author of *Williston on Contracts*. All three held Harvard A.B. degrees before they entered law school; Beale and Williston had also completed most of the work for their master of arts degrees. This first group of mature and well-educated students selected its own successors from among Harvard students who ranked high on the first year examinations and this mode of selection has been continued. In 1887 the University of Missouri Law Department required entering students to be at least nineteen years of age and of good moral character.<sup>37</sup> In 1912 the School of Law required high school graduation.<sup>38</sup> In 1936 it required two years of college,<sup>39</sup> but no subjects were required; two years in a junior college which offers vocational agriculture but no history, literature, philosophy, or economics does not qualify one to edit a law journal. The University of Missouri Faculty of Law, which knew of the Harvard practice, wisely chose faculty control in 1912 and 1934. Missouri did not then have enough students with the maturity and education needed for law review editing.

From 1936 through 1945 the masthead of the Missouri Law Review listed the entire Faculty of Law as members of the Editorial Board, usually with one professor designated as chairman.<sup>40</sup> Beneath these were listed the student members, elected by the Faculty of Law on the basis of first-year grades, usually with one designated as student chairman.<sup>41</sup> This reflected the actual operation of the Law Review. The faculty chairman had sole responsibility for procuring, reviewing, and editing leading articles. Each teacher provided the faculty chairman with suggestions of topics for comments (short stu-

37. College graduates were exempt from these requirements. LAW BARN 8.

38. *Id.*

39. *Id.* Harvard Law School had 204 students in 1887, when the LAW REVIEW was started. 1 HARV. L. REV. 35 (1887). The University of Missouri School of Law had 203 students when the LAW REVIEW was started in 1936. 1 MO. L. REV. 62 (1936). The MICHIGAN LAW REVIEW was faculty controlled until 1940.

40. The faculty chairmen, later called faculty advisers, are listed in Appendix A. Until 1968 the LAW REVIEW had a non-student business manager; these are also listed in Appendix A. After 1968 the business functions, including subscriptions, advertising, printing, and distribution, were carried out by a student Managing Editor. At first he was a designee of the student Editor in Chief but the Faculty of Law, with some dissent, accepted the recommendation of the 1968-69 Editor in Chief that the business manager be selected by the Faculty of Law.

41. The student chairmen, designated as Editors in Chief from 1958 and actually functioning as such after that date are listed in Appendix B. The 1968-69 editor in chief recommended that, because the duties of the position were so onerous as to prevent the holder from engaging in summer or part-time employment, he should be paid. This was later accomplished indirectly by giving the editor in chief a substantial scholarship.

dent-written articles) and cases which should be noted. The faculty chairman assigned these to student members of the Editorial Board. Upon receiving an assignment, the student conferred with the teacher who had suggested the topic or case note. The student then prepared a draft and revised it under the teacher's supervision. When the teacher had approved the final draft it went to the faculty chairman, who read and edited it before approving its publication. From 1946 to 1957 only the faculty chairman was named in the masthead but the other members of the Faculty of Law continued to perform the same functions.

By 1944 the Law Review was in difficulty. With a student body drastically reduced by required or voluntary war service, there were only two students on the Editorial Board.<sup>42</sup> All members of the Faculty of Law were compelled to contribute articles and several wrote comments and casenotes.<sup>43</sup> It was a struggle to keep the Missouri Law Review alive through the war but, unlike the Law Series in 1918, the Law Review survived.

Since 1951 three years of college have been required for admission to the School of Law. In 1963 the Law School Admission Test was required and since 1966 degree candidates have been required to have a college degree before the law degree is conferred.<sup>44</sup> These changes have resulted in a more mature and better-educated student body. In 1958, the Faculty Chairman became the Faculty Editor and the Student Chairman became the Editor in Chief. Under him were listed student comment and note editors. The next year there was only a Faculty Adviser at the top of the masthead and by 1965 his name was lowered to the bottom. Student article and book review and managing editors appeared in 1959. These changes in nomenclature reflected a gradual shift of the Law Review from faculty control to student control.

The faculty adviser was still reading all articles, comments, notes and book reviews before publication as late as 1974. Until 1977 serving as faculty adviser counted as a quarter of the teacher's annual work load. In that year, the new dean<sup>45</sup> required the faculty adviser to teach a full load. This, as a practical matter, made it impossible for him to review all manuscripts before publication. In 1979, the long-standing requirement that every manuscript be read by a faculty member before publication, was abolished by the dean. Since then the Missouri Law Review has been student controlled and the faculty adviser has been only an adviser. Each year the Board of Editors selects its own successors for the following year. Students with high grades in the first year become candidate members automatically. Those with slightly lower grades may write a case note and submit it in competition. The best are added

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42. Edith Dailey and Jackson A. Wright. They later married. Mr. Wright became President of The Missouri Bar and General Counsel of the University of Missouri. Mrs. Wright became Vice President in charge of the Trust Department of the Boone County National Bank.

43. LAW BARN 87-88, 104-05. Comments, 10 MO. L. REV. 128, 133 (1945).

44. LAW BARN 8.

45. Allen E. Smith, B.A. 1960, LL.B. 1961, Texas.



to the candidate list in the second year. Candidates who do their law review writing satisfactorily become members in their third year.

Regular publication of a law review provides, for both able students and law teachers, an incentive for legal research and writing that tends to raise the stature of a law school and improve the morale of everyone connected with it. It also provides a valuable source of information for practicing lawyers and others interested in understanding legal developments. No one questions these valuable features of law reviews run in conjunction with law schools. There is controversy, however, over the question of whether such law reviews should be run by students without faculty supervision.<sup>46</sup> The current President of the Association of American Law Schools<sup>47</sup> has written,

The extraordinary proliferation of student-edited reviews, most of them of erratic and uneven quality, has had harmful effects on the nature, evaluation, and accessibility of legal scholarship. Student editors prefer pieces that recite prior developments at great length, that contain voluminous and largely meaningless citations for every proposition, and that deal with topics that are safe, standard or faddish.

They discourage scholarship that assumes an informed reader, presents its contribution succinctly, and is innovative or novel.<sup>48</sup>

Student editors of law reviews published at other law schools have been known to condition acceptance of an article on a controversial question of law upon the author reversing his conclusions on the question. Even worse, they have been known to change such conclusions themselves without consulting the author. Their slavish adherence to the Harvard Law Review Uniform System of Citation has sometimes resulted in their refusing to allow an author to indicate in his citations whether a decision was made by a court of law or a court of equity, although that is a crucial point. In short, student editors, like older and more experienced editors, make mistakes. My own feeling is that some faculty advice is desirable, at least to students writing comments and case notes. Most of them seek it whether or not they are required to do so.

In the early years of the Law Review each student was required to write three case notes, or a comment and one case note, each semester. In 1936, as in the case of the Harvard Law Review, a case note occupied about one and a half printed pages. A comment was longer. It was thought then, and is still thought by some, that a one and a half page-case note was much better, and much harder to write, than an eight-page note. However that may be, both

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46. Cramton, *Faculty Edited Law Reviews - Yes*, 16 AM. BAR ASSN. SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR SYLLABUS, No. 3, 1 (Sep. 1985); Julin, *Faculty Edited Law Reviews - No*, *id.*; Speidel, *Good-bye to Student-Edited Law Reviews?*, *id.* Other literature on this subject is collected in Swygert & Bruce, *The Historical Origins, Foundings and Early Development of Student-Edited Law Reviews*, 36 HASTINGS L. J. 739, 740 (1985).

47. Roger C. Cramton, A.B. 1950 Harvard; J.D. 1955 Chicago; Robert S. Stevens Professor of Law, Cornell.

48. Cramton, *supra*, note 46 at 3.

comments and case notes have become much longer since 1936. The writing requirement has been reduced gradually. Currently each candidate is required to write one casenote and part of a survey project during his second year in law school. Each third-year member with no editorial title is required to write one comment. This is, in part, a reflection of a larger student body, with more student candidates and members. If all of them wrote as many comments and notes as were required in 1936, many could not be published. Third year students serving as editor in chief, associate editor in chief, lead articles editor, journal editor, managing editor, or as note and comment editors (the 1985 titles) are not required to write comments or notes. Academic credit is given for satisfactory Law Review service, the number of credit hours depending on the position held. The position of editor in chief is really more than a full-time job.

In recent years Guy Thompson awards have been given annually for the best and second best comments and case notes written by students. The awards include sums of money derived from the income earned by a fund set up by the University of Missouri Law School Foundation in honor of Guy Atwood Thompson of the Class of 1898, President, first, of the Missouri Bar Association and, later, of the American Bar Association. The sums are small but the honor is great.<sup>49</sup>

Beginning in 1937, the Missouri Law Review carried a series of articles in each November issue describing the "Work of the Missouri Supreme Court" for the preceding year.<sup>50</sup> At first these surveys contained tables showing the number of opinions written by each judge. Understandably, some of the judges did not like this feature. It was dropped. Then followed a series of survey articles describing the Missouri Supreme Court decisions in various fields during the preceding year. Many of these were written under compulsion by members of the Faculty of Law who taught courses in the fields covered. For example, the November, 1957, issue contained survey articles by Eckhardt on Property, Fratcher on Trusts and Succession, McCleary on Torts, and Wheaton on Procedure. The Work of the Missouri Supreme Court occupied nearly a quarter of each Law Review volume, consumed a great deal of the time of the conscript writers, thus preventing them from doing more useful work, and was of little use. Brief digest paragraph treatment of cases published nearly two years after their appearance in the advance sheets is not very helpful.<sup>51</sup> As the writers were not allowed to mention Missouri appeals decisions, decisions of federal courts, or statutes, these surveys did not enable anyone to keep up with developments in Missouri law. After his arrival in 1958, Dean Covington<sup>52</sup> permitted citation of statutes and court of appeals decisions and the titles of

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49. Guy A. Thompson awards winners are listed in Appendix C.

50. *E.g.* 2 MO. L. REV. 393-505 (1937); *see also* LAW BARN 105.

51. The Work of the Missouri Supreme Court was postponed to the January, 1962, issue, which covered 1960 and 1961 decisions. Some of these had been published well over two years earlier. 27 MO. L. REV. 1-119 (1962).

52. B.A. 1932, LL.B. 1940, Arkansas; LL.M. 1941, S.J.D. 1952, Harvard.

the survey articles were changed accordingly.<sup>53</sup> Even so, it is virtually impossible to make a survey article interesting or inspiring. I tried to relieve the dullness by beginning each article with an in-depth study of some case or problem. Professor Eckhardt was even bolder: he limited his compulsory article to one problem, thus making it into a useful, readable, and scholarly article. One of his best, an able criticism of Missouri decisions on the Rule Against Perpetuities,<sup>54</sup> was never indexed because the Index to Legal Periodicals refused to index survey articles.<sup>55</sup> There were no annual surveys of Missouri law after 1965. The Journal of The Missouri Bar effectively accomplishes their intended purpose by monthly surveys entitled *The Flag*, written by Thomas A. Vetter. For many years the Missouri Law Review carried a separate series of surveys of decisions on the Humanitarian Doctrine.<sup>56</sup> Older lawyers may remember this doctrine. These surveys, too, have ceased.

Law reviews run in conjunction with law schools do not compensate their contributors. Why does anyone write a law review article for which he will not be paid? Obviously, some people do. Who are they? First, there are young assistant and associate professors who must publish in order to win promotion and the coveted tenure which guarantees their continued employment until they reach seventy. Second, there are lawyers in private practice or in the service of corporations or governments who want to promote change in the law, sometimes because of the loss of a case which the writer thinks that he should have won. Third, there are older law teachers who are compelled to write survey articles to ensure annual raises. Fourth, there are mature and established scholars who write to demonstrate that they are still masters of their subjects—but they are unlikely to submit their work to a law review published in a remote Missouri town, thirty miles from a railroad, where the Dairy Goat Journal has its headquarters.

Most contributors to the Missouri Law Review have been in the first three classes, but a few class four types have submitted articles, usually because they have been students or teachers at Missouri or because they have been paid an honorarium to deliver a lecture.<sup>57</sup> Some of the best of these arti-

53. E.g. Fratcher, *Trusts and Succession in Missouri 1958*, 24 MO. L. REV. 497-512 (1959).

54. Eckhardt, *Rule Against Perpetuities in Missouri*, 30 MO. L. REV. 27-71 (1965). This was an outstanding article which helped to secure the enactment of MO. LAWS 1965, p. 628, § 1, MO. REV. STAT. § 442.555 (1978). See Eckhardt, *Perpetuities Reform by Legislation*, 31 MO. L. REV. 56 (1966); Fratcher, *The Missouri Perpetuities Act*, 45 MO. L. REV. 240 (1980).

55. Fratcher, *The Decline of the Index to Legal Periodicals*, 18 J. LEGAL ED. 297-303 (1966). Yet the INDEX had covered the UNIVERSITY OF MISSOURI BULLETIN LAW SERIES from 1915 to 1935 although the LAW SERIES was primarily a survey of Missouri decisions.

56. E.g. Becker, *The Missouri Supreme Court and the Humanitarian Doctrine in the Year 1954*, 20 MO. L. REV. 38-51 (1955).

57. John Hanna, *New Frazier—Lemke Act*, 1 MO. L. REV. 1 (1936); Percy Bordwell, *Interests in Chattels Real and Personal*, 1 MO. L. REV. 119 (1936); Edwin

cles have been contributed by foreign scholars visiting these remote parts.<sup>58</sup> Then there are the contributors who were in the first or second class when they made their contributions but later became famous. James Albert Pike<sup>59</sup> was a Securities and Exchange Commission lawyer when he wrote.<sup>60</sup> Who would have guessed then that he would become the controversial Episcopal Bishop of California who died in the desert wilderness of Judah, between Bethlehem and Qumran, under mysterious circumstances?<sup>61</sup> Other contributors, little-known when they wrote, became major figures.<sup>62</sup> Then there is the sad case of the

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W. Patterson, *The Scope of Restitution and Unjust Enrichment*, 1 MO. L. REV. 223 (1936); Laurance M. Hyde, *Origin and Development of Missouri Appellate Procedure*, 2 MO. L. REV. 281 (1937); Robert A. Leflar, *Constitutional Jurisdiction Over Tangible Chattels*, 2 MO. L. REV. 171 (1937); Rush H. Limbaugh, *The Adoption of Children in Missouri*, 2 MO. L. REV. 300 (1937); Fleming James, Jr., *The Qualities of the Reasonable Man in Negligence Cases*, 16 MO. L. REV. 1 (1951); Edwin W. Patterson, *The Role of Law in Judicial Decisions*, 19 MO. L. REV. 101 (1954); Wayne Morse, *Senator Thomas C. Hennings, Jr., and Civil Rights*, 26 MO. L. REV. 420 (1961); Roger J. Traynor, *Lawbreakers, Courts and Law Abiders*, 31 MO. L. REV. 181 (1966); Paul E. Basye, *Are Probate Courts in Missouri Undergoing Retrogression?*, 32 MO. L. REV. 175 (1967); Erwin N. Griswold, *The Office of the Solicitor General—Representing the Interests of the United States before the Supreme Court*, 34 MO. L. REV. 527 (1969); Thomas F. Eagleton, *Congress and the War Powers*, 37 MO. L. REV. 1 (1972); John C. Danforth, *Proposed Missouri Criminal Code—Introduction*, 38 MO. L. REV. 361 (1973); William F. Swindler, *Runnymede Revisited: Bicentennial Reflections on a 750th Anniversary*, 41 MO. L. REV. 153 (1976); William H. Rehnquist, *Government by Cliche*, 45 MO. L. REV. 379 (1980); W. Page Keeton, *The Meaning of Defect in Products Liability Law—A Review of Basic Principles*, 45 MO. L. REV. 579 (1980); Charles B. Blackmar, *The Missouri Supreme Court and Lawyer Advertising: RMJ and its Aftermath*, 47 MO. L. REV. 621 (1982); William French Smith, *Limiting the Insanity Defense: A Rational Approach to Irrational Crimes*, 47 MO. L. REV. 605 (1982); Edward C. Halbach, Jr., *Issues About Issue: Some Recurrent Class Gift Problems*, 48 MO. L. REV. 333 (1983); Eugene F. Scoles, *Succession Without Administration*, 48 MO. L. REV. 371 (1983); R.H. Helms, *Bankruptcy and Probate Jurisdiction Before 1571*, 48 MO. L. REV. 415 (1983); Richard W. Effland, *Rights of Creditors in Nonprobate Assets*, 48 MO. L. REV. 431 (1983); George L. Haskins, *"Inconvenience" and the Rule For Perpetuities*, 48 MO. L. REV. 451 (1983); Mack A. Player, *The Evidentiary Nature of Defendant's Burden in Title VII Disparate Treatment Cases*, 49 MO. L. REV. 17 (1984).

58. E.g., Frederick H. Lawson (late Professor of Comparative Law, Oxford University), *Limited Liability*, 33 MO. L. REV. 537 (1968); Ronald Maudsley (Professor of Law, University of London), *Escaping the Tyranny of Common Law Estates*, 42 MO. L. REV. 355 (1977).

59. A.B. 1934, LL.B. 1936, Southern California; J.S.D. 1938, Yale; B.D. 1951, Union Theological Seminary.

60. Pike, *Personal Names as Trade Symbols*, 3 MO. L. REV. 93 (1938).

61. *Death in the Desert*, 94 TIME 47, 85 (September 12, 1969).

62. E.g., Alfred F. Conard, *Words Which Will Create an Easement*, 6 MO. L. REV. 245 (1941); Bernard Schwartz, *Habeas Corpus and Court-Martial Deviations from the Articles of War*, 14 MO. L. REV. 147 (1949); Elvis J. Stahr, Jr., *Review of V. GSOVSKI, SOVIET CIVIL LAW*, 16 MO. L. REV. 89 (1951); John Ashcroft, *A Renewed Commitment to State Antitrust Enforcement and a State Policy of Competition: The Missouri Experience*, 46 MO. L. REV. 469 (1981); Conard and Schwartz became na-

contributor who was Dean of Harvard Law School when he wrote and a federal convict when he died.<sup>63</sup> The Law Review has published a dozen articles on legal history, several of them by Professor Charles F. Mullett of the History Department.<sup>64</sup> It has also given space to one of Professor Elmer M. Million's delightful pieces of legal humor<sup>65</sup> and to his valuable survey of community property law.<sup>66</sup> The Law Review can be proud that it published one of Professor Thomas E. Atkinson's articles which sparked the movement for probate reform in this country.<sup>67</sup>

From 1913 through the Summer 1976 number, each number of the University of Missouri Bulletin Law Series and the Missouri Law Review carried a masthead on a page which followed the last leading article and preceded the comments, case notes, and book reviews. From January, 1922 (Law Series No. 23), until Winter, 1965 (30 Mo. L. REV. 102), the following quotation appeared at the bottom of the masthead:

My keenest interest is excited, not by what are called great questions and great cases, but by little decisions which the common run of selectors would pass by because they did not deal with the Constitution or a telephone company, yet which have in them the germ of some wider theory, and therefore of some profound interstitial change in the very tissue of the law.— Oliver Wendell Holmes, *Collected Legal Papers* (1920).

With its restriction to Missouri decisions, the Law Series was unlikely to note cases involving the Constitution or a telephone company. The Law Review, with much broader coverage, could do so. What is the significance of the 1965 dropping of the Holmes quotation? Does it indicate a major policy shift to great questions and great cases involving the Constitution or a telephone company? No announcement was made of any such momentous change. But there are notes in later numbers of the Law Review on cases which do not involve the Constitution or a telephone company. Perhaps the Holmes quota-

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tionally known as professors at the University of Michigan and New York University, respectively; Stahr became Secretary of the Army; Ashcroft is now Governor of Missouri.

63. Landis, *Law and the New Liberties*, 4 Mo. L. REV. 93 (1939). James McCauley Landis, A.B. 1921 Princeton; LL.B. 1924, S.J.D. 1925, Harvard. Mr. Landis, who served as adviser to President Kennedy, was convicted of failure to file federal income tax returns. See 84 TIME 88 (Aug. 7, 1964).

64. E.g. Mullett, *On Englishing the Law of England*, 4 Mo. L. REV. 178 (1939).

65. Million, *Sawyer, et. al. v. Administrator of Injun Joe*, 16 Mo. L. REV. 27 (1951).

66. Million, *Community Property: A Guide for Lawyers and Students of Forty States*, 19 Mo. L. REV. 201 (1954). Elmer M. Million, A.B. 1936, S.W. Okla. St.; LL.B. 1935 Oklahoma; J.S.D. 1938, Yale; New York University, 1947-70; Oklahoma, since 1970.

67. Atkinson, *Brief History of English Testamentary Jurisdiction*, 8 Mo. L. REV. 107 (1943). Thomas Edgar Atkinson, A.B. 1925 North Dakota; LL.B. 1917 Michigan; J.S.D. 1926 Yale; North Dakota 1922-26; Kansas 1926-35; Missouri 1935-45; New York University 1945-60; author, *HANDBOOK OF THE LAW OF WILLS* (1937).

tion was dropped merely to make room for more names on the masthead. And perhaps it will reappear in times of war or depression when the Editorial Board is small.

The Missouri Law Review and its predecessor, the Law Series, have improved legal education in Columbia and contributed useful legal literature to the profession for nearly seventy-three years. They have served the purposes intended by the founders in 1912 and 1934. Without the Missouri Law Review, I might not have won promotion and tenure and the world would have been poorer—for me.

## Appendix A

The faculty chairmen, later "faculty advisers," have been:

- 1936-38 William E. Masterson, S.J.D. Harvard, Editor in Chief;
- 1936-37 Robert L. Howard, S.J.D. Harvard, Case Editor;
- 1937-39 Glenn A. McCleary, S.J.D. Harvard, Case Editor;
- 1940-46 Orrin B. Evans, J.S.D. Yale, Chairman, Editorial Board;
- 1946-57 Hiram H. Lesar, J.S.D. Yale, Faculty Chairman;
- 1957-59 William Douglas Kilbourn, Jr., LL.B. Columbia, Faculty Editor;
- 1959-62 Henry T. Lowe, J.D. Harvard, Faculty Adviser;
- 1962-64 Theodore E. Lauer, S.J.D. Michigan, Faculty Adviser;
- 1964-65 Edwin Brown Firmage, J.S.D. Chicago, Faculty Adviser;
- 1965-67 Hal M. Bateman, J.D. Southern Methodist, Faculty Adviser;
- 1967-69 Grant S. Nelson, J.D. Minnesota, Faculty Adviser;
- 1969-71 Gary L. Anderson, LL.M. Harvard, Faculty Adviser;
- 1971-72 Joan M. Krauskopf, J.D. Ohio State, Faculty Adviser;
- 1972-74 David A. Fischer, J.D. UMC, Faculty Adviser;
- 1974-77 Richard B. Tyler, J.D. Minnesota, Faculty Adviser;
- 1977-78 Lary Lawrence, J.D. California-Berkeley, Faculty Adviser;
- 1978-79 Terry A. Bethel, J.D. Ohio State, Faculty Adviser;
- 1979-80 William B. Fisch, Dr. jur. Freiburg, Faculty Adviser;
- 1980-84 E. Thomas Sullivan, J.D. Indiana, Faculty Adviser;
- 1984-86 Timothy J. Heinsz, J.D. Cornell, Faculty Adviser.

Until 1968 the LAW REVIEW had a non-student business manager. These were:

- 1936 Lee-Carl Overstreet, Professor of Law;
- 1937-43 Owen H. Price (Secretary to the Dean);
- 1943-68 Esther Mason (Secretary to the Dean).

## Appendix B

The student chairmen, designated as editors in chief from 1958 and actually functioning as such after that date, have been:

- 1936-37 Robert A. Winger, Student Case Editor;
- 1937-38 Milton M. Leibowitz, Student Case Editor;
- 1938-39 Ozbert W. Watkins, Jr., Student Case Editor;
- 1939-40 Ralph J. Tucker, Chairman;
- 1940-41 Edward E. Mansur, Chairman;
- 1941-42 Fred L. Howard, Student Chairman;
- 1944-45 T. H. Parrish, Chairman;
- 1945-46 Harold J. Fisher, Chairman;
- 1946-47 James E. Craig, Chairman;
- 1947-48 Guy A. Magruder, Jr. Chairman;
- 1948-49 Murry L. Randall, Chairman;
- 1949 Olen W. Burnett, Chairman;
- 1949-50 Robert L. Smith, Chairman;
- 1950-51 James E. Reeves, Chairman;
- 1951-52 William W. Shinn, Chairman;
- 1952-53 Robert F. Pyatt, Chairman;
- 1953-54 Donald G. Stubbs, Chairman;
- 1954-55 Stephen E. Strom, Chairman;
- 1955-56 Leo E. Eickhoff, Jr., Chairman;
- 1956-57 Charles P. Dribben, Chairman;
- 1957-58 Louis F. Cottey, Chairman;
- 1958 Larry O. Davis, Chairman;
- 1958-59 Larry L. McMullen, Editor in Chief;
- 1959-60 Bernard N. Frank, Editor in Chief;
- 1960-61 Daniel H. Coleman, Editor in Chief;
- 1961-62 David H. Lloyd, Editor in Chief;
- 1962-63 Ross T. Roberts, Editor in Chief;
- 1963-64 Marvin E. Wright, Editor in Chief;
- 1964-65 John T. Martin and Jack L. Whitacre, Editors in Chief;
- 1965-66 Thomas J. Enis and Ronald E. Smull, Editors in Chief;
- 1966-67 James E. Bowles and David M. Roberts, Editors in Chief;
- 1967-68 John L. Oliver, Jr., Editor in Chief;
- 1968-69 Kenneth H. Suelthaus, Editor in Chief;
- 1969-70 Morris J. Nunn, Editor in Chief;
- 1970-71 John R. Phillips, Editor in Chief;
- 1971-72 James D. Edgar, Editor in Chief;
- 1972-73 Scott W. Ross, Editor in Chief;
- 1973-74 C. Brooks Wood, Editor in Chief;
- 1974-75 Howard S. Bishop, Jr., Editor in Chief;
- 1975-76 R. J. Robertson, Jr., Editor in Chief;
- 1976-77 Lawrence G. Crahan, Editor in Chief;



- 1977-78 Andrew See, Editor in Chief;  
1978-79 Richard Earl McLeod, Editor in Chief;  
1979-80 Robert Paul Ballsrud, Editor in Chief;  
1980-81 Ronald L. Blunt, Editor in Chief;  
1981-82 Daniel W. Shinn, Editor in Chief;  
1982-83 Franklin G. Snyder, Editor in Chief;  
1983-84 John J. Miller, Editor in Chief;  
1984-85 John L. Roark, Editor in Chief;  
1985-86 W. Edward Reeves, Editor in Chief.

## Appendix C

## Guy A. Thompson awards:

- 1953 Donald J. Hoy;  
 1954 Stephen E. Strom;  
 1955 Ernst Frederick Beihl;  
 1956 Issac Newton Skelton;  
 1957 Elvin Sidney Douglas, Jr.;  
 1958 Lawrence Owen Davis;  
 1959 E. Mitchell Hough and Larry D. Dingus;  
 1960 Troy Richard Mager and Daniel Coleman;  
 1961 Edwin David Akers, Jr., William Hixon Drummond, and Harold L. Caskey;  
 1962 Ross Roberts;  
 1963 James H. McLarney;  
 1965 William B. Morgan (comment) and Mack A. Player, Michael A. Landrum, Allen F. Brauningner.

	Comments		Casenotes
1967	1st. James E. Bowles	1st.	Hadley E. Grimm
	2nd. David M. Roberts	2nd.	Helen Breidenstein
1968	1st. David E. Rosenbaum	1st.	Devon F. Sherwood
	2nd. Ronald C. Spradley	2nd.	Wallace C. Banta
1969	1st. John H. Calvert	1st.	Richard N. Brown
	2nd. James M. Beck	2nd.	Alan L. Atterbury
1970	1st. James M. Smart	1st.	John C. Monica
	2nd. Edward Sheppard	2nd.	Myron S. Zwibelman
1971	1st. Thomas J. O'Neil	1st.	Dale C. Doerhoff
	2nd. Irwin E. Blond	2nd.	John R. Phillips
1972	1st. David Radunsky	1st.	James E. Edgar
	2nd. Patrick E. Murphy	2nd.	David L. Dennis
1973	1st. William H. Thomas	1st.	James E. Crowe
	2nd. Timothy V. Barnhart	2nd.	Robert F. Deis
1974	1st. Scott W. Ross	1st.	C. Brooks Wood
	2nd. James E. Crowe		
1975	1st. Howard S. Bishop	1st.	Paul D. Barks
		2nd.	Stuart Conrad
1976	1st. Richard L. Adams	1st.	Charles E. Bridges
	2nd. Lathrop Gates	2nd.	David Bayland
1977	1st. Michael E. Kaemmerer	1st.	Linda Castleman-Zia
	2nd. Robert B. Lee	2nd.	Albert W. Cagle, Jr.
1978	1st. Paul V. Herbers	1st.	James Moeller
	2nd. Kathryn M. Krause	2nd.	Mike B. Minton
1979	1st. James Moeller	1st.	Donald Scott
	2nd. Stephen C. Scott	2nd.	Wilbur Tomlinson
1980	1st. Donald Scott	1st.	Milton B. Gardner

	2nd.	Doug Curran	2nd.	Robert E. Pinnell
1981	1st.	Milton B. Gardner	1st.	William J. Powell
	2nd.	Harry Morley Swingle	2nd.	Kent H. Roberts
1982	1st.	Phillip K. Gebhardt	1st.	Sandra Davidson Scott
			2nd.	Maria W. Campbell
1983	1st.	Stephen W. Hubbard	1st.	Franklin G. Snyder
			2nd.	Sandy R. Stigall
1984	1st.	Ketrina C. Bakewell	1st.	John C. Sullivan
	2nd.	Jeffrey A. Burns	2nd.	Jeffrey Bates
1985	1st.	David M. Peterson	1st.	Joe W. Miller
			2nd.	Vicki A. Dempsey
1986	1st.	Gary B. Brewer	1st.	W. Edward Reeves
	2nd.	Karen Lee Schneider	2nd.	Peter F. Daniel