

Hepburu's Dream: The History of the *Indiana Law Journal*[†]

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In 1842 when Judge David McDonald delivered his inaugural lecture to the handful of students who made up the first law class at Indiana University ("University"),¹ he did not anticipate a law school journal. No one had. At that time, even the idea of law schools was a relatively new concept in America. By 1840, just twelve colleges or universities had attempted teaching law as a part of their curriculum, and only eight law programs were in existence at the time of the founding of the law department at Indiana University.² These schools had a combined law enrollment of only 350 students.³

The legal profession itself was still developing its standards and requirements in the mid-1800s and was undergoing a significant transition as it established its place in society.⁴ During the early colonial period in America, lawyers were viewed with suspicion and hostility.⁵ The colonists had come to America to escape the tyranny of the state, and many saw lawyers as instruments of that tyranny. But as the new

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1. Judge David McDonald served as professor of law at Indiana University from 1842 until 1853. In addition to practicing law in both Washington, Indiana and Indianapolis, he served on the Indiana General Assembly, 1833-1834; as prosecuting attorney in Indianapolis, 1834-1837; as Judge of the 10th Judicial Circuit, 1839-1852; and was appointed to the United States District Court, Indiana, in 1864 and served until his death in 1869. *See* JUDGES OF THE UNITED STATES 326-27 (2d ed. 1983); BURTON MYERS, TRUSTEES AND OFFICERS OF INDIANA UNIVERSITY, 1820 TO 1950, at 221-23 (1951). His introductory lecture was delivered as a public lecture in the Indiana University chapel. *See* David McDonald, Introductory Address on the Study of the Law, at the Indiana University chapel (Dec. 5, 1842). No records exist regarding exactly how many students were in the first law class. The law school catalog for 1842-1843 lists six in the senior law class and nine in the junior law class. *See* CATALOGUE OF THE TRUSTEES, OFFICERS, AND STUDENTS OF INDIANA UNIVERSITY 1842-1843, reprinted in INDIANA UNIVERSITY CATALOGUES 1841-1851.

2. *See* ALFRED Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 152 & un.2-3, 153 & n.2 (1921). The law programs in existence in 1842 included: William and Mary founded in 1779, Transylvania in Kentucky in 1799, Harvard in 1817, Yale in 1824, University of Virginia in 1826, Cincinnati in 1833, Dickinson in 1834, and St. Louis University in 1842. *See id.* at 423. Other schools that had established law programs but had suspended them by 1840 were: University of Pennsylvania, Columbia, University of Maryland, Columbian College of Washington, D.C. (later George Washington University), and New York University. *See id.* at 152 & n.3, 423.

3. *See id.* at 152.

4. *See generally* ALBERT J. HARNO, LEGAL EDUCATION IN THE UNITED STATES 18-19 (1953); CHARLES WARREN, A HISTORY OF THE AMERICAN BAR 3-18 (1911).

5. *See* HARNO, *supra* note 4, at 18; WARREN, *supra* note 4, at 4.

settlements prospered, commerce developed and land grew more valuable, written contracts and leases became essential. Disputes decided from the local customs and morés of the colonies were creating a body of common law with precedents that were numerous and complicated. There was a growing need for lawyers to sort out these complex issues. By the latter part of the 1700s, lawyers had begun to assume a position of prominence, and training in the law became more important.⁶

Although the colonists originated from numerous European countries, the English legal system was the tradition most commonly followed. The early need for lawyers was met by those trained in the English Inns of Court,⁷ bringing with them the graded system of solicitors, attorneys, and barristers.

Only a few colleges had been established in the colonial period,⁸ and their curricula did not include teaching in law. There were two ways to prepare for a career in the law. One could try to acquire the necessary knowledge by serving as an assistant in the office of a clerk of the court, or one could arrange for an apprenticeship.⁹ The latter was the method most commonly followed by young men from prominent families. At the conclusion of their university education, they would enter the office of a well-known attorney in their area to read the law under the attorney's tutelage.

But the study of law, even as an apprentice, was difficult. There were few law books in the colonies, most brought from England. By 1776 only thirty-three law books had been printed in America, including eight editions of the same book, and the majority of these were not suitable for training new lawyers.¹⁰ Traditionally the attorneys would have their apprentices read *Blackstone's Commentaries*, *Coke's Institutes*, *Coke on Littleton*, and the works of Grotius, Pufendorf, Bracton, and Hume, and the apprentices would learn the law by association as they worked in law offices.¹¹

No book became more important in the study of law than *Blackstone's Commentaries*.¹² Blackstone was the first to prepare both a comprehensive and comprehensible discussion of the law of England. His volumes were widely read and captured the imaginations of many of the idealistic colonial lawyers who provided the leadership during the development of the new government.

As lawyers gained a prominent place in society, apprenticeship programs grew in popularity. Several lawyers had become known as particularly fine teachers of law, and their programs grew in size. One of these programs, started by Tapping Reeves

6. See HARNO, *supra* note 4, at 18.

7. English planters frequently sent their sons to England to be trained at the Inns of Court. See REED, *supra* note 2, at 36.

8. Harvard College was founded in 1636 in Massachusetts, William and Mary College in 1692 in Virginia, Yale in 1700 in Connecticut, Kings College (Columbia) in 1754 in New York, College of New Jersey (Princeton) in 1746, Brown in 1764 in Rhode Island.

9. See HARNO, *supra* note 4, at 19; WARREN, *supra* note 4, at 164-66.

10. See WARREN, *supra* note 4, at 157.

11. See HARNO, *supra* note 4, at 22; WARREN, *supra* note 4, at 166-67.

12. See WARREN, *supra* note 4, at 177-87; see also HARNO, *supra* note 4, at 21-23; Steve Sheppard, *Casebooks, Commentaries, and Curmudgeons: An Introductory History of Law in the Lecture Hall*, 82 IOWA L. REV. 547, 561-64 (1997).

in 1774, developed into the first law school.¹³ By 1784, the Litchfield Law School, named for its location in Litchfield, Connecticut, included a comprehensive course on jurisprudence. The graduates of the Litchfield Law School gained remarkable prominence, they included 2 vice-presidents, 6 cabinet members, 101 members of the House, 28 members of the Senate, 14 governors, and many others who held leadership roles in public affairs.¹⁴ When it closed in 1833, Litchfield had graduated more than a thousand students,¹⁵ and the study of law as a science rather than as a trade had won wide acceptance.

By the late 1700s, some universities were also beginning to include law as a part of their curriculum. In 1777, Ezra Stiles, president of Yale College, introduced the study of law as a science among the offerings within the school's undergraduate program.¹⁶ In 1779, George Wythe, a judge in the Court of Chancery in Virginia, became the first professor of law and police at the College of William & Mary.¹⁷ In 1790, James Wilson was appointed as law professor at the College of Philadelphia (now the University of Pennsylvania), and David Howell became professor of law at Brown.¹⁸ James Kent was elected to fill the position of professor of law at Columbia in 1793,¹⁹ and Harvard appointed Isaac Parker in 1815.²⁰

Between the late 1700s and the early 1800s, most states developed specific requirements for admission to the bar. Requirements varied depending on the court in which the individual wished to practice. This graded system mandated a length of training as long as seven years for practice in the lower courts, and a shorter period of as long as three years for admission as a counselor.²¹ Many states reduced the period of training for college graduates,²² and subsequently most lawyers were college educated.²³

Just as the legal profession was beginning to achieve prominence in society, it suffered a severe blow with the emergence of Jacksonian Democracy in the 1830s.²⁴ This movement, reflective of the views of President Andrew Jackson, asserted that there must be "no distinction between the rich and poor the great and ignoble"²⁵ to insure that the central government would not become the instrument of the wealthy.²⁶ In 1835 Alexis de Tocqueville published *Democracy in America*²⁷ in which he described an aristocracy of lawyers in America, whose "temper will be eminently

13. See SAMUEL H. FISHER, LITCHFIELD LAW SCHOOL 1774-1883, at 1 (1946).

14. See *id.* at 3-4.

15. See *id.* at 2-4.

16. See WARREN, *supra* note 4, at 341-43.

17. See *id.* at 343-44.

18. See *id.* at 349.

19. See *id.*

20. See CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL 1817-1917, at 2 (1918).

21. See REED, *supra* note 2, at 82-84.

22. See *id.*

23. See Warren, *supra* note 4, at 194-95.

24. See ROBERT V. REMINI, THE LEGACY OF ANDREW JACKSON 8 (1988).

25. *Id.* at 10 (quoting Letter from Andrew Jackson, to L.H. Coleman (Apr. 26, 1824)).

26. See *id.*

27. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA (J.P. Mayer & Max Lerner eds., 1966) (1835).

conservative and will prove antidemocratic.”²⁸ The Jacksonian commitment to democratic rule translated into a fear of the emergence of the aristocracy of lawyers, as de Tocqueville described. The philosophy swept through the country. In an effort to insure membership to the bar from all levels of society, states began to remove the established requirements for law training for membership to the bar.²⁹ Since legal training was no longer required, the reduction of interest in the study of law caused many schools to close their law programs.

Nine years after Indiana University had established its law program in 1842, the Indiana Constitutional Convention passed a provision declaring that: “Every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice.”³⁰ Although forward thinking enough to establish a law school long before other states, the Indiana state legislature reduced the appropriations to the University in 1877. When Baskin Rhodes, then the professor of law, resigned his position to study in Europe, the Board of Trustees closed the Law Department in an effort to save money.³¹

This was to prove an unfortunate decision, since the period between 1865 and 1890 was a particularly creative and pivotal period in law school development.³² Following the Civil War, the need for lawyers increased and law schools expanded their programs and intensified their training. At the same time, the American Bar Association, created in 1878, had among its primary goals the elevation of standards within the legal profession.³³ It was this movement that brought about an acceleration in the development of law schools throughout the country. By 1890, law schools that had been virtually uniform in their offerings and quality at the end of the Civil War,³⁴ differed significantly in their programs, curriculum, and entrance requirements.³⁵ Harvard had revolutionized legal education with the introduction of the case method and casebooks,³⁶ replacing traditional lectures and *Blackstone’s*

28. *Id.* at 244.

29. See REED, *supra* note 2, at 86-90.

30. IND. CONST. art. 7, § 21 (repealed 1932).

31. THEOPHYLUS A. WYLIE, INDIANA UNIVERSITY, ITS HISTORY FROM 1820, WHEN FOUNDED, TO 1890, at 139 (1890).

32. See ALFRED Z. REED, PRESENT-DAY LAW SCHOOLS IN THE UNITED STATES AND CANADA 9 (1928).

33. See ROBERT STEVENS, LAW SCHOOL, LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S, at 27-28; THE AMERICAN BAR ASSOCIATION 26 (1878). The American Bar Association grew out of a speech given by Lewis Delafield, at the 1877 meeting of the American Social Science Association (“ASSA”). Delafield, the ASSA president, argued that the states’ laissez-faire approach that allowed easy admission to the bar suggested that law was a trade rather than, as he believed, a public calling. He called for standards that would require all applicants to learn the principles of law in a school, then to spend a year in an office, and finally to pass an examination given by an impartial panel appointed by the courts.

34. See REED, *supra* note 2, at 154.

35. See *id.* at 13-14.

36. See Sheppard, *supra* note 12, at 598-99 & n.286. Christopher Columbus Langdell introduced the case method to his Contracts class at Harvard in 1870. Langdell’s casebook, *Selection of Cases on the Law of Contracts* was first published in 1871. James Barr Ames, also of Harvard, adapted Langdell’s idea into the modern casebook developed around principles of law. See CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL 1817-1917,

Commentaries in law teaching. In 1887, a group of students at the Harvard Law School published the first academic law review.³⁷ By the time Indiana University reopened its School of Law ("Law School") in 1889,³⁸ legal education was entering an entirely different era.

In 1899 during a meeting of the ABA Section of Legal Education, a resolution was passed recommending the formation of an auxiliary organization to the ABA that would "bring the reputable law schools of the country into closer relations with each other and with the Section of Legal Education"³⁹ In 1900, representatives from thirty-five law schools met in Saratoga Springs, New York to form the Association of American Law Schools ("AALS").⁴⁰ William P. Rogers, dean of the Indiana University School of Law, served on the first executive committee.⁴¹ Law schools were eligible for membership in the AALS only if they complied with the standards established by the group, including prescribed entrance requirements, length of course, degree requirements with graduation based upon examination, and law library holdings.⁴² This marked the beginning of the collective effort by law schools themselves to raise the standards of legal education in the United States.

I. THE STRUGGLE TO BEGIN

In many ways, the story of the *Indiana Law Journal* is similar to those of other state schools which had to struggle to get an innovative and expensive idea funded. This story begins with Charles McGuffey Hepburn who came to teach at the Indiana University School of Law in 1903.⁴³ Born in Ohio and schooled at the University of

supra note 20, at 81-82.

37. See Michael I. Swygert & Jon W. Bruce, *The Historical Origins, Founding, and Early Development of Student-Edited Law Reviews*, 36 HASTINGS L.J. 739, 763 (1985). Professional legal periodicals had existed in America since the early 1800s. But they included largely case reports and general news about the profession. It was not until 1852 with the publication of the *American Law Register* that scholarly articles became a part of legal literature. See *id.* at 755-56.

38. See Colleen K. Pauwels, *Inferior to None*, BILL OF PARTICULARS, Fall 1992, at 15, 19. Indiana University's law program reopened as the School of Law with David Banta as its dean. In keeping with the standard among law schools at that time, it was again an undergraduate program, the course of study was two years, each year with two terms, fall and winter. See *id.* at 18. In 1890, a third summer term was added to correspond to the University's schedule. See *id.* That same year, Tamar Althouse was admitted to the Law School and became the first woman to attend the Law School and graduated in 1892. See *id.* Before the turn of the century, three other women would receive their LL.B. degrees from Indiana University. See *id.*

39. AMERICAN BAR ASS'N, REPORT OF THE TWENTY-SECOND ANNUAL MEETING OF THE AMERICAN BAR ASSOCIATION 565 (1899).

40. See EDSON R. SUNDERLAND, HISTORY OF THE AMERICAN BAR ASSOCIATION AND ITS WORK 47 (1953).

41. See PROCEEDINGS OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS 1900-1905, at 1 (n.d.).

42. See *id.*

43. See ASSOCIATION OF AMERICAN LAW SCHOOLS, DIRECTORY OF TEACHERS IN MEMBER SCHOOLS 42 (1927).

Virginia Law School, Hepburn practiced law for twenty-two years in Cincinnati and served as a lecturer at the Cincinnati Law School.⁴⁴ But academia was in his blood: his father was a college president, his mother a teacher, and his grandfather the creator of the McGuffey readers. When offered a position on the faculty at the Indiana University School of Law, Hepburn accepted enthusiastically.⁴⁵

Hepburn taught in the areas of procedure and torts and had already written one of the major treatises on code pleading before he came to Indiana.⁴⁶ He was active in the American Bar Association, holding the office of secretary of the Section on Legal Education for many years. He was involved in the administration of the Law School even before he became dean, when in 1905 Law School Dean George Reinhard suggested Hepburn send his ideas about how to improve the Law School to Indiana University President Bryan.⁴⁷ In a series of letters, Hepburn urged President William Lowe Bryan to increase the funding for the Law School;⁴⁸ expand the number of law faculty; initiate J.D. and LL.M. degrees; and improve the law library.⁴⁹

In the early 1900s Indiana University experienced more than the usual difficulty with the legislature and was struggling to maintain the status quo. Even prior to World War I, President Bryan and the Board of Trustees were unable to convince the legislature to commit to funding that would keep the University competitive with other state universities. It was during these difficult economic times that Hepburn first brought his idea of a law review to the Board of Trustees.⁵⁰ Although favorably disposed to the idea of a law review, the Trustees were not able to find the funding for it.

In 1918 Hepburn had become Dean of the Law School,⁵¹ and by this time he had several additional goals for the Law School. Among these was a post-graduate clinic year to be conducted in Indianapolis for new law graduates of Indiana and other law schools who planned to practice in Indiana.⁵² As he planned this project, Hepburn

44. *See id.*

45. *See* Letter from Charles M. Hepburn to William L. Bryan, President, Indiana University (Nov. 18, 1903) (on file with the Indiana University Archives).

46. *See* CHARLES M. HEPBURN, *THE HISTORICAL DEVELOPMENT OF CODE PLEADING IN AMERICA AND ENGLAND* (1897).

47. *See* Letter from Charles M. Hepburn, Professor of Law, Indiana University School of Law, to William L. Bryan, President, Indiana University (Dec. 22, 1905) (on file with the Indiana University Archives).

48. *See id.* (stating that "[t]he Law School of Indiana University stands at the threshold of a great opportunity But I am no less impressed with the fact that while we have this opportunity, we are not able, as things now stand with us, to take advantage of it. We are something like a manufacturing plant which has not the capital necessary to do the business offered it.").

49. *See id.*

50. *See* Letter from William L. Bryan, President, Indiana University, to Charles M. Hepburn, Professor of Law, Indiana University School of Law (June 21, 1916) (on file with the Indiana University Archives).

51. Hepburn served as Acting Dean for one year beginning in 1917 after a stroke incapacitated Dean Hogate. When Hogate was unable to recover fully from the stroke, Hepburn was appointed dean in 1918.

52. *See* Letter from Charles M. Hepburn, Professor of Law, Indiana University School of Law, to William L. Bryan, President, Indiana University (June 29, 1916) (on file with the

spoke to many attorneys around the state, and although this project also went unfunded by the Board of Trustees, Hepburn won the confidence and support of several well placed members of the bar.

While his efforts to get approval for the law journal and the clinic year continued, Dean Hepburn also worked to gain support within the Indiana bar for a change in the Indiana Constitution that still granted bar membership to any "person of good moral character [who is] a voter."⁵³ Indiana was the only state that did not require any prescribed law training or an examination as a criteria for bar membership. In 1921, the American Bar Association adopted a resolution recommending specific standards for sound legal training as well as a required bar examination following law school graduation.⁵⁴ After substantial inquiry and investigation, the American Bar Association announced a tentative list of approved schools, with "Class A" rating for those schools complying with the standards that were established in 1921.⁵⁵ Indiana University was among the 39 "Class A" law schools named from the 146 law schools in the United States.⁵⁶

In 1921, Dean Hepburn wrote to President Bryan telling him that he planned to step down from the deanship in "three or four years" to return to teaching and writing.⁵⁷ He told Bryan that before he resigned the deanship, he wanted to accomplish four things: to raise entrance requirements and the quality of teaching at the Law School; to win the respect and support of the practicing bar in the state; to begin a post-graduate legal clinic year; and to found an "Indiana Law Review."⁵⁸ But by 1922, after numerous other attempts for approval, Hepburn saw that funding

Indiana University Archives). The clinic year was developed out of Hepburn's work with AALS. Law firms were beginning to speak of the failure of law schools to train their students in the law and procedure of a particular jurisdiction. The clinic year was to provide for new graduates who planned to practice in Indiana, an opportunity to work with faculty, practicing attorneys and judges to put the theory to practice. As a part of his plan, a legal aid clinic would be developed to provide opportunities for the young lawyers to assist with the legal problems of the poor.

53. IND. CONST. art. 7, § 21 (repealed 1932).

54. See AMERICAN BAR ASS'N, REPORT OF THE FORTY-FOURTH ANNUAL MEETING OF THE AMERICAN BAR ASSOCIATION 38-39 (1921). "Every candidate for admission to the Bar shall give evidence of graduation from a law school complying with the following standards: (1) prior to admission, each student must complete at least two years of study in a college; (2) a law course of full-time study three years in duration; (3) an adequate library; and (4) a sufficient number of full time faculty." The resolution further recommended that there be "an examination by public authority" prior to admission to the bar. *Id.* at 38.

55. See *Law Schools Meet Association Standards*, 9 A.B.A. J. 728 (1923).

56. See *id.*; *University's Professional Schools Ranked Among Best*, INDIANA ALUMNUS, Jan 12, 1924, at 3.

57. Letter from Charles M. Hepburn, Dean, Indiana University School of Law, to William L. Bryan, President, Indiana University 2-3 (July 26, 1921). "But while I did not seek administrative work, I have in fact taken it up, and with a definite purpose . . . The thing that attracts me in the administrative work of this law school . . . is the wonderfully fine opportunity in the state of Indiana and in the Indiana University School of Law for a really great result in legal education." *Id.*

58. See *id.* at 4-5.

from the University was never going to be enough to enable him to begin his "law review."

Funding a law review was not an easy proposition for any law school. By 1922, thirty-nine law schools had established law reviews, but many others that had attempted a law review, had been forced to stop publication. In 1891, the State University of Iowa's College of Law became the first state school to begin a law review but it was discontinued in 1901 and was not reinstated until 1915.⁵⁹ The University of Michigan attempted a law journal in 1892 but relied too heavily on funding from subscriptions.⁶⁰ The school ceased publication of the *Michigan Law Journal* in 1898, but in 1902 began the *Michigan Law Review*.⁶¹ Unable to match the number of alumni subscribers and the endowment of larger private schools, state schools struggled to find funding for what was seen by the legislatures and the universities as an unnecessary undertaking.

On the other hand, some schools sought outside funding for their law review. The West Virginia College of Law produced a cooperative publication with the West Virginia Bar Association.⁶² The *West Virginia Law Quarterly and the Bar* started as a bar association publication, but in 1917 joined with the West Virginia College of Law.⁶³ The faculty and students of the law school were to do the editorial work and the publication was funded by the bar association.⁶⁴ The University of Minnesota began its law review in 1917, partially supported by the Minnesota Bar Association together with law school funding. After a few years, however, it was struggling financially, and in 1922 the Minnesota State Bar Association voted to adopt the law review as the journal of the Minnesota State Bar Association,⁶⁵ supporting it entirely by the dues of its members.⁶⁶

The Indiana State Bar Association previously had published a journal called *Indiana Law Journal*. Issued monthly beginning in January of 1898, it was sent to all members of the Indiana State Bar Association ("ISBA") and to lawyers ISBA

59. It was reinstated in 1915 as the *Iowa Law Bulletin*. It was so well-funded by the law school that, as a service to the bar, it was sent free of charge to all the lawyers in Iowa. The *Bulletin*, therefore, had very few paid subscribers. See Letter from H. C. Jones, Dean, Iowa School of Law, to Charles M. Hepburn, Dean, Indiana University School of Law 1-3 (Oct. 22, 1924) (on file with the Indiana University School of Law Library); 1 IOWA L. BULL. 29 (1915).

60. This is apparently what occurred with the first attempt of the *Michigan Law Review*. A letter dated September 23, 1898, from the "ex-Editor" of the *Michigan Law Journal*, R.T. Speed, reads: "The Michigan Law Journal would be alive today if all our patrons had acted as fairly as yourself. Our inability to collect subscriptions has left us several hundred dollars in debt . . ." 7 MICH. L.J. Letter (1898).

61. See *id.*; *Announcement*, 1 MICH. L. REV. 58 (1902).

62. See *Editorial Notes*, 25 W.VA. L.Q. & B. 56-57 (1917).

63. *Id.*

64. See *id.*

65. See 7 MINN. L. REV. 40 (1922-23).

66. Several other state law schools have funded their journals in the same way. Nebraska started out independently and then joined with the bar association in 1924. 3 NEB. L. BULL. 161 (1924). Arkansas started as an independent journal in 1946. By the third issue the law school had joined with their bar association to publish the journal.

hoped to attract as members.⁶⁷ Each issue was forty to fifty pages long and was a combination of short essays, bar news, news of other jurisdictions, and a monthly digest of cases from the United States District Court in Indiana and the Supreme and Appellate Courts of Indiana.⁶⁸ The *Journal* was published for only eighteen months and ceased in June 1899.⁶⁹

With these models in mind, Hepburn took the idea to the practicing bar. He sought out Charles M. McCabe, an attorney from Crawfordsville and then-President of the Indiana State Bar Association. Hepburn, who was also active in the ISBA, presented the idea as a means of strengthening the relationships between the Law School and the practicing bar. The plan was to have a bar association funded review that would be edited by a faculty member⁷⁰ with the help of third-year students. McCabe was supportive,⁷¹ but the University still had to approve the half-time faculty member who would serve as the editor. As enthusiastic as both the University and bar were about the idea, Hepburn was still unable to gain the necessary funding to launch the publication.

Also of concern to state law schools in general was the issue of their law review's place in this new enterprise. Harvard, Yale, and Columbia had established themselves as the authoritative reviews of Anglo-American law. Other schools realized the importance of having a law review, but felt that they must find a unique niche to justify the endeavor. Most state schools found their justification by specializing in the law of their home state, some even initially confining their scope to a review of their state's law.⁷²

Hepburn tried several different means to persuade the University to fund the journal. In 1923, he combined his idea of the law review together with the plan for a post-graduate clinic year in Indianapolis.⁷³ Hepburn brought his idea to the Board

67. See 1 Ind. L.J. 93 (1898).

68. See *id.*

69. During that time, the *Journal* published Volume 1 (January 1898) through Volume 3 (June 1899).

70. In the early years, there was a variation in the way law journals were administrated. The larger law schools, like Harvard, Yale, and Columbia had completely student-run journals, but this was much more difficult for smaller schools who not only had fewer students, but who at this time had primarily undergraduate programs. To provide the best foundation for their law reviews, many of these schools initiated their journals with a faculty editorial board assisted by a student board.

71. See Letter from C.M. McCabe, President, ISBA, to Charles M. Hepburn, Dean, Indiana University School of Law (July 19, 1922) (on file with the Indiana University School of Law Library).

72. See, e.g., 1 IOWA L. BULL. 29 (1915). The *Iowa Law Bulletin* (precursor to the *Iowa Law Review*) explained that "[t]he *Bulletin* does not purport to be a review of current decisions throughout the common law world, nor even of the important cases decided in the United States. This field it believes to be carefully and adequately covered by older publications The purpose of the *Bulletin* is to present scientifically the law of Iowa." *Id.*; see also 1 MICH. L. REV. 58 (1902) (stating that "[t]here are, of course, several excellent legal journals already in the field, but no one of them serves quite the purpose which is the aim of this one. There is, moreover, in the great northwest, a field essentially unoccupied.").

73. See Letter from Charles M. Hepburn, Dean, Indiana University School of Law, to James W. Fesler, President, Indiana University Board of Trustees (Feb. 17, 1923) (on file

of Trustees, after eliciting support from the bar association.⁷⁴ The Trustees heard Hepburn's plan, but since the plan still required the half-time commitment of a faculty member in a faculty already thought to be too small, the Trustees again did not approve the plan.

By 1924, the prospect of his law review began to look even more remote when two members of the Indiana University law faculty, Paul McNutt and Merrill Schnebly, applied for leaves of absence to return to Harvard for advanced degrees. This was a common practice among aspiring faculty as they tried to advance within legal education, and it often signaled that they would soon move to a teaching position at another school.

Paul McNutt had joined the law faculty in 1917 after graduating from Harvard Law School and working for a short time at his father's law firm in Martinsville, Indiana.⁷⁵ McNutt had attended Indiana University as an undergraduate and had been a prominent member of the student body as the president of the Student Union Board, the Editor-in-Chief of the *Indiana Daily Student*, and president of the drama club, *Strut and Fret*.⁷⁶ Shortly after his appointment to the law faculty, he joined the Army where he served in the artillery in World War I, rising to the rank of Lieutenant-Colonel.⁷⁷ McNutt returned to the University in 1919.⁷⁸ Handsome and charismatic, McNutt was a favorite of President Bryan, and in addition to teaching, he was active in alumni affairs and fund raising for the University.⁷⁹

Hepburn saw that without an increase in the number of the law faculty, there was little hope for the law review.⁸⁰ But when all looked lost, he received a letter from Willis E. Roe, an attorney, member of Indiana General Assembly, and active member of the ISBA.⁸¹ Roe asked Hepburn if he was interested in exploring the possibility of the Law School editing a new journal the ISBA was planning.⁸²

with the Indiana University School of Law Library).

74. Letter from Charles M. Hepburn, Dean, Indiana University School of Law, to C.M. McCabe, President, ISBA (Apr. 16, 1923) (on file with the Indiana University School of Law Library).

75. See *DICTIONARY OF AMERICAN BIOGRAPHY 1951-1955*, at 459 (John A. Garraty ed., Supp. V 1977).

76. See *id.*

77. See *id.*

78. See *id.*

79. See Letter from Paul McNutt, Professor of Law, Indiana University School of Law, to William L. Bryan, President, Indiana University (Oct. 3, 1922) (on file with the Indiana University Archives).

80. See Letter from Charles M. Hepburn, Dean, Indiana University School of Law, to Raymond J. Heilman, Professor of Law, University of Notre Dame Law School 2 (Mar. 22, 1924) (on file with the Indiana University School of Law Library).

81. See Letter from Willis E. Roe to Charles M. Hepburn, Dean, Indiana University School of Law (Aug. 18, 1924) [hereinafter August 18, 1924 Letter] (on file with the Indiana University School of Law Library).

82. See *id.* "At the last meeting of the Indiana State Bar Association, Frank Hatfield, George H. Batchlor and myself were appointed a committee to arrange for starting the publication of a State Law Journal. Prior to the appointment of this committee there was a resolution passed which provided that fifty cents of the dues paid by the Bar Association should go toward the defraying of expenses of this publication. Several have suggested that

Hepburn was delighted, but Roe's concept for the publication was not the same as Hepburn's as to content and timing. Roe envisioned a journal that would be "made up largely from clippings from other law journals," "some good ads from leading law book firms," "issued bi-monthly," and a journal that would look something like the *Hoosier Health Herald* or the *Masonic News*, newsletters which Roe already edited.⁸³ Hepburn sent a copy of the *Journal of the American Judicature Society*⁸⁴ to Roe to try to raise the committee's expectations for the law journal.⁸⁵

Despite the difference in opinion, Hepburn was hopeful that something would come out of this alliance. But after a few months, Hepburn began to see that the money allocated by the ISBA was not enough to produce the journal that he had in mind.⁸⁶

Once again Hepburn took his proposal to the Board of Trustees to attempt to get enough additional funding from the University to make the journal what he wanted it to be.⁸⁷ But after talking it over with James Fesler, President of the Board of Trustees, he was cautioned not to commit to anything that would cost more than the ISBA was willing to pay.⁸⁸ At the same time Willis E. Roe, single-minded about his plan, would have nothing to do with Hepburn's quarterly publication. "If we can reach the boys monthly with propaganda that has to do with the increasing of membership I believe that the membership can be more than doubled before the next annual meeting."⁸⁹ And Roe sent the twelve-page *Masonic News* once again to Hepburn.⁹⁰

When Hepburn saw that he was not making progress with Roe, he began to write to the other members of the ISBA Law Journal Committee for support.⁹¹ While

this journal might be under the [auspices of the Indiana University] Law School" Letter from Willis E. Roe to Charles M. Hepburn, Dean, Indiana University School of Law (Aug. 18, 1924) (on file with the Indiana University School of Law Library); 1924 IND ST. BAR ANN. PROC. 41-42.

83. August 18, 1924 Letter, *supra* note 81.

84. The *Journal of the American Judicature Society* was a publication of a society that was made up of members of both the practicing bar and law faculty. Each issue had several articles usually on subjects regarding law reform or issues of current interest in law, together with news of the organization. During this period it was 32 pages in length.

85. See Letter from Charles M. Hepburn, Dean, Indiana University School of Law, to Frank Hatfield, ISBA Law Journal Committee (Aug. 22, 1924) (on file with the Indiana University School of Law Library).

86. See Letter from Charles M. Hepburn, Dean, Indiana University School of Law, to Frank Hatfield, ISBA Law Journal Committee (Oct. 13, 1924) (on file with the Indiana University School of Law Library).

87. See *id.*

88. See Letter from James Fesler, President, Indiana University Board of Trustees, to Charles M. Hepburn, Dean, Indiana University School of Law (Oct. 25, 1924) (on file in the Indiana University School of Law Library).

89. Letter from Willis E. Roe, ISBA Law Journal Committee, to Charles M. Hepburn, Dean, Indiana University School of Law (Oct. 29, 1924) (on file with the Indiana University School of Law Library).

90. See *id.*

91. See, e.g., Letter from Charles M. Hepburn, Dean, Indiana University School of Law, to Frank Hatfield, ISBA Law Journal Committee (Nov. 25, 1924) (on file with the Indiana

Hepburn was trying to garner support for a more substantial journal, Roe pushed to get his publication underway "for propaganda purposes in connection with legislation matters . . . [and] to get new members."⁹²

Hepburn was out of town when the ISBA committee held its next meeting.⁹³ When Hepburn returned he received a letter from Roe telling him of the committee's decision.⁹⁴ They decided that the publication was to be called the *Indiana Law Journal*, after the short-lived Indiana bar publication from the 1890s;⁹⁵ that it was to be a monthly publication of eight pages in length; and that it was to begin in January 1925 (one month from then).⁹⁶ The *Journal* was to include a "few of the syllabus [sic] of some of the most interesting cases which involve new principals of law."⁹⁷ Roe added that he was familiar with a company that specializes in this kind of journal, explaining that "[t]hey have a number of pages of good jokes and lively topics in plate matter which will increase the size of the journal at very little extra expense."⁹⁸

Hepburn was horrified, but knowing he would get nowhere with Roe, he wrote to the others on the committee and to James Fesler, President of the Board of Trustees. He expressed his concern that the law journal committee, and specifically Mr. Roe, was making plans that would be detrimental to the success of the *Journal*.⁹⁹

Hepburn's effort to turn around the committee began to bear fruit by February 1925. But in order to insure that the Board understood his plan for the journal, he wrote to Fesler itemizing the points he thought were essential to ensure a quality law journal.¹⁰⁰ A committee of three "law" members of the Board of Trustees, including

University School of Law Library).

92. Letter from Willis E. Roe, ISBA Law Journal Committee, to Charles M. Hepburn, Dean, Indiana University School of Law (Nov. 20, 1924) (on file with the Indiana University School of Law Library).

93. See Letter from Charles M. Hepburn, Dean, Indiana University School of Law, to Willis E. Roe, ISBA Law Journal Committee (Dec. 4, 1924) (on file with the Indiana University School of Law Library).

94. See Letter from Willis E. Roe, ISBA Law Journal Committee, to Charles M. Hepburn, Dean, Indiana University School of Law (Dec. 12, 1924) [hereinafter December 12, 1924 Letter] (on file with the Indiana University School of Law Library).

95. See *supra* text accompanying notes 67-69.

96. See December 12, 1924 Letter, *supra* note 94.

97. *Id.*

98. *Id.*

99.

It seems to me also that with a good start this year the Indiana Law Journal ought to develop into a publication of real influence in the profession throughout the State. But it is important to make the right start. I have a good deal of doubt about the wisdom of the suggestion which comes from Mr. Roe . . . I feel that there is no better way to kill this opportunity than to start on the basis which this suggestion would imply.

Letter from Charles M. Hepburn, Dean, Indiana University School of Law, to James Fesler, President, Indiana University Board of Trustees (Dec. 24, 1924) (on file with the Indiana University School of Law Library).

100.

I shall send you in a day or two, an outline of the points which I have been

James Fesler, Benjamin F. Long, and Ira Batman, met with the ISBA Law Journal Committee members Willis E. Roe, Frank Hatfield, George H. Batchelor, and Judge Lex Kirkpatrick.¹⁰¹

Hepburn brought the *Journal of the American Judicature Society* to a faculty meeting, as an example of what was about to be proposed to the Board of Trustees. The faculty expressed their opposition to a journal that was not on a par with general law journals like the *Minnesota Law Review*.¹⁰² That same week, Professor Schnebly brought Dean Hepburn a resolution approved by himself and Professors McNutt, Treanor, and Willis stating that the faculty opposed the *Journal* as proposed by Hepburn and wanted the Trustees to consider a journal "under the untrammelled control of this faculty."¹⁰³

Hepburn had unsuccessfully argued with the Trustees for ten years for such a journal. He feared that this would kill the deal with the Indiana State Bar Association, and subsequently for any journal, since the Board of Trustees did not have the money to fund such a journal. He prepared a proposal for the *Journal* as he originally planned, attaching the faculty resolution.¹⁰⁴

On March 13, 1925, George H. Batchelor, of Indianapolis, who represented the ISBA, appeared before the Board of Trustees and presented a plan for the publication of a law journal under the joint editorship and control of the Indiana University School of Law and the Indiana State Bar Association. The Board of Trustees met and agreed to

enter into a contract with the Indiana State Bar Association for the publication of a law magazine, and that Dean Hepburn be requested to edit the first number. Judge Batman was appointed as a committee of one to confer with the President and Secretary of the Indiana State Bar Association and the special law journal committee concerning the contract.¹⁰⁵

urging upon the committee with reference to the quality of this publication. The out-look for something of high quality is better than it was. But I think that it will be very well at the conference, to have some specific features clearly brought out in the conference, if one is held, and put into the agreement between the University and the State Bar Association.

Letter from Charles M. Hepburn, Dean, Indiana University School of Law, to James Fesler, President, Indiana University Board of Trustees (Feb. 9, 1925) (on file with the Indiana University School of Law Library).

101. See Letter from Charles M. Hepburn, Dean, Indiana University School of Law, to Frank Hatfield, ISBA Law Journal Committee (Feb. 11, 1925) (on file with the Indiana University School of Law Library).

102. The *Minnesota Law Review* was a monthly publication 78 to 98 pages in length. It included lengthy articles and student notes, and had sections covering recent cases and book reviews.

103. Letter from Paul McNutt, Professor of Law, Indiana University School of Law, to President and Board of Trustees, Indiana University (Mar. 17, 1925) [hereinafter March 17, 1925 Letter] (on file with the Indiana University Archives).

104. See Letter from Charles M. Hepburn, Dean, Indiana University School of Law, to James Fesler, President, Indiana University Board of Trustees (Feb. 13, 1925) (on file with the Indiana University School of Law Library).

105. INDIANA UNIVERSITY, INDIANA UNIVERSITY BOARD OF TRUSTEES MINUTES 110 (Mar.

On March 17, 1925, Professor McNutt sent a letter to President Bryan and the Board of Trustees, regarding his vision for the Law School and his opposition to the *Journal*.¹⁰⁶ It is unclear whether McNutt submitted this proposal at the request of President Bryan, but from the tone of the letter, McNutt soon expected to be the dean:

I wish to present certain facts and a possible solution of the problems which have arisen in connection with the law school [He included a request for better salaries, more faculty, funding for the law library. He then continued:] The other perplexing question is whether the editing and publishing of a law journal should be added to the duties of the law faculty. The views of the majority of the faculty have been set forth in a resolution, a copy of which is attached hereto. The members of the faculty are anxious to promote better relations between the active bar and the law school. They will cooperate to the fullest extent in this or any other movement leading to better relations.

However, the publication of such a journal by this faculty seems inadvisable at this time If the reorganization of the law school were complete, and a full faculty in residence, then the work of publishing a law journal might be undertaken with hope of success. It is not likely that such conditions will be satisfied until the scholastic year 1927-28. In view of the facts, it would seem advisable to postpone such publication until that time.¹⁰⁷

Bryan did not fund McNutt's proposal,¹⁰⁸ and the Board of Trustees continued the negotiations with the ISBA for the *Journal*. While Hepburn saw that his deanship was drawing to a close, he worked tirelessly to keep the negotiations going.¹⁰⁹

By April, what was obvious became official. Seeing that Hepburn had lost the confidence of his faculty, and viewing McNutt as a worthy successor to the deanship, President Bryan offered Dean Hepburn an appointment as Research Professor of Law if he would step down as dean, sixty-seven-year-old Hepburn accepted the proposal,¹¹⁰ but continued to work for the *Journal* until the end of his term as dean.

14, 1925) (on file with the Indiana University Archives). "The Board met pursuant to adjournment. Members present were: President J.W. Fesler, Vice President S.E. Smith, Messrs. Batman, Long, and Niezer, and Mrs Teter. On motion of Mr. Long, seconded by Dr. Smith, it was ordered." *Id.*

106. See March 17, 1925 Letter, *supra* note 103.

107. *Id.*

108. See Letter from William L. Bryan, President, Indiana University, to Paul McNutt, Professor of Law, Indiana University School of Law (Mar. 30, 1925) (on file with the Indiana University Archives).

109. See Letters from Charles M. Hepburn, Dean, Indiana University School of Law, to Ira Batman, Board of Trustees, Indiana University (Mar. 23, 1925 and May 26, 1925) (on file with the Indiana University School of Law Library); Letters from Charles H. Hepburn to Judge Lex Kirkpatrick, ISBA (Mar. 23, 1925 and May 26, 1925) (on file with the Indiana University School of Law Library); Letters from Charles H. Hepburn to George Batchelor, ISBA Law Journal Committee (Mar. 23, 1925, Apr. 6, 1925, and May 26, 1925) (on file with the Indiana University School of Law Library); Letter from Charles M. Hepburn to Willis E. Roe, ISBA Law Journal Committee (June 20, 1925); Letter from Charles M. Hepburn to H. E. Randall, Vice President, West Publishing Co. (July 31, 1925) (on file with the Indiana University School of Law Library).

110. Letter from Charles M. Hepburn, Dean, Indiana University School of Law, to William

The negotiations were slow, and Roe was anxious to get a journal out to boost membership before the annual meeting of the ISBA in July. The *Indiana Law Journal*, edited by Roe, was published in June 1925.¹¹¹ At the July meeting, the ISBA directed the Law Journal Committee to continue publishing the *Journal*, but to negotiate with the Indiana University Board of Trustees "until such time as some favorable co-operating connection could be made."¹¹² By the end of July, the negotiations had not resulted in a successful alliance, and Hepburn stepped down as dean without an agreement on the *Journal* having been reached.

After Hepburn left the deanship, the negotiations slowed to a stop. McNutt had turned his attention to running the Law School and his many other activities. He made no secret of his political aspirations, and as past president of the Indiana University Alumni Association, and active in the American Legion, he was a frequent speaker throughout the state.

In October of 1925, George Dix, then the president of the ISBA wrote to Dean McNutt asking for his recommendation for "a lawyer, preferably a young man who has the ability to edit the *Journal* and also act as Secretary and Treasurer [of the *Journal*]." ¹¹³ Dix told McNutt that he would pay the individual a salary of \$1,000 as well as pay for a stenographer.¹¹⁴

Dean McNutt suggested that Dix divide the \$1,000 in half and recommended Professor Walter Treanor for secretary-treasurer of the *Indiana Law Journal*, and newly appointed Assistant Professor Paul Sayre for editor of the *Journal*, and that they each be given a stenographer.¹¹⁵ McNutt commented further:

If the Association desires the type of journal mentioned by Mr. Roe, then the members of the Law School Faculty do not wish to appear responsible for the publication. We are willing to do the work and Mr. Sayre is willing to act as editor, provided the publication appears as a publication of the Indiana State Bar Association, for which the Bar Association alone is responsible. On the other hand, if the Bar Association wishes a publication on the plan of the *American Bar Association Journal* (smaller, of course) then the members of the Faculty are willing to take the entire responsibility. To put the comparison bluntly, Mr. Roe wants a monthly newspaper, which Mr. Sayre is willing to edit as a newspaper of the Indiana State Bar Association. The suggestion is made that it would be better to publish a monthly or quarterly state law Journal worthy of the name. It is possible that a publication of the first type might grow into a publication of the second type through the years. Then the transition would not arouse the ire of those who wish a monthly newspaper.¹¹⁶

L. Bryan, President, Indiana University (Apr. 24, 1925) (on file with the Indiana University Archives).

111. 1 IND. L.J. 1 (1925).

112. INDIANA STATE BAR ASSOCIATION, 1925 PROCEEDINGS 103 (1925).

113. Letter from George Dix, President, ISBA, to Paul McNutt, Dean, Indiana University School of Law (Oct. 15, 1925) (on file with Indiana University School of Law Library).

114. See *id.*

115. See Letter from Paul McNutt, Dean, Indiana University School of Law, to George Dix, President, ISBA (Oct. 17, 1925) (on file with the Indiana University School of Law Library).

116. *Id.*

McNutt, who apparently had adopted Hepburn's point of view by this time, then concluded "[t]he field of national legal periodicals is over-crowded. There is a real need for state publications, devoted to discussions of the law or of the law directly affecting that state. Such a publication would be of real service to the lawyers of the State."¹¹⁷ McNutt and Dix met with the ISBA Board of Managers on October 29, 1925, and the deal was struck.¹¹⁸

Initially the *Journal* was published nine times a year, monthly from October through June, with the October issue printing the *Proceedings of the Indiana State Bar Association*. The first volume, which began in the middle of the academic year, included only six issues. There was a faculty editorial board, a student board of editors, and an advisory board from the ISBA.

The first issue of the *Indiana Law Journal* as a cooperative effort between the Law School and the Indiana State Bar Association was published in January 1926.¹¹⁹ It was sixty-four pages in length. Its lead article, *Effect of an Unconstitutional Statute*, was written by Oliver P. Field, a distinguished scholar and member of the Indiana University Department of Political Science, who had written widely in other law reviews.¹²⁰ One other substantive article was included, *Some Fundamental Legal Concepts* by the Law School's Professor Hugh Evander Willis.¹²¹ The ISBA material included a tribute to the resigning president of the ISBA, George H. Batchelor,¹²² *Announcements of ISBA*,¹²³ and *News of Bench and Bar*.¹²⁴ Comments were written by Dean Paul McNutt¹²⁵ and Professor Walter Treador.¹²⁶ The first student board of editors was selected by the faculty using class standing as the criteria for membership. The eleven-member board included the Law School's only woman law student, Pearl Lee Vernon, who wrote one of the four student notes in the first issue.¹²⁷ The issue also included a list of cases decided by the Indiana Appellate

117. *Id.*

118. *See id.* There is no evidence that the Board of Trustees or President Bryan took part in these negotiations or formally approved of whatever the agreement was between McNutt and Dix. *See* Letter from Paul McNutt, Dean, Indiana University School of Law, to William L. Bryan, President, and the Board of Trustees, Indiana University (Jan. 25, 1926) (on file with the Indiana University Archives). On January 25, 1926, McNutt sent a letter to the President and the Board telling them that "[t]he editorial responsibility for the *Indiana Law Journal*, the official publication of the Indiana State Bar Association, has been taken over by the Indiana University School of Law. The first number, for which the Law School is responsible, is just off the press and is receiving much favorable comment." *Id.* There was never any formal approval of the venture by the Board.

119. *See* 1 IND. L.J. 1 (1926).

120. Oliver P. Field, *Effect of an Unconstitutional Statute*, 1 IND. L.J. 1 (1926).

121. Hugh Evander Willis, *Some Fundamental Legal Concepts*, 1 IND. L.J. 18 (1926).

122. George O. Dix, *Services of George H. Batchelor to the Indiana State Bar Association*, 1 IND. L.J. 29-31 (1926).

123. *Announcements*, 1 IND. L.J. 33-40 (1926).

124. *News of Bench and Bar*, 1 IND. L.J. 41-44 (1926).

125. *See* Paul V. McNutt, *Stockholders Right to Inspect Corporate Books and Records*, 1 IND. L.J. 45-48 (1926).

126. *See* Walter E. Treador, *Burden of Proof of Due Course Holding Under Negotiable Instruments Law*, 1 IND. L.J. 49-52 (1926).

127. *See* Recent Case Note, 1 IND. L.J. 54-55 (1926).

Court in December of 1925, and three book reviews, two written by Indiana University faculty and one by an appellate court judge.¹²⁸ There were no jokes, and Charles M. Hepburn's name was quietly included among the names of the Advisory Board of Editors in the second issue.¹²⁹ It had taken ten years, and he had stepped down as dean, but Hepburn got his journal.

II. LIVING WITH THE AGREEMENT

After publishing its first volume, the *Journal* quickly developed a routine. Professor Paul Sayre and Dean McNutt wrote to prominent Indiana attorneys and judges soliciting articles. The student editorial boards in the early years were selected on the basis of grades from both the second-year and third-year law classes.¹³⁰ They prepared notes and worked with Sayre on a variety of editorial tasks in the final preparation of each issue.¹³¹

When Sayre left to begin an advanced degree at Harvard in August of 1928, Professor Walter Treanor took over as editor of the *Journal*.¹³² By this time, the *Journal* had been well established.¹³³ Although they may have each had a different purpose for the *Journal*, the relationship between the Law School and the ISBA was excellent. Both editors, Paul Sayre and Walter Treanor, worked closely with the bar soliciting articles and urging participation.¹³⁴

Despite its success, in 1929 when the depression dealt a blow to the Bar Association finances, the *Journal* was reduced in size to save money. The ISBA continued to believe that the *Journal* was serving them well, but to respond to the financial crisis in the Indiana State Bar Association, there was an ISBA committee appointed in 1932 to investigate the establishment of an endowment to fund the *Journal*. Their report commended the *Journal*

in founding and maintaining the *Indiana Law Journal*, this Association has acted with wisdom, and that the *Journal* has been a valuable instrumentality through which the Association has been able to do much in bringing to the attention of the bar its plans to improve the bar in Indiana, and to further the cause of legal education generally.¹³⁵

128. See *Book Reviews*, 1 IND. L.J. 61-64 (1926).

129. See 1 IND. L.J. 83 (1926).

130. See *The Work of the Indiana Law Journal*, 9 IND. L.J. 37, 38 (1933-34).

131. See Audio tape of interview with Daniel James, *Indiana Law Journal* Editorial Board, 1927-28 (March 5, 1992) (on file in the Indiana University School of Law Library).

132. See Letter from Paul Sayre, Professor of Law, Indiana University School of Law, to Paul McNutt, Dean, Indiana University School of Law (Aug. 22, 1928) (on file with the Indiana University School of Law Library).

133. When Sayre left he commented: "[The Journal] is in a very strong position now in every way. As you know, I have a deep interest in it for its own sake and I am happy in the thought it is now a permanent institution which will go on doing good work for the indefinite future." *Id.*

134. See *State Bar Association Proceedings*, 3 IND. L.J. 1, 76-77 (1927-28) (containing Sayre's report to the ISBA); *State Bar Association Proceedings*, 4 IND. L.J. 1, 74-76 (1928-29) (including Treanor's report to the ISBA).

135. *State Bar Association Proceedings*, 8 IND. L.J. 1, 71 (1932-33).

In addition to the work of the faculty editors, the good will between the bar and the Law School was probably due, in no small part, to Paul McNutt himself. McNutt was politically savvy and charming. By 1928 he had become the National Commander of the American Legion and very much an absentee dean. He was however, traveling around the state and the country, giving speeches, and winning supporters. In February 1932, McNutt announced his candidacy for governor of Indiana, and following his election that November, was inaugurated governor on January 9, 1933, with the law faculty and the students as his special guests.

But it did not take long for the different purposes of the ISBA and the Law School to become a point of contention. By July 1933, Professor Leon Wallace was asked by the ISBA to speak at the annual meeting about criticisms that had arisen regarding the *Indiana Law Journal*, including that it was presumptuous of the *Journal* to discuss cases which had not been fully determined; that students were unprepared to write material in the *Journal*; and that the lead articles were largely written by professors and were not practical enough for the practicing bar.¹³⁶

These criticisms were not unlike those heard about many law journals. The place of law review articles within legal literature had been debated within the legal profession since their inception, and their importance was slow to be realized. The wide difference of opinion within the judiciary is characterized by those held by Justices Holmes and Brandeis. Chief Justice Charles E. Hughes recounts the time that Justice Oliver Wendell Holmes criticized an attorney, who referred to law review articles in his argument, for relying on “the work of boys,” and “thought the limit had been reached when what he had said in his judicial opinions was approved by the students as being ‘a correct statement of law.’”¹³⁷ Justice Louis Brandeis, who prior to his appointment to the bench had written numerous articles in law reviews as a professor of law, was a strong proponent of law review articles as legal authority. In 1917, he was the first Justice to cite to a law review article in a United States Supreme Court opinion,¹³⁸ and during his years on the bench, Brandeis authored forty-seven decisions in which he cited to law reviews.¹³⁹ From 1917 until the end of 1929, law review articles were cited by courts only twenty-nine times, and cited in only seventy-one cases in the 1930s.¹⁴⁰ Professor Max Radin in a 1928 article on sources of law pointed out that “there is a normal enough feeling that fledglings trying their wings can give little assistance to full grown and seasoned practitioners,” yet Radin acknowledged that law reviews were an emerging authority within the courts.¹⁴¹

In 1934, Wilmer T. Fox, president of the ISBA, wrote to Dean Gavit expressing his concern about the editorial policy used in determining the content on the *Journal*, as well as the division of financial responsibility between the ISBA and the Law School.¹⁴² Some changes were made in 1934. The paper and print size was changed

136. See *The Work of the Indiana Law Journal*, *supra* note 130, at 37-41.

137. *Foreword*, 50 YALE L.J. 737 (1941).

138. See *Adams v. Tanner*, 244 U.S. 590, 606, 613, 615 (1917) (Brandeis, J., dissenting).

139. See JOHN W. JOHNSON, *AMERICAN LEGAL CULTURE 1908-1940*, at 62 (1981).

140. See *id.* at 62-63.

141. Max Radin, *Sources of Law—Old and New*, 1 S. CAL. L. REV. 411, 418 (1928).

142. See Letter from Wilmer T. Fox, President, ISBA, to Bernard Gavit, Dean, Indiana

so that the resulting savings could be used to increase the *Journal* to its pre-depression length. There was also an announced effort to increase the number of articles "on subjects that will be of practical value to the members of our Association."¹⁴³ During this time, there was some talk about dissolving the relationship because of the differing goals that each of the two groups had for the *Journal*. After a year of discussion, an agreement was reached that placed the editorial responsibility with the Law School; that recommended the editor and dean of the Law School would meet with the Bar Association's board of managers regularly to discuss concerns; and that determined financial division where the Law School was to pay for the salary of the editor, faculty time, and incidental office costs, while the ISBA, through the dues of its membership, paid for the printing and mailing of the *Journal*.¹⁴⁴

From the outset of the *Journal*, the students on the board of editors were elected to their posts by a vote of the faculty with grades as the primary criteria. The 1939-1940 student board of editors established for the first time a competitive method to select the second-year associates.¹⁴⁵ Twelve second-year students, chosen by the faculty, were asked to write notes.¹⁴⁶ A committee was appointed to judge each note on the basis of quality of the note and degree of interest and willingness shown by the student to do journal work.¹⁴⁷ Seven students were selected in the competition to serve on the board.¹⁴⁸ Also in 1939, the faculty voted to give academic credit to

University School of Law (Nov. 6, 1934) (on file with the Indiana University School of Law Library).

143. Wilmer T. Fox, *A Message from the President*, 10 IND. L.J. 84 (1934-35).

144. See Letters from Bernard Gavit, Dean, Indiana University School of Law, to Wilmer T. Fox, President, ISBA (Nov. 15, 1934; Mar. 20, 1935; and Mar. 27, 1935) (on file with the Indiana University School of Law Library); Letters from Bernard Gavit to Fred C. Gause, Vice-President, ISBA (Mar. 25, 1935; Sept. 26, 1935; and Oct. 4, 1935) (on file with the Indiana University School of Law Library); Letter from Wilmer T. Fox, President, ISBA, to Fowler Harper, Law Journal Editor and Professor of Law, Indiana University School of Law (Mar. 18, 1935) (on file with the Indiana University School of Law Library); Letter from Wilmer T. Fox, President, ISBA, to Bernard Gavit, Dean, Indiana University School of Law (Mar. 21, 1935) (on file with the Indiana University School of Law Library); Letter from Bernard Gavit, Dean, Indiana University School of Law, to James Fesler, President, Indiana University Board of Trustees (Sept. 3, 1935) (on file with the Indiana University School of Law Library); Letter from Bernard Gavit, Dean, Indiana University School of Law, to Benjamin Long, Logansport, Ind., (Sept. 3, 1935) (on file with the Indiana University School of Law Library); Letter from James Fesler to Bernard Gavit, Dean, Indiana University School of Law (Sept. 27, 1935) (on file with the Indiana University School of Law Library).

145. See Memorandum from the Executive Committee, 1939-1940 Student Board of Editors of *Indiana Law Journal*, to the Faculty of the Indiana University School of Law (n.d.) (on file with the Indiana University School of Law Library).

146. See *id.*

147. See *id.*

148. According to the minutes of the faculty, the students that were selected for the *Law Journal* Board were: Victor R. Beard, Waverly D. Bretz, Seymour Cohen, Gerald Ewbanks, Wilbur S. Harrison, Howard R. Hawkins, and Charles D. Sands. Indiana University School of Law, Faculty Minutes (Dec. 12, 1939) (on file with the Indiana University School of Law Library).

second-year associates who satisfactorily completed a year of work with the *Journal*.¹⁴⁹ And in December of 1939, the Law School sponsored the Second Midwestern Law Review Conference in Bloomington.¹⁵⁰

Although the early years of the *Journal* concentrated on practice-oriented articles, articles by the Law School's faculty were more scholarly. Among the most prolific writers for the *Journal* was Hugh Evander Willis, professor of contracts and constitutional law at the Law School. Within the first twelve volumes, Professor Willis wrote more than twenty articles for the *Journal*. Dean Bernard Gavit also wrote numerous articles on civil and criminal procedure. But his most significant articles were those that used the power of the *Journal* to lobby for changes in the Indiana Constitution to require attendance to law school for admission to the bar.

Following the attack on Pearl Harbor, the Law School enrollment plummeted from 170 in 1940-1941, to 23 in 1943-1944. The Law School amended its rules to provide for those students who needed to leave mid-semester for the military. Law students who withdrew from school to enter the service and who had completed as much as ten weeks of a semester were granted credit if the student was in good standing in the classes.¹⁵¹ Third-year students in their last semester needed only to complete half the semester to receive credit and graduate.¹⁵²

Dean Gavit took a leave of absence in that year to serve on the Federal War Manpower Commission, and three other faculty, Ralph Fuchs, Frank Horack, and Fowler Harper were also on leave, holding government service or service-related positions. With the reduction in the faculty and student body, the *Journal* struggled to keep going. Volumes Eighteen through Twenty, published from 1942 to 1945, had only four issues, two of which were proceedings of the annual and mid-winter meetings of the ISBA. There were fewer lead articles and many were written on issues directly related to the war effort.

In 1944, a proposal for the merger of the Indiana University School of Law and the independently run Indiana Law School in Indianapolis was approved. The Indianapolis school was to continue as the evening division, and Dean Gavit served as the administrator of both schools. A student editorial board was also organized at the Indianapolis evening division in 1947.¹⁵³ Students from the Indianapolis division

149. *See id.*

150. *See* Report of the Second Annual Law Review Conference (Dec. 2, 1939) (on file with the Indiana University School of Law Library). The members of the student board of editors and Edward Craft as chairman of the *Journal* editorial board served as the hosts for a series of round table discussions on issues relating to the publication of law reviews. Fourteen schools were represented sending forty-five student representatives and seven faculty. The *Journal* edited the minutes of the meeting. *See* Report of the Second Annual Law Review Conference (Dec. 2, 1930) (on file with the Indiana University School of Law Library).

151. *See* Note for Bulletin Board from Bernard Gavit, Dean, Indiana University School of Law (Dec. 15, 1941) (on file with the Indiana University School of Law Library).

152. *See id.*

153. *See* INDIANA UNIVERSITY, 46 INDIANA UNIVERSITY BULLETIN 1, 2 (1948).

submitted notes to the editorial board in Bloomington. This was a source of tension between the two schools from the outset,¹⁵⁴ and would not be completely resolved until the Indianapolis Law School obtained autonomy in 1969.¹⁵⁵

Following World War II, the Law School's enrollment grew at an extraordinary rate, reaching 416 by 1948. The make-up of the student body was markedly different from past classes. Many were veterans, most were older students, often married. Because they had postponed their education, these were eager, committed students, anxious to get on with their careers. At the same time they were quick to laugh and glad to be alive.¹⁵⁶ An indication of this *joie de vivre* was the founding in 1947 of the *Indiana Flaw Journal*, an irreverent spoof on the *Indiana Law Journal* and the Law School. The *Flaw Journal* soon became an annual "institution" in the Law School appearing each spring on Law Day from 1947 until 1958, and then continued irregularly until 1967. Although some *Indiana Law Journal* staff members admitted to participation in the controversial humor magazine, the *Indiana Flaw Journal* was a publication of the Indiana University Law Club.

With the influx of students after World War II, the Law School appointed a number of new faculty. Among the new appointments was Professor Howard Mann, who began teaching at the Law School in 1946.¹⁵⁷ Mann had attended the University of Iowa Law School¹⁵⁸ where he had been the editor of the *Iowa Law Review*. After graduation, he clerked for United States Court of Appeals Judge Wiley B. Rutledge.¹⁵⁹ He served in the Navy during the World War II and then returned to the U.S. Supreme Court to clerk for Justice Harold Burton.¹⁶⁰ In 1947 Mann was appointed as faculty editor of the *Indiana Law Journal*.

That same year, the Board of Managers of the ISBA contacted Dean Gavit about adjusting the arrangement regarding the *Journal*. Costs of printing had risen and the Bar Association was having to use additional funds to supplement the \$1.50 per member allocation for *Journal* costs. They felt that the ISBA could no longer afford these additional costs.

Gavit and Mann negotiated with the ISBA board of managers and agreed that beginning on July 1, 1948, the University would take over the *Journal* in its entirety. The terms of the agreement stated that the *Journal* would contract with the Indiana State Bar Association to send a copy of the *Journal* to each name on the membership list for \$2 per member. The *Journal* would continue to publish the proceedings of the ISBA's annual meeting as a supplement. The University assumed complete editorial responsibility as to form and content, and the ISBA would appoint an advisory group which would be available to the editorial staff regarding questions on policies and

154. See Indiana University School of Law, Faculty Minutes (Oct. 8, 1947) (on file with the Indiana University School of Law Library).

155. See *Indianapolis Law School Becomes Academically Autonomous Division*, 8 I WITNESS 1 (Feb. 1968).

156. See Audiotape Interview with Val Nolan Jr., Class of 1949 and Professor of Law, Indiana University, in Bloomington, Ind., in *Reminiscences: Reflections on the Law School* (Spring 1996) (on file with the Indiana University School of Law Library).

157. See DIRECTORY OF LAW TEACHERS 223 (1966).

158. See *id.*

159. See *id.*

160. See *id.*

content of the *Journal*.¹⁶¹ Mann welcomed this agreement since he believed that the *Indiana Law Journal* should become student-edited and take a more academic focus. For several years he had urged the faculty to make these changes.¹⁶²

In the spring of 1948, the faculty voted to give complete editorial control to the student editorial board, and the faculty member who formerly was the editor of the *Journal* became the faculty advisor.¹⁶³ Garza Baldwin, Jr. was the student editor-in-chief at the time of the change.¹⁶⁴ As a celebration of this change the Annual Law Journal Banquet was inaugurated in 1948.¹⁶⁵ Val Nolan, Jr., who would later serve on the law faculty, was the editor-in-chief for 1948-1949, the first full year that the *Journal* was officially a student-edited journal. Jesse E. Eschbach II, who was later appointed as judge on the United States Court of Appeals for the Seventh Circuit, was the first student business manager.

With its new status, the *Journal* made an effort to attract prominent authors to contribute to the *Journal*. The Law School's faculty, which included Jerome Hall, Fowler Harper, and Ralph Fuchs, were among the world's most notable scholars in criminal law, torts, and administrative law. Although they published in numerous other journals, all contributed major pieces to the *Indiana Law Journal*.

Following his death in 1949, the *Journal* published a symposium issue commemorating U.S. Supreme Court Justice Wiley Rutledge,¹⁶⁶ who had a close relationship with the Law School through his brother and Indiana University law faculty member Professor Ivan Rutledge. The *Journal* invited contributions from numerous prominent jurists and scholars including Chief Justice Fred Vinson, Associate Justice Hugo Black, Professors Willard Wirtz and Nathaniel Nathanson and the Indiana University School of Law's Fowler Harper and Howard Mann.¹⁶⁷ Other prominent scholars and jurists contributed articles to the *Journal* including

161. The *Journal* carried the following statement: "The *Indiana Law Journal* is published by the Indiana University School of Law under a cooperative arrangement between the Indiana State Bar Association and the Indiana University School of Law." Letter from Bernard Gavit, Dean, Indiana University School of Law, to Herman Wells, President, Indiana University (Jan. 24, 1948) (on file with the Indiana University School of Law Library).

162. Other members of the 1948-1949 Student Editorial Staff included Norman Beatty, Dan Winchell, Larry R. Taylor, Jr., Janet Paulsen, Robert A. Lucas, Frederick E. Rakestraw, Clay Ulen, and second-year associates: Otis B. Allyn, Rover L. Bach, Howard E. Baumgartner, Willard Z. Carr, Jr., Harry K. Cuthbertson, Jr., Gerald E. Dennis, John W. Fitch, Albert M. Gavit, Philip J. Harris, Robert M. Mehilovich, Robert S. O'Shea, James H. Pankow, Richard P. Robinson, Ralph L. Schuler, Zane E. Stohler, William Traylor, and Charles L. Whistler. See 24 IND. L.J. 401 (1948-49).

163. See Indiana University School of Law, Faculty Minutes (Apr. 5, 1948) (on file with the Indiana University School of Law Library).

164. See 23 IND. L.J. 271 (1947-48).

165. See First Annual Law Journal Banquet, Program (Apr. 14, 1948) (on file with the Indiana University School of Law Library). The First Annual Law Journal Banquet was held on April 14, 1948, and C. Ben Dutton, Jr. was the toastmaster, with Dean Gavit, Richard Tinkham, attorney from Lake County, Garza Baldwin, Jr., editor-in-chief, and John S. Hastings of the Daviess County bar as speakers. See *id.*

166. See Symposium, *Mr. Justice Rutledge*, 25 IND. L.J. 421 (1949-50).

167. See *id.*

Archibald Cox, then-Professor of Law at Harvard,¹⁶⁸ who wrote a 1951 article, *The Right to Engage in Concerted Activities*, discussing safeguards provided by the National Labor Relations Act.¹⁶⁹

In the Law School's effort to include more scholarly articles, there was some criticism of the *Journal* when attorneys, who had become accustomed to having their articles published, were turned away. The leadership of the ISBA, however, understood the new goals of the *Journal*.¹⁷⁰ Meetings continued between the Law School and the ISBA. To lessen the burden for the Law School, in 1952, the ISBA took over the editing of their reports, discussions, and minutes which continued to be printed in the *Journal* as a supplement.

By this time there was little contact between the ISBA and the *Journal* staff, other than some ISBA members' attendance at the *Journal*'s annual banquet.¹⁷¹ In 1952, the publications committee of the ISBA recommended that a newsletter be started to cover the activities of the local bar associations and other matters of interest to the bar. *The Bulletin* began as an irregular, then semi-monthly, newsletter, and by 1954 became *Res Gestae*,¹⁷² the bar journal for the ISBA that continues to the present day.

With its own bar publication underway, and no longer able to justify the expense, on February 20, 1958, the ISBA voted unanimously to withdraw its support of the *Indiana Law Journal*.¹⁷³ On June 30, 1959, ownership of all previous volumes of the *Journal* was transferred to the University and the copyright was assigned to the Board of Trustees.¹⁷⁴

In the spring of 1959, Dean Wallace sent a letter to each member of the former editorial staffs of the *Journal* asking for donations to see the *Journal* through this sudden loss of financial support. The effort was organized by members of the *Journal* alumni, headed by William "Rosy" Snyder, Class of 1937. A large percentage of the past *Journal* members responded, as well as several Indiana law firms and Law School faculty. A subscription drive was also initiated and the Law School sent letters to all members of the Indiana Bar, who previously received the *Indiana Law Journal* as a part of their dues, asking them to subscribe for \$5 per year.¹⁷⁵ With Volume Thirty-Four, the *Indiana Law Journal* was on its own.

168. Archibald Cox went on to become the Director of the 1973 Special Prosecution Force for the Watergate Hearings. See 1999 WHO'S WHO IN AMERICA 926 (1998).

169. See Archibald Cox, *The Right to Engage in Concerted Activities*, 26 IND. L.J. 319 (1950-51).

170. See Letter from Richard Tickham, attorney in Hammond, Ind., to Leon Wallace, Dean, Indiana University School of Law (Aug. 29, 1951) (on file with the Indiana University School of Law Library).

171. See Proceedings of the Fifty-Seventh Annual Meeting of the Indiana State Bar Association, 29 IND. L.J. Supp. at 16 (1953).

172. *Why "Res Gestae"?*, 1 RES GESTAE 10 (1956).

173. See *Report of the Action of Board of Managers and House of Delegates*, 2 RES GESTAE 9 (1958).

174. See *id.*; Letter from Leon Wallace, Dean, Indiana University School of Law, to Fenwick Reed, Secretary, Indiana University Board of Trustees (Sept. 21, 1959) (July 24, 1959 assignment attached) (on file with the Indiana University School of Law Library).

175. See *Indiana Law Journal* Subscription Form (Sept. 8, 1959) (on file with the Indiana University School of Law Library).

III. THE MODERN JOURNAL

When the *Indiana Law Journal* became completely independent in 1959, all but 30 of the 129 ABA accredited law schools had law reviews.¹⁷⁶ Of the thirty-five state law reviews that were published at that time, twelve were at least partially supported by state bar associations.¹⁷⁷

But independence brought a financial struggle for the *Journal* that plagued the editorial boards and the Law School for many years. Limited funding helped cause production delays that resulted in issues being published far behind schedule. With the troubled financial situation of the Law School through the 1960s and 1970s, there seemed to be little hope for a resolution.

In 1981 the *Journal's* editor-in-chief, Carla J. Smith, requested that the Law School help fund the effort to "resynchronize the editorial and fiscal responsibility each Board has for its own volume."¹⁷⁸ To provide the *Journal* with the needed boost in its funding, the Law School established the Sustaining Subscriber Program to help defray the cost of bringing the *Journal* back on schedule.¹⁷⁹

In 1983, Dean S. J. Plager appointed an advisory committee to study developing issues regarding the *Journal*.¹⁸⁰ The committee's report included recommendations concerning quality of publication, student participation, journal organization, and

176. See INDEX TO LEGAL PERIODICALS AUGUST 1958-AUGUST 1961, at 5-9 (1961).

177. Seventeen state law reviews were associated with their respective state bar association at some time in their history. Some publications started independently and then joined with their respective state bar association, while others began as bar publications with the editorial work taken over later by the state law school. Some associations were brief, others lasted for many years. Sixteen of these publications included: *Alabama Law Journal*, *Arkansas Law Review*, *Idaho Law Journal*, *Indiana Law Journal*, *Maryland Law Review*, *Mississippi Law Journal*, *Minnesota Law Review*, *Nebraska Law Review*, *Oregon Law Review*, *North Dakota Law Review*, *South Carolina Law Review*, *Tennessee Law Review*, *Texas Law Review*, *Washington Law Review*, *Wyoming Law Journal*, *West Virginia Law Review*.

In 1959, when the *Indiana Law Journal* became fully independent, there were eleven others that still were associated with their state bar association: *Arkansas Law Review*, *Idaho Law Journal*, *Maryland Law Review*, *Mississippi Law Journal*, *Nebraska Law Review*, *Oregon Law Review*, *North Dakota Law Review*, *Tennessee Law Review*, *Washington Law Review*, *West Virginia Law Review*, and *Wyoming Law Journal*. The *South Carolina Law Review* also became independent in 1959. The Connecticut School of Law, not counted in the 16 listed above, did not have its own law review until 1968, but its students edited a notes section of the *Connecticut Bar Journal* from 1948 until 1968 when the *Connecticut Law Review* was inaugurated. The *North Dakota Law Review* continues to be the official organ of the North Dakota Bar Association.

178. Memorandum from Carla J. Smith, Editor-in-Chief, *Indiana Law Journal*, to S. J. Plager, Dean, Indiana University School of Law (Mar. 4, 1981) (on file with the Indiana University School of Law Library).

179. Cost for the sustaining subscribers was \$100 above cost of subscription. See Sustainer Subscriber Program Flyer with Attached Transmittal Slip, from Art Lotz, Assistant Dean for Alumni Affairs, to S.J. Plager, Dean, Indiana University School of Law (July 24, 1987) (on file with the Indiana University School of Law Library).

180. See *Indiana Law Journal* Advisory Committee Report 1 (1983) (on file with the Indiana University School of Law Library).

resources and expenses.¹⁸¹ In spite of the implementation of new procedures and additional funding, the *Journal* continued to struggle with delays and editorial problems. This reached its apex in 1984-1985 when problems with a new computer system exacerbated the situation. With Herculean effort, however, the editorial board in 1985-1986,¹⁸² under the leadership of Ellen Mufson, edited nine issues in a single year to bring the *Journal* back on schedule.¹⁸³ It has remained on schedule since that time.

From the election of Pearl Vernon to the first student editorial board in 1926,¹⁸⁴ to the many women who participate on the current *Journal*, women have made major contributions to its success. During the years when few women attended the Law School, there was limited participation on the *Journal*. But as the percentages of women increased, so did their numbers on the editorial boards. By the 1970s women were a part of every *Indiana Law Journal* staff, and in 1977 Renee Mawhiuney was the first woman to be elected editor-in-chief of the *Journal*.¹⁸⁵ Since that time five women have served in that position.

The presence of minorities on the *Indiana Law Journal* has been more limited. A partial explanation for this lies in the small enrollment of minorities in the Law School until recent years. The first African American member of the *Journal* was Rufus McKinney, who was the Note Editor in 1955-1956.¹⁸⁶ Richard Sasaki, the first Asian American, was on the editorial staff in 1956-1957.¹⁸⁷ Each of these men was the only minority member in his class. Juan Carlos Ferrucho, the *Journal's* first Hispanic member, served as a note writer in 1992-1993, and then on the editorial staff in the following year.¹⁸⁸

It was not until the late 1960s that there were more than a few minority students enrolled in the Law School. During the academic year 1969-1970, numbers began to rise and student groups such as the Black Student Lawyers Association and the

181. The *Journal* Advisory Committee included: Professor Michael Carrico, chair; Professors Terry Bethel and Robert Heidt; Attorney Stephen Lee; Instructors Carolyn Sue Brenner and Delois Leapheart; and Assistant Dean Art Lotz. *Indiana Law Journal* Advisory Committee Report 1 (1983) (on file with the Indiana University School of Law Library).

182. No single person is responsible for any *Journal* and certainly not for the massive effort that it took to accomplish the task before this Board. The Editorial Board included: Editor-in-Chief: Ellen Z. Mufson; Executive Editors: Eric E. Boyd, Marc E. Odier; Senior Managing Editor: John M. Hamilton, Articles Editors: D. Scott Gurney, David J. Hensel, Administrative Editors: Stephan L. Hodge, Andrew W. Hull, Thomas B. Parent, David T. Schaefer, Senior Note Editor: Ann Vurnon Crowley; Research Editor: Phyllis E. Grimm; Managing Editors: Eric M. Jensen, Cynthia D. Lude, Karen A. Rolcik, C. Brian Sauers, Lawrence A. Vanore; Editorial Staff: J. Adam Bain, James A. Button, Bonny J. Forrest, Nina Sorensen, Daniel DeArmond, Marilyn A. Hartman, Joan M. Heinz, James P. Steiff, and William L. Turner. See 61 IND. L.J. Editorial Board Page (1985-86).

183. See *id.*

184. See 1 IND. L.J. 201 (1926).

185. See 53 IND. L.J. Editorial Board Page (1977-78).

186. See 31 IND. L.J. 62 (1955-56).

187. See 32 IND. L.J. 19 (1956-57).

188. See 69 IND. L.J. Title Page (1993-94).

Women's Law Caucus were formed to respond to the more diverse student body in the Law School.

The percentage of minority students attending law schools is now in the upper teens, and minority membership on the law reviews has increased somewhat in recent years. Participation on the law reviews by people of color is still limited, however, and it is important that these small improvements do not create complacency. Deborah Rhode warns that "[t]he problems for women and men of color in law schools are partly attributable to people who believe that the problems have been solved. Partial progress has created its own obstacles to further change."¹⁸⁹ Finding ways to increase diversity is an issue facing law journals and law schools throughout the country, and is among the important challenges for the *Indiana Law Journal* in the coming years.

To insure fair treatment to a broader segment of the student body, the 1972-1973 editorial board announced changes to the *Journal* selection process. The new plan was "in response to criticism that the Law Journal provides its program only to those who are fortunate enough to attain a high class standing in their freshman year of study, and that many students with superior legal and writing skills are thereby excluded from the Law Journal."¹⁹⁰ The editors acknowledged that the criticism was at least partially warranted because of their failure to make it known that they accepted notes from all students who were "willing to expend the time and effort necessary to produce a publishable note."¹⁹¹ To remedy the problem, the *Journal* announced a new plan to increase student participation on the *Journal*.¹⁹² Legal problems, solicited from law firms that subscribed to the *Journal*, served as the topics for the writing competition.¹⁹³ Second-year and third-year students were invited to write memoranda on a topic.¹⁹⁴ On the basis of these memoranda, student note writers were selected.¹⁹⁵ Since that time the competition for *Journal* note writers has changed somewhat although it continues to be open to all interested first-year students.

Attracting interesting and important articles for the *Journal* has also been a challenge. Some of the most prestigious and provocative articles to appear in the *Indiana Law Journal* have been published as a part of the *Journal's* collaboration with the Addison Harris Lecture Series. The Harris Lectureship was established in 1946 by a trust from the bequest of India Crago Harris in the name of her husband, Addison C. Harris.¹⁹⁶ Mr. Harris, an Indiana lawyer, was admitted to the bar following his graduation from Butler University and law study with Samuel E. Perkins, who later was Professor of Law at Indiana University.¹⁹⁷ Harris served as the

189. Deborah L. Rhode, *Whistling Vivaldi: Legal Education and the Politics of Progress*, 23 N.Y.U. REV. L. & SOC. CHANGE 217, 218 (1997).

190. THE APPEAL, Sept. 20, 1972, at 11, 12 (reprinting a letter from the Board of Editors).

191. *Id.*

192. *See id.* at 25-26

193. *See id.* at 25.

194. *See id.*

195. *See id.* at 25-26.

196. *See* Honorable Earl Warren, *Dedication Address*, 33 IND. L.J. 162, 165 (1957-58).

197. *See* COURTS AND LAWYERS OF INDIANA 1306 (Leander J. Monks et al. eds., 1916).

President of the Indiana State Bar Association, the Indiana Law School, and had been appointed by President McKinley as minister to Austria-Hungary.¹⁹⁸

The collaboration between the *Indiana Law Journal* and the Harris Lecture Series began in 1956. As a part of the dedication ceremonies for the new Law Building, Chief Justice Earl Warren delivered the keynote address.¹⁹⁹ In addition, the Law School held a series of Harris Lectures, given by three distinguished speakers: Leon Green, Professor of Law at the University of Texas;²⁰⁰ David W. Peck, Presiding Justice of the Appellate Division of the Supreme Court of the First Judicial Department of the State of New York;²⁰¹ and Harold A. Smith, senior partner at Winston, Strawn, Smith & Patterson in Chicago and Vice-President and General Counsel of the Monon Railroad.²⁰² Articles developed from these lectures as well as the dedication address by Chief Justice Earl Warren appeared in the *Indiana Law Journal*.

The *Journal* looked forward to the publication of an article that Karl N. Llewellyn was to submit following his Harris Lecture on Appellate Advocacy on February 8, 1962.²⁰³ Four days after his speech, however, Llewellyn died suddenly.²⁰⁴ When Soia Mentschikoff, Llewellyn's widow, requested that the speech be included in *Chicago Law Review's* memorial issue devoted to Llewellyn, who was a faculty member at Chicago, Dean Wallace released the speech to be published according to her wishes.²⁰⁵

In 1971 Robert H. Bork, then-Professor of Law at the Yale Law School, delivered a lecture as part of the Harris Lecture Series. The article that grew out of that speech, *Neutral Principles and Some First Amendment Problems*,²⁰⁶ has been called "[o]ne of the most intelligently provocative law journal articles of its time,"²⁰⁷ and became a primary "exhibit" during the controversy in the 1987 Bork nomination to the U.S. Supreme Court.²⁰⁸ It continues to be one of the most widely cited articles ever

198. *See id.*

199. *See* Warren, *supra* note 196, at 162-65.

200. *See* Leon Green, *The Regenerative Process in Law*, 33 IND. L.J. 166 (1957-58).

201. *See* David W. Peck, *Court Organization and Procedures to Meet the Needs of Modern Society*, 33 IND. L.J. 182 (1957-58).

202. *See* Harold A. Smith, *The Role of the Lawyer in a Changing World*, 33 IND. L.J. 198 (1957-58).

203. *See* Letter from Leon H. Wallace, Dean, Indiana University School of Law, to Fenwick T. Reed, Secretary, Indiana University Board of Trustees (June 14, 1962) (on file with the Indiana University School of Law Library).

204. *See id.*

205. *See id.*

206. Robert H. Bork, *Neutral Principles and Some First Amendment Problems*, 47 IND. L.J. 1 (1971-72).

207. ETHAN BONNER, *BATTLE FOR JUSTICE* 74 (1989).

208. *Id.*

written,²⁰⁹ and Bork himself has said that the article, and its subsequent use at the nomination hearings, may have altered forever the way authors and readers view academic writing.²¹⁰

Over the past forty years the Harris Lecture Series has brought many exciting and prominent scholars to the Law School who have contributed articles to the *Journal*. Among the many fine articles are constitutional law articles contributed by Professors Laurence Tribe,²¹¹ John Hart Ely,²¹² and Martha Minow,²¹³ law and economics articles written by Professor Frank Michelman,²¹⁴ and Judge Richard Posner;²¹⁵ perspectives on the rights of homosexuals by Cass Sunstein²¹⁶ and William N. Eskridge, Jr.;²¹⁷ an article on the "bankruptcy crisis" by Elizabeth Warren;²¹⁸ and a biographical work by Barbara Babcock.²¹⁹

Beginning in 1944 with a *Symposium on Post War Problems of the Legal Profession*,²²⁰ the *Journal* has published symposia that have explored a wide range of issues. Some of these topics have included: *Administrative Law and the Environment: National Fuels Policy*,²²¹ law and bioethics;²²² *Problems of the Federal Judiciary: A View from the Bench*,²²³ *The Growth of Large Law Firms and its Effect on the Legal Profession and Legal Education*,²²⁴ and *Paul Bator: Legislative and Administrative Courts Under Article III*.²²⁵ The ceremonies at the 1986 dedication

209. See Fred R. Shapiro, *The Most-Cited Law Review Articles*, 73 CAL. L. REV. 1540, 1550 (1985); Fred R. Shapiro, *The Most-Cited Law Review Articles Revisited*, 71 CHI.-KENT L. REV. 751, 767 (1996).

210. See ROBERT BORK, *THE TEMPTING OF AMERICA: THE POLITICAL SEDUCTION OF THE LAW* 347 (1990).

211. See Laurence H. Tribe, *Toward a Syntax of the Unsaid: Construing the Sounds of Congressional and Constitutional Silence*, 57 IND. L.J. 515 (1981-82).

212. See John Hart Ely, *Constitutional Interpretivism: Its Allure and Impossibility*, 53 IND. L.J. 399 (1977-78).

213. See Martha Minow, *The Constitution and the Subgroup Question*, 71 IND. L.J. 1 (1995).

214. See Frank T. Michelman, *Political Markets and Community Self-Determination: Competing Judicial Models of Local Government Legitimacy*, 53 IND. L.J. 145 (1977-78).

215. See Richard A. Posner, *The Material Basis of Jurisprudence*, 69 IND. L.J. 1 (1993).

216. See Cass R. Sunstein, *Homosexuality and the Constitution*, 70 IND. L.J. 1 (1994).

217. See William N. Eskridge, Jr., *Multivocal Prejudices and Homo Equality*, 74 IND. L.J. 1085 (1999).

218. Elizabeth Warren, *The Bankruptcy Crisis*, 73 IND. L.J. 1079 (1998).

219. See Barbara Allen Babcock, *Clara Shortridge Foltz: Constitution-Maker*, 66 IND. L.J. 849 (1991).

220. See *Symposium on Post War Problems of the Legal Profession*, 19 IND. L.J. 287 (1943-44).

221. Symposium, *Administrative Law and the Environment: National Fuels Policy*, 47 IND. L.J. 603 (1971-72).

222. See Symposium, *Emerging Paradigms in Bioethics*, 69 IND. L.J. 945 (1994).

223. *Problems of the Federal Judiciary: A View from the Bench*, 51 IND. L.J. 292 (1975-76).

224. Symposium, *The Growth of Large Law Firms and its Effect on the Legal Profession and Legal Education*, 64 IND. L.J. 421 (1989).

225. Symposium, *Paul Bator: Legislative and Administrative Courts Under Article III*, 65

of the Law Building renovation and addition included a faculty symposium with the keynote address by Chief Justice Designate William H. Rehnquist.²²⁶ The sesquicentennial anniversary of the Law School in 1992 was commemorated with the *Journal's* publication of a *Symposium on the Future of the Law*.²²⁷ Among the many distinguished contributors to these symposia have been: Environmental Protection Agency Administrator William Ruckelshaus;²²⁸ Newton N. Minow,²²⁹ former chairman of the F.C.C.; Professors Charles Fried,²³⁰ Lawrence Friedman,²³¹ and Paul M. Bator;²³² Justice Shirley Abrahamson²³³; Judges Jesse E. Eschbach,²³⁴ Howard C. Bratton,²³⁵ and Sarah Evans Barker,²³⁶ and practicing attorneys Robert N. Saylor, Covington & Burling;²³⁷ and James Fitzpatrick, Arnold & Porter.²³⁸

IV. THE CHALLENGE OF THE FUTURE

There are many measures of success for a law review: ability to attract high quality writing; depth of their readership; strengthened bonds with alumni, to name a few. By all these measures, the *Indiana Law Journal* has been outstanding.

But, despite the prominence of the contributors and the frequency of the citation of its articles, most agree that the primary value of a law review is its role as a tool in legal education. Karl Llewellyn referred to the law review as

a scientific publication, on which in good part the reputation of the school depends . . . [a]nd by virtue of the terms of tenure of office, . . . to *earn* that honor is to earn an education. I hold out before you, then as the goal of highest

IND. L.J. 229 (1990).

226. See William H. Rehnquist, *Dedicatory Address, The Legal Profession Today*, 62 IND. L.J. 151 (1986-87).

227. See *Symposium on the Future of the Law*, 68 IND. L.J. 621 (1992).

228. See William D. Ruckelshaus, *The Citizen and the Environmental Regulatory Process*, 47 IND. L.J. 636 (1971-72).

229. See Newton N. Minow & Peter David Blank, *Welcoming Remarks and Statement of the Issues*, 68 IND. L.J. 1033 (1993).

230. See Charles Fried, *Introduction: The Need for a Philosophical Anthropology*, 48 IND. L.J. 527 (1972-73).

231. See Lawrence M. Friedman et al., *Law, Lawyers, and Legal Practice in Silicon Valley: A Preliminary Report*, 64 IND. L.J. 555 (1989).

232. See Paul M. Bator, *The Constitution as Architecture: Legislative and Administrative Courts Under Article III*, 65 IND. L.J. 233 (1990).

233. See Shirley S. Abrahamson, *The Justice Who Never Graduates: Law Schools and the Judicial Endeavor*, 68 IND. L.J. 621 (1993).

234. See Jesse E. Eschbach, *Introduction: A View from the Bench*, 51 IND. L.J. 293 (1975-76).

235. See Howard C. Bratton, *Diversity Jurisdiction—An Idea Whose Time Has Passed*, 51 IND. L.J. 347 (1975-76).

236. See Sarah Evans Barker, *Federal Court Long Range Planning: Fine Lines and Tightropes*, 71 IND. L.J. 859 (1996).

237. See Robert N. Saylor, *Keynote Address*, 68 IND. L.J. 1093 (1993).

238. See James F. Fitzpatrick, *Legal Future Shock: The Role of Large Law Firms by the End of the Century*, 64 IND. L.J. 461 (1989).

achievement in your first year, this chance to enter on real training in your second.²³⁹

For many years, the skills developed by those who have been a part of a law journal staff, have been recognized by law firms as a major criterion in their selection of young associates. As membership on law review has translated into a major advantage in the job market, the selection process for these coveted positions has created a controversy. Most law reviews select their members from a combination of first-year grades and a first-year writing competition. Although this made sense in the days of open admissions in law schools, when the ability of class members varied widely, some believe that with the modern method of selective admissions, the margin of difference between individuals in a class is too slight to continue to use these out-dated selection methods.²⁴⁰ Many current students question the validity of continuing to select journal members by merit in the first year. Others see the need for law review experience to be offered to all groups equally, ideally maintaining the same mix of peoples on law review as are reflected in law schools, and eventually in society. Some law schools and their journals have addressed these issues in various ways.²⁴¹ Many others have yet to find solutions. Although the Law School and the *Indiana Law Journal* are committed to the importance of equitable selection procedures, determining the right means to achieve this result remains unresolved.

Another of the challenges for the *Indiana Law Journal* lies ahead, as the new journals at the Law School, and those around the country, make their full impact on the law review enterprise. The increase of new law journals began with a few new publications in the 1970s, and escalated rapidly in the 1990s. In 1984, there were 250 academic law reviews.²⁴² In 1999, just fifteen years later, there are 430.²⁴³

239. K.N. LLEWELLYN, *THE BRAMBLE BUSH, ON OUR LAW AND ITS STUDY* 121-22 (1960) (emphasis added).

240. See Roger C. Crampton, "The Most Remarkable Institution": *The American Law Review*, 36 J. LEGAL EDUC. 1, 6 (1986).

241. Law schools have responded to the pressure to offer journal experience to a wider group of students in different ways. Some have included second-year grades and an open writing competition. See Barbara H. Cane, *The Role of Law Review in Legal Education*, 31 J. LEGAL EDUC. 215, 222 (1981). *Harvard Law Review* has tried several methods to increase diversity on the *Review*. The first in 1981, a quota system, was highly criticized. See Josh E. Fidler, *Law-Review Operations and Management*, 33 J. LEGAL EDUC. 48, 52-55 (1983). Since that time they have instituted another plan based on a combination of traditional methods and a personal statement. See *id.* In 1980, the University of Iowa dropped the writing competition altogether, and offered membership to all students "willing to undertake the obligations of writing and working for the *Review*." N. William Hines, *The Iowa Law Review: A Tradition of Excellence*, 75 IOWA L. REV. 821, 825 (1990). They have heralded the move as a resounding success, maintaining the same high standards of the *Review*, while achieving a pluralization in the Law Review membership that they were unable to affect in other ways. See *id.* at 825-26. Yale and Stanford also use an open membership method. See JOEL SELIGMAN, *THE HIGH CITADEL: THE INFLUENCE OF HARVARD LAW SCHOOL* 182 (1978).

242. See Crampton, *supra* note 240, at 2 & n.7.

243. See 92 INDEX TO LEGAL PERIODICALS at x, x-xxv (1999).

Today, few of the 181 ABA accredited law schools²⁴⁴ publish only one law review. Many have three journals, some five, Columbia has nine, and Harvard ten.²⁴⁵

Indiana University School of Law—Bloomington founded the *Indiana Journal of Global Legal Studies* in 1993;²⁴⁶ also in 1993, the Law School began co-publishing the *Federal Communications Law Journal*²⁴⁷ with the Federal Communications Bar Association (“FCBA”). Although providing an undisputed benefit to both law students and the Law School, the addition of these two publications, changes, at the very least, the journal dynamics within the Law School. The *Indiana Journal of Global Legal Studies* is a peer-reviewed, faculty/student-edited publication.²⁴⁸ The *Federal Communications Law Journal* is the official organ of the FCBA and a cooperative effort between the Bar Association and the Law School.²⁴⁹ The different roles of these journals mandate their function, their administration, and, to some extent, their focus as journals. As can be seen through its history, the *Indiana Law Journal* has had a changing role, as it has developed through the years. It will be important for the *Indiana Law Journal*, as the flagship journal of the Indiana University School of Law—Bloomington, to find its voice in the twenty-first century, and to set its goals for the coming years.

Some of the nation-wide increase in law journals is a result of the growing dissatisfaction among journal contributors regarding the way their articles are being handled by student-edited journals. There are stories of how articles, now-classics,

244. See *Legal Education and Bar Admission Statistics 1963-1998* (visited Nov. 15, 1999) <http://www.abanet.org/legaled/LE_BAstats.html>.

245. See 92 INDEX TO LEGAL PERIODICALS, *supra* note 243, at xiii, xv-xvi.

246. See Alfred C. Aman, Jr., *Indiana Journal of Global Legal Studies, An Introduction*, 1 IND. J. GLOBAL LEG. STUDIES 1 (1993). Established as a faculty-edited, peer-reviewed interdisciplinary journal, *The Indiana Journal of Global Legal Studies* focuses on “the intersections of global and domestic legal regimes, markets, politics, technologies, and cultures.” *Id.* Its faculty and student editorial boards work together, with the faculty focusing on the selection and editorial work on the lead articles, while the student editorial board has primary responsibility for student contributions. See *id.* at 3-4. They work collaboratively on all other editorial work.

247. See Thomas E. Deer, *Editor’s Note*, 46 FED. COMM. L.J. (unnumbered) (1993). Published since 1947, the students of the Indiana University School of Law—Bloomington began editing the *Federal Communications Law Journal* with Volume Forty-Six. See *id.* Its focus includes the development of communications policy and law, and the broad range of issues that deal with the changing nature of communications: intellectual property, data protection, privacy, antitrust, international, and information law. See *id.*

248. See Aman, *supra* note 246.

249. See Deer, *supra* note 247.

were rejected by numerous editorial boards as not being worthy of publication,²⁵⁰ or of prominent authors retracting their articles after student editors insisted on significant revision.²⁵¹

As this history shows, journals were once collaborative efforts. Even when student-edited, the editorial boards once sought the counsel of the faculty regarding the suitability of both the lead articles and the student notes. Faculty considered this part of their responsibilities as teachers. Student editors also asked their faculty to use professional contacts to encourage the submission of articles from prominent attorneys, jurists and scholars. Certainly in the history of the *Indiana Law Journal*, one can see the hand of faculty in some of the articles published.²⁵² Throughout the Law School community, however, this collaboration has been largely discarded as the law reviews became increasingly autonomous.²⁵³

With the shift in legal scholarship to more theoretical and interdisciplinary writing, some are questioning whether it is realistic to expect students, no matter how bright and capable, to recognize an article that makes an original contribution to the law, "when the most experienced and able faculty members do not claim competence over the entire realm of legal scholarship."²⁵⁴ The growing complexity of the law and the diversity of legal scholarship brings into question the current administration of law reviews. The issue of autonomy will likely be an important challenge to this and all law reviews in the coming years.

Still another challenge for the *Indiana Law Journal* grows out of the increasing divide between the scholarly interests of some members of the academy and the practicing bar and bench.²⁵⁵ Recognized by scholars and the practicing bar alike,²⁵⁶ this disjunction has law journals caught in the middle. In order to satisfy a readership that has widely diverse interests, the *Indiana Law Journal* will need to be attentive to these varied intellectual needs by including a carefully selected mix of doctrinal and theoretical writings.

250. See Crampton, *supra* note 240, at 8.

251. See *id.*

252. In the early years, the relationships were clear. Roscoe Pound was a friend of Charles Hepburn and a teacher of Paul McNutt; Walter Treanor and Oliver Stone were good friends. Following World War II, Bernard Gavit, Ralph Fuchs, Fowler Harper, and Howard Mann all used their Washington contacts to bring in articles including contributions from Archibald Cox and John Daufmann, Justices Hugo Black and Fred Vinson; and their academic contacts including Alexander Meiklejohn, Gerhard Mueller, and John Hazard.

253. *Harvard Law Review* does solicit input of legal scholars on some manuscripts. See Jordan H. Leibman & James P. White, *How the Student-Edited Law Journals Make Their Publication Decisions*, 39 J. LEGAL EDUC. 387, 417 (1989). Most other law journals use student editors to review manuscripts. See *id.* at 402.

254. See Crampton, *supra* note 240, at 7.

255. For perspectives of both the bench and the academy, see Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992); see also Richard A. Posner, *The Present Situation in Legal Scholarship*, 90 YALE L.J. 1113 (1981).

256. See Edwards, *supra* note 255; Posner, *supra* note 255.

Chief Justice Earl Warren called the law review “the most remarkable institution in the Law School world.”²⁵⁷ For this “institution” to remain relevant, however, it will be essential for each law review to consider the changes in legal education in the last twenty-five years and determine how best to respond. As the *Indiana Law Journal* seeks answers about its future, it can find inspiration from its past. Since its inception, the *Journal* has struggled for existence, for focus, for independence. It has always emerged stronger, by drawing its strength from the ingenuity and commitment of the many men and women who have made the *Indiana Law Journal* what it is today.

As the world enters the twenty-first century and the *Indiana Law Journal* begins its seventy-fifth volume, it is appropriate to consider both the achievements of the past and the challenges of the future, celebrating the journey made and the one that lies ahead.

257. See Earl Warren, *Upon the Tenth Anniversary of the UCLA Law Review*, 10 UCLA L. REV. 1 (1962-63).