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The New Journal: A Supplement Not Undertaken Hitherto

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The New Journal: A Supplement Not Undertaken Hitherto

DOUGLAS A. HASS*

INTRODUCTION

“Members of the bar of Indiana will notice that some things are attempted in the January issue of their journal which have not been undertaken hitherto. . . . [I]t is hoped [the *Journal*] will be increasingly interesting and useful to the legal profession with succeeding issues.”¹ With his announcement entitled *The New Journal*, Professor Paul Sayre, the *Journal*’s first editor, introduced the new *Indiana Law Journal* in 1926. More than eight decades later, I call our readers’ attention to some things attempted in this volume that have not been undertaken hitherto. Volume 83 includes an online companion—*The Indiana Law Journal Supplement*—and a newly expanded, integrated Web site to house both the print edition and *Supplement*.² We intend the addition of the *Supplement* to serve a need not fully met by the print edition.

I. THE EVOLUTION OF THE *INDIANA LAW JOURNAL*³

The *Indiana Law Journal*’s first issue debuted in January 1926, led by Professor Oliver P. Field’s practical article *Effect of an Unconstitutional Statute*.⁴ The *Journal*, published in cooperation with the Indiana State Bar Association (ISBA),⁵ maintained a robust schedule with nine issues per volume, including an issue devoted to the proceedings of the state bar’s annual meeting.⁶ The *Journal* maintained its furious publishing pace to provide a timely forum for legal discourse,⁷ a goal we can better meet today by augmenting our print edition with the *Supplement*.

The early *Journal* volumes attempted to maintain a balance between articles with the practical focus desired by the ISBA and ones with the more scholarly tone common to law journals⁸—a source of the first significant debate over the *Journal*’s direction. The 1933 issue covering the proceedings of the state bar meeting included a “prepared paper on the work of the Indiana Law Journal” presented by Leon Wallace, a law professor at Indiana, in response to criticisms of the *Journal*.⁹ Wallace noted three primary criticisms. First, “the Journal [was] presumptuous in discussing cases which

* Volume 83 Executive Notes & Comments Editor, *Indiana Law Journal*; J.D. Candidate, 2008, Indiana University School of Law–Bloomington. Special thanks to my mother, Susan Fournier, and my grandmother, Kit Fournier, who both spent hours redlining my essays, teaching me to diagram sentences, and holding me to higher standards than the public schools ever could. Not only did you give me the writing gene, you also ensured I knew how to use it.

1. Paul L. Sayre, *The New Journal*, 1 IND. L.J. 33, 33–34 (1926).

2. The Indiana Law Journal, <http://www.indianalawjournal.org>.

3. Volume 75 included a detailed history of the *Journal*, from which Part I draws. Colleen Kristl Pauwels, *Hepburn’s Dream: The History of the Indiana Law Journal*, 75 IND. L.J. i (2000).

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

5. Pauwels, *supra* note 3, at xvi.

6. *Id.*

7. See Sayre, *supra* note 1, at 34.

8. See Pauwels, *supra* note 3, at xx.

9. Leon Wallace, *The Work of the Indiana Law Journal*, 9 IND. L.J. 37, 37, 40–41 (1933).

[had] not been finally determined . . .” Second, “youngsters with no legal experience and very little study” wrote most of the *Journal*'s content. Third, “college Professors . . . who [had] no grasp of the practical phases of the practice of law, and whose ideas [were] too theoretical and too impractical” for use by practitioners dominated the remainder of the *Journal*'s issues.¹⁰ Wallace summarily dismissed each of these generic criticisms.¹¹ Despite Wallace's restatement of the *Journal*'s purposes and explanation of the mechanisms used to fulfill them,¹² the tension between the editorial policy of the *Journal* and the competing aims of the ISBA continued.

The debate over the proper mission for law journals—scholarly versus practical, retrospective versus prospective—was not unique to Indiana. Only a few years earlier, Professor Max Radin had criticized the relevance of student-written articles and journals, arguing that “there is a normal enough feeling that fledglings trying their wings can give little assistance to fullgrown and seasoned practitioners.”¹³ Yet, Radin acknowledged that courts were increasingly relying upon law reviews' practical articles.¹⁴ Two years later, in 1930, one commentator remarked that law journals' lack of relevance led most practitioners to subscribe to just one law review.¹⁵ In 1934, ISBA president Wilmer Fox wrote the dean of Indiana's law school, expressing concern about the *Journal*'s editorial policy.¹⁶ The 1934-35 volume of the *Journal* included a letter from Fox that announced that the *Journal* would subsequently focus “on subjects that will be of practical value to the members of the [Indiana State Bar] Association.”¹⁷

The debate over the proper role of law journals continued even sixty years later. Judge Henry Edwards, of the United States Court of Appeals for the District of Columbia echoed the ISBA's concern, worrying that the problem had only worsened as “many law schools—especially the so-called ‘elite’ ones—have abandoned their proper place, by emphasizing abstract theory at the expense of practical scholarship and pedagogy.”¹⁸ With the advent of online research and publication, other commentators have complained about the plethora of superfluous legal scholarship to the point of suggesting that even one law journal—as currently constituted—is one too many.¹⁹

10. *Id.* at 40-41.

11. *See id.*

12. *Id.* at 37-40.

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

14. *See id.*

15. *See* Douglas B. Maggs, *Concerning the Extent to Which the Law Review Contributes to the Development of the Law*, 3 S. CAL. L. REV. 181, 190 (1930); *see also* Frederic C. Woodward, *Editorial Notes*, 1 ILL. L. REV. 39, 39 (1906) (“Undoubtedly the field for law reviews of a general character is already overcrowded. Moreover, it must be conceded that such reviews, however excellent, enlist the interest of but a small minority of the practicing lawyers of Illinois.”).

16. Pauwels, *supra* note 3, at xviii.

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

18. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 34 (1992).

19. *See* Roger C. Cramton, “The Most Remarkable Institution”: *The American Law Review*, 36 J. LEGAL EDUC. 1, 8 (1986) (supporting fewer journals because “[t]he extraordinary proliferation of law reviews, most of them student edited and all but a handful very erratic in

II. THE INDIANA LAW JOURNAL SUPPLEMENT

A. *The End of Law Reviews as We Know Them*

Against this continued backdrop of criticism about the proliferation of journals and their supposed irrelevance, the *Indiana Law Journal* has decided to add an online component. In 1996, Professor Bernard Hibbitts predicted “[t]he next decade could witness the end of the law review as we know it.”²⁰ Albeit for the wrong reasons, Professor Hibbitts’ prediction was correct.²¹ He proposed a system of electronic self-publication, essentially what we now see manifested in the blogosphere.²² Lawyers, professors, and other commentators have flocked to the World Wide Web to share their off-the-cuff thoughts about pressing legal topics. My own daily blog rounds include gossip outlets like David Lat’s *Above the Law*,²³ Professor Glenn Reynolds’ political- and legal-themed *Instapundit*,²⁴ Evan Schaeffer’s practice-focused *Legal Underground*,²⁵ and publication-style legal analysis blogs *SCOTUSblog*²⁶ and *The Wall Street Journal Online’s Law Blog*.²⁷

On the surface, blogs and law reviews appear to have little in common beyond their publication on the Internet. Law reviews publish largely long-form articles that reflect months or even years of painstaking research, writing, and revision. Journals carefully vet each article submitted, competing for the best pieces. Each ostensibly publishes only the highest quality content available. Each article gets a meticulous review by second-year law student associates and their third-year supervisors and, in some cases, undergoes an additional peer review by scholars in the field. Journals often publish articles only after a four- to six-month production schedule. A blogger, however, can set up a blog using any one of a number of free services and post an entry in just minutes. Individual bloggers face little if any oversight, editorial constraint, or control. Unlike law review authors, bloggers can post in anger, without checking facts, or even

quality, has been harmful for the nature, evaluation, and accessibility of legal scholarship”); cf. Bernard J. Hibbitts, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615, 643–44 & nn. 163–65 (1996) (arguing that legal scholarship is adversely affected by the delays inherent in law journals’ publication processes).

20. Hibbitts, *supra* note 19, at 616.

21. As one famous judge might have said, he found the truth but not the way that led to it, not unlike the tipsy coachman. *Lee v. Porter*, 63 Ga. 345, 346 (1879) (“The human mind is so constituted that in many instances it *finds the truth* when wholly unable to *find the way* that leads to it. ‘The pupil of impulse, it forc’d him along, / His conduct still right, with his argument wrong; / Still aiming at honor, yet fearing to roam, / The coachman was tipsy, the chariot drove home.’”) (emphasis in original).

22. See, e.g., Rafael Gely & Leonard Bierman, *Social Isolation and American Workers: Employee Blogging and Legal Reform*, 20 HARV. J.L. & TECH. 287, 292–96 (2007) (providing an introduction to “blogs” and the “blogosphere”).

23. David Lat, *Above the Law: A Legal Tabloid*, <http://www.abovethelaw.com>. I do not use the term “gossip” pejoratively. Hollywood has Perez Hilton, Hollywood Gossip Blog, <http://www.perezhilton.com>; the legal world has David Lat.

24. Glenn Reynolds, *Instapundit.com*, <http://www.instapundit.com>.

25. Evan Schaeffer, *Evan Schaeffer’s Legal Underground*, <http://www.legalunderground.com>.

26. Supreme Court of the United States Blog, <http://www.scotusblog.com>.

27. The Wall Street Journal Online, *Law Blog*, <http://blogs.wsj.com/law>.

while intoxicated. Bloggers can easily edit, rethink, or remove posts without leaving a trail of the original, making archival and preservation by others more difficult.

While blogs or other online repositories like Wikipedia undoubtedly have an important, expressive place in legal discourse, the *Indiana Law Journal Supplement*, and its counterparts at other law schools, can fill a void. Online journals like the *Supplement* offer both the interactivity and timeliness of blogs and the established path of legal scholarship provided by traditional law reviews. The *Supplement* embraces the best of our long-form print tradition—now in its eighty-third volume—and the emerging online, interactive legal scholarship format. Many blog postings lack proper citations to relevant authority and authors may leave them incomplete. Our staff can carefully check the necessary sources, and help draw out the most crucial ideas. The *Supplement*, like the print edition, adheres to our established, exacting standards for publication, yet takes advantage of the Internet's fast-moving forum for dissemination and discussion of legal scholarship. Our readers may rely on the significance, permanence, and accuracy of our online publication, just as they have relied for over eighty years on our printed volumes.

B. Supplemented Mission

The first issue of the *Indiana Law Journal* outlined the mission that we continue to pursue today.²⁸ Leon Wallace's address to the ISBA's members six years later gave a useful synopsis of that purpose that bears repeating here.

1. It is a journal of Bar Association affairs, and is the medium through which news and announcements touching not only the State Bar Association, but also the District, County and City Bar Associations are conveyed to the members.
2. The Journal deals with legal news of general interest to the profession of the State.
3. The Journal aims to be a forum for the discussion of the problems facing the legal fraternity, not only those problems having to do with legal standards, but also the problems which arise in the field of substantive and procedural law.²⁹

With the advent of text-searchable proprietary databases like LexisNexis, Westlaw, Hein Online, and JSTOR; free repositories like the Social Science Research Network and Berkeley Electronic Press; and search engines for the wider Internet, dissemination of legal thought does not present the same problem to us as it did in Wallace's day. The *Journal* no longer acts as the official record of the ISBA. However, our commitment to publishing legal topics that impact the bar's members in our state and elsewhere remains.

The chief complaint about our *Journal* and other law journals has been their isolation from the practicing bar and the topics of the day that interest and affect our readers.³⁰ Online scholarship would help to address ISBA President Fox's concerns, echoed by so many others over the years. The *Supplement's* fast time to publication

28. See Sayre, *supra* note 1, at 33–37.

29. Wallace, *supra* note 9, at 37.

30. See *supra* Part I.

allows law professors and students to analyze both abstract theory *and* contemporary legal issues simultaneously. More importantly, this added publication outlet drives scholars toward the type of analysis that “will be of practical value to the members” of the bar.³¹ As New York Court of Appeals Judge Stanley Fuld wrote in 1953, the law review must “render a real service to lawyers . . . [and] seek to relate the law to the problems of the community at large. . . . In a real sense, [law reviews] thus help to keep our system of law an ‘open’ one, ever ready to keep pace with changing social patterns.”³²

We focus, therefore, on keeping pace with current legal discussions and developments. We have chosen to name our online journal the *Supplement* not to stake out prime *Bluebook* citation form territory,³³ but because the appellation best represents this new mechanism for accomplishing our mission. Wikis, blogs, bulletin board forums, and mailing lists created the space in which short-form legal scholarship has emerged. The *Supplement* allows us to innovate in that development space, and gives us another tool to further the purposes of this *Journal* as we first outlined them in 1926.³⁴

The *Indiana Law Journal Supplement* will publish both original scholarship and responses to articles that appeared in the *Supplement* or the printed pages of the *Journal*. In keeping with the long-established practice of our print edition, the *Supplement* will not only encourage submissions from professors, practitioners, judges, and legislators, but from law and interdisciplinary students at Indiana University and other schools. The *Indiana Law Journal* has consistently been one of the few top-tier law journals to both encourage *and* publish significant student works.³⁵ Ideas that advance the practice of law are no less vital simply because students—at Indiana University or elsewhere—developed them. The *Supplement* enables the *Journal* to

31. Fox, *supra* note 17, at 84.

32. Stanley H. Fuld, *A Judge Looks at the Law Review*, 28 N.Y.U. L. REV. 915, 917–18 (1953).

33. The “coolness factor” of our citation form is an added bonus, though. For example, the *Supplement*’s citation to this article is 83 IND. L.J. SUPP. 1 (2007).

34. See Sayre, *supra* note 1, at 33–37.

35. The *Journal* has no policy against publishing student-written articles. Indiana Law Journal, Article & Note Guidelines, <http://www.indianalawjournal.org/pages/Article-%26amp%3B-Note-Guidelines.html>. My own experiences as a student author corroborate this point. While I was a second-year law student, the *Journal* published an article of mine after a blind review. Douglas A. Hass, *Crafting Military Commissions Post-Hamdan: The Military Commissions Act of 2006*, 82 IND. L. J. 1101 (2007). Despite planning a special issue directly on point, another top-tier journal had rejected the article solely because their policy prohibited accepting student-written articles. Another top-tier law school’s journal actually offered to publish a different article of mine, only to rescind the offer when they later examined my curriculum vitae and found that I was still a law student. UCLA’s Professor Eugene Volokh dedicated an entire book chapter to strategies for overcoming these obstacles. EUGENE VOLOKH, ACADEMIC LEGAL WRITING: LAW REVIEW ARTICLES, STUDENT NOTES, SEMINAR PAPERS, AND GETTING ON LAW REVIEW 150–69 (2005). Seton Hall Professor of Law Frank Pasquale noted on his blog, “You will probably find that the main law review of each law school only publishes pieces from professors and students on that law review.” Posting of Frank Pasquale to Concurring Opinions, http://www.concurringopinions.com/archives/2006/04/publishing_stud.html (Apr. 4, 2006).

enhance dissemination of essential legal scholarship even further, and to amplify the focus on ideas, rather than on who holds them.

III. BRIEF ACKNOWLEDGEMENTS

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CONCLUSION

The pages of this volume are a celebration of eighty-three years of our evolution. Like the staff of Volume 1, we cannot predict the shape of future legal scholarship or the role the *Indiana Law Journal* and *Indiana Law Journal Supplement* will play in it. However, the broader context of increasingly complex legal scholarship and practice will likely lead the next generation of lawyers to rely more heavily on still-emerging electronic platforms. The *Supplement* will broaden our future, even if we cannot yet determine its shape, by enabling greater scholarship opportunities and wider dissemination. We invite our authors, readers, and alumni, as well as the legal community at large, to work with us to expand this increasingly interesting and useful arena of online legal scholarship.

36. MyReview: Open-Source Web-Based Paper Submission and Review, <http://myreview.lri.fr>.

37. ImageStream Internet Solutions, Inc., <http://www.imagestream.com>.

38. Interspire Pty. Ltd., Web Software and Webware Solutions by Interspire, <http://www.interspire.com>.

39. The Skye Group, Ltd., The Skye Group, <http://www.skyegroup.com/>.