

# ESSAY

## DRIVEN: THE FIRST DECADE OF *HOUSTON LAW REVIEW*

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In the beginning was . . . the word?<sup>1</sup> Not exactly. Before *Houston Law Review* was begat, the University of Houston was. No one can understand the history of *HLR* without knowing the history of the institution from which it sprang.

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<sup>\*</sup> Andrews Kurth Professor of Law, University of Houston Law Center. I am indebted hugely to the student members of *Houston Law Review*, whose diligent efforts helped so much to make possible the publication of this first installment of a planned five-part telling, decade-by-decade from 1963 to date, of the history of a remarkable institution. In particular, I thank Matthew Hoffman, Editor in Chief of Board 49 and University of Houston Law Center Class of 2012, who shared the vision, green-lighted the effort, and advanced the project's progress in every way possible. Mr. Hoffman will become, officially, a co-author of the series, beginning with its second installment. Thanks as well to Rebekah Reed of Board 49 and Katherine Witty of Board 50, for their generous gifts of time and insight during the preparation of this manuscript, to Peter Danysh and Casey Holder, Board 50's Editor in Chief and Chief Articles Editor respectively, for graciously allowing my "voice" to survive the Review's rigorous editing process, and to the many 2Ls and 3Ls who provided incidental labor along the way. I am grateful, too, to Mike Willatt (Board 1), Marvin Nathan (Boards 2 and 3), Lawrence Pirtle (Board 3), Alvin Zimmerman (Boards 3 and 4), Wendell Alcorn (Boards 5 and 6), Steven Segal (Boards 7 and 8), and Carol Dinkins (also Boards 7 and 8), all of whom contributed substantively to the present essay, and to Christopher Dykes, Reference and Research Librarian at the O'Quinn Law Library, for helpful assistance in the compilation of data. Due to the careful reading accorded the manuscript by so many former editorial board members (including Board of Directors chair Bob Sergesketter and member Judge Jeff Brown, both Board 32, and my long-time, greatly-to-be-revered faculty colleague John Mixon), readers have been spared many an error that otherwise might have been published in the pages that follow. Most of all, I express my profound appreciation to *all* the members of Boards 1 through 50, who actually *lived* the story I have been privileged merely to recount.

In keeping with the general practice in historical essays, all notations hereafter appear as endnotes at the conclusion of this essay, where the reader will find also a compilation of statistical trivia of perhaps more than passing interest, at least to some!

**(MORE THAN) HUMBLE BEGINNINGS<sup>2</sup>**

The official motto of the University of Houston is: “In Time.”<sup>3</sup> Just-in-time, in the Japanese industrial sense? Mañana, in the Americanized–Hispanic sense? In due course,<sup>4</sup> in the plodding sense generally associated with American academic writing? Perhaps all of the above.

Stripping aside all else, the University of Houston, as founded, was about *leveling*. The purpose of the University was to uplift the working people of the City of Houston and give them a chance to succeed, or fail, in college.<sup>5</sup> As founded, UH was all about the Open Door, with due allowance for substantial numbers of students exiting by the Back Door when they did not succeed.

The University began life, under the leadership of enterprising Houston public school superintendent E.E. Oberholtzer, in 1927, and became a four-year institution (assuming its present name) seven years later.<sup>6</sup> In those days, the University of Houston offered a chance to obtain, but clearly not the guarantee of, a post high school degree on a shoestring. Not surprisingly, at a school which continually has faced significant financial challenges in advancing its mission, academic quality was, generally speaking, less important than tuition income.<sup>7</sup>

*A.A. White’s Law School*

Against this background, nothing more startling could have occurred than the creation in 1947, within the University of Houston, of a college dedicated to *excellence*. A.A. White, the founding dean of the College of Law,<sup>8</sup> a top-ranking law graduate at SMU (with graduate study at Columbia), saw no reason for the law school Oberholtzer had engaged him to begin to be anything less than first rate. While the University could provide his new law school no better quarters than old military services barracks (later upgraded to the basement of the university library), White was undeterred:

I told President Oberholtzer my ambition would be to make the law school better than the University.<sup>9</sup>

Oberholtzer had in mind a *big* law school, defined by quantity: the more students the College of Law enrolled, the more income it would produce. White had in mind a *quality* law school.

Dean White apparently operated on a short leash. On the one hand, he set high standards. Other Texas law schools required 90 college hours and a C average for admission. White

stipulated the same hours but a C+ average, making the requirements of his fledgling College of Law the most rigorous in the state. On the other hand, White acquiesced in the need to create an evening division of the law school, staffed by part-time professors from the local bar, to bring in additional income.<sup>10</sup>

Dean White set out to lay a firm foundation for the school by hiring top-notch faculty. White's first hire, signaling his intentions, was Lewis Roberts, a University of Kentucky Law School faculty retiree with a Ph.D. and a national reputation as a legal scholar. Other early additions included Dwight Olds, poached from Wake Forest Law School, who soon would hold the record for most frequent publication during the first decade of *HLR*'s existence; C.W. Wellen, a Harvard LL.M student referred to White by Harvard Dean Erwin Griswold; and David Vernon, a Harvard LL.B. with an S.J.D. from New York University. Vernon departed after a year and went on to a distinguished career in legal academia, including the deanship at Iowa. But his credentials, however shortly they may have graced the University of Houston College of Law, were emblematic of the caliber of the faculty A.A. White sought to achieve.<sup>11</sup>

Indeed, of the College's first nine faculty hires, more than half held J.D.s from such non-Texas law schools as Harvard, Michigan, and Chicago,<sup>12</sup> and all but one had, or would shortly obtain, graduate study outside the state, capped by such advanced degrees as LL.M., Ph.D., and S.J.D.<sup>13</sup>

Two homegrown Texas products, however, would go on to be central players in the history of the College of Law: Newell Blakely, a UT grad rescued by White from two years of law practice in Harlingen, Texas, who would become a beloved teacher and White's successor as dean (although, ironically, his vision of a great law school differed sharply from White's); and John Mixon, the first University of Houston College of Law graduate to be hired as a professor at his alma mater when Vernon's resignation left a sudden hole in the teaching ranks—who would himself become beloved by literally generations of students, remain on the faculty for fifty-five years, and leave behind him, among his many other good works, the history of the law school from which (as the endnotes reveal) much of the material in the present section of this essay has been lifted with its author's blessing.<sup>14</sup>

Despite, however, the promising omens just recited, the future of A.A. White's vision, and the history of the College of Law he founded, would soon take a radically different direction.

*Nothing Succeeds Like Successors*

In the spring of 1956, A.A. White resigned suddenly in mid-semester from the deanship of the College of Law (and from its faculty, although he would return in 1962 and serve as interim dean in 1974–76). Conflicts with University of Houston administrators, never fully enamored of White’s vision for the law school, apparently came to a head in ways which White could no longer tolerate. White regarded law as a noble profession and believed that law schools should train highly qualified students to serve an increasingly complex society. He was dismayed when the University chartered, over his opposition, a law fraternity with an “Aryan clause” (i.e., no Jews allowed). Then, the University turned down flat his proposal to build or rehab a downtown building to get the College of Law out of the university library’s basement<sup>15</sup> and into a space capable of supporting a top-quality institution. A.A. White’s last act as dean would be to hire another College of Law graduate, John Neibel, to take over his classes. Neibel eventually would build the new building that White had longed for, and White would live long enough to see it go up.<sup>16</sup>

White had tried to build an institution, too—one that reflected his admiration for national law schools that admitted students of proven ability and hired professors who would teach law in its societal context, inquiring after the social impact of laws, considering how the legal system might serve society better, and publishing widely. Newell Blakely, while loyal to White when White was dean (as White would be to Blakely when he rejoined the faculty during Blakely’s deanship), saw things differently.

Blakely, not White, was by then the College of Law’s most respected teacher. His classroom discipline was legendary. So, too, was the discipline of his approach to legal education. Blakely (at least according to John Mixon, a contemporary of both) regarded law more statically than did White, as something to be learned by memory and induction—that is, through piecing together reasons and principles gleaned from readings of assigned cases and interrogations by Blakely, a master of the Socratic method.<sup>17</sup>

Dean Blakely also had firm ideas—and ideas distinctly different from his predecessor’s—about how the College of Law should be comprised. He installed a new system of admissions that much resembled the philosophy of the College’s parent institution, the University. Gone immediately were A.A. White’s selective admission standards, which Blakely regarded as elitist. (Shades of E.E. Oberholtzer!) Instead, Blakely opened admissions to anyone with a flat C average (and 90 hours of college).<sup>18</sup> According to Mixon, the school’s new dean defined its purpose as

teaching traditional doctrine to large numbers of unscreened students, with a tough grading system [based on Darwinian selection] that flunked out half the class to identify those who were worthy to graduate and practice law.<sup>19</sup>

Besides his open admissions policy and unqualified support for the evening division, Blakely's revamped vision for the College of Law led to a starkly different policy regarding faculty hiring. For Blakely, the primary purpose of a law school was to train students to practice law so that they could serve their clients capably, and the primary instrument for carrying out that mission was a corps of outstanding teachers. He rejected White's preference for selecting professors from the national market in favor of hiring more aggressively from the local bar, and specifically from the ranks of the College of Law's own growing list of graduates.<sup>20</sup>

Likewise, and in keeping with his view of a law teacher's proper role, Blakely did not expect professors to engage significantly in research or publication. Indeed, in his first five years as dean, Blakely and his new faculty hires published next to nothing<sup>21</sup>—although Blakely himself would later become a publishing legend through his masterful explication of the Texas Rules of Evidence in the pages of *Houston Law Review*.

Beginning in 1963, for reasons and by means that need not detain us here (in part because they are told so well elsewhere),<sup>22</sup> Newell Blakely's vision for the College of Law had begun to encounter stiff opposition. Many of the faculty who had been hired by A.A. White continued to cherish the educational ideals he had championed. Among Blakely's own hires, many became converts to those ideals.<sup>23</sup> Outside the walls of the College of Law, a President of the United States was assassinated, the civil rights and women's rights movements gained force, the U.S. Government conducted war in a faraway place while riots broke out on campuses nationwide, and in general both society and the law began to move away from Blakely's understanding of law as "a self-referential and neutral system whose formal content was independent of social and community interests outside the legal system itself."<sup>24</sup>

Newell Blakely resigned as dean effective at the end of the school year in 1965. His successor, John Neibel, who had been A.A. White's last hire, succeeded him. Neibel struggled for almost a decade to bridge the gap between White's founding vision for the College of Law and the more local version espoused by Blakely. Along the way, many capable hires joined the faculty's ranks (none more notable for this history of *Houston Law Review* than a University of Michigan Law School graduate and local Houston practitioner named Sidney Buchanan, of whom more later),<sup>25</sup> and Neibel succeeded in building a new building—a concept first urged

by White, then adopted by Blakely, but finally made a reality (albeit on the University of Houston campus and on a huge scale which neither White nor Blakely had imagined) by Neibel.<sup>26</sup>

Then Neibel himself was gone, in a rare show of faculty unanimity<sup>27</sup> which suggested that the College of Law could no longer straddle the White and Blakely visions. Sooner or later, one would prevail. In the meantime, it seems fair to say, the law school would exist somewhere in between.

In the meantime, too, the College of Law's first student-led journal would emerge amidst all of the institution's upheavals. But where would it fit within the landscape of the battle-scarred terrain that lay between the competing visions of A.A. White and Newell Blakely?

#### *Enter Houston Law Review*

Just before the foundations of Newell Blakely's ideal law school began to crumble, philosophically speaking, in 1963, he made a fateful decision. Blakely had earlier observed to John Mixon, newly returned from his year at Yale with an LL.M. in hand, that he knew how to get national attention (had he wanted it) for the College of Law: "Just hire a bunch of New York liberals who want to write law review articles. That would do it." But, the dean advised the professor, "I wouldn't want to teach in a school like that."<sup>28</sup>

Many of Dean Blakely's students, however, wanted to *learn* at a law school like that—not a school with a bunch of New York liberals as the faculty, necessarily, but one with a law review.<sup>29</sup>

The students got up a petition, evidently supported by members of the faculty like White and Mixon. Even faced with a formal request from a committee of the Student Bar Association, however, Dean Blakely was reluctant. The students could have a law review, he decided, but only if they raised enough cash to cover start-up costs. With the assistance of College of Law alumni/ae and other members of the Houston Bar,<sup>30</sup> they did just that.<sup>31</sup>

Officially, *Houston Law Review* came into being on November 1, 1962, with the filing of its articles of incorporation at the office of the Texas Secretary of State. The initial organizational meeting occurred on January 11, 1963. The publication of *HLR*'s first volume<sup>32</sup> followed sometime thereafter the same year. The law school around the *Review*, like the nation itself, was in upheaval. Funding, as always at the University of Houston, was scarce, and bodies were few (fourteen members in all). In short, the editors of the upstart journal had little to sustain them except their confidence in their own abilities and the hope that the new venture would survive. The few, the brave . . .

In Volume 1, Issue 1, after the first of many pages of advertising necessary for “lift off!” (in the parlance of the day in Houston, site of NASA’s Johnson Space Center, itself newly opened for business in 1963),<sup>33</sup> *HLR*’s first Editor in Chief would write:

The editors recognize that they yet have much to learn about publishing a law review, and that only the passage of time accompanied by much hard work will establish the fine traditions that will make the Review enduringly great.<sup>34</sup>

“Enduringly great”? In the circumstances into which *Houston Law Review* had been born?

Absurd.

Or maybe not. After all, *Houston Law Review*’s first faculty advisor turned out to be none other than A.A. White. White had, in fact, suggested the creation of the law review even before the students did,<sup>35</sup> although it was they who got the job done. Their dexterity as editors, and that of their advisor, would quickly be tested.

### CONDOMS AND COCKROACHES

Condoms and cockroaches did not grace the pages of any volume of *Houston Law Review* during Decade 1 of its existence. But they nearly did. Volume 1, although necessarily cobbled together in short order by Board 1,<sup>36</sup> came and went without incident and with many excellences, as will appear below. Board 2’s editors,<sup>37</sup> however, shortly found themselves confronted with the tantalizingly titled *Trouble in a Bottle: From Condoms to Cockroaches*—a voluminous examination of contaminated bottle litigation from across the country. Wisely, they declined to print it,<sup>38</sup> realizing that, as a start-up organization with big goals but limited resources, *Houston Law Review* should seek out and publish only serious-minded pieces that would advance its cause.

Still, the pages of Volume 2 reveal the dichotomy. Condoms and cockroaches were nowhere to be found; in their place were articles on fair use in copyright law, nontaxable corporate separations, and the constitutionality of wiretapping—all topics of national concern. Yet an examination of the table of contents reveals all Volume 2 authors to be practitioners rather than professional legal scholars, with one noticeable (and soon-to-be common) exception: College of Law professor Dwight A. Olds. Olds indeed authored *three* articles, including an assessment of mechanics’ liens under Texas law and a practitioner-oriented piece instructing lawyers on the practical consequences of recording acts. As the sole representative of legal academia in Volume 2, Olds joined a group of local practitioners to comment on matters

important to the Houston Bar, while simultaneously addressing the kinds of scholarly legal topics necessary to begin to bring the *Review* attention on the radar screen of respected publications.

As *Houston Law Review* was setting up shop in its early years, the focus was clear: to achieve its founders' aims, the publication's contents eventually would have to include nationally relevant articles by nationally renowned scholars. But such articles were not readily available to *HLR's* editors in its beginning years so, along with the practitioners, the school's faculty—Olds, Mixon, Neibel, Raymond Britton, and others—pitched in vigorously to provide articles of quality.

Thus, local practitioners and College of Law professors dominated the pages of the early volumes. The mix, however, was unstable from volume to volume.

#### *The Academy or the Bar?*

The academy or the bar? Who would be the *Review's* primary audience, and what would they read? Fifty years of hindsight evidence the steady emergence of a tier-one law journal as the leading edge of a tier-one law school. Today's *Houston Law Review* is a national top-50 publication that consistently prints only top-flight articles by professional authors of recognized stature.<sup>39</sup> Yet the success ultimately achieved was not always so certain, and certainly not guaranteed.

As suggested in *Humble Beginnings* above, during the early days of the *Review* the College of Law itself faced an identity crisis, which in turn was reflected in the content of *HLR's* volumes. As the law school struggled to define itself—would it compete with the top academic institutions in the region, or would it settle for a role that favored degree volume over scholarly research?—the *Review* faced a similar dilemma. Volumes 1 and 2 illustrate the contrast.

The first article published in the first issue of *Houston Law Review* was penned by a member of the law school's own faculty. Dean John Neibel opined on the *Implications of Robinson v. California*, echoing Justice Potter Stewart (who himself was echoing the appellee's brief) with these, the first words published in the inaugural issue of the *Review*: "It is generally conceded that a narcotic addict, particularly one addicted to the use of heroin, is in a state of mental and physical illness."<sup>40</sup> How appropriate that the first sentence of the *Review's* first article should feature the College of Law's dean quoting a Supreme Court case about an issue of national concern. After all, six of Volume 1 and 2's professional articles would be written by the

school's faculty; only one was by a law professor from another school.

Practitioners generally led the way in the earliest volumes. Nonetheless, while the *Review* did focus heavily on scholarship of interest chiefly to Texas lawyers (topics ranging from Texas criminal courts of inquiry to apartment ownership in Texas), the nationwide scope of content necessary to achieve steadily increasing quality was not altogether an afterthought. Commentaries on multiple Supreme Court cases (*Robinson v. California*<sup>41</sup> and *Reed v. Steamship Yaka*<sup>42</sup>), privity in the sale of goods, patent litigation, copyright fair use, migrant-labor laws, the legality of wiretapping, and nontaxable corporate separations satisfied those readers from the academy concerned with more than Texas-centered scholarship.

The bell cow of the early years was Justice Tom C. Clark.<sup>43</sup> Surrounded in the pages of the *Review* by members of the local bar and professors from the local law school, Justice Clark stands out as a herald of the publication's promising future. His slightly offhand-sounding title: *Random Thoughts on the Court's Interpretation of Individual Rights*. A United States Supreme Court Justice opining on American liberty, quoting Justice Holmes, and providing metaphysical and historical justifications for the Court's role in protecting human dignity, all in the *Review's* very *first* volume!

#### *The Academy Pulls Ahead*

What Clark had begun in Volume 1, Solicitor General Archibald Cox carried forward in Volume 3. Long before the *Review* hosted its first Frankel Lecture or printed its first symposium issue (events which would become the hallmarks of its mature years), Cox's 1965 address to the Student Bar Association's Annual Spring Banquet was reprinted as an article in Volume 3, Issue 1. *The Constitutionality of the Proposed Voting Rights Act of 1965* afforded the *Review* its second article by a figure prominent on the national scene. And like Clark's article before it, Cox's address ensured that *Houston Law Review* would enter into the national dialogue concerning the ongoing struggle for greater civil rights for all Americans.

Serious law journals address the serious legal issues of the day. The civil rights movement was the paramount social issue of the day as the *Review* pressed forward in its first decade. Articles by Justice Clark and Solicitor General Cox ensured that the journal's two most visible pieces in its earliest volumes would provide important commentary on the changing landscape of individual rights in the United States. And they were not alone.

Throughout the decade, the *Review* published numerous articles containing commentary on the civil rights movement. Joining Clark and Cox were, among others, Professor Alfred Avins of Memphis State University with *Social Equality and the Fourteenth Amendment: The Original Understanding*, Professor Nathaniel E. Gozansky of Emory University School of Law with *School Desegregation in the Fifth Circuit*, and practitioner Robert W. Doty with *The Texas Voter Registration Law and the Due Process Clause*.

As the decade progressed, the *Review's* contents became increasingly more diverse and accomplished, as did the CVs of the published authors. *Houston Law Review* would never abandon its commitment to educating the Texas Bar (indeed, even today its online-only *HLRe: Off the Record* demonstrates a continued commitment to publishing articles of practical importance to Texas lawyers), but achieving the *Review's* larger goals required an increased reliance on national law professors. Volumes 4 through 10 brought just that.

Harvard, Stanford, Pennsylvania, George Washington, Emory, Alabama, U.C. Davis, and American University—law professors from these diverse schools (and many others) helped to enhance the *Review's* budding credibility. Justice Clark returned in Volume 6; justices from the Supreme Courts of Texas and Colorado published articles in Volumes 4 and 10; Texas trial court judges appeared periodically; and United States Senator Mike Mansfield published in Volume 9. A geographically and professionally diverse group, these authors provided articles concerning issues of critical national prominence, including nuclear power regulation, the role and power of the Supreme Court, societal resistance to the law, and obscenity and the law.<sup>44</sup>

While local law professors and practitioners continued to make regular and vital contributions, by the end of the *Review's* first decade its ambition to become a journal of steadily broader scope and recognition was evident. In spite of a marked reliance on practitioner-oriented articles early on, the *Review* had begun to emerge as a serious engine of scholarly research.<sup>45</sup> To get better, however, as the editors of the publication quickly recognized, *Houston Law Review* would have to grow.

### *Ramping Up Production*

As the ambition and visibility of the *Review* increased, so necessarily did its size (both in paper and in people). To accommodate longer articles, more distinguished authors, and more diverse subject matter, the heft of each volume began to increase.

Volume 1 introduced the journal to the world as a three-issue, 312-page publication. Volumes 2 and 3 followed suit, each with three issues and barely 400 pages of length. But just as Volume 4 brought more law professors than ever before (including authors from George Washington University and the University of Iowa), so too did it bring an additional issue.<sup>46</sup> Volume 4's four issues gave way in Volume 5 to five issues, which remains *HLR's* normal publication output to this day. By the end of the decade, in stark contrast with the production of earlier years, Volume 10's five issues spanned more than 1,200 pages.<sup>47</sup>

The publication's swift growth, both in content and in size, reflects a changing organizational vision, membership, and structure. As the editors pressed to become ever better, they implemented changes to realize that objective. And much did change over the first half-a-century of the journal's existence. But one consistently present and vital piece of the *Review's* contents appeared right from the start, only to grow in prominence as the years went by.

#### *A Curious Fascination*

Among the professional pieces published in Volume 1 was one with a particularly "non-Texas" flavor: an article on an exclusively federal topic titled *The Need for the Impartial Expert in Patent Litigation*. Although the article's central focus was more trial advocacy than substantive patent theory, the presence of patent law in Volume 1 foreshadowed intellectual things to come.

Indeed, each of the *Review's* first five volumes contained articles addressing intellectual property and/or entertainment law. In Volume 2, although the editors declined to publish Arthur Bishop's commentary on prophylactics and pesky pests, in its place they printed his other submission, *Fair Use of Copyrighted Books*. Articles on prior restraint in the motion picture industry, the patentability of inventions, and international licensing agreements followed in Volumes 3 through 5. Barely has a volume gone by since that time without the inclusion of one or many articles on IP law, perhaps an odd emphasis for a legal publication based in Houston, Texas, but an emphasis that has remained constant through the years.

#### *"Off the Record"*

Volume 2's first issue introduced a special section of the *Review* intended to balance the competing visions of the publication. *Off the Record's* stated purpose was "to present discussions of problems of practicing attorneys in an informal manner, rather than to replace

the regular article section.”<sup>48</sup> All practicing attorneys with experience in a particular field were invited to submit short pieces.

Submissions such as *Operation of the Discovery Rules*, *Alternative Testamentary Administrations*, and “*In Lieu*” *Royalty Agreements in the Oil Industry* afforded practitioners a steady voice in the *Review* and a continued interest in the contents of publication. Although this section eventually was set aside as the *Review* grew in size and stature, *Off the Record* would come full circle in 2010 when Board 48 began publication of the practitioner oriented *HLRe: Off the Record*, a feature designed to advance many of the same goals of the original feature first conceived in 1964.

### *The Content's the Thing*

Board 1 Editor in Chief Dan Matthews set forth the *Review's* ultimate vision in his editor's page of Volume 1, Issue 1. Enduring greatness was the goal, but much work would be needed to get there. The arch of Decade 1 illustrates an organization initially regional (and often simply state-based) in scope, publishing the output of mostly practitioners and Houston law professors but fitfully providing a glimpse of the levels of scholarship and acclaim to which the early editors aspired. Professors, judges, and academics from around the country filled the *Review's* pages as the decade progressed, necessitating an increase in annual issues from three to five. “Off the Record” and other such ephemera gave way to Harvard, Stanford, and Penn. As the decade concluded, much had been accomplished.

### **A PERFECT ARISTOCRACY**<sup>49</sup>

#### *Membership and Logistics: An Overview*

Fourteen members strong, the pioneer Board of the *Houston Law Review* was small in number, though not in achievement. Law reviews are repopulated annually by their school's highest achieving first-year students, and “continued membership is based on higher performance than is demanded of non-members.”<sup>50</sup> Whether selection is based on grades, a writing competition, or a combination of both, spots are limited.<sup>51</sup> And so the fourteen members of Board 1 had much to celebrate—the requisite success required for initial membership brought about the opportunity to print the *Review's* first pages.

By design and by necessity, the size of a law review is closely linked to the size of its law school. And the College of Law in 1962 was not large—a few hundred at most. A small law class birthed a

small *Law Review* Board; a small Board required a relatively modest structure, at least by the standards of today.

Board 1 was indeed simply organized: an Editor in Chief, supported by a single Articles Editor, Comment Editor, Casenote Editor, Book Review Editor, and Business Manager, with a population rounded out by eight members of the Editorial Staff. No Managing Editor, no Chief Articles Editor, and certainly no Alumni Developments Editor (there being, obviously, no alumni to develop). But as the *Review* labored along through the remainder of Decade 1, the membership structure would evolve annually.

The position of Managing Editor was added by Board 2 and remained a constant thereafter. But beyond that, few masthead changes made during those early years were permanent. Board 6 took a bifurcated approach: there were Editors of Student Writings and Editors of Non-Student Writings (but very little else). By Board 7, they had become, respectively, Casenote and Comment Editors and Articles Editors. Board 8 introduced the title of “Members.” And at the end of the decade, Board 10 did away with Associate Editors, instead crediting them on the masthead simply as Editors.

The main constant was a limited size throughout most of the decade: fourteen members of Board 1, down to ten by Board 6, but rising slightly to eleven on Board 7 and thirteen on Board 8. What would it take for the *Review* to grow, given its insistence on asking only a small percentage of each class into membership?

The answer? The law school itself would have to grow. And grow it did.

Newell Blakely, it will be recalled, had embraced A.A. White’s ambition to build or buy space for a downtown law building. While their motives may have differed (both getting out of the cramped university library basement and getting closer to the practicing bar and the judiciary featured in each man’s vision, though in differing measure), Blakely and White’s efforts produced exactly the same result: nothing.

Their successor, John Neibel, proved a better institutional politician than either. In 1966, the University announced that it would fund a law building—on campus. The promise proved sufficient to gain the College of Law membership in the Association of American Law Schools.<sup>52</sup> And it opened up the prospect of a greatly expanded student body, with concomitant results for the membership of *Houston Law Review*, through an ingenious<sup>53</sup> hub-and-satellite design, including a projected five teaching units (and an underground library) capable of accommodating up to 2,500 students, if ever completely built.

As the first (and still only) two teaching units rose and became occupied in 1969 and 1974, the school's enrollment skyrocketed. Increased enrollment led, in turn, to a larger *Review* (an important development, considering that the page length per *HLR* volume had quadrupled from Volume 1 to Volume 10). By Board 10, membership had risen to thirty.

The growing number of members did not immediately produce a notably more sophisticated Editorial Board structure. Members and Editors comprised 80% of Board 10. They were led by an Editor in Chief and a Managing Editor, along with two Article Editors and two Comment and Casenote Editors. But if the hierarchical organization of the *Review* remained somewhat thin, the addition of many additional hands at least made easier the processes of reviewing submissions, selecting articles, editing galley proofs, and printing five issues per volume.

Along with arduous labor, membership on *Houston Law Review* (or any law review) carries with it many benefits as well. The success, the prestige, and the responsibility accompanying law review membership really never changes. Famed scholar (and *Yale Law Journal* Editor in Chief) Karl Llewellyn encouraged first-year law students concerning the merits of attaining membership in his school's most elite student organization thus:

We have in law schools an aristocracy of a peculiar kind. We may almost say it is a perfect aristocracy. One achieves membership exclusively in terms of his performance. Membership carries honor, but the honor that it carries is the duty to work and slave and drive oneself as no other student is expected to. A perfect aristocracy, then, because continued membership is based on higher performance than is demanded of non-members. Now this law review is a scientific publication, on which in good part the reputation of the school depends. Here is a thing American. Here is a thing Americans may well be proud of. There is not so far as I know in the world an academic faculty which joins its reputation before the public upon the work of undergraduate students—there is none, except in the American law reviews. Such an institution it is an honor to belong to. And by virtue of the terms of tenure of office of this you may be sure: to earn that honor is to earn an education. I hold out before you, then, as the goal of highest achievement in your first year, this chance to enter on real training in your second.<sup>54</sup>

At the University of Houston College of Law during Decade 1, what sort of person rose to that challenge?

*The Boys of Pointe du HLR*<sup>55</sup>

The young men and women who served on *HLR* during its early years bore the burden not only of advancing their own careers but also of bringing closer to reality the dream of excellence that A.A. White had dreamed for the College of Law and the first-born of its scholarly publications, *Houston Law Review*.<sup>56</sup>

Truth to tell, the “men and women” of Decade 1 were mostly men. Given the demographics of law school enrollments nationwide at the time, things could hardly have been otherwise.

But by only the seventh year of its existence (Board 7 in 1969–70), *Houston Law Review* had its first female Editor in Chief, Marjorie Caldwell.<sup>57</sup> Carol Eggert Dinkins,<sup>58</sup> who served on Caldwell’s successor board and helped oversee the publication of Volume 8, has clear memories of life at the College of Law of that era:

There were not many women—[I along with] two others walked across the stage [at Commencement] in June of 1971 . . . The professors were, as you would imagine, very professional with us and made no distinctions between us and the male students. It was not easy for women to get a job in those days, and there weren’t many in the firms. For example, Marjorie was the first woman associate at V&E [(Vinson & Elkins)] in 1970 . . . When I made partner at the end of 1979, *Texas Monthly* carried a blurb about it, as it was the first for any large law firm in Texas.<sup>59</sup>

Seven years after Marjorie Caldwell became Editor in Chief of *Houston Law Review*’s Volume 7, the “other *HLR*” (*Harvard Law Review*) would elect its first female President, Susan Estrich—heading up Volume 90.

Marvin Nathan<sup>60</sup> served as Managing Editor of Volume 2 and Editor in Chief of Volume 3. *Review* members, he recalls, were “few in number in contrast with the current editorial board,” resulting in what he regarded as his greatest challenge during the early days of the publication: “to instill pride and to inspire tradition.”<sup>61</sup> The viewpoint of Nathan’s boards was intensely forward looking, yet pragmatic and self aware:

The vision of the editorial boards at the time was to try to change the image of the law [school] as much as we could as quickly as we could . . . We wanted, as a group, more recognition, more approbation, in the community. We were not so much focused on our standing nationally. That wasn’t as important as our regional standing.<sup>62</sup>

Indeed. First things first. Presciently, however, and happily for *HLR*’s later national standing, it was Nathan’s Board that

“summarily rejected” *Condoms and Cockroaches* for publication by *Houston Law Review*.

Lawrence (Larry) Pirtle,<sup>63</sup> an Associate Editor on Board 3, remembers conducting the publication’s affairs with Nathan and others from an office in the *Review*’s old university library basement “about the size of a modest-sized closet of today.” Substantively, his strongest memory is of the “Boys from the Basement”<sup>64</sup> publishing in Volume 3 Solicitor General Cox’s address regarding the constitutionality of the then-proposed Voting Rights Act of 1965. The events of the day, he recalls, including those considered in the pages of *Houston Law Review*, “raised issues and fundamental differences which are still echoing (even more loudly) today.”<sup>65</sup>

Echoing Pirtle, Alvin Zimmerman,<sup>66</sup> who served as Managing Editor on Board 4 under John O’Quinn (see below), recalls his experience as the first editor to attend a meeting of the National Conference of Law Reviews. While gratified “because we were complimented for being such a young law review but . . . having such a professional publication” (news that “brought . . . high fives from everyone” when reported back in Houston), Zimmerman realized that still greater efforts would be required if *HLR* were to move up in the ranks.<sup>67</sup> “[W]e wanted . . . eventually to be able to compete with any other major law review,” he recalls. But “to begin that quest, we needed [to put out] not less than four issues.”<sup>68</sup> Board 4, accordingly, did just that.

Probably few members of the Decade 1 boards would contest that, among any number of extraordinary members of *Houston Law Review*, John O’Quinn<sup>69</sup> towered above them all—not always to their comfort—by virtue of both his physical stature and his sometimes outlandish appetites and professional achievements.<sup>70</sup>

O’Quinn was raised by his father, who ran an auto repair shop near Houston’s Rice University. His alcoholic mother had deserted the family when O’Quinn was four years old.<sup>71</sup> He enrolled at Rice, where he accumulated 90 hours of credit, accompanied by at best middling grades earned amidst off-and-on probation. He never graduated.<sup>72</sup> It didn’t matter. Under the Blakely Rules then in force at the University of Houston College of Law, a degree was not required. Ninety credit hours and C (or thereabouts) was good enough for admission.

Fortunately for himself and the law, O’Quinn caught fire at UH, pushing not only himself but everyone around him tremendously hard. He became Editor in Chief of *Houston Law Review* (not only presiding over the expansion of the publication from three issues per volume to four, but also adding *HLR*’s first ever symposium issue).<sup>73</sup> After specially petitioning to be allowed

both service on the *Review* and participation in advocacy competitions (a practice forbidden by College of Law regulations but allowed by the administration in O'Quinn's instance), he won a national moot court competition.<sup>74</sup> He finished first in his class.

O'Quinn proved to be a bigger-than-life, big-case lawyer. He won enormous verdicts in gas royalty disputes and breast implant cases and was a major participant in the class action that extracted billions of dollars for the State of Texas from Big Tobacco. He celebrated his successes with extravagant Christmas parties. But he also "dealt daily with personal demons and addictions."<sup>75</sup>

Not everyone liked John O'Quinn. Many physicians hated him because of the breast implant litigation, a fact that opened him to speculation that he "must have enjoyed great satisfaction when he funded a Texas Medical Center building with his name attached."<sup>76</sup> He was also a tenacious, even ferocious, advocate and more than once was accused of playing too close to, or across the line, in pursuit of success in his practice.

One of O'Quinn's great loves (perhaps not surprisingly in light of his growing-up years)—and one at which he felt compelled, as he did with everything in his life, to succeed—was assembling what became one of the nation's most impressive collections of antique cars. In all, he amassed more than 800 vehicles, including both enormously expensive classics (Lamborghini, Rolls-Royce, Duesenberg, and even a Batmobile), plus a plain grey 1975 Ford Escort GL first owned by a young Polish priest who would become John Paul II.

On the morning of October 29, 2009, having forgotten a file he needed for a hearing later in the day in San Antonio, O'Quinn left Houston's Hobby Airport in the rain in his black Suburban and headed toward his home in Houston's tony River Oaks neighborhood, speeding along at 76 miles per hour on a slick, winding road posted at 40 mph. He lost control of the vehicle. The Suburban slid first, then flew across three lanes of traffic, a wide grassy median, and three more lanes of oncoming traffic, before it crashed head-on into a massive oak. O'Quinn was killed instantly. Many of the autos from his beloved collection were exhibited at his memorial service.

John O'Quinn's is an out-sized story. But stripped of its wholly personal extravagances, it is much like the story of *Houston Law Review*.<sup>77</sup> O'Quinn had come up from the bottom. He possessed enormous drive always to be better. He worked with all the might he had. And in the end, he succeeded in making something of himself.

\* \* \*

“Context matters,” Justice Sandra Day O’Connor once observed.<sup>78</sup> So it was with *Houston Law Review* during the first decade of its intended journey toward “enduring greatness.”

Fourteen members, a closet-sized office, and barely 300 pages—*Houston Law Review* had been born amidst humble circumstances in 1963. The dedicated editors of Boards 1 through 10 strove to make the *Review* a publication of substance and quality, if still a publication with only regional ambitions. They hobnobbed with their fellow wizards<sup>79</sup> (at the National Conference of Law Reviews), broadened the horizon of the journal’s subject matter, published the first symposium issue, and grew the organization in prestige, scope, and size.

By the end of Decade 1, it could be said truly of the men and women of *Hous. L. Rev.* that, like perhaps their most famous member, they were . . .

Driven.

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1. Cf. *John* 1:1.

2. The following section, unless otherwise noted, is drawn principally from JOHN MIXON, AUTOBIOGRAPHY OF A LAW SCHOOL (2012) (unpublished manuscript) (on file with *Houston Law Review*) (used with its author’s enthusiastic endorsement), plus the personal recollections and reflections of this essay’s author. Publication of the MIXON HISTORY is scheduled to occur in late 2012 in celebration of the 65th anniversary of the founding of what is now the University of Houston Law Center, with funding made possible by The John Mixon Society and through the generosity of Don R. Riddle, UHLC Class of 1966 and an Associate Editor of *Houston Law Review* on Board 3 and the Law Center’s long-time good friend.

3. PATRICK J. NICHOLSON, IN TIME: AN ANECDOTAL HISTORY OF THE FIRST FIFTY YEARS OF THE UNIVERSITY OF HOUSTON 1 (1977).

4. Not to be confused with “all deliberate speed.” Cf. *Brown v. Bd. of Educ.*, 349 U.S. 294, 301 (1955).

5. Houston offered other educational opportunities for local high school graduates, of course, but none on such easy terms. In particular, Rice Institute (as today’s Rice University was then known) was highly selective in its admission policy. The founders of the University of Houston saw the need for an alternative. NICHOLSON, *supra* note 3, at 13.

6. *Id.* at 31, 65.

7. MIXON, *supra* note 2, at 34. UH became a state university in 1963, but the University of Texas and Texas A&M University, both with longer traditions and deeper alumni bases, continue to dominate other state universities where state funding support is concerned.

Today, however, the University of Houston is a Carnegie Tier One university and home to one of the nation’s leading Honors Colleges.

8. Contrary to received unwisdom, the University of Houston College of Law never was named, formally, the Bates College of Law, at least insofar as the early pages of *Houston Law Review* disclose. A one-page announcement in Issue 5:2 describes plans for the construction, initially, of several structures that would include “an administrative unit, a library, and a teaching unit” (emphasis added), but with up to four more teaching units to be built later. “Future growth in enrollment will be met,” the announcement continues, “by the construction of a new law school, sharing library and administrative facilities and guided by the philosophy of Bates College, but otherwise independent, with its own student body, faculty, and curriculum.” (Emphasis again added.) In short, and at least arguably, what was then meant by “Bates College” was merely the first teaching unit (together with the central library

and administration building), with the naming of the second, and any other future teaching units (or schools), to abide—perhaps in the hope of a major donation in exchange for naming rights, which never occurred.

9. A.A. White, as told to John Mixon in the 1980s. MIXON, *supra* note 2, at 29.

The University of Houston Law Center currently ranks in the top quartile of American law schools. See *Best Law Schools*, U.S. NEWS & WORLD REPORT (2012), available at <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-rankings/page+3>.

10. See generally MIXON, *supra* note 2, at 34–35, 39–54.

11. *Id.* at 35–36.

12. Dean White was willing to hire from in-state as well, but did so rigorously. Simon Frank, for example, had been a straight A student at the University of Texas School of Law. White simply was unwilling to compromise on quality. MIXON, *supra* note 2, at 43.

13. *Id.*, app. VIII (Tenure Track Faculty Hired, 1947–2011). White, who himself had spent a year of graduate study at Columbia, believed strongly in the value of post-J.D. education. He encouraged Blakely to take a year off in 1953 to earn an LL.M. from Michigan; and Blakely in turn, when he became dean, often sent his locally hired professors off to “finishing school” at highly regarded institutions like Yale, where UH law grad John Mixon would polish his credentials. Mixon suggests that Blakely thought he had little to fear from Yankee influences upon his new hires, whereas in fact most of his newly minted LL.M.s returned to Houston more invested in A.A. White’s conception of the role of legal education than they were in Blakely’s. *Id.* at 125–26, 224.

14. *Id.* at 9–42, 53–54. Mixon would bookend Decade 1 of *HLR*’s early history by publishing in both Volume 1 and Volume 10, writing frequently thereafter, and even contributing to the Decade 5 issue that celebrated his 50 years of teaching at the Law Center.

15. Basements, as the University would learn to its dismay half a century later when Tropical Storm Allison nearly destroyed its physical plant—underground library and all—in 2000, are no place to put a law school.

16. MIXON, *supra* note 2, at 101–03.

17. *Id.* at 42.

18. *Id.* at 111–15.

19. *Id.* at 113.

20. *Id.* at 122–25.

21. *Id.* at 112.

22. See generally *id.* at 183–234.

23. *Id.* at 224; see also *supra* note 13 (discussing Dean Blakely’s commitment to sending his local hires off to elite law schools to burnish their credentials with LL.M.s).

24. MIXON, *supra* note 2, at 112.

25. *Id.* at 224–26. See particularly, hereafter, the story of Decade Two: *Carry On Boldly!*

26. MIXON, *supra* note 2, at 235–49.

27. *Id.* at 298. A.A. White himself succeeded Neibel as dean, but only in a caretaker capacity. *Id.* at 304–05.

28. *Id.* at 186.

29. For the motivations of the early leaders of *Houston Law Review*, see “*The Boys of Pointe du HLR*” below.

30. One leading figure was Charles I. Francis, to whom Volume 8 was dedicated. Mr. Francis was vital in covering *HLR*’s start-up costs and contributing vision to the organization. The Editors of Volume 8 praised Mr. Francis, a graduate of the University of Texas School of Law, for “realiz[ing] that the country needed more good law schools and that competition stimulated education.” *Dedication*, 8 HOUS. L. REV. xxxi (1970).

31. MIXON, *supra* note 2, at 186–87.

32. Officially, as originally numbered, Volume I. The use of Romans for volume numbers was discontinued after only one volume and replaced in Volume 2 by the use of Arabic numerals.

33. Originally christened the Manned Spacecraft Center but renamed in 1973 after former President (and Texan) Lyndon B. Johnson's death, JSC would guide all U.S. space flight from Gemini through the current International Space Station. *Mission Control Fact Sheet, Houston*, NASA.GOV, [http://www.nasa.gov/centers/johnson/pdf/160406main\\_mission\\_control\\_fact\\_sheet.pdf](http://www.nasa.gov/centers/johnson/pdf/160406main_mission_control_fact_sheet.pdf) (last visited Aug. 28, 2012).

34. Dan G. Matthews, *Editor's Page*, 1 HOUS. L. REV. viii, viii (1963).

35. MIXON, *supra* note 2, at 186–87.

36. Mike Willatt, who served as the articles editor for Volume 1, notes dryly: “My major responsibility was to find some articles. I suspect that the role has not changed, but the menu of contributors has probably enlarged considerably.” Questionnaire Response, Mike Willatt, Willatt & Flickinger (Nov. 3, 2011) (on file with Houston Law Review).

37. Physical copies of Volume 2 contain three different mastheads, an artifact indicative of the *Review's* continually changing membership. Members came and went, as one former Editor in Chief recalls, “without any real predictability.” Some finished their degrees in mid-year; others accumulated the hours necessary to take the bar exam, got their licenses, and departed without obtaining a degree at all. “We never thought of ourselves as being on the board as a group, because there was a lot of transition within the boards . . . We never knew from semester to semester who would be there.” Interview by Rebekah Reed with Marvin Nathan, Senior Partner, Nathan Sommers Jacobs, in Houston, Tex. (Feb. 16, 2012).

38. Ultimately, the article was published as *Trouble in a Bottle* (absent any mention of condoms or cockroaches in the title) by *Baylor Law Review* in 1964. See generally Arthur N. Bishop Jr., *Trouble in a Bottle*, 16 BAYLOR L. REV. 337 (1964).

39. Regrettably, brevity and clarity—not to mention the failure of early volumes of the *Review* to disclose the authorship, whether student or professional, of notes, comments, and the like—require this series of essays to focus primarily on the publication's articles, which were drafted by, and credited to, professional authors.

40. John B. Neibel, *Implications of Robinson v. California*, 1 HOUS. L. REV. 1, 1 (1963) (quoting *Robinson v. California*, 370 U.S. 660, 667 n.8 (1962)) (internal quotation marks omitted).

41. *Robinson*, 370 U.S. 660.

42. *Reed v. Steamship Yaka*, 373 U.S. 410 (1963).

43. Justice Tom Campbell Clark (b. Dallas, Texas, Sept. 23, 1899; d. New York City, New York, June 13, 1977) was a Texas lawyer, appointed to the Supreme Court by President Harry S. Truman, who served as an Associate Justice from 1949 to 1967.

44. For more detailed information on the subject matter of Decade 1's contents, see “By the Numbers,” *infra* pages 281–86.

45. “I recall a pervasive sense throughout the tenure of Board 10,” recalls its Editor in Chief, Jan Baker, “that the Law Review had, in some fundamental way, ‘arrived’ as a scholarly law school publication.” Thanks to the hard work of their predecessors as well as their own efforts, the *Review* “was being increasingly cited by courts and commentators” and the Board 10 editors experienced “an influx of articles that were of increasingly high quality.” Questionnaire Response, D. Jansing Baker, Latham & Watkins LLP (May 24, 2012) [hereinafter Baker Questionnaire] (on file with Houston Law Review).

46. The expansion to four issues per volume was funded by a \$35,000 grant, to be paid at the rate of \$7,000 per year over five years, by the Maurice Frankel Foundation; and, not surprisingly, Issue 3 was dedicated to Mr. Frankel. “Financial instability,” the editors noted, “seems the natural state of law reviews, and no review could long endure without a subsidy of some kind.” *Dedication*, 4 HOUS. L. REV. (1966).

47. The technology used to produce the volumes, however, remained almost unimaginably primitive by today's standards. “In the early years of the *Law Review*, it was printed on linotype machines. Copy was sent to the printer, and an operator retyped the copy on a linotype keyboard. The machine then created a line of type called a ‘slug,’ and each slug was—literally—a line of hot metal.” The labor-intensive character of the process also made changes “very expensive” and forced the editors to balance “the cost of each change . . . against [its] importance.” Baker Questionnaire, *supra* note 45.

Once the changes were made and the volumes published, there remained, of course, the question of how to get *Houston Law Review* noted in the legal world. Board 8 Editor in Chief Steven Segal relates that, prior to his Board's time in office, *HLR* had remained conspicuously absent from notice in *Shepard's Citations*. Contacting the publisher, Segal was informed by *Shepard's* that it "would consider our inclusion when there was a demand." In response, Dean John Neibel placed in his annual letter to College of Law alumni/ae a message requesting that they write letters to Shepard's demanding that henceforth it publish citations to *HLR* (or, as many of them apparently added, risk the cancellation of their subscriptions). "Not long after, we received a letter from *Shepard's* advising that our *Law Review* was going to be added to their service. We joked in the office that the letter really said, 'call off the dogs, you have created the demand.'" Questionnaire Response, Steven Segal, retired partner at Fulbright & Jaworski L.L.P. (Mar. 20, 2012) (on file with Houston Law Review).

48. *Editor's Note*, 2 HOUS. L. REV. 69, 69 (1965).

49. KARL N. LLEWELLYN, THE BRAMBLE BUSH 105 (1930).

50. *Id.*

51. By Board 3, students writing onto the *Review* could choose between drafting a full-length article or, alternatively, submitting two case notes.

52. MIXON, *supra* note 2, at 235.

53. Ingenious, but flawed. For architectural reasons, the plans called for not only "basement" floors to all buildings, but "ground" (meaning "sunken into the ground") floors as well. The early results, while hardly promising, at least provoked some amusement:

Professor Dwight Olds had famously predicted that TU 1 [i.e., the Bates College of Law building] would flood, no matter how it was designed, because of the fact that it was to be built in an area . . . he knew to be flood prone. He was, of course, completely correct; TU 1 always flooded badly during heavy rains, with the result that any entrance with a door below grade was heavily sandbagged, in order to try to prevent flooding. On the instance of the heaviest storm that I can remember during my time in law school, a torrent of water had overwhelmed the sandbags and was flowing down the steps toward the below-grade entrance into TU 1. As I stood in the hallway, I saw water cascading down the stairs, then rolling into the elevator shaft and shorting out the elevator. As a result, the doors would open and close, the elevator would go up to the top floor, the doors would open and close, it would come back down, the doors would open and close, with the cycle endlessly repeating itself. Occasionally, sparks would fly out. I had never seen anything like it.

Baker Questionnaire, *supra* note 45. The design would have calamitous consequences for both the school and the *Review* during the latter's Decade 4.

54. LLEWELLYN, *supra* note 49, at 105.

55. A battlefield reference. *Cf.* STEPHEN E. AMBROSE, D-DAY 406–17 (1994). On the 40th anniversary of D-Day, standing above the beach where Allied soldiers had stormed ashore to liberate Europe from Nazi tyranny, President Ronald Reagan memorably described the Allied Expeditionary force thus: "These [we]re the boys of Pointe du Hoc. These [we]re the men who took the cliffs."

56. As the foregoing subsection on membership and logistics makes clear, the boards of the earliest volumes were small. But by Volume 10, the mastheads (an unreliable measure but still the best one readily available) indicate that somewhere north of 150 students had, at one time or another, been members of *HLR* during Decade 1. Each had a story, but cumulatively, there are too many to attempt to tell here. With apologies for necessary omission and compression, what follow are but a few of those stories of sacrifice and achievement.

57. Ms. Caldwell's current contact information is unknown as of this writing. *Houston Law Review's* hope, however, is that these 50th Anniversary essays will elicit further information, including the whereabouts of former members, relevant to the history of the *Review's* first five decades. The essays will be compiled, and corrected as necessary, after the publication of their fifth episode.

58. Ms. Dinkins currently is a partner at Vinson & Elkins LLP, with offices in Houston and Washington, D.C., and serves as the firm's Group Leader for Environmental Practice.

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59. E-mail from Carol Eggert Dinkins, Partner, Vinson & Elkins LLP, to Author (Aug. 30, 2012).
60. Mr. Nathan is Senior Partner at Nathan Sommers Jacobs in Houston, specializing in real estate law, business organizations, and finance.
61. Questionnaire Response, Marvin Nathan, Senior Partner, Nathan Sommers Jacobs (Nov. 11, 2011) (on file with Houston Law Review).
62. Interview by Rebekah Reed with Marvin Nathan, Senior Partner, Nathan Sommers Jacobs (Feb. 16, 2012) (on file with Houston Law Review).
63. Today Mr. Pirtle is Of Counsel, focusing on tax law at Houston's Gardere Law Firm.
64. The phrase is taken from T. Gerald Treece, *My Friend John*, 47 HOUS. L. REV. 253, 253 (2010).
65. Questionnaire Response, Lawrence J. Pirtle, Of Counsel, Gardere (Nov. 30, 2011) (on file with Houston Law Review).
66. Mr. Zimmerman currently is chair of Zimmerman, Axelrad, Meyer, Stern & Wise, P.C., in Houston, and is board certified in family law.
67. While probably *HLR* had not moved up all *that* much in the ranks three years later despite the addition of a fourth issue, by Board 6 (1968–69) the *Review* was at least sufficiently “on the map” for its editors to be asked to journey to San Antonio, which they happily did, to assist in the start-up of *St. Mary's Law Journal*. Questionnaire Response, Wendell B. Alcorn, Jr., Alcorn Law Office (Dec. 4, 2011) (on file with Houston Law Review).
68. Interview by Rebekah Reed with Alvin Zimmerman, Chair, Zimmerman, Axelrad, Meyer, Stern & Wise, P.C. (Oct. 16, 2011) (on file with Houston Law Review).
69. John Maurice O'Quinn (b. Houston, Texas, Sept. 4, 1941; d. Houston, Texas, Oct. 29, 2009) was the founding partner of The O'Quinn Law Firm and a famed Texas plaintiff's personal injury lawyer.
70. As did the institutional history of *Houston Law Review* earlier in this Essay, the text below draws heavily upon MIXON, *supra* note 2. For the content that follows regarding John O'Quinn, see generally *id.* at 119–21.
71. Larry J. Doherty, who practiced law with O'Quinn early in their careers, credits childhood hardship and abuse as a factor in making O'Quinn a successful trial lawyer. See *id.* at 120 n.115.
72. Alvin Zimmerman, *In Memoriam*, 47 HOUS. L. REV. 255, 257 (2010).
73. Issue 4:3 was the initial installment in a planned series of surveys “annually reporting, discussing, analyzing, dissecting, and criticizing” the work of the U.S. Court of Appeals for the Fifth Circuit.
74. Despite his great intelligence, O'Quinn was not a natural as an advocate. His friend, Mark Lanier, has written:
- John explained to me once that some cars come equipped with all you need, while other cars require installation of certain things. John self-installed communication skills in a way that made most think his skill set was original factory equipment! He joined Toastmasters, read speech books, and took every opportunity to watch the communication masters work. John would tear apart every great trial lawyer's successes to the nuts and bolts. John would then seek to rebuild them into his own practice.
- W. Mark Lanier, *John O'Quinn: The Power of Drive and Hard Work*, 47 HOUS. L. REV. 249, 249 (2010).
75. MIXON, *supra* note 2, at 121.
76. *Id.* at 120. O'Quinn also was capable of generous gifts. A drive from Houston to Galveston, as Mixon notes, takes one through the John M. O'Quinn Estuarial Corridor. *Id.* He funded an environmental law chair at the University of Houston and, during one of the many lean periods in University support, renovated the Law Library.
77. O'Quinn served on *HLR*'s Board of Directors from 1973 until the day of his death.
78. *Gutter v. Bollinger*, 539 U.S. 306, 327 (2003).
79. *Cf.* “The Wizard of Oz” (1939).

### ODDMENTS

An oddment, according to the Merriam-Webster Dictionary, is “something left over”—or, more simply, an “oddity.” In the plural, oddments are “odds and ends.” <http://www.merriam-webster.com/dictionary/oddment>. The following section, which will be a recurring feature of these essays, consists of interesting, perhaps even entertaining, bits and pieces of information which have found no convenient placement in the writing of an essay, but which seem (at least most of them) too good to be left as a “remnant” (another common definition of “oddment”) on the cutting room floor.

*Ephemera.* The brief life of “Off the Record,” at least in its paper incarnation, lasted only three volumes. As such, it was but one of many occasional features which flourished briefly during the first decade of *Houston Law Review*’s existence. Some, like “Books Reviewed” and “Books Received,” would persist throughout all ten volumes. Others, like “Off the Record” and “Current Materials” (citations to “items from other reviews selected by the *Houston Law Review* as being of probable interest,” with the suggestion that readers so interested obtain a copy of the article or comment listed “by writing to the review in which it appeared”), quickly went the way of the Dodo as the *Review* evolved and matured.

*Passing the Hat.* In addition to accepting the assistance of alumni/ae and friends like Charles I. Francis, early boards collected what small change they could from any source available. Advertisements figured prominently in the financing. For example, the early volumes frequently included ads from law book publishers—but from banks and clothing stores, too.

*Cover Story.* The *Review* underwent a visual makeover during its early years. The first five volumes of the publication had featured what might be described most charitably as a “functional” look (basically, the journal’s name, the volume and issue numbers plus the date, and a listing of contents, but with no shields or other graphical embellishments). In anticipation of the construction of the new buildings, however, the cover of Volume 6 sported both snazzier fonts and a new symbol perhaps suggestive of the five teaching units intended for the new building complex. As executed, however, the design resembled

nothing so much as a pentagon-shaped copper snowflake—an unlikely symbol for a law school located in Houston, Texas!

*Romance at the Review.* Labor at *HLR* could prove fruitful in more ways than even Karl Llewellyn had promised, as Board 2's example demonstrated. Miller Walsh (a comment editor) and Mimi Walsh (the *Review's* secretary) were married at some point in 1964 and continued so for 43 years until Miller's death in 2007. [http://www.chron.com/CDA/archives/archive.mpl/obits\\_4450664/walsh.html](http://www.chron.com/CDA/archives/archive.mpl/obits_4450664/walsh.html). No doubt many more such tales could be told.

*Clearly (En)titled.* Hands down, the prize for best title of the decade goes to University of Houston College of Law Professor (and *HLR* Faculty Advisor) Alan D. Cullison, *Interpretations of the Eleventh Amendment (A Case of the White Knight's Green Whiskers)*, 5 HOUS. L. REV. 1 (1967) (arguing, per the abstract to his article and with reference to the White Knight's song to Alice in Lewis Carroll's *Through the Looking Glass*, that the Eleventh Amendment to the United States Constitution “does not mean what it says nor even what the [Supreme] Court says it means”).

# BY THE NUMBERS. . .<sup>1</sup>

## ISSUES AND PAGES

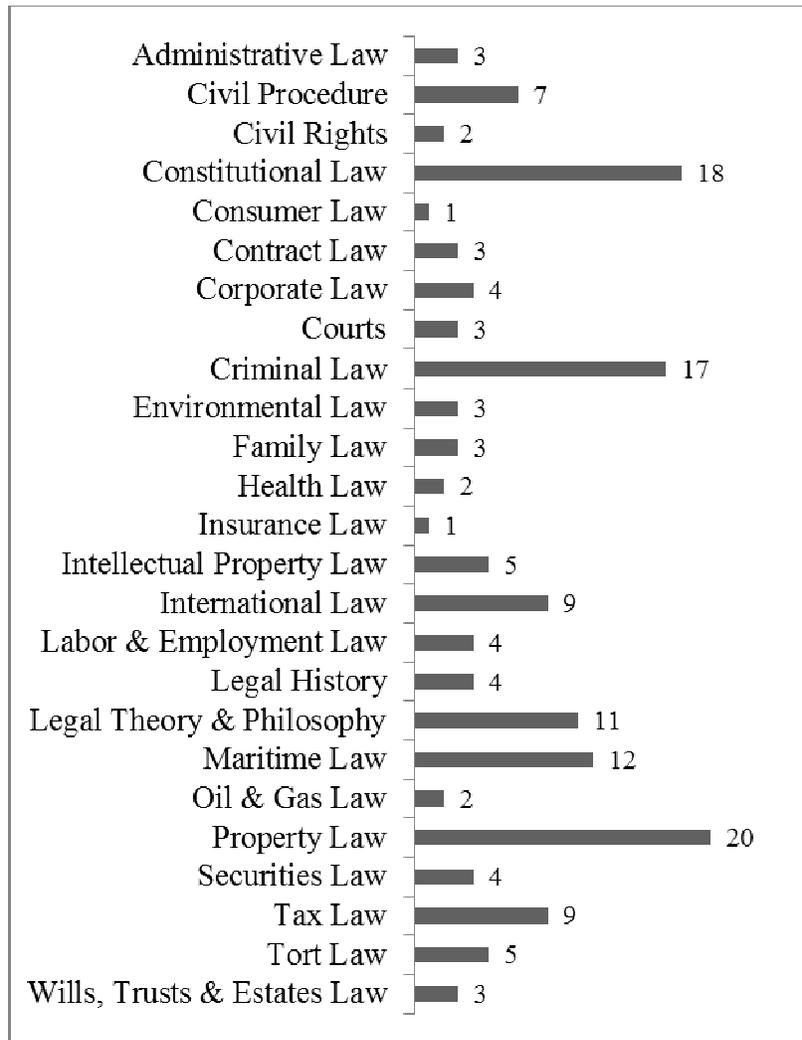
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| 8      | 5      | 1002  |
| 9      | 5      | 1122  |
| 10     | 5      | 1214  |

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1. Compiled by *Houston Law Review*, Boards 50 and 51.

**EDITORS IN CHIEF AND FACULTY  
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**ARTICLE TOPICS**

## MOST PUBLISHED AUTHORS

1. Dwight A. Olds (published 14 articles)
- T2. Carl O. Bue, Jr., John Mixon, and Daniel L. Rotenberg  
(each published 3 articles)
- T5. Gerald J. Adler, David N. Atkinson,  
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Jim M. Perdue, John W. Sayer,  
T.C. Sinclair, Edward W. Turley, Jr., and A.A. White  
(each published 2 articles)

## MOST CITED ARTICLES<sup>2</sup>

1. *Admiralty Law in the Fifth Circuit—A Compendium for Practitioners: I*  
Carl O. Bue, Jr.  
4 HOUS. L. REV. 347 (1966) (14 citations)
2. *Civil Remedies Under the Texas Securities Laws*  
Claude P. Bordwine, Jr.  
8 HOUS. L. REV. 657 (1971) (8 citations)
- T3. *Manufacturers' and Contractors' Liability Insurance Policy: The Care, Custody, or Control Exclusion Clause*  
John Mustachio  
6 HOUS. L. REV. 359 (1968) (7 citations)
- T3. *The Right to a Speedy Trial: Standards for its Implementation*  
William H. Erickson  
10 HOUS. L. REV. 237 (1973) (7 citations)
5. *The Unconstitutionality of Criminal Liability Without Fault: An Argument for a Constitutional Doctrine of Mens Rea*  
James J. Hippard, Sr.  
10 HOUS. L. REV. 1039 (1973) (6 citations)

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2. Due to the limitations of the available databases, our numbers only reflect citations to these articles that occurred from the early 1980s forward and do not include citations during the 1960s and 1970s. Better data will be available for Decades 3, 4, and 5 of this history.

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**LONGEST ARTICLES**

1. *Admiralty Law in the Fifth Circuit—A Compendium for Practitioners: II*

Carl O. Bue, Jr.

5 HOUS. L. REV. 767 (1968) (159 pages)

2. *An Economic Analysis of Recent Attempts to Alter the Laws Regulating the Prescription Drug Industry: The Canadian Investigation and its Relevance for the United States*

Henry Steele

6 HOUS. L. REV. 666 (1969) (93 pages)

3. *Creating a Community:*

*Process of Land Development for Urban Growth*

Barow Burke, Jr. &amp; C. Thomas Dienes

9 HOUS. L. REV. 189 (1971) (82 pages)

- T4. *The One Class of Stock Requirement of Subchapter S—A Round Peg in a Pentagonal Hole*

Lorence L. Bravenec

6 HOUS. L. REV. 215 (1968) (75 pages)

- T4. *Admiralty Law in the Fifth Circuit—A Compendium for Practitioners: I*

Carl O. Bue, Jr.

4 HOUS. L. REV. 347 (1966) (75 pages)

**DEDICATIONS, TRIBUTES,  
IN MEMORIA, ETC.**

A Dedication to Newell H. Blakely appears before Issue 1 of  
Volume 3.

A Dedication to the Maurice Frankel Foundation and its Board of  
Directors appears before Issue 3 of Volume 4.

A Dedication to Professor and Law Librarian Mabel M. Smith  
appears between Issues 3 and 4 of Volume 4.

A Tribute to A.A. White appears in Issue 1 of Volume 5.

A Dedication to Charles I. Francis appears before Issue 1 of  
Volume 8.

A Tribute to Dwight A. Olds appears before Issue 1 of  
Volume 9.