The Most Important Article of All Time

Ross E. Davies

The law review business in the U.S. began modestly. The first American law journal—the *American Law Journal & Miscellaneous Repertory*—published its first issue in Philadelphia in 1808. In its preface, editor John E. Hall confessed that, “the feeble exertions of a youthful individual, unaided by the impressive sanction of experience, can effect but little without the cordial cooperation of those from whom he has some right to claim assistance.”\(^1\)

At the end of the 19th century, the culture of law review modesty remained sufficiently strong to inspire this diffident inaugural editorial in the *Harvard Law Review*:

In publishing the first number of the HARVARD LAW REVIEW the editors feel it necessary to offer a few words of explanation. The REVIEW is not intended to enter into competition with established law journals, which are managed by lawyers of experience, and have already a firm footing with the profession.

Our object, primarily, is to set forth the work done in the school with which we are connected, to furnish news of interest to those who have studied law in Cambridge, and to give, if possible, to all who are interested in the subject of legal education, some idea of what is done under the Harvard system

---

* Ross Davies is an editor of the Green Bag and therefore he is hardly a disinterested commentator.

of instruction. Yet we are not without hopes that the REVIEW may be serviceable to the profession at large. From the kind offers of assistance on the part of the professors in the Law School, and from the list of the alumni who have consented to write for the REVIEW, we feel sure that the contributed articles will provide of permanent value.

It will be our aim to develop the REVIEW on the lines we have indicated, in the hope of deserving the support which we have already received. If we succeed, we shall endeavor to enlarge our field as much as is consistent with our plan. If we fail, we shall at least have the satisfaction of believing that our work has been honestly done in the interests of the Law School and of its alumni.2

Similarly, the original Green Bag billed itself as “A Useless but Entertaining Magazine for Lawyers” and declared in its opening editorial:

Our “Green Bag” is not intended as a text-book or a legal reporter; and the lawyer who turns to these pages for material which will aid him in the preparation of his case will seek in vain. But if wearied by the labors of the day his mind requires relaxation, it will find in the “Green Bag,” we hope, entertainment and amusement.3

In modern times, editors of new law journals have generally continued the tradition of introducing themselves with protestations of their limited powers and aspirations. Consider, for example, the editors’ modest excuses for their decision to launch Constitutional Commentary:

On a list of Things The World Needs Most, a new law review would probably rank somewhere between winter baseball and more kitchen gadgets. How then can we satisfy our heavy burden of justification?

Conventional law reviews serve several purposes. They are thought to be outstanding training for the student editors. A cynic might wonder why, if that is so, we don’t have a Minnesota Bottom Quarter Law Review for the students who would profit most by reading proofs. Anyhow, we are reluctant to justify our journal on the ground that it will improve our minds.

Typically, reviews provide an outlet for the publication of massive research projects that in other fields would probably appear in monograph form. The quality of scholarly journals is so variable that neatly anything can be published somewhere. As dues-paying members of the union, we will not sniff at that additional justification, but as editors we dare not stress it. ...4

Philip Kurland, in his preface to the first issue of the Supreme Court Review, offered a similarly un-imperial explanation for his decision to start a new law review:

---

2 Notes, 1 Harv. L. Rev. 35 (1887).
3 1 Green Bag cover & 37 (Jan. 1889) (emphasis in original).
Anyone exhibiting the temerity to bring another law review into existence must, if only to salve his conscience, publicly explain his reason for doing so. In this case the reason is simple. In many recent comments on the Court and its critics, the point has been made that, in the words of Professor Henry Hart, “neither at the bar nor among the faculties of law schools is there an adequate tradition of sustained, disinterested, and competent criticism of the professional qualities of the Court’s opinions.” ... It is hoped that The Supreme Court Review will meet that need. ...

Then, too, the Court, as an institution, is too little understood by that elusive personality, the intelligent layman. While he may have to struggle with the technicalities of language that are indispensable to the task of professional criticism, it is hoped that some idea will come through the verbiage of the depth, the variety, and the difficulty of the problems confronting the Court and the limited tools available to it for their resolution. ...

But modesty and Madison Avenue don’t mix, and notwithstanding their self-deprecation, those who run law journals want people to buy and read their work product. Which means marketing. Which means boasting. Which is not necessarily a bad thing. However, the mingling of claims to serious legal scholarship with the hooting and chest-thumping necessary to grab some attention in a crowded marketplace can result in amusingly overdone puffery. Thus, even in the old days, when law journal editors shifted temporarily from the editorial pages to the advertising section, they could make the marketing mavens at Coca-Cola and R.J. Reynolds look like pikers.

The Green Bag is a good example of the persistence of this phenomenon. See these ridiculous claims in a self-promoting advertisement in the journal’s December 1911 issue:

We feel encouraged ... by the importance which seems to have come to be attached to the favorable or unfavorable comments of the GREEN BAG by law publishers, librarians, and others who have to deal extensively with books. This is doubtless largely because of the unchallenged supremacy of the GREEN BAG as the representative organ of professional opinion throughout the country.

And this morsel from the Green Bag’s 1997 direct mail campaign shows that overblown self-importance has not yet lost its appeal:

In the spirit of preferring substance over form, and style over its absence, the editors of the new Second Series aim to serve both writers and readers. By providing material that is interesting yet brief, we hope to be a journal that is read, rather than placed on a shelf in the library for only occasional reference.

Not even the Harvard Law Review, an early model of restraint, is immune. Several recent issues include an advertisement for “Harvard Law Review on CD-ROM” boasting, “Includes the most important articles of all time.”

Now comes a new law journal with enormous promise. Legal Affairs brings the formidable resources of the Yale Law School, the editorial talents of Lincoln Caplan, and an impressive list of committed contributors to bear on the perennial challenge of producing responsible legal scholarship that is both useful to and readable by the general public. This is a journal that should be taken seriously. With the thorough preparations the publisher and editor have made, there is every reason to believe that Legal Affairs will succeed where so many others have failed.

The first issue of Legal Affairs is not scheduled to reach newsstands for a few weeks yet, so there is no way to know now whether its editorial pages will echo the tone set by John Hall and followed by Harvard, Kurland, et al. But it is clear that Legal Affairs is carrying on the law journal tradition of entertaining marketing materials. Consider the following direct mail message that I recently received, which highlights numerous interesting and important topics in a manner reminiscent of the Green Bag’s 1911 ad.

Introducing ... legalaffairs

A spirited exchange of ideas and opinions about the issues that shape our society

The Premier Issue is yours free.

[BUT, FRANKLY, IT MAKES LOUSY BEDTIME READING.]

Dear Reader,

LEGAL AFFAIRS is the wrong magazine to keep on your night table.

---

1 See, e.g., 114 Harv. L. Rev. iv (Feb. 2001); cf. Fred R. Shapiro, The Most-Cited Law Review Articles Revisited, 71 Chicago-Kent L. Rev. 751, 767 (1996) (reporting that the Harvard Law Review has published many, but not most, of the most widely-cited law review articles, and that the #1 article is Ronald Coase’s The Problem of Social Cost, which was published in the Journal of Law & Economics); Scott C. Idleman, Of Judicial Supremacy and Academic Inadequacy, 18 Const. Comm. 5 (2001) (bemoaning some judges’ failure to appreciate the importance of legal scholarship).


9 Brackets in original.
You’re not likely to drift off into peaceful slumber after reading our stimulating mix of voices and viewpoints.

A restful night’s sleep is NOT what you should expect when you lie down with restless legal minds and provocative journalists.

In fact, I can almost guarantee that you’ll LOSE sleep after reading about the impact on daily law enforcement when state prosecutors bring murder charges against local policemen. The life-or-death urgency that drives parents of children with rare genetic disorders to create the perfect transplant match by having a second child—and the ethical and legal questions raised by this new science. The conflict between Indonesia’s military law, which exempts generals from prosecution, and efforts to bring human-rights violators to justice.

But you’ll embrace the dawn with greater clarity and depth of understanding, fueled by the words of penetrating lawyers and far-sighted, independent-minded judges.

Its roots in the Yale Law School give LEGAL AFFAIRS unparalleled access to outstanding writers and thinkers. The opportunity to introduce new contributors whose ideas deserve a national forum. And a sense of social responsibility that meets the needs of today.

LEGAL AFFAIRS tackles topics as vital and varied as:

- The special status of Japanese doctors who perform abortions and why they are treated with great respect while American practitioners are treated as outcasts and targeted by vigilantes.

- Jacques Verges, the 74-year-old French trial lawyer who has defended a Nazi, a terrorist, and a dictator by challenging the moral smugness of his country.

- One Tennessee judge who rules on all death sentence appeals ... and why two-thirds of his rulings are overturned in federal court.

- Can Kareem Abdul-Jabbar’s legendary sky hook be patented? New York attorney Robert Kunstadt argues on behalf of creative, original sports moves that are useful to the industry.

- One billion people are without drinkable water, while nations battle for control of the rivers that flow between countries. Water-rich countries like Canada fear that exporting water will set an open-tap precedent in international law. Is a legal solution for sharing water possible?

- Lessons from the ancient Chinese Han dynasty, whose imperial magistrates were chosen for their knowledge of literature and culture, rather than the law.
The National Rifle Association’s role in arming black soldiers against the Ku Klux Klan so they could return home safely to the South after the Civil War.

Whether or not you’re a member of the bar, the law reaches its tentacles into every aspect of your existence, LEGAL AFFAIRS keeps you on top of ...

Legal decisions that have an impact on our way of life.

Legal issues that define who we are. How far we’ve evolved. And where we are headed next.

Legal precedents that have far-reaching implications for the way we live, work, and love.

You’ll find LEGAL AFFAIRS to be an unflinching exploration of the substantive issues confronting our society. A challenge to your complacency. The antidote to easy answers.

Stimulating to the eye as well as the mind, LEGAL AFFAIRS vibrates with art as compelling as the ideas it showcases.

On our docket right now:

Issues of privacy ...

How fear about national security could change the privacy equation not just at airports, but also on the street, at work, and at home.

Pop Culture ...

Skateboarding, rock climbing, whatever—the sorry history of the liability waivers you sign when you (or your kid) head out for adventure.

Parity ...

Should legal immigrants be able to invoke the same anti-discrimination protections as citizens when they lose jobs, can’t open bank accounts, or are refused insurance because of their status?

Pay-up ...

Debt-ridden countries like Argentina know that to win relief they must fight corruption at the heart of the legal system. Will they?

Paternity ...

The Supreme Court recently ruled that unmarried American mothers, but not fathers, automatically confer U.S. citizenship on children born abroad. Feminists who say the ruling allows fathers to duck parental responsibility ask Congress to take action.
There has never been a magazine like LEGAL AFFAIRS. It raises issues that raise the level of intelligent discourse.

Look for bold, incisive reporting. Conversation that’s consequential. Presentation of ideas with vivid explanations of the facts that frame them. Discussion of the Supreme Court’s evolving rulings on state sovereignty, search and seizure, and environmental protection. How Turkish defense lawyers struggle to represent Kurdish militants despite being branded as traitors. Lapsed lawyers who’ve come crawling back to the law.

Humor in the most unexpected places.

And, thanks to a readership that we hope will include you, a spirited exchange of ideas and opinions to make LEGAL AFFAIRS an affair to remember.

The Premier Issue is yours FREE.

People are talking about LEGAL AFFAIRS. Since you’re the kind of person they want to talk about it with, you have been chosen to receive the Premier Issue absolutely free.

If this invigorating intellectual workout awakens a desire for more, go ahead and make LEGAL AFFAIRS a regular romp. Six handsome bimonthly issues in all for just $ 49.95. Otherwise, return the invoice marked “no thanks” and keep your first issue.

Easy. Neat. No strings. No catch. Since we expect the demand for this unique new magazine to be strong, please let us hear from you right away.

Sincerely,

Lincoln Caplan
Editor

P.S. Only a limited number of copies will be printed. When the Premier Issue is exhausted, no more requests can be honored. To avoid disappointment, mail the Reservation Card today.

Surely there must be among American law journals some exceptions to the pattern sketched here of editorial modesty juxtaposed with marketing hyperbole. But wherever such exceptions are, should we welcome them? Aren’t we better off with a scholarly publishing environment in which exaggeration and pomposity are common in the one forum, but not the other?