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Cass D. Vickers

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OF 'NAM, NIXON, AND A NEW LAW REVIEW

CASS D. VICKERS*

THE winter of 1972-73 seems as distant and shrouded with haze as a small island a mile off the stern of a trawler plowing the North Sea on an overcast afternoon. The memory has faded, but the headlines freshen my ebbing recollections to some degree:

•On November 5, 1972, an Army AH1 Cobra helicopter is shot down by small arms fire from Communist ground forces fourteen miles south of Da Nang, resulting in the death of an American crewman.

•On November 7, Richard Nixon is elected President; he captures forty-nine of the fifty states and receives the second highest popular vote percentage ever.

•On December 11, Apollo 17 astronauts Eugene A. Cernan, Harrison H. Schmitt, and Ronald E. Evans land on the moon, the sixth such landing. Cernan and Schmitt spend the next seventy-five hours cruising the moon's surface in the lunar craft Challenger and collecting rocks.

•At midnight on December 31, a new court system takes effect in Florida. Justices of the peace, small claims courts, criminal and civil courts of record, juvenile courts, and municipal courts are abolished and replaced by circuit and county courts.

•Efforts to consolidate Leon County and City of Tallahassee governments begin again. (A year later voters will reject consolidation for the second time, by a margin of 1,758 votes.)

•In the spring of 1973, still a few months away, Tallahassee will elect its first female mayor, Joan Heggen.

These events come back to mind, but only vaguely.

I recall somewhat more distinctly the small bit of history made that winter at the Florida State University College of Law. That winter, Volume 1, Issue 1 of the *Florida State University Law Review* was

* Shareholder, Messer, Vickers, Caparello, Madsen, Lewis, Goldman & Metz, P.A., Tallahassee, Florida. B.S., 1970, Colorado State University and Florida State University; J.D., 1972, Florida State University; LL.M., 1982, Georgetown University Law Center. The author was the founding Editor-in-Chief of the *Florida State University Law Review*, which published its first volume in Winter 1973. (An earlier Volume 1, Issue 1 was published in 1970-71. Wendell J. Kiser was its Editor-in-Chief. However, consecutive numbering of the *Florida State University Law Review* began with the issue published in 1973.)

published. The *Law Review* had been in gestation for some time, and those of us who later proclaimed our status as the founding board probably offered too little in the way of thanks and recognition to students including Ed McGinty¹ and Bob Humphries² whose labors preceded our own.

Dean Joshua Morse³ was the driving force in creating the conditions that would spawn a law review. He knew the College of Law would never realize its institutional destiny without one. He arranged for us to have a suite of offices in the new law school and, more importantly, he brought us a faculty advisor, Harold P. Southerland.⁴ We were thus doubly blessed, having been given both organizational legitimacy and the attentions of an accomplished master.

There was never any doubt about the quality that Phil Southerland would demand of the new law review. Nor were there any compromises. Phil was a runner, intent on testing the limits of his capacity at longer distances when he reached age forty, then a couple of years away. I did not know at the time of the self-discipline that running requires. But I watched Phil run at Mike Long Track, lap after lap after lap, an unnatural constraint in his gait which minimized extraneous motions, conserving energy, giving each shuffling stride everything and yet holding a bit in reserve for the last 400 yards. It was clear to me that Phil possessed inner strengths which his modest frame did not suggest.

In bringing a law review into being, we all drew on Phil's resources, usually of our own initiative, but occasionally at his demand. One evening, for example, after reviewing some of our handiwork, Phil summoned the staff together. The call came just before midnight. He advised us in clear terms that the galley proofs were in unacceptable condition. We spent the next two hours checking citations, rewriting footnotes, and proofreading. We would have published something, no doubt, had Phil never come to us, but it could not have claimed the status of a law review by any proper standards.

Among the students of our young College of Law, enthusiasm for a law review was notably modest. A group of students was initially

1. Now a Partner, Rudnick & Wolfe, Tampa, Florida. He also is one of the partners building the Tampa Coliseum where the new National Hockey Team, the Lightning, will play.

2. Now a Shareholder, Fowler, White, Gillen, Boggs, Villareal and Banker, P.A., Tampa, Florida, and part-time golf devotee.

3. Joshua Morse was Dean of the College of Law from 1969-80. He now serves as a Professor of Law at the Florida State University College of Law and teaches courses including torts and admiralty.

4. Harold P. Southerland is now an Associate Professor of Law at the Florida State University College of Law who teaches courses including statutory interpretation and law and literature.

identified on the basis of scholastic achievement and pressed into service as a law review staff. Having no tradition or any tangible proof that the staff's work would ever be made manifest, a number of students returned to their classroom work. Grades seemed somehow much more real and vital than pleading with an author, drafting notes and comments, or verifying the accuracy or form of a hundred footnotes. But as the size of the staff dwindled, so grew the resolve of those who remained to show what could be done. We chose our own titles, staked out our respective areas of responsibility, and declared ourselves in the law review business. We had every intention of making it so.

Beginnings are rarely smooth and ours was no exception. As a warmup we published a monograph entitled *An Introduction to Florida Corporate Income Taxation*, announcing at page i that the *Law Review* "will commence publication in December 1972" and reciting the commitment of various distinguished scholars to write for us. Oh, the optimism that inexperience will sustain! We were young and anxious to trumpet into existence a journal that would stand with volumes of the *Harvard Law Review* and the *Yale Law Journal* on the shelves of cavernous law firm libraries in New York, Chicago, and Los Angeles.

We brought to Tallahassee the President of the *Harvard Law Review*. We sought his counsel and tried to emulate the fabric and countenance, if not the content, of that publication. We met with our counterparts at the University of Florida to cover such mundane topics as state bidding requirements in the selection of a printing house. We prepared budget forecasts. Of necessity, we learned a little about the United States' copyright laws. We handwrote and mailed hundreds upon hundreds of postcards soliciting subscriptions from law school libraries, courts and government offices, and law firms. Many, of course, had barely heard of our college and had no way of knowing whether the price of a subscription to this unpublished journal would prove bargain or folly. We rejoiced at the guarantee of a few advertisers. We knew that with this hurdle behind us we were at least a commercial success, even if the academic and jurisprudential aspects of the process escaped us.

While we regarded our duties in this incipient period solemnly, there were certainly lighter moments. Larry Sartin,⁵ our Executive Ed-

5. Now a Hearing Officer, Division of Administrative Hearings, Tallahassee, Florida. He handles ethics cases, rule challenges, prisoner cases, child abuse cases, and cases from the Florida Department of Professional Regulation. During the recent Florida budget crisis, his petition for classification as a nonessential government employee was left pending.

itor, recently entertained me with his reminiscence of the Great Pencil Sharpener Debate. It developed that the *Law Review* needed a pencil sharpener, pencils being the principal utensil with which we scratched out our lofty musings and corrected the inferior product of other writers. Issue was then joined over the alternatives of procuring a mechanical or electrical device for the purpose of keeping the lead in good and pointed form. Mr. Sartin, seizing upon the imperative of guarding our fiscal condition, argued forcefully for a mechanical sharpener, pointing to empirical data demonstrating that an electric sharpener would use electricity (for which the *Law Review* would be charged by the law school). Larry Pritchard,⁶ a Notes & Comments Editor, was more concerned about the greater dispatch with which an electrical sharpener would perform its task. The discussions extended over several days and the views of all staff members were made known, though they reflected no more unanimity than the average United States Supreme Court decision. In the end, we went with the more modern appliance and the cost be damned.

On another occasion, we determined that a canoe trip for the *Law Review* staff would offer a unifying experience and remove us from the tensions set upon us by small print and short deadlines. The trip was planned with military precision, and therein was the problem. It seems that a waterway which surveys out as a short and reasonable course from a roadside perspective will stretch and yaw nightmarishly when a hand-driven vessel is laid upon its surface and asked to transport a few hundred pounds of flesh and beverage. This compelling principle also emerged from our endeavors that day: always proceed upstream *first*. Even so, a single canoe trip will probably suffice if making law review work bearable is the object.

I recall too the evening we spent at Joshua Morse's home with Dean Rusk.⁷ Brian Kuehner,⁸ another Notes & Comments Editor, had been told that when confronted with a difficult question, Mr. Rusk had the habit of pushing his glasses up on his forehead and lighting a Lark cigarette. This prediction stuck in Mr. Kuehner's mind because he himself favored Larks at the time. It was not long after a dinner of barbecue ribs, fries, and ambrosia salad that the gentler inquiries melted away into the roar of the fire and the probing began. We asked Mr. Rusk what it had been like to have physical possession of the "black box," the device that could commit nuclear warheads irretriev-

6. Now an Assistant State Attorney and Legal Advisor to the Jacksonville Sheriff's Office, Jacksonville, Florida. His hair is much shorter (and whiter) than it used to be.

7. Secretary of State in the Kennedy and Johnson administrations, 1961-69.

8. Now a solo practitioner, Lakeland, Florida. He quit smoking a couple of years ago.

ably to their preordained target. The question came in the context of the reality then running under the rubric Mutual Assured Destruction. The glasses went up. A Lark was extracted from its package and lighted, the smoke curling away into the dark above the glow of the lamps. Even with that delay, the response was unsatisfactory. It was clear that the awesome and final power which control of such missiles represented had disturbed his sleep on more than one night. But what really implanted a gnaw in us was the knowledge that such weapons might actually have been invoked. On this occasion, as the *Florida State University Law Review* publishes its twentieth volume, I cannot help but feel encouraged in the hope that no sitting or future *Law Review* staff members, or their descendants, need ever ponder such ominous possibilities as we did that night.

Finally, I am obliged to express my profound sorrow that Pat Dore cannot sit beside me and pour over a copy of Volume 20.⁹ Pat and I came to the law school at the same time. The tributes have already been paid her more capably than I could do here. But none of the fading images in my mind is any sharper than are those of Patricia Ann Dore. She cast me as Justice Thurgood Marshall in her Supreme Court role-playing seminar, and I hope I have remembered the lessons. She involved me in the first political cause of my life, the ratification of the Equal Rights Amendment. She inspired noble thoughts and intentions and made the calling of the law seem worthy. If her spirit finds its way into the dreams and hopes and work of the *Law Review*, this journal will surely endure for another score of years, and four more after that. I shall wish for the *Florida State University Law Review* that it forever maintain the standards of excellence and high purpose which Pat Dore's life and career reflected. If it does so, there will be no need to look behind to check the competition.

9. Pat Dore was an Associate Professor of Law at the Florida State University College of Law until her death on January 11, 1992.

