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## Fortieth Anniversary Tribute

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## FORTIETH ANNIVERSARY TRIBUTE

### Reflections on the *William Mitchell Law Review*

Dan O'Keefe<sup>†</sup>

I had the great pleasure of working on Volumes 2–4 of the *William Mitchell Law Review* as staff member, editor, and executive editor. I published two student articles and was the primary editor for several others.

My memories of my *Law Review* experience actually predate my becoming a staff member on Volume 2. I recall the excitement during my first year at William Mitchell, when Volume 1 was published. The excitement level was enhanced for me because my legal writing instructor was Marcy Wallace, who was also the editor in chief of Volume 1, and my Torts professor was Mike Steenson, then and now the *Law Review* Faculty Advisor. If two people can give birth to a periodical, Marcy was the mother and Mike was at least the godfather. Their excitement was contagious. I was hooked.

It was hard sledding back when William Mitchell was purely an evening law school and most of us worked full time during the day. The idea of committing to a law review with no appreciable track record—on top of our studies, work responsibilities, family, and other commitments—was intimidating but also energizing. It was great fun to help build something from scratch, standing on the shoulders of the team that preceded us in publishing Volume 1.

We were pretty low-tech, although we did not know it at the time. It was just a long time ago. I wrote my articles in long hand and then typed them on an old-fashioned typewriter (with plenty of white-out nearby). The research was conducted entirely in the musty stacks of the law library. Cite checking and Shepardizing

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were manual. Galley sheets were proofread in hard copy, marked up with a pencil, and then proofread again until ready for publication.

I remember the dedication and good humor of the *Law Review* members as we worked deep into the night and on weekends. I remember the leadership of Don Gjerdingen, David Allen, and Dennis Trooien, editors in chief of Volumes 2, 3, and 4, respectively. As personalities they were each unique, but they shared certain key traits: they all were hard workers, perfectionists, nice guys, and good leaders—and they were talented. They were up to the task. By the time Volume 4 was published, there was no doubt that the *William Mitchell Law Review* was a permanent fixture at the law school and an asset to the local and regional bench and bar.

When the *Law Review* was in its infancy, we knew we were not the *Harvard Law Review* or *Yale Law Journal* or *University of Minnesota Law Review*—yet. But we had looked at plenty of other law reviews. It was not hard to see which ones had a feel of quality about them and which did not. It was apparent in the typos or lack thereof, whether legal assertions were supported by appropriate authorities, and whether the citations followed *The Uniform System of Citation*—the notorious *Bluebook*. There was a maniacal attention to detail in those early years; we knew, both instinctively and consciously, that if we paid careful attention to the details, quality would follow. The bench, bar, and alums would be impressed; distinguished lawyers, judges, and scholars would want to publish with us; students would compete for the honor of being elected to the *Law Review*; and the overall stature of the College would be enhanced.

Lest the reader think these claims of obsessive attention to detail are the product of the addled memory of a now-senior lawyer, I commend to you the book review published in Volume 4.<sup>1</sup> Don Gjerdingen, editor in chief of Volume 2 and currently a professor at the Indiana University Maurer School of Law, reviewed *A Uniform System of Citation*. Don required twenty-seven pages to record all the citation errors and internal inconsistencies in the twelfth edition of the *Bluebook*. The Harvard Law Review Association and its partners at Columbia, Yale, and Pennsylvania would have done well to ask Don or some other member of the

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1. Don Gjerdingen, Book Review, 4 WM. MITCHELL L. REV. 499 (1978).

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*William Mitchell Law Review* to proofread the twelfth edition before it went to press.

So, what did the *Law Review* experience mean for me? Mostly, it greatly enhanced my law school experience. There was a unique camaraderie among the editorial board, the result of an intense shared experience. That sense of camaraderie and pride is reignited whenever I see Mike Steenson, Marcy Wallace, Dennis Trooien, and my other former co-editors. I feel a bond to William Mitchell that far exceeds my connection with my undergraduate college and high school, and I attribute this principally to my *Law Review* experience.

With the benefit of many years of hindsight, it also is clear that my *Law Review* experience has been of immeasurable assistance to me professionally. I did not know how to write or how to think critically until I had the good fortune to be assigned Marcy Wallace as my legal writing instructor, followed by my three years of writing and editing on the *Law Review*. Those new-found writing and analytic skills contributed to respectable grades. Those grades, my *Law Review* credentials, and a bit of luck landed me a judicial clerkship following graduation with Edward J. Devitt, then Chief Judge for the United States District Court for the District of Minnesota. As I write this, I am looking at a portrait of that great jurist and good man hanging on my office wall, on which he wrote: "For Dan O'Keefe: An excellent law clerk, outstanding writer, adequate golfer. With warm memories of our association. Edward J. Devitt, USDJ, 1987." To the extent there is any truth to Judge Devitt's comment on my writing skills, I am indebted to my *Law Review* experience. From my clerkship, I moved on to Dorsey & Whitney for sixteen years, first as an associate and then a partner, followed by corporate counsel work for the past seventeen years. I have been blessed professionally, and it would not have happened but for my education at William Mitchell, in particular the opportunity to participate on the *Law Review*.

## Reflections on Volume 18

Matthew E. Johnson<sup>†</sup>

A law review that has published forty volumes deserves to be recognized for its contributions to the law as well as for its longevity. Through the years, many people have played a part in building the well-established and well-respected institution that we know today. I offer my congratulations to all of those people. I also am pleased to offer some reflections on my experiences as a member of the organization.

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I had the good fortune to be a staff member on Volume 17 and an editor on Volume 18. Those two years lie at approximately the halfway point in the existence of the organization thus far. Forty years ago, Dean Heidenreich compared the publication of the *Law Review's* first issue to the birth of a child.<sup>2</sup> One could borrow the analogy by comparing the *Law Review's* eighteenth volume to the emancipation of a child. That transition in life typically is accompanied by some significant milestone events. Similarly, there are two particular milestones in the development of the *William Mitchell Law Review* that may be found in the history of its eighteenth volume.

First, one could say that the *Law Review* reached the age of majority in its eighteenth volume when it outgrew its existing office space and moved into better accommodations. During the 1991–92 academic year, our board occupied a single rectangular room on the second floor of the college, where the windows face east toward the main parking lot. This location was close to frequently used classrooms, and the foot traffic in the hallway was more than a little distracting, especially for the editor in chief, whose desk was next to the door. Also, the open layout of the room meant that no one had an opportunity for either a quiet workspace or a private conversation. As our year was drawing to a close, we were told that the *Law Review* office would be moved to a new location, on the

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<sup>2</sup> Douglas R. Heidenreich, *Introduction*, 1 WM. MITCHELL L. REV., at v (1974).

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basement level. As an alternative, I suggested a seemingly under-used space in the southeast corner of the first floor, with some enclosed offices that would allow for greater productivity. The suggestion was well taken, and the *Law Review* office has been in that location ever since.

Second, one could say that the *Law Review* had a “coming out” of sorts in its eighteenth volume with a symposium concerning the case of *R.A.V. v. City of St. Paul*,<sup>3</sup> which at the time was pending at the United States Supreme Court. It was the first time that the *Law Review* had organized an actual symposium event, with live speeches and panel discussions. Dean Hogg was very supportive, which allowed us to invite a number of prominent out-of-town guests to augment the impressive group of local experts. An audience of approximately 350 persons attended the event on April 24, 1992. An edited transcript of the event was published in our fourth issue.<sup>4</sup>

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The Volume 18 board and staff published four issues. In the first issue, we began with a tribute to the late Professor Andrew Haines, who had recently passed away. Professor Heidenreich submitted a touching essay that focused on the enduring spirit and purpose of Professor Haines’ life.<sup>5</sup> We also published an article about the Torrens system of registering real property, which had particular relevance to Minnesota practitioners because it focused extensively on Hennepin County.<sup>6</sup> The value of the article is demonstrated by the fact that both the Minnesota Supreme Court and the Minnesota Court of Appeals have cited it.<sup>7</sup> The highlight of the first issue, however, was an article jointly authored by the Chief Judge and Chief Staff Attorney of the Minnesota Court of Appeals concerning contempt of court.<sup>8</sup> Chief Judge Wozniak walked into the *Law Review* office one day—without prior notice or

3. 505 U.S. 377 (1992).

4. Symposium, *Hate Speech After R.A.V.: More Conflict Between Free Speech and Equality?*, 18 WM. MITCHELL L. REV. 889 (1992).

5. Douglas R. Heidenreich, *Professor Andrew W. Haines—A Personal Reminiscence*, 18 WM. MITCHELL L. REV. 1 (1992).

6. John L. McCormack, *Torrens and Recording: Land Title Assurance in the Computer Age*, 18 WM. MITCHELL L. REV. 61 (1992).

7. See *Hersh Prop., L.L.C. v. McDonald’s Corp.*, 588 N.W.2d 728, 733 (Minn. 1999); *U.S. Fed. Credit Union v. Avidigm Capital Grp., Inc.*, Nos. A07-1596, -2415, 2008 WL 2796742, at \*5 (Minn. Ct. App. July 22, 2008).

8. D.D. Wozniak & Cynthia L. Lehr, *Dealing with a Double-Edged Sword: A Practical Guide to Contempt Law in Minnesota*, 18 WM. MITCHELL L. REV. 7 (1992).

communication—and handed me a large manila envelope. To my amazement, it contained a thorough, well-polished article that was perfect for the *William Mitchell Law Review* because it was concerned with Minnesota law and had a practical orientation. This article has been cited by the Minnesota Court of Appeals on several occasions.<sup>9</sup> I later learned from one of the co-authors that the article had a noticeable effect on the state courts in that the incidence of reversible errors in contempt proceedings decreased significantly following its publication. When I became a judge, I learned that the article is incorporated into the orientation and training program attended by new state-court judges.

In the second issue, we published a special issue on international trade.<sup>10</sup> We published six thoughtful articles on complex topics such as free-trade treaties, international taxation, and product-liability laws in Europe. We also published three student notes that were equally thorough and sophisticated, even though the authors had not yet entered private practice. This special issue was of great interest to lawyers and businesses at that point in time, which was shortly after the passage of several international free-trade agreements.<sup>11</sup>

In the third issue, we continued the then-existing tradition of publishing a special issue on the United States Court of Appeals for the Eighth Circuit. This issue paid tribute to the outgoing Chief Judge with a series of short essays by distinguished persons, including former Chief Justice Warren E. Burger, Justice Lewis F. Powell Jr., and three federal circuit-court judges.<sup>12</sup> We also published five student pieces on recent opinions of the Eighth Circuit and other relevant topics of federal law. As was the custom at that time, our special issue was distributed to all judges and practitioners attending the 1992 Eighth Circuit conference.<sup>13</sup>

In the fourth issue, we published one article by an accomplished practitioner and three student pieces in addition to

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9. See, e.g., *Zaldivar v. Rodriguez*, 819 N.W.2d 187, 195 (Minn. Ct. App. 2012); *Schubel v. Schubel*, 584 N.W.2d 434, 436 (Minn. Ct. App. 1998).

10. See Symposium, *International Trade*, 18 WM. MITCHELL L. REV. 271 (1992).

11. See William H. Cavitt, *Western Hemisphere Free Trade Agreements*, 18 WM. MITCHELL L. REV. 271, 272–88 (1992).

12. See Symposium, *A Tribute to Judge Donald P. Lay*, 18 WM. MITCHELL L. REV. 557 (1992).

13. See 28 U.S.C. § 333 (2006) (allowing the chief judge of each circuit to summon the judges of the circuit to a conference).

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the *R.A.V.* symposium. One of the student works provided valuable and timeless insight into whether and when a state court should interpret a state constitutional provision differently from the United States Supreme Court's interpretation of a similar or identical provision in the United States Constitution.<sup>14</sup>

I was then and still am proud of everything that is contained in Volume 18.

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Most of my memories of Volume 18, of course, relate to the people with whom I experienced it. Professor Steenson naturally comes to mind first. As is well known, he had been the faculty advisor since the beginning of the *Law Review*. In my experience, he approached his advisor role with a light touch. Early in our working relationship, I was caught off guard, and perhaps slightly dismayed, by his tendency to not offer more advice, or more specific advice, or more detailed advice. I soon came to realize that his advising style was informed by his respect for the autonomy of a student-run organization. I remain grateful for his assistance, more so than if he had taken a stronger hand in directing the board's operations.

I also am appreciative of the seventeen associate editors and forty-five staff members of Volume 18, some of whom became editors the following year. They consistently approached their assigned duties with positive attitudes. The board tried to make the *Law Review* fun (or, to be more accurate, more fun) by hosting parties in the *Law Review* office on the evenings when drafts of long papers were due. We played loud music and served the types of beverages that now are more likely to be proscribed by campus regulations. We followed the maxim that it is better to ask for forgiveness than for permission. It is a credit to the law school's professors and administrators that we never were told to curtail our activities.

Most of all, I have fond memories of the friendly and productive relationships among the members of the editorial board. We worked long and hard to produce our four issues, and we managed to keep an even keel throughout our year together. Our finest moment might have been the afternoon and evening when we selected the members of the Volume 19 editorial board.

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14. Lisa M. Wiencke (Taft), Note, *Invoking the State Constitution to Invalidate Legislation: Who's Guarding the Guardians?*, 18 WM. MITCHELL L. REV. 1073 (1992).



We did so with minimal disagreement and with maximum efficiency, which provided an opportunity for an enjoyable social gathering afterward at a familiar nearby watering hole.

Late in the school year, someone took a group photograph of the editorial board on the front lawn, in front of the college sign. The photograph now hangs on the wall in the *Law Review* office. The photograph shows many of the editors in business attire, which indicates that they had part-time jobs in addition to their coursework and their editor duties. Some editors also had families with young children. It truly is a wonder that everyone in the photograph was able to produce so much as law review editors while also tending to their other responsibilities.

For me, the photograph is rich in meaning because it is a snapshot of a brief but intense period in our lives. Individually we were on a steep learning curve in the law, and collectively we were doing something significant by publishing an academic journal. The photograph captures a moment when most of us were only a few weeks away from graduation. After that day, we necessarily had less in common, and our paths inevitably diverged. The photograph, however, is a tangible reminder that, in the spring of 1992, we were a close-knit group of young would-be lawyers, focused on a worthy, enjoyable, and memorable enterprise: to edit and publish Volume 18 of the *William Mitchell Law Review*.

