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Celebrating 100 Years of The Georgetown Law Journal

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FOREWORD

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SHERMAN L. COHN*

It was 1911. Georgetown Law was then forty-one years old. It was an undergraduate program, as a college degree was unnecessary. Indeed, it was only a dozen years or less since Georgetown had begun to require a high school diploma for admission and had expanded to a three-year program. The degree granted was an LL.B., a bachelor of law, usually the first academic degree the student received. The school had recently grown to over 900 students. It was time to move forward.

That year, three dynamic young men enrolled at Georgetown: Eugene Quay, Horace H. Hagan, and John Cosgrove. They decided—perhaps with the encouragement of the dean or the faculty (the record is silent)—that it was time to move into the big leagues with a scholarly law journal. By 1911, there were four law journals. The University of Pennsylvania claims to have the oldest, going back to 1852, when it was known as the *American Law Register*. The *Harvard Law Review* was started in 1887, followed by the *Yale Law Journal* in 1891 and the *Columbia Law Review* in 1901. It was time for Georgetown to join that distinguished group. Starting with Shakespeare's eternal question, "What Would You Undertake?,"[1] the editors responded:

> When a school has gathered to itself some thousand potential lawyers, its efforts in the literary endeavor should find some proper expression; when a law school has reached the rank to which Georgetown has attained, it should be represented by a review that would take a place as high; and when we scan the names that make up the list of Georgetown's faculty and the roster of her alumni, we can see no room for fear but that a journal representing her would take its proper rank.[2]

Eugene Quay became "Editor," as the title was then known.[3] John Cosgrove was named business manager.[4] Horace Hagan and eight others are listed on that first masthead as well as two assistant business managers.[5] One of the lead

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1. *See* WILLIAM SHAKESPEARE, HAMLET act 4, sc. 7, line 122 (Burton Raffel ed., 2003).
2. *What Would You Undertake?—Cymbeline*, 1 GEO. L.J. 50, 50 (1912).
3. *Masthead*, 1 GEO. L.J. 50, 50 (1912).
4. *Id.*
5. *Id.*

articles was by Frank J. Hogan, entitled *The Patent Monopoly*.[6] Its twenty-six pages contained only five footnotes![7] Eugene Quay later published a two-part scholarly piece entitled *Justifiable Abortion—Medical and Legal Foundations*.[8] Hagan also published two pieces, *Fletcher vs. Peck*[9] and *The Dartmouth College Case*.[10]

Charles Fahy, a Georgetown Law student at the time,[11] a member of the *Journal* staff "in its earliest years,"[12] and later a distinguished public servant in his own right,[13] commented that the "moving spirit" of the new *Georgetown Law Journal* "was Eugene Quay, a scholarly and idealistic student. Without his devotion the infant Journal would not so quickly have gained recognition and growth."[14] Speaking to the Thirtieth Annual Banquet of *The Georgetown Law Journal,* then Solicitor General Fahy continued,

> It should, I think, always remain for everyone a very serious and difficult undertaking to do a law journal article. These articles serve not only as educational sources to fellow students but as real means of self-education of the writer. They are also capable of being of great value to the practicing bar, to teachers and to jurists and through these various means to play a part in the development of the law. Editors or contributors to law journals, for these reasons, should approach this branch of legal writing with a high sense of responsibility and scholarship—to give to those who read and study the

6. Frank J. Hogan, *The Patent Monopoly*, 1 GEO L.J. 23, 23 (1912) (spelling "Monopoly" in the title as "Monoply").

7. *See id.* at 23–49. Frank Hogan had matriculated at Georgetown in 1900 with a sixth grade education. Along with the rest of his classmates, Hogan worked full time. His job, while in law school, was as Secretary to the Quartermaster General and then Secretary to the Chief of Staff of the Army, finishing the three-year course in two years. He went on to become one of the leading trial lawyers between the First and Second World Wars and founded the law firm of Hogan & Hartson, now Hogan & Lovells. In 1938, he was elected President of the American Bar Association. *See Frank J. Hogan*, 30 A.B.A. J. 393, 393–95 (1944) (discussing Frank J. Hogan's life).

8. Eugene Quay, *Justifiable Abortion—Medical and Legal Foundations*, 49 GEO. L.J. 173 (1960) (part one); Eugene Quay, *Justifiable Abortion—Medical and Legal Foundations*, 49 GEO. L.J. 395 (1961) (part two). Eugene Quay practiced law in Chicago. He was active in the American Bar Association Insurance Law Section.

9. Horace H. Hagan, *Fletcher vs. Peck*, 16 GEO. L.J. 1 (1927).

10. Horace H. Hagan, *The Dartmouth College Case*, 19 GEO. L.J. 411 (1931). Horace H. Hagan practiced law in Oklahoma. He also published a book, *Eight Leading American Lawyers*. John Cosgrove practiced in South Carolina. As far as I have been able to determine, he did not publish.

11. Charles Fahy attended Georgetown from 1911 to 1914.

12. Charles Fahy, *The Inevitable Obligation of Our Time*, 30 GEO. L.J. 752, 752 (1941).

13. Among his many roles, Charles Fahy was first general counsel of the National Labor Relations Board, Solicitor General of the United States, legal advisor to the State Department, and a circuit judge on the United States Court of Appeals for the District of Columbia Circuit. He was also legal advisor to the San Francisco Conference on the United Nations and to the U.S. Military occupation of Germany; he also assisted at the Nuremberg Trials and was a delegate to the United Nations. He said that he was proudest of being chair of the President's Committee to eliminate racial segregation in the armed forces.

14. Fahy, *supra* note 12.

> benefit of a treasure, as it were, that the writer has mined by hard, thoughtful labor.[15]

These words sum up beautifully my experience with *The Georgetown Law Journal*. As a staff member and then as managing editor (when that job meant, as a practical matter, being the final edit or on every article), I would add only that, from my own experience, being on the *Journal* staff was also a tremendous learning experience. Learning to pay attention to organization, to fidelity of citation, to clarity of presentation, and, perhaps most importantly, to detail, paid tremendous dividends later in the practice of law as well as in academia. It also was clear that editors have a significant responsibility to train the generation that will follow them the next year. The quality of the *Journal* over the past century speaks highly to the editors' continued success.

All of this was reflected in my experience, now over half a century ago. As a staff member, the editors taught me a great deal about effective writing as well as the details of commas, semicolons, and ellipses. I found later that each of these lessons was very important in my own work as a law clerk with Judge Charles Fahy and then at the United States Department of Justice. I will never forget the first opinion I worked on for Judge Fahy and his strong words about a misplaced comma. "Nothing goes out of this office that is not perfect to the finest detail," he said. That admonishment emphasized what I learned on the *Journal* and what I tried to teach others.

There were other tangible benefits to the *Journal* experience. I have no doubt that my *Journal* experience helped land me interviews with both Judge Fahy and the Department of Justice. In a curious way, it also led to my first Supreme Court argument. My *Journal* note was on *Pennsylvania v. Nelson*,[16] a case in which the Court held that federal law could preempt state law.[17] Shortly after I started at the Department of Justice (Civil Division, Appeals Section), the first federal–state conflict and preemption problem arrived. The section chief recalled that I had written about preemption, so the case was assigned to me. I became the Section person who handled all such cases. Not long thereafter I wrote an amicus brief on behalf of the government in *Campbell v. Hussey*.[18] I was then assigned to argue the case on behalf of the government. Need I say that Justice Frankfurter's words—before I started any argument—"Counsel, I have a question," will forever be etched in my memory. It all began with the initial case note.

Another real benefit of my *Journal* experience is the friends that I made. My law school friends today are largely those I made on the *Journal*. I suppose that working together at four in the morning is a great bonding mechanism. More-

15. *Id.*
16. 350 U.S. 497 (1956).
17. *Id.* at 509.
18. 368 U.S. 297 (1961).

over, the *Journal* relations cut across the years. The Fahy law clerks have always been close—as I expect is true of law clerks for any judge. But there is a special closeness among those of us who also served on the *Journal*, even if a decade apart.

After a year of clerking and then seven at the Department of Justice, I returned to Georgetown. The person largely responsible for that return was the *Journal* Editor in Chief the year that I was a *Journal* staff member, Dexter Hanley, S.J. There is no doubt that when I decided to try academia, my positive *Journal* experience and close friendship with Fr. Hanley, going back to our days on the *Journal*, were strong factors in my deciding on Georgetown in lieu of other possibilities. In those days the *Journal* had a faculty advisor. When I joined the faculty, it was Fr. Hanley. When he moved on to become president of Scranton University, I was very pleased to try to step into his shoes. Working closely with new generations of *Journal* editors was a wonderful experience. Several became and have remained close friends.

The quality of the finished product of course owes much to the author. It is the author who does the initial research and hard, often innovative thinking. Yet it is the law journal editor who knows the condition in which some (many?) manuscripts arrive and the work that it takes to shape them into the well-written form in which they are ultimately published. It is also the editor who knows of the problems that occur in manuscripts. The extreme story happened while I was managing editor: the discovery that a manuscript (which had been the major part of the author's doctorate dissertation) had been plagiarized, word for word, from an obscure book located by two enterprising staff persons who noted changes in writing style, wondered why, and found the answer. While, thankfully, that extreme is rare, there are many other instances of garbled language and sometimes garbled logic that are put straight by the editing staff. It is their job to make the author look good, and they usually succeed.

Law journals are sometimes criticized as being student reviewed instead of reviewed by the author's peers. While that thought has a certain surface validity, I do not think it stands up to scrutiny. As one hears of "peer-reviewed" articles being disavowed by journals in other fields, it is clear that "peer" review is far from infallible. Indeed, from all I have seen, the review given by law journal editors, and certainly by editors at *The Georgetown Law Journal*, stands up to the highest standards of integrity and professional capability. The continued achievement of those standards built the reputation of *The Georgetown Law Journal* over the past century, and this achievement will carry the *Journal* through the next century and beyond.