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A Tradition to Uphold: Twenty-Five Years and Counting

Erratum

Footnote 12 (p. 757) states that Sherry Bartley was the Editor-in-Chief of Volume One, Number 2. In fact, the Editor-in-Chief of that issue was Diane Mackey.

A TRADITION TO UPHOLD: TWENTY-FIVE YEARS AND COUNTING

Amy Dunn[‡]
Christian Harris[†]

Only a year has passed since our terms as law review editorial board members rather unceremoniously ended.¹ Our April 2002 “pass the torch” party—an annual gathering of outgoing and incoming board members held to celebrate the law review leadership transition—was one of a series of milestones signaling the end of law school; our last set of final exams, graduation, and the bar exam loomed ahead in the weeks to come. The sense of utter relief and accomplishment that we anticipated feeling upon transferring responsibility for the law review to a new board were subtly present, though difficult to relish amid preparations for the many other impending changes: some of us leaving to take on judicial clerkships, and the others steeling ourselves for the grueling period of bar exam study. Most of us had already made our peace with this particular change in preceding weeks, gladly handing over our job responsibilities to our eager replacements. Others of us cleaned out our desks with heavier hearts, knowing that friendships deepened by the year’s experiences would soon begin to fade as time and distance intervened.

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† J.D., high honors, University of Arkansas at Little Rock William H. Bowen School of Law, 2002; B.S., University Honors, Arkansas State University, 1993. Harris is an associate at the Allen Law Firm in Little Rock. During the 2002-03 term, Harris served as a law clerk to the Honorable Robert L. Brown, Associate Justice, Arkansas Supreme Court. During the 2001-02 year, Harris served as Articles Editor for the *University of Arkansas at Little Rock Law Review*.

1. Also serving on the 2001-02 Editorial Board were Patti Stanley, Editor-in-Chief; Oliver Hahn, Executive Editor; Jennifer Wethington, Notes Editor; Peggy Egan, Symposium Editor; Ken Miskin, Survey/Comments Editor; and Brett Watson, Managing Editor. Patti also served on the 2000-01 Editorial Board as Symposium Editor. The authors wish to dedicate this essay to the honor of Professor J. Thomas Sullivan, a true friend of the Law Review, whose inspiration as a mentor, teacher, and friend has profoundly influenced the authors in law school and in practice.

Perhaps every law review editorial board fancies itself, at least at the outset of its tenure, to be exceptionally capable, if not *the* most capable board to ever grace the halls of the law school. Full of grand ideas inspired by the perceived successes and follies of a previous board or two, and armed with just enough familiarity with the law to feel perfectly qualified to edit the most complicated law review article, every new board commences its responsibilities with at least a measure of self-righteous zeal. Our board was certainly no exception.

It only took a few months for us to realize that our law review's lack of institutional memory had fated us to spend at least the first half of our respective tenures figuring out how to do our jobs. Our collective (and perhaps naïve) idealism, once aimed toward producing cutting-edge scholarship worthy of the finest law reviews, faded into the singular goal of meeting publication deadlines. We would venture to guess that such is the experience of many editorial boards that preceded us, and of many editorial boards to come. To the extent that our service to the law review qualifies us as authorities, but by no means experts, on the rewards and pitfalls of being student editors, we offer our reflections on the *University of Arkansas at Little Rock Law Review*, the value of law review service, and our humble advice on how to make that time as painless and rewarding as possible.

A. Why Law Review?

Why are law reviews an important component of law school? What is it about law review service that makes membership a sought-after goal among students and a symbol of accomplishment to potential employers? Law review service is often a thankless job with many challenges: endless hours in the law library, cite-checking assignments that seem to contain thousands of incorrect pinpoint citations, lackadaisical editors whose work leaves much to be desired, missed deadlines, deteriorating grades All this for a little extra recognition?

Because most law reviews and journals are student-edited and student-run,² law review members are on the front lines of legal scholarship, so to speak. For the student, participation in law review promises the chance to follow, document, and even bring about significant developments in the law.³ Membership also offers opportunities to work with highly acclaimed and respected writers, a number of whom are stalwarts of the local legal community.

2. See Phil Nichols, Note, *A Student Defense of Student-Edited Journals: In Response to Professor Roger Cramton*, 1987 DUKE L.J. 1122, 1134.

3. See Kenneth F. Ripple, *The Role of the Law Review in the Tradition of Judicial Scholarship*, 57 N.Y.U. ANN. SURV. AM. L. 429, 434-35 (2001).

For the potential employer, a student's willingness to shoulder law review responsibilities, in addition to the day-to-day burdens of law school, is often indicative of a solid work ethic. The writing requirements that many law reviews' members must fulfill as a condition of full membership demand a level of competency in research and writing that exceeds the standards for completion of a Juris Doctorate. The process of selecting and editing articles for publication undoubtedly teaches important critical thinking skills.⁴

For the law school, its law review can promote the school's public image—judges, lawyers, professors, and students do read and cite law review articles. A school will likely receive recognition for innovative ideas published in the pages of its law review.⁵

For the broader legal community, a law review can serve as an important source of information about recent developments in the law. Busy practitioners with the interest, but not the time, to keep up with the latest cases, legislation, or trends, need only peruse a recent law review issue. Articles can also serve the valuable purpose of directing one's research into a particular issue of law, offering a starting place, if not the entire line of authority, on a given topic of interest.

B. History of the *University of Arkansas at Little Rock Law Review*

The *University of Arkansas at Little Rock Law Review* has, during its twenty-five years, served its members, its school, and its community in just these ways. Professor Averill, in 1985, described the formation of the law review:

To develop a program of excellence and become a distinct separate institution, it was essential that the Law School begin publishing its own law journal. Previously students at the Law School served as members of the *University of Arkansas at Fayetteville Law Review*. After separation of the schools occurred, a new law journal was in order and the *UALR Law Journal* was born in 1978. One distinctive feature of the *Law Journal* has been the publication of the annual surveys of Arkansas cases and statutes. These features of the *Journal* have received many compliments and enthusiastic support.

As with many law schools, the *Journal* is basically student operated and controlled. Students are initially selected for *Journal* membership by their grades and then are accepted as staff members after serving an apprenticeship. The journal's editorial board is elected from staff members. The editors-in-chief of the first volume were Stephen W. Jones and

4. James W. Harper, *Why Student-Run Law Reviews?*, 82 MINN. L. REV. 1261 (1998).

5. *Id.* at 1277.

Diane Mackey. Initially, only two issues were published annually. In 1981 three issues were published and in 1982, the *Journal* began publishing four issues a year. The *Journal* has published many outstanding articles, including an article by Chief Justice William R. Rehnquist. In 1983 the Arkansas Bar Association agreed to purchase a subscription to the *Journal* for each of its members, giving the *Journal* a total circulation exceeding 3,000 copies.⁶

C. A Fragment of Institutional Memory for New (and Former Editors)

Yes, it's true that the law review doesn't have much of an institutional memory—you'll spend a lot of time as an editor reinventing the wheel. But with a little effort you can find out lots of things about it. But think about it: you are taking a leadership position in an institution. Granted, it is an institution formed in the days of platform shoes, bell-bottoms, and disco, but an institution nonetheless. And your work for this institution will be very hard most of the time. It will help get you through the rough times if you have a sense of the journal as a whole. It will also, hopefully, motivate you to do a better job if you know whose shoulders you are standing on.

D. Where Are They Now? Former Editors, Now Leaders in the Legal Community⁷

No matter what position on the board that you are in, you follow in the footsteps of some of Arkansas's most successful and brilliant legal minds. As a new editor, your predecessors include lawyers who are judges,⁸ law professors,⁹ public servants,¹⁰ and in-house counsel.¹¹ Former board mem-

6. Lawrence H. Averill, Jr., *A Short History of the Law School at UALR*, 8 U. ARK. LITTLE ROCK L.J. 619, 629 (1986). Although Professor Averill doesn't mention write-on candidates, they have apparently been around from the start of the law review. Professor Frances Fendler told one of the authors that the practice was already well-established in the Spring of 1980, when she joined the board. Email from Frances Fendler, Professor of Law, University of Arkansas at Little Rock William H. Bowen School of Law, to Christian Harris, Law Clerk, Arkansas Supreme Court (Apr. 22, 2003, 18:55 CST) (on file with author).

7. Due to time, space, and research considerations, this discussion is limited to former board members. We have doubtless left out many leading lights of the bar. Please excuse any important omissions as ignorance rather than malice.

8. The Honorable Andree Layton Roaf, Articles Editor for volume one, number one, is a Judge on the Arkansas Court of Appeals, Position Twelve. The Honorable Vic Fleming, Executive Editor for volume one, number two, is a district judge for the Little Rock District Court, Second Division. Audrey Riemer Evans, the Survey Editor for volume five, number four, and Survey Editor for volume six, number one, is the Chief Judge of the United States Bankruptcy Court for the Eastern and Western Districts of Arkansas.

9. Frances Fendler, Editor-in-Chief for volume four, number three, and all of volume

bers are partners and associates in both large and small law firms within Arkansas¹² and around the country.¹³

five, is an Associate Professor at the University of Arkansas William H. Bowen School of Law. Ranko Shiraki Oliver, the Research Editor for volume nine, is an Assistant Professor at the University of Arkansas William H. Bowen School of Law. Editor in Chief for volume twelve, E. Gregory Wallace, is an Associate Professor of Law at Campbell University Norman Adrian Wiggins School of Law. Stephanie Bartels, who was Notes Editor for volume thirteen, is married to Professor Wallace. She lives in North Carolina with her husband, but also maintains an Arkansas practice through the Bartels Law Firm in Jonesboro.

10. Victra L. Fewell, the first Research Editor, is a deputy attorney general for the State of Arkansas. Donna Gay, who is the Notes Editor for volume four, number three, is a staff attorney at the Arkansas Supreme Court Administrative Office of the Courts. Rhonda Thornton, now Rhonda Wheeler, who was Executive Editor for volume thirteen, is now Associate General Counsel for the University of Arkansas.

11. Harold E. Rainbolt, who served as Articles Editor for volume three, number one, and Comments Editor for volume three, number two, is the general tax counsel for SBC Communications in San Antonio. Mary L. Harmon, who was the Articles Editor for volume five, number four, and volume six, number one, is with the corporate tax department with Banker's Trust Corporation in New York, New York. Sarah Heffley, who was the Survey/Comments Editor for volume thirteen, serves in the Office of Legal Counsel at Wal-Mart, Inc.

12. Stephen W. Jones, the first Editor-in-Chief, is a named partner at Jack, Lyon & Jones, P.A., in Little Rock. Diane Mackey, the Executive Editor for volume one, number one, is a partner at Friday, Eldredge & Clark in Little Rock. Sherry Bartley, the Editor-in-Chief for volume one, number two, and the Articles Editor for volume two, number two, is a partner at Mitchell, Williams, Selig, Gates, & Woodyard, P.L.L.C., in Little Rock. Lee Muldrow, the Research Editor for volume two, number two, is a partner at Wright, Lindsey & Jennings, L.L.P., in Little Rock. Christopher Heller, the Editor-in-Chief for volume four, number one, is a partner at Friday, Eldredge & Clark, L.L.P., in Little Rock. Susan Gordon Gunter, who was the Comments Editor for volume four, number two, is a partner at Hilburn, Calhoun, Harper, Pruniski & Calhoun, Ltd., in North Little Rock. Marcella J. Taylor, the Notes Editor for volume five, numbers two and three, is a partner at Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C. M. Stephen Bingham, who was the Research Editor for volume five, number four, is a director at Cross, Gunter, Witherspoon & Galchus, P.C., in Little Rock. William A. Waddell, Jr., who was Co-Research Editor for volume six, number one, Co-Executive Editor for volume six, number two, the Executive Editor for volume six, number three, and the Legislative Survey Editor for volume six, number four, is a partner at Friday, Eldredge & Clark, L.L.P., as is Scott Lancaster, who was the Managing Editor for volume seven, number one, and Editor-in-Chief for volume seven, number two. Mark Allison, the Notes Editor for volume seven, number one, is a partner at Dover Dixon Home, P.L.L.C., in Little Rock. Troy A. Price, who was the Executive Editor for volume nine, is a partner at Wright, Lindsey & Jennings, L.L.P., in Little Rock. David A. Smith, who was the Survey/Comments Editor for volume nine, is a partner at the Little Rock office of Kutak Rock, L.L.P. Mark K. Halter, the Editor-in-Chief of volume ten, is a partner at the North Little Rock firm of Hilburn, Calhoun, Harper, Pruniski & Calhoun, Ltd. Mary L. Wiseman, who was the Survey/Comments Editor, is a partner at Faruki Ireland & Cox, P.L.L. Patricia Sievers Harris, who was the Executive Editor for volume eleven, is a partner at Wright, Lindsey & Jennings, L.L.P., in Little Rock. Elizabeth Fletcher, Notes Editor for volume 11, numbers three and four, is an associate at Huckabay, Munson, Rowlett & Moore, P.A., in Little Rock.

Former board members have also found their way into solo and small-firm practice.

E. Contents of the Law Review: A Tradition to Uphold

The law review has published a wide variety of articles, both regional and national, by leading lights in the law. For example, we have published articles by one of the leading authorities on contract law,¹⁴ a leading historian of the law,¹⁵ one of the world's foremost trial lawyers,¹⁶ a leading commentator on disability law,¹⁷ a well-known commentator on the Establishment Clause and the Free Exercise Clause,¹⁸ and several nationally-known sexual harassment scholars.¹⁹

For example, Charles Clifford Gibson III, the Business Manager for volume four, number two, founded his own firm—Gibson & Hashem, P.L.C.—in Monticello, Arkansas. F. Thomas Curry, who was the Executive Editor in volume four, number three, and volume five, number one, is a partner in the Arkadelphia firm of McMillan, Turner, McCorkle, & Curry. Michael J. Dennis, the Notes Editor for volume five, number four, practices at the firm of Bridges, Young, Matthews & Drake, P.L.C., in Pine Bluff. James M. Ammel, the Executive Editor volume two, number two, is a solo practitioner in Little Rock. Lucinda McDaniel, who was Articles Editor for volume seven, number two, is a partner at the Jonesboro, Arkansas firm of Womack, Landis, Phelps, McNeill, and McDaniel. Rufus E. Wolff III, the Research Editor for volume seven, number two, founded the Wolff Law Firm P.A., in Little Rock. Paul E. Harrison, who was the Survey/Comments Editor for volume ten, is a partner at McMath Woods, P.A., in Little Rock. Don A. Taylor, who was the Research Editor for volume eleven, is a partner in the Fayetteville firm of Davis, Wright, Clark, Butt & Carithers, P.L.C. John P. Neihouse was the Managing Editor for volume eleven and is a partner at Harrington, Miller, Neihouse & Krug, P.A. in Springdale. Grant E. Fortson, who was the Notes Editor for volume fourteen, is a partner at Lax, Vaughan, Fortson & McKenzie, P.A., in Little Rock. Michael J. Ptak, who was the Research Editor for volume fifteen, is a partner in Pender, McCastlain & Ptak, P.A., in Little Rock.

13. Carol Slayden Arnold, who was the Notes Editor for volume three, number two, and was the Articles Editor for volume four, numbers one and two, is a partner in the Seattle office of Preston Gates & Ellis, L.L.P. Small-firm practitioners include: Steven G. Nilsson, the Notes Editor for volume four, number two, who has his own solo practice in Clearwater, Florida, and Robert H. Nunnally, Jr., the Articles Editor for volume six, number two, is a partner at Wisener * Nunnally, L.L.P. in Garland, Texas.

14. E. Allan Farnsworth, *Coercion in Contract Law*, 5 U. ARK. LITTLE ROCK L.J. 329 (1982).

15. Lawrence M. Friedman, *The American Constitution: A Double Life*, 10 U. ARK. LITTLE ROCK L.J. 257 (1988).

16. Irving Younger, *The Facts of a Case*, 3 U. ARK. LITTLE ROCK L.J. 345 (1979).

17. Laura F. Rothstein, *Reflections on Disability Discrimination Policy—25 Years*, 22 U. ARK. LITTLE ROCK L. REV. 147 (2000).

18. See Marci A. Hamilton, *The Constitutional Rhetoric of Religion*, 20 U. ARK. LITTLE ROCK L.J. 619 (1998). Professor Hamilton is the Paul R. Verkuil Chair in Public Law, Benjamin N. Cardozo School of Law, Yeshiva University.

19. Theresa M. Beiner, *Using Evidence of Women's Stories in Sexual Harassment Cases*, 24 U. ARK. LITTLE ROCK L. REV. 117 (2000); Susan Bisom-Rapp, *Fixing Watches with Sledgehammers: The Questionable Embrace of Employee Sexual Harassment Training by the Legal Profession*, 24 U. ARK. LITTLE ROCK L. REV. 147 (2000); Linda Hamilton-Krieger, *Employer Liability for Sexual Harassment—Normative, Descriptive, and Doctrinal Interactions: A Reply to Professors Beiner and Bisom-Rapp*, 24 U. ARK. LITTLE ROCK L.

Our law review has also published authors who were or were to become United States Supreme Court Justices,²⁰ judges on the Eighth Circuit Court of Appeals²¹ and their law clerks,²² several federal district court judges,²³ a Justice of the Arkansas Supreme Court,²⁴ several Arkansas Court of Appeals Judges,²⁵ and several Arkansas trial court judges.²⁶

Less traditional pieces have entertained our readers as well, from Vic Fleming's memorable treatment of Franz Kafka's parable *The Trial*²⁷ to Mac Golden's recently published piece describing the fateful but fictional meeting between Sherlock Holmes and Supreme Court Justice Oliver Wendell Holmes.²⁸ The law review has also been fortunate enough to publish scholarship written by private practitioners of note and distinction. These practitioners include a past president of the American Bar Association,²⁹ a past president of the Arkansas Bar Association,³⁰ well-known envi-

REV. 169 (2000).

20. See Ruth Bader Ginsburg, *On Amending the Constitution: A Plea for Patience*, 12 U. ARK. LITTLE ROCK L.J. 677 (1990); William H. Rehnquist, *Isaac Parker, Bill Sikes and the Rule of Law*, 6 U. ARK. LITTLE ROCK L.J. 485 (1983).

21. See, e.g., Morris S. Arnold, *An Early Opinion of an Arkansas Trial Court*, 5 U. ARK. LITTLE ROCK L.J. 397 (1982); Morris S. Arnold, *The Arkansas Colonial Legal System 1686-1766*, 6 U. ARK. LITTLE ROCK L.J. 391 (1983); Gerald Heaney, *Jacob Trieber: Lawyer, Politician, Judge*, 8 U. ARK. LITTLE ROCK L.J. 421 (1986).

22. See, e.g., Brian G. Brooks, *Adventures in Cyber-Space: Computer Technology and the Arkansas Freedom of Information Act*, 17 U. ARK. LITTLE ROCK L.J. 417 (1995); Price Marshall, "No Political Truth": *The Federalist And Justice Scalia on The Separation of Powers*, 12 U. ARK. LITTLE ROCK L.J. 245 (1990); Lisa R. Pruitt, *A Survey of Feminist Jurisprudence*, 16 U. ARK. LITTLE ROCK L.J. 183 (1994).

23. See, e.g., Allen W. Bird, II, James G. Mixon, & Brian Rosenthal, *The Bankruptcy Reform Act of 1994*, 17 U. ARK. LITTLE ROCK L.J. 387 (1995); Susan Webber, *Arkansas Corporate Fiduciary Standards—Interested Directors' Contracts and the Doctrine of Corporate Opportunity*, 5 U. ARK. LITTLE ROCK L.J. 39 (1982).

24. Robert L. Brown, *From Whence Cometh Our State Appellate Judges: Popular Election Versus the Missouri Plan*, 20 U. ARK. LITTLE ROCK L.J. 313 (1998).

25. See, e.g., Terry Crabtree, *Abstracting the Record*, 21 U. ARK. LITTLE ROCK L. REV. 1 (1998); Wendell L. Griffen, *Race, Law, and Culture, A Call to New Thinking, Leadership, and Action*, 21 U. ARK. LITTLE ROCK L. REV. 901 (1999); Josephine Linker Hart & Guilford M. Dudley, *Available Post-Trial Relief After a State Criminal Conviction When Newly Discovered Evidence Establishes "Actual Innocence"*, 22 U. ARK. LITTLE ROCK L. REV. 629 (1999).

26. See, e.g., Ellen B. Brantley & Richard W. Effland, *Inheritance, the Share of the Surviving Spouse, and Wills: Arkansas Law and the Uniform Probate Code Compared*, 3 U. ARK. LITTLE ROCK L.J. 361 (1980); Victor A. Fleming, "Before the Law": *An Analysis for the Legal Profession*, 1 U. ARK. LITTLE ROCK L.J. 321 (1978).

27. See Fleming, *supra* note 26, at 321.

28. Mac Golden, *A Case of Deduction, or, Upon the First Meeting of Sherlock Holmes and Oliver Wendell Holmes, Jr.*, 24 U. ARK. LITTLE ROCK L. REV. 855 (2002).

29. Philip S. Anderson, *A Toast to Robert S. Wright, III*, 22 U. ARK. LITTLE ROCK L. REV. 11 (1999).

30. Harry Truman Moore, *Child Support Arrearages: What Statute of Limitations (if*

ronmental litigators,³¹ prominent prosecutors and defense attorneys,³² and prominent appellate specialists.³³

Writers from outside the law, whether they have law degrees or not, have graced the pages of the law review with their insights and scholarships. These authors include a former United States president,³⁴ United States congressional members,³⁵ and journalists,³⁶ to name a few. Readers have been invited to tiptoe through the tulips³⁷ and stroll through minefields³⁸ of law, from locations from Arkansas rice fields³⁹ to South Africa⁴⁰ to Sherlock Holmes's London.⁴¹

Any) Applies?, 19 U. ARK. LITTLE ROCK L.J. 487 (1997).

31. Allan Gates, *Does Arkansas (Or Anyone Else) Have a Valid Mixture or Derived-From Rule?*, 15 U. ARK. LITTLE ROCK L.J. 697 (1993); G. Alan Perkins, *Arkansas Water Rights: Review and Considerations for Reform*, 25 U. ARK. LITTLE ROCK L. REV. 123 (2002); Walter G. Wright, Jr. & Albert J. Thomas, III, *The Federal/Arkansas Water Pollution Control Programs: Past, Present, and Future*, 23 U. ARK. LITTLE ROCK L. REV. 541 (2001). Mr. Wright and co-author Albert J. Thomas, III, hold the distinction of having written the longest law review article to appear in the law review to date, at 233 pages. The article, cited above, also features the largest number of footnotes to appear in our law review (1637).

32. Paula J. Casey, *Bad Faith in First Party Insurance Contracts—What's Next?*, 8 U. ARK. LITTLE ROCK L.J. 237 (1986); John Wesley Hall, Jr., *Defensive Defense Lawyering or Defending the Criminal Defense Lawyer from the Client*, 11 U. ARK. LITTLE ROCK L.J. 329 (1989); Samuel A. Perroni & Mona J. McNutt, *Criminal Contingency Fee Arrangements: How Fair Are They?*, 16 U. ARK. LITTLE ROCK L.J. 211 (1994); J. Thomas Sullivan, *An Overview of the Law of Jury Selection for Arkansas Criminal Trial Lawyers*, 15 U. ARK. LITTLE ROCK L.J. 37 (1992).

33. Marshall, *supra* note 22, at 245; Troy A. Price, *Preemption "Between the Poles": ERISA's Effect on State Common Law Actions Other Than Benefit Claims*, 19 U. ARK. LITTLE ROCK L.J. 541 (1997).

34. William Jefferson Clinton, *A Tribute to William H. Bowen*, 23 U. ARK. LITTLE ROCK L. REV. 12 (2000).

35. Vic Snyder, *You've Taken an Oath to Support the Constitution, Now What? The Constitutional Requirement for a Congressional Oath of Office*, 23 U. ARK. LITTLE ROCK L. REV. 897 (2001). Speaker of the House J. Dennis Hastert, Representatives Bob Filner and David E. Price, and Senators Dale Bumpers and Blanche Lambert Lincoln issued their responses to Congressman Snyder's essay in the subsequent issue. *See* 24 U. ARK. LITTLE ROCK L. REV. 803, 803-16 (2002).

36. David S. Broder, *The New World of News Media*, 23 U. ARK. LITTLE ROCK L. REV. 25 (2000).

37. *See* Ora Fred Harris, Jr., *The Arkansas Marital Property Statute and the Arkansas Appellate Courts: Tiptoeing Together Through the Tulips*, 7 U. ARK. LITTLE ROCK L.J. 1 (1984).

38. *See* Timothy J. Kennedy, *Initiated Constitutional Amendments in Arkansas: Strolling Through the Mine Field*, 9 U. ARK. LITTLE ROCK L.J. 1 (1987).

39. *See* Perkins, *supra* note 31.

40. *See* Christina Murray, *A Constitutional Beginning: Making South Africa's Final Constitution*, 23 U. ARK. LITTLE ROCK L. REV. 809 (2001).

41. *See* Golden, *supra* note 28, at 855.

F. Citations: Law Review Articles in "The Real World"

The law review's articles have been of use to courts across the country and every level of the federal and state courts. As of this writing, the law review has been of use in three United States Supreme Court opinions,⁴² including a case that is familiar to almost every law student in the country.⁴³ A majority of the circuit courts of the United States,⁴⁴ many federal district courts,⁴⁵ military courts,⁴⁶ state courts of last resort,⁴⁷ and state courts of

42. See *O'Gilvie v. United States*, 519 U.S. 79, 87 (1996) (citing Bernard Wolfman, *Current Issues of Federal Tax Policy*, 16 U. ARK. LITTLE ROCK L.J. 543, 549-50 (1994)); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985) (citing Timothy Brewer, *Jurisdiction in Single Contract Cases*, 6 U. ARK. LITTLE ROCK L.J. 1, 7-11, 13 (1983)); *Rector v. Arkansas*, 466 U.S. 988, 988 (1984) (denial of petition for certiorari) (Marshall J., and Brennan, J., dissenting) (citing Robert M. Berry, *Death-Qualification and the "Fireside Induction"*, 5 U. ARK. LITTLE ROCK L.J. 1 (1982)).

43. *Burger King*, 471 U.S. at 478. Wouldn't it be nice if UALR's civil procedure professors told the class about Mr. Brewer's cite in *Burger King*?

44. See, e.g., *Smith v. Metropolitan Sch. Dist. Perry Tp.*, 128 F.3d 1014 (7th Cir. 1997) (citing Joanne Liebman Matson, *Civil Rights—Sex Discrimination in Education—Compensatory Damages Available in a Title IX Sexual Harassment Claim*, 15 U. ARK. LITTLE ROCK L.J. 271, 296 (1993)); *Taylor v. Heckler*, 835 F.2d 1037, 1043 (3d Cir. 1987) (citing James R. Cromwell, *A Substantial Paradox: Attorney's Fees Under the Equal Access to Justice Act in Social Security Appeals*, 7 U. ARK. LITTLE ROCK L.J. 355, 383-85 (1984)); *Leaf Tobacco Exporters Ass'n, Inc. v. Block*, 749 F.2d 1106, 1110 (4th Cir. 1984) (citing Robert H. Marquis, *The Zone of Interests Component of the Federal Standing Rules: Alive and Well After All?*, 4 U. ARK. LITTLE ROCK L.J. 261 (1981)).

45. See, e.g., *In re Air Disaster at Little Rock, Arkansas on June 1, 1999*, 125 F. Supp. 2d 357, 360 (E.D. Ark. 2000) (citing Carmen L. Arick, Note, *Arkansas Relies on Choice-Influencing Considerations and the "Better Rule of Law"*, 10 U. ARK. LITTLE ROCK L.J. 511, 519 (1987) and L. Lynn Hogue, Schlemmer v. Fireman's Fund Insurance Co.: *A Case for Rethinking Arkansas' Choice-of-Law Rule for Interstate Torts*, 12 U. ARK. LITTLE ROCK L.J. 459, 490 (1989)); *Bd. of Educ. of County of Kanawha v. Michael M.*, 95 F. Supp. 2d 600, 607-08 (S.D. W.Va. 2000) (citing Sharon C. Streett, *The Individuals with Disabilities Education Act*, 19 U. ARK. LITTLE ROCK L.J. 35, 45 (1996)); *Torres Nieves v. Hosp. Metropolitano*, 998 F. Supp. 127, 132 (D. Puerto Rico 1998) (citing Diane S. Mackey, *The Emergency Medical Treatment and Active Labor Act: An Act Undergoing Judicial Development*, 19 U. ARK. LITTLE ROCK L.J. 465 (1997)).

46. See *United States v. Myers*, 51 M.J. 570, 580 (N.M. Ct. Crim. App. 1999) (citing Robert F. Thompson III, *Character Evidence and Sex Crimes in the Federal Courts: Recent Developments*, 21 U. ARK. LITTLE ROCK L.J. 241, 246 (1999)).

47. See, e.g., *State v. Papisavvas*, 751 A.2d 40, 78 (N.J. 2000) (citing Robert M. Berry, *Remedies to the Dilemma of Death Qualified Juries*, 8 U. ARK. LITTLE ROCK L.J. 479, 501 (1986)); *State v. Nunez*, 2 P.3d 264 (N.M. 1999) (Baca, J., concurring) (citing Jennifer B. Hendren, *Annual Survey of Caselaw: Criminal Law*, 19 U. ARK. LITTLE ROCK L.J. 707-11 (1997)); *Spaulding v. Butler*, 782 A.2d 1167 (Vt. 2001) (Dooley, J., dissenting) (citing Elizabeth Banker Brandt, *The Challenge to Rural States of Procedural Reform in High Conflict Custody Cases*, 22 U. ARK. LITTLE ROCK L. REV. 357, 359-60 (2000)); *Stone v. St. Joseph's Hosp. of Parkersburg*, 538 S.E.2d 389, 401 n.16 (W. Va. 2000) (citing Luther Sutter, *The Americans With Disabilities Act of 1990: A Road Now Too Narrow*, 22 U. ARK. LITTLE

appeal⁴⁸ from across the country have used the law review for guidance and support. The review has been particularly useful to the Arkansas Supreme Court⁴⁹ and the Arkansas Court of Appeals.⁵⁰ The number of times that judges and practitioners have turned to the law review for guidance illustrates the importance of the law review's work.⁵¹

ROCK L. REV. 161 (2000)).

48. See, e.g., *Ferguson v. Dyer*, 777 N.E.2d 850, 854 (Ohio App. 2002) (citing Lynn D. Lisk, *A Physician's Respondeat Superior Liability for the Negligent Acts of Other Medical Professionals—When the Captain Goes Down Without the Ship*, 13 U. ARK. LITTLE ROCK L.J. 183 (1991)); *Hughes v. State*, 868 P.2d 730, 732 (Okla. Crim. App. 1994) (citing John T. Shannon, Note, *A Fetus Is Not a "Person" As the Term Is Used in the Manslaughter Statute*, 10 U. ARK. LITTLE ROCK L.J. 403 (1987)); *Burkes v. Hales*, 478 N.W.2d 37, 42 n.9 (Wis. Ct. App. 1991) (citing David Ivers, Note, *Prohibition Against Appearance of Impropriety Retained Under Model Rules of Professional Conduct*, 13 U. ARK. LITTLE ROCK L.J. 271, 282 (1991)).

49. See, e.g., *Griffin v. State*, 347 Ark. 788, 792, 67 S.W.3d 582, 584–85 (2002) (citing Elisa Masterson White, Note, *Good Faith, Big Brother, and You: The United States Supreme Court's Latest Good Faith Exception to the Fourth Amendment Exclusionary Rule*, 18 U. ARK. LITTLE ROCK L.J. 533 (1996)); *Dawson v. Temps Plus, Inc.*, 337 Ark. 247, 255, 987 S.W.2d 722, 727 (1999) (citing John R. Pagan, *Arkansas Courts and Covenants Not to Compete*, 12 U. ARK. LITTLE ROCK L.J. 57, 61 (1989-90)); *Johnson v. State*, 331 Ark. 421, 425, 961 S.W.2d 764, 766 (1998) (citing John DiPippa, *Suspending Imposition and Execution of Criminal Sentences: A Study of Judicial and Legislative Confusion*, 10 U. ARK. LITTLE ROCK L.J. 367 (1988)).

50. See, e.g., *Hill v. State*, 100 S.W.3d 84, 88 (Ark. Ct. App. 2003) (Griffen, J., concurring) (citing David J. Sachar, *Overview of Arkansas Warrantless Search and Seizure Law*, 23 U. ARK. LITTLE ROCK L. REV. 423 (2001)); *Pierce v. Pierce*, 73 Ark. App. 339, 343, 43 S.W.3d 192, 196 (2001) (citing H. Patrick Stern, M.D., *Battered Child Syndrome: Is It a Paradigm for a Child of Embattled Divorce*, 22 U. ARK. LITTLE ROCK L. REV. 335 (2000) and Kathleen Coulborn Faller, Ph.D., *Child Maltreatment and Endangerment in the Context of Divorce*, 22 U. ARK. LITTLE ROCK L. REV. 429, 446 (2000)); *Hayes v. Advanced Towing Servs., Inc.*, 73 Ark. App. 36, 44, 40 S.W.3d 800, 805 n.4 (2001) (citing Odette Woods, Note, *Tortious Interference with Contract: The Arkansas Supreme Court Clarifies Who has the Burden and What They Have to Prove*, 21 U. ARK. LITTLE ROCK L. REV. 563, 575 (1999)).

51. And do not think that the surveys and case notes are unimportant as compared to articles. See also *supra* notes 45, 47, 48–50 for cases citing case notes and surveys. An example of a case note that appears to have changed Arkansas law is Dale D. Smith, Note, *Trial Procedure—An Analysis of Arkansas's Exceptional Treatment of the Contemporaneous Objection Rule in Criminal Bench Trials*, 19 U. ARK. LITTLE ROCK L.J. 291 (1995) (“[I]t was submitted that the Arkansas Supreme Court amend Rule 36.21(b) of the *Arkansas Rules of Criminal Procedure* to eliminate waiver of the contemporaneous objection rule in a criminal bench trial. This amendment would require the defendant to notify the trial court of the particular reasons why the State's evidence is insufficient in order to preserve the issue for appeal. In addition to curing the equity concerns addressed by the concurring justices in *Strickland*, this approach will add uniformity and predictability to a confusing area of Arkansas law.”) See *In re* Rule 33.1, Rules of Criminal Procedure, 337 Ark. 621, 622 (1999) (citing Smith, *infra*) (“In both jury and bench trials, the defendant is required to notify the trial court of the particular reasons why the State's evidence is insufficient in order to preserve that issue for appeal. This requirement in a bench trial is a change in previous procedure and

G. Carrying the Tradition Forward: Advice for Law Review Board Members

1. *Your Role as Editor*

In your capacity as a board member, you will be in a position to offer feedback to authors, whether through written comments, edits of a piece, or telephone and email contact. If you heed no other piece of our advice, here is the cardinal rule to which you should adhere: *always be deferential to the authors whose work you publish*. Simply put, your job is not to eliminate every occurrence of passive voice or footnote every sentence—it is precisely this “edit-the-hell-out-of-it” fervor that has garnered perhaps the harshest criticism of student-edited law reviews.⁵² Such fervor, combined with—let’s face it—inexperience and lack of expertise on the part of student editors, can make for an experience that is downright ugly for both the author and the law review.⁵³ One incident like this, and you run the risk of losing the piece that you are in the process of publishing, making a sworn enemy out of a well-respected member of the legal community, and ruining the goodwill of your school and your publication. This can be especially devastating to a law review like ours, which depends upon Arkansas judges, professors, and practitioners for a large bulk of its scholarship.

We are reminded of a couple of particularly egregious examples of editing gone terribly awry.⁵⁴ In one case, a student editor—having unilaterally concluded that the authors of a constitutional law piece had not adequately supported their assertions or provided proper pinpoint citations—marched straight into the dean’s office with the offending article in hand, demanding to know why the law review should even publish the piece. The student did

overrules the decision in *Strickland v. State*, 322 Ark. 312, 909 S.W.2d 318 (1995)).

52. See, e.g., James Lindgren, *An Author’s Manifesto*, 61 U. CHI. L. REV. 527, 527–28 (bemoaning the “war crimes” of his law review editing days); Juan F. Perea, *After Getting to Yes: A Survival Guide for Law Review Editors and Faculty Writers*, 48 FLA. L. REV. 867, 870–72 (1996) (discussing the “Rambo edit”). We highly recommend Professor Perea’s essay as a much more complete and informed treatment on how to improve the quality of a law review piece without butchering it to death.

53. Perea, *supra* note 52, at 871–72. As one author has aptly observed, “[s]tudents select articles written by professors, judges, practitioners—their experiential and—hell!—moral superiors. Students then edit and criticize these articles (and by implication, their authors), often without reservation and often without the benefit of any experience.” James W. Harper, *Why Student-Run Law Reviews?*, 82 MINN. L. REV. 1261, 1270 (1998).

54. Disclaimer: These anecdotes—though loosely based on actual events—are recounted for illustrative purposes only. The authors do not wish to single out any particular student editor, author, or law review. Such occurrences are not unique to the *University of Arkansas at Little Rock Law Review* anyway. See, e.g., Lindgren, *supra* note 52, at 528–31 (offering a litany of atrocities committed by “nameless” elite law reviews in New Haven, Cambridge, and Chicago).

not approach any board members to discuss his concerns. News of the tirade made it back to the authors of the piece, who, understandably, threatened to pull the piece from the law review and publish elsewhere. After profuse apologies from the law review board, the authors agreed to publish the article with the law review anyway—but begrudgingly so.

In another instance, an editorial board member took it upon himself to insert extremely critical remarks about the author's writing style and word choice into the electronic version of the article, which was to be returned to the author for review. Another board member averted disaster when, glancing over the printed copy for good measure, she noticed the remarks, brought them to the attention of the Editor-in-Chief, and promptly had them deleted.

This is not to say that there are not articles out there needing work. In fact, some pieces may need a considerable amount of editing. But here are some tips for accomplishing the goal of improving an article in a manner that will hopefully please the author, and hence, better the reputation of the Law Review and editors.

First, assume that the author is an expert in his field and knows much more than you know with regard to the topic.⁵⁵ Second, question your reasons for believing a change⁵⁶ is justified; unless you can articulate a good reason for making the alteration, it is probably unnecessary. Third, run any such changes by the author *before* you make them, and even then, only with the author's approval.⁵⁷ We recommend framing the changes as suggestions, and accompanying those suggestions with an explanation that utilizes a very deferential tone for why that change would be helpful. Finally, "sandwich" your suggestions between compliments, addressing what you like about the article and your most sincere thanks to the author for publishing her article with your law review. And make it genuine—the authors, after all, are lawyers who will generally see through even the most candy-coated attempts at brown-nosing.

55. This, of course, assumes further that you have accepted an article for publication after having researched the author's credentials.

56. Here, we refer to "changes" in the substantive sense, meaning alterations to the organization, style, or word choice of the piece, as contrasted with "technical" changes, which encompass "Bluebook" accuracy. The line between the two is admittedly fuzzy. We would add that any suggestions for substantive changes should *never* challenge the author's ideas or assertions—only clarity with which those assertions and ideas are stated and organized.

57. Your best bet would be to designate only one or two trustworthy people to do this, and to train your staff to direct any concerns to these individuals. Otherwise, you might run into a situation where an overly self-righteous staff member runs amok (as in the example above) and takes matters into his own hands.

2. *Your Role as Colleague and Team Member*

When your board first commences its responsibilities, everyone gets along swimmingly. Energy and creativity are at their peak.⁵⁸ A few deadlines and crises later, your board may be lucky if everyone is still on speaking terms!

As well as our editorial board got along, we encountered some notable rough spots. Perhaps our most bitter disagreements arose in the context of selecting student-written notes for publication. Whereas the process for selecting articles and essays was typically the duty of the Editor-in-Chief or the Articles Editor, the job of settling on a note always proved to be a board-wide free-for-all. An argument that began as a polite “reasonable minds can differ” dialogue invariably ended with the hurling of at least an insult or two.

Such disagreements are unavoidable—what do you expect when you gather together a group of fairly intelligent, opinionated individuals who are attending school to learn how to argue? The key is learning how to gracefully handle your differences of opinion, and then to leave those differences at the table.

For example, during our tenure, one board member’s solution for resolving a particularly heated casenote publication debate was to propose twelve written criteria for determining whether or not a case was “significant,” ergo, worthy of publication. It became clear that all twelve criteria, although objective and presented in the most thoughtful and impassive manner, were tailored to guarantee publication of the note that the editor was most vigorously advocating. His efforts to persuade other board members with thoughtful arguments, though ultimately unsuccessful, were at least free of vitriol and personal insult.⁵⁹

Another key to success in your relationships with colleagues is to perform your full share of the work and to do so in a timely and complete manner. Keep in mind that if you fall behind in your work, your colleagues are obligated to pick up the slack.⁶⁰

58. At the outset of our board’s term, we agreed that the law review office needed a good cleaning. We scheduled a Saturday to tidy up the office. Our Saturday cleaning session fell by the wayside as our first major deadline approached, and as we began to realize how precious our time away from law review really was. Sure, we managed to toss out a few boxes of yellowing papers and that coffee machine with the dried and moldy sludge caked to the bottom of the carafe, but the office otherwise remained the same—cluttered and chaotic.

59. Author’s Note: Harris still thinks that *Bush v. Gore* was a very significant case!

60. The authors of this essay—both notorious procrastinators—almost made history as the first board members in recent history to earn “missed works” for their tardiness in turning in their legislative survey sections.

Our advice for being a good colleague applies with even more force to your role as supervisor and liaison to the law review staff. After all, if the members and apprentices—many of whom are your equal in ability and passion—don't feel like you are worthy of "going the extra mile" for, they won't.

These skills will benefit you, not only as an editor, but more importantly, in your practice of law. As a practitioner, you will depend heavily on the work of fellow attorneys and support staff. It is better for you to learn these skills early on—when your deadlines are law review articles and cite-checks, than to pay the price later when it is a deadline for an answer or a brief.

We could ramble on for days with advice: to tell you, for example, to quit worrying so much about grades (you'll be lucky to have time to attend class, much less actually read),⁶¹ or to advise you to reach out to the faculty,⁶² or to tell you to always take your office key with you (or else suffer the wrath of "Frank").⁶³ But these are lessons more appropriately learned through experience. As an editor, you will hopefully take from your law review experience a sense of genuine humility, having realized how much you have yet to learn. Nothing can better prepare you for the practice of law. And for our final piece of advice: go into the Executive Editor's office, or into the closest law library, and thumb through the old issues! You will be surprised by what you find.⁶⁴

61. One board member in particular—affectionately referred to by his colleagues as "The Machine"—shocked fellow board members when he took to reading "canned briefs" during his tenure.

62. Faculty support the law review with their scholarship—as a group, they probably have published the most articles. One admired professor—Sullivan—once told these authors that he believed professors had a duty to support the law review through their scholarship.

63. "Frank" has probably just earned his rightful place in law review history for being the first law school security guard to earn mention in a law review.

64. Did you know, for example, that Patricia Stanley was on the editorial board *three times*? Patricia Ann Stanley was the Executive Editor for volume four, number two; Patti Stanley (full name Patricia Jeane Stanley) was the Symposium Editor for volume twenty-three and Editor-in-Chief (the best ever, in these authors' humble opinion) for volume twenty-four.