

Letter from the Editor

John C. Roberts Jr.

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LETTER FROM THE EDITOR

I.

There is apparently a tradition at the *DePaul Law Review* that the Editor in Chief writes a short preface to the final issue of every volume.¹ This letter from the editor, from what I can gather, is supposed to summarize the past year—to recount all that has happened and all that the board has learned. Now, the risk in writing this kind of thing is that one becomes a bit too self-congratulatory, so it is not something that I am naturally inclined to do. More importantly, such puffery does not suit our style as a board.² We were, on the whole, a quiet bunch;³ we spent much of our time working. That said, we have also been mindful that we are only stewards of this journal; we have really tried to be conscientious of our place. Sometimes it is better to follow tradition for tradition's sake so continuity is preserved.⁴ Thus, there will be a letter from the editor this year, just as there has been in past years. I will try not to be boring.

II.

Let us begin with the articles; I will not list the names. Those of you who receive paper copies of the *DePaul Law Review* are free to read the issues as you see fit. You can read them from start to finish, consult the table of contents, or simply thumb through the pages until you find something that strikes your interest. I will, however, mention the first article that we published—a piece on federalism by Simon Lazarus—because it has special meaning to us. We wanted the article, and

1. See, e.g., Eric W. Schupp, *Letter from the Editor*, 55 DEPAUL L. REV. xi (2006); Karyn L. Bass, *Letter from the Editor*, 54 DEPAUL L. REV. 1039 (2005); Suzanne Milne Alexander, *Letter from the Editor*, 53 DEPAUL L. REV. 1401 (2004); Heather R. McDonald, *Letter from the Editor*, 52 DEPAUL L. REV. 1059 (2003); Annette Messitt, *Letter from the Editor*, 51 DEPAUL L. REV. 983 (2002); David Edward Dahlquist, *Letter from the Editor*, 50 DEPAUL L. REV. 1061 (2001).

2. Cf. FRIEDRICH NIETZSCHE, *THE GAY SCIENCE* § 330 (Walter Kaufmann trans., Vintage Books 1974) (1887) (“A thinker needs no applause and clapping of hands, if only he is assured of his own hand-clapping; without that he cannot do.”). I would like to thank Associate Editor Gabriel Sanchez for also including a Nietzsche reference in his own piece. See Gabriel S. Sanchez, *Towards a Post-historicist Punishments Clause Jurisprudence*, 56 DEPAUL L. REV. 1321, 1332 n.91 (2007).

3. Associate Editor Stephanie Gomberg exemplified our quiet and studious approach. I would like to thank her for all her work.

4. See *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 406 (1932) (Brandeis, J., dissenting) (“[I]n most matters, it is more important that the applicable rule . . . be settled than that it be settled right.”).

in fact we went out and got it, because it was different. It had a stylistic *savoir faire*, and yet it got to the point; the analysis was both confident and timely. It was not boring. There were, of course, more technical pieces. Indeed, a detailed study of contemporary abstention doctrine by two Phoenix attorneys, Steven Plitt and Joshua Rogers, was promptly cited in an amicus curiae brief submitted to the Supreme Court by a long list of state attorneys general.⁵ Professor Catherine Sharkey, who taught at Harvard Law School last spring, gave us a truly outstanding piece on a troubling trend—the increasingly bold assertions of preemptive authority found in the preambles to recent federal agency rules. Professor Elizabeth Mertz of the University of Wisconsin wrote the outstanding overview of the *Ties That Bind* symposium that introduced our third issue. What is remarkable about her piece is that she does an excellent job of summarizing the contributions of the various participants in the Symposium and yet, at the same time, she weaves these insights into her own framework and introduces her own distinct concept—that of *translation*. It is really more of an original piece than a typical introduction. But I will not mention any more articles; I do not want to give the impression that *expressio unius est exclusio alterius*.⁶ There were many great articles.

Loyal readers and alumni will want to know about the two symposia we held this year. As you know, the *DePaul Law Review* hosts two symposia each year: the Clifford Symposium on Tort Law and Social Policy (Clifford Symposium) and the DePaul Law Review Symposium (Law Review Symposium). These symposia are always published in the *following* volume; the Clifford Symposium is in second issue, and the Law Review Symposium is in the third.

The Clifford Symposium is now famous.⁷ The Clifford Symposium held in April 2007 was entitled, *Distortions in the Attorney/Client Relationship: Threats to Sound Advice?* It featured the usual array of outstanding scholars; we particularly appreciated the presence of Professor Robert Rabin of Stanford University and Professor Charles Silver of the University of Texas. We were pleased above all, how-

5. Brief of Amici States of North Dakota, California, Indiana, Iowa, Maryland, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, Oklahoma, Oregon, South Dakota, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming in Support of Petitioners at 17, *Lundeen v. Canadian Pac. Ry. Co.*, 127 S. Ct. 1149 (2007) (No. 06-528).

6. See, e.g., *Chevron U.S.A., Inc. v. Echazabal*, 536 U.S. 73, 80–84 (2002) (Souter, J.) (providing a typically insightful discussion of the canon).

7. The *DePaul Law Review* is currently ranked forty-first in citation frequency. Alfred L. Brophy, *The Emerging Importance of Law Review Rankings for Law School Rankings, 2003–2007*, 78 U. COLO. L. REV. 35, 57–61 tbl.6 (2007). The popularity of the Clifford Symposium must contribute to this high ranking.

ever, that two of DePaul's brightest young professors also participated: Professors David Franklin and Andrew Gold. We do not often get the opportunity to publish work from our own professors. Most of you know why: the number of times a professor has a law review article published is, for good or bad, an important consideration for tenure. Thus, a rule has developed that law reviews should not publish works from their own professors to avoid the appearance of a *quid pro quo*, or of overreaching on the part of a professor. We understand the rule and we abide by it.⁸ But it is also a shame that law students do not get an opportunity to work on legal scholarship that is coming out of their own community. The symposia offer a great opportunity to do this, and we are happy as an institution to have at least this limited opportunity to work with Professors Gold and Franklin on their scholarship.⁹

The Law Review Symposium held this spring was entitled, *Atkins v. Virginia: Protecting a Moral Consensus*. Our Symposium Editor, Chris Nadeau, decided early on that he wanted this year's Law Review Symposium to highlight one of the major legal centers at the College of Law. He settled on the DePaul Center for Justice in Capital Cases. Dean Andrea Lyon, who directs the Center and also recently lured the Clarence Darrow Death Penalty College from the University of Michigan, should be well known to everyone. There is no better capital defense lawyer, and she is a tireless advocate for the marginalized. Nadeau and Lyon attracted some of the nation's best and brightest scholars on the death penalty to talk about the implications of *Atkins*—the seminal case that invalidated the death penalty as applied to mentally retarded persons.

Professor Jim Ellis, who argued and won *Atkins* in the Supreme Court, told us the fascinating, behind-the-scenes story of the litigation. Professor Bryan Stevenson, the Director of the Equal Justice Initiative in Alabama and Professor of Law, was nothing short of brilliant. He gave us not one but *two* inspiring talks on the relationship between the death penalty and justice—one at the Symposium itself, and the other, entirely impromptu, after a screening of Rachel Lyon's *Race to Execution* to a gathering of scholars the night before. Agitha Reddy, the Associate Director of the DePaul Center for Justice in Capital Cases, also gave a passionate presentation. Professor Marla Rita

8. The *DePaul Law Review* does not generally accept work from DePaul professors for issues one and four—the issues for which we accept *general* submissions.

9. Another DePaul professor, Jane Rutherford, contributed an excellent piece to our third issue. See Jane Rutherford, *Community Accountability for the Effect of Child Abuse on Juvenile Delinquency in the Brave New World of Behavioral Genetics*, 56 DEPAUL L. REV 949 (2007).

Sandys, who has done tremendous work for the Capital Jury Project, provided us with invaluable empirical evidence of how juries interpret evidence of mental retardation. Professor Carol Steiker gave an erudite reading of the constitutional doctrine before leaving the floor to her brother, Professor Jordan Steiker. He parsed dicta in recent Supreme Court death penalty cases before making a surprising—and compelling—argument that the death penalty itself may soon be overturned. Creative lawyers should take note of Steiker's reading. Our own Professor L. Song Richardson closed the conference. Again, we welcomed the opportunity to use the Symposium to highlight the work of DePaul's professors and scholars.

III.

Those are the brass tacks. I am not sure how much more you want to know. Real law review work is rather esoteric. In fact, you can recognize the editors because they are the people who find themselves, casually and in conversation, musing about the nuances of the *Chicago Manual of Style*¹⁰ or *The Bluebook*.¹¹ But we were not overly technical, and we were not slaves to manuals of style.¹² We attempted to capture, to the extent we could, the poetry and voice of the piece. To do this you need great editors, and we were fortunate enough to have them.¹³ Indeed, we were lucky to have one of the most brilliant DePaul students in our class, Meg Dolan, as our Managing Editor of Lead Articles. Her work was absolutely meticulous and invariably correct. But perhaps our most talented writer was our Managing Editor of Notes and Comments, Louis Shansky—*il miglior fabbro*.¹⁴

That is not to say you would want to sit in on a line meeting. They often went late into the night,¹⁵ and we talked about some pretty arcane stuff. For example, we were proud that we minimized the use of

10. THE CHICAGO MANUAL OF STYLE (Univ. of Chicago Press eds., 15th ed. 2003).

11. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 18th ed. 2005).

12. *But see* Richard A. Posner, *Against the Law Reviews*, LEGAL AFFAIRS, NOV.-DEC. 2004, at 57 (disrespecting student-run law reviews). While Judge Posner may believe that student-run law reviews are in a state of crisis, simply stating that there is a crisis does not necessarily make it so. *Cf.* Adam G. Winters, *Where There's Smoke, Is There Fire? An Empirical Analysis of the Tort "Crisis" in Illinois*, 56 DEPAUL L. REV. 1347 (2007). I would like to thank Associate Editor Adam Winters for all his hard work.

13. Associate Editors Brandon Helms and Blake Strautins were particularly good above-the-line editors. I would also like to thank Brandon for helping me edit this piece.

14. T.S. ELIOT, *The Wasteland*, in THE WASTELAND AND OTHER POEMS 27 (Harcourt Brace & Co. 1988) (1934) (dedicating *The Wasteland* to that poem's editor, Ezra Pound).

15. I would like to thank our resident night owl, Associate Editor Marisa Saber, for all her work.

hyphenation in our articles. Legal prose is very different from a form like the novel. Fiction writing is evocative. But legal arguments, like philosophical arguments, are more like architecture. They are often built, slowly and methodically, around terms that themselves have long strings of qualifiers. These terms aggregate as legal thinking becomes more exact. That is why we have all heard of things like “implied private causes of action.” We understood that our readers are adept at keeping track of all these distinctions, so we tried not to burden the text with unnecessary punctuation. We concentrated on flow, and tried to be practical. We did not bow to the manuals of style; they would have us placing hyphens everywhere. Still, the guiding principle seems to be that hyphenation should be used to avoid confusion.¹⁶ We do not think that these terms are confusing anymore, so we went with what was simple. From now on, the *DePaul Law Review* will use “factfinder” and “policymaker” and “decisionmaker” without a hint of shame. It is true that *Webster’s Third International Dictionary* still specifies “fact finder,” and “fact-finding,”¹⁷ and we are hesitant to cross that great authority. But our copy is perhaps a little old, and language changes.¹⁸ In the end, we went with what we thought was right: “*One must be absolutely modern.*”¹⁹

This, however, is the perspective of an above-the-line editor. The *Bluebook* is a whole different story. Most law students have only a passing (and largely unpleasant) acquaintance with the *Bluebook*. But for below-the-line editors, its Byzantine nature becomes fascinating. Indeed, if you were to listen to our Executive Editor, Erin Lynch, work through a particularly difficult *Bluebook* issue, you would think that you were listening to a great Talmudic scholar weighing ancient lines of authority. Do you want a glimpse into Erin’s life? Here is an example. There has been a marked increase over the last few years in citations to Internet sites.²⁰ It can be difficult to draw parallels between websites and more traditional sources; this area of *Bluebook* law is still in flux. We are told to use the title that appears on the “title

16. THE CHICAGO MANUAL OF STYLE, *supra* note 10, ¶ 7.85 (suggesting hyphenation for words that would “otherwise be misread”).

17. WEBSTER’S THIRD INTERNATIONAL DICTIONARY 813 (18th ed. 1986).

18. THE CHICAGO MANUAL OF STYLE, *supra* note 10, ¶ 7.84 (noting the “trend toward closed compounds”).

19. ARTHUR RIMBAUD, *A Season in Hell*, in ARTHUR RIMBAUD COMPLETE WORKS 213 (Paul Schmidt trans., Harper & Row 1976).

20. We try to minimize the use of Internet citations. They can be helpful in directing readers to more obscure sources, such as unpublished papers and minor government documents. But we continue to insist that many Internet sources, such as Wikipedia and legal weblogs, are not proper support.

bar” unless it “is unwieldy, long, uninformative, or confusing.”²¹ If it is long or unwieldy, we are simply told to use a “better” title.²² This provides precious little guidance for conscientious below-the-line editors.

IV.

I do not want to give the impression that we were completely introverted. It was actually a very amiable group.²³ We took pride in keeping a clean office. Fifteen student editors can share the office now with a modicum of dignity. Furniture was rearranged to create more space. We started a recycling program. Potted plants were placed throughout the office: three orange philandendra, three needy homalomena, and a beautiful jade plant. The candy bowl was full most of the time. It may not be as impressive as the lobby of the new Sidley & Austin building, but it looks nice.

More importantly, we kept the door open. We made an effort to be accessible to both the student body and to our own second-year candidates.²⁴ There is no need for law review offices to be haughty and exclusive. They should not have an air of privilege and conceit. After all, it is nothing short of conceit to derive so much self-importance from merely doing well on first-year exams. The law review office is a place of work; it should be accessible and contribute to student life. We created the Law Review Student Resource Center, which we will use to disseminate important materials to the student body as a whole: materials on writing skills and organization, footnoting, cite checking, plagiarism, publishing opportunities, judicial clerkships, and more. For example, students who take senior research seminars often need general information on how to structure a law review article. With the addition of the Resource Center, these students will now have access to the same training materials used by second-year law review candidates. And, of course, we are also offering outlines from our newly computerized outline bank.

We also interacted with other student organizations. We worked on an innovative way to work with other student journals, which will hopefully bear fruition soon. We bought decent wine for the PILA Auction; Patrick Gallagher, our excellent Business Manager, made

21. THE BLUEBOOK, *supra* note 11, R. 18.2.3(c), at 156.

22. *Id.*

23. I would like to thank Associate Editor Emma Salustro for bringing such positive energy to our office.

24. I would like to thank Associate Editor Bob Teigen for putting so much time and energy into ensuring that his cite-checking team actually enjoyed their experience.

this possible. The incoming board has told me that, next year, the Law Review will start to officially co-sponsor events with other student organizations. This is a very exciting development. But I will not go into more details. We have no great advice to pass on. Law review editors should be detailed and honest, the atmosphere in the office should be civil and relaxed, and the law review should make efforts to engage the student body as a whole. One would hope that this was obvious.

V.

I would like to thank everyone in the DePaul community for their support, including Glynnis Jones-Marshall, Dave Bell, Debbie Howard, and Christa Preusser. I would like to thank all the DePaul professors who reviewed the work of our second-year candidates; they appreciate your insight and your encouragement. I would particularly like to thank Dean Andrea Lyon and Professor Jane Rutherford. The Law Review would like to thank the DePaul Center for Justice in Capital Cases and the Schiller, Ducanto and Fleck Family Law Center. I would also like to thank Robert Clifford for his generous support of the *DePaul Law Review*.

I would like to give special thanks to Professor Stephan Landsman, who stood behind us every step of the way; he was supportive but never intrusive. I would also like to give special thanks to Dean Stephen Siegel, who responded to all our inquiries promptly, thoughtfully, and with a sense of humor. Finally, I would like to give special thanks to Dean Glen Weissenberger.

*John C. Roberts, Jr.**

* J.D. 2007, DePaul University College of Law; B.A. 1996, Carleton College.

