

# Foreword: Why “Tradition, Innovation, and New Beginnings: Celebrating the History of the *Dickinson Law Review*” Is an Appropriate Title for Volume 122(1)

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Volume 122(1) of the *Dickinson Law Review* is entitled *Tradition, Innovation, and New Beginnings: Celebrating the History of the Dickinson Law Review*. The goal of this *Foreword* is to provide information that will help current and future students at Penn State Dickinson Law, readers, alumni, and friends of the law school understand why this is an appropriate title for Volume 122(1).

## TRADITION

The law review and its current student editors are part of a long tradition. Penn State Dickinson Law, which was founded in 1834, is the oldest law school in Pennsylvania<sup>2</sup> and one of the oldest law schools in the country.<sup>3</sup> Its law review—the *Dickinson Law Review*—is the fifth oldest law review in the country, having first

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1. Professor of Law, H. Laddie Montague Jr. Chair in Law, and Faculty Advisor for Volume 122 of the *Dickinson Law Review*. The author would like to thank Gail Partin and 2L student Spencer Bradley for their assistance with this article and Maureen Weidman for her hard work launching Vol. 122(1).

2. See, e.g., *State Commission Lists 48 Historical Markers in Cumberland County*, 9(1) CUMBERLAND CNTY. HIST. 21, 26 (Summer 1992), <https://perma.cc/AZ3H-V7YY> (“Oldest law school in Pennsylvania; founded in 1834 by the Honorable John Reed, eminent jurist, and author of ‘Pennsylvania Blackstone.’”) [hereinafter 48 Historical Markers].

3. Law schools that are older than Penn State Dickinson Law (1834) include the law schools at Harvard (1817), Yale (1824), the University of Virginia (1826), and the University of Cincinnati (1833). See Alfred Z. Reed, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 424 (1921). *But see* U. of Va School of Law, UVA Law School History, <https://perma.cc/KT2L-VZYE> (“Founded by Thomas Jefferson in 1819, the University of Virginia School of Law is the second-oldest continuously operating law school in the nation.”).

been published in 1897.<sup>4</sup> The only law reviews that are older are the law reviews published by the University of Pennsylvania (1852), Harvard (1887), Yale (1891), and West Virginia (1894).<sup>5</sup> Over the course of its 121-year history, the *Dickinson Law Review* has published more than 4,000 articles and other submissions totaling approximately 70,000 pages.<sup>6</sup> Its influence started early<sup>7</sup> and has continued.<sup>8</sup> Information about the law school and the law review's history can be found in multiple locations, including a book about the law school,<sup>9</sup> a book celebrating 250 years of legal practice in

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4. See FREDERICK C. HICKS, MATERIALS AND METHODS OF LEGAL RESEARCH 207 (3d. 1942) (*List VII Law School Periodicals*).

5. *Id.* Hicks indicates that Columbia Law School, Michigan Law School, and Northwestern University Pritzker School of Law started their law reviews in 1901, 1902, and 1906, respectively. *Id.* Although Hicks, *supra* note 4, lists the Iowa Law Review as starting in 1891, the masthead of Volume 1, Number 1, which is available in HeinOnline, shows a date of January 1915.

6. See Email from Gail Partin, Director of the H. Laddie Montague, Jr. Law Library, Penn State Dickinson Law to Dean Gary S. Gildin (Oct. 9, 2017) (on file with author) (email attachment includes an Excel sheet with volume page counts) [hereinafter Partin Email 1].

7. According to the law school's former archivist, the law review published its first book reviews in 1899 and its first article in 1904. Mark W. Podvia, *The Dickinson Law Review: A Brief History*, 108 PENN ST. L. REV. 747, 750 (2011) (citing book reviews of Criminal Law and Civil Procedure treatises and William Trickett, *Character-Evidence in Criminal Cases*, 8 FORUM 121 (1904)). A 1908 law review editorial noted the positive reaction to articles published in the law review. See *The Forum*, 12 FORUM 129 (1908) (noting that articles in the law review had been cited positively in a leading contract law treatise written by Professor Samuel Williston and in the Wigmore on Evidence treatise). For another statement about the early influence of the *Dickinson Law Review*, see John H. Wigmore, *William Trickett*, 38 DICK L. REV. 166, 166–67 (1934) (“It was with satisfaction that I was able frequently to draw upon [Trickett’s] acutely reasoned demonstrations as ammunition for supporting my views. To find him in accord with my personal hypotheses was to encourage me to proceed and to convince me that sound reason was on my side. . . .”). In a 50th Anniversary Editorial, the student editors had referred to the early years of the law review rather dismissively, describing the contents as “primarily social.” *Editorial*, 50 DICK. L. REV. 195 (1946). The author disagrees with this characterization of the early years of the Dickinson Law Review because a review of the early issues shows that they were dominated by articles about the law and the law-based “moot court” items, rather than “primarily social” items.

8. See, e.g., Partin Email 1, *supra* note 6 (reporting, *inter alia* that *Dickinson Law Review* articles have been cited in 16 U.S. Supreme Court opinions, 78 U.S. Courts of Appeals opinions, and in more than 600 state court opinions).

9. BURTON R. LAUB, *THE DICKINSON SCHOOL OF LAW: PROUD AND INDEPENDENT* (McFarland Co. Harrisburg Sesquicentennial 2d. ed. 1984).

Cumberland County,<sup>10</sup> a number of law review articles,<sup>11</sup> and in many items found in the law school's archives.<sup>12</sup>

During most of its life, the law review has been published by students located exclusively in Carlisle, Pennsylvania. Volumes 1–12 of *The Forum*, Volumes 13–107 of the *Dickinson Law Review*, and Volumes 108–110 of the *Penn State Law Review* were all produced exclusively in Carlisle; Volumes 111–121 were jointly produced by Penn State law students located at the unified law school's two campuses located in University Park, Pennsylvania, and Carlisle, Pennsylvania.<sup>13</sup> Volume 122 of the *Dickinson Law Review* represents a new chapter in the law school's existence and is produced exclusively by Penn State Dickinson Law students located in Carlisle.

Carlisle is a tradition-filled community that provides our students with opportunities to consider both the Dickinson and Penn State roots of the law school they attend. For example, because he was born in Carlisle, died in Carlisle, and practiced law in Carlisle, Carlisle has a historic marker honoring Frederick Watts, who has been called the “Father of Penn State University.”<sup>14</sup> Carlisle also has a historic marker honoring John Dickinson, for whom Dickin-

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10. CUMBERLAND JUSTICE: LEGAL PRACTICE IN CUMBERLAND COUNTY 1750–2000 (Cumberland Cnty B. Found. 2001).

11. William L. Wilks, *In the Beginning*, 88 DICK. L. REV. 199 (1984); Podvia, *Dickinson Law Review History*, *supra* note 7; *Symposium*, 23 DICK. L. REV. 1 et. seq. (1918-1919) (Symposium commemorating the opening of Trickett Hall).

12. See Email from Gail Partin, Director of the H. Laddie Montague, Jr. Law Library, Penn State Dickinson Law to author (Nov. 10, 2017) (on file with author). Historical records and artifacts pertaining to the Dickinson School of Law are housed in the Dickinson Law Library Archives & Special Collections library. These collections trace the rich history and tradition of the Law School from its founding in 1834 through to the current day. Highlights of the collection include 19th Century founding documents, law school catalogs and yearbooks dating from 1890 onward, Commencement programs, event brochures, photographs, alumni directories and publications, and a variety of law school newspapers, newsletters and magazines” [hereinafter Partin Email 2].

13. The author has personal knowledge of the location at which these volumes were produced. With respect to the name changes, it should be noted that the *Dickinson Law Review* is not the only law review to have undergone a name change. For example, the original name of the University of Pennsylvania Law Review was the American Law Register. See Hicks, *supra* note 4, at 207. For additional information about the *Dickinson Law Review's* name, see *infra* notes 73–76 and accompanying text.

14. See ExplorePAHistory.com, *Frederick Watts Historical Marker*, <https://perma.cc/24D9-4YTM>. For additional information about Frederick Watts, see Mark W. Podvia, *The Honorable Frederick Watts: Carlisle's Agricultural Reformer*, 17 PENN ST. ENVTL. L. REV. 299 (2009); Cumberland Justice, *supra* note 10, at 44–45 (noting, *inter alia*, his role as a reporter of the decisions of the Supreme Court of Pennsylvania and the fact that he is buried in Carlisle's old graveyard).

son College (and thus the law school) was named.<sup>15</sup> (John Dickinson was a U.S. founding father who participated in the first and second Constitutional Congress and prepared the first draft of the Articles of Confederation.<sup>16</sup> He abstained from signing the Declaration of Independence because he thought it was premature; once it had been signed, however, he joined the Pennsylvania Militia in the fight for independence.)<sup>17</sup> As the prior sentence suggests, history is everywhere in Carlisle. As our students walk from their homes or the law school to the courthouse or to our recently-renovated clinic building, they are likely to walk by historical markers that point to actions taken by our country's founding fathers and mothers,<sup>18</sup> civil rights leaders,<sup>19</sup> sports figures,<sup>20</sup> the architect of the

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15. Cumberland County Historical Society, *Carlisle Historical Markers Walking Tour (undated)*, at Item 3 – Dickinson College, <https://perma.cc/A9TW-85BB> [hereinafter *Carlisle History*]; Dickinson C. Archives & Special Collections *Benjamin Rush (1745–1813)* (2005), <https://perma.cc/WRD9-8KBR> [hereinafter *Rush*]

[*Rush*] believed in creating a better system of schools on every level so that all children, girls as well as boys, could receive the benefits of a proper education that consisted of lower schools as well as colleges; his dream included a national university. It was this idealistic view of education that prompted *Rush* to envision a college in Carlisle, Pennsylvania, then the edge of the frontier, as the first building block of this great system. . . . *Rush* succeeded in garnering support from John Dickinson, then president of the Supreme Executive Council of Pennsylvania; as a tribute to Dickinson's accomplishments (and donations), the college was named in honor of the great statesman.

For information about the founding of the law school and its relationship to Dickinson College, see Laub, *supra* note 9, at 18–23; Cumberland Justice, *supra* note 10, at 34–35.

16. Dickinson C. Archives & Special Collections *John Dickinson (1732-1808)* (2005), <https://perma.cc/YX67-3FV7>.

17. *Id.* For addition information about John Dickinson, see Robert G. Natelson, *The Constitutional Contributions of John Dickinson*, 108 PENN ST. L. REV. 415 (2003).

18. See 48 Historical Markers, *supra* note 2, at 24 (marker notes the contributions of Carlisle resident James Wilson, who signed the Constitution and Declaration of Independence), 25 (marker honors Mary (Ludwig) Hays McCauley, known as “Molly Pitcher,” heroine at Battle of Monmouth, who is buried in old graveyard), 26 (marker noting President Washington's mustering the troops that would oppose the Whiskey Rebellion), 28 (discussing the marker at First Presbyterian Church, notes that it is the oldest public building in Carlisle and that colonists met there in 1774 to declare for independence and President George Washington worshipped there in 1794); *Rush*, *supra* note 15, (noting that he was a member of the Continental Congress and a signatory of the Declaration of Independence); Borough of Carlisle, *Walking Tour of Carlisle's Wayside Markers*, <https://perma.cc/Z6E2-PVNZ> [hereinafter *Wayside Markers*] at Item 3 (marker noting “Benjamin Franklin's 1753 visit to Carlisle to meet with representatives of several American Indian tribes”). To see photographs of many of these markers, see *Carlisle History*, *supra* note 15. Not all of these markers memorialize positive contributions. For example, a historic marker notes the location of a tavern where Major Andre was

U.S. Capitol,<sup>21</sup> and even a Pulitzer Prize-winning poet.<sup>22</sup> Law students can deliver or observe moot court arguments in the “old” courthouse, which still has a Civil War cannonball hole in one of its pillars. (The hole dates from July 1, 1863, when Confederate troops shelled Carlisle shortly before they turned south towards the Battle of Gettysburg.)<sup>23</sup> In short, tradition is inescapable for the Penn State Dickinson Law students who are members of the *Dickinson Law Review*.

#### INNOVATION

Although the *Dickinson Law Review* is steeped in tradition, one of its traditions is innovation. For example, the *Dickinson Law Review* is credited with being the first law review in the country to have a woman editor. Former law school archivist Mark Podvia has written that “the law school’s first female student, Julia A. Radle, became an editor of *The Forum* in 1898. She was in all probability

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detained; he was hanged as a spy for helping Benedict Arnold. *Id.* at Item 16 – Major Andre. *See also infra* note 20 (references cite the Carlisle Indian school).

19. *See* Wayside Markers, *supra* note 18, at Item 4 (noting Frederick Douglass’ three visits to Carlisle). *See also* David L. Smith, *Frederick Douglass in Carlisle*, 22(1–2) CUMBERLAND CNTY HIST. 53 (2005). In addition to the marker honoring Frederick Douglass, there is a historical marker honoring one of the oldest (1820) African American congregations located west of the Susquehanna River and the fact that this church was a site of Underground Railroad activity. *See* Carlisle History, *supra* note 15, at Item 14 – Bethel A.M.E.

20. The Carlisle “square” includes a marker honoring Jim Thorpe, noting that “in 1950 voted the greatest athlete and football player of the first half of the 20th Century”). *See* The Historical Marker Database, *Jim Thorpe*, <https://perma.cc/2KAX-ZYUV>. *See generally* SALLY JENKINS, *THE REAL ALL AMERICANS* (2007) (discussing Jim Thorpe, Pop Warner, and the football team from the Carlisle Indian School that “changed a game, a people, a nation”); *see also* Carlisle Barracks: Carlisle Indian Industrial School Walking Tour, <https://perma.cc/G5N7-8UVH> (stops on the walking tour include the Thorpe Hall Gym, named for Jim Thorpe, and the Pop Warner House); Cumberland Justice, *supra* note 10, at 70 (“Two Non-Practicing Lawyers of Note: Glenn S. “Pop” Warner and Walter Harrison Hitchler”).

21. *See* 48 Historical Markers, *supra* note 2, at 22 (“Old West,” built 1804, was designed by Benjamin H. Latrobe, architect of the national Capitol”). *See also* Susan Fritschler, *The Capitol and the College: The Latrobe Collection*, 11(1) CUMBERLAND CNTY. HIST. 25 (Summer 1994) (noting Latrobe was simultaneously working on Dickinson College’s “Old West” building and the Capitol).

22. *See* Carlisle History, *supra* note 15, at Item 7 Marianne Moore (marker notes that the Pulitzer Prize winning poet lived in Carlisle from age 8 to 28 and taught at the Carlisle Indian School. Her first poems were published the year after she left Carlisle).

23. The author has personal knowledge that our law students have delivered moot court arguments in Carlisle’s Old Courthouse. For information about the Courthouse, *see* CUMBERLAND JUSTICE, *supra* note 10, at 52; Cumberland County, *History of the Cumberland County Old Courthouse*, <https://perma.cc/CM9P-UD8Y>.

the first woman to serve as an editor of an American academic law review.”<sup>24</sup> While having a woman editor may not seem particularly innovative to current-day students, they may not realize that not all law schools were this welcoming of diverse students. Harvard Law School, for example, did not admit women until 1950.<sup>25</sup> A number of other law schools also excluded women for many years.<sup>26</sup> Lawyers of color also have a long history of being welcomed at our law school. One of the first African American students at the law school was Clarence Muse, who attended during 1908.<sup>27</sup> (Muse received an honorary Doctor of Laws degree from the law school in 1978.)<sup>28</sup>

The law school’s commitment to being a welcoming community has continued into the present. For example, when the faculty of Penn State Dickinson Law adopted in 2012 the Core Principles that would govern the separately accredited Penn State law school in Carlisle, “community” was one of the four principles adopted:

Community: We pledge that on a daily basis we will strive to foster a sense of community and mutual support between and among faculty, students and staff, and in our interactions outside the Law School.

- We not only view community as a proper ethos but also believe that cultivating the interpersonal skills, respect, and tolerance that promote community will enable our students to more professionally and sensitively counsel their clients and accomplish their professional goals.<sup>29</sup>

The *Dickinson Law Review* has a similar commitment to the principle of community. Its Constitution includes this statement:

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24. See Podvia, *supra* note 7, at 750; *accord* 1898–99 *Dickinson Law Review Masthead*, 3 THE FORUM 1 (1898). According to Mark Podvia, the first female Editor-in-Chief was Marcia A. Binder of the Class of 1982. Podvia, *supra* note 6, at 760–761. Since that time there have been a number of women Editors-in-Chief, *id.*, including Maureen A. Weidman, who is Editor-in-Chief of this volume of the law review. See *infra* note 73.

25. See CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* 5 (2d. ed. 1993).

26. *Id.* at 50–51. For information about Dickinson Law’s first female tenure-track professor, Professor Christine H. Kellett, see *Remarks Given at 2009 Scholarship Luncheon and Awards Ceremony on the Dedication of a Portrait in Honor of Professor Christine H. Kellett and in Celebration of the 175th Anniversary of the Dickinson School of Law October 24, 2009*, 114 Penn St. L. Rev. 693 (2009) [hereinafter Kellett Tribute].

27. See Susan Zullinger, *Penn State Dickinson Law: Keeping it Brief: Clarence Muse* (Feb. 23, 2017), <https://sites.psu.edu/keepingitbrief/2017/02/23/clarence-muse/>.

28. *Id.*

29. See Pennsylvania State University, Dickinson Law, Core Principles (Dec. 2012) (on file with author) [hereinafter Core Principles].

The *Dickinson Law Review* . . . is committed to Dickinson Law's fourth core principle—to strive on a daily basis to foster a sense of community and mutual support between and among faculty, students, and staff, and in our interactions outside the Law School.<sup>30</sup>

Tradition? Innovation? We consider the *Dickinson Law Review's* commitment to community to be both.

Experiential education is another way in which the *Dickinson Law Review*—and indeed the law school itself—has a tradition of innovation. As Dean Gary Gildin's Introduction observes, at the time the law school was established, its mission included creating profession-ready graduates, as well as citizen-scholars:

As to the object of the institution. It is two-fold. First: To prepare students of law, thoroughly for the practice of their profession. Secondly: To afford others the means of such general instruction in the science of law as is deemed indispensable to every finished scholar.<sup>31</sup>

The *Dickinson Law Review* had—from the very outset—a commitment to experiential education. As Dean Wilks explained in 1984, “the opening editorial in Volume 1, No. 1, reaffirmed the Reed mission to examine not only well established principles of law but to generate discussion of legal questions and to help adduce new principles and apply them to specific cases.”<sup>32</sup>

The early issues of the law review did more than simply acknowledge the commitment to experiential education—they helped foster that commitment. For example, during the first 33 years of its existence, the *Dickinson Law Review* published items that it called “moot courts.”<sup>33</sup> These moot courts were part of Judge Reed's founding vision of a law school that would combine theory with practice.<sup>34</sup> In an 1833 letter outlining his vision for the law school, Judge Reed said that:

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30. *Constitution of the Dickinson Law Review, The Pennsylvania State University, The Dickinson School of Law, Dickinson Law*, Preamble (Amended May 8, 2017) (on file with author).

31. Laub, *supra* note 9, at 13 (1984) (citing an 1833 letter by law school founder Judge John Reed).

32. See Wilks, *supra* note 11, at 200.

33. See generally *The Forum*, Vol. 1–12; *Dickinson Law Review*, Vol. 13–33. In 1929, the moot courts were “replaced by notes and comments on recent decisions and other interesting phases of the law.” See *Notes*, 33 *DICK L. REV.* 85 (1929).

34. See Walter H. Hitchler, *The Dickinson School of Law: Judge Reed's Law School*, 38 *DICK L. REV.* 147, 150 (1934).

The application of theory and practice will further be made familiar by frequent exercises in conducting proceedings in a Moot-Court to be organized for that purpose. Actions will be instituted, and regularly prosecuted through all the windings which the skill and ingenuity of the students can suggest; and in these prosecutions, regular discussions will be had on the debatable points that arise, both orally and in writing.<sup>35</sup>

Section II of this *Tradition, Innovation & New Beginnings* issue of the *Dickinson Law Review* reprints an *Editorial* from Volume 1 about these moot courts and also reprints an early example.<sup>36</sup> The reprinted moot court item represents an early 20th century example of experiential education.

Not all law schools have had the same type of historic commitment to experiential education that is found at Dickinson Law. This fact is highlighted in an article by Professor Peter Joy entitled *The Uneasy History of Experiential Education in U.S. Law Schools* that will be published in the next issue of the *Dickinson Law Review*.<sup>37</sup> His article explains the history of experiential education accreditation requirements and the ways in which experiential education historically has been de-emphasized in U.S. legal education. At Dickinson Law, however, experiential education has been and remains an important part of what we do.<sup>38</sup> For example, the law school first operated a clinic in the 1930s and our Community Law Clinic is almost 40 years old, having first been established by Professor Tom Place in 1979.<sup>39</sup> When it originally was established,

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35. *Id.* at 150 (quoting Judge Reed's letter).

36. See *Editorial: About the Moot Court*, 1 *THE FORUM* 136 (1897), reprinted in 122 *DICK. L. REV.* 103 (2017); *Barnett vs. Corson*, 10 *THE FORUM* 57 (1905), reprinted in 122 *DICK. L. REV.* 105 (2017).

37. See Peter A. Joy, *The Uneasy History of Experiential Education in U.S. Law Schools*, 122 *DICK. L. REV.* \_\_ (2017) (forthcoming). Professor Joy is an expert in both experiential education and accreditation rules. He was one of the advisors for the influential book ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007). He has also served on the Accreditation Committee of the Council of the ABA Section of Legal Education and Admissions to the Bar.

38. See, e.g., Dickinson Law, *Experiential Learning*, <https://dickinsonlaw.psu.edu/academics/experiential-learning>.

39. See Email from Prof. Thomas Place to author (Sept. 24, 2015)(on file with author) ("The Family Law Clinic began in 1979—the Prison Clinic in 1975.") Although Professor Place still handles the occasional pro bono prisoners' rights case, the 1975 Prison Clinic is no longer operational. It should be noted, however, that the Prison Clinic was not the first clinic with which the law school was involved. See *Third Legal Aid Clinic Saturday*, *EVENING SENTINEL* 6 (May 5, 1937); *CUMBERLAND JUSTICE*, *supra* note 10, at 127, which describes initiatives in the 1930s to develop a law school-bar association clinic and "in 1969, the Dickinson School of Law sponsored a legal clinic to represent poor people. . . . In 1970, the Cumberland

its name was the Family Law Clinic; its current name, which is the Community Law Clinic, reflects its expanded portfolio of work.<sup>40</sup>

Dickinson Law's experiential education offerings have not been limited to the 1979 establishment of the Family Law Clinic. For more than a decade, we have operated interdisciplinary clinics. Since 2007, the Children's Advocacy Clinic has brought together social workers, medical residents and fellows, and law students to help address the needs of children.<sup>41</sup> Our Medical-Legal Partnership Clinic, which was launched in 2016, also provides interdisciplinary opportunities to our law students who work alongside Penn State Hershey College of Medicine residents and fellows to provide legal and medical assistance to the clinic's clients.<sup>42</sup>

Another example of the law school's commitment to experiential education is our extremely well-regarded Trial Advocacy program. Dean Gildin, who designed this course, won the Roscoe Pound Award almost 35 years ago.<sup>43</sup> Rather than simply resting on these achievements, however, our trial advocacy program has continued to evolve. We now offer a Trial Advocacy II course in which students have the opportunity to try an entire simulated case from start to finish: at the beginning of the semester, they meet their client and negotiate a fee agreement, and by the end of the semester, they have conducted a trial in front of real judges and volunteer jurors.<sup>44</sup> Our students have also had the opportunity to help develop and deliver trial advocacy training to international lawyers. For example, during the summer of 2017, Dean Gildin and Profes-

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County Legal Services Association was founded. People were advised and represented by law students, supervised by professors." This clinic evolved into Legal Services, Inc., with federal funds used to hire permanent staff. The author has personal knowledge that this legal services organization is now known as Mid-Penn Legal Services and regularly has Dickinson Law student interns. *See generally* Peter A. Joy, *Government Interference with Law School Clinics and Access to Justice: When is There a Legal Remedy?* 61 Case W. Res. L. Rev. 1087 (2011) (provides a history of clinics).

40. *See* Penn State Dickinson Law, *Community Law Clinic*, <https://perma.cc/DXD9-ELBF>.

41. *See* Penn State Dickinson Law, *Children's Advocacy Clinic*, <https://perma.cc/RD2Z-LKLY>.

42. *See* Penn State Dickinson Law, *Medical-Legal Partnership Clinic*, <https://perma.cc/WM2W-ZL8Z>.

43. In 1983, Dean Gary Gildin received the Roscoe Pound Foundation's Jacobson Award for excellence in the teaching the art and skills of trial advocacy. This award was based on his work in the Trial Advocacy course, which he still teaches. Some of the principles of this course are found in the second edition of *Trial Advocacy Basics*, which was published by the National Institute for Trial Advocacy in 2016. *See generally* <https://perma.cc/4BH6-EF6S>.

44. *See* Email from Professor Dermot Groome to author (Oct. 25, 2017) (on file with author)[hereinafter Groome email].

sor Dermot Groome, along with judges from the International Criminal Court and students from Penn State Dickinson Law, offered an international trial advocacy program in The Hague in the Netherlands to members of the International Criminal Court Bar Association (ICCBA).<sup>45</sup> This program, which was held at the International Criminal Court and was allowed to use the ICC courtrooms, was the first-ever program of this kind.<sup>46</sup>

Although only a few Dickinson Law students were able to assist with the International Trial Advocacy program held at The Hague, experiential education is something that is part of every Penn State Dickinson Law student's education. As part of the "new beginnings" that are described in greater detail in the next section, the faculty changed the curriculum so that all of our graduates must complete at least six credits of experiential education that are provided in a "real" law practice setting.<sup>47</sup> Students can choose to practice in one of our clinics, or one of our many internships, or in our Semester-in-Practice programs, which are located in the state capital of Harrisburg, in Washington, D.C., in New York, and in The Hague.<sup>48</sup> In addition to the six required "practice" credits, our graduates must also complete six additional experiential credits, which they may do in one of the settings listed above or in an experiential (simulation) course such as our Trial Advocacy course, our small-business planning course, or our transactional drafting course. Another change to our required curriculum is that students now learn about the "extra-legal" competencies that have not traditionally been taught in law school, but are vital to 21st-century lawyers.<sup>49</sup>

As you read the paragraphs above, you might be asking "What do these paragraphs about experiential education have to do with

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45. See Penn State Dickinson Law, *Faculty and Students Debut New International Trial Advocacy Course at the International Criminal Court, The Hague, Netherlands* (June 22, 2017), <https://dickinsonlaw.psu.edu/news/new-international-trial-advocacy-course>.

46. See Groome Email, *supra* note 44.

47. See Penn State Dickinson Law, *J.D. Program*, <https://dickinsonlaw.psu.edu/academics/curriculum/jd-program>.

48. Penn State Dickinson Law, *Experiential Learning*, <https://dickinsonlaw.psu.edu/academics/experiential-learning>. The author has personal knowledge of the fact that Dickinson Law's proximity to six county seats and Harrisburg, Pennsylvania provides a multitude of internship opportunities for students. (Harrisburg is the state capital and the location of the U.S. District Court for the Middle District of Pennsylvania).

49. See Educating Tomorrow's Lawyers, *ETL Ignite: Dickinson Law's New Curriculum and its Focus on Student Outcomes* (Dec. 2015), <https://perma.cc/4B4H-CYJ6> (describing the Problem Solving 1 course and the Practicing Law in a Global World: Contexts & Competencies course).

the *Dickinson Law Review*?” We believe the answer is “a lot.” Our experiential education graduation requirement, which goes well beyond what our accreditor requires,<sup>50</sup> ensures that Penn State Dickinson Law students who serve on the Editorial Board of the *Dickinson Law Review* will have the benefit of real world experience as they write their Comments, evaluate article submissions, and consider Symposia topics. We believe that our commitment to experiential education and extra-legal competencies will serve the *Dickinson Law Review* well in the future.

The third example of a tradition of innovation is the *Dickinson Law Review*'s early recognition of the global nature of the world in which its members and future lawyers would operate. For example, in 1945, the *Dickinson Law Review* was one of the entities that published the American Law Institute's *Statement on Essential Human Rights*.<sup>51</sup> Although this document was never adopted by the ALI Council,<sup>52</sup> its publication by the *Dickinson Law Review*, along with the law review's publication of other articles about international issues,<sup>53</sup> demonstrates the law review's early sensitivity to global issues.

Although one might not immediately associate a small town such as Carlisle with global awareness, this perspective has, for a very long time, been part of the culture in which our law review operates. The law school's first foreign J.D. student was Issa Tanimura from Japan, who was a member of the Class of 1892.<sup>54</sup>

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50. See ABA Section of Legal Education and Admissions to the Bar, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2017–2018 (2017), <https://perma.cc/44HD-FHQ8> at Standard 303(a)(3) (“A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following: . . . (3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement.”)

51. Am. Law Inst., *Statement on Essential Human Rights*, 50 DICK. L. REV. 7 (1945).

52. See, e.g., Louis B Sohn, *How American International Lawyers Prepared for the San Francisco Bill of Rights*, 89 Am. J. Int'l L. 540, 545–550 (1995); Hanne H. Vik, *Taming the States: the American Law Institute and the 'Statement of Essential Human Rights*, 7 J. GLOB. HIST., 461 (2012); 21 A.L.I. Proc. 32–34 (1944).

53. See, e.g., Lester Harris, *Treaties under the Constitution and International Law*, 54 DICK. L. REV. 417 (1950); Lester Harris, *Recognition of the Holy See*, 55 DICK. L. REV. 235 (1951); Lester B. Orfield, *Icelandic Law*, 56 DICK. L. REV. 42 (1951); Robert B. Ely, III, *A Proposal for an International Criminal Court: A Critique and an Alternative*, 57 DICK. L. REV. 46 (1952); George S. Prugh, *Prisoners at War: The POW Battleground*, 60 DICK. L. REV. 123 (1956); Gottfried Dietze, *Constitutional Courts in Europe*, 60 DICK. L. REV. 313 (1956).

54. See Mark W. Podvia, *The Japanese Memorial Law Library*, 4 UNBOUND 59, 61–62 (2011), <https://perma.cc/SW4B-2DKG>. Tanimura's positive experience may be inferred from his donation that enlarged the law school's library. *Id.* at 62.

Although Issa Tanimura graduated too early to have served on the *Dickinson Law Review* or to have interacted with law review editors, we know that later law review students had opportunities to interact with students and lawyers from other countries. Dickinson Law has one of the oldest LL.M. programs in the country for foreign lawyers and law students—our first foreign Master’s degree students received their degrees in 1970.<sup>55</sup> (Foreign law students may feel at home in Carlisle because our neighbor Dickinson College has one of the most vibrant global education programs in the country and regularly has in residence foreign students from throughout the world.<sup>56</sup> In addition, for a number of years, the U.S. Army War College has brought approximately 80 foreign officers to Carlisle for one year as part of its International Fellows program; these foreign officers usually bring their families and become part of the community.<sup>57</sup>)

Another reason why our law school is more global than one might expect is because we were an early adopter of international summer programs; our Florence program began in 1981<sup>58</sup> and the “Capitals of Europe” summer program began in 1985.<sup>59</sup> Students

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Mark Podvia’s article includes a reproduction of the bookplate contained in one of the books that Issa Tanimura donated to the law school.

55. See Dickinson School of Law, *1970 Commencement* (June 10, 1970) (shows that Prabodhchandra Joshi from India and Timotheus Pohl from Germany received a Master of Comparative Law (MCL) degree, which was the predecessor degree to the current Master of Laws (LL.M.) degree).

56. See, e.g., Dickinson College, *Global Philosophy*, <https://perma.cc/G6RU-YJ7L>.

57. See U.S. Army War College, *International Fellows Home*, <https://perma.cc/2MAE-RLVL>. The author has personal knowledge that it is common for the international fellows, who come for one year, to bring their families with them.

58. Laub, *supra* note 9 at 132. The courses offered in Florence during 1981 included a Comparative Law course taught by Dickinson Professor Lou Del Duca and Professor (later Dean) Vincenzo Varano from the University of Florence Faculty of Law; a course called Doing Business Abroad taught by Dickinson professors Louis Del Duca and William Keating; and a course in European Economic Community & International Trade co-taught by Dickinson Professor Joseph Kelly and Giorgio Gaja, who currently serves as a judge in the International Court of Justice and formerly was a professor and dean at the University of Florence Faculty. See Email from Gail Partin, Director of the H. Laddie Montague, Jr. Library at Penn State Dickinson Law to author (Nov. 10, 2017) (on file with author) and accompanying documents [hereinafter Partin Email 3]. The driving force behind the Florence Summer Program and the Capitals of Europe Program was Professor Louis Del Duca. For more information about Professor Louis Del Duca, see Patrick Del Duca, *Why We Read the International Lawyer—Answers Parsed from Works of Two International Lawyers*, 50 INT’L L. 87, 89–92 (2017); Mark W. Podvia, Dedication: Louis F. Del Duca, 117 PENN ST. L. REV. 1337 (2013).

59. One side benefit of these programs is that the faculty of Dickinson Law is very aware of global issues. At the time this article was written (Fall 2017), all of our tenure-line faculty had either lived, worked, or taught in another country. A

who attended these courses were exposed to foreign faculty and lawyers and got to know foreign law students who often served as logistical assistants.<sup>60</sup> Our students also had the opportunity to hear from judges who served on international tribunals.<sup>61</sup> While these summer programs were excellent in their own right, the fact that U.S. Supreme Court Justices taught all or part of a course during 12 different summers certainly increased the attractiveness of these summer programs.<sup>62</sup> The exposure to international issues that our law review editors received—either directly or indirectly from their peers—may help explain the global awareness of the *Dickinson Law Review* and its students.

By 1982, the law school decided that global issues were so important that it needed a separate law review devoted to international issues. For 29 years, the law school in Carlisle published an international law review as well as its flagship law review.<sup>63</sup> In addition to the regular issues, through the efforts of faculty such as Lou Del Duca, Dermot Groome, Joe Kelly, John Maher, Katherine

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relatively large percentage of this faculty has received Fulbright Grants. The research agendas of several current and former faculty members have been shaped by these experiences. (The author has personal knowledge of these facts).

60. See Email from Professor Emeritus Robert Rains to author (Oct. 25, 2017) (on file with author).

61. International judges would sometimes “drop by” a class session in Strasbourg or The Hague. But there were also courses with these judges. See, e.g., Partin Email 3, *supra* note 58 (courses taught during Summer 1999 and 2000 included *International Tribunals in the Twenty-first Century* taught by Members and staff of the ICJ, ICC, ECJ, ECHR and Christine Kellett (in 1999) and Peter Glenn (in 2000)).

62. See Partin Email 3, *supra* note 58, and supporting documents. The Florence courses in which the Justices participated included the following: Separation of Powers (Associate Justice Antonin Scalia 2013); Current Issues in Constitutional Interpretation (Associate Justice Samuel P. Alito 2012); The Supreme Court in Historical Perspective (Chief Justice Roberts and Richard Lazarus (2011)). The “Capitals of Europe” courses in which Supreme Court Justices participated included the following: Current Issues In Constitutional Interpretation (Justice Samuel Alito and Christine Kellett 2010); Separation of Powers (Associate Justice Antonin Scalia and Christine Kellett 2009); The Supreme Court of the United States (Chief Justice John G. Roberts and Richard Lazarus 2007); The Supreme Court in United States History (Chief Justice William Rehnquist and Christine Kellett 2002); The Supreme Court in United States History (Chief Justice William Rehnquist and Robert Ackerman 2001); Separation of Powers (Justice Antonin Scalia and Christine Kellett 2000); Courts and Constitutions: A Comparative Perspective (Justice Ruth Bader Ginsburg 1998); Constitutional Law – Selected Comparative and Practice Perspectives (Justice Sandra Day O’Connor 1997); and Separation of Powers (Justice Antonin Scalia 1996).

63. Volume 1 was published as the “Dickinson International Law Annual.” Volumes 2–19 were published as the Dickinson Journal of International Law. Volumes 20–29, which were published between 2001 and 2011, were published as the Penn State International Law Review.

Pearson, and Laurel Terry, the law school was fortunate to publish a number of Symposia issues that included articles or published transcripts from leading global experts, including Richard Goldstone,<sup>64</sup> Mary Robinson,<sup>65</sup> and many other notable authors.<sup>66</sup> Indeed, because we consider these Symposia to be an important part of the heritage and culture of the *Dickinson Law Review*; we will be placing links to the articles from these Symposia on the law review's forthcoming digital commons webpage.<sup>67</sup>

Although Dickinson Law no longer publishes a separate international law review, the law school has retained a global sensitivity that provides the context in which the *Dickinson Law Review* operates. Our first-year law students learn criminal law from Professor Dermot Groome who is a historic figure in the field of international criminal law because he has investigated and/or prosecuted more heads of state than any person in history.<sup>68</sup> Professor Groome led the prosecution in five significant international criminal trials. His multi-day opening statement in the case against Ratko Mladić was broadcast live on CNN and the BBC, which was the first time such coverage was afforded an international criminal trial. He has combined both practice and theory—he is probably the world's expert in both practice and in his scholarship on the “right to truth,” which

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64. Richard Goldstone, *Historical Evolution—From Nuremberg to the International Criminal Court*, 25 PENN ST. INT'L L. REV. 763 (2007).

65. Mary Robinson, *Key Note Address—Rule of Law and International Human Rights in Challenging Times*, 25 PENN ST. INT'L L. REV. 833 (2007).

66. These authors were published in Symposia related to international criminal law, legal education, (including numerous sessions from AALS and IALS meetings), global legal practice, economic crime, and other internationally oriented symposia, including Symposia about NAFTA, the ALI & UNIDROIT Principles and Rules of Transnational Civil Procedure, the Biennial Meeting of the International Academy of Commercial and Consumer Law, and an elder law symposium with comparative perspectives.

67. See *Dickinson Law IDEAS: Inspire Digital Engagement, Archives and Scholarship*, [www.ideas.dickinsonlaw.psu.edu](http://www.ideas.dickinsonlaw.psu.edu) (forthcoming). Authors whose articles or remarks are published in Dickinson's international law review include: T. Alexander Aleinikoff, John B. Attanasio, Martin H. Belsky, Carl Bevernage, James K. Carter, Robert C. Clark, Michael Coper, Charles Cramton, Mary C. Daly, Mark Ellis, Toni Fine, Alfredo Fuentes-Hernández, Franklin A. Gevurtz, H. Patrick Glenn, Claudio Grossman, Vivian Grosswald Curran, Geoff Hazard, Aalt Willem Heringa, Chuma Himonga, Rosalie Jukier, Harold Hongju Koh, Charlotte Ku, Paul Mahoney, Carl Monk, Elizabeth Rindskopf Parker, Diane Penneys Edelman, Katharina Pistor, Nancy Rapoport, Norbert Reich, Mathias W. Reimann, Donald Rivkin, Michael P. Scharf, John Sexton, Peter L. Strauss, Gerald Torres, Mark Tushnet, Frans Vanistendael, Francis S.L. Wang, Jack Weiss, and Adrien Wing. See generally Volume 18 of the Dickinson International Law Review, *supra* note 63, and Volumes 20, 21, 25, 27 and 29 of the Penn State International Law Review, *supra* note 63.

68. See Groome email, *supra* note 44.

is a right that is not explicitly listed in any of the foundational human rights conventions, but has emerged as an enforceable “implicit” right. As a result of his expertise, students in his required first-year criminal law course—including the future law review editors—learn about criminal law from both a domestic and a global perspective.

Another way in which our students acquire a global perspective is through our first-year required course called *Practicing Law in a Global World: Contexts & Competencies*.<sup>69</sup> One of the “competencies” units focuses on international and foreign law in order to ensure that our students are aware of the global environment in which they and their clients will operate.<sup>70</sup> This course is one of the ways in which the law school seeks to accomplish our first core principle which expresses our commitment “to vest in our students the entire range of concrete lawyering skills necessary to most effectively perform as legal professionals at the local, state, national, transnational, and international levels in the 21st century.”<sup>71</sup> We fully expect that global perspectives will inform the decisions of the current and future *Dickinson Law Review* editors. We also believe that the law review plays an important role in helping us achieve the law school’s second core principle, which is a commitment to “engage in a constant quest for knowledge and wisdom that we can share not only with our students, but with the legal profession, scholars, policy makers, and others, consistent with Penn State’s role as a world-class research university.”<sup>72</sup>

Let me now turn from the topics of “tradition” and “innovation” to the topic of “new beginnings,” which is also part of the title of Volume 122(1) of the *Dickinson Law Review*.

#### NEW BEGINNINGS

Volume 122(1) represents a new stage in the law review’s evolution and we thank the Editorial Board members for their leadership during the inaugural year of Penn State Dickinson Law’s *Dickinson Law Review*.<sup>73</sup> As noted earlier, the law review’s name

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69. See Laurel S. Terry, *Panel on New Leaders, New Laws . . . and New Perspectives on Creating “Practice Ready” International Lawyers: Materials from Professor Laurel S. Terry, Pennsylvania State University—Dickinson Law* (April 27, 2017, ABA Sec. of Int’l L. Spring Meeting, Washington, D.C.), <https://perma.cc/P2DD-KKLU>.

70. *Id.* at 4.

71. See Core Principles, *supra* note 29, at 1.

72. *Id.*

73. Volume 122’s Editorial Board includes Editor-In-Chief Maureen Weidman; Managing Editor Hanna E. Borsilli; Research Editor Logan M. Hethering-

has changed several times over the course of its history. Between 1908 and 2003, which includes the first six years after the law school's 1997 affiliation with Penn State University,<sup>74</sup> the law review's name was the *Dickinson Law Review*. In 2003, the law review changed its name to the *Penn State Law Review*.<sup>75</sup> In 2006, the law school opened a second campus in University Park and for the next decade, the *Penn State Law Review* was jointly published by students located at the Carlisle and University Park campuses of Penn State's single law school.<sup>76</sup>

The "new beginnings" referred to in the title of Volume 122(1) reflects the fact that in 2014, Penn State received permission from its accreditor to split its two law school campuses into two separate and fully accredited law schools: Dickinson Law in Carlisle and

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ton; Executive Comments Editor Jordan E. Yatsko; Executive Articles Editor Craig E. Rushmore; Symposium Executive Editor Lindsay Daniels; Executive Editor of Digital Media Mathom Molayem; Comments Editors Stephen C. Howard, Maria Kennison, Kristina J. Kim, and Jeremy L. Klein; and Articles Editors Yudith Rubi Bujanda, Nicholas Gallion, Adam W. Kohl, and Kyle Semroc.

74. See *Dickinson Law Review*, Volumes 13–107 (on file with Dickinson Law). In January 1997, the Pennsylvania State University Board of Trustees approved an "Affiliation Agreement and Agreement and Plan of Merger" dated Jan. 17, 1997. Effective July 1, 1997, Dickinson became an academic unit of Penn State, although the complete merger, in which the endowment was transferred, several new bodies were created, and The Dickinson School of Law ceased to exist as a separate legal entity, were not concluded until July 1, 2000. For information about the merger of Penn State and The Dickinson School of Law, see Penn. St. U., Meetings of the Board of Trustees Minutes 169-6 (Jan. 17, 1997) (on file with author). The Board voted to approve a resolution that contained a number of "whereas" clauses and the following "resolved" paragraphs:

THEREFORE, BE IT RESOLVED, That the Board of Trustees hereby approves the merger of the Dickinson School of Law with The Pennsylvania State University as contemplated in the Term Sheet.

RESOLVED, That the Board of Trustees authorizes the officers of the University to enter into a definitive merger agreement with the Dickinson School of Law in substantially the same form as set forth in the Term Sheet.

FURTHER, BE IT RESOLVED, That the officers of the University be and they hereby are authorized to take any and all actions necessary or desirable to implement the merger.

Id. at 169-6. See also Penn. St. U., *Penn State Historical Timeline: 1990s*, <https://perma.cc/PGM5-QXAL> ("1997 . . . Penn State merges with Dickinson Law School.").

75. See *Contents*, 108(1) PENN ST. L. REV. (2003).

76. The author has personal knowledge of these facts. See also Pennsylvania State University, *Penn State News: Law school kicks off semester in Carlisle and University Park* (Aug. 24, 2006), <https://perma.cc/LT9G-UFA9> ("Penn State's Dickinson School of Law kicked off the fall semester like none other before it. Not only are law students taking classes at the school's original home in Carlisle, but also at its new location in University Park, marking the beginning of its operation as a unified two-location law school.").

Penn State Law in University Park.<sup>77</sup> Penn State thus joined the ranks of other university systems, such as the University of California and Indiana University, which have more than one law school.

Volume 122(1) marks the first publication of the *Dickinson Law Review* as a publication of the separately-accredited Penn State Dickinson Law. There are a number of tangible signs of this new chapter in the law review's history. For example, this issue is the first time the *Dickinson Law Review* has used its new cover, which is the fourth cover it has used in the course of its 121 year history. This cover references both tradition and new beginnings: it identifies the year the law review was established and uses the new Penn State Dickinson Law logo, which was designed specifically for the law school after the split of the two Penn State campuses into two fully accredited Penn State law schools. Before publishing new articles,<sup>78</sup> the *Dickinson Law Review* editors thought it would be fitting to acknowledge and celebrate the past by reprinting some previously-published articles. Hence the last part of the title of Volume 122(1) of the *Dickinson Law Review*.

#### CELEBRATING THE HISTORY OF THE *DICKINSON LAW REVIEW*

We are proud to be reprinting in Volume 122(1) articles by leading scholars, practitioners, and jurists. You may recognize the names of some of the authors in this issue: scholars such as Samuel Williston,<sup>79</sup> Marc Galanter,<sup>80</sup> Deborah Hensler,<sup>81</sup> Pam Karlan,<sup>82</sup> Tony Kronman,<sup>83</sup> and Nancy Rapoport;<sup>84</sup> jurists such as the Honor-

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77. See Letter from Barry A. Currier, Managing Director of Accreditation, ABA Section of Legal Education and Admissions to the Bar to Deans of ABA Approved Law Schools, et. al., (June 19, 2014), <https://perma.cc/82NP-8SCH>.

78. *Dickinson Law Review* Volume 122(2) will include articles by Professors Bill Henderson and Peter Joy, among others.

79. Samuel Williston, *Uniform Commercial Acts*, 20 DICK. L. REV. 263 (1916), reprinted in 122 DICK. L. REV. 75 (2017).

80. Marc Galanter, *Lawyers in the Mist: The Golden Age of Legal Nostalgia*, 100 DICK. L. REV. 549 (1996), reprinted in 122 DICK. L. REV. 267 (2017).

81. Deborah R. Hensler, *Our Courts, Ourselves: How the Alternative Dispute Resolution Movement is Re-Shaping Our Legal System*, 108 PENN ST. L. REV. 165 (2003), reprinted in 122 DICK. L. REV. 349 (2017).

82. Pamela S. Karlan, *Bringing Compassion into the Province of Judging: Justice Blackmun and the Outsiders*, 97 DICK. L. REV. 527 (1993), reprinted in 122 DICK. L. REV. 297 (2017).

83. Anthony T. Kronman, *The Fault in Legal Ethics*, 100 DICK. L. REV. 489 (1996), reprinted in 122 DICK. L. REV. 281 (2017).

84. Nancy B. Rapoport, *Changing the Modal Law School: Rethinking U.S. Legal Education in (Most) Schools*, 116 PENN ST. L. REV. 1119 (2012), reprinted in 122 DICK. L. REV. 189 (2017).

able Ruggero Aldisert,<sup>85</sup> Karen Nelson Moore,<sup>86</sup> Lee Rosenthal,<sup>87</sup> and Diane Wood,<sup>88</sup> and practitioners such as Ward Bower,<sup>89</sup> Larry Fox,<sup>90</sup> and Bob MacCrate.<sup>91</sup> But even for those authors whose names you won't recognize, we hope you will enjoy seeing the degree to which things have—or have not—changed during the 121-year history of the *Dickinson Law Review*.

Although there undoubtedly are many different ways in which one could describe or categorize the tens of thousands of pages that have been printed since the *Dickinson Law Review* was established, the items reprinted in Volume 122(1) have been organized according to six themes, each of which continues to be an important part of the life of Penn State Dickinson Law. The organizing themes are: 1) *What Does it Mean to be a Lawyer?*; 2) *Early & Ongoing Efforts to Help Shape the Law*; 3) *An Early & Ongoing Commitment to Experiential Education*; 4) *Reflections About Legal Education*; 5) *Facilitating Dialogue With and About the Profession*; and 6) *Understanding and Improving Our Judicial System*.<sup>92</sup> The sections that follow briefly describe the articles that have been reprinted and help place them in context.

#### SECTION I: WHAT DOES IT MEAN TO BE A LAWYER?

To illustrate the law review's history and tradition, Section 1 reprints an article that appeared in the very first volume of the law review. It has become relatively common for law reviews to publish the public remarks of prominent jurists.<sup>93</sup> Section I provides an

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85. Ruggero J. Aldisert, Ryan C. Kirkpatrick and James R. Stevens III, *Rat Race: Insider Advice on Landing Judicial Clerkships*, 110 PENN ST. L. REV. 835 (2006), reprinted in 122 DICK. L. REV. 117 (2017).

86. Karen Nelson Moore, *Justice Blackmun and Preclusion in the State-Federal Context*, 97 DICK. L. REV. 465 (1993), reprinted in 122 DICK. L. REV. 311 (2017).

87. Lee H. Rosenthal, *Pleading, for the Future: Conversations After Iqbal*, 114 PENN ST. L. REV. 1537 (2010), reprinted in 122 DICK. L. REV. 383 (2017).

88. Diane P. Wood, *Justice Blackmun and Individual Rights*, 97 DICK. L. REV. 421 (1993), reprinted in 122 DICK. L. REV. 333 (2017).

89. Ward Bower, *Law Firm Economics and Professionalism* 100 DICK. L. REV. 515 (1996), reprinted in 122 DICK. L. REV. 235 (2017).

90. Lawrence J. Fox, *Money Didn't Buy Happiness*, 100 DICK. L. REV. 531 (1996), reprinted in 122 DICK. L. REV. 249 (2017).

91. Robert MacCrate, *"The Lost Lawyer" Regained: The Abiding Values of the Legal Profession*, 100 DICK. L. REV. 587 (1996), reprinted in 122 DICK. L. REV. 153 (2017).

92. See Table of Contents, 122 DICK. L. REV. i (2017). Each of these sections begins with a brief set of reflections by a member of the Dickinson Law Review Editorial Board.

93. See, e.g., Christopher W. Schmidt, *Beyond the Opinion: Supreme Court Justices and Extrajudicial Speech*, 88 CHI.-KENT. L. REV. 487 (2013). This article

early example of this tradition because it reprints from Volume 1 Delaware Chief Justice Charles Lore's *Thoughts about What It Means to Be a Lawyer*.<sup>94</sup> This question is as relevant today as it was in 1897 because it is a question that is at the heart of legal education.

Chief Justice Lore's published remarks provide an opportunity to consider the ways in which the world and the practice of law have—or have not—changed since Volume 1 of the law review was published.<sup>95</sup> The question that Chief Justice Lore asks—*what does it mean to be a lawyer?*—is one that each generation must ask and is a question that prompts law schools to innovate.<sup>96</sup> At Dickinson Law, we are proud that “what does it mean to be a lawyer?” is a question that our law students have been considering since the first days of the law review. We are also proud that this continues to be

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cited, *inter alia*, a number of law review articles that were based on remarks by state or U.S. Supreme Court Justices, including: Hugo Black, *The Bill of Rights*, 35 N.Y.U. L. REV. 865 (1960); Ruth Bader Ginsburg, *Informing the Public About the U.S. Supreme Court's Work*, 29 LOY. U. CHI. L. REV. 275 (1998); *Justice Black and First Amendment “Absolutes”: A Public Interview*, 37 N.Y.U. L. REV. 549 (1962); *Justice Black and the Bill of Rights*, 9 SW. U. L. REV. 937, 939 (1977); Justice Hans A. Linde, *First Things First: Rediscovering the States' Bills of Rights*, 9 BALT. L. REV. 379 (1980); Felix Frankfurter, *The Supreme Court in the Mirror of Justices*, 105 U. PA. L. REV. 781 (1957); Felix Frankfurter, *John Marshall and the Judicial Function*, 69 HARV. L. REV. 217 (1955); William Brennan, *Address by William J. Brennan*, 32 RUTGERS L. REV. 173 (1979); Thurgood Marshall, *Reflections on the Bicentennial of the United States Constitution*, 101 HARV. L. REV. 1 (1987); John Paul Stevens, *Construing the Constitution*, 19 U.C. DAVIS L. REV. 15 (1985); William J. Brennan Jr., *The Constitution of the United States: Contemporary Ratification*, 27 S. TEX. L. REV. 433 (1985); Antonin Scalia, *Originalism: The Lesser Evil*, 57 U. CINN. L. REV. 849 (1989); John Paul Stevens, *The Ninth Vote in the “Stop the Beach” Case*, 88 CHI.-KENT L. REV. 553 (2013); John M. Harlan, *Mr. Justice Black: Remarks of a Colleague*, 81 HARV. L. REV. 1, 2 (1967); Ruth Bader Ginsburg, *Informing the Public About the U.S. Supreme Court's Work*, 29 LOY. U. CHI. L.J. 275 (1998). See also Brian L. Frye, *The Most Scholarly Justices*, 18 GREEN BAG 2D 435 (2015).

94. *Baccalaureate Address Delivered by Charles B. Lore, LL D., Chief Justice of the Supreme Court of Delaware*, 1 THE FORUM 131 (1897), reprinted in 122 DICK. L. REV. 39 (2017).

95. Some of Chief Justice Lore's remarks appear as relevant today as when they were made. For example, he advised students that “a primal condition of success in law is absolute integrity and sincerity,” that “[y]our success will be largely measured by your willingness and capacity to work,” and that “the law still is the open sesame to political life and honor and presents a wider range for usefulness than any other field. In it the possibilities of one's usefulness are limited only by one's capacity.” See Lore, *supra* note 94, at 133–34, reprinted in 122 DICK. L. REV. 39 (2017). Other of Chief Justice Lore's remarks, however, clearly would seem inappropriate if delivered in 2017, such as his assumption that all of the law school's graduates would be male and Christian.

96. See, e.g., *supra* notes 38, 40–42, and 49 (describing Penn State Dickinson Law's traditions and tradition of innovation, including its commitment to experiential education and its global outlook).

an important question in our community, along with the question of how the law school can best educate future lawyers.

## SECTION II: EARLY AND ONGOING EFFORTS TO HELP SHAPE THE LAW

The articles that are reprinted in Section II illustrate the important role that a law review can play in fostering the discussion and debate that help shape the law. While there are many articles that might have been selected for republication, this section reprints three articles that span more than 80 years and address the need for uniform commercial laws: J.P. McKeehan, *The Uniform Commercial Acts* (1915), Samuel Williston, *Uniform Commercial Acts* (1916), and Michael Joachim Bonell, *Do We Need a Global Commercial Code?* (2001).<sup>97</sup>

The first two articles reveal an early 20th century conversation about commercial law between Professors McKeehan and Williston. McKeehan was a Dickinson Law School professor who was also a commercial law scholar.<sup>98</sup> His article examined differences among three Uniform Acts that recently had been adopted, and explained “the risks that a purchaser of documents of title still runs,” and called for greater uniformity<sup>99</sup> (The three Uniform Laws under discussion were the precursors to Article 7 of the Uniform Com-

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97. See Joseph P. McKeehan, *The Uniform Commercial Act*, 20 DICK. L. 33 (1917), reprinted in 122 DICK. L. REV. 51 (2017); Williston, *supra* note 79; Michael Joachim Bonell, *Do We Need a Global Commercial Code?* 106 DICK. L. 87 (2001), reprinted in 122 DICK. L. REV. 85 (2017).

98. Professor McKeehan published a number of commercial law articles. See, e.g., Joseph P. McKeehan, *How to Locate a Sale*, 16 DICK. L. REV. 89 (1912); Joseph P. McKeehan, *Sales of Goods and the Statute of Frauds*, 28 DICK. L. REV. 177 (1924); Joseph P. McKeehan, *Gifts*, 30 DICK. L. REV. 255 (1926); Joseph P. McKeehan, *Agents' Need of Written Authority*, 34 DICK. L. REV. 105 (1930); Joseph P. McKeehan, *The Extension of Negotiability to Documents Representing Goods*, 43 DICK. L. REV. 224 (1939); Joseph P. McKeehan, *The Duties of the Trustee of a Mortgage Given to Secure Bondholders*, 49 DICK. L. REV. 1 (1944); Joseph P. McKeehan, *The Chattel Mortgage Act of June 1st, 1945*, 50 DICK. L. REV. 72 (1946); Joseph P. McKeehan, *Is Moral Consideration on the Way out in Pennsylvania*, 50 DICK. L. REV. 184 (1946); Joseph P. McKeehan, *Effect of the Uniform Sales Act on the Pre-Existing Law in Pennsylvania*, 55 DICK. L. REV. 102 (1950) (reprinted from 26 DICK. L. REV. 151 (1922)). His work appears to have been well-regarded. See, e.g., *The Forum*, 12 FORUM 129 (1908) (“Prof. Williston, in his edition of Pollock on Contracts, refers in his discussion of Moral Obligation as a consideration, to the article by Prof. McKeehan in 9 FORUM 1, as a valuable contribution.”) Among his other activities, Professor McKeehan was a delegate in 1904 to the Universal Congress of Lawyers and Jurists held in St. Louis; he also served as a member of the Jury of Awards at the Paris Exposition in 1900. See Laub, *supra* note 9, at 38.

99. McKeehan, *supra* note 97, at 34. The three Uniform Acts that he examined were the Bills of Lading Act, the Warehouse Receipts Act and the Stock Transfer Act. *Id.*

mercial Code).<sup>100</sup> Williston was a Harvard Law professor and pre-eminent commercial law scholar; in 1909, he had published his treatise on the *Law of Sales* and in 1920 he published *Williston on Contracts*.<sup>101</sup> He later served as the reporter for the American Law Institute's *Restatement of Contracts*.<sup>102</sup>

Professor McKeehan's article provided a close reading of the three Uniform Acts and pointed to inconsistencies that he believed were problematic. His article concluded with a call for unification and consistency:

We have pointed out the many points of difference between these "Uniform Acts," in their provisions dealing with analogous situations. Is it not time for the Commissioners to begin the preparation of an act to unify these acts and put these documents on exactly the same basis? It would greatly reduce the labor of students and practitioners and the writer knows of no objection which could be urged against such a course.<sup>103</sup>

Professor Williston had drafted the three Uniform Acts in question.<sup>104</sup> While he conceded that the seriatim drafting of the Uni-

100. See, e.g., Robert Braucher, *The Uniform Commercial Code Documents of Title*, 102 U. PA. L. REV. 831, 831 (1954) ("Article 7 of the [Uniform Commercial Code] deals comprehensively with documents of title; it is designed to replace the Uniform Warehouse Receipts Act, the Uniform Bills of Lading Act, and Sections 27–40 of the Uniform Sales Act." (footnotes with dates omitted)).

101. Austin W. Scott, *Samuel Williston*, 76 HARV. L. REV. 1330, 1332 (1963). Although Professor Williston is long-dead, WILLISTON ON CONTRACTS is still in print. See Richard A. Lord, WILLISTON ON CONTRACTS (4th ed. 2002-2017).

102. Scott, *supra* note 101, at 1331. Although some criticized the 1932 Restatement when it was first issued, overall it was exceptionally well-received and Williston received a large share of the credit. Compare Charles E. Clark, *The Restatement of the Law of Contracts*, 42 YALE L. J. 643 (1933) (criticizing the Restatement) with E. Allan Farnsworth, *Ingredients in the Redaction of the Restatement (Second) of Contracts*, 81 COLUM. L. REV. 1 (1981):

The first Restatement of Contracts has been characterized by Professor Herbert Wechsler of Columbia, Director of the American Law Institute, as "a legendary success." He attributed this in good part to Professor Samuel Williston of Harvard, who "served throughout as the Reporter, vouching, as it were, his famous treatise as warranty for the positions that the Institute espoused." . . . Chief Justice Charles Evans Hughes praised the Restatement as a "monumental achievement" and described its publication as "an event of first importance." Even those who took to the law reviews to criticize some of the Restatement's provisions showered the product as a whole with praise. It was "highly significant," . . . ; "an outstanding production" and "a milestone," . . . and a "splendid attempt" and "a masterpiece of condensation," . . . "It probably represents more in concentrated effort of the best minds per word than any other law book that has ever been published." (Internal citations and footnotes omitted).

*Id.* at 1.

103. McKeehan, *supra* note 97, at 76.

104. Scott, *supra* note 101 at 1330–1331.

form Acts accounted for some of the differences Professor McKeehan had noted,<sup>105</sup> Professor Williston was not persuaded that most of the changes that Professor McKeehan called for were warranted, but he clearly took the suggestions seriously and used his law review article as an opportunity to set forth the issues he saw.<sup>106</sup>

The third article in this section is more modern; it addresses from a global perspective the need for uniform commercial laws. Its author, Michael Joachim Bonell, is a figure of global stature. In addition to the academic positions he has held around the world,<sup>107</sup> Professor Bonell has been instrumental in helping develop the UNIDROIT Principles of International Commercial Contracts.<sup>108</sup> (UNIDROIT refers to the International Institute for the Unifica-

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105. Williston, *supra* note 79, at 264

It is no doubt true that if three at least of the commercial acts of which Mr. McKeehan wrote (for the stock transfer act should be excluded) had been simultaneously prepared, greater similarity of wording in some instances, and of substantive law in one or two matters, might have been achieved. As each successive Act was drawn, the temptation to attempt improvements existed, and to a slight extent was yielded to.

106. *Id.*

Mr. McKeehan has rendered good service in comparing these various statutes, and he might well have included in his comparison the Negotiable Instruments Law. To such a proposed addition he would probably reply that a bill of exchange or promissory note is not a document of title. This is true, but neither is a stock certificate. . . . This suggestion is made because it will indicate to the reader at once that there may be some objection to putting the various documents on exactly the same basis. The reader may perceive that perhaps mercantile custom in regard to the use of the several documents is not identical, and because of this difference the questions which in fact arise and press for decision are not identical. . . . The following examination will, however, show that most of the differences in the statutes are not accidental but intentional, and exist for good reasons.

107. UNIDROIT, Michael Joachim Bonell—Curriculum Vitae, <https://perma.cc/MW4D-9T2L>. Professor Bonell is an Emeritus Professor at the University of Rome I “La Sapienza.” He has two honorary degrees and has been a visiting professor at a number of institutions, including Oxford, Columbia, and Berkeley.

108. See Bonell CV, *supra* note 107 (showing, *inter alia*, that Mr. Bonell has served as Chairman of the Working Group for the preparation of the first edition of the UNIDROIT Principles of International Commercial Contracts; Chairman of the Working Group for the preparation of the 2004 edition of the UNIDROIT Principles of International Commercial Contracts; Chairman of the Working Group for the preparation of the 2010 edition of the UNIDROIT Principles of International Commercial Contracts. He also served as Italy’s representative to UNCITRAL.) The Foreword to the 1994 edition of the Principles stated:

Tribute must first be paid to the members of the Working Group primarily entrusted with the preparation of the UNIDROIT Principles and, among them, especially to the Rapporteurs for the different chapters. Without their personal commitment and unstinting efforts, so ably coor-

tion of Private Law, which is an independent intergovernmental body whose purpose is “to study needs and methods for modernising, harmonising and co-ordinating private and in particular commercial law as between States and groups of States and to formulate uniform law instruments, principles and rules to achieve those objectives.”<sup>109</sup> Professor Bonell’s article, which is entitled “*Do We Need a Global Commercial Code*,” discusses a project that is different than the UNIDROIT Principles of International Commercial Contracts; the project in question had been proposed to UNIDROIT by the Secretary of the United Nations Commission on International Trade Law (UNCITRAL).<sup>110</sup> Professor Bonell’s article focused on the kind of global commercial code he envisioned and the relationship between that code and general contract law.<sup>111</sup> His vision was a new global commercial code that would be an integrated body of rules relating to the most important commercial transactions, but would leave the general contract law to be supplemented by other more flexible instruments such as the UNIDROIT Principles of International Commercial Contracts.<sup>112</sup> Professor Bonell’s article offers early insights into a project that undoubtedly will be relevant for many years to come.<sup>113</sup> Since this article is now 15 years old, it is interesting to reread it in the context of UNCITRAL’s current work program.<sup>114</sup>

While the perspectives and details in these three articles differ from one another, all three articles agree on the importance of uniform commercial codes. These articles collectively illustrate the im-

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minated throughout by Michael Joachim Bonell, this ambitious project could not have been brought to its successful conclusion.

UNIDROIT, PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS, Foreword (Rome 1994).

109. About UNIDROIT, <http://www.unidroit.org/about-unidroit/overview>; Bonell, *supra* note 97, at 87.

110. Bonell, *supra* note 97, at 87.

111. *Id.*

112. *Id.* at 100.

113. Professor Bonell’s article, which was written over a decade ago, contains a number of specific recommendations. *Id.* at 94, 96. He discussed the fact that individual countries might choose to apply all or parts of the new code to purely domestic transactions. His article also talked about how the Global Commercial Code “should deal with internal gaps that cannot be filled on the basis of general principles underlying the Code and also with external gaps, described as matters falling outside the scope of the Code. *Id.* at 97.

114. UNIDROIT, Work Programme, <http://www.unidroit.org/about-unidroit/work-programme>. As Professor Bonell explains in this article and elsewhere, UNIDROIT’s focus has evolved from a proposed focus on international trade law to a focus on international contract law. See Bonell, *supra* note 97, at nn. 1-3 and accompanying text. See generally Michael Joachim Bonell, AN INTERNATIONAL RESTATEMENT OF CONTRACT LAW (3d. ed. 2005).

portant role that law reviews can play in promoting discussions that help shape the law. Whether it is Professor Williston and McKeehan debating topics that eventually made their way into the Restatement and the Uniform Commercial Code or Professor Bonell calling for a new global commercial code, the *Dickinson Law Review* is proud of its 121-year history of promoting important conversations. We look forward to many more years of the *Dickinson Law Review* encouraging dialogue about the proper shape of the law.

### SECTION III: AN EARLY AND ONGOING COMMITMENT TO EXPERIENTIAL EDUCATION

Section III reprints three items, only one of which is a traditional law review article. The items in this section include an 1897 editorial entitled “About the Moot Court”;<sup>115</sup> a sample moot court problem from 1905;<sup>116</sup> and a 2006 article by Third Circuit Judge Ruggero J. Aldisert and two of his law clerks that provides advice on obtaining a judicial clerkship.<sup>117</sup> These items illustrate both historic and more modern approaches to experiential education and reflect Dickinson Law’s commitment to experiential education.

As was noted previously, for the first 33 years of its existence, the *Dickinson Law Review* published numerous items that listed a case name followed by the designation “Moot Court.”<sup>118</sup> The Volume 1 “Editorial” that is reprinted in this section of the law review describes the experiential education “moot courts” that gave rise to these publications:

The moot court has for some time played a larger role in the Dickinson School of Law than in most other law schools, and during the year just closing it has received an emphasis never before put on it. Since the commencement of the present school year, two nights weekly, Tuesdays and Thursdays, have been devoted to this work. In the fall term, only the seniors [3L students] were engaged as counsel, because it was thought that those who had just begun the study of law were not qualified to act in this capacity with advantage to themselves but since the opening of the long session in January, both juniors [1L students] and seniors [3L students] have been thus employed. Every Tuesday

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115. *About the Moot Court*, *supra* note 36.

116. *Barnett v. Corson*, *supra* note 36. *Barnett v. Corson* is one of hundreds of moot court problems that might have been selected. As explained *supra* note 36 and accompanying text, the law review published moot court problems throughout Volumes 1–12 of *The Forum* and Volumes 13–33 of the *Dickinson Law Review*.

117. Aldisert, et. al., *supra* note 85.

118. *See supra* note 36 and accompanying text.

and Thursday night two cases have been argued, one by seniors, and one by juniors. Briefs are prepared in each case by every attorney. Oral arguments are made in the order, and as nearly after the forms as possible, that obtain in court. The Dean of the school has sat as Judge in every case except one, having been relieved on that occasion by Judge Sadler. The cases cited in the briefs and on the argument are examined, and careful opinions are prepared in every case.<sup>119</sup>

Reprinting the *About the Moot Court* Editorial and a sample moot court problem should make it easier for contemporary audiences to imagine what experiential legal education looked like 100 years ago.

If the reprinted moot court items reveal a historic approach to experiential education, the article by Judge Aldisert and his law clerks shows a more modern approach. At Dickinson Law and elsewhere, judicial internships and post-graduate clerkships have become a common way in which law students acquire additional legal experience before commencing full-time employment. *Insider Advice on Landing Judicial Clerkships* provides students and faculty and career service advisors with a number of concrete recommendations that should help a student obtain a judicial clerkship after graduation.<sup>120</sup> Although this article is more than ten years old, it remains timely and full of good advice and we are proud to be reprinting this useful article about judicial clerkships and experiential education.

#### SECTION IV: REFLECTIONS ABOUT LEGAL EDUCATION

Section IV reprints articles written by Walter Harrison Hitchler, Bob MacCrate, and Nancy Rapoport that address the topic of legal education.<sup>121</sup> Although the first and last articles were

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119. See *About the Moot Court*, *supra* note 36, at 103. The Editorial also explains how the legal opinions that were included as part of each “moot court” publication were generated:

The preparation of some decisions has required a large amount of time, as those experienced in such matters will readily understand. It has not infrequently happened that as many as fifty authorities have been consulted. As the purpose of the opinion is somewhat different from that of the opinions filed by the judges of the courts, as it is designed not merely to announce the decision reached, and to indicate to trained lawyers the principles that have conducted to it, but to assist students, to clear up for them doubtful or difficult points; the style observed in them differentiates them somewhat from that of the published opinions of the courts.

*Id.*

120. Kirkpatrick, *supra* note 85.

121. See *supra* notes 84 and 91 and *infra* note 122.

written almost 100 years apart, they illustrate some of the common threads that have appeared in discussions of legal education. One might easily imagine that the article entitled *College Graduation as an Entrance Requirement to Law Schools*<sup>122</sup> is a 21st century article, responding to developments such as the 2016 recommendations of the ABA Task Force on the Future of Legal Education<sup>123</sup> or questions that may be addressed by the ABA Commission on the Future of Legal Education that was established in August 2017.<sup>124</sup> This article was, however, written in 1914 by Walter Harrison Hitchler, who later became dean of Dickinson Law; his article explained why the law school was willing to accept applicants who were not college graduates.<sup>125</sup> In addition to pointing out a number of distinguished lawyers and jurists who had not graduated from college, Hitchler's article compared the bar passage rates and law school GPAs of students who were college graduates and those who were not, cited the cost of a legal education, compared legal training to medical training, asked whether a college education was necessary in order to learn the "culture" of the law, and asked what sort of examination, if any, should be required as a prerequisite to entering law school. Although the context in which he asked these questions has changed, all of these questions remain relevant—and the subject of discussion—today.<sup>126</sup>

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122. W. Harrison Hitchler, *College Graduation as an Entrance Requirement to Law Schools*, 19 DICK. L. REV. 31 (1914), reprinted in 122 DICK. L. REV. 141 (2017).

123. See REPORT AND RECOMMENDATIONS, AM. B. ASS'N TASK FORCE ON THE FUTURE OF LEGAL EDUCATION 3 (2014), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/report\\_and\\_recommendations\\_of\\_aba\\_task\\_force.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf).

To expand access to justice, state supreme courts, state bar associations, admitting authorities, and other regulators should devise and consider for adoption new or improved frameworks for licensing or otherwise authorizing providers of legal and related services. This should include authorizing bar admission for people whose preparation may be other than the traditional four-years of college plus three years of classroom-based law school education . . . .

124. See *Comm'n on Future of Legal Education*, ABA (2017), [https://www.americanbar.org/groups/leadership/office\\_of\\_the\\_president/futureoflegaleducation.html](https://www.americanbar.org/groups/leadership/office_of_the_president/futureoflegaleducation.html).

125. For additional information, see Mark W. Podvia, *Walter Harrison Hitchler*, 16(1) CUMBERLAND CNTY. HIST. 3 (1999); Daniel J. Flood, *Eulogy for Harry Hitchler*, 64 DICK. L. REV. 1, 6 (1959).

126. In addition to the ABA initiatives cited above, the influential Carnegie Foundation report on legal education addressed a number of similar issues. See William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007), available at [http://archive.carnegiefoundation.org/pdfs/elibrary/elibrary\\_pdf\\_632.pdf](http://archive.carnegiefoundation.org/pdfs/elibrary/elibrary_pdf_632.pdf).

The second article in this section is a 1996 article written by Bob MacCrate.<sup>127</sup> The title of his article is “*The Lost Lawyer Regained: The Abiding Values of the Legal Profession*,” but it focuses on legal education as well as the legal profession. Including a Bob MacCrate article in this section on legal education is altogether fitting because one cannot overstate the impact that Bob MacCrate and the MacCrate Commission Report have had on U.S. legal education. This article—like the MacCrate Report itself—stresses the interrelationship of U.S. legal education and legal practice. As the article explains, law schools are “the unifying experience for the great majority of lawyers, and the judiciary in each state” and the profession’s gatekeeper for that jurisdiction.<sup>128</sup> In his conclusion, he observed that the legal profession was “determined to respond to the challenge of change by building an educational continuum that will sustain the abiding values of the legal profession.”<sup>129</sup>

The third article in this section, which is entitled *Changing the Modal Law School: Rethinking U.S. Legal Education in (Most) Schools*, was written in 2012 and reflects both new themes, as well as some of the same themes that appear in the Hitchler and MacCrate articles. The author, Nancy Rapoport, brings to the article a wealth of experience and perspectives, including her service as a dean and a professor at multiple law schools, her service in senior roles in University administration, her previous experience in private practice, and her current work as a bankruptcy law expert. This article starts by noting that the senior lawyers she talks to are frustrated by law graduates’ failure to move from drafting competent memos discussing current case law to providing useful advice to clients. Her article talks about the need for U.S. law professors to adjust their assumptions about their students’ academic back-

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127. In addition to his many other accomplishments, Robert MacCrate chaired the *ABA Task Force on Law Schools and the Profession: Narrowing the Gap*. Because of his leadership, this Commission and its 1992 report are known as the MacCrate Commission and the MacCrate Report. For a link to the report, see [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/2013\\_legal\\_education\\_and\\_professional\\_development\\_maccrate\\_report\).authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report).authcheckdam.pdf). As a testament to the continuing impact of the MacCrate report, in 2013, the ABA issued its report entitled “Twenty Years After the MacCrate Report: A Review of the Current State of the Legal Education Continuum and the Challenges Facing the Academy, Bar, and Judiciary,” [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/june2013councilmeeting/2013\\_open\\_session\\_e\\_report\\_prof\\_educ\\_continuum\\_committee.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/june2013councilmeeting/2013_open_session_e_report_prof_educ_continuum_committee.authcheckdam.pdf). In 2016, the National Conference of Bar Examiners had a plenary session at its annual bar admissions conference devoted to continuing impact of the MacCrate Report.

128. *Id.* at 615–16.

129. *Id.* 619.

grounds. She also asserts that if law professors want their graduates to be competent lawyers—which may not be a goal of all law schools or professors—then professors need to recalibrate their own goals and rethink how they should convey their material. In the course of offering a number of useful concrete suggestions about things that law schools and professors could do, she offers a 21st century perspective on some of the same themes that Hitchler was writing about 100 years ago, including the preparation of incoming law students, the impact of the bar exam on students, and the range of skills that make one a good lawyer. Her article also addresses topics such as the critical role of the lawyer as a problem-solver, the importance of students learning a variety of skills, including “extra-legal competencies,” and the fallacy of the unitary model of law school.

As these articles demonstrate, for more than 100 years, the *Dickinson Law Review* has considered it important to foster conversations about legal education. These are important conversations not just for students, but for all stakeholders in our legal system and our society. Penn State Dickinson Law is proud to have published articles that address themes that it considers important – the need to respond to the challenge of change, the critical role of lawyers as problem-solvers, and the importance of students learning a wide range of competencies.

#### SECTION V: FACILITATING DIALOGUE WITH AND ABOUT THE PROFESSION

Section V of the *Tradition, Innovation & New Beginnings* issue of the *Dickinson Law Review* is entitled “Facilitating Dialogue with and about the Profession.” The authors whose articles appear in this section have played an outsized role in shaping the conversation in the United States with and about the legal profession.<sup>130</sup> Their contributions in the *Dickinson Law Review* and elsewhere have deepened our understanding of the legal profession and have helped advance important conversations.

Professor Marc Galanter is a prolific and influential academic whose work has focused on lawyers, litigation, and legal culture, among other topics.<sup>131</sup> His influential 1991 book entitled *TOURNA-*

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130. See Galanter, *supra* note 80; Fox, *supra* note 90; Bower, *supra* note 89; Kronman, *supra* note 83.

131. Professor Galanter’s interests and work extend well-beyond the legal profession. See, e.g., Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUDIES 459 (2004); Marc Galanter, *Why the “Haves” Come out Ahead: Speculations on*

MENT OF LAWYERS has literally changed the way in which we talk about lawyers in the United States.<sup>132</sup> Thus, the *Dickinson Law Review* is extremely pleased to be able to reprint his article entitled *Lawyers in the Mist: The Golden Age of Legal Nostalgia* in this section devoted to articles that facilitate dialogue with and about the profession.

This section also includes an article entitled *Law Firm Economics and Professionalism*, by Ward Bower, who for many years was a partner in the law firm management consulting firm Altman Weil. He “joined Altman Weil in 1975 when the [law firm consulting] profession was in its infancy and built an unparalleled career over four decades as an advisor to hundreds of law firms, including some of the largest firms in the world.”<sup>133</sup> Altman Weil was a leader in data-driven decision-making and the firm’s annual benchmarking studies continue to be widely relied upon.<sup>134</sup> Ward Bower was a leader in Altman Weil and, like Marc Galanter, he is one of the figures who has changed the conversations with and about lawyers.

The third article in this section is Larry Fox’s article entitled *Money Didn’t Buy Happiness*. Although Larry Fox was and still is a practicing lawyer, his activities and interests reach far and wide. He is a former Chair of the ABA Standing Committee on Ethics and Professional Responsibility and a former Chair of the ABA Section of Litigation. (He has also taught courses at numerous law schools and currently is the George W. and Sadella D. Crawford Visiting Lecturer in Law and Supervising Lawyer at the Ethics Bureau at Yale Law School.) Many are familiar with Larry Fox because of his passionate engagement with the ABA, particularly on issues related to legal ethics, lawyer regulation, and the legal profes-

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*the Limits of Legal Change*, 9 L. & SOC. REV. 95 (1974). Professor Galanter has also written extensively about India, including about the Bhopal disaster. See, e.g., Marc Galanter, *Legal Torpor: Why So Little Has Happened in India After the Bhopal Tragedy*, 20 TEX. INT. INT’L LJ 273 (1985); Marc Galanter, *When Legal Worlds Collide: Reflections on Bhopal, and Good Lawyer, and the American Law School*, 36 J. LEGAL EDUC. 292 (1986).

132. Marc Galanter & Thomas Palay, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* (1991); see also Marc Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STANFORD L. REV. 1867 (2010).

133. See Ward Bower, 1947 - 2016: Altman Weil Principal and Unparalleled Law Firm Advisor, <http://www.altmanweil.com/WB/>.

134. See, e.g., Altman Weil, Inc., *Law Firm Surveys and Reports*, <https://perma.cc/MMV4-9KEE> (includes links to a variety of surveys from 2003-2017); Altman Weil Inc., *Law Department Surveys and Reports*, <https://perma.cc/9KWG-5HXS> (includes links to a number of Chief Legal Officer Surveys, along with other surveys).

sion. There are few legal practitioners who have embraced more than he has the importance of dialogue with and about the legal profession.

The fourth article in this section is Anthony T. Kronman's article entitled *The Fault in Legal Ethics*.<sup>135</sup> Tony Kronman is a former Dean of Yale Law School and the author of numerous books, including *THE LOST LAWYER*.<sup>136</sup> It was a great privilege for the *Dickinson Law Review* not only to be able to host a Symposium in his honor, but to have him contribute *The Fault in Legal Ethics* which discusses the impact of the theories of Aristotle, Hobbes, and Locke on the ways in which we think about the legal profession and what it is that lawyers do and ought to do and our oscillation between republican and contractarian visions of the legal profession.

The final author in this section is Pennsylvania Supreme Court Justice Edward J. Fox.<sup>137</sup> His article, which was originally published in 1918, adds a diversity of perspective to the topic of facilitating dialogue with and about the legal profession. His article differs from the others because it was written in a different era and it was written by a judge, rather than an academic or a practicing lawyer. What all of these articles have in common, however, is a shared view that it is important to facilitate dialogue with and about the legal profession. The *Dickinson Law Review* looks forward to continuing this tradition in the future.

#### SECTION VI: UNDERSTANDING AND IMPROVING OUR JUDICIAL SYSTEM

The final section of Volume 122(1) of the *Dickinson Law Review* is entitled "Understanding and Improving Our Judicial System." The five articles that are reprinted in this section address this topic from differing perspectives. Two of the articles focus on understanding and improving the judicial system itself. This section includes *Pleading, for the Future: Conversations After Iqbal*, which was written by Judge Lee Rosenthal, who has been actively engaged in efforts to understand and improve the judicial system.<sup>138</sup>

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135. See Kronman, *supra* note 83.

136. See Yale Law School, Anthony T. Kronman, *Sterling Professor of Law*, <https://perma.cc/QA7M-2FMY>.

137. See *Address of Justice Edward J. Fox of the Supreme Court of Pennsylvania*, 23 DICK. L. REV. 11 (1718) reprinted in 122 DICK. L. REV. 229 (2017).

138. See Rosenthal, *supra* note 87, at 383. Judge Rosenthal served as Chair of the Judicial Conference Advisory Committee on the Federal Rules of Civil Procedure and thereafter as Chair of the Judicial Conference Committee on Rules of Practice and Procedure. See Am. L. Institute, Members: The Hon. Lee H. Rosenthal, <https://perma.cc/V27V-3SVY>.

Professor Deborah Hensler's article entitled *Our Courts, Ourselves: How the Alternative Dispute Resolution Movement Is Re-Shaping Our Legal System* also focuses on understanding and improving the judicial system.<sup>139</sup> Both of these articles show the important role that a law review can play in facilitating dialogue among and between the judiciary, lawyers, and the public, with the goal of understanding and improving the judicial system.

The remaining three articles in this section focus on the impact an individual judge can have, rather than judicial design issues. Because they were written for a Symposium honoring Justice Harry Blackmun,<sup>140</sup> the articles by Diane Wood, Karen Moore, and Pam Karlan all focus on the jurisprudence of Justice Harry Blackmun, but each uses a particular lens to examine the impact that an individual judge can have. Two of the three authors writing about Justice Blackmun are themselves now judges, which adds an interesting perspective when (re)reading these articles. Judge Diane P. Wood's article focuses on *Justice Blackmun and Individual Rights*; Judge Karen Nelson Moore writes about *Justice Blackmun and Preclusion in the State-Federal Context*; and Professor Pamela S. Karlan writes about *Bringing Compassion into the Province of Judging: Justice Blackmun and the Outsiders*.<sup>141</sup> Although all three of these articles focus on a different topic, each of them provides insights into Justice Blackmun's jurisprudence and thus helps lawyers, clients, judges, and the public better understand not just a particular judge, but the judicial system itself. Although these articles are now approximately 25 years old, the topics they address—outsiders—federal-state relations—and individual rights—are as topical as ever.

Dickinson Law values its close historic relationship with the judiciary. After all, the law school was founded by a judge in 1834 and continues to have close relationships with the judiciary.<sup>142</sup> The

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139. See Hensler, *supra* note 81, at 349. Professor Hensler has conducted extensive empirical research regarding dispute resolution, complex litigation, class actions and mass tort liability. See Stanford Law School, Deborah Hensler Biography, <https://perma.cc/4DAC-BXH2>.

140. Additional information about the connections between the law school and Justice Blackmun, as well as other Supreme Court Justices, is available in the Kellett Tribute, *supra* note 26, at 700; Justice Harry A. Blackmun, *Foreword* in Laub, *supra* note 9, at 4 (explaining that he got to know Dickinson Law School Dean Burton Laub when both served on an ABA Criminal Justice Project committee charged with developing standards on the function of a trial judge).

141. See Wood, *supra* note 88; Moore, *supra* note 86; Karlan, *supra* note 82.

142. See, e.g., *supra* note 35 (quoting Judge's Reed's letter about the need to establish a law school); *supra* note 62 (listing Supreme Court Justices who taught in Dickinson Law courses); and *supra* note 45 (participation by International Crimi-

*Dickinson Law Review* is pleased to be republishing these articles in Section VI and looks forward to continued opportunities to publish articles that will promote understanding and improvement of our judicial system.<sup>143</sup>

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As this *Foreword* has shown, there are a wide range of articles reprinted in this “greatest hits” volume. We hope you will enjoy (re)reading these articles and that you agree that *Tradition, Innovation, and New Beginnings* is an apt title for Volume 122(1) of the *Dickinson Law Review*

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nal Court judges in the law school’s Summer 2017 international trial advocacy program in The Hague). *Dickinson Law Review* students have numerous opportunities to interact with state and federal judges and hear from them first-hand about the importance of understanding and improving our judicial system. For example, students can take an electronic evidence seminar taught by the Hon. Thomas I. Vanaskie, of the U.S. Court of Appeals for the Third Circuit; a federal criminal law course jointly taught by Chief Judge Christopher Conner and the Hon. John E. Johns, III, of the U.S. District Court for the Middle District of Pennsylvania; and a bankruptcy course taught by the Hon. Mary D. France, who is the former Chief Judge of the U.S. Bankruptcy Court for the Middle District of Pennsylvania. A handful of students are selected each year to serve as two-semester interns for the judges in the U.S. District Court for the Middle District of Pennsylvania. Students can also enroll in a Pennsylvania Criminal Law course taught by the Hon. Richard Lewis or the Hon. Jessica E. Brewbaker or a Pennsylvania Civil Procedure course taught by the Hon. Kevin A. Hess, all of whom are Pennsylvania trial court judges. In addition to these semester-long opportunities, it is common for students to attend a class session in which judges participate or hear a moot court argument at which a judge presides.

143. The Symposium that is the basis for Volume 122(3) will include presentations by Utah Supreme Court Justice Deno Himonas about Utah court initiatives to provide broader access to legal services, the chief librarian for the Minnesota court system, Judge Fern Fisher about New York’s Court Navigator program, and a presentation by Paula Littlewood, who is Executive Director of the Washington State Bar Association, who will speak about Washington’s innovative LLLT (limited license legal technician) program.