A Brief History of the American Journal of Legal History

by ROBERT M. JARVIS*

I

INTRODUCTION

In 2010, the American Journal of Legal History published its 50th volume.¹ With the reaching of this milestone, it seems appropriate to take a few moments and briefly reflect on the Journal’s own history.

II

OPERATIONS

Since its founding in 1957, the Journal has had one home—the library at Temple University’s James E. Beasley School of Law²—and

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The information contained herein is current as of October 31, 2010.

¹ Although 2010 was the Journal’s 50th volume-year, it represented the Journal’s 54th publishing-year. Of course, such discrepancies are common. In 2007, for example, the well-known Dutch periodical Legal History Review celebrated its 75th volume-year in its 90th publishing-year. See The Editorial Committee, A New Jubilee for the Legal History Review, 75 LEGAL HIST. REV. 1, 2 (2007).

² Temple University was founded in 1884 to provide educational opportunities for Philadelphia’s working poor. See JAMES W. HILTY, TEMPLE UNIVERSITY: 125 YEARS OF SERVICE TO PHILADELPHIA, THE NATION, AND THE WORLD 1-2 (2010). The law school, tasked with the same mission, opened in 1895. Id. at 33. Since 1999, it has been named for Mr. Beasley, a 1956 alumnus, in recognition of his generous financial support. Id. at 243.

In July 1972, a fire destroyed the Temple law library. Id. at 114-15. As readers later found out, the Journal was largely, but not entirely, spared:
three editors: Erwin C. Surrency (1957-81),\(^3\) Diane C. Maleson (1982-2002),\(^4\) and Lawrence J. Reilly (2008 to the present).\(^5\) Between 2003 and 2007, the Journal functioned without an official editor.\(^6\)

The year 1972 . . . was trying because of the catastrophic fire last summer at the law library of the School of Law of Temple University, which housed the editorial function of the Journal. Although the library building was totally destroyed, and the library collection severely damaged, the records and manuscripts of the Journal survived intact. The unavoidable disruption of operations, however, caused the issuance of the Journal to be delayed. It is hoped that by July the schedule will have been resumed.

Erwin C. Surrency, Foreword, 17 AM. J. LEGAL HIST. 1, 1 (1973) [hereinafter cited as 1973 Foreword].

\(^3\) Professor Surrency was the director of the Temple law library from 1950 to 1978. From 1979 to 1995, he occupied the same position at the University of Georgia, where he is now a professor emeritus. He holds an A.B. (1947), M.A. (1948), and L.L.B. (1949) from the University of Georgia and an M.A.L.S. (1950) from George Peabody University. See ASSOCIATION OF AMERICAN LAW SCHOOLS, 2009-2010 DIRECTORY OF LAW TEACHERS 1342 (2009).

During the 1963-64 school year, Professor Surrency was a visiting professor at Queen’s University Belfast in Northern Ireland. In his absence, Temple law school professor Earl F. Murphy served as the acting editor of volume 8. See 8 AM. J. LEGAL HIST. i (1964). For a profile of Professor Murphy, who passed away in July 2006 at the age of 77, see MORITZ COLLEGE OF LAW—THE OHIO STATE UNIVERSITY, Remembering Professor Earl Finbar Murphy, Aug. 2006, at http://moritzlaw.osu.edu/alumni/newsletter/2006/august/murphy.html (last visited Sept. 15, 2010). See also Erwin C. Surrency, A Word to Our Readers, 13 AM. J. LEGAL HIST. 95 (1969) (praising Professor Murphy’s contributions to the Journal during his time at Temple).

In discussing the Journal, Temple’s official history pays homage to Professor Surrency. See HILTY, supra note 2, at 240 (“Temple’s academic stature was heightened in 1957 by the appearance of the American Journal of Legal History, edited by Temple’s law librarian, Erwin C. Surrency, a reknowned [sic] scholar of American legal history.”). Likewise, Professor Surrency’s name has never left the Journal’s masthead—since 1982, he has been listed as “editor emeritus.”

\(^4\) Professor Maleson has been a member of the Temple law faculty since 1973 and served as the law library’s acting director from 1979 to 1980. She holds an A.B. from Bryn Mawr College (1964) and a J.D. from Temple University (1969). For a further profile, see Temple University School of Law, Diane C. Maleson—Professor of Law, at http://www.law.temple.edu/servlet/com.rnci.products.DataModules.RetrievePage?site=TempleLaw&page=N_Faculty_Maleson_Main (last visited Sept. 15, 2010).

Mr. Reilly joined the Temple law library in 1974 and is currently its senior reference librarian and head of public services. He holds a B.A. from the University of Dallas (1972) and an M.L.S. from Drexel University (1974). His association with the Journal dates back to 1976, when he prepared the fourth five-year index. See Lawrence J. Reilly, Index to Volumes 16-20, 20 AM. J. LEGAL HIST. 336 (1976).

\(^5\) From 2003 to early 2005, the editor’s job was shared by Professor Maleson (as “senior editor”) and Mr. Reilly (as “associate editor,” a post he had held since 1999). Following the release of the January 2005 issue, Professor Maleson transferred her responsibilities to Mr. Reilly, whose title remained “associate editor” through 2007.

\(^6\)
Professor Erwin C. Surrency, founding editor of the American Journal of Legal History
From its inception, the Journal has been a peer-edited, peer-reviewed quarterly (January, April, July, and October). The Journal currently has 850 subscribers, a number that has grown steadily over the decades.\footnote{In 1962, for example, the Journal had 391 subscribers. See Annual Meeting of the Advisory Board of the American Journal of Legal History, 6 AM. J. LEGAL HIST. 406, 406 (1962).} Not surprisingly, the cost of an annual subscription has also risen over time, from $7.50 in 1957 to $35 in 2010.\footnote{Beginning in 2011, the price will be $45. When inflation is factored in, however, the Journal is actually cheaper than when it started. See S. Morgan Friedman, The Inflation Calculator, at http://www.westegg.com/inflation/ (last visited Sept. 15, 2010) (indicating that $7.50 in 1957 is the equivalent today of $56.51).} Like most law reviews, the Journal utilizes ExpressO for manuscript submissions,\footnote{See ExpressO, List of Participating Law Reviews, at http://law.bepress.com/expreso/list.html (last visited Sept. 15, 2010).} William S. Hein & Co., Inc. for back issue orders,\footnote{See William S. Hein & Co., Inc., American Journal of Legal History, at http://www.wshein.com/Catalog/Product.aspx?sku=209 (last visited Sept. 15, 2010). At present, a complete run of the Journal’s back issues costs $2,940. E-mail from Nathali M. Head, Customer Service Representative—William S. Hein & Co., Inc., to the author, dated July 23, 2010, at 10:19 a.m. EDT (copy on file with the author).} and the Copyright Clearance Center for reprint permissions.\footnote{See Copyright Clearance Center, American Journal of Legal History, at http://www.copyright.com/search.do?operation=detail&item=122825290 (last visited Sept. 15, 2010).}

As is so often the case, the impetus for the Journal’s creation was need. As Professor Surrency explained in the inaugural issue:

Many authors are aware of the difficulty in obtaining publication of any article on any aspect of legal history published in any of the many current legal periodicals. The editors of these journals feel that articles on the more practical current aspects of the law should receive priority in their publications. [At the same time, m]any articles of great significance to an understanding of our legal institutions are published in the historical journals to which the legal profession has limited access. The American Journal of Legal History seeks to combine the professional approach of the historian and the technical knowledge of the lawyer, which is essential if a history of American law is to be prepared. It seeks to provide a forum for the publication of articles on legal history.\footnote{Erwin C. Surrency, Introduction, 1 AM. J. LEGAL HIST. 2, 3 (1957) [hereinafter cited as 1957 Introduction]. Of course, by the early 1980s these problems had largely disappeared, in no small measure due to the Journal’s pioneering efforts. See Lawrence M. Friedman, American Legal History: Past and Present, 34 J. LEGAL EDUC. 563, 569 (1984) (“In 1950, there was very little research and writing [on legal history]; today, there is a great outpouring of books and articles.”).}
Although the Journal was started by Temple, during its first 25 years it was the official publication of the American Society for Legal History (“ASLH”) and looked to cover its costs by sharing in the dues paid by the ASLH membership.\textsuperscript{13} Perhaps inevitably, clashes developed, and at the end of 1982 the ASLH and Temple parted company; in the divorce, Temple kept the Journal and the ASLH began a new publication known as the Law and History Review.\textsuperscript{14} Today, the Journal relies on a combination of subscription fees and Temple sub-

\textsuperscript{13} The relationship between Temple and the ASLH was explained in the Journal’s second issue:

In December 1955, at the Chicago conference of the Association of American Law Schools, a group of persons interested in legal history met under the chairmanship of Mr. Erwin C. Surrency of Temple University. . . . At the conclusion of the meeting it was determined to elect a steering committee to organize a legal history society. . . .

Because of the difficulty of communication, a subcommittee composed of Mr. Surrency, Mr. [William T.] Dean, and Mr. [Earl F.] Murphy was set up to initiate the work of the whole committee. . . .

[D]uring the same period . . . through the work of Mr. Surrency, Dean Benjamin F. Boyer of Temple University School of Law, and the Provost of Temple University, Dr. Millard E. Gladfelter, the groundwork had been laid for Temple University to inaugurate a journal of legal history. In the summer of 1956, the announcement of it was made and an invitation extended to the nascent society to designate the new publication as its official organ. The new publication, the American Journal of Legal History, eventually appeared in February 1957 under the joint sponsorship of the society and Temple University, with Mr. Surrency as its editor. By arrangement with Temple University, all members of the society are to receive the journal in its quarterly issuance; and part of their dues will go towards defraying the cost of the journal.

Earl F. Murphy, The American Society for Legal History, 1 AM. J. LEGAL HIST. 170, 170-71 (1957).

\textsuperscript{14} See Michael H. Hoeflich & Steve Sheppard, Disciplinary Evolution and Scholarly Expansion: Legal History in the United States, 54 AM. J. COMP. L. 23, 23-24 (2006 Supp.) (“The American Journal of Legal History began life as the joint production of the American Society for Legal History and the Temple Law School. For many years it was the only law review published in the United States devoted exclusively to legal history. However, by the early 1980s, the relationship between Temple Law School and the Society had deteriorated to a point at which the two agreed to part company. The American Journal of Legal History ceased to be affiliated with the Society but continued to be published by Temple. The Society began to publish Law & History Review guided by its first editors, Lloyd Bonfield, of Tulane Law School, and Russell Osogoode, then of Cornell Law School and now President of Grinnell College.”).
dies\textsuperscript{15} to pay its printing and postage bills. One expense the \textit{Journal} has not had to bear is labor, for the editors and their assistants—whose ranks have included such notable figures as Alfred S. Konesky (1970–77), William E. Nelson (1972–82), and Kermit L. Hall (1986–98)—have always donated their time.\textsuperscript{16}

Initially, the \textit{Journal} was printed by the Winchell Company; since 1974, it has used the George H. Buchanan Company.\textsuperscript{17} For 2011, the editors have updated the \textit{Journal}’s long-time design. As a result, the cover is now white with black lettering (previously it was buff with black lettering); the logo\textsuperscript{18} has been enlarged and moved to the center; the broad stripe along the left-hand edge, which formerly changed color every year, is now “Temple cherry”; and the volume numbers are in Arabic rather than Roman numerals. Between the covers there is more white space (to improve readability) and the typeface, which used to be a combination of Palatino (outside) and Times Roman (inside), has been made uniformly Calibri.

\textsuperscript{15} The \textit{Journal} has been subsidized by Temple for most of its history. See E-mail of Professor Erwin C. Surrency, “Re: Law Library Journal,” dated June 22, 1995, \textit{available at} http://lawlibrary.ucdavis.edu/lawlib/jun95/0602.html (last visited Sept. 15, 2010) (“When I sought [the] support of Temple University for the establishment of the American Journal of Legal History, I only promised that it would break even[,] which it did for several years during its early history.”).

\textsuperscript{16} As the \textit{Journal}’s mastheads reveal, staffers have gone by a variety of titles, including “managing editor,” “associate editor,” “assistant editor,” “book review editor,” “editorial assistant,” and “research assistant.” The precise duties of these individuals have varied, but have usually consisted of some combination of manuscript solicitation and selection, copy editing, and cite checking. Most of the time, the masthead has also listed a “business editor,” “business manager,” or “subscriptions and circulation manager.” Uniquely, the 1959 masthead included Professor Neil H. Alford, Jr., of the University of Virginia’s law school, as “\textit{Reporter}, American Society for Legal History.”

\textsuperscript{17} E-mail from W. Robert Strauss, Vice President—George H. Buchanan Company, to the author, dated July 8, 2010, at 10:32 a.m. EDT (copy on file with the author) [hereinafter cited as Strauss e-mail].


\textsuperscript{18} Until 1982, the \textit{Journal}’s logo was a white outline of Lady Justice. In 1983, the logo was changed to an ancient Greek coin bearing an owl. As of 2011, the logo is the building that appears on Temple University’s seal.
The masthead has also been revised to include the Journal’s new tagline: “Combining the professional approach of the historian and the technical knowledge of the lawyer.” This phrase (slightly modified) originally appeared in Professor Surrency’s inaugural Editor’s Note\(^{19}\) and nicely captures the Journal’s spirit.

At the outset, it was expected that each volume of the Journal would run 300 pages.\(^{20}\) In fact, the Journal has always exceeded this number and has averaged 420 pages per volume.\(^{21}\) Having published nearly 1,500 writers and 21,000 pages, a full set of the Journal now occupies seven feet of shelf space.

In addition to its print version, the Journal is available in such electronic databases as HeinOnline, Journal Storage (“JSTOR”), and Westlaw. The Journal is also included in both Current Law Index and the Index to Legal Periodicals. At present, work is underway on a Journal web site.\(^{22}\) The editors are also looking into making issues available via EBSCO and Lexis, enlarging the Journal’s footprint on the Social Science Research Network (“SSRN”), and starting a Facebook page.

Prior to 2010, the Journal had both an editorial board and an advisory board, but the former has now been merged into the latter. The unified board’s membership continues to be made up of prominent attorneys and historians.\(^{23}\)

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\(^{19}\) See 1957 Introduction, supra note 12, at 3.


\(^{21}\) The Journal’s shortest volume, at 338 pages, is volume 19 (1975); its longest volume, at 532 pages, is volume 38 (1994). The first volume to top 400 pages was volume 6 (1962); the first volume to top 500 pages was volume 36 (1992).


\(^{23}\) From 1957 until his death in 1974, the honorary chairman of the advisory board was U.S. Chief Justice Earl Warren. He welcomed readers to the Journal with the following words:

All lawyers are, of course, in some sense students of legal history. The knowledge of medieval law, which is essential to the most elementary understanding of our land law, is an obvious example. But legal history as history has generally been neglected by a profession too busy with the work at hand to be self-conscious about itself, its traditions, its past. Gaps have
III
CONTENT

Originally, the Journal had four sections:

The first section will consist of articles on legal history including biographical accounts of outstanding members of the profession.

The second section, eruditely entitled Brevia Addenda, will contain comments and short notes of information which have been discovered through research.

The third section will print the text of significant documents pertaining to legal history. It is the purpose of this section to preserve our legal documents, such as court records and the correspondence of lawyers on legal matters, before they are lost through the natural destruction of time. . . .

The final section will be devoted to book reviews, with notes and references to articles appearing in historical and legal publications which would be of interest to the legal historian. Many of these articles will be digested for the convenience of the reader. Also included in this section will be bibliographies of subjects in the field of legal history.24

In 1972, the Journal dropped the second and third sections and scaled back the fourth section to book reviews and books received. As of 2011, the Journal is discontinuing the books received page.

The January 1957 issue served notice that the Journal would be a diverse read, for it included articles on the history of bailment and Louisiana’s adoption of the civil law, a brevia addenda about the nation’s first federal judges, documents describing the daily operations of Philadelphia’s colonial trial courts, a bibliography of recent works on legal history, two book reviews, and a list of books received. Such variety continues to be a hallmark of the Journal. The January 2010 issue, for example, featured a biography of John B. West (the founder of the West Publishing Company), articles about the Irish Court of Admiralty and the Indian Removal Act, 11 book reviews, and a list of books received.

been left in our knowledge of the development of our American legal institutions. By encouraging the work of scholars and by making available to them . . . basic source material . . . the Journal should help us as lawyers and citizens toward the kind of understanding of the past which illuminates the present.


24 1957 Introduction, supra note 12, at 3-4.
The remainder of this issue of the Journal presents a comprehensive index to volumes 1-50 prepared by Dr. Joel Fishman of the Allegheny County (Pennsylvania) Law Library.\textsuperscript{25} As it shows, the Journal has amply fulfilled its early pledge to publish articles on “the history of all legal systems such as the English law, Roman law, and Canonical law as well as American law.”\textsuperscript{26}

\section*{IV

IMPACT}

The impact of the Journal is hard to overstate. As the first English-language publication devoted to legal history,\textsuperscript{27} it has been relied on extensively. A July 2010 Westlaw search, for example, returned nearly 3,000 results, while a Google search produced 358,000 hits (including 15,500 in Google Books).\textsuperscript{28}

\textsuperscript{25} This offering represents both a revision and an expansion of his earlier compilation. See Joel Fishman, \textit{Index to the American Journal of Legal History—Volumes 1-42} (1957-1998), 43 \textit{Am. J. Legal Hist.} 353 (1999).

\textsuperscript{26} 1957 Introduction, \textit{supra} note 12, at 3.

In an otherwise complimentary sketch, one observer complained that given its inclusion of foreign legal systems, the Journal’s title was “misleading.” See Julius J. Marke, \textit{Legal Bibliography and History}, 1957 \textit{Ann. Surv. Am. L.} 615, 619 (1957). This is a common misunderstanding that the editors encounter all the time. Of course, what is being produced is the “American Journal of Legal History” and not, as is so often assumed, the “Journal of American Legal History.” Cf. Erwin C. Surrency, \textit{A Proposed Society of Legal History}, 9 \textit{J. Legal Educ.} 78, 79-80 (1956) (discussing the difference in a related context).

\textsuperscript{27} The idea of such a periodical pre-dates the Journal’s founding by at least 30 years. See, \textit{e.g.}, Albert Kocourek, \textit{The Law Review}, 21 Ill. L. REV. 147, 153 (1926). Likewise, one of the unfulfilled goals of the short-lived (1933-37) American Legal History Society was the “establishment of a Journal of Legal History.” Francis S. Philbrick, \textit{American Legal History Society}, 6 N.Y. St. B.A. Bull. 161, 161 (1934).


\textsuperscript{28} These searches were run multiple times using the Journal’s full name; its Bluebook abbreviation (“Am. J. Legal Hist.”), see \textit{The Bluebook: A Uniform System of Citation} 445 (19th ed. 2010); and various combinations of the two.
Not surprisingly, jurists are among the most active users of the *Journal* and have included it in more than 125 published opinions.\(^29\) During the U.S. Supreme Court’s 2009-10 term, for example, the *Journal* was mentioned in *Bilski v. Kappos*,\(^30\) *Graham v. Florida*,\(^31\) and *McDonald v. City of Chicago*.\(^32\) Numerous other tribunals have also referenced the *Journal*, including 10 federal appellate courts, 23 state supreme courts, and judicial bodies in Australia, Canada, and the European Community.

V

CONCLUSION

When the *Journal*’s first issue appeared, “Ike” was president, *Gunsmoke* was America’s favorite television show, and Elvis Presley was at the top of the musical charts.\(^33\) By the end of the year, the world had been turned upside-down: the Soviet Union had launched Sputnik (thereby initiating the Space Age), Europe had agreed to form a common market (by signing the Treaty of Rome), and federal troops had integrated Little Rock Central High School.\(^34\) Even baseball had been transformed, as both the Dodgers and Giants announced they were fleeing New York for sunny California.\(^35\)

Since then, the world has continued to witness epic changes: men walking on the moon, Watergate, the fall of the Berlin Wall,

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\(^29\) By far, the *Journal*’s most-cited article has been Jay M. Feinman, *The Development of the Employment at Will Rule*, 20 AM. J. LEGAL HIST. 118 (1976). At the time he wrote the article, Professor Feinman was an instructor at the University of Miami’s law school. Since 1977, he has been on the faculty of Rutgers University’s law school in Camden, New Jersey.


\(^33\) **Bill Yenne**, *Going Home to the Fifties* 25, 98, 106 (2002 rev. ed.).


\(^35\) **Marvin A. Cohen**, *The Dodgers-Giants Rivalry, 1900-1957: A Year by Year Retrospective* 205-08 (2000).
the rise of China as an economic superpower, and the first African-American U.S. president. Against this tumultuous background, the Journal has remained committed, as Professor Surrency once put it, “to attract[ing] and disseminat[ing] the best and most significant scholarship in the field of Legal History.” Thankfully, some things never change.

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36 Historians, of course, are just beginning to assess these events. For a preliminary evaluation, see Tom Hayden, The Long Sixties: From 1960 to Barack Obama (2009).

37 1973 Foreword, supra note 2.