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The *Buffalo Law Review*: 1952-2002

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FOREWORD

The Buffalo Law Review: 1952-2002

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Congratulations, *Buffalo Law Review*, on your Golden Anniversary.

Milestones like this usually lead me to wonder how it all began. So naturally, in preparing this Foreword, my first impulse was to retrieve Volume 1 of the *Review*, which unexpectedly provided a delightful voyage back fifty years.

Several things about the volume were intriguing, impressive, even surprising. In an era when women represented a minuscule percentage of the nation's law students, this *Review* had four women on the masthead. (Today's masthead, happily, is close to half female, led by a woman Editor-in-Chief.)

Volume 1 also offers a glimpse of what life was like for the *Review's* pioneers, because the faculty advisor wrote an introduction to the first issue and an Editor's Note appears in each of the three issues that make up Volume 1.

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As the story goes, a group of Seniors took on the start-up project and somehow managed to publish Issue No. 1 before graduation, defying the odds and beating their target date by months. This seems remarkable since, back in 1951-1952, the desktop computer was no more than a wild idea, the electric typewriter was rare, white-out was not yet available, the photocopier was still on the drawing board, and legal research was done manually in the library—with real books. Imagine starting up a law review, assembling and preparing the content, and publishing your first issue in the space of a few months without tools we now take for granted.

As for the Editor's Notes—no longer a regular feature—they were informal, often humorous, and describe some of the challenges: for example, asking for and receiving guidance from the editors of the rival *Cornell Law Quarterly*, selecting cases for student writing only to have other reviews choose the same cases, owning up to a filing system that was “a joke.” By the second and third issues, the Editor's Notes commented with pride about appellate rulings consistent with earlier student writings, but also admitted that other suggestions did not fare quite so well.

As I thumbed through Volume 1, the first familiar author I encountered was Charles S. Desmond, then an Associate Judge of the Court of Appeals, later the distinguished Chief Judge. He served on the Court for twenty-five years—from 1941 through 1966—the longest tenure ever of a Court of Appeals Judge. So it seems entirely fitting that a member of the Court of Appeals should again contribute to a historic volume of the *Buffalo Law Review*.

Scanning Judge Desmond's more than 400 opinions reminded me of the joys and perils of judging. Some have not withstood the passage of time, like *Engel v. Vitale*.¹ Others are alive and well—still the bedrock of the law today—like *Kilberg v. Northeast Airlines*² and *Bata v. Bata*.³

1. 176 N.E.2d 579 (N.Y. 1961) (allowing an official state school prayer), *rev'd* 370 U.S. 421 (1962).

2. 176 N.E.2d 526 (N.Y. 1961) (choice of law decision refusing, on public policy grounds, to adopt a Massachusetts \$15,000 wrongful death damage limitation, noting that modern conditions “make it unjust and anomalous” to subject a traveling New Yorker to the varying law of other states through which they move).

3. 105 N.E.2d 623 (N.Y. 1952) (a leading case on *forum non conveniens*, a

Another familiar name in Volume 1 was Robert H. Jackson, Associate Justice of the United States Supreme Court, who had practiced in Western New York before joining the judiciary. Judge Desmond was a graduate of Buffalo Law School, but Justice Jackson never did finish law school—he satisfied his Bar requirements through a law firm apprenticeship. While on leave from the Supreme Court, Justice Jackson served as United States Chief Counsel at the Nuremberg International War Crimes Tribunal. Justice Jackson's article, *Wartime Security and Liberty Under Law*, is eerily topical today, as it discusses the tension between authority and civil liberties, a tension always present in our society but heightened in times of war, or—now as never before—in times when our homeland security is threatened.

Which brings me to today. The brutal attack on this country and this state on September 11th has changed us forever in so many ways, beginning with a change in our sense of personal security. Opening the mail is different. Air travel is different. Building security—including courthouse security—is different. Almost daily we see newspaper stories that highlight the very same tension that concerned Justice Jackson. His prediction was that our system would survive future threats:

The problems of liberty and authority ahead are slight in comparison with those of the 1770's or the 1860's. We shall blunder and dispute, and decide and overrule decisions. And the common sense of the American people will preserve us from all extremes which would destroy our heritage.⁴

This new century has unexpectedly challenged us again. What remains as true in 2002 as it was in 1952 is that, thankfully, we are a free, strong, stable society governed by the rule of law. The savagery of September 11th has not changed that. I have every expectation that the common sense of the American people will again “preserve us from all extremes which would destroy our heritage.”

The desire to express to all the world our steadfast commitment to American values, including American

doctrine since codified in N.Y. C.P.L.R. § 327).

4. Robert H. Jackson, *Wartime Security and Liberty Under Law*, 1 BUFF. L. REV. 103, 117 (1951).

justice, was one of the reasons that we reopened our Manhattan courthouses close to the disaster site as quickly as possible.⁵ The other was to assure that the administration of justice in the State of New York would not miss a beat. Balancing a commitment to the safety and security of court personnel with the rights of jailed defendants and other litigants, our courts and judges performed admirably, creatively, patriotically.⁶

The *Buffalo Law Review* of fifty years ago covered many other subjects that are still litigated and tested by new situations, as well as subjects that became part of history. The lead article in Volume 1—written by Louis L. Jaffe, Harvard law professor and, as Dean, one of the architects of today's University at Buffalo Law School—is still cited for its insights into *res ipsa loquitur*.⁷ The Uniform Sales Act, discussed in a case note in Volume 1, has been supplanted by the subject of an article in Volume 49, the Uniform Commercial Code. Recent issues, including this one, cover many subjects that did not exist in 1952—ERISA, the Motor Vehicle Safety Act, women in combat, child custody in same-sex relationships—all responses to changes in society. At the same time, the *Review's* articles contribute to contemporary debates that began long before 1952—issues of corporate governance and social responsibility, the proper role of local institutions in our political system, and the interplay between public opinion and constitutional change.

When the *Review* was conceived by the faculty, the hope was that it would provide a learning experience for the students and useful legal analysis for the bench and bar. Its example has inspired the creation of six more student journals at the school, and this *Review* is among the legal periodicals cited by the Court of Appeals.⁸ I can safely say

5. For additional information about the court system's response to September 11th, see, for example, Judith S. Kaye, *Coping with Disaster*, JUDGES' JOURNAL, Fall 2001, at 1.

6. OREN ROOT, VERA INST. OF JUSTICE, THE ADMINISTRATION OF JUSTICE UNDER EMERGENCY CONDITIONS: LESSONS FOLLOWING THE ATTACK ON THE WORLD TRADE CENTER (2002), available at <http://www.vera.org>.

7. See, e.g., Ann Woolhandler & Michael G. Collins, *The Article III Jury*, 87 VA. L. REV. 587, 675 n.366 (2001); Ruth Gana Okediji, *Status Rules: Doctrine As Discrimination in a Post-Hicks Environment*, 26 FLA. ST. U. L. REV. 49, 84 n.193 (1998).

8. See, e.g., *Bryant v. New York City Health & Hospitals Corp.*, 716 N.E.2d 1084, 1088 n.3 (1999); William H. Manz, *The Citation Practices of the New York*

that you have amply succeeded in fulfilling the aspirations of a half-century ago.

Finally, whether the subject is Court of Appeals cases, or wartime security, or golden law review anniversaries, our justice system remains a remarkable strength of this great nation. As our voyage back to Volume 1 attests, our system adapts to change and to the increasing complexity of modern life, all the while preserving the best of the past.

