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# UC DAVIS LAW REVIEW ONLINE

VOL. 50



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## Foreword: 50 Volumes of the UC Davis Law Review

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Not long after UC Davis admitted its first entering class, seven students with faculty editor Professor Frank B. Baldwin III in 1969 published the first volume of the "U.C.D. Law Review." The issue was devoted to "Legal Control of Water Pollution."<sup>1</sup> The purchase price was \$8.50, but discounts were available for sales of five or more volumes.

The introduction to the first volume of the law review read as follows:

In planning a student publication for the University of California's newest law school, the faculty agreed on two principles: first, that law review experience is valuable

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\* Copyright © 2017 Kevin R. Johnson. Dean and Mabie-Apallas Professor of Public Interest Law and Chicana/o Studies, University of California, Davis, School of Law. I thank Sue Walther Jones, Publications Coordinator to the *UC Davis Law Review*, for her research and editorial assistance, as well as serving as the institutional memory of the law review for many years. For more on the history of the *UC Davis Law Review*, see Sue Jones, *50 Years of the UC Davis Law Review*, KING HALL COUNSELOR (UC Davis), 2016, at 34, <https://law.ucdavis.edu/publications-broadcasts/files/Counselor2016.pdf>. That article includes a list of the "Top Twenty-Five Most Cited UC Davis Law Review Articles." *Id.* at 35.

<sup>1</sup> Symposium, *Legal Control of Water Pollution*, 1 UC DAVIS L. REV. i (1969). The Law Review traditionally has had one or more faculty advisers for each volume. Professor Brian Soucek is the faculty advisory for Volume 50.

educationally, and indeed is the high spot of many students' legal education; second, that one thing America definitely does not need is just another law review, churning out leading articles and unrelated student writings of varying lengths.<sup>2</sup>

The first volume lists no specific positions on the otherwise traditional law review masthead. The first Editor-in-Chief, J. Richard Couzens, took the helm with Volume 2.<sup>3</sup>

Following Professor Baldwin, Professor Jack Ayer,<sup>4</sup> who established what evolved into the current "Intellectual Enrichment" program for the law faculty, was one of the faculty advisers for seven of the first eight volumes of the UC Davis Law Review. Professor Brian Soucek<sup>5</sup> has been advisor of the three most recent volumes (Volumes 48–50).

As the list of symposia in the Appendix denotes, the first ten volumes of the *UC Davis Law Review* were entirely student-written and devoted to one topic: "The choice of topic reflects a determination to move outside the traditional materials of legal research and to explore an area in which lawyers need to understand and assimilate a mass of technological and political data before a legal solution can be devised."<sup>6</sup>

With Volume 11 published in 1978, the *UC Davis Law Review*, with little fanfare, changed its collective mind about the journal's format. In a one-paragraph foreword, the Editor-in-Chief Deena G. Peterson simply declared "our first publication of a general law review," which included non-student written articles on different topics.<sup>7</sup> The Law Review also expanded to two issues per volume. The increased number of issues began a trend. Volume 13 crept up to three issues. Volume 14 was four issues. Volume 35 expanded to the five issues that the *UC Davis Law Review* publishes today.

Beginning in Volume 10, the Law Review has held an annual symposium on topical legal issues. See the Appendix for a list of the *UC Davis Law Review* symposia. The topics of the symposia have run the gamut of the law, from intellectual property to evidence to criminal procedure to environmental law to international law to family law to immigration law to critical race theory and so on. I had the

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<sup>2</sup> *Id.* at ix.

<sup>3</sup> See J. Richard Couzens, *Introduction*, 2 UC DAVIS L. REV. xi (1970).

<sup>4</sup> See John D. Ayer, UC DAVIS SCH. L., <https://law.ucdavis.edu/faculty/ayer/> (last visited Jan. 19, 2017).

<sup>5</sup> See Brian Soucek, UC DAVIS SCH. L., <https://law.ucdavis.edu/faculty/soucek/> (last visited Jan. 19, 2017).

<sup>6</sup> See *Introduction*, 1 UC DAVIS L. REV. ix (1969).

<sup>7</sup> Deena G. Peterson, *Foreword*, 11 UC DAVIS L. REV. unpaginated (1978).

honor of making contributions to several symposia, including one of the top 25 most cited articles.<sup>8</sup>

The *UC Davis Law Review*'s highest profile symposium accomplishment was its role in the movement to "Save Mono Lake" (quoting the bumper sticker). In September 1980, the Law Review held its symposium, "The Public Trust Doctrine in Natural Resources Law and Management." Architect and founder of the environmental law program at the School of Law, Professor Harrison (Hap) Dunning<sup>9</sup> organized the two-day event, which attracted roughly 650 attendees. The articles from that symposium were published in Volume 14, Issue 2, in the winter of 1980–81.<sup>10</sup>

In an issue commemorating the thirtieth anniversary of the symposium, Professor of Environmental Practice Richard M. Frank and Director of the California Environmental Law and Policy Center<sup>11</sup> assessed the importance of the public trust doctrine symposium in a piece entitled "The Public Trust Doctrine: Assessing Its Recent Past & Charting Its Future."<sup>12</sup> Frank wrote, "Most environmental scholars cite two critically-important developments as the basis for converting the public trust from an arcane principle of Roman, Spanish and English property law into a cornerstone of modern environmental law."<sup>13</sup> One was a 1970 *Michigan Law Review* article by Joseph L. Sax.<sup>14</sup> The other was the *UC Davis Law Review* symposium.<sup>15</sup>

Professor Frank continued:

In 1983 the California Supreme Court responded by issuing what was perhaps "the nation's most important public trust decision in nearly a century — the iconic 'Mono Lake' case. . . . Critically, the court's landmark opinion cited to the

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<sup>8</sup> See Jones, *supra* note \*, at 35 (noting that my contribution to Volume 27's NAFTA and Human Rights symposium, Kevin R. Johnson, *Free Trade and Closed Borders: NAFTA and Mexican Immigration to the United States*, 27 UC DAVIS L. REV. 937 (1994), was among the most cited).

<sup>9</sup> See Harrison C. Dunning, UC DAVIS SCH. L., <https://law.ucdavis.edu/faculty/dunning/> (last visited Jan. 19, 2017).

<sup>10</sup> *The Public Trust Doctrine in Modern Natural Resources Law and Management: A Symposium*, 14 UC DAVIS L. REV. 181 (1980) [hereinafter *Public Trust Symposium*].

<sup>11</sup> See Richard M. Frank, UC DAVIS SCH. L., <https://law.ucdavis.edu/faculty/frank/> (last visited Jan. 19, 2017).

<sup>12</sup> Richard M. Frank, *The Public Trust Doctrine: Assessing Its Recent Past & Charting Its Future*, 45 UC DAVIS L. REV. 665 (2012).

<sup>13</sup> *Id.* at 667.

<sup>14</sup> Joseph L. Sax, *The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention*, 68 MICH. L. REV. 471 (1970).

<sup>15</sup> See *Public Trust Symposium*, *supra* note 10.

articles contained in the 1980–81 UC Davis symposium issue devoted to public trust principles on no less than *eight* separate occasions.<sup>16</sup>

Professor Sax's contribution to the symposium, "Liberating the Public Trust Doctrine from Its Historical Shackles,"<sup>17</sup> has been cited more than any piece ever published by the *UC Davis Law Review*.<sup>18</sup>

Professors Alan Brownstein and Vikram David Amar persuaded a prominent University of Chicago law professor to speak at the 1996 Law Review symposium "Developments in Free Speech Doctrine: Charting the Nexus Between Speech and Religion, Abortion, and Equality."<sup>19</sup> The professor published her article "When a Speech Code Is a Speech Code: The Stanford Policy and the Theory of Incidental Restraints" in Volume 29.<sup>20</sup> Fourteen years later, the author, Elena Kagan, became Associate Justice of the Supreme Court of the United States.<sup>21</sup> 1996 was also the year Law Review launched its first website.<sup>22</sup> The site included basic information about the journal, including tables of contents from recent issues.

As this history suggests, the Law Review's annual symposium has become a major intellectual event at UC Davis and consistently has brought leading scholars to the campus. In 2009, it also brought C-SPAN to cover the symposium on "The Honorable John Paul Stevens."<sup>23</sup> Professor Diane Marie Amann,<sup>24</sup> who had served as a law clerk to Justice Stevens, made the symposium possible, with the help of Senior Symposium Editors Jamie Chon and David Vogel and Editor-in-Chief Ryan Stahl.

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<sup>16</sup> See Frank, *supra* note 12, at 669-70 (footnotes omitted); see *Nat'l Audubon Soc'y v. Superior Court*, 658 P.2d 709 (Cal. 1983).

<sup>17</sup> Joseph L. Sax, *Liberating the Public Trust Doctrine From Its Historical Shackles*, 14 UC DAVIS L. REV. 185 (1980).

<sup>18</sup> See Jones, *supra* note \*, at 35.

<sup>19</sup> Symposium, *Developments in Free Speech Doctrine: Charting the Nexus Between Speech and Religion, Abortion, and Equality*, 29 UC DAVIS L. REV. 465 (1996).

<sup>20</sup> See Elena Kagan, *When a Speech Code is a Speech Code: The Stanford Policy and the Theory of Incidental Restraints*, 29 UC DAVIS L. REV. 957 (1996).

<sup>21</sup> See Paul Kane & Robert Barnes, *Senate Confirms Elena Kagan's Nomination to Supreme Court*, WASH. POST, Aug. 6, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/05/AR2010080505247.html>.

<sup>22</sup> The current UC Davis Law Review website can now be found at <https://lawreview.law.ucdavis.edu/>.

<sup>23</sup> Symposium, *The Honorable John Paul Stevens*, 43 UC DAVIS L. REV. 713 (2010).

<sup>24</sup> Professor Amann is now at the University of Georgia School of Law. See *Diane Marie Amann*, U. GA. SCH. L. <http://www.law.uga.edu/profile/diane-marie-amann> (last visited Jan. 19, 2017).

With Volume 40, Editor-in-Chief David Richardson and Technical Editor Micah Globerson brought the Law Review fully into the digital age. They replaced the old cardboard source boxes with digital “boxes” (which today, fittingly, are housed on an online file sharing service called Box), and established electronic processes for selecting and editing articles. Globerson worked closely with Law School staff to improve the Law Review website. He added the Law Review’s articles archives to the site, making them freely available to the public.

Two pieces in Volume 41 attracted national attention. First, an essay called “Followed Rates and Leading State Cases, 1940–2005,” written by Jake Dear ’83 (Volume 16 Editor-in-Chief) and Edward W. Jessen,<sup>25</sup> generated discussion in *The New York Times*<sup>26</sup> and other major media. Second, the article “Digitus Impudicus: The Middle Finger and the Law” by Professor Ira P. Robbins<sup>27</sup> caught the eye of Stephen Colbert, who featured Robbins holding an issue of the *UC Davis Law Review* on his Comedy Central show *The Colbert Report*.<sup>28</sup> The editors thanked Colbert by sending him two Law Review sweatshirts and affording him the honorary title of “Truthiness Editor.”

2016 marks the celebration of the fiftieth volume *UC Davis Law Review*. As part of that celebration, it is launching the *UC Davis Law Review Online*, a companion to the print edition designed to facilitate dialogue among legal scholars. One of the first pieces continues a conversation that began at the 2016 symposium entitled “Disjointed Regulation: State Efforts to Legalize Marijuana.”<sup>29</sup> The online edition will allow Dean Steven W. Bender to revisit his article from Volume 50, Issue 2, “The Colors of Cannabis: Race and Marijuana,”<sup>30</sup> with a

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<sup>25</sup> Jake Dear & Edward W. Jessen, *Followed Rates and Leading State Cases, 1940–2005*, 41 UC DAVIS L. REV. 683 (2007).

<sup>26</sup> See Adam Liptak, *Around the U.S., High Courts Follow California Lead*, N.Y. TIMES, Mar. 11, 2008, <http://www.nytimes.com/2008/03/11/us/11bar.html>. This piece led to further commentary. See Jake Dear & Edward W. Jessen, *Measuring the Comparative Influence of State Supreme Courts: Comments on Our “Followed Rates” Essay*, 41 UC DAVIS L. REV. 1665 (2008).

<sup>27</sup> Ira P. Robbins, *Digitus Impudicus: The Middle Finger and the Law*, 41 UC DAVIS L. REV. 1403 (2008).

<sup>28</sup> See Kevin R. Johnson, *UC Davis Law Review on the Colbert Report*, UC DAVIS DEAN’S BLOG (Apr. 30, 2010), <https://law.ucdavis.edu/blogs/deans/posts/uc-davis-law-review-on-the-colbert-report.html>; see also *Difference Makers – Robert Ekas*, THE COLBERT REPORT (Apr. 28, 2010), <http://www.cc.com/video-clips/ke79c8>.

<sup>29</sup> See Symposium, *Disjointed Regulation: State Efforts to Legalize Marijuana*, 50 UC DAVIS L. REV. 573 (2016).

<sup>30</sup> Steven W. Bender, *The Colors of Cannabis: Race and Marijuana*, 50 UC DAVIS L. REV. 689 (2016).

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reflection on California's newly passed Proposition 64 legalizing recreational use of marijuana.<sup>31</sup>

The *UC Davis Law Review Online* owes its existence to Volume 50 Editor-in-Chief Lars Torleif Reed, Projects Editors Parnian Vafaenia and Andrew Karl Aaronian, and Managing Editor Markie Jorgensen along with the School of Law's Senior Graphic Designer Sam Sellers and Web Application Developer Jason Aller.

In celebrating its fiftieth volume, the UC Davis Law Review will hold a symposium entitled "Future-Proofing Law: From rDNA to Robots" with papers — to be published in Volume 51 — that predict how the law will adapt to rapidly emerging technology. Discussion will surround technologies such as synthetic biology, artificial intelligence, and virtual and augmented reality. The keynote speakers are Mariano-Florentino Cuellar, Associate Justice, Supreme Court of California,<sup>32</sup> and Mark A. Lemley, William H. Neukom Professor of Law, Director, Program in Law, Science & Technology; Stanford Law School.<sup>33</sup>

As this brief history attests, the UC Davis Law Review has come a long way in fifty volumes. It describes itself in this way today:

The UC Davis Law Review is the school's premier scholarly publication and is ranked thirty-fifth among student-run legal journals in the United States. We publish articles from legal academics, practitioners, and our own student editors. Each academic year, we print one volume composed of five issues and host a symposium focused on pressing legal issues. The Law Review provides students the opportunity to hone their research and writing skills, while advancing the public discourse surrounding important legal topics.<sup>34</sup>

The *UC Davis Law Review* has evolved with the times. It is ranked highly in all rankings of law reviews.<sup>35</sup> As has been said, from small acorns large oaks grow.

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<sup>31</sup> See *California Proposition 64, Marijuana Legalization (2016)*, BALLOTPEDIA, [https://ballotpedia.org/California\\_Proposition\\_64,\\_Marijuana\\_Legalization\\_\(2016\)](https://ballotpedia.org/California_Proposition_64,_Marijuana_Legalization_(2016)) (last visited Jan. 19, 2017).

<sup>32</sup> See *Associate Justice Mariano-Florentino Cuellar*, CAL. CTS., <http://www.courts.ca.gov/28724.htm> (last visited Jan. 19, 2017).

<sup>33</sup> See *Mark A. Lemley*, STAN. L. SCH., <https://law.stanford.edu/directory/mark-alemley/> (last visited Jan. 19, 2017).

<sup>34</sup> *About Us*, UC DAVIS L. REV., <http://lawreview.law.ucdavis.edu/about-us.html> (last visited Jan. 19, 2017).

<sup>35</sup> See, e.g., *Law Journals: Submissions and Ranking, 2008–2015*, WASH. & LEE U. SCH. L., <http://lawlib.wlu.edu/LJ/index2015.aspx> (ranking the *UC Davis Law Review* as the number 35 student-edited law review in the United States).



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- Vol 23 (1990). Agricultural Law
- Vol 24 (1990). Legalization of Drugs
- Vol 25 (1992). Making Sense of the Federal Sentence Guidelines
- Vol 26 (1993). The Reemergence of Natural Law Jurisprudence in Decisional Law (In Memory of Professor Edgar Bodenheimer)
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Vol 44 (2011). *The Asian Century?*

Vol 45 (2012). *The Public Trust Doctrine: 30 Years Later*

Vol 46 (2013). *The Daubert Hearing: From All the Critical Perspectives*

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Vol 48 (2014). *Not Equal Yet: Building Upon Foundations of Relationship Equality*

Vol 49 (2015). *Corruption and Compliance: Promoting Integrity in a Global Economy*

Vol 50 (2016). *Disjointed Regulation: State Efforts to Legalize Marijuana*

Vol 51 (forthcoming 2017). *Future-Proofing Law: From rDNA to Robots*