

1997

Foreword: *Nebraska Law Review* Seventy-Fifth Anniversary Issue

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Recommended Citation

Harvey Perlman, *Foreword: Nebraska Law Review Seventy-Fifth Anniversary Issue*, 76 Neb. L. Rev. (1997)

Available at: <https://digitalcommons.unl.edu/nlr/vol76/iss4/2>

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Foreword

Dean Harvey Perlman*

Nebraska Law Review Seventy-Fifth Anniversary Issue

This issue of the *Nebraska Law Review* marks the *Review's* seventy-fifth anniversary in a special way. All of the authors, including the Author of this introduction, are either former or current members of the *Review*. Some of the articles focus on the *Review* itself; others on substantive topics. No theme was imposed. A reader marching from the first page to the last (a feat to be expected of very few) will be impressed with the diversity of the experience represented by the authors, which mirrors how wide the winds spread former editors and how well most of them flourish.

Universities are facing the age of "accountability" when every program is subject to evaluation, and its value and quality must be carefully documented, preferably by measurable criteria. How should one objectively measure the contribution of the *Nebraska Law Review*, or any law review, to the program of its host law school? As Richard Harnsberger tells us in the opening article of this issue, the central concept of a student published academic journal has its critics. Any measurement based on a survey of academics certainly would provide mixed results. And as Judge Richard Kopf documents in this issue, a count of judicial citations will not provide much ammunition for the *Review's* survival.

Nonetheless, as a dean, I cannot imagine being at a law school without a law review. The College's publication of the *Review* signals the confidence that we have in the talents of our students. This signal flows not only to the external community but to the student body itself. Just as our clinical programs permit students the opportunity to demonstrate their preparedness to serve real clients by engaging in

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- * Dean, University of Nebraska College of Law, 1983-98. University of Nebraska, B.A., 1963; University of Nebraska College of Law, J.D., 1966; Editor-in-Chief, *Nebraska Law Review*; Order of the Coif; Member, American Law Institute; Bigelow Teaching Fellow, University of Chicago Law School, 1966-67; Professor of Law, University of Nebraska, 1967-74; Professor of Law, University of Virginia, 1974-83.

litigation against licensed members of the profession, the *Review* provides the opportunity for students to engage members of the profession and the academic community in an intellectual exchange where the stakes are significant. If there is an occasional contribution to legal thought, so much the better.

Student-edited reviews also serve, in subtle ways, to assure the free marketplace of legal ideas. In the never ending struggle to help the rest of the University understand the law school, I have often had to rebut the assertion that without peer reviewed publications, the quality of any law faculty is suspect. It seems pretty clear that with persistence and an unlimited postage budget, any law professor can find an outlet for his or her written masterpiece. Indeed, skeptics have been heard to hypothesize that the reason so many economists, sociologists, and psychologists are applying for positions on law faculties is that the pay is better and it's easier to get published!

For the downside of the peer review model, I recommend a read of Donald Johanson and Maitland Edey, *Lucy: The Beginnings of Humankind* (Warner Books 1981), a study of the progress of paleoanthropology, describing how academic jealousy and reputational defensiveness can capture a peer review system to censor viewpoints and stifle intellectual debate. Or consider Professor Brian Arthur who developed a new economic theory called "network effects" to explain why the VHS videotape format and Querty keyboard came to dominate their markets even though superior products were available. Arthur reportedly had trouble convincing academic economic journals to publish his theory, but the Justice Department is now using it as the basis for an antitrust suit against Microsoft.¹ To be sure, his theory may not be valid, but it will now be openly tested in the marketplace of ideas rather than privately suppressed by peers. This could not have happened with a new legal theory. The demand for articles is insatiable, and law review editors continually graduate to be replaced by those with new biases. This process of constant renewal has produced a body of literature that is rich and diverse in its perspective.

This is not the forum for me to engage in a major defense of the *Review*, however. To thumb through older volumes at random, as I have recently done, uncovers some very important and influential articles, some anecdotal evidence of the history of the Law College and the law in Nebraska, and the legal writings of some very accomplished lawyers and scholars. This anniversary issue provides an appropriate opportunity to acknowledge the many contributions the *Review* has made over the past seventy-five years to the program of the College, the profession, and the jurisprudence of Nebraska and the nation. Expectations are high for the next seventy-five years!

1. John Cassidy, *The Force of an Idea*, NEW YORKER, Jan. 12, 1998, at 32.