

6-30-2022

One Hundred Years of the *Nebraska Law Review*

Alicia Christensen

University of Nebraska College of Law

Sam Colwell

University of Nebraska College of Law

Follow this and additional works at: <https://digitalcommons.unl.edu/nlr>

Recommended Citation

Alicia Christensen and Sam Colwell, *One Hundred Years of the Nebraska Law Review*, 100 Neb. L. Rev. (2021)

Available at: <https://digitalcommons.unl.edu/nlr/vol100/iss4/2>

This Article is brought to you for free and open access by the Law, College of at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Nebraska Law Review by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

Foreword*

One Hundred Years of the *Nebraska Law Review*

Housed in the *Nebraska Law Review* office are artifacts that trace the first one hundred years of the *Law Review*; no, we are not referring to the coffee maker or refrigerator, though it certainly seems as if the coffee maker's maiden brew was in 1922. Rather, the *Law Review* office is home to the first one hundred volumes of the *Nebraska Law Review*. Despite the volumes' deserved patina and deteriorating bindings, the words printed over the tens of thousands of pages remain largely timeless. For these first one hundred years of the *Law Review's* existence, its pages have been dedicated to the rigors of legal analysis with a commitment to our readers to never steer away from the complex issues of the day. The editors of this 100th volume of the *Nebraska Law Review* can say without trepidation that the next one hundred years of the *Law Review* will maintain a similar adherence to the growth of the law both in Nebraska and across the country.

The *Nebraska Law Review* began its life in 1922 as the brain child of Dean Warren Seavey and Professors Henry Foster and E.M. Dodd.¹ At that time, the publication was known simply as the *Nebraska Law Bulletin*.² In these early days, the *Bulletin* published primarily the work of the College's faculty; in fact, among the first ten volumes, articles from Professors Foster and Maurice Merrill appeared six³ and

© Copyright held by the NEBRASKA LAW REVIEW. If you would like to submit a response to this Foreword in the *Nebraska Law Review Bulletin*, contact our Online Editor at lawrev@unl.edu.

* Alicia Christensen, editor in chief of *Nebraska Law Review* Volume 100; Sam Colwell, managing editor of *Nebraska Law Review* Volume 100.

1. Carl Circo, *1903 & 1946: The Making and Remaking of the University of Nebraska College of Law*, 57 NEB. L. REV. 44, 59 n.42 (citing 4 NEB. L. BULL. 350 (1926); 5 NEB. L. BULL. 412 (1927)).
2. Henry Foster, *The Law of Covenants for Title in Nebraska*, 1 NEB. L. BULL. 5 (1922).
3. *Id.*; Henry Foster, *Execution and Acknowledgment of Deeds*, 2 NEB. L. BULL. 1 (1924); Henry Foster, *The Nebraska Homestead Part I, Part II*, 3 NEB. L. BULL. 109, 353 (1926); Henry Foster, *Nebraska Landlord and Tenant*, 4 NEB. L. BULL. 317 (1926); Henry Foster, *Does the Doctrine of Destructibility of Contingent Remainders Exist in Nebraska?*, 6 NEB. L. BULL. 390 (1928); Henry Foster, *The Rule in Shelley's Case in Nebraska*, 8 NEB. L. BULL. 124 (1929).

five⁴ times respectively. Appreciation for the professors' prolific scholarship is furthered upon recognition that these early volumes either contained only a single article or a select few. The first article published in the *Bulletin* addressed *The Law of Covenants for Title in Nebraska*⁵ The piece spanned fifty-four pages yet contained only sixty-four footnotes⁶—a much simpler time for the *Bulletin's* editors. After ten years of exclusively publishing faculty work, the *Bulletin* broadened its horizons when it published the first piece by an author from another University.⁷

In 1941, the *Nebraska Law Bulletin* appeared “under a new name and in a new garb”⁸—the *Nebraska Law Review*. Editors believed the new name to be “more descriptive of [the journal's] character.”⁹ The new *Nebraska Law Review* retained its emphasis on Nebraska law, and to a large extent, the *Law Review* has continued to place an emphasis on the same. By rough estimation, over its first one hundred years, the *Law Review* has published over four hundred pieces with the word “Nebraska” in the title.¹⁰ That means, on average, there is at

4. Maurice Merrill, *Agency, Part III*, 6 NEB. L. BULL. 135 (1927); Maurice Merrill, *Some Observations Concerning Gordon v. Lowry*, 7 NEB. L. BULL. 410 (1928); Maurice Merrill, *Nebraska Suretyship, Part I, Part II*, 8 NEB. L. BULL. 266, 412 (1930); Maurice Merrill, *Nebraska Suretyship, Part III*, 9 NEB. L. BULL. 420 (1931); Maurice Merrill, *Nebraska Suretyship Part IV, Part V*, 10 NEB. L. BULL. 260, 404 (1932). Additional faculty work, *inter alia*, includes Lawrence Vold, *Express Conditions in Contracts*, 4 NEB. L. BULL. 215 (1926); Charles Robbins, *The Uniform Sales Act Compared with Nebraska Case Law*, 3 NEB. L. BULL. 201 (1925); Ralph Wilson, *The Parol Evidence Rule in Nebraska*, 4 NEB. L. BULL. 115 (1925); Herman Ginsberg, *Who is a Depositor Within the Provisions of the Nebraska Depositors Guaranty Fund Law*, 3 NEB. L. BULL. 260 (1925).

5. Foster, *supra* note 2.

6. *Id.*

7. John Hanna, *The Nebraska Law of Conditional Sales*, 10 NEB. L. BULL. 141 (1931). As noted by Dean Harvey Perlman in his introduction to an issue of the *Nebraska Law Review* that commemorated the College's centennial, the faculty of the Nebraska College of Law has continued to provide substantial contributions to scholarship by way of the *Law Review*. Harvey Perlman, *Introduction: Centennial Showcase of Law College Faculty*, 70 NEB. L. REV. 183 (1991).

8. *Editors' Page*, 44 NEB. L. REV. 6 (1965).

9. *Id.* Along with the name change, the change to the *Nebraska Law Review* also was accompanied by an increase in physical dimensions. The *Bulletin* was a measly 5.75 by 8.75 inches. The new *Law Review* provided the text some upgraded real estate, expanding the square footage to a 6.75 by 10-inch page. *Id.* at 7. For an extensive discussion on the appearance of the *Law Review* in its first forty-five years of existence, see *id.*

10. It may be surprising, but we did not perform an exhaustive review of the previous one-hundred volumes or read every piece that has been published in the *Law Review* during our final year of law school. Thus, the best method to identify these articles was simply locating pieces with Nebraska in the title. It stands to reason that the actual number of pieces addressing Nebraska law far exceeds four hundred. It should also be noted that for many of the early *Law Review*

least one Nebraska-related piece per issue of the *Law Review*.¹¹ To wit, there have only been two volumes throughout the *Law Review*'s history in which Nebraska was not mentioned in any title contained within the volume's four issues.¹²

What's more, for nearly all of its first fifty years, the *Law Review* served as the annual publisher of the Nebraska State Bar Association's minutes. In 1924, the *Bulletin* announced to its readers that it was "the official organ of the Bar Association, and its distributions among lawyers of this state will be limited to members of the Association."¹³ This was premised, at least in part, on the notion that the *Law Review* would continue "to publish articles of interest to, and place emphasis upon, Nebraska practice."¹⁴ However, as the *Law Review* evolved from its origins as a practice guide for Nebraska attorneys into a journal of scholarly repute, conflict ostensibly emerged between the Nebraska State Bar Association and the *Law Review*.¹⁵ By Volume 50, the *Law Review* proclaimed, "Providing advice on the mechanical aspects of the practice of law is not the role of a law review. Our concern is mainly with theory, for in the final analysis abstract ideas are the basis for solving the hard, concrete cases with which lawyers deal."¹⁶ Such, Volume 50:2 became the last to house the Nebraska State Bar Association's minutes.

Of course, the scholarship contained in the annals of the *Nebraska Law Review* is not limited to Nebraska law. The *Law Review*'s most popular articles generally touch on issues that exceed Nebraska's borders.¹⁷ These include an article by Thomas Merrill, professor at Columbia Law School, entitled *Property and the Right to Exclude*;¹⁸ an article by Jody Freeman, professor at Harvard Law School, entitled

volumes, the *Law Review* would publish "Recent Cases," the intent of which was to provide Nebraska lawyers updates on cases relevant to Nebraska law.

11. Issues that do not contain any Nebraska-related titles include, inter alia: 36:4, 38:2, 39:2, 49:4; 52:2, 53:4, 55:2, 57:2, 59:1, 62:3, 63:2, 63:4, 64:3, 64:4, 65:2, 65:4, 66:3, 67:3, 69:1, 69:3, 70:1, 70:4, 71:2, 73:1, 73:3, 73:4, 74:3, 74:4, 75:3, 75:4, 76:2, 77:1, 77:2, 78:2, 78:3, 79:3, 80:1, 80:4, 82:1, 85:2, 86:1, 86:3, 86:4, 87:4, 89:2, 90:1, 90:2, 90:4, 91:1, 91:4, 92:1, 92:2, 92:3, 92:4, 94:2, 94:3, 95:4, 96:1, 96:2, 96:3, 96:4, 97:1, 97:2, 97:4, 98:2, 98:4. There are two issues that hold the record for most Nebraska-related titles with seven: 57:1 and 76:4.
12. Volume 92 (2014) and volume 96 (2017).
13. *Notice to All Readers*, 2 NEB. L. BULL. (1924).
14. *From the Editors*, 49 NEB. L. REV. 3 (1970).
15. *Id.* ("A criticism recently leveled at the Review is that the Board of Editors seem to totally ignore the practical needs and interests of Nebraska attorneys in the selection and publication of articles.")
16. *From the Editors*, 50 NEB. L. REV. (1970).
17. By popular, we mean most frequently accessed since publication online through Digital Commons. The *Law Review*'s most popular articles are determined using the average number of full-text downloads per day since publication.
18. Thomas W. Merrill, *Property and the Right to Exclude*, 77 NEB. L. REV. 730 (1998).

The Limits of Executive Power: The Obama-Trump Transition,¹⁹ and; an article by the late Lawrence Berger, professor at the University of Nebraska College of Law, entitled *Conflicts Between Zoning Ordinances and Restrictive Covenants: A Problem in Land Use Policy*.²⁰

Most of the *Law Review's* issues are not committed to a single topic. As stated by the editors of Volume 41, "Because all phases of the law are in a constant state of flux and in need of interpretation, the *Nebraska Law Review* has seldom [confined] an entire issue to analyzing only one area of law."²¹ However, on various occasions throughout the *Law Review's* history, it has suspended this general policy. Several issues of the *Nebraska Law Review* have been devoted to special issues or symposiums. These include, *inter alia*, symposiums addressing or titled: Nebraska Constitutional Revision,²² workers' compensation,²³ Tasks of Penology,²⁴ the Outlook for Antitrust Law and Policy,²⁵ Proposed Nebraska Rules of Evidence,²⁶ Medical Jurisprudence,²⁷ Water Law,²⁸ Protections for Individual Personal Employment Relationships,²⁹ Juvenile Law,³⁰ Partnership and Business,³¹ Agricultural Law,³² Teaching Lawyering Skills,³³ the Death Penalty,³⁴ William Jennings Bryan,³⁵ and State, Local, and Regional Issues in Cybersecurity.³⁶

Additionally, the *Law Review* has made a tradition of memorializing notable figures in both the local and national legal community, as well as members of the Nebraska College of Law faculty. The first memorial we could locate was in Volume 44, following the death of Dean Roscoe Pound. In addition to his service to the Nebraska College of Law, Pound had served as dean of Harvard Law School and revolu-

19. Jody Freeman, *The Limits of Executive Power: The Obama-Trump Transition*, 96 NEB. L. REV. 545 (2017).

20. Lawrence Berger, *Conflicts Between Zoning Ordinances and Restrictive Covenants: A Problem in Land Use Policy*, 43 NEB. L. REV. 449 (1964). Other popular downloads can be accessed at <https://digitalcommons.unl.edu/nlr/topdownloads.html>.

21. *The Editor's Page*, 41 NEB. L. REV. (1963).

22. 40 NEB. L. REV. 560 (1961).

23. 41 NEB. L. REV. 1 (1962).

24. 45 NEB. L. REV. 1 (1966).

25. 46 NEB. L. REV. 582 (1967).

26. 53 NEB. L. REV. 331 (1974).

27. 63 NEB. L. REV. 663 (1984); 64 NEB. L. REV. 537 (1985).

28. 66 NEB. L. REV. 1 (1987).

29. 67 NEB. L. REV. 1 (1988).

30. 68 NEB. L. REV. 1 (1989); 69 NEB. L. REV. 251 (1990).

31. 70 NEB. L. REV. 1 (1991).

32. 73 NEB. L. REV. 1 (1994).

33. 75 NEB. L. REV. 643 (1996).

34. 81 NEB. L. REV. 479 (2002).

35. 86 NEB. L. REV. 1 (2007).

36. 96 NEB. L. REV. 247 (2017).

tionized legal instruction.³⁷ At the time of his death, Dean Pound's publications numbered 1,066.³⁸ Other notable memorials include retiring Dean David Dow,³⁹ retiring United States Supreme Court Justice Earl Warren,⁴⁰ retiring Judge Robert Van Pelt,⁴¹ departing Dean Harvey Perlman,⁴² the late Professor Norman Thorson,⁴³ the late Professor Richard Harsnberger,⁴⁴ the late Professor John Gradwohl,⁴⁵ and the late Professor Marty Gardner.⁴⁶ Of note, the late Dean Anna Shavers will be memorialized in Volume 101.

As perhaps exemplified by the *Law Review's* faculty memorials, the *Law Review* has also played a role, sometimes instrumental and sometimes small, in the internal dynamics of the College of Law. On the more acrimonious end of the spectrum, the editors of the *Law Review* have been known to wade into controversial internal waters. For instance, when the editors of Volume 49 were not rankling the feathers of the Nebraska State Bar Association, they fixed their sights on the University's administration. Specifically, the Volume 49 editors lambasted the administration's perceived failings in attracting "top students" and retaining young faculty, attaching this failure to poor educational facilities, a lack of resources, and inadequate support from the University.⁴⁷ It is perhaps no coincidence that only a few short years after these remarks, the law school left its outdated building on the University's City Campus and moved to a new building on East Campus, where it remains today.⁴⁸ The comments of the editors

37. Richard W. Smith, *Dean Roscoe Pound*, 44 NEB. L. REV. 1 (1965).

38. Thomas A. Walsh, *Memorial Citation*, 44 NEB. L. REV. 5 (1965).

39. 45 NEB. L. REV. 663 (1966).

40. 48 NEB. L. REV. 1 (1969).

41. 49 NEB. L. REV. 503 (1970).

42. 78 NEB. L. REV. 739 (1999).

43. 83 NEB. L. REV. 295 (2004).

44. 91 NEB. L. REV. 1 (2013).

45. 93 NEB. L. REV. 1 (2015).

46. 99 NEB. L. REV. 1 (2020).

47. *From the Editors*, 49 NEB. L. REV. 3 (1970).

48. The editors continued airing their concerns in the final issue of Volume 49, writing:

[T]he University has established [the College of Law] at or near the bottom of the priority list. What this means in terms of the college's reputation, adequate facilities, and most importantly in terms of faculty turnover is frightening, not for those who will leave these halls in June, but for those who have not yet entered the College of Law, and who desire to acquire a legal education in an appropriate atmosphere, to be taught by a competent, established, and well-equipped faculty, in an adequate physical plant.

The University of Nebraska offers only an initial proving ground for the young law professor, allowing him to become familiar with the teaching profession and begin developing his techniques and writing, at a salary which, initially, compares well with other similar opportunities. What it does not offer for the professor is the opportunity to expand his intellectual capacity and add more to the legal profession, to become es-

of Volume 49 are a stark reminder that the *Nebraska Law Review* is an entirely student-run journal—though today’s editors engage in far less controversial editorializing.

If you, dear reader, will forgive the aura of self-aggrandizement, the editors of the *Nebraska Law Review* deserve the recognition commensurate to the words they have caused to be printed. The mastheads of the *Nebraska Law Review* bear the names of some of the most influential figures to graduate from the College of Law. Within ten years of his stint as editor in chief of Volume 30, Ted Sorenson was President John F. Kennedy’s head speechwriter and closest advisor, playing an instrumental role in the Kennedy Administration’s major policy decisions.⁴⁹ After President Kennedy’s assassination, Sorenson went on to a prolific legal career, remaining active in politics and counseling leaders such as Nelson Mandela and Anwar Sadat.⁵⁰

Clayton Yeutter, editor in chief of Volume 42, went on to become a national leader on trade and agriculture, serving as the United States Trade Representative for President Reagan and the Secretary of Agriculture under President George H.W. Bush.⁵¹

Judge Laurie Smith Camp was one of the first female editors in chief of the *Nebraska Law Review*. After a long career in practice, Judge Smith Camp became the first woman to serve as a federal judge in Nebraska, eventually becoming Chief Judge of the United States District Court of Nebraska.⁵²

established in an institution and assist in the development and maintenance of its fine reputation, while realizing some of the monetary benefits which his students will shortly realize and surpass. Because there is no incentive to stay, young professors move on to better facilities and higher pay. As a consequence of this problem of turn-over, the quality of education must eventually suffer, and because the retention rate of law school graduates in this state is so high, it is the citizens and taxpayers of this state who, in the long run, suffer most.

The graduating seniors at the College of Law leave behind an extremely distressing situation. What is worse, no one, except the law faculty and some students, really seems concerned, least of all the University administration.

From the Editors, 49 Neb. L. Rev. 719, 720 (1970).

49. Tim Weiner, *Theodore C. Sorenson, 82, Kennedy Counselor, Dies*, N.Y. Times (Oct. 31, 2010), <https://www.nytimes.com/2010/11/01/us/01sorensen.html> [<https://perma.cc/BZ6T-DAL6>].

50. *Id.*

51. Adam Bernstein, *Clayton Yeutter, Chief U.S. Trade Negotiator and Agriculture Secretary, Dies at 86*, WASH. POST (Mar. 6, 2017) https://www.washingtonpost.com/national/clayton-yeutter-chief-us-trade-negotiator-and-agriculture-secretary-dies-at-86/2017/03/06/826277b6-027a-11e7-b9fa-ed727b644a0b_story.html [<https://perma.cc/5N8V-MZVY>].

52. Martha Stoddard, *Laurie Smith Camp, 1st Female Federal Judge in Nebraska, Remembered for Professionalism, Compassion*, OMAHA WORLD-HERALD (Sept. 24, 2020), <https://omaha.com/news/state-and-regional/crime-and-courts/laurie-smith-camp-1st-female-federal-judge-in-nebraska-remembered-for-professionalism->

These three individuals are simply representative of the hundreds of former *Nebraska Law Review* members who have put down their editing pen and entered long, meaningful careers. We had the occasion to celebrate all *Law Review* alumni at our centennial banquet on April 9, 2022. At this event, current and former members heard from seven former *Law Review* members—Deryl Hamann, Judge Jeffrey Chevront, David Domina, Senator Patty Pansing Brooks, Justice Stephanie Stacy, Professor Anthony Schutz, and Jaydon Pence—each of whom represented the decade in which they were on *Law Review* and their respective area of excellence. These speakers are emblematic of the impact and success of former *Nebraska Law Review* members in Nebraska and around the nation.

Remembrances during the centennial banquet made it clear that the rewards of *Law Review* membership endure, and the everyday trials of acquiring, editing, and publishing twenty-four scholarly articles, give or take, while in law school are quickly forgotten. This is, of course, as it should be. Still, as we welcome you to enjoy this centennial edition of the *Nebraska Law Review*, we leave you with these immortal words from editors past as a reminder of the hard work and pride behind each *id.*'s italicized period and each en dash published in the *Nebraska Law Review*:

This is the last issue of the *Nebraska Law Review*, volume fifty. The editors have long anticipated that a sense of relief would accompany the last installment of their work product. But this relief is tempered somewhat by a vague feeling of apprehension. It has been suggested that this volume will be remembered because it was behind schedule. Certainly it was late, for the editors adopted a policy at the outset that quality of publication was more important than prompt delivery.

Problems were manifold during the year. Several authors cancelled their lead article commitments after it was too late to find replacements. An overburdened printer usually contributed to the delay. One article was lost in the confusion accompanying the British postal strike, and at one point the university withdrew its financial support as part of an economy drive forced upon it by a new state administration.

Some of our work was outdated almost as soon as it appeared in print. This is unavoidable when dealing with the metamorphic law. Sometimes we must gamble, and we expect that sometimes we will lose. However . . . [i]n the long run it matters little that we were tardy in publishing the *Nebraska Law Review*, but the quality (or lack thereof) will remain in the words we have caused to be printed. The editors believe they have benefitted from producing these pages. We hope the ideas embodied in them are worthy to crystallize into law, and benefit.⁵³

compassion/article_efdcf914-582b-5eac-9e19-463764911082.html [https://perma.cc/SF8F-NKP6].

53. *From the Editors*, 50 NEB. L. REV. (1971) (printed without reference to page).