

A TRIBUTE FROM THE ADVISORS OF THE
DENVER LAW REVIEW IN HONOR OF THE *LAW REVIEW*'S
ONE HUNDREDTH ANNIVERSARY

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Nancy Leong: Hi colleagues! I'm excited that we have the chance to honor the *Denver Law Review*'s 100th anniversary by reflecting together on the past, present, and future of legal scholarship.

Much has changed since the early days of the *Denver Law Review*. It was known back then as the "Denver Bar Association Record," and beginning with the first issue in December 1923, it also included the minutes of the Denver Bar Association!¹ Perusing the early issues of the publication is a fascinating look at the history of the institution and its role in the community. For example, Volume 1, Issue 1, notes that, at the time of publication, "[t]he library of the Denver Bar Association contains 6,425 volumes, and is considered one of the best law libraries in the West."² The same Issue also brags of the library's recent acquisition of "Wigmore on Evidence."³ Although the *Denver Law Review* has evolved over the years, it has clearly played a central role in the Colorado legal community's intellectual life from the beginning.

Eli Wald: The growth of the *Denver Law Review* over the past century reflects the evolution of law reviews and legal scholarship. Over the years, corresponding with the gradual rise of legal scholarship in terms of the quality and scope of research, length, and productivity, the journal has stopped publishing the minutes of bar associations' meetings and other short professional features, instead focusing its attention on longer, well-researched and well-documented law review articles. These articles analyze complex doctrines and are designed to inform policy discussions, influence courts, and guide the practice of lawyers. As the content published by the *Denver Law Review* has shifted to more scholarly articles, so has the identity of its authors, who are increasingly nationally recognized subject-matter experts, law professors, and judges. In recent years, the journal has settled on publishing four issues annually, including a

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1. 1 DENV. B.A. REC. 2, 2 (1923).

2. *Id.* at 4.

3. *Id.*

symposium issue and a Tenth Circuit survey issue. In 2010, the journal added the *Denver Law Review Forum*, imagined as a “readily accessible, fleet-footed supplement,” intended to promote timely “discussion of important legal issues and to aid in the development of new ideas.”⁴

Viva Moffat: The Tenth Circuit survey issue has been one of the *Denver Law Review*’s enduring contributions to the broader legal community, reflecting the significance of the law school and the *Law Review* in the region. With the Tenth Circuit survey issue, the *Law Review* has been able to engage with judges and practitioners on matters of particular relevance to the students at the law school—many of whom go on to practice in the Tenth Circuit—and to practicing lawyers in the Rocky Mountain region and beyond. Some of the earliest topics included the Tenth Circuit’s “experimentation” with computerized legal research, case summaries illustrating “the tension between development of western energy sources and environmental concerns,” and a practitioner’s guide to the Tenth Circuit.⁵ More recently, the articles have ranged from a critique of the Tenth Circuit’s handling of the conflict between state marijuana law and federal tax and banking law; an overview of Colorado school discipline law; and an examination of a copyright case in which a professor at the University of Denver’s Lamont School of Music was the lead plaintiff.⁶ Judges have been frequent contributors to the annual issue, and so have practitioners and government officials. The most recent development in the evolution of the Tenth Circuit survey issue is the journal’s commitment to support and report the results of the Tenth Circuit Database Project. As described by Professor Wyatt Sassman, who leads the project, the goal is “to create a more detailed, more comprehensive database for studying judicial behavior on the Tenth Circuit.”⁷ This is a hallmark of the *Law Review*’s service to the law school and the legal community beyond the law school.

Ian Farrell: In addition to the Tenth Circuit survey issue, the *Law Review* has also contributed both to scholarship per se and to the Colorado community by publishing academic articles on important issues of legislative reform. One such example is the death penalty. Colorado abolished the death penalty in March 2020—due in no small part to empirical research by legal scholars. For instance, a 2015 article in the *Law Review*

4. DENVER LAW REVIEW FORUM, <https://www.denverlawreview.org/dlr-forum> (last visited May 11, 2023).

5. Dennis E. House, Note, *Computerized Legal Research—The Tenth Circuit’s Experimentation with LEXIS*, 53 DENV. L.J. 13 (1976); Stanley L. Grazis, Note, *Lands and Natural Resources*, 52 DENV. L.J. 289 (1975); Jane Michaels Talesnick, *Understanding the United States Court of Appeals for the Tenth Circuit: A Guide for the Practitioner*, 52 DENV. L.J. 375 (1975).

6. Jeffrey Boxer & Bobby Dishell, *Risking a Contact High: The Tenth Circuit’s Failure to Defer to Colorado’s Marijuana Laws*, 98 DENV. L. REV. 265 (2021); Jacque Phillips, Elie Zwiebel, Rachel Dore, Igor Raykin, Makenzie Bogart, & Michael Nolt, *Colorado School Discipline Laws: Gaps and Goals*, 97 DENV. L. REV. 347 (2020); Carrie Claiborne, *Golan v. Gonzales and the Changing Balance Between the First Amendment, Copyright Protection, and the Rest of the World*, 86 DENV. U. L. REV. 1113 (2009).

7. Wyatt G. Sassman, *Introducing the Tenth Circuit Database Project*, 97 DENV. L. REV. 383, 389 (2020).

demonstrated through original statistical research that prosecutors in Colorado were more likely to seek the death penalty against minority defendants than against white defendants.⁸ It is all too easy for legislative decisions to be knee-jerk reactions to moral panic or short-term political expediency. Involving academic voices in the legislative process to complement, and often counterbalance, other perspectives is crucial to ensure that policy is instead grounded in data, reason, and depth of thought. This also demonstrates that legal scholarship is not just an ivory-tower exercise but can also be a genuine force for progress.

Alan Chen: Having been at the University of Denver Sturm College of Law the longest of any of the faculty advisors, I have had the opportunity to watch the *Law Review* evolve over a generation during which it has flourished as a respected academic publication. Some of my fondest memories are from the years 1995 to 1999, when the junior faculty formed a collaboration with the *Law Review* to hold an annual Legal Theory symposium.

The faculty had observed that while we wrote in many different areas of law, there were often crosscutting themes that connected our work in unexpected ways. We started a legal theory reading group, sometimes joined by some of the *Law Review*'s editors, in which we would read leading articles in an area of legal theory over the course of an academic year, culminating in a live symposium with nationally renowned scholars as well as some of us contributing papers for the symposium. The themes for these annual symposia were the Unconstitutional Conditions Doctrine, the New Private Law, Coercion, InterSEXionality, and Habermas and the Law.⁹ Not only were these intellectually engaging topics, but also they allowed us to bring in prominent scholars to the law school to interact with our faculty and publish in the *Law Review*. Among those who participated and published were Larry Alexander, Albert Alschuler, Ian Ayres, Mary Becker, Patricia Cain, Mary Anne Case, Daniel Farber, Katherine Franke, Clayton Gillette, Jürgen Habermas, Thomas Merrill, Frank Michelman, Gary Peller, Dorothy Roberts, Jane Schacter, Frederick Schauer, Brian Tamanaha, and Francisco Valdes.¹⁰

8. Meg Beardsley, Sam Kamin, Justin Marceau, & Scott Phillips, *Disquieting Discretion: Race, Geography & the Colorado Death Penalty in the First Decade of the Twenty-First Century*, 92 DENV. U. L. REV. 431 (2015).

9. Symposium, *The Symposium on the Unconstitutional Conditions Doctrine*, 72 DENV. U. L. REV. 857 (1995); Symposium, *The New Private Law*, 73 DENV. U. L. REV. 991 (1996); Symposium, *Symposium on Coercion: An Interdisciplinary Examination of Coercion, Exploitation, and the Law*, 74 DENV. U. L. REV. 877 (1997); Symposium, *InterSEXionality: Interdisciplinary Perspectives on Queering Legal Theory*, 75 DENV. U. L. REV. 1129 (1998); Symposium, *Fifth Annual Legal Theory Symposium: Exploring Habermas on Law*, 76 DENV. U. L. REV. 927 (1999).

10. Larry Alexander, *Impossible*, 72 DENV. U. L. REV. 1007 (1995); Albert W. Alschuler, *Constraint and Confession*, 74 DENV. U. L. REV. 957 (1997); Ian Ayres, *The Twin Faces of Judicial Corruption: Extortion and Bribery*, 74 DENV. U. L. REV. 1231 (1997); Mary Becker, *Problems with the Privatization of Heterosexuality*, 73 DENV. U. L. REV. 1169 (1996); Patricia Cain, *Stories from the Gender Garden: Transsexuals and Anti-Discrimination Law*, 73 DENV. U. L. REV. 1321 (1996); Mary

Over time, as exciting as it was, the project ran out of steam and faculty were pulled in many different directions, but for someone just starting out in their academic career, it was a wonderful opportunity for engagement. And none of it would have been possible without the *Denver Law Review*!

Nancy: What a terrific piece of institutional history, Alan—I had no idea this collaboration had taken place, and it sounds like a wonderful event both for junior faculty and for the whole law school community!

One of my own favorite *Denver Law Review* memories from my untenured years is the Volume 91 symposium called *Revisiting Sex: Gender & Sex Discrimination Fifty Years After the Civil Rights Act*.¹¹ It was an amazing event that featured a keynote by Vicki Schultz, later converted to article form and published as *Taking Sex Discrimination Seriously*.¹² Professor Schultz’s memorable talk explained that Title VII was the catalyst for progress in its early years because it effectively challenged stereotypes based on sex and gender. The legislation worked “because the leaders of the emerging women’s rights movement pulled activists together to mount a strong, clear, concerted challenge to the existence and relevance of sex difference.”¹³ Going forward, Professor Schultz also challenged us to think about *how* and *why* stereotypes come into being—for example, many stereotypes that result in workplace discrimination are actually produced and reinforced at work “through institutional practices.”¹⁴ This talk, and the symposium in general, stand out in my memory as an intellectually formative experience that took place in our own building! These ideas stick with me even today and have been very helpful to my own research on race, identity, and stereotyping.

Anne Case, *Unpacking Package Deals: Separate Spheres Are Not the Answer*, 73 DENV. U. L. REV. 1305 (1996); Daniel A. Farber, *Whither Socialism*, 73 DENV. U. L. REV. 1011 (1996); Katherine M. Franke, *Putting Sex to Work*, 73 DENV. U. L. REV. 1139 (1996); Clayton P. Gillette, *Opting Out of Public Provision*, 73 DENV. U. L. REV. 1195 (1996); Jürgen Habermas, *Between Facts and Norms: An Author’s Reflections*, 76 DENV. U. L. REV. 937 (1999); Thomas W. Merrill, *Dolan v. City of Tigar: Constitutional Rights as Public Goods*, 72 DENV. U. L. REV. 859 (1995); Frank I. Michaelman, *Morality, Identity and Constitutional Patriotism*, 76 DENV. U. L. REV. 1009 (1999); Gary Peller, *Public Imperialism and Private Resistance: Progressive Possibilities of the New Private Law*, 73 DENV. U. L. REV. 1001 (1996); Dorothy E. Roberts, *The Only Good Poor Woman: Unconstitutional Conditions and Welfare*, 72 DENV. U. L. REV. 931 (1995); Jane S. Schacter, *Taking the InterSEXional Imperative Seriously: Sexual Orientation and Marriage Reform*, 75 DENV. U. L. REV. 1255 (1998); Frederick Schauer, *Too Hard: Unconstitutional Conditions and the Chimera of Constitutional Consistency*, 72 DENV. U. L. REV. 989 (1995); Brian Z. Tamanaha, *The View of Habermas from Below: Doubts About the Centrality of Law and the Legitimation Enterprise*, 76 DENV. U. L. REV. 989 (1999); Francisco Valdes, *Beyond Sexual Orientation in Queer Legal Theory: Majoritarianism, Multidimensionality, and Responsibility in the Social Justice scholarship or Legals Scholars as Cultural Warriors*, 75 DENV. U. L. REV. 1409 (1998).

11. Symposium, *Denver University Law Review 2014 Symposium: Revisiting Sex: Gender and Sex Discrimination Fifty Years After the Civil Rights Act*, 91 DENV. U. L. REV. 779 (2014).

12. 91 DENV. U. L. REV. 995 (2015).

13. *Id.* at 996.

14. *Id.*

How about the rest of you? What are some other favorite symposia and other events from over the years?

Viva: In 2009, I worked with the *Law Review* on the annual symposium, this one titled *Cyber Civil Rights*. The symposium was one of the first to address the then nascent but already deeply troubling issues surrounding harassment, privacy, and speech on the internet. These issues are obviously only more relevant—and at least as troubling—today, and the symposium highlighted the work of several scholars whose work continues to be influential in this area, including Danielle Citron, Mary Anne Franks, Eric Goldman, James Grimmelman, Paul Ohm, and Helen Norton. In some significant ways, Professor Citron launched the conversation on this topic, making the case that there is both “practical and normative value [in] seeing online harassment as a discrimination problem.”¹⁵ Looking back at the symposium pieces, it is striking to see both how much has changed but also how valuable this early work has been in shaping the current conversation and moving the debate forward today. This symposium is just one example of the *Law Review*’s thoughtful selection of topics of significance. And on a personal note, it was a real pleasure to work with the *Law Review* editors on this—they were deeply invested in the topic and in the success of the symposium, and it was an excellent event.

Alan: I agree with Viva that the *Law Review* has always done an excellent job in selecting timely and important symposium topics. Another example is its 2004 symposium on *Post-9/11 Civil Rights*.¹⁶ In the aftermath of the 9/11 terrorist attacks, government concerns about national security led to the enactment of several initiatives that created tangible threats to civil liberties around the country, and in particular to communities of color. The editors organized a fascinating symposium featuring a national ACLU attorney working on issues affecting Arab, Muslim, and South Asian communities; a Colorado state representative who was the President of the Colorado Federalist Society; and Professor Erwin Chemerinsky, a nationally recognized constitutional law expert.¹⁷ I was also honored to speak at and write a piece for this symposium.¹⁸ Exposing our law school to a range of thinking about these issues is an important way of generating discourse among faculty, students, and other community members. My favorite memory from this conference is that after it was over, there was a huge line of students asking Professor Chemerinsky to autograph their constitutional law casebooks! After he patiently signed

15. Danielle Keats Citron, *Cyber Civil Rights: Looking Forward*, 87 DENV. U. L. REV. ONLINE 1, 1 (2010), <https://ssrn.com/abstract=1583514> (last visited Apr. 15, 2023).

16. Symposium, *Post 9/11 Civil Rights*, 81 DENV. U. L. REV. 703 (2004).

17. Dalia Hashad, *Stolen Freedoms: Arabs, Muslims, and South Asians in the Wake of Post 9/11 Backlash*, 81 DENV. U. L. REV. 735 (2004); Shawn Mitchell, *How Far Have We Come Since September 11th, 2001*, 81 DENV. U. L. REV. 749 (2004); Erwin Chemerinsky, *Post 9/11 Civil Rights: Are Americans Sacrificing Freedom for Security*, 81 DENV. U. L. REV. 759 (2004).

18. Alan K. Chen, *Forced Patriot Acts*, 81 DENV. U. L. REV. 703 (2004).

every single one, I told him, “Erwin, you are the first ever rock star law professor!”

Eli: In 2011, in a special issue called *Class and American Legal Education*, the editors of the *Law Review* invited UCLA Law School’s Professor Richard Sander to author the lead contribution, spurring a discussion about socioeconomic diversity in the legal academy; its relationship with other forms and types of diversity, including racial diversity; and the future of affirmative action.¹⁹ The *Law Review* assembled an all-star lineup of interdisciplinary scholars to respond to Professor Sander’s paper, including Richard Lempert, Richard Kahlenberg, Deborah Malamud, Deirdre Bowen, Daniel Kiel, Angela Onwuachi-Willig, Amber Fricke, Arin Reeves, Danielle Holley-Walker and L. Darnell Weeden.²⁰ The editors then gave Professor Sander the opportunity to reply.²¹ I was impressed with the editors’ commitment to robustly explore a set of timely, significant, and sometimes controversial issues and claims, while modeling a civil and respectful discourse.

Justin Marceau: I share my colleagues’ enthusiasm for the *Law Review*’s excellent and timely symposia in recent years. The *Law Review* has not been afraid to take up new topics, and to do so in a way that highlights the journal’s tolerance for creativity. In 2018, the *Law Review* hosted a symposium titled, *Uproar: The Intersection of Animals and the Law*.²² To my knowledge, this was the first time a general interest, flagship law review hosted a symposium entirely devoted to the topic of animal law. The symposium was so provocative and well received that I continue to receive emails from the public and colleagues across the country inquiring whether the law school will sponsor another “Uproar” event in the future.

For me personally, the symposium was very meaningful because it helped me connect with a number of scholars whose work has shaped the way I think about the animal law field. Indeed, I think it is fair to treat this symposium as one of the catalysts for the Animal Law Program that now

19. *Special Issue: Class and American Legal Education*, 88 DENV. U. L. REV. 631–953 (2011); Richard H. Sander, *Class in American Legal Education*, 88 DENV. U. L. REV. 631 (2011).

20. Richard Lempert, *Reflections on Class in American Legal Education*, 88 DENV. U. L. REV. 683 (2011); Richard D. Kahlenberg, *Reflections on Richard Sander’s Class in American Legal Education*, 88 DENV. U. L. REV. 719 (2011); Deborah C. Malamud, *Class Privilege in Legal Education: A Response to Sander*, 88 DENV. U. L. REV. 729 (2011); Deirdre M. Bowen, *Meeting Across the River: Why Affirmative Action Needs Race & Class Diversity*, 88 DENV. U. L. REV. 751 (2011); Daniel Kiel, *An Ounce of Prevention Is Worth a Pound of Cure: Reframing the Debate About Law School Affirmative Action*, 88 DENV. U. L. REV. 791 (2011); Angela Onwuachi-Willig & Amber Fricke, *Class, Classes, and Classic Race-Baiting: What’s In a Definition?*, 88 DENV. U. L. REV. 807 (2011); Arin N. Reeves, *Race as a Red Herring? The Logical Irrelevance of the Race vs. Class Debate*, 88 DENV. U. L. REV. 835 (2011); Danielle Holley-Walker, *Race and Socioeconomic Diversity in American Legal Education: A Response to Richard Sander*, 88 DENV. U. L. REV. 845 (2011); L. Darnell Weeden, *Commentary on Professor Richard Sander’s Class in American Legal Education*, 88 DENV. U. L. REV. 851 (2011).

21. Richard H. Sander, *Listening to the Debate on Reforming Law School Admissions Preferences*, 88 DENV. U. L. REV. 889 (2011).

22. Symposium, *Uproar: The Intersection of Animals and the Law*, 95 DENV. L. REV. 843 (2018).

(starting in 2021) exists at the Sturm College of Law. One of the panels for the symposium is, to this day, one of my favorite events that I have ever attended. It was a panel on free speech and transparency that was composed of a free speech legal scholar (Alan Chen), a leading political scientist who had recently completed an undercover investigation at a slaughterhouse (Timothy Pachirat), and a prominent Canadian animal lawyer who oversees undercover investigations (Camille Labchuk). There were also talks by Vikram Amar, a leading civil rights scholar and now the Dean of the University of Illinois; Steve Wise, the founder of the Non-Human Rights Project; Kristen Stilt, a leading legal scholar and the director of the Harvard Animal Law Program; and a keynote by the philosopher, legal scholar, and public intellectual, Martha Nussbaum. Professor Nussbaum's *Denver Law Review* essay is regularly invoked in the field and serves as a path-marking piece of scholarship that culminated in her book that published just this year, *Justice For Animals: Our Collective Responsibility*.²³ I think this symposium is a microcosm of the good work the *Law Review* has been doing—attracting key figures to talk, not just about what they have already become famous for, but rather pushing new boundaries and new directions in legal scholarship.

Alan & Eli: Through the hard work and dedication of its editors, the *Denver Law Review* has established itself as a leading platform for the publication of outstanding legal scholarship. Publishing unsolicited manuscripts, as well as the Tenth Circuit survey and symposia issues, the *Law Review* has contributed for a century now to clarifying, informing, and shaping the law; to improving the practice of law; and to protecting the Rule of Law. We are proud to serve as advisors to this venerable institution. Fifty years ago, our colleague Ved Nanda authored a tribute to the *Law Review* on the occasion of its fiftieth anniversary.²⁴ We look forward to supporting the journal, its editors, and its mission, and to celebrating its 150th anniversary!

23. Martha Nussbaum, *Why Freedom of Speech Is an Important Right and Why Animals Should Have It*, 95 DENV. L. REV. 843 (2018); see MARTHA C. NUSSBAUM, *JUSTICE FOR ANIMALS: OUR COLLECTIVE RESPONSIBILITY* (2023).

24. Ved P. Nanda, *American Law Reviews Meet Changing Societal Needs: A Tribute to the Denver Law Journal upon Its 50th Anniversary*, 50 DENV. L. J. 1 (1973).