

## Foreword: Form Over Substance

### De minimis non curat lex.<sup>1</sup>

The law may not care about trifles, but lawyers certainly do. From time out of memory,<sup>2</sup> members of the bar have delighted in advancing the arcane argument, in drawing the strained analogy, and in resuscitating the outmoded doctrine; even today, when "exalt[ing] form over substance" is reversible error,<sup>3</sup> the fascination with long dead and unimportant detail continues to pervade the legal mind. A "case is not to be decided by attenuated subtleties,"<sup>4</sup> but the fancy of the lawyer is surely to be struck by them.

It is to this fascination with the defunct, trivial, recherché, and inconsequential that this Journal is dedicated. In this and forthcoming issues, we propose to present short scholarly essays, gracefully written, cogently argued, and copiously referenced, which treat subjects long and justifiably neglected in the "substantial" legal literature<sup>5</sup>-- legal topics made obsolete by time or logic.

1. *Taverner v. Cromwell*, 1 Cro. Elix. 353, 353, 78 Eng. Rep. 601, 602 (C.P. 1594).

2. That is, since before Sept. 23, 1189. See 2 W. BLACKSTONE, COMMENTARIES \*31.

3. *Parker v. Flook*, 437 U.S. 584, 590 (1978), rev'g In re Flook, 559 F.2d 21 (C.C.P.A. 1977).

4. *Lucas v. Earl*, 281 U.S. 111, 114 (1930) (Holmes, J.).

5. It must be acknowledged that there is a small body of legal writing which deals in the humorous. See, e.g., Review, 79 YALE L.J. 1198 (1970) (review of the "With the Editors" section of The Harvard Law Review); Note, Crossing the Bar, 78 YALE L.J. 484 (1969) (analysis of ceremonials in the Federal Reporter and the Federal Supplement honoring or in memory of federal judges). Legal trivia, on the other hand, have been heretofore ignored by "serious" scholars.

This Journal, however, is not for every lawyer. The attorney who has never stopped to wonder about the odd footnote affixed to Supreme Court syllabi, for example, will find nothing of interest in these pages. The practitioner who dismisses thoughts of Supreme Court jury trials or claims based on the Titles of Nobility Clauses because of their extreme infrequency and improbability will take no delight in our forays; nor will the lawyer who looks to the Court only for holdings and not for historical richness appreciate an analysis of its geographical center. Our colleagues of this ilk must find their recreation outside the law, in alcohol or bowling.

The Journal is for those steeped in the law who love the subtle and the attenuated. To them we extend our invitation to read our works and to submit their own efforts for publication. Here, then, is to form over substance; here is to trifles.

- The Editorial Board