

# IPIL AND HLR: A HISTORY

Craig Joyce & Matthew Hoffman

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[Craig Joyce, *Driven: The First Decade of Houston Law Review*,  
50 HOUS. L. REV. 257 (2012)]

In the beginning was . . . the word?<sup>1</sup> Not exactly. Before *Houston Law Review* was begat, the University of Houston was. No one can understand the history of *HLR* without knowing the history of the institution from which it sprang. . . .

## *A.A. White's Law School*

Against this background [a larger institution not nearly as good as the Tier One university it is today], nothing more startling could have occurred than the creation in 1947, within the University of Houston, of a college dedicated to *excellence*. A.A. White, the founding dean of the College of Law, . . . saw no reason for the law school [UH President E.E.] Oberholtzer had engaged him to begin to be anything less than first-rate. . . . :

I told President Oberholtzer my ambition would be to make the law school better than the University.<sup>2</sup>

Oberholtzer had in mind a *big* law school, defined by quantity: the more students the College of Law enrolled, the more income it would produce. White had in mind a *quality* law school. . . .

## *Enter Houston Law Review*

. . . Officially, *Houston Law Review* came into being on November 1, 1962, with the filing of its articles of incorporation at the office of the Texas Secretary of State. The initial organizational meeting occurred on January 11, 1963. The publication of *HLR*'s first volume followed sometime thereafter the same year. . . .

In Volume 1, Issue 1, after the first of many pages of advertising necessary for "lift off!" (in the parlance of the day in Houston, site of NASA's Johnson Space Center, itself newly opened for business in 1963),<sup>3</sup> *HLR*'s first Editor in Chief would write:

The editors recognize that they yet have much to learn about publishing a law review, and that only the passage of time accompanied by much hard work will establish the fine traditions that will make the Review enduringly great.<sup>4</sup>

“Enduringly great”? In the circumstances into which *Houston Law Review* had been born? Absurd.

Or maybe not. After all, *Houston Law Review*’s first faculty advisor turned out to be none other than A.A. White. . . .

### *A Curious Fascination*

Among the professional pieces published in Volume 1 was one with a particularly “non-Texasy” flavor: an article on an exclusively federal topic titled *The Need for the Impartial Expert in Patent Litigation*.<sup>5</sup> Although the article’s central focus was more trial advocacy than substantive patent theory, the presence of patent law in Volume 1 foreshadowed (intellectual) things to come.

Indeed, each of the *Review*’s first five volumes contained articles addressing intellectual property and/or entertainment law. In Volume 2, although the editors declined to publish Arthur Bishop’s commentary on prophylactics and pesky pests,<sup>6</sup> in its place they printed his other submission, *Fair Use of Copyrighted Books*. Articles on prior restraint in the motion picture industry, the patentability of inventions, and international licensing agreements followed in Volumes 3 through 5. Barely has a volume gone by since that time without the inclusion of one or many articles on IP law, an emphasis (at least partially explained by the importance of patents and trade secrets to Houston’s petrochemical, biomedical, and astrophysical industries) that has remained constant through the years. . . .

[Craig Joyce & Matthew Hoffman, *Carry On Boldly: The Second Decade of Houston Law Review*,  
50 HOUS. L. REV. 689 (2012)]

“Houston, Tranquility Base here. The Eagle has landed.”<sup>7</sup> So began the first communication by Apollo 11’s commander, Neil Armstrong,<sup>8</sup> to NASA’s Manned Space Flight Center on July 20, 1969. From the moon. To Houston.

The journey to the moon had begun several years earlier when President John F. Kennedy announced, on September 12, 1962, also in Houston:

We choose to go to the moon. We choose to go to the moon in this decade and do the other things [which JFK had pledged that day], not because they are easy, but because they are hard, because that goal will serve to organize and measure the best of our energies and skills, because that challenge is one that we are willing to accept, one we are unwilling to postpone, and one which we intend to win . . .<sup>9</sup>

*Houston Law Review*’s journey had begun in 1962 as well.<sup>10</sup> Whereas Kennedy had committed the United States to go to the moon, the students and faculty who began *HLR* had committed to something infinitely more modest: starting up a

student-run and edited journal of law. But while the President and NASA could bring to their chosen task the resources of an entire nation, the founders of *HLR* could summon only the meager assets of a local Houston law school—and their own “Driven” determination.

Both the nation and the *Law Review* would meet the challenges that faced them in their respective first decades—the United States within the calendar decade promised by President Kennedy, the *Review* with the publication of its tenth volume in 1972–1973. Neither goal would be achieved without struggle and sacrifice. . . .

### *Swelling Numbers*

. . . A bigger school meant a bigger faculty, many of whom would soon commit articles of high quality to *HLR*. During the 15 years spanning the opening of the first buildings in the College of Law’s new complex in 1969 through the occupancy of TUII in 1975, to the close of Decade 2 in 1983, the school . . . hired an astonishing 49 new faculty members[, including] . . . Raymond T. Nimmer [of whom more hereafter] . . .

### *The Small Matter of Financing*

*Houston Law Review* had been founded in 1962 on the proverbial shoestring. After a request from the Student Bar Association and with the support of faculty members like A.A. White and John Mixon, Dean Newell Blakely had approved the creation of a student journal of academics only after making the students promise to raise the necessary start-up funding themselves.<sup>11</sup> . . .

At a meeting of the Board of Directors in 1981, the student editors reported publishing costs nearly twice the funding they were receiving from the Law Center (\$48,000 and \$24,000, respectively). “Simply stated, the *Law Review* does not have enough money in its operating expenses to pay for the issues it has scheduled for publication.”<sup>12</sup>

Something had to change. Accordingly, Associate Dean Raymond T. Nimmer mandated a solution: the *Review* would need to develop a source of private funding.<sup>13</sup> . . . [The publication promptly did just that, in part through initiating a series of profitable book projects headlined by the *Texas Rules of Evidence Handbook*, first published in 1983 and still in print via successor editions today.<sup>14</sup>]

### *Highest Quality Service . . .*

. . . Among the topics continuing to receive attention in the pages of the *Review* throughout the decade was one which, along with health law, would come to loom large in Decades 3–5: computer and intellectual property law. In Volume 17, Raymond T. Nimmer, one of the many Decade 2 College of Law hires and distinguished scholars who had begun to come online as *HLR* contributors, published *Consumer Payment Systems: Leverage Effects Within an Electronic Funds Transfer Systems*,<sup>15</sup> presaging his own later transformation from an expert on

commercial transactions (rapidly electronifying by 1980) into one of the nation's foremost scholars in information law. By 1983, as Glenn J. O'Grady of IBM would report in *Protection of Computer Software—An Update and Practical Synthesis*,<sup>16</sup> “[t]he computer software industry [wa]s exploding.”<sup>17</sup> . . .

Throughout the decade, regardless of the subject matter treated, the *Review* strove to assure consistently high quality in the pages it published. And, albeit with a particular focus on providing product for the benefit of Texas practitioners, *HLR* aimed its sights higher in Decade 2 by beginning to publish the kinds of “themed issues” . . . that are a hallmark of law review success everywhere.

### *Themed Issues: The Beginning*

Top law reviews regularly host symposia, which result in published articles written by the symposia's distinguished speakers. A symposium technically is “a conference or meeting to discuss a particular subject,” which produces “a collection of essays or papers . . . by a number of contributors.”<sup>18</sup> But other events—a lecture with commentators, a conference that produces papers, or even papers generated without any physical gathering of the participants—likewise may be presented in the pages of a law review in what, for want of a better term, might be called, generically, “themed issues.”<sup>19</sup> [More on these anon, particularly as they related to IPIL's growing association with *Houston Law Review*.] . . .

[Craig Joyce & Matthew Hoffman, *Centered: The Third Decade of Houston Law Review*,  
50 HOUS. L. REV. 1027 (2013)]

As *Houston Law Review* entered the 1980s, the world around it, and *HLR*'s host institution, were changing. The College of Law, recognizing the increasing specialization and diversity of the legal practice, would reinvent itself, too. A new HOUS. L. REV. for a new “Law Center”! Evening and morning of the Third Decade.<sup>20</sup> . . .

### *A “Law Center,” Officially!*

On the eve of Decade 3, the College of Law changed its name, both to reflect what it already had become and to position itself for the future. . . .

The announcement of the change was compact and efficient. The May 1982 issue of *Briefcase*, published by the Law Alumni Association, noted simply that the revision had been approved by the University of Houston Board of Regents the preceding January . . . :

[T]he new designation more accurately describes not only the expanded physical facilities at the law school but also the growing involvement of the law school in areas of a broader nature than in years past. . . .<sup>21</sup>

In short, the institution had not only recognized what it had become but also proposed to do more of the same, only better. . . .

### *Institutes, Centers, and Programs*

The centerpiece of the changes wrought in the Law Center's mission and mindset during Decade 3 was a continual expansion and enhancement of its specialty program offerings, always accompanied by the continued strength of the school's basic J.D. program. The history of UHLC's institutes and centers has, however, received scant attention.

One of those programs began as the Computer Law Institute in 1985.<sup>22</sup> Ironically, the initiative was launched in part as a vehicle for providing Continuing Legal Education in computer law through the University of Texas, simply because the Institute's founder, Raymond T. Nimmer of the University of Houston law faculty, was on leave teaching in Austin at the time and the School of Law there offered him support for the provision of CLE. Nimmer agreed. Upon returning to the University of Houston for the 1986-87 academic year, he for a time continued to run the Institute's CLE aspects through UT, while simultaneously upgrading and expanding the Institute's other programs as exclusively UH initiatives. During Nimmer's term as Acting Dean of the Law Center from 1993 to 1995, the Institute's CLE functions, too, moved formally to Houston.

Nimmer's Institute was joined by the companion Intellectual Property Law Institute in 1991 and combined with the latter to form the current Institute for Intellectual Property & Information Law (IPIL) in 1999. IPIL recently has received at least limited treatment elsewhere<sup>23</sup> (and will merit further attention in the Decade 4 narrative). . . .

[Craig Joyce & Matthew Hoffman, *The Great Leap Forward: The Fourth Decade of Houston Law Review*,  
50 HOUS. L. REV. 1255 (2013)]

At the dawn of *Houston Law Review's* fourth decade, the accomplishments of its predecessor ten years were much in evidence. A relationship with a burgeoning institute that resulted in publishing numerous top-tier national scholars? Check. A logistically proficient and technologically endowed publication process? Check. A generously donated copyright on a widely publicized (and purchased) legal handbook to finance the organization's operations? Check. But would the advance continue? Could *HLR* grow further? Perhaps even exponentially? Leapin' lizards,<sup>24</sup> yes!

### *Centering Continued*

. . . [As Health Law departed *HLR's* pages,] a new kid on the institute block stepped in to fill the annual symposium gap.

*Intellectual Property and Information Law.*<sup>25</sup> From its earliest decades, *Houston Law Review* had displayed a peculiar and sustained interest in IP and

information law. True, the subjects did not receive coverage with nearly the same regularity as, say, litigation matters; and both energy law, and then health law as HLPI grew, also appeared with greater frequency. All of *HLR*'s first five volumes, however, contained articles addressing intellectual property and/or entertainment law.<sup>26</sup> In Decade 2, Raymond T. Nimmer . . . began to write about electronic funds transfer systems,<sup>27</sup> thereby anticipating his later interest pre-eminence in computer and information law . . . Decade 3 continued the focus, with not only attention to traditional applications of familiar IP law<sup>28</sup> but also a venture into the brave new interface between IP and health law.<sup>29</sup> And also in Decade 3 . . . , Nimmer founded his own Computer Law Institute to promote the study and dissemination of knowledge in his new specialty.

In 1991, the Law Center's Dean, Robert L. Knauss, asked the school's copyright professor, Craig Joyce (who had joined the faculty in 1986), to consider founding an Intellectual Property program to complement Nimmer's Computer Law Institute. The copyright law professor, while recognizing that he was the only member of the school's full-time faculty specializing in any of the traditional IP subjects (principally, copyright, trademark, and patent law), felt compelled to point out a problem. Houston, Texas, might be a powerhouse center for the petrochemical, biomedical, and astrophysical industries, all of them highly interconnected with patent (and trade secret) law, but it was far from the center of the copyright industries on the East and West Coasts.

Thus, for an IP program to be located in Houston, the copyright law professor thought that he might make an excellent mascot, just not, without reinforcement, an adequate director. The Dean accepted the change in plans. With the faculty's approval, the copyright professor became the faculty director of the Law Center's newest special program, while local superstar practitioner and egghead intellectual Paul M. Janicke was hired in 1992 as the staff director—later moving to tenure-track and tenured status, a named professorship, and of course faculty co-directorship.<sup>30</sup>

The detailed story of the IP program's founding was, however, not quite as simple as the text above makes it seem.

As indicated, the Dean and the professor saw the way forward for founding the program differently. Yet they reached a tacit *quid pro quo* agreement that allowed planning to proceed.

The professor could put together an IP program however he thought best. But if the plan became controversial, he would get no support from the Dean when it was put to the faculty for a vote. The plan immediately became controversial, and the professor got no decanal support in the end.

Convinced that the program could not succeed without a patent professor but aware that the faculty was unlikely to hire one, the copyright professor set out to find a candidate who could avoid the perils of Scylla and Charybdis. Shortly, the

ideal candidate emerged: a former managing partner of Houston’s world-class “boutique” IP firm, Arnold, White & Durkee, an egghead practitioner who published constantly, and a top-level lawyer who had announced widely his intention to retire at age 50 to become either a concert pianist (an ambition for which he was ably qualified) or a law professor.

His name was Paul Janicke. He was then a year short of 50. And the copyright professor thought he deserved not to become yet another starving musician.

The plan was simple. Janicke would be hired as Staff Director of the proposed IP program. The copyright professor would be Faculty Director. The latter would assure that, beyond directing the program’s otherwise non-existent staff, Janicke would have ample time to teach and write about patent law and other areas of interest to him.

Viewing the proposal as a Trojan horse that would later open to disclose a Janicke candidacy for tenure-track status, more than a few faculty members expressed serious reservations. In an example of Law Center collegiality at its best, however, the plan’s principal opponent, Richard Alderman, asked to come to the copyright professor’s office and offer him the opportunity to persuade the likely dissenters of the plan’s merit. Alderman came and listened—but was not persuaded.

The plan then went forward for faculty decision. Specifically, Joyce proposed that the faculty:

- (1) Approve the concept of formally identifying IP as a specialty field for UHLC;
- (2) Give “go ahead” for beginning the research, etc., needed to compile information for a proposal to forward to the state’s Coordinating Board regarding an LL.M. in IP; and
- (3) Approve, on a contract basis, someone to be appointed as Co-Director of the IPP [Intellectual Property Program].

Furthermore, the professor proposed that, if the program were not successful and self-sufficient within two to three years, it should terminate automatically.<sup>31</sup>

At the faculty meeting itself, the advocacy on both sides was strong, and the balloting, close. The plan prevailed initially on a vote of 17–16, but it then was approved unanimously, for the record, when the most determined doubter, Richard Alderman, graciously so moved and the faculty duly concurred.

The University of Houston Law Center had an Intellectual Property program.

Like the Health Law & Policy Institute, many of the IP program’s subsequent achievements are of little importance to its subsequent relationship with *Houston Law Review*.<sup>32</sup> Other initiatives of the program, however, would in short order prove

central to *HLR*'s dramatic advances during Decade 4.

Among the highlights, all to be described in detail hereafter, were the following developments:

- *The Fall Lectures*. Begun initially by Professor Janicke as “The Katz-Kiley Lectures” (and known more recently as “The Katz Family Foundation Fund Lectures”), this event marked the first collaboration between the newly formed IP program and *Houston Law Review*. While designed as a “live lecture” in Houston, beginning with Board 32’s tenure the series occasionally produces published product by agreement between *HLR* and the program.<sup>33</sup>
- *Miscellaneous Symposium Issues*. The new IP program also began co-marketing with Professor Nimmer’s Computer Law Institute and, during the middle years of Decade 4, . . . Computer Law . . . contributed two symposia to *HLR*’s pages.<sup>34</sup>
- *The Annual National Conference Symposium Issue*.<sup>35</sup> Shortly following the merger of the IP program and the Computer Law Institute (see below) and the discontinuance of the *HLR/HLPI* series of symposia on health law, the IP program’s successor (whose history follows this listing of Decade 4 developments), at Professor Joyce’s instigation entered into an agreement with *Houston Law Review* to stage, and *HLR* to publish the articles resulting from, a continuing series of National Conferences to be held annually in Santa Fe, New Mexico. The actual symposia publications of Decade 4, including articles by such notable scholars as Judge Richard Posner, are described hereafter in this essay. The story of the founding of the conference will be coupled with the history of the Spring Lecture (see immediately below) and told in Decade 5.
- *The Spring Lectures*.<sup>36</sup> Also during Decade 4, although its first fruits would not be published until the beginning of *HLR*’s following decade, Joyce and the *Review* established a new lecture series, intended to be held each spring and with the specific purpose of furnishing for *HLR*’s publication articles by the leading figures, nationally and internationally, in the fields of intellectual property and information law. The series, also known as “The Baker Botts Lectures” in honor of its long-time sponsor, commenced publication with an article by Columbia Law School professor and leading copyright scholar Jane C. Ginsburg in Volume 41. For further details, see the Decade 5 essay.

All of the foregoing initiatives were commenced in Decade 4. But in the course of the decade, a new entity emerged as *HLR*’s partner. In 1999, under the enlightened leadership of Dean Stephen Zamora, the IP program and the Computer Law Institute, which had been co-branding programs for the better part of the



decade, joined together as the Institute for Intellectual Property & Information Law (IPIL).<sup>37</sup> By the end of Decade 4, then, *Houston Law Review* and IPIL had forged a firm, new partnership, the fruits of which by then had begun appearing prominently in the pages of the *Review*. (For a listing of the extraordinarily capable faculty added to the IPIL roster during the following years, see the information contained in the accompanying endnote.<sup>38</sup>)

### *Founding Frankel*

[The detailed story of the beginnings of the Law Center's premier annual scholarly event, the Frankel Lecture (co-founded by IPIL's Craig Joyce), has been omitted here, but reference to the fifth annual lecture will appear below in connection with the recitation of *HLR's* substantive content during Decade 4.]

Not surprisingly, the events and decisions just recounted had a tremendous impact within the covers of *Houston Law Review* during Decade 4. As reflected in the contents of the publication itself, the *Review* split ways amicably with one institute but gained an equally beneficial relationship with another, began to host and publish an annual lecture series on par with any other nationwide in prestige of keynote and commentary, and included among its non-symposia, non-themed issue ranks more top-flight nationally renowned scholars than editors of prior decades could have hoped to imagine. . . .

### *The Frankel Lectures*

The result of much ingenuity and ambition, with a healthy dose of flawless execution, the inaugural installment of *Houston Law Review's* Frankel Lecture Series [launched the new lecture series in impressive fashion]. . . .

In the fifth installment, printed in 2001, *HLR* worked hand-in-glove with Professor Joyce of the IPIL Institute to publish David Nimmer's *Copyright in the Dead Sea Scrolls: Authorship and Originality*.<sup>39</sup> As the author of *Nimmer on Copyright* (the most highly cited secondary source in copyright law),<sup>40</sup> Nimmer ranks indisputably as one of the world's foremost experts in his subject. Joining him for the Lecture were Judge James Oakes of the U.S. Court of Appeals for the Second Circuit and Martha Woodmansee of Case Western Reserve, both of whom had made their own unique impacts on copyright law (Oakes through key judicial opinions<sup>41</sup> and Woodmansee as a professor of English and Law).<sup>42</sup> The Frankel Lecture—this time with an assist from one of the Law Center's leading special programs—was taking the *Review* to heights never before seen, at least not *consistently*. . . .

. . . [By] the end of *HLR's* fourth decade, the Frankel Lecture had brought to *Houston Law Review* the kind of publicity on a national scale that both reflected the *Review's* established stature and helped escalate it.

### *Themed and Specialty Program Issues*

*Themed Issues*. . . . Following the Health Law institute's final published

symposium issue in 2000, *HLR* and HLPI would part ways on more-than-amicable terms, the Institute in search of its own specialty journal and the *Review* in pursuit of another institute. Luckily, by that time, *HLR* had established a framework of successful collaboration with the Law Center's specialty programs. All it needed was a new partner. The logical candidate was IPIL, already a regular contributor to *HLR* volumes but now about to become much more.

*Institute for Intellectual Property & Information Law*. "IPIL is to *HLR* in 2001–2013 as HLPI was to *HLR* in 1988–2000"—or so the SAT analogy might go. The relationship that would culminate ultimately in IPIL's annual National Conference in Santa Fe and *HLR*'s resulting annual IPIL Symposium issue had begun years prior with 1994's inaugural Katz-Kiley Lecture,<sup>43</sup> featuring nationally recognized patent and trademark practitioner John Pegram asking: *Should the U.S. Court of International Trade Be Given Patent Jurisdiction Concurrent with That of the District Courts?*<sup>44</sup> Modest, but a start.

Volume 32's symposium on *Legal Issues in the Information Revolution*, led by Professor Raymond T. Nimmer of IPIL, was coordinated in *HLR* with a full slate of student comments concentrated solely on intellectual property and information law matters (a practice that continues to this day, to the extent that eager *Review* students in any given year are predisposed to opine on matters of IP or related law). In the following years, 1997's Katz-Kiley Lecture would feature three attorneys from the U.S. Patent and Trademark Office, Ray Nimmer would keynote a symposium on *Licensing in the Digital Age*, and nearly an entire issue of professional scholarship would be dedicated to commenting on David Nimmer's *Copyright in the Dead Sea Scrolls*, with contributions from L. Ray Patterson of Georgia, Richard A. Lanham of UCLA (another professor of English), Niva Elkin-Koren of the Haifa School of Law, and Israeli practitioner Neil Wilkof.<sup>45</sup>

Upon the departure of the annual HLPI Symposium from *HLR*'s regularly scheduled rotation (to use a baseball analogy), the IPIL institute, eager and able to build on *HLR*'s prior successes with IP scholarship, stepped up to the plate—and did so in major league fashion. 2001's inaugural IPIL symposium, *E-Commerce and Privacy*, featured Joel R. Reidenberg of Fordham, Anita L. Allen of Penn, Walter W. Miller, Jr. and Maureen A. O'Rourke of Boston University, Chris Reed from Queen Mary University of London, and Trotter Hardy of William & Mary.<sup>46</sup> The final two symposium issues of Decade 4 included contributions from law professors from Georgetown, North Carolina, Boston College, Washington, Iowa, UCLA, and the University of Kent Law School in England, along with U.S. Court of Appeals for the Seventh Circuit Judge Richard Posner and William Patry, University of Houston Law Center Class of 1980 and author of *Patry on Copyright*, another standout treatise in the field that he and David Nimmer share.

Initially a pinch hitter for the departing Health Law Institute, almost immediately IPIL was batting clean-up. . . .

The end, and the beginning, are nigh. The end? The conclusion of *Houston Law Review*'s first fifty years. The beginning? The next fifty. And at the midpoint? Perhaps the fulfillment of *Houston Law Review*'s founders' dream [that the journal might one day become "enduringly great"].<sup>47</sup> . . .

At the beginning of Decade 5, having overcome all prior adversities,<sup>48</sup> the *Review* was well-positioned to build on the numerous achievements of its first 40 years.

### *A Place Beyond*

By the beginning of *Houston Law Review*'s fifth decade, the exceptional had become the norm in terms of *HLR*'s "business as usual" scholarship.

### *Symposia Issues*

. . . *IPIL*. Like the Frankel Lecture Series, *IPIL*'s annual National Conference Symposium issues entered *HLR*'s Decade 5 fresh from their own infancy in Decade 4. The continuing contributions of the *IPIL* Symposia to *HLR*'s Decade 5 must of necessity be measured against the astronomical heights already achieved. "Improvement," given a baseline of Georgetown, Penn, Posner, and the like (a small sampling of Decade 4's *IPIL* C.V.), may not have been possible, but maintaining that high standard of scholarly contributions certainly was.

Only a complete list of Decade 5's contributors to the Symposia issues could do justice to the quality of the content consistently provided (and such a list is indeed available in the endnotes).<sup>49</sup> Yet even a small sampling of the articles published during the past 10 years reveals the broad reach of *IPIL*'s ambition as the Law Center's youngest institute—and its corresponding impact on *HLR*.

In various issues throughout Decade 5, J. Thomas McCarthy (author of *McCarthy on Trademarks and Unfair Competition*) published *Proving a Trademark Has Been Diluted: Theories or Facts?*; Seventh Circuit Judge Frank Easterbrook authored *Contract and Copyright*; Graeme B. Dinwoodie of Oxford contributed not one but two articles; and copyright king David Nimmer of UCLA returned to help commemorate copyright law's tri-centennial with *Queen Anne in the Emperor's Shadow*.<sup>50</sup>

In Issue 45:4 alone, Arti K. Rai of Duke published *Building a Better Innovation System: Combining Facially Neutral Patent Standards with Therapeutics Regulation*; Rebecca S. Eisenberg of Michigan contributed *Noncompliance, Nonenforcement, Nonproblem? Rethinking the Anticommons in Biomedical Research*; Janice M. Mueller of Pittsburgh and Donald S. Chisum (of *Chisum on Patents*) co-authored *Enabling Patent Law's Inherent Anticipation Doctrine*; Paul J. Heald of Georgia produced *Optimal Remedies for Patent Infringement: A*

*Transactional Model*; and Michael J. Meurer of Boston University added *Inventors, Entrepreneurs, and Intellectual Property Law*.<sup>51</sup>

Joined by contributions from the likes of Mark A. Lemley (Stanford), William M. Landes (Chicago), Peter S. Menell (UC Berkeley), Rebecca Tushnet (Georgetown), Ronan Deazley (Glasgow), and Catherine Seville (Cambridge), the participation of such notable academics in the annual IPIL Symposium issue firmly cemented the *Review* as a major center of IP scholarship on an international scale.

*Other Symposia. . . .*

#### *The IPIL Spring Lectures*

Not to be outdone by its annual National Symposium counterpart, IPIL's Spring Lecture—the Baker Botts Lecture—brought numerous top-flight IP academics to *HLR* from across the nation in Decade 5. The scholarship was outstanding from the outset, when the series led off in 2004 with Jane C. Ginsburg of Columbia delivering the first lecture, published in Volume 41 as *The Right to Claim Authorship in U.S. Copyright and Trademarks Law*.<sup>52</sup>

Of equal stature, subsequent Spring Lecturers have included Federal Circuit Judge Arthur J. Gajarsa and Professors Paul Goldstein of Stanford, William O. Hennessey of Franklin Pierce, F. Scott Kieff of Washington University, Douglas Lichtman of UCLA, Robert P. Merges of UC Berkeley, R. Anthony Reese of UC Irvine, and Joel R. Reidenberg of Fordham.<sup>53</sup>

Although contributing to the *Law Review* just a single article annually, the IPIL Spring Lecture is, indisputably, one of the *Review's* crown jewels, publishing authors of a level of prestige rivaling any journal in the country. . . .

#### *Exemplars of Excellence*

The University of Houston's first dean of the College of Law famously told his appointing president that he aimed to make UH's newest unit better than the institution that had spawned it—and then proceeded to implement admissions requirements for students that were stronger than those at the state's flagship law school.<sup>54</sup>

The goal was *excellence* above all. With apologies to so many who contributed also, what follows is a brief roll call of a few of those who helped make it happen. . . .

*Benign Builders.* Empire builders build mostly for their own satisfaction; benign builders, mostly for the sake of their institutions. The latter decades of *Houston Law Review's* first 50 years were an era of benign builders. . . . Raymond T. Nimmer founded the Computer Law Institute.<sup>55</sup> . . . A copyright law professor [Craig Joyce] and a patent law professor [Paul Janicke] created the Intellectual Property Program.<sup>56</sup> A “young professor” [Joyce] and two EICs, with the help of an acting dean [Nimmer], conceived and financed the Frankel Lectures.<sup>57</sup> Dean

Stephen Zamora brought together the computer and IP programs as the Institute for Intellectual Property & Information Law.<sup>58</sup> IPIL's leaders imagined into reality the institute's annual national conference and spring lecture [Joyce, Janicke, and Nimmer].<sup>59</sup> Each of these events, together with the efforts of all the *HLR* boards of the period, produced the lecture series and symposium issues that provided the springboard for the *Review's* ascent to national prominence. . . .

*Raymond T. Nimmer.* Hired in 1975 during A.A. White's second term as dean,<sup>60</sup> Raymond T. Nimmer embodied White's first-term determination that the College of Law should be a place dedicated to *excellence*. Nimmer's own scholarship, including his six contributions to HOUS. L. REV., more than amply fulfilled White's founding vision. But White's vision was Nimmer's also. Concerned as Associate Dean in 1981 that the *Review's* mission was unsustainable without stable financing, he mandated that the students somehow conjure up private financing<sup>61</sup> and thus helped push *HLR* toward long-term stability in funding. Presented as Acting Dean in 1994 with the question of whether to green-light the *Review's* initiative to launch a potentially prestigious but dauntingly costly new lecture series, Nimmer volunteered to go to the Frankel Foundation and ultimately secured long-term underwriting.<sup>62</sup> Again and again, he supported institutional advances, creating the Computer Law Institute in 1985 and merging it into IPIL in 1999.<sup>63</sup> And in 2012, during the final year of his second deanship, Nimmer decided to throw *Houston Law Review* a party for 550 to celebrate the publication's 50th Anniversary. It was—how to say?—a very *excellent* party.<sup>64</sup> . . .

In the span of its first fifty years, *Houston Law Review* had gone from barely birthed to internationally renowned, from cash-strapped to profitable, from uncomfortable adolescence to indisputable maturity.

At the end of the day, at the end of these essays, one thing can be said with certainty. By the conclusion of its fifth decade, *HLR* [with critical assistance, as these essays have detailed, from IPIL] had reached “a place beyond.” As its founders had predicted, *Houston Law Review* was now “enduringly great.”

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1. Cf. *John* 1:1. Where appropriate throughout these essays, authorities (here, *the Authority*) have been cited when possible. Otherwise, what follows is based solely on the imperfect recollections of these essays' senior co-author.

2. A.A. White, as told to John Mixon in the 1980s. JOHN MIXON, *AUTOBIOGRAPHY OF A LAW SCHOOL* at 39 (2012) [hereinafter *MIXON* and used with its author's enthusiastic endorsement]. The publication of *AUTOBIOGRAPHY* celebrated the 65th anniversary of the founding of what is now the University of Houston Law Center, with funding for the book made possible by the John Mixon Society and through the generosity of Don R. Riddle, UHLC Class of 1966, an Associate Editor of *Houston Law Review* on Board 3, and the Law Center's long-time good friend.

Currently, the University of Houston Law Center ranks in the top quartile of American law schools. See *Best Law Schools*, U.S. NEWS & WORLD REPORT (2012), available at <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-rankings/page+3>.

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3. Originally christened the Manned Spacecraft Center but renamed in 1973 after former President (and Texan) Lyndon B. Johnson's death, JSC would guide all U.S. space flight from Gemini through the current International Space Station. *Mission Control Fact Sheet, Houston*, NASA.GOV, [http://www.nasa.gov/centers/johnson/pdf/160406main\\_mission\\_control\\_fact\\_sheet.pdf](http://www.nasa.gov/centers/johnson/pdf/160406main_mission_control_fact_sheet.pdf) (last visited Aug. 28, 2012).

4. Dan G. Matthews, *Editor's Page*, 1 HOUS. L. REV. viii, viii (1963).

By 2012, *HLR* had arrived, ranking in the top 2.5% of all law reviews worldwide—with a year to spare as the organization approached its 50th anniversary. *Law Journals: Submissions and Ranking*, WASH. & LEE U. SCH. LAW, <http://lawlib.wlu.edu/LJ/> (last visited Apr. 22, 2013) (follow “access prior surveys” link, then select “combined score” for 2011; *Houston Law Review* is ranked 41st out of 1,686 journals).

5. B. R. Pravel, *The Need for an Impartial Expert in Patent Litigation*, 1 HOUS. L. REV. 272 (1964).

6. See Craig Joyce, *Driven: The First Decade of Houston Law Review*, 50 HOUS. L. REV. 257, 263 (2012) [hereinafter *Driven*] (discussing *HLR* Board 1's decision not to publish Bishop's tantalizingly titled *Trouble in a Bottle: From Condoms to Cockroaches*).

7. *July 20, 1969: One Giant Leap for Mankind*, NASA (July 8, 2009), [http://www.nasa.gov/mission\\_pages/apollo/apollo11\\_40th.html](http://www.nasa.gov/mission_pages/apollo/apollo11_40th.html).

8. Armstrong, the first human to utter the word “Houston” on the moon, went skyward permanently as this essay was in draft. See, e.g., John Noble Wilford, *Neil Armstrong, 1930–2012: Made ‘Giant Leap’ as First Man to Step on Moon*, N.Y. TIMES, Aug. 25, 2012, at A1.

9. President John F. Kennedy, *Moon Speech at Rice University* (Sept. 12 1962), available at <http://er.jsc.nasa.gov/seh/ricetalk.htm>.

10. Joyce, *Driven*, *supra* note 6, at 262-63.

11. Joyce, *Driven*, *supra* note 6, at 262.

12. Board of Directors Meeting Minutes (Nov. 19, 1981) (on file with Houston Law Review).

13. The minutes of the fall 1981 Board meeting reveal the mandate (although it was phrased as an “offer”): “To [e]nsure the *Review*'s timeliness and overcome [publication] delays, Dean Nimmer offered as a long-term solution, the funding of the *Law Review* through private sources.” Board of Directors Meeting Minutes (Nov. 19, 1981) (on file with Houston Law Review).

14. For that story, see Craig Joyce & Matthew Hoffman, *Carry On Boldly: The Second Decade of Houston Law Review*, 50 HOUS. L. REV. 689, 702 (2012) [hereinafter *Boldly*], and Craig Joyce & Matthew Hoffman, *Centered: The Third Decade of Houston Law Review*, 50 HOUS. L. REV. 1027, 1031 (2013) [hereinafter *Centered*].

15. Raymond T. Nimmer, *Consumer Payment Systems: Leverage Effects Within an Electronic Funds Transfer System*, 17 HOUS. L. REV. 487 (1980) [hereinafter Nimmer].

16. Glenn J. MacGrady, *Protection of Computer Software—An Update and Practical Synthesis*, 20 HOUS. L. REV. 1033 (1983).

17. *Id.* at 1033.

18. *Definition of Symposium*, OXFORD DICTIONARIES, <http://oxforddictionaries.com/definition/english/symposium?q=symposium> (last visited Oct. 29, 2012).

19. The term has been adopted here by the authors owing to the absence of a more popularized alternative. As used, the term does not imply necessarily that the entire *HLR* issue in question was devoted to the designated theme. Articles on other subjects, and of course student notes and comments, frequently comprised the remainder of such issues.

20. *Cf.* Genesis 1:13. With apologies, again, to the Deity; see also Joyce, *Driven*, *supra* note 6, at 274 n.1.

21. *Briefcase*, Vol. 1, No. 4, at 1 (May 1982) (on file with Houston Law Review).

22. Also in 1985, the Institute's founder, Raymond T. Nimmer, won the Association of American Publishers' “Best New Book in Law” award for *The Law of Computer Technology* (currently in its fourth edition). The remainder of this note, which appeared originally as endnote 15 in *Centered*, *supra* note 14, has been moved into the text above.

23. See MIXON, *supra* note 2, App. VII, at 544–50.

24. A term of astonishment, “leapin' lizards!” seems to have originated in the 1930s, when it was popularized by none other than Little Orphan Annie in the comic strip of the same name. The phrase, through the 1977 Broadway musical *Annie*, lives on . . . and on . . . and on: “Tomorrow!

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Tomorrow! I love ya Tomorrow! You're always a day away!"

25. Except as noted otherwise, all of the information contained in the following subsection is drawn either from the personal recollections of this essay's senior co-author or from MIXON, *supra* note 2, App. VII ("Institutes at the Law Center, 2012").

26. See *Driven*, *supra* note 6, at 267 ("A Curious Fascination") (referencing early articles on patent litigation, fair use of copyright, prior restraint in the motion picture industry, the patentability of inventions, and international IP licensing agreements).

27. *Nimmer*, *supra* note 15.

28. Joy Eskew, *The Copyright Dilemma Facing Texas Educators as They Implement Computer Literacy into Their Curriculum*, 22 HOUS. L. REV. 1011 (1985); A. Samuel Oddi, *The Functions of "Functionality" in Trademark Law*, 22 HOUS. L. REV. 925 (1985).

29. Dan L. Burk, *Patenting Transgenic Human Embryos: A Nonuse Cost Perspective*, 30 HOUS. L. REV. 1597 (1993).

30. The text that follows (through "duly concurred") appeared originally, in Craig Joyce & Matthew Hoffman, *The Great Leap Forward: The Fourth Decade of Houston Law Review*, 50 HOUS. L. REV. 1255 (2013) [hereinafter *Leap*], as endnote 15.

Janicke currently serves as Houston Intellectual Property Law Association Professor of Law. Joyce is Andrews Kurth Professor of Law and has published frequently in *Houston Law Review*, including A UNIFIED THEORY OF COPYRIGHT (unfinished manuscript by L. Ray Patterson & Stanley H. Birch, Jr., edited and completed by Joyce), 46 HOUS. L. REV. 215 (2009), and *A Curious Chapter in the History of Judicature*, 42 HOUS. L. REV. 325 (2005).

31. Faculty Meeting Minutes (Oct. 3, 1991) (on file with Houston Law Review).

32. For one such development at least tangentially related to *HLR*, spearheaded for IPIL by Janicke, see Joyce & Hoffman, *Centered*, *supra* note 14, at 1031 (2013) ("The LL.M. Program").

33. During Decade 4, for example, the *Review* published the Inaugural Katz-Kiley Lecture. See John B. Pegram, *Should the U.S. Court of International Trade Be Given Patent Jurisdiction Concurrent with That of the District Courts?*, 32 HOUS. L. REV. 67 (1995); Nancy J. Linck, Kevin T. Kramer & David J. Ball, Jr., *A New Patent Examination System of the New Millennium*, 35 HOUS. L. REV. 305 (1998).

34. See *Legal Issues in the Information Revolution*, 32 HOUS. L. REV. 303 (1995); *Licensing in the Digital Age*, 36 HOUS. L. REV. 1 (1999).

35. For a listing of all annual IPIL symposia issues to date, see the Decade 5 essay.

36. For a listing of all Spring Lecture articles to date, see the Decade 5 essay.

37. All references during the remainder of these essays to any of the programs just named will carry the moniker "IPIL."

38. Vitally importantly to *Houston Law Review*, since 1999 the following distinguished faculty have been added to the IPIL roster: Greg Vetter (2002) (among the nation's leading figures on open-source software); Sapna Kumar (2009) (an administrative-law-and-patent specialist who will moderate IPIL's 2013 National Conference); and Jacqueline Lipton (2012) (indisputably the best lateral hire, by any law school in America, in 2012–13).

39. In attendance at that year's Lecture were "lawyers, judges, biblical scholars, bibliophiles, members of the clergy, comparative religion experts, authorities on the Middle East, law faculty, . . . and of course . . . students." Craig Joyce, *Welcome and Introduction*, 38 HOUS. L. REV. xi, xiv (2001).

40. A search of Westlaw's "Federal Courts" database at the time of this essay's publication yields more than 3,000 citations to *Nimmer on Copyright*. Like *Houston Law Review*, *Nimmer on Copyright* currently is celebrating its 50th anniversary.

41. See, e.g., *Princess Fabrics, Inc. v. CHF, Inc.*, 922 F.2d 99, 104 (2d Cir. 1990) (Oakes, C.J., concurring in part and dissenting in part); *New Era Publ'ns Int'l, ApS v. Henry Holt & Co.*, 873 F.2d 576, 585 (2d Cir. 1989) (Oakes, C.J., concurring); *Brandir Int'l, Inc. v. Cascade Pac. Lumber Co.*, 834 F.2d 1142 (2d Cir. 1987); *Authors League of Am., Inc. v. Oman*, 790 F.2d 220, 224 (2d Cir. 1986) (Oakes, J., concurring); *Kieselstein-Cord v. Accessories by Pearl, Inc.*, 632 F.2d 989 (2d Cir. 1980); *L. Batlin & Son, Inc. v. Snyder*, 536 F.2d 486 (2d Cir. 1976).

42. See, e.g., THE CONSTRUCTION OF AUTHORSHIP: TEXTUAL APPROPRIATION IN LAW AND LITERATURE (Martha Woodmansee & Peter Jaszi eds., 1994).

43. See *supra* note 33 and accompanying text.

44. Pegram, *supra* note 33.

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45. Linck, Kramer, & Ball, *supra* note 33; Raymond T. Nimmer, *Images and Contract Law—What Law Applies to Transactions in Information*, 36 HOUS. L. REV. 1 (1999); David Nimmer, *Copyright in the Dead Sea Scrolls: Authorship and Originality*, 38 HOUS. L. REV. 1 (2001); L. Ray Patterson, *Nimmer’s Copyright in the Dead Sea Scrolls: A Comment*, 38 HOUS. L. REV. 431 (2001); Niva Elkin Koren, *Of Scientific Claims and Proprietary Rights: Lessons from the Dead Sea Scrolls Case*, 38 HOUS. L. REV. 445 (2001); Neil Wilkof, *Copyright, Moral Rights and Choice of Law: Where Did the Dead Sea Scrolls Court Go Wrong?*, 38 HOUS. L. REV. 463 (2001); Richard A. Lanham, *Barbie and the Teacher of Righteousness: Two Lessons in the Economics of Attention*, 38 HOUS. L. REV. 499 (2001).

46. Who urged his peers, in a mutually deprecating sort of way, to continue publishing with *Houston Law Review*: “The *Houston* article nags know something about meandering-around law faculty in far off lands: Keep soliciting.” Trotter Hardy, *The Copyrightability of New Works of Authorship: “XML Schemas” As an Example*, 38 HOUS. L. REV. 855, 855 n.\*.

47. See *supra* note 4 and accompanying text.

48. For the story of Tropical Storm Allison, which devastated the Law Center but, remarkably, not *Houston Law Review*, see *Leap*, *supra* note 30, at 1266-68 (“Almost Undone: All About Allison”) and 1273-77 (“The Allison Boards”).

49. IPIL contributing authors (introductory and prologue material excluded) throughout Decade 5 are listed chronologically below:

41:3 – Graeme B. Dinwoodie (Chicago-Kent); Stacey L. Dogan (Northeastern); A. Michael Froomkin (Miami); William M. Landes (Chicago); Mark A. Lemley (Stanford); J. Thomas McCarthy (San Francisco)

42:4 – Judge Frank H. Easterbrook (7th Circuit); Clayton P. Gillette (NYU); Robert W. Gomulkiewicz (Washington); Robert L. Oakley (Georgetown); R. Polk Wagner (Pennsylvania)

44:4 – Keith Aoki (UC Davis); Thomas F. Cotter (Minnesota); Robert Rosenthal Kwall (DePaul); Peter S. Menell (UC Berkeley); Neil Weinstock Netanel (UCLA)

45:4 – Donald S. Chisum (*Chisum on Patents*); Rebecca S. Eisenberg (Michigan); Paul J. Heald (Georgia); Janice M. Mueller (Pittsburgh); Michael J. Meurer (Boston University); Arti K. Rai (Duke)

46:4 – Graeme B. Dinwoodie (Oxford); Rochelle C. Dreyfuss (NYU); Cynthia M. Ho (Chicago); Charles R. McManis (Washington University); Jerome H. Reichman (Duke); Peter K. Yu (Drake)

47:4 – Oren Bracha (Texas); Ronan Deazley (Glasgow); David Nimmer (UCLA); Catherine Seville (Cambridge); Diane Leenheer Zimmerman (NYU)

48:4 – Ann Bartow (Pace); Barton Beebe (NYU); Greg Lastowka (Rutgers); Mark McKenna (Notre Dame); Rebecca Tushnet (Georgetown)

50:2 – Colleen V. Chien (Santa Clara); Kevin Emerson Collins (Washington University); Paul M. Janicke (Houston); Mark R. Patterson (Fordham); Lee Petherbridge (Loyola L.A.); David L. Schwartz (Chicago-Kent); Katherine J. Strandburg (NYU)

50. J. Thomas McCarthy, *Proving a Trademark Has Been Diluted: Theories or Facts?*, 41 HOUS. L. REV. 713 (2004); Frank Easterbrook, *Contract and Copyright*, 42 HOUS. L. REV. 953 (2005); Graeme B. Dinwoodie, *Trademarks and Territory: Detaching Trademark Law from the Nation-State*, 41 HOUS. L. REV. 885 (2004); Graeme B. Dinwoodie & Rochelle C. Dreyfuss, *Designing a Global Intellectual Property System Responsive to Change: The WTO, WIPO, and Beyond*, 46 HOUS. L. REV. 1187 (2009); David Nimmer, *Queen Anne in the Emperor’s Shadow*, 47 HOUS. L. REV. 919 (2010).

51. Arti K. Rai, *Building a Better Innovation System: Combining Facially Neutral Patent Standards with Therapeutics Regulation*, 45 HOUS. L. REV. 1037 (2008); Rebecca S. Eisenberg, *Noncompliance, Nonenforcement, Nonproblem? Rethinking the Anticommons in Biomedical Research*, 45 HOUS. L. REV. 1059 (2008); Janice M. Mueller & Donald S. Chisum, *Enabling Patent Law’s Inherent Anticipation Doctrine*, 45 HOUS. L. REV. 1101 (2008); Paul J. Heald, *Optimal Remedies for Patent Infringement: A Transactional Model*, 45 HOUS. L. REV. 1165 (2008); Michael J. Meurer, *Inventors, Entrepreneurs, and Intellectual Property Law*, 45 HOUS. L. REV. 1201 (2008).

52. Jane C. Ginsburg, *The Right to Claim Authorship in U.S. Copyright and Trademarks Law*, 41 HOUS. L. REV. 263 (2004).

53. Paul Goldstein, *Copyright on a Clean Slate*, 48 HOUS. L. REV. 691 (2011); William O. Hennessey, *Protection of Intellectual Property in China (30 Years and More): A Personal Reflection*, 46 HOUS. L. REV. 1257 (2009); F. Scott Kieff, *IP Transactions: On the Theory & Practice of*



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*Commercializing Innovation*, 42 HOUS. L. REV. 727 (2005); Doug Lichtman, *Understanding the Rand Commitment*, 47 HOUS. L. REV. 1023 (2010); Robert P. Merges, *The Concept of Property in the Digital Era*, 45 HOUS. L. REV. 1239 (2008); R. Anthony Reese, *What Copyright Owes the Future*, 50 HOUS. L. REV. 287 (2012); Joel R. Reidenberg, *E-Commerce and Trans-Atlantic Privacy*, 38 HOUS. L. REV. 717 (2007).

54. See Joyce, *Driven*, *supra* note 6, at 258–59.

55. See Joyce & Hoffman, *Centered*, *supra* note 14, at 1032.

56. That would be Craig Joyce and Paul M. Janicke. See Craig Joyce & Matthew Hoffman, *Leap*, *supra* note 30, at 1257–58.

57. Craig Joyce, Robert J. Sergesketter, D’Andra Millsap (Shu), and Raymond T. Nimmer. See *id.* at 1259–62.

58. See *id.* at 1259.

59. Craig Joyce, Paul M. Janicke, and Raymond T. Nimmer. See *id.* at 1258–59.

60. See Joyce & Hoffman, *Boldly*, *supra* note 14, at 693-94.

61. *Id.* at 695.

62. See Joyce & Hoffman, *Leap*, *supra* note 30, at 1260–62.

63. See Joyce & Hoffman, *Centered*, *supra* note 14, at 1032; Joyce & Hoffman, *Leap*, *supra* note 30, at 1259.

64. Or so, in Craig Joyce & Matthew Hoffman, *Enduringly Great: The Fifth Decade of Houston Law Review*, 50 HOUS. L. REV. 1541, 1561 (2013), one of the authors of these essays once recollected.