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REFLECTIONS ON THE COMPUTER AGE

REFLECTING UPON A START-UP

Cory H. Van Arsdale†

It started out, not unlike many companies in California's Santa Clara or "Silicon" Valley, as an idea. We thought we had a better idea. As Scott's VW bus rattled past two story pop-up buildings emblazoned with the ever-revolving names of aspiring Valley start-ups and success stories such as Intel, Amdahl and TeleVideo, we came up with it. We had just completed our first year of law school final exams, freeing up fourteen plus hours of time each day normally reserved for studying; it was easy to engage in a lot of discussion. Still being caught up in the first-year-of-law-school frenzy, we, of course, were discussing what we would do in our second year at the Santa Clara University Law School.

"Scott" is Scott Ross Porter, who, like me, greatly enjoyed law school. We were discussing the merits of writing for that dreaded second year law student albatross, LAW REVIEW. Law school seems to be comprised of one mental feeding frenzy after another. Starting with reading your first case, all-important topics of concern and discussion change like clockwork as you proceed through law school toward the bar exam. It is LAW REVIEW, however, that easily stands out on resumes, law firm descriptions, job applications, transcripts and the like. Most second and third year law students are rabid in their conviction that LAW REVIEW is the *sine qua non* for obtaining a job both during and after law school.

Scott and I shared a common interest in the computer and electronic business that is the lifeblood of Silicon Valley. We discussed how we could shape our legal education to fit our interests. I contended that we should do at least one, if not two, issues in the

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SANTA CLARA LAW REVIEW, similar to a recently published "Computer Law" symposium issue.¹ At this point, we arrived at the idea of starting a new law journal which would be devoted exclusively to computer law. Historians differ as to whose idea it was to have a separate journal. That is, Scott thinks it was his idea, and I think it was mine. I am sure that had the SANTA CLARA COMPUTER & HIGH-TECHNOLOGY LAW JOURNAL failed, my memory would be that it was Scott's idea.

Scott and I related "our" idea to our third partner in crime, Amy Lundquist, who also shared an interest in computer law. During that Summer of 1983, the three of us improved our knowledge base in computer law. In addition, we mapped out a strategy for developing the basis for our new law journal; each of us would interview various professors and practitioners of computer law, both as to the viability of such a journal, as well as what should appear in it. Amy was working as a clerk for the Mountain View, California law firm of Remer, Remer & Dunaway where today she is an associate at the firm.² The firm enjoyed a wealth of start-up computer technology clients and thought a journal devoted to computer law was a natural from a law school based in the heart of Silicon Valley.

Scott spent his summer in Washington, D.C., working for the COMPUTER LAW REPORTER, at that time the largest professional journal devoted to computer law. Scott co-authored an article for the COMPUTER LAW REPORTER, "Unconscionability in Computer Contracts"³ and spent a substantial portion of his time grilling Gary Rinkerman, Managing Editor of the COMPUTER LAW REPORTER, on how to run a professional publication.

I spent that summer attending a six-week tutorial in computer law at Oxford University under a noted English computer law and evidence authority, Colin Tapper. While at Oxford, I questioned both Professor Tapper and Santa Clara Law Professor Bob Peterson, director of Santa Clara's program at Oxford, on whether a computer law journal was a good idea, and what strategy to use in getting the idea approved. Both agreed that there was definitely room in the market for an additional computer law journal.⁴

Upon returning to Santa Clara for our second year, we began

1. 23 SANTA CLARA LAW REV. 979 (1983).

2. The firm is now called Dunaway, Schacter & Lo.

3. Rinkerman and Porter, *Unconscionability in Computer Contracts*, 2 COMPUTER L. REP. 2 (1983).

4. At that time, there existed in the academic world USC's Computer Law Journal, and Rutgers' Journal of Computers, Technology and the Law. In addition, Arizona State, like Santa Clara, had published a symposium issue on computer law. Professional journals

contacting additional people in earnest, all of whom expressed great praise for the idea.⁵ Our plan was to have these individuals send a letter, *care of me*, to the law school's Dean, George J. Alexander, supporting the proposed law journal. I would assemble the letters of recommendation, along with our business plan, and present them all at once to Dean Alexander and the law school faculty.

Colin Tapper sent his letter directly to Dean Alexander. An obvious mistake, right? Dean Alexander, of course, did not know what to make of a letter from an Oxford University Lecturer in Law espousing the enormous benefits of the proposed Santa Clara University law journal devoted to computer law. Unfortunately, my name was on the smoking gun, uh, letter, and Dean Alexander promptly called me on the carpet. It wouldn't be the last time. I escaped with a relatively mild admonishment about representing University interests when not authorized to do so and a directive that henceforward I and the rest of the merry band would work with Professor Kenneth A. Manaster. Ever the optimist, I took this to be tacit acceptance of the idea on the part of the Dean.

Professor Manaster was both a stabilizing and a driving influence. His first words upon meeting us were: "When do we publish?" From that meeting forward, we were skillfully guided and prodded by him through an approval maze of corinthian complexity. Professor Manaster knew when to pull the reins on our impatience. We tended to make it difficult, always wanting to cut through the Gordian knot. On perhaps thirty or forty occasions we stepped on his toes in our eagerness to get the new journal approved. It was Professor Manaster's idea to move beyond the then-current hot topic of computer law and ensure that the JOURNAL would cover such issues as telecommunications, biotechnology and toxic wastes generated by high-technology businesses. I note with twenty/twenty hindsight that Professor Manaster was correct and

consisted of the Computer Law Reporter, the Computer Law & Tax Report, and the Scott Report.

5. We contacted Daniel Remer, Paul Remer and Robert Dunaway; Colin Tapper; Fred Gonzalez; alumnus and counsel at Amdahl Corporation, Sunnyvale, California; William Fenwick, Ron Schrottenboer and Jay Dratler, Jr. of Fenwick, Davis & West, Palo Alto, California; Thomas Schatzel, Santa Clara Lecturer in Law and patent attorney, Santa Clara, California; Ted Hannig, Santa Clara law alumnus, organizer of the first Santa Clara Computer Law Conference and associate at Ropers, Majeski et al., Redwood City, California; George Lundquist, Litigation Support at IBM, San Jose, California; Albert Eisenstat, General Counsel of Apple Computer, Inc., Cupertino, California; John Eastling, President of LITICOM Corporation, San Francisco, California; John Bing, Director of the Norwegian Center for Computers and Law; and Steven Saxby, Professor at the University of Southampton, England.

that the JOURNAL has admirably addressed such diverse and timely topics in recent volumes.

By then, we had formulated a name which must be stated in full to appreciate its beauty: the SANTA CLARA COMPUTER & TECHNOLOGY LAW JOURNAL. Unfortunately, we eventually had to change the name to the one on the masthead, as Rutgers' JOURNAL OF COMPUTERS, TECHNOLOGY AND THE LAW took umbrage at our proposed name; they claimed they were on the verge of changing to the JOURNAL OF COMPUTERS & TECHNOLOGY.

This belies what we felt was a failing of the other academic-based computer law journals: they were neither consistent nor timely. We sought to avoid this as best we could with the JOURNAL by proposing that we publish only two issues each year. This would ensure that an article was published no more than four to five months after receipt and that the board of editors that started publishing the article, finished it. In addition, we wanted to include other article styles, such as informal essays, which required relatively little editing and therefore could be more timely. Katy Rogers, an articles editor for Volume 1, stated our goal best with the copy she wrote for our subscription brochure: "Combining the state of the art with the state of the law."

Still, however, we had to struggle with University approval of the JOURNAL. We started by presenting our business plan to the entire law school faculty. They approved our idea in principle, but placed it no higher than fifth or sixth on their list of budget priorities, despite the fact that we had presented the JOURNAL as a break-even venture in its first year. Dean Alexander informed us that there was only enough budget for the top three or four items.

The Dean presented his law school budget proposal to the Academic Vice President of the University, Father Paul J. Locatelli. As expected, Father Locatelli's approval of the law school budget included only the top few budget priorities. The Dean informed us of the decision and essentially pronounced the JOURNAL dead - it wouldn't be the last time. This, of course, is where Scott and I ("Hold us back!") immediately sought out Father Locatelli to point out the error of his ways. Father Locatelli still describes the meeting as the time Scott and I attacked him. All we did was passionately plea our case for the JOURNAL. Father Locatelli consented to presenting our case to the University President, Father William J. Rewak.

We had stepped on several shoes with our now infamous trip to the Academic Vice President's office, going over the heads of both

Professor Manaster and Dean Alexander. We were called on the carpet by both - it wouldn't be the last time. Some time later, the Dean informed us that Father Rewak had rejected the proposal for the JOURNAL. Again, the JOURNAL was pronounced dead. Again, it wouldn't be the last time. We assumed Father Rewak made his decision based upon limited information, and we set about to provide him with more information. Father Rewak did finally meet with us along with Father Locatelli, Professor Manaster and the Dean.

At the meeting, we pressed our case that the JOURNAL would break even if we could sell 300 subscriptions in the first year and obtain some already-promised donations. By now we had fairly exasperated the Dean. It was a true credit to his patience that last rites for both us and the JOURNAL were not administered by him at that meeting. We were given tacit approval and an ultimatum: sell 300 subscriptions by December 1984, or the Dean would pull the plug on the JOURNAL.

That grudging acceptance was all we needed. Scott and I resigned from LAW REVIEW and set up shop in a basement office shared with the school's newspaper, THE ADVOCATE. We then assembled an editorial staff by asking interested second year students and part-time third year students to submit an application and a writing sample.⁶ From there, Scott, Amy and I set about on several fronts to raise money for the JOURNAL, primarily on the subscription front. With appropriate fiscal restraint, we immediately spent several thousand dollars of the initial budget to print a slick brochure outlining our wonderful new JOURNAL. We purchased mailing lists from the Law & Technology Press and we poured through the corporate counsel book pulling every relevant address we could find. We sent out several thousand brochures. By August, subscriptions began trickling in at the rate of about fifteen per week.

From its inception, the JOURNAL was blessed with benevolent financial assistance. We received a grant and loan from the Student Bar Association and matching funds from the Law Student Division of the American Bar Association.⁷ We also received some ex-

6. With Professor Manaster's assistance, the following people were selected as the first board of editors of the journal: Ray Brinson, Gary Bronstein, Kevin Chiarello, Barbara DeBenedetto, Brad Elkin, Morgan Foley, Doris Freiberg, Susana Gatewood, Tom Hogan, Steve Johnson, Rodney Moore, Bob Perez, Katy Rogers, Ruth Schoenbeck, Joe Tabrisky, and Cathy Thorsteinson.

7. The loan, I am happy to say, was paid back to the Student Bar after the Journal's first year.

tremely charitable donations from law school alumni Fred Gonzalez, B.T. Collins and Robert Wall, as well as from the local law firms of Remer, Remer & Dunaway and Hopkins, Mitchell & Carley. We received substantial amount of moral support and practical assistance from law school Professors Howard C. Anawalt and Jost J. Baum; law alumni John Bates, Jr., Carol Berge, William Casey, Mary Hood, Maya Mathews and Charles Packer; the JOURNAL's Board of Advisors, particularly G. Gervaise Davis; the LAW REVIEW; THE ADVOCATE; and our families and friends. Throughout all of this we relied heavily upon Professor Manaster's guidance.

Our first list of authors was healthy; over twelve professionals and professors expressed their interest in writing articles for the first issue. Some submissions were even received in response to our brochure. Many authors, of course, begged out. We managed to recover enough articles for the first issue by lending out some of our student editors to perform some of the extensive and timely research and editing required for the articles. We felt all of the articles were timely and well written. As our third year of law school began, we also began the process of selecting the editorial board for Volume 2. Candidates for Volume Two applied by writing a "publishable" note and performing several hours of editing tasks for Volume 1. Scott was the perfect task master for this, cracking out assignments as if he were wielding a circus whip. This is why he was the Managing Editor. Again, historians disagree - Scott believes that he became Managing Editor only because I was bigger and threw a bigger tantrum to become Editor-in-Chief. I seem to recall a decision process that was more high-level and high-brow. Selective memory does have its strong points. Amy chose to become Research Editor, assisting the candidates in finding recent topics in technology law on which to base their notes.

The specter of doom still lay over the JOURNAL. Despite the fact that we were garnering substantial financial support from other sources, the Dean stuck steadfast to his requirement that we have over 300 subscriptions by December. We didn't meet the December goal. However, in January we shot right past 300 and approached 400 paid subscriptions. The Dean had eased the tension, and it was a foregone conclusion that the JOURNAL would be published. The reception we held following publication of our first issue was a true celebration. We had almost 400 subscriptions at that time and nearly 500 by the time the second issue shipped, nearly 200 more subscriptions than the LAW REVIEW. Volume 1 of the JOURNAL

was a success, and we knew it wouldn't be the last time. Judging from the quality of the Volumes that have followed, we were right.^{a,b}

^a It is interesting to note how differently events appear in others' recollections. When he describes *facts*, Mr. Van Arsdale is impeccably correct—especially when he describes his indifference to prior instructions. As for his numerous trips to “the carpet,” my office had no carpet. I'm not sure about the President's Office or the offices of the other villains in his story but if any of them or I had really not wanted the JOURNAL to thrive, I could not have written this note. George J. Alexander

^b Since Dean Alexander always got the last word, the JOURNAL was kind enough to give me that privilege in this instance. Cory H. Van Arsdale

