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# THE INTELLECTUAL HISTORY OF *THE SHORTEST ARTICLE IN LAW REVIEW HISTORY*

Erik M. Jensen<sup>†</sup>

I'm sure you're familiar with *The Shortest Article in Law Review History*.<sup>1</sup> If perchance you haven't read the piece, take a second and get up to speed. (You can do so right now—no reason to root through musty old issues of the *Journal of Legal Education*, where *Shortest* first appeared,<sup>2</sup> or to wait for the abridged version—since “This is it” was, in fact, it.<sup>3</sup>) *Shortest* has been translated into many languages<sup>4</sup>—not a difficult task, to be sure<sup>5</sup>—and many scholars, obviously taken with the piece, have memorized it. I know I have. I'm ready to declaim *Shortest* at cocktail parties or while out on the road, on the short circuit.

Many have said that *Shortest* is the best thing I've ever written<sup>6</sup> (or, if you prefer, not written<sup>7</sup>). It's not the most cited article in law

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<sup>1</sup> Erik M. Jensen, *The Shortest Article in Law Review History*, 50 J. LEGAL EDUC. 156 (2000).

<sup>2</sup> Besides, if your library is a “library of the future,” the issues might not have been acquired at all, or they might have been discarded long before they could become musty. (Indeed, one has to wonder how long musty old electrons will survive in the libraries of the future.)

<sup>3</sup> Jensen, *supra* note 1, at 156. That was it not counting the title, the author's name, the author's note, and the footnotes.

<sup>4</sup> Well, one at least. See Erik M. Jensen, *Hukuk Dergileri Tarihindeki en Kisa Makale*, 2005 MEDENİ USÛL VE İCRA İFLÂS HUKUKU DERGISİ 373.

<sup>5</sup> In case you're interested, the text in Turkish came out “Bu, budur,” *id.* at 373, which I hope isn't scatological.

<sup>6</sup> Sad but probably true. Cf. E-mail from Roger I. Abrams to author (Dec. 12, 2000) (“Brilliant piece in the Journal. (Among your best.)”).

<sup>7</sup> For a really non-written article, however, see Erik M. Jensen, *The Unwritten Article*, 17 NOVA L. REV. 785 (1993).

review history,<sup>8</sup> and its influence on the development of legal thought is as yet difficult to measure.<sup>9</sup> By any yardstick, however—whatever ruler of law is used—*Shortest* gets right to the point, without the intellectual baggage—the many satchel pages—that so many law review articles carry.<sup>10</sup>

In short—*sorry!*—*Shortest* makes up for shortness of breadth with depth. One doesn't need to turn up the volume to make a contribution to legal scholarship. And brief though *Shortest* is, it's chockful of interpretive issues. William Jefferson Clinton taught us about the ambiguities inherent in “is,”<sup>11</sup> and “this” and “it” are no easier to unpack.<sup>12</sup>

*Shortest* attracted much commentary immediately after its publication. The *Journal of Legal Education* itself printed a couple of responses, demonstrating the interest in the article,<sup>13</sup> and the editors gave me the opportunity to reply to my critics. My *Comments in Reply* reached a new peak in erudition-by-omission.<sup>14</sup>

Because of *Shortest*'s importance, those interested in the intellectual history of legal thought have every reason to want to know how *Shortest* came into being and what has followed its ballyhooed publication. (You want to know, don't you?)

<sup>8</sup> That honor unquestionably belongs to Gerald F. Uelman, *Id.*, 1992 BYU L. REV. 335.

<sup>9</sup> Scholars don't always recognize path-breaking work when it first appears, and *Shortest* has been short-cited. But not long after *Shortest*'s appearance, many top law reviews announced in 2005 that they would no longer entertain lengthy submissions. See Joint Statement Regarding Articles Length, available at [http://www.harvardlawreview.org/PDF/articles\\_length\\_policy.pdf](http://www.harvardlawreview.org/PDF/articles_length_policy.pdf) (last visited Oct. 25, 2008). Because I'm sure the *Harvard Law Review* and *Yale Law Journal* editors closely monitor my work, I have to assume cause and effect here.

<sup>10</sup> At least intellectual baggage can be lost without causing inconvenience. *But cf.* M. R. Franks, *Airline Liability for Loss, Damage, or Delay of Passenger Baggage*, 12 FORDHAM J. CORP. & FIN. L. 735, 735–36 (2007).

<sup>11</sup> Editors, you don't really need a cite for this, do you?

<sup>12</sup> One thing we can say for sure: There's a big difference between the “It girl” (Clara Bow, for whom there was no doubt about the meaning of “It”) and “This girl.” See The Clara Bow Page, <http://www.clarabow.net/> (last visited Dec. 19, 2008); Ty Burr, *This 'Girl' Has Old-Fashioned Appeal*, BOSTON GLOBE, July 2, 2008, at E7 (review of “Kit Kittredge: An American Girl,” a movie devoid of “It”); see also *That Girl* (ABC television broadcast 1966–1971) (featuring Marlo Thomas as “That Girl,” falling somewhere between “It girl” and “This girl”); Eric Wilson, *Who's That Girl?*, N.Y. TIMES, July 17, 2008, at G1 (discussing a once very different “That girl,” Madonna—the It girl *par excellence*—who is supposedly regressing to the mean by becoming nicer).

<sup>13</sup> See Grant H. Morris, *The Shortest Article in Law Review History: A Brief Response to Professor Jensen*, 50 J. LEGAL EDUC. 310, 310 (2000) (“Not so!”); Thomas H. Odom, *A Response to Professors Jensen and Morris*, 50 J. LEGAL EDUC. 311, 311 (2000) (“Why?”).

<sup>14</sup> See Erik M. Jensen, *Comments in Reply*, 50 J. LEGAL EDUC. 312, 312 (2000) (“ ”), or, if you prefer the Turkish version, Erik M. Jensen, *Cevabi Yorum*, 2005 MEDENİ USÛL VE ICRA IFLÂS HUKUKU DERGISI 376, 376 (“ ”); *cf.* E-mail from Mark Cochran to author (Dec. 6, 2000) (“Your Comments in Reply . . . is the best thing you haven't written in years. It's far ahead of anything I haven't written (and I haven't written a lot).”).

This is how it happened. A curmudgeonly colleague was perusing a reprint of one of my earlier articles,<sup>15</sup> a lengthy two-pager,<sup>16</sup> and he exclaimed, “That’s it?!” That was an intriguing comment—at least it was the best I could hope for from him—and it got me thinking.<sup>17</sup> I know what a really long article looks like—I’ve written many myself—but what would the quintessentially short piece look like?

And then the epiphany: That’s it!!<sup>18</sup> The quintessentially short article would be Damon Runyon’s worst nightmare: a titled page otherwise generally full of “white space.”<sup>19</sup> We all know that it’s harder to write a good short article than a long one, and drafting *Shortest* was really, really hard. I started by cutting adverbs and adjectives—normal procedure—but I then moved to nouns, and I scrutinized each pronoun and verb. “This is it” was learning distilled to its essence.

Even then, after the distilling—*burp*—my work wasn’t over. Proofreading is a never-ending task. At one point I was so tired that I dropped the proofs into the dessert.<sup>20</sup>

That’s how “This is it” came to be.

Some have questioned my claim that *Shortest* is the shortest article in law review history.<sup>21</sup> Two scholars went so far as to challenge my priority. For example, Professor Bob Rains wrote,

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<sup>15</sup> My “earlier” articles are those I do before lunch.

<sup>16</sup> See Erik M. Jensen, *19th Century 16th Amendment Jurisprudence*, 3 GREEN BAG 2D 241 (2000) (noting, after exhaustive research, the absence of case law on the meaning of the Sixteenth Amendment before the Amendment had been contemplated); see also Erik M. Jensen, *16th Century 19th Amendment Jurisprudence*, 4 GREEN BAG 2D 465 (2001) (coming to a similar conclusion about a different amendment).

<sup>17</sup> That happens.

<sup>18</sup> I drove an Epiphany once. It got good mileage, but it couldn’t seat five comfortably.

<sup>19</sup> See JIMMY BRESLIN, DAMON RUNYON 247 (1991) (“Don’t ever leave white space.” (quoting Damon Runyon)). The body of the shortest piece would look like this:

In fact, you could make several articles from the above. Please don’t do so, however. That would be plagiarism.

<sup>20</sup> The proofs were in the pudding.

<sup>21</sup> I have no idea about shortest works in most other disciplines, but Aram Saroyan’s one-word poems are worth a mention. See Richard Hell, *Lighght Verse*, N.Y. TIMES, Apr. 27, 2008, Book Review, at 9 (reviewing ARAM SAROYAN, COMPLETE MINIMAL POEMS (2007)). Jesse Helms used *Lighght*—that’s a complete poem, to be looked at rather than pronounced—to ridicule the National Endowment for the Arts because Saroyan won a cash award for the poem. *Id.* How very unfair. And musically there’s John Cage’s 4’33”—a three-movement piece without a single note. Having heard some of Cage’s other work, I think he should be praised for 4’33”, for much the same reasons I should be praised for *Shortest*. (Thank you, thank you, thank you very much.)

I must question your claim to authorship of the “The Shortest Article in Law Review History” [*Oh, you must, must you, Rains?*] . . . . May I call your attention to an article in verse entitled “Sum of a Law Professor’s Life” [*grudgingly noted*] which appeared in the *Journal of Legal Education*, Vol. 40, No. 3 (Spring 1990). If one takes into consideration all the verbiage which the author of the Y2K piece [*that’s me*] has tried to hide in his footnotes, I win hands down. I shall await your written apology in an upcoming issue of the *Journal*.<sup>22</sup>

He’s still waiting.

Professor Rains refers to an eighteen-word poem that contains no footnotes.<sup>23</sup> Of course reasonable people can disagree about how titles, author’s notes, and footnotes should be counted for purposes of measuring brevity.<sup>24</sup> But however the words in *Shortest* are counted, my *Comments in Reply* destroys Rains. As the Parrys definitively conclude, “Jensen’s article has no text and no footnotes, making it *certainly* the shortest article in law review history.”<sup>25</sup> Yep. And Rains’s poem refers to “[a]rticles with thoughts sublime” that “[I]eave subtextual reminders: Footnotes ‘neath the sands of time.”<sup>26</sup> By its own terms, therefore, *Sum*, unlike *Shortest*, isn’t a real law review article. Seeing the non-writing on the wall,<sup>27</sup> Professor Rains has now graciously conceded my victory.<sup>28</sup>

Professor Steve Bradford had an imaginative challenge (which means he made it all up) to the primacy of *Shortest*:

I’m sorry, but I beat you to it. [*You’re sorry? Oh sure, Bradford.*] Your claim to have written “The Shortest Article in Law Review History” is incorrect. I have written one even

<sup>22</sup> Letter from Robert E. Rains to author (Sept. 29, 2000) (citation omitted).

<sup>23</sup> See Robert E. Rains, *Sum of a Law Professor’s Life*, 40 J. LEGAL EDUC. 406 (1990).

<sup>24</sup> That serious, scholarly question must wait for another day and for another summer stipend. Senator Helms just passed on, so I have every reason to think my research will be supported financially. See *supra* note 21.

<sup>25</sup> Matthew Parry & Melinda A. Parry, *Theirs Not to Reason Why, Theirs but to Make Law Review or Die: A Critique of the Law Review System and Annotated Bibliography*, LEGAL REF. SERVS. Q., Vol. 23(4) 2004, at 29, 40 (emphasis added). The Parrys came to this conclusion after skeptically noting that, in *Shortest*, I had “*claim[ed]* to have written the shortest law review article ever,” a piece that “consists of three words and two footnotes.” *Id.* (emphasis added). Another cite for Uelman! See *supra* note 8.

<sup>26</sup> Rains, *supra* note 23, at 406.

<sup>27</sup> Perhaps Steve Bradford’s. See *infra* note 29 and accompanying text.

<sup>28</sup> “[A]s I recall you won hands down in the end!” E-mail from Robert Rains to author (July 15, 2008). “[I]n the end” must refer to my *Comments in Reply*. See *supra* note 24 and accompanying text. Please ignore, for these purposes, the fact that *Comments in Reply* is itself sans footnotes. Even if *Comments in Reply* isn’t technically an article, my non-article beats Rains’s non-article.

shorter. See the article I cite in fn. 13 of my article, “As I Lay Writing,” 44 J. LEG. EDUC. 13, 14 (1994). Since you edited the Journal of Legal Education article, and I am sure you carefully checked all the footnotes, you must have been aware of this article. [*I forgot, although it wouldn't have changed anything anyway.*] I therefore must conclude that your claim to have written the shortest article was deliberately misleading. I hereby demand a retraction or I shall be forced to bring legal action under Rule 10b-5. (I'll find a security somewhere in this.)<sup>29</sup>

Finding a security is easy: a “note” is a security,<sup>30</sup> Bradford sent me a note, and he cited note 13. (With two notes, maybe there are two securities—a security system.) But now let's get to the non-textual analysis. Bradford's note 13 reads: “It is difficult to get a major law review to accept blank sheets of paper for publication. It is not, however, impossible. See, for example, my recent short article: C. Steven Bradford, [untitled], 90 Colum. L. Rev. 838 (1990).”<sup>31</sup> Page 838 is, of course, blank. Bradford was not writing, that is, on a clean slate.<sup>32</sup>

Bradford's concepts now seem a bit dated—blank sheets of *paper*? What's *paper*? More fundamentally, I question Bradford's claim of title to a page that is, in fact, untitled. An article might have little content,<sup>33</sup> but a title, I submit, is a prerequisite for an article. No title, no article, and *a fortiori* no law review article.

As far as I know, Professor Bradford hasn't yet conceded defeat, but to my mind the game is over.<sup>34</sup> (Even Al Gore and Hillary Clinton retreated from their no-concession stands.) Bradford will get only distractions,<sup>35</sup> not retractions, from me.

I would be remiss in not mentioning Professor Robert Laurence's contribution to the literature, *The Shortest Article Ever on Secured*

<sup>29</sup> Letter from C. Steven Bradford to author (Sept. 7, 2000).

<sup>30</sup> See 15 U.S.C. § 78c(a)(10) (2006) (“The term ‘security’ means any note . . .”).

<sup>31</sup> C. Steven Bradford, *As I Lay Writing: How I Write Law Review Articles for Fun and Profit*, 44 J. LEGAL EDUC. 13, 14 n.13 (1994).

<sup>32</sup> Bradford has been not writing in lots of other venues. For example, I've seen many a cave wall reflecting his non-work.

<sup>33</sup> For example, as parents of teen-age girls know, articles of clothing can have almost no content, and definite or indefinite articles . . . Oh, this all gets so complicated. Another summer stipend, please, mister dean, see *supra* note 24, so I can do an article on the meaning of “article.”

<sup>34</sup> And I don't do overtime. Cf. *supra* note 15; *infra* note 38.

<sup>35</sup> See accompanying text; *supra* notes 1–34 and accompanying text; *infra* notes 36–38 and accompanying text.

*Transactions*,<sup>36</sup> which I admit I missed in my forty-five minutes of research on *Shortest*. The piece appeared in *Arkansas Law Notes*, which I don't ordinarily see, and it reads, in its entirety (if you ignore a Bob-Lanier-size footnote): "Once and for all, let's get this straight: *unperfected* does not mean *unsecured*. O.K.?"<sup>37</sup> I don't understand the wordiness—why "does not" rather than "doesn't" if you're going to use contractions anyway?—but I applaud Laurence's effort. (I can applaud his effort because I prevail on word count.)

Did I mention that I win in the shortest-article sweepstakes? Yes? Then I guess it's time to cut this short. Ed McMahon will be arriving at any moment, and I still need to write another couple of articles today.<sup>38</sup>

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<sup>36</sup> Robert Laurence, *The Shortest Article Ever on Secured Transactions*, 1989 ARK. L. NOTES 77. I love the idea of "Ark Law Notes." See, e.g., Noah, *A Couple of Ideas About Flood Insurance*, 3000 B.C. ARK L. NOTES 1 (not quite covering everything).

<sup>37</sup> Laurence, *supra* note 36, at 77 (footnote omitted).

<sup>38</sup> These will be later articles. Cf. *supra* note 15.