Defending the Law Review - A Response to Judge Posner & Professor Lindgren

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ARTICLE: Defending the Law Review--A Response to Judge Posner and Professor Lindgren

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TEXT:
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Introduction

I am fairly new to the publication game. I am not a professional writer. I was never a law review editor. My current teaching job does not mandate that I "publish or perish." On top of that, I believe that law reviews were invaluable in helping me write research papers during my time in law school. I enjoy reading law review articles to this day. In addition, I have enjoyed the privilege of having several of my own pieces accepted for publication as law review articles. Consequently, I have had positive experiences dealing with law review editors over the past few years. Therefore, despite those who challenge the viability of law reviews, law reviews were certainly good to me. Quite frankly, I like law reviews.

Against that backdrop, law reviews are largely criticized. The criticisms include, among others, too many articles, "lack of scholarly quality, " inexperienced editors, " and excessive footnoting, " sometimes to the point of even demonizing student editors. In this commentary, I first discuss what law reviews do. Next, I respond to some of the criticisms of law reviews. Finally, I discuss why law reviews are still beneficial despite those criticisms.

What is a Law Review, Anyway?
In its most basic form, a law review is a compilation of articles written by attorneys, judges, law professors, and, occasionally, law students. The articles typically cover "recent court decisions, unresolved [*324] issues of law, and other topics of interest to the legal community." [*8] Prior to publication, these articles are edited by upper-class law students. Students have the very thankless job of cite-checking to make sure that the author's points have the proper support. Students also check for spelling, punctuation, and grammatical errors. Therefore, editing a law review article is a very big job.

Some Criticisms of Law Review and My Responses

I would be understating the obvious by saying that there are those who do not like law reviews. [*7] For example, one of the classic rants against law reviews comes from Fred Rodell's piece, "Goodbye to Law Reviews." [*8] He rails that the two things most wrong with law reviews are style and content. [*9] Since then, Seventh Circuit Judge Richard Posner and Professor James Lindgren have emerged as probably the two shrillest voices denouncing law reviews. For example, Professor Lindgren accuses law review editors of committing "crimes against humanity." [*10] Also, Judge Posner takes aim at law reviews as being "hopeless." [*11] This kind of commentary does not strike me as open-minded.

1) Excessive Footnoting

One popular criticism of law reviews is that the typical article is severely weighed down by footnotes. The allegation is that law review editors require their authors to support their points with seemingly endless footnotes and citations. [*12] Supposedly, every point or every sentence in an article is to be supplemented with a footnote consistent with the current Bluebook citation. In my opinion, this is a fair point. [*13] As a practical matter, a fifteen page article with 340 [*325] footnotes (with 270 of the footnotes simply being Id.) would probably look ridiculous. I think that even the most ardent law review defenders among us would agree.

However, I firmly believe that footnoting is legitimate when it comes to writing law review articles. First, we as law students (and attorneys) hear all the time that we should support our positions. [*14] To wit, we should always be able to explain why we are taking a particular position. In order to do that, we have to point to some authority that is consistent with our position and backs it up. This is certainly true in a number of instances. In the typical first year legal writing class, law students submit assignments to their legal writing instructors in which they must properly cite the relevant legal authority. The same is true in any upper-level class in which a student has to write research papers, mock appellate briefs, commercial document drafts, and the like.

Next, I believe footnoting provides quality control for every legal document that someone writes. From our first day of law school, we learn the necessity of paying attention to detail. Not only must we be precise in our work, but we must consistently check its accuracy before we submit our finished product, whether to our professor, a presiding judge, or to the managing partner. If this were not the case, we would not need to spend long hours footnoting and cite-checking in law school. And in professional life, we would not spend endless hours in the law library working on document review, dotting every i, crossing every t, and checking spelling and punctuation on every contract, every legal brief, every negotiable instrument, and every piece of legislation. This is the level of exactitude that legal practice requires. And law school (and law review) is the very place where we learn that exactitude.

2) Inexperienced Editors

The next popular criticism of law reviews is that they are edited by students. Judge Posner, for example, seems to relish taking shots at law review editors precisely because they are students and not practitioners. [*15] In my opinion, Judge Posner selectively forgets the fact that a practitioner learns his profession as a student first. One would think, based on his rather cynical commentary about student [*326] editors, that Judge Posner practiced law and became a judge straight out of college. As Judge Posner was a law review editor himself, [*16] I am disappointed that he would take such an unfriendly stance toward something that he himself once participated in. Professor Lindgren, also a former law review editor, takes an equally antagonistic approach, but also attempts to slip in a mea culpa. He says, in effect, yes, I was part of the evil-doing machine once, but I am now sorry that I did it. [*17]

How exactly does one learn his profession? One learns his profession by getting practical experience. How does one acquire practical experience? One starts by developing skill in an academic setting. I would think that any professional attorney, physician, architect, or accountant would agree with that statement. For example, accountants first learn how to prepare financial statements and tax returns from classroom assignments. Students are given certain facts and they use that information to put together financial statements and tax returns from scratch.
Similarly, law review gives students practical experience in the academic realm. "While working on a law review, a student develops, often for the first time, the skill of taking criticism from a peer rather than a professor, and conversely, as an editor, giving criticism that is both tactful and constructive." As I mentioned previously, law reviews also give editors additional practice in analyzing legal arguments, as well as cite-checking. All of this helps to prepare student law review editors for what they will encounter in real life practice.

3) Article Selection

Contrary to the opinion of their detractors, law review editors are smart people. Students primarily gain membership on law reviews based on their first year grades. Similarly, students get accepted to law school based primarily on their high undergraduate GPAs and LSAT scores.

[*327] I believe the critics' argument that students are not competent to either select articles or edit them is misguided. That is like saying that a person cannot be successful in law school because his undergraduate major was physical education, or philosophy, or business administration. The anti-law review argument could be equally applied to all law students for the same reason: the typical law student is doomed to failure precisely because he is not a legal expert. If this is true, then ninety-nine percent of us never would have gone to law school. That idea is just silly.

True, upper-class law students are not legal experts; however, no one expects law students to be. No one starts law school as a legal expert. That is why we call the academic experience law school. Law school is a new experience for all of us. This is something else that Judge Posner seems to forget. Also, as Judge Posner clearly expresses his distaste for editors who are legal neophytes, I believe that he has absolutely no use for student editors, regardless of their professional and life experience prior to law school and law review.

It is true that some law students start law school right out of college and are in their early to middle twenties. Other law students start later in life, and come to law school after careers as stockbrokers, physicians, entrepreneurs, store managers, engineers, teachers, and so on. I was in my early thirties when I started law school after having been an accountant for ten years. Even in the case of older students like me, Judge Posner, in my view, has no regard for even an older student's ability to be successful both in law school and on the law review. Judge Posner's commentary convincingly shows that in his perfect world of legal scholarship, student law review editors would not exist!

I see one ray of hope on the horizon, and that is the growth of the law-related blog. Blogs such as "How Appealing," "The Volokh Conspiracy," "Law Blog," "Legal Theory Blog," the University of Chicago "Faculty Blog," and "Balkinization" are gaining attention and respect. They are becoming legitimate venues for academic publication. They are much more timely than law reviews and, best of all, they bypass the student editors. I believe that the law reviews are beginning to take notice of this competitive medium and, like the mainstream print and electronic media may find themselves compelled by competition to alter their practices in order to hold authors and readers. Let us hope so.

[*328] Contrary to the rants of Judge Posner and Professor Lindgren, a law review editor's job is not to be a legal authority on the subject matter of a specific article under consideration. A law review editorial team's job is simply to pick which articles it likes and believes are strong enough to be published. This has nothing to do with an editor's per se understanding of any technical or substantive issues in an article. Nor does editing call for a student to attest to the veracity of what the author is trying to say. The burden falls on the author to prove his point. This goes back to my earlier point on the necessity of cite-checking; the editors have to verify that the author's points are properly supported.

Again, those who write law review articles include lawyers, judges, law professors, college professors, and occasionally, law students. What do we write about? The same way that student editors choose articles that they find interesting, we as authors write about legal issues we find interesting. The topics can be as diverse as tax law, constitutional issues, terrorism, antitrust and professional baseball, and lawyers' career dissatisfaction, just to name a few.

Another Response to Judge Posner

This now brings me to address one more of Judge Posner's complaints. He finds that the majority of law review articles are less doctrinal than to his liking. Judge Posner's chief complaint is that a lot of legal scholarship has impermissibly shifted to what he calls "nondoctrinal subfields of law." He expresses his distaste for topics like law and literature, critical legal studies, economic analysis of law, feminist jurisprudence, and critical race theory, to name just a few.
I think Judge Posner's complaint is seriously misplaced here, also. First, all of the "nondoctrinal" subjects that he complains about are affected by the law in some fashion. As Judge Posner surely knows, the law stretches its tentacles into our everyday lives in any number of ways. For example, when I go into Dunkin' Donuts and order a large french vanilla coffee, I am creating an enforceable contract by law. Anytime I write a check, it implicates Articles Three and Four of the Uniform Commercial Code. When I file my income tax return with the Internal Revenue Service, it is subject to the Internal Revenue Code.

Second, the fact that some legal articles do not deal with specific technical aspects of the law does not make them any less relevant. For example, writings on feminist jurisprudence look at legal issues involving gender discrimination and equal protection. Similarly, if an article on law and literature discusses how films like The Verdict, Witness for the Prosecution, The Caine Mutiny, and Twelve Angry Men concern legal issues, I do not see that as being so terrible. I do not think that such an article would lead to the slow death of legal scholarship that Judge Posner so greatly fears. I believe Judge Posner's stance on "nondoctrinal" writing is dead wrong.

Next, I see an open generational bias regarding Judge Posner's belief that student editors do not have the capacity to recognize good legal scholarship. Interestingly, he acknowledges that student editors become law review members due to their superior first-year grades, albeit in what he calls the "golden age" (which he believes gradually disappeared between 1970 and 1990) of student-edited law reviews:

> The narrow orbit in which legal scholarship revolved facilitated the job of law review editors. Inexperienced they might be, but as students who had earned a berth on their school's law review by doing well in their first-year classes they had demonstrated that they possessed the knack of legal doctrinal analysis that was the very heart of legal scholarship in that era.  

It seems to me that Judge Posner has developed a severe disrespect for student editors since his so-called golden age. This must be the source of his continuing derision of modern day student editors as handicapped by ignorance, immaturity, and inexperience. I am thoroughly convinced that Judge Posner's position severely devalues a student editor's ability and efforts to successfully bring a law review publication to fruition. I believe his antipathy is grievously wrong, and I cannot disagree with him more strongly.

Again, law students are pretty smart people. As Judge Posner himself noted above, most student editors must have done well in their first-year classes in order to make the law review. This was true during his time as a law student, this was true during his so-called "golden age," and it is just as true today. Because student editors are smart enough to score top grades in their substantive classes, I certainly think that they have the intellectual acuity to make an honest, informed judgment on the publishable quality of a proposed article.

In corporate law, for example, the business-judgment rule protects directors from liability for an erroneous, albeit good faith decision. Why? While a corporation's directors have the fiduciary responsibility to act in the corporation's best interest, they are not required to be guarantors of the corporation's success. Similarly, an editor upholds the law review's best interest by choosing top quality articles for publication. If a student editor makes a good faith mistake in judgment and picks a "wrong" article to be published, then the editor does not suffer any recrimination. Why should he? And I am deliberately using the word "wrong" as a relative term here. Whose definition of "wrong" is supposed to inform the student editor's decision? Rodell's? Posner's? Lindgren's? Or even mine for that matter? I have absolutely no doubt that a student editor is astute enough to choose an article and topic that is interesting and likely relevant to the legal community. Consequently, there is no harm to the legal community; legal scholarship would not be destroyed.

"In sum, students are competent to evaluate articles because they can competently evaluate each of the criteria listed above. If 'misjudgments' are made, they do not harm the reviews or legal scholarship."  

One final point about Judge Posner's stance on inexperience. It brings to my mind a rather ironic twist on the relationship between students and professors. In my own experience as an undergraduate taxation instructor, part of my job is to make academic and professional judgments on student performance - this is the grading process. I make those judgments based on the fact that I had practical experience in the legal field prior to teaching law and grading law school exams.
The irony here is this: with law review publication, the roles are reversed. Student editors are in a position to make editorial assessments on articles they receive from professors. This puts us, as professor-authors, in the uncomfortable position of seeking editorial "favor" in the form of a publication offer, and suffering the resulting blow when our manuscript is rejected instead. This is no different from all of us as law students seeking professorial "favor" in the form of good grades. As such, one can certainly understand why some professors do not like the idea of having their work assessed by those who have not yet earned their Juris Doctor degree.\footnote{36}

A Few Words on Professor Lindgren's Diatribe

I think Professor Lindgren's article, An Author's Manifesto, is nothing short of foul and just plain hateful. Although I was never a law review editor myself, I felt personally insulted as an author after reading it. I felt so insulted that my immediate reaction in characterizing his article as a "diatribe" was being charitable. Frankly, I had to read his piece two more times just to make sure I did not miss anything. Consequently, I felt even more insulted and just plain dirty after re-reading his piece. On the bright side, however, Professor Lindgren's article demonstrates the vitality of First Amendment protection.

I will say this up front: although Professor Lindgren's self-described "playfully extreme"\footnote{37} article was intended to be tongue-in-cheek, I admittedly missed the joke. Frankly, I fail to see any satirical wit or humor in his article. In my humble opinion, Professor Lindgren's piece is the single most hostile, vitriolic, cynical, borderline defamatory law review article that I have ever read in all of my professional life. His article is invective without four-letter profanity. If I were a law review editor today, I would be highly insulted by his piece. Even worse, if he were the faculty advisor to my law\footnote{332}\*\* review, based on how he feels about law review, I would run screaming into the night!!!

The first part of his rant is titled "Crimes Against Humanity."\footnote{38} He starts out by comparing student editors to war criminals (exactly how he analogizes law review editing to committing wartime atrocities is beyond me). However, it is painfully obvious to me that he has absolutely zero respect for either student editors or authors. 'I'm not saying that law review editors are stupid; I wish things were that simple.'\footnote{39} Then, in his very next sentence, he turns his gun on the authors: "On the contrary, law review editors are smart - frequently smarter than the authors whose work they edit."\footnote{40} Ouch! In his first two sentences, not only does he make blatantly inconsistent statements about student editors, he then goes on to dismiss authors as blithering idiots. Since Professor Lindgren leaves no doubt regarding how he feels about law review editors and authors, I would ask if he has the same opinion of himself, since he too is a member of both groups (somehow I doubt it). Is his obviously unfriendly commentary supposed to be constructive criticism, satire, or just some flippant cheap shots? I will leave the answer to the reader's judgment.

Next, Professor Lindgren refers to several anecdotal incidents in which authors had been abused by student editors.\footnote{41} His examples, among others, include:

1. Asking a female author, both a Ph.D. and J.D., if she understood the mathematical equations of her article. When the author responded that the question would not be asked of a man, the editor backed down.\footnote{42}

2. Threatening an author who objected to proposed changes by saying the review had "a long memory."\footnote{43}

3. Editors cutting down parts of one author's article and pasting the pieces onto an article written by a professor at their own law school.\footnote{44}

4. Editors refusing to acknowledge an author's proof that they had made stylistic errors to his original manuscript. The author then withdrew his piece and published it elsewhere.\footnote{45}

[\*333] 5. Editors turning down an article because the author did not graduate from an "elite" law school.\footnote{46}

Admittedly, these are flagrant, egregious abuses of an editorial position. I would have to ask two questions. First, where were the faculty advisors? Second, were these students subjected to any disciplinary sanctions by their law schools? I would like to know what (if anything) ultimately happened (Professor Lindgren does not tell us). Professor Lindgren's failure to paint the whole picture casts doubt on the point he is trying to make. Indeed, highlighting a few outliers does not reflect the attitude and competence of law review editors as a whole.
Satire or not, I think Professor Lindgren's tenor can somehow lead one to reasonably believe that he feels that this sort of unethical behavior goes on at every law review in every law school in this nation. Unfortunately, by the time Professor Lindgren offers some fairly decent suggestions (like blind reviews and presumptive page limits) as to how to solve the problem (as he sees it), his anti-student ravings have given his suggestions a hollow ring and, I think, neutralized those suggestions. I say neutralized in the sense that I think Professor Lindgren had long since lost the proverbial room by page 538, especially after he accuses student editors of committing crimes against humanity on page 527, the very first page of his article.

During law school, a student learns to persevere, and eventually thrive, in an often adversarial environment. One needs to have thick skin to be able to successfully navigate law school and, in particular, be able to withstand the seemingly endless Socratic "cross examinations" from professors. In my view, Professor Lindgren's commentary is so over the top and so unnecessarily vindictive that it would be difficult (at least for me) to take his "tough love" critique seriously, no matter how thick-skinned one might be. He does not let up after his suggestions, either. "After all, do I really expect oppressors to give up their oppression voluntarily?" Finally, "you are responsible for the evil that you do .... Admit that you don't know what you're doing, and use that self-knowledge to reform your journals." Even taking Professor Lindgren's arguments in the most favorable light, I, for one, would be dubious in accepting his proposed help, if all his "help" did was continually smack me in the mouth with a crowbar.

To be fair, Professor Lindgren wrote another piece, Reforming the American Law Review, in which he states that his attacks on law reviews were intended to be satirical. Assuming that is the case and his heart was in the right place, I still do not see the joke. Additionally, I still believe that the heavy-handed venomousness of his earlier piece effectively drowned out his attempt at satire as well as the supposedly constructive criticism. The problem I have with Professor Lindgren's self-alleged attempt at "satire" is this: his attempt at humor hardly conceals his contempt for student editors. In addition, his attempt to couch his piece as a playfully extreme rant comes off as the functional equivalent of getting all of his insults out and then saying "just kidding" at the end (before anyone can respond). Meanwhile, he gets all of his punches in and does his damage, which I believe was always the desired result.

Why a Law Review is Still Viable

Despite Judge Posner's and Professor Lindgren's continuing antipathy to law reviews, I strongly believe that law reviews are still great tools that provide a great service to the academic and legal communities. I maintain my confidence that law reviews are beneficial for the following reasons.

1) Law Review Editors Help Authors Whose Bluebook Skills are Rusty

One point that I think Professor Lindgren consistently misses is that editors, believe it or not, actually give authors some very helpful suggestions and technical tips. The editors whom I have had the pleasure to work with certainly helped me with some excellent advice.

It has been seventeen years since I took legal writing in law school. The Bluebook that I used way back then was the fifteenth edition; the current version of the Bluebook is the nineteenth edition. Consequently, student editors are typically a semester (or two) removed from having had their legal writing course, and would have taken it much more recently than most authors. This is certainly true in my case.

Although I have the current edition of the Bluebook (as well as my old edition from my law school days), I welcome the editors' input when it comes to the correct citation form. Why? Because I freely admit that my legal writing prowess is quite rusty, and I am truly grateful for student editors giving me their help and guidance. I would like to think that most authors feel the same way.

2) The Law Review is Still a Joint Venture

Judge Posner's and Professor Lindgren's complaints notwithstanding, I strongly believe that a law review publication is a joint effort between authors and student editors. The parties involved have the same stake in the process - that is to make the finished product the best it can be. In spite of Professor Lindgren's above examples, I do not believe (perhaps naively) that either editors or authors would deliberately sabotage the publication efforts. For obvious reasons, I believe that would be self-defeating. As I have mentioned previously, my dealings with student editors have been extremely positive, and the editors have certainly helped me more times than I can count.
I have certainly accepted suggestions that editors have given me to help me improve my piece, just as other authors have. I have certainly accepted suggestions that editors have given me to help me improve my piece, just as other authors have. Other times, I have stood my ground and prevailed to keep my original text as written. It only takes a reasonable conversation at both ends to come to a mutually satisfying result. In the final analysis, however, the editors' suggestions are just those - suggestions. The author retains the final say as to how he wants to present his piece. Although the author has the last word, so to speak, that does not mean that any author is automatically a despot, nor is a student automatically an enemy with the dreaded red pen as his weapon of choice. While authors and editors might have an occasional difference of opinion, the efforts to publish are not adversarial, nor should they be. The finished product of a well-written law review article is beneficial for both editors and authors.

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3) Benefits for Student Editors

Students get any number of academic benefits as law review is part of the learning experience for editors. Law review further hones and expands the writing and analytical skills that student editors learned in their first-year legal writing courses. Students get academic credit for law review participation. Students can satisfy the upper class writing requirement by submitting notes and comments. Students can also receive graduation awards for participating in the law review.

As I mentioned previously, law review also gives student members a glimpse of what they will encounter in daily legal practice. Students will have to be able to prioritize, exercise due diligence, and have excellent time management skills. "Prioritizing between daily school assignments, law review duties, and other extracurricular activities serves as a practice round for law review members before they enter the workplace." Not only do students acquire these skills during law school, but they will also rely on those skills in daily practice. "Law review membership necessitates that a member acquire various tools that any successful attorney must possess--efficiency, diligence, task prioritization, and time management." Finally, law review membership puts student members ahead of the curve in terms of getting better job offers and higher salaries.

4) Benefits for Authors

The law review obviously provides benefits for authors as well. First, the law review provides authors with a forum to write about legal topics. "Some faculty publish out of a sincere desire to disseminate their ideas." Speaking only for myself, I will say that I like to write about legal topics that I find interesting. Whoever reads my writings can agree or not. "Not every article will make every reader happy." In my humble opinion, therein lies the beauty of legal scholarship: reasonable minds can differ.

Next, a well-written, well-reasoned piece will eventually find a publication home. With the many law reviews out there, I imagine that it is only a matter of time before a law review finds an article that fits with the law review's objectives. Not only that but legal scholarship means different things to different people. By necessity, a law review publication is not a homogenous undertaking (aside from a symposium format). "Law reviews compete by trying to attract the best portfolio of articles--the best collection among submissions that would appeal to varied critical readers."

Finally, law review publication provides tenure opportunities for authors. For better or worse, publication is a factor in determining whether a professor gets tenure or some other promotion (i.e. assistant to associate professor). Additionally, publication also gives authors the means and opportunity to keep up with the current developments of the profession. Law is an especially dynamic field; it is forever changing. We can look at the recent debate regarding the new health care law, and the Congressional "fiscal cliff" legislation as proof of that. A professor's job is to deliver the information to his students so that the students can gain a proper understanding of the subject matter on a timely basis.

A professor's classroom credibility depends in part on his delivering current information to his students. Just imagine a constitutional law professor trying to teach his class in 2013 that Plessey v. Ferguson is still the law of the land. And he does so despite the Brown v. Board of Education decision, civil rights legislation, and the fact that an African-American male is in his second term as the forty-fourth President of the United States. I admit this is an extreme example, but it serves the purpose of showing the necessity for professors to stay current. Legal scholarship and publication help to meet that end.

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Conclusion
I have addressed in the preceding pages some of the criticisms about law review and have given my opinion regarding those criticisms. I have also shown why I like law reviews and why I believe that they are still worthwhile. Finally, I would like to thank every person who has ever served on a law review. Those individuals have willingly undertaken a very painstaking, meticulous job as volunteers.

Thus, I believe that some of the criticisms that I have mentioned here are a grievous slap in the face and needless personal attacks on those individuals who accepted both the challenge and responsibility of putting out a quality product. It is one thing to give a valid critique and give helpful suggestions; I can respect that. However, especially in the cases of Judge Posner and Professor Lindgren, I think that their non-stop vilification of student editors as somehow uninformed, uncultured bumpkins (merely because they are students) is just vile.

The people who serve on law reviews have the arduous, painstaking task of sifting through hundreds (if not thousands) of manuscripts (including this one) to pick the fifteen or twenty pieces that they will ultimately accept for publication. Again, to the consternation of those people who do not like law reviews, I emphatically thank student editors, past, present, and future (even Richard Posner and James Lindgren), for wanting to take on such a massive job.

FOOTNOTES:

n1. Kenneth Lasson, Scholarship Amok: Excesses in the Pursuit of Truth and Tenure, 103 Harv. L. Rev. 926, 928 (1990) (“Simply put, there are too many of them.”).


n3. Id. at 1132.


n9. Id. at 38.

n10. Lindgren, supra note 5, at 527.

n11. Posner, supra note 2, at 1135.

n13. Id. at 360-61 ("A more serious argument made by critics is that law review editors are obsessed with form to the detriment of substance, fixated by footnotes and the Bluebook. I have to admit there is some truth to these arguments. I find that students are often fanatics about the Bluebook, perhaps because it is easier to focus on rules when editing is much more amorphous. Much simpler to tell Professor X that the Bluebook requires a pin cite than to tell that same professor why his argument is not convincing.").

n14. Id. at 362.


n17. Lindgren, supra note 5, at 528.


n19. Posner, supra note 2, at 1132 ("Given the handicaps of ignorance, immaturity, inexperience, and inadequate incentives, the wonder is not that law reviews leave much to be desired as scholarly journals, but that they aren't much worse than they are."); see also Lindgren, supra note 5, at 527 ("Our scholarly journals are in the hands of incompetents.").

n20. Sloviter, supra note 18, at 7; see also Scott Turow, One L 67 (1988).


n22. Posner, supra note 2, at 1132.

n23. Lindgren, supra note 5, at 527.

n24. Stracher, supra note 12, at 355 ("A law review, when it accepts an article for publication, is not saying: 'This is true;' it is merely saying: 'We like this.").

n25. Id.
n26.  Id.

n27.  Posner, supra note 2, at 1132-33.

n28.  Id.

n29.  Id.

n30.  Id.

n31.  Id. at 1132.

n32.  Id.


n34.  See, e.g., 18B Am. Jur. 2d Corporations § 1470 (2004); see also Lael Daniel Weinberger, The Business Judgment Rule and Sphere Sovereignty, 27 T.M. Cooley L. Rev. 279, 284 (2010) (“The standard formulation of the Business Judgment Rule usually includes the following components: courts will not review the substantive reasonableness of a business decision that is reasonably well informed, made in good faith, and without conflicts of interest, fraud, or illegality. This doctrine has been applied to decisions of directors, officers, and majority shareholders of corporations.”).

n35.  Cotton, supra note 33, at 973.

n36.  See J.C. Oleson, You Make Me [Sic]: Confessions of A Sadistic Law Review Editor, 37 U.C. Davis L. Rev. 1135 (2004); see also Stracher, supra note 12, at 358 (“Thus, the complaints about student-run law reviews' failure to select the 'best' articles for publication—even if true—is really a smokescreen for faculty whose egos are bruised by giving students the power to 'grade' them.”); Hunter, supra note 7, at 766 (“We legal scholars just hate students assessing our work. We hate asking students to consider our article. We are disgusted at our role as supplicants when we beg them for an expedited read.”).

n37.  Lindgren, supra note 5, at 528.

n38.  Id. at 527.

n39.  Id.

n40.  Id.
n41. Id. at 528.

n42. Id.

n43. Id. at 529.

n44. Id. at 528.

n45. Id. at 529.

n46. Id. at 530.

n47. Id. at 535-39.

n48. Id. at 527.

n49. Id. at 537-38.

n50. Id. at 538.


n52. Cotton, supra note 33, at 951 n.1 ("Professor Lindgren has viciously attacked student editors in several articles.").

n53. Wendy J. Gordon, Counter-Manifesto: Student-Edited Reviews and the Intellectual Properties of Scholarship, 61 U. Chi. L. Rev. 541, 544 (1994) ("But as Jim fails to indicate, the student editors sometimes recommend tremendously helpful structural changes.").

n54. Id. at 544-45 ("Indeed, nearly every one of my articles has been stronger coming out of the editorial process than it was going in.").

n55. Cotton, supra note 33, at 980 ("Although authors are understandably frustrated by the repeated revisions, the changes to their work that law reviews submit to the author are merely suggestions. In the end, the author has the authority to accept or reject.").

n56. Stracher, supra note 12, at 360 ("Second, I would argue, the law review's primary purpose is educational.").
n57. Id.

n58. Id.

n59. Id.


n61. Id. at 931.

n62. Id. at 933.


n64. Cotton, supra note 33, at 958.

n65. Id.


n67. Plessey v. Ferguson, 163 U.S. 537 (1896).
