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Best Practices for Academic Law Reviews

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Best practices for academic law reviews encompass both ethical standards and operational methods. In 1992, the National Conference of Law Reviews adopted a set of ethical standards.¹ This article addresses both ethical standards and operational methods.²

The scope of this article pertains to academic law reviews published by law schools in the United States, including both general-purpose law reviews and special-topic law reviews. It does not extend to foreign law reviews, bar association periodicals, or for-profit law reviews.

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I: Prior Criticism

Over the years, law reviews have been subject to extensive criticism. Such criticism has fallen into three categories. First, it has been alleged that the subject matter of law reviews is of little practical value. Second, it has been alleged that law review articles are verbose and poorly organized. Third, it has been alleged that students on law review staffs lack the experience required to produce a professional journal. Specifically, it has been alleged that these students lack the ability to select the most qualified articles, and lack the ability to edit the articles which are selected for publication.³ These three categories of criticism will be addressed at various places in the remainder of this article.

II: Legal Writing Program

A law review should be an integral part of a law school's carefully designed program of curricular and co-curricular legal writing activities. Legal writing activities could include:

1. Legal writing courses, in which students can learn how to write office memoranda of law, trial documents (pleadings, discovery documents, motions, etc.), and appellate documents (notices of appeal, appellate briefs, etc.).
2. The law school's general-purpose law review.
3. Any special-topic law reviews: natural resources, civil rights, intellectual property, etc.
4. An institutional or student chapter of Scribes, the American Society of Legal Writers.⁴
5. The law student newspaper and the alumni bulletin (which can include substantive legal articles, in addition to the usual information about student activities, faculty appointments, and alumni deaths).

These legal writing activities should be coordinated by a Legal Writing Director, who should be a member of the Association of Legal Writing Directors.⁵ The Legal Writing Director should be well-connected with various bar associations and the editors of bar association periodicals; thus, for students who are not members of a law review, the Legal Writing Director should provide introductions to assist these students in getting their work published in bar association periodicals. The Legal Writing Director should harmonize all of the law school's publication activities: style manual, publication format, publication schedules, printing arrangements, etc.

The National Conference of Law Reviews conducts an annual conference every spring.⁶ While it might be impractical to send the entire law review staff to such an event, it would be

useful to send the second-year incoming Editor-in-Chief and Managing Editor.

III: Organization and Staff Selection

A law review normally has an Editor-in-Chief, a Managing Editor, and an Editor for each type of published work: full articles, note articles, case notes, book reviews, etc.

The Adviser is normally a faculty member with some prior experience in law reviews. The Adviser should serve as the law review's institutional memory, because everyone else on the law review staff turns over every two years. If the law school has multiple publications, there should be one Adviser per publication, thereby preventing each Adviser from becoming overworked.

Law review staff selection is best done by a write-on competition. Ideally, all first- and second-year students at the law school should be eligible to participate in the write-on competition. Any policy which excludes potential staff members based on class rank serves no purpose. Also, if a student is excluded from the write-on competition because of class rank, the student might be inclined to make alumni contributions to other academic institutions.

It is a normal practice to award academic credit for service on the law review staff; one credit per semester seems about average.

Diversity on the law review staff is a laudable goal. However, a law review staff can be diverse only to the extent that the law school student body is diverse. For example, my class of 1978 at Dickinson School of Law in Pennsylvania consisted of 138 Whites and 1 Alaska Native. The Alaska Native was never on the law review staff, so there was no diversity at all on the law review staff.

IV: Web Site

A law review's web site should make the law review's policies known to potential authors. The web site should address the following topics.

First, the web site should provide up-to-date contact information: postal address, email address, voice telephone number, and fax telephone number.

Second, the web site should indicate what type of materials are solicited: full articles, note articles, case notes, book reviews, etc. The approximate lengths of these materials should also be indicated.

Third, the web site should indicate what persons should submit materials: admitted attorneys, law students, etc. (At least one law review requires all authors to be admitted attorneys.)

Fourth, the web site should indicate the publication schedule: publication dates, submission deadlines, etc.

Fifth, the web site should indicate the publication format: online, hard copy, or both.

Sixth, the web site should indicate the substantive areas of law which would be suitable for publication. Some law reviews are limited to the law of their respective home states, while other law reviews are not so limited.

Seventh, the web site should indicate upcoming symposium issues. It would serve no purpose to submit a securities law article when a law review is publishing a divorce law symposium.

Eighth, the web site should indicate the appropriate style manual: the Bluebook, the ALWD Guide, or some other manual.⁷ Furthermore, the web site should indicate any state-specific style manual.⁸

Ninth, the web site should indicate the manner of submission: hard copy, e-mail, Scholastica, ExpressO, etc.⁹ (Frequently, a law review accepts hard copy submissions; if an article is selected for publication, the law review requests the author to provide an electronic version.) Microsoft Word is the normal format; if a law review desires another format, that should be indicated. For documents submitted in hard

copy, the law review should specify spacing, margins, etc.

Tenth, the web site should indicate the approximate number of submissions received by that law review every year.

V: Selection of Articles

Much prior criticism of law reviews has concerned the alleged impracticality of law review subject matter. Thus, in the selection of articles and other materials, the law review staff should choose materials which are useful to significant numbers of lawyers and judges; articles which are useful to very small numbers of lawyers and judges should be avoided. Furthermore, articles about legal philosophy and legal history, and articles which promote novel offbeat legal theories, should be avoided. (For example, a law review should reject an article about the Fertile Octogenarian Rule under the Rule Against Perpetuities.) Some law review articles analyze existing law and synthesize conclusions. Some law review articles also recommend improvements in the law, which is consistent with lawyers' ethical duty to improve the law.¹⁰

A law review should refrain from selecting articles which are patently racist, sexist, homophobic, or xenophobic. Prejudice is stupidity and nothing more; a law review should never promote prejudice, but should expose prejudice to the light of day. In 1995, three law professors wrote a severely homophobic article which was published in the Dickinson Law Review. The article demonstrated the professors' prejudice, and tarnished the image of the Dickinson School of Law and its law review.¹¹

Peer review involves selection of law review articles by panels of experts.¹² Peer review addresses the problem of inexperienced law students selecting articles for a professional journal. However, a less elaborate approach would involve review by the appropriate faculty members: for example, a securities law article

could be reviewed by a securities law professor, who would immediately recognize if a proposed article is totally off the mark.

Blind review involves selection of law review articles by persons who do not know the identities or affiliations of the authors.¹³ Blind review addresses the problem of incumbent faculty members, and faculty members of prestigious law schools, utilizing their positions to receive favorable publication treatment. However, at many law schools, it is an established tradition for incumbent faculty members to receive favorable publication treatment; these faculty members may not wish to end this tradition.

Both peer review and blind review consume significant time and significant personnel resources. Also, peer review and blind review normally involve exclusive submission to a single law review, which many authors would find burdensome.

VI: Duties of Authors and Law Reviews

Articles submitted for publication should be tightly written, i.e., organized into structured paragraphs, with headings and sub-headings throughout. Rambling sentences and rambling paragraphs should be avoided. Authors should emulate Abe Lincoln; authors should not emulate Cicero. A Table of Contents should appear at the beginning of the article. Stylistic matters should comport with Bryan A. Garner, *The Redbook: A Manual on Legal Style*.¹⁴

Authors should proofread their articles carefully, and should check their citations exhaustively. Each citation should accurately refer to the location of the cited material. Furthermore, each citation should accurately reflect the substance of the cited material. Phantom citations are a serious embarrassment.

The Bluebook and the ALWD Guide indicate when to use parallel citations, and when to avoid them.¹⁵ Regardless of the Bluebook and the ALWD Guide, authors should provide parallel citations whenever they would be helpful, because the purpose of citations is to

assist the reader, not to create difficulties for the reader.

In the CCH services, a “paragraph” can easily run for several pages. Thus, authors who cite CCH services should cite both paragraph numbers and page numbers.

The U.S. Supreme Court and other courts have been known to make changes between their preliminary reports and their final reports.¹⁶ The final reports should be cited as soon as they become available.

When a treatise goes through multiple editions, only the most recent edition should be cited.

For statutory materials, the citation should refer to both the session law and the statutory codification. For regulatory materials, the citation should refer to both the adopting document and the regulatory codification.

When a law review receives an article, it should acknowledge receipt and should advise the author of its time frame for review. When a law review rejects an article, it should advise the author of whether the materials are rejected on the merits, or are rejected for being submitted at the wrong time of year, in the wrong format, etc.

VII. Acceptance for Publication

After a law review accepts an article, the author should proceed with publication in that law review, forsaking all others. If a more prestigious law review comes along with a subsequent acceptance, such subsequent acceptance should be turned down. The practice of jockeying for publication in a prestigious law review merely serves the author's vanity, and is highly counterproductive to the operation of law reviews.

When a law review accepts an article, the law review should send the author a publication contract. The law review should specify a deadline for finalizing the publication contract. (Publication contracts are discussed in Section IX below.)

The law review should advise the author of a specific contact person on the law review staff. Telephone calls and e-mail inquiries should be answered promptly.

The law review publication schedule should be designed to avoid staff changes during preparation of any given issue of the law review.

The law review should provide the author with a written list of any requested revisions. Requesting revisions over the telephone would invite confusion.

The author should provide the law review with copies of any esoteric source materials: unpublished court decisions, unpublished documents, etc. If source materials are readily available in the law school's law library, the staff should not request the author to provide them.

Web sites are increasingly used as source materials for law reviews and various other publications. The problem with web sites is they can change over time, or disappear from the web entirely. This has been called "reference rot."¹⁷ Thus, the author should print out copies of any web sites used as source materials, and should provide them to the law review.

The law review should follow the principle of "light edit," i.e., making minor changes in the text and footnotes, but leaving the materials so that the author would still recognize his or her work.

The law review should provide the author with a copy of the galley proofs, so the author can catch any mistakes before the law review gets printed.

VIII: Author's Vested Interests

When publishing articles written by incumbent faculty and students at the law review's sponsoring law school, the authors are known quantities, and need only minimal scrutiny regarding possible vested interests. However, when publishing articles written by persons outside the law school community, extensive scrutiny is warranted.

The authors who submit articles to law reviews may represent a variety of clients and interest groups in their professional activities, either as transactional attorneys, litigators, or lobbyists. Any such professional representations should be addressed in the publication contract: the author should be required to disclose such vested interests, or to declare the absence of such vested interests. A law review which publishes an author's work, without identifying the author's vested interests, could invite serious embarrassment.

The law review staff should identify the author in the Martindale-Hubbell.¹⁸ Furthermore, the staff should conduct a Google search of the author, to identify any possible vested interests, and to identify any other possible surprises in the author's background.

After a law review publishes an author's work, the author may decide to become a financial supporter of the law school. If the financial support commences after publication, it would raise no ethical concerns. If a major unexpected contribution from an author precedes publication, it would raise serious ethical concerns.

IX: Publication Contracts

Publication of a law review article should be governed by a formal publication contract. Some law reviews do not use publication contracts, but rely on exchanges of correspondence with authors; that is a slipshod practice, and should be avoided.

The first concern in drafting a publication contract is identifying the party to contract on behalf of the law review. Normally, a law review is a publication, not a legal entity, so the law review cannot be a party to the contract. The party could be the law school, or it could be the law school's parent institution.

If the law school is a public law school, it must be established that the contract is statutorily exempt from open public bidding, normally as a "professional services contract."

As noted above in Section VIII, the author's possible vested interests should be addressed in the publication contract. The publication contract should also address plagiarism and copyright issues, which are discussed in Section X below.

X: Plagiarism and Copyright Issues

The law review staff should use any commercially available anti-plagiarism software to scour the worldwide web and identify plagiarism in submitted articles.¹⁹ After a major U.S. Supreme Court decision, several case notes normally appear in various law reviews, to analyze the decision; such case notes tend to be very similar, so the law review staff should use its judgment to distinguish between plagiarism and unavoidable similarity. The publication contract should specify that the submitted article contains no plagiarism.

While plagiarism is an academic concept, copyright is a legal concept. 15 U.S.C. sec. 501 governs copyright infringement.²⁰ The extensive case law annotations under that section in the United States Code Annotated indicate that the standard for infringement is "substantial similarity."²¹ The publication contract should specify that the submitted article contains no copyright violations.

Copyright assignment should also be addressed in the publication contract. When the author creates the work, the copyright belongs to the author. The normal practice at law reviews is that the publication contract assigns the copyright to the law school. In return, the law school provides a limited license to the author for derivative works. Such derivative works could include shortened versions for bar association periodicals and sequel versions to appear several years later. The publication contract should explicitly permit the author to upload the article into the Social Science Research Network (SSRN).²²

Copyright filings are addressed in Section XII below.

XI: Libel and Invasion of Privacy Issues

Law review articles rarely generate libel litigation. Such litigation would be a possibility only in unusual circumstances, such as a law review article which demolishes someone's doctoral dissertation.

Likewise, law review articles rarely generate invasion of privacy litigation. Such litigation would be a possibility only in the event that source materials include allegedly confidential correspondence or other allegedly confidential documents.

If there is any possibility of libel litigation or invasion of privacy litigation, the law review staff should consult with the faculty advisors or the law school administration.

XII: Operational Details

Office Arrangements

The law review should be provided with adequate office space, which should be available to the law review staff whenever the law school building is open. State-of-the-art computer facilities should be provided.

Fiscal Arrangements

The law review should have an annual operating budget. The Managing Editor should formulate the operating budget, after which it should be approved by the law review staff and the law school administration.

Most of the revenue side of the budget is normally funded by the law school or its parent institution. Most copies of the law review are normally distributed free to law libraries and other institutions, with only a small number of copies involving paid subscriptions. It may be worthwhile to solicit advertisements and sponsorship listings from law firms, especially the law firms of the law school's alumni.

Most of the expense side of the law review budget goes to printing and mailing costs. The Managing Editor should compare the law review's printing bills with the printing bills of comparable law reviews, and should follow up if the law review's printing bills become unusually large.

A law review's payments and receipts are normally processed through the law school's cashier, bursar, or similar official.

Filings with Federal Government

The United States Copyright Office regards law reviews as serial publications. The copyright notice should appear in each issue. Form SE should be filed upon the publication of each issue, along with two deposit copies and the fee (currently \$85.00). The filing with the Copyright Office is a simple task, which the law review staff can accomplish without difficulty.

The United States Postal Service has established extensive regulations regarding the mailing of periodicals. The relevant forms, notably Form 3500 and Form 3526/3526-R, are very complex. Thus, filing Postal Service forms should be left up to the parent institution's mailroom staff.

Records Retention

The author should keep all source materials on file for an extended period, in case anyone challenges the author's research. A good retention period would be 20 years.

The law review staff should retain various records in accordance with the records retention policies of the law school or its parent institution.

Reprint Procedures

The law review should automatically provide a given number of copies to the author upon publication; 50 copies would be appropriate.

The law review should arrange for reprints of the article, for a specified fee, when requested by the author at any future time. If the law review changes printers from time to time, it should maintain contact information for all previous printers.

Index to Legal Periodicals and Books; Current Law Index

A law review should promptly notify the [Index to Legal Periodicals and Books](#) and the [Current Law Index](#) of any changes in the law review's contact information.²³

XIII: Citation Service

Washington and Lee University School of Law operates an online citation service, which tabulates the number of times various courts cite various law reviews.²⁴

There are two shortcomings with the Washington and Lee online citation service. First, the number of court citations to a law review article do not measure the academic soundness of the article. Second, the Washington and Lee citation service does not distinguish between court citations and court mis-citations. (When a court mis-cites a law review article, the court refers to the article for a proposition which is not found in the article.)

XIV: Law Review Alumni Associations

Some law schools have law review alumni associations. These associations can provide support to the law review, whether financial, moral, or otherwise.

XV: Conclusions

For a law review author, submitting articles to a law review is an effective utilization of the author's talents. By the time in a lawyer's career that he or she starts submitting law review articles, he or she has accumulated a significant amount of professional experience; sharing such experience benefits all concerned.

For law review staff members, selection and editing of law review articles is an excellent form of intellectual development, and a good way to interact with prominent members of the bar. For a law school, having a good law review enhances the reputation of the law school in the eyes of the profession and the public.

For lawyers and judges, good law review articles can provide useful analysis and guidance in addressing legal issues of current importance.

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Notes:

1. Michael L. Closen and Robert M. Jarvis, The National Conference of Law Reviews Model Code of Ethics: Final Text and Comments, 75 Marq. L. Rev. 509 (1992).
2. Josh E. Fidler, Law Review Operations and Management: An Empirical Study of the New York University Law Review Alumni Association, 33 J. of Legal Educ. 48 (1983), involved survey research into the operational practices of law reviews in the early 1980s.
3. Law reviews have been criticized in varying degrees in Fred Rodell, Goodbye to Law Reviews, 23 Va. L. Rev. 38 (1936-1937); Richard A. Posner, Against the Law Reviews, Legal Affairs (Nov.-Dec. 2004); Walter Olson, Abolish the Law Reviews, The Atlantic (Jul. 5, 2012); James Lindgren, An Author's Manifesto, 61 U. Chi. L. Rev. 527 (1994); Wendy J. Gordon, Counter-Manifesto: Student-Edited Reviews and the Intellectual Properties of Scholarship, 61 U. Chi. L. Rev. 541 (1994); John G. Browning, Fixing Law Reviews, Inside Higher Educ. (Nov. 19, 2012); Brian Farkas, Fixing Law Review Critics, Inside Higher Educ. (Nov. 30, 2012); Richard S. Harnsberger, Reflections about Law Reviews, 76 Neb. L. Rev. 681 (1997); Richard A. Wise et al., Do Law Reviews Need Reform?, 59 Loyola L. Rev. 1 (2013).
4. The Scribes web site is <https://www.scribes.org>.
5. The Association of Legal Writing Directors web site is <http://www.alwd.org>.
6. The National Conference of Law Reviews web site is <http://www.nclrlaw.com>.
7. Harvard Law Review Association, The Bluebook: A Uniform System of Citation (20th ed. 2015); Coleen M. Barger, ALWD Guide to Legal Citation (6th ed. 2017). Anyone who uses the Bluebook should also rely on Alan L. Dworsky, User's Guide to the Bluebook, which is revised to accompany each edition of the Bluebook.
8. New York Official Reports: Law Reports Style Manual (2017), https://www.nycourts.gov/reporter/Styman_menu.shtml.
9. The Scholastica website is <https://scholasticahq.com/law-reviews>. The ExpressO website is <https://www.bepress.com/products/expresso/>.
10. American Bar Association, Model Rules of Professional Conduct (2018 ed.), preamble sec. 6.
11. Arthur A. Murphy, Leslie M. MacRae, and William A. Woodruff, Gays in the Military: What About Morality, Ethics, Character and Honor? 99 Dick. L. Rev. 331 (1995).
12. Peer review is discussed in Steven Lubet, Law Review vs. Peer Review, 2017 U. Ill. L. Rev. Online 1 (2017). One example of a peer review law review is The Journal of Legal Studies, edited by the law faculty of the University of Chicago. The peer reviewers are called "referees." Its web site is <https://www.journals.uchicago.edu/loi/jls>.
13. Albert H. Yoon, Editorial Bias in Legal Academia, 5 J. of Legal Analysis 309 (2013), suggests blind review as a possible solution to the problem of giving incumbent faculty members priority in the publication of their law review articles.
14. Bryan A. Garner, The Redbook: A Manual on Legal Style (3d ed. 2013). Part 4 of the book is entitled "Scholarly Writing."
15. Bluebook at sec. 10.3.1; ALWD at sec. 12.4(c) and sidebar 12.4.
16. Adam Liptak, Final Word on U.S. Law Isn't: Supreme Court Keeps Editing, N.Y. Times (May 24, 2014).
17. L. Jay Jackson, Missing Links: "Reference Rot" Is Degrading Legal Research and Case Cites, ABA J. (Dec. 2013).
18. The Martindale-Hubbell web site is <http://www.martindale.com>.
19. Plagiarism detection software includes Dupli Checker, CopyLeaks, PaperRater, Plagiarisma, Plagiarism Checker, Plagium, and PlagScan.
20. Pub. L. 107-273, 116 Stat. 1909, 17 U.S.C. sec. 501 (2002).
21. Extensive caselaw annotations regarding "substantial similarity" are found at notes 131-210 under 17 U.S.C.A. sec. 501.
22. The Social Science Research Network web site is <http://www.ssrn.com>.
23. The Index to Legal Periodicals web site is http://www.hwwilsoninprint.com/index_legal.php; the Current Law Index web site is <https://www.cengage.com>.