

You Make Me [*Sic*]: Confessions of a Sadistic Law Review Editor

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"There are various forms of curiosity: one, based on self-interest, makes us want to learn what may be useful, another, based on pride, comes from a desire to know what others don't."¹

The student-run law review is a puzzling phenomenon. To the legal outsider, the practice of allowing second- and third-year law students to select and edit the research of established scholars seems preposterous.² How could students *possibly* know what constitutes a significant advance in a line of legal argument? And how *dare* students tell law professors what is and what is not good scholarship? The very idea of it sounds like the proverbial asylum where the inmates are in charge.³

But, ridiculous as it may be, this is the system of scholarship that legal academics and law students have inherited.⁴ Ever since curmudgeon Fred Rodell identified the two fundamental problems with law reviews — their form and their content⁵ — legal scholars have spilled a great deal of ink extolling the virtues and vices of law reviews.⁶ Critics continue to excoriate the law review system⁷ and apologists continue to defend it.⁸

Yet in spite of all this lively debate about the pros and cons of the law review system, there has been little discussion of why law students become involved with law reviews.⁹ What attracts law students to the law review in the first place, and what holds them there?

¹ LA ROCHEFOUCAULD, MAXIMS 59 (Leonard Tancock ed., Penguin Books 1959) (1665).

² See James Lindgren, *An Author's Manifesto*, 61 U. CHI. L. REV. 527, 535 (1994) ("In some other parts of the academy, legal journals are considered a joke. Scholars elsewhere frequently can't believe that, for almost all our major academic journals, we let students without advanced degrees select manuscripts.").

³ See John G. Kester, *Faculty Participation in the Student-Edited Law Review*, 36 J. LEGAL EDUC. 14, 14 (1986).

⁴ See generally Bernard Hibbitts, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615 (1996), available at <http://www.law.pitt.edu/hibbitts/lastrev.htm> (last visited Jan. 20, 2004) (analyzing history of law reviews and their future as technology and Internet continue to develop).

⁵ Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38, 38 (1937).

⁶ See, e.g., Symposium, *Law Review Conference*, 47 STAN. L. REV. 1117 (1995); Symposium, *Law Review Editing: The Struggle Between Author and Editor Over Control of the Text*, 70 CHI.-KENT L. REV. 71 (1994); Symposium, *Who Needs Law Reviews?: Legal Scholarship in the Age of Cyberspace*, 30 AKRON L. REV. 173 (1996).

⁷ See, e.g., James Lindgren, *Fear of Writing*, 78 CAL. L. REV. 1677 (1990).

⁸ See, e.g., Phil Nichols, Note, *A Student Defense of Student Edited Journals: In Response to Professor Roger Cramton*, 1987 DUKE L.J. 1122 (1987).

⁹ But see, e.g., Vincent E. Gunter, *The Moon, the Stars, and All the Planets*, 30 STETSON L. REV. 547 (2000) (discussing student's role as law review editor in chief); Nathan H. Saunders, Note, *Student-Edited Law Reviews: Reflections and Responses of an Inmate*, 49 DUKE L.J. 1663 (2000).

I. MEMBERSHIP: WELCOME TO THE MACHINE¹⁰

Although law reviews vary dramatically in terms of membership size, organizational structure, and membership requirements, they share several universal characteristics. First, they are elitist.¹¹ Whether based on grades, a write-on competition, or some combination of the two, law review membership is inherently selective. Some of the students who would give their eye teeth (or their eyes) to join the law review are not invited to join. Second, law reviews are demanding. Students who join are required to devote considerable time and effort to the law review. Third, they breed a kind of obsessive-compulsive perfectionism. Because law reviews attempt to ensure that all published citations are substantively accurate and technically correct,¹² members are socialized to value precision and detail. In some members, this attention to detail metastasizes into a sick fetish for editing.

Who joins the law review? How are students drawn in?

The process looks something like this:¹³ as they finish their first year, many law students are not certain that law review is something they want to do, but they've heard other students talk about it. Or they've read Turow's *One L* and remember the almost reverential way he described the law review.¹⁴ So, although they're still shell-shocked from their spring exams, they shuffle to the law review offices, pay their twenty-dollar fee, and collect their application packages (consisting of 100+ pages of photocopies). They have one week to complete their applications and return them to the law review. If their applications are late, they will not be considered for membership.

They skim the instructions and see that there are three components: a twenty-page casenote (synthesizing the 100 pages of case extracts and secondary materials into something resembling a sound legal analysis), a proofreading and bluebooking test, and a one page personal statement. It's like taking another traumatizing take-home exam. These 1L hopefuls

¹⁰ See PINK FLOYD, *Welcome to the Machine*, on WISH YOU WERE HERE (Columbia Records 1975).

¹¹ See James D. Gordon III, *How Not to Succeed in Law School*, 100 YALE L.J. 1679, 1700 (1991) (noting that "the most elitist organization is the law review").

¹² Although the *California Law Review* leaves ultimate responsibility with the author, it pledges "first, to verify the research on which an article is based, and second, to do our duty to the English language by scrupulously correcting errors in grammar, word choice, and punctuation." Editorial Note, 78 CAL. L. REV. 1675, 1675 (1990).

¹³ The application process described is based upon the one utilized by the *California Law Review* between 1999 and 2001, but also resembles the writing competitions from numerous other schools.

¹⁴ See SCOTT TUROW, *ONE L* 223-28 (Warner Books 1988) (1977).

want to complete the assignment, but most of them are frazzled, so they set the materials aside. And many of them do not bother picking them up again. Some who do, decide that the laurels of law review are simply not worth it, and give up. But even those robust souls who persevere, complete the assignment, and endure the weeks of waiting for a decision, are not guaranteed a place on the law review. More than half of the hopefuls are disappointed (yet another blow to the ego for ambitious law students unaccustomed to failure).¹⁵

Indeed, it is hard to say whether those who are invited to join the law review are — in truth — the lucky ones. New law review members are like indentured servants: they are granted passage into the world of legal scholarship, but they pay for the privilege.¹⁶ Typical requirements for a 2L law review member are demanding: four editing packets (requiring an average of twenty-five hours each), thirty-six hours of source collection (gathering hard copies of the sources cited by authors so that the review can authenticate the veracity of every claim), twelve office hours (spent doing miscellaneous work in the review offices), and a few additional proofreading packets (requiring line-by-line scrutiny of eight to fifteen pages, often on very short notice). Furthermore, 2L members are typically required to write a publishable comment (forty-plus pages) or casenote (twenty to twenty-five pages). Later, between their 2L and 3L years, law review members are required to devote one forty-hour week to working in the review offices (which can be difficult for students working as summer associates in law firms), and also to assist in the grading of the write-on competition materials. But the work does not end after the second year: 3L members are required to complete three editing packets, eighteen hours of source collection, thirty office hours, and occasional proofreading packets. For those 3Ls elected to positions on the editorial board,¹⁷ there is even more responsibility. Many senior editors seem to live in the law review offices, wired on coffee and adrenaline, pulling late-nighters and all-nighters on an all-too-regular basis.¹⁸

¹⁵ See Note, *Making Docile Lawyers: An Essay on the Pacification of Law Students*, 111 HARV. L. REV. 2038 (1998) ("For those students who try and fail to make the Law Review, the experience can reinforce the sense of inadequacy, of being average in a large crowd of students. Obviously, people recover from the pain this experience evokes, but the process changes them.").

¹⁶ The requirements described in the text were in effect at the *California Law Review* during the 1999-2000 year.

¹⁷ The current and previous editorial boards of the *California Law Review* can be viewed at <http://www.law.berkeley.edu/journals/clr/> (last visited Jan. 20, 2004).

¹⁸ See Carol Sanger, *Editing*, 82 GEO. L.J. 513, 518 (1993) ("Because student editors are

Admittedly, some of the work is intrinsically interesting (e.g., learning about the cutting edge in an exciting area of law); but the bulk of it is mindless scut work (e.g., making hundreds of photocopies on a temperamental copy machine, spelunking the bowels of the law library to find paper copies of obscure references, or line editing for hours at a time with a copy of the infamous and opaque *Bluebook* in hand). Given that every hour spent working on the law review is an hour *not* spent studying, socializing, or earning money, why would law students compete for the opportunity to do so much unappealing work?¹⁹ Indeed, why would any sane person voluntarily undertake such Herculean labors?²⁰

II. THE CULTURE OF STRIVERS

Most students join the law review because they're thinking about their résumés. Law review membership is a kind of merit badge, a status symbol, and a mechanism for law students to distinguish themselves.²¹ Law school neophytes are told that employers prefer to hire members of the law review.²² Perhaps this is so. Law review membership is

simultaneously taking classes, looking for jobs, *and* publishing a journal, many are overworked. In consequence, they may lose perspective as law review offices sometimes take on the atmosphere of urgency found the night before a bond offering at Skadden Arps.").

¹⁹ The Princeton Review helpfully noted:

Working on a law review is not as much fun as being a rock star. The big difference is that rock stars earn wads of cash for playing music to throngs of adoring fans, while law review members earn nothing and spend their time poring over manuscripts in some dark corner of the library. Other than that, the two jobs are pretty much the same.

The Princeton Review, *Why Working on Law Review Is Like Eating Vegetables*, at <http://www.princetonreview.com/law/research/articles/life/lawReview.asp> (last visited Jan. 20, 2004).

²⁰ Law review work can seem truly Herculean. Recall that Hercules' fifth labor was to clean the dung-filled Augean stables. See Perseus Digital Library, *The Augean Stables: Hercules Cleans Up*, at <http://perseus.mpiwg-berlin.mpg.de/Herakles/stables.html> (last visited Feb. 10, 2004). Similarly, many of the responsibilities that accompany law review membership involve cleaning up a lot of bullshit.

²¹ See Sonali R. Kolhatkar, *Law's Greatest Influence: The Law Review Process*, 30 STETSON L. REV. 571, 571 (2000) ("First-year law students are indoctrinated with the importance of doing well. The reward for high grades during one's first year of law school is a coveted spot on the law review.").

²² See John Henry Schlegel, *An Endangered Species?*, 36 J. LEGAL EDUC. 18, 18 (1986); see also The Princeton Review, *supra* note 19 ("Law review is important because working on one will help you land that job where they throw buckets of cash at you every week.").

conditioned upon good grades or the demonstration of analytic ability,²³ and participation on the review involves long hours and rigorous intellectual work. Thus, employers may reasonably treat law review membership as an indicator of potential in the law.

And these employers are correct. In a very real sense, law review membership *does* prepare students for a career in the law. The grueling hours required by the law review are excellent preparation for the 2000+ hours that associates are expected to bill annually.²⁴ The scut work — making copies, poring over hundreds of footnotes in search of missing commas and misplaced italics — is excellent preparation for the horribly mundane work that is entrusted to most junior associates.²⁵ The stress of achieving technical perfection in every published article is excellent preparation for the chronic stress that is part-and-parcel of contemporary legal practice.²⁶ Most importantly, everything about the law review (from the competition for membership, to the struggle to do a virtuoso editing job, to the competition for vaunted editorial positions like Editor in Chief and Senior Articles Editor) is a rehearsal for “the game” by which attorneys measure their success, and thereby, their worth.²⁷ One perceptive author lamented the young law students who

have spent almost their entire lives competing to win games that other people have set up for them. First they competed to get into a prestigious college. Then they competed for college grades. Then they competed for LSAT scores. Then they competed to get into a prestigious law school. Then they competed for law school grades. Then they competed to make the law review.²⁸

²³ At St. John's University, for example, students are automatically invited to join the law review if they are in the top 6% of their class. Alternatively, if they are in the top one-third of their class, they can earn membership through a write-on competition. See St. John's Univ. Sch. of Law, *Membership Selection Policies*, at http://www.law.stjohns.edu/pls/portal30/lawdev.welcome_live1?p_id=2022 (last visited Feb. 10, 2004).

²⁴ See WILLIAM G. ROSS, *THE HONEST HOUR: THE ETHICS OF TIME-BASED BILLING BY ATTORNEYS* 27 (1996).

²⁵ See David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581, 1608-10 (1998).

²⁶ See James J. Alfini & Joseph N. Van Vooren, *Is There a Solution to the Problem of Lawyer Stress? The Law School Perspective*, 10 J.L. & HEALTH 61, 66 (1995-96).

²⁷ See Patrick J. Schiltz, *Attorney Well-Being in Large Firms: Choices Facing Young Lawyers: On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 903-06 (1999).

²⁸ *Id.* at 905.

Socialized to equate success in competition with self-worth, members of the law review are willing to tolerate discomfort and hardships to win the game. More stoic than a stiff upper lip, law review members will strive, even when it hurts, because ensuring success is their way of maintaining identity.²⁹

Law review members further reinforce the achievement-as-being paradigm by spending their time with like-minded achievers. Since all members have made the same sacrifices of time and effort, all members tend to convince themselves of the importance of the law review's mission.³⁰ The rigorous perfectionism of the law review is routinized and normalized and a powerful esprit de corps takes root. It's the same mechanism that unifies battalions and rugby teams:³¹ even members who are unwilling to sacrifice for themselves may be willing to sacrifice for their comrades, their friends, and their teammates.

But as law review members acclimate to their editorial responsibilities, something odd happens. Some individuals begin to enjoy editing itself.³² Some become excited by the prospect of subtly changing the topography of the jurisprudential landscape. Others find it intrinsically gratifying to participate in the shaping of the author's vision. Still others become enthralled by the grail quest for the perfect article.³³

²⁹ See Note, *supra* note 15, at 2036-37 (describing painful process of reconceiving personal identity when high-achievers at Harvard Law School receive mediocre law school grades).

³⁰ See Wendy J. Gordon, *Counter-Manifesto: Student-Edited Reviews and the Intellectual Properties of Scholarship*, 61 U. CHI. L. REV. 541, 543 (1994) ("[M]ost student editors consider their review work a valuable learning experience. Admittedly, cognitive dissonance may be partially responsible for their view. (Those who feel themselves required to jump through resume-enhancing hoops are more likely than outsiders to assign a transcendent value to hoop-hopping.)").

³¹ See Leon Festinger, *Informal Social Communication*, 57 PSYCHOL. REV. 271 (1950).

³² But see Nichols, *supra* note 8, at 1128-29 ("Editing is not fun: for the writer because it looks like the destruction of something the writer individually created, and for the editor because it involves an ungodly amount of time and often is more like pulling teeth than it is rewarding. *The Elements of Editing* describes the editing process as 'hand-to-hand combat.'") (footnotes omitted).

³³ Recall that according to Arthurian legend, the search for an unattainable grail lured the Knights of the Round Table away from their ordinary duties and weakened Arthur's kingdom. Galahad, the one knight who successfully found the grail, died obtaining it. The moral seems to be that some forms of perfection are best left unsought. See *TALES FROM KING ARTHUR* 59 (Andrew Lang ed., 1993).

III. PSYCHOPATHOLOGIES AS VIRTUES

The American Psychiatric Association's *Diagnostic and Statistical Manual* (DSM-IV-TR) defines obsessive-compulsive disorder as the presence of unreasonable and recurrent obsessions or compulsions that consume more than one hour per day or cause marked distress.³⁴ Does the fastidious editing of the law review qualify as obsession? Certainly, iconic authors have characterized their need to write as obsession. Ernest Hemingway wrote:

I have to write to be happy whether I get paid for it or not. But it is a hell of a disease to be born with. I like to do it. Which is even worse. That makes it from a disease into a vice. Then I want to do it better than anybody has ever done it which makes it into an obsession. An obsession is terrible.³⁵

The DSM notes that "repeated doubts" and "a need to have things in a particular order" are two common obsessions, and reports that "counting, checking, requesting or demanding assurances, repeating actions, and ordering" are among the most common compulsions.³⁶ Does slavish obedience to *Bluebook* rule 1.4 (order of authorities within each signal) qualify as an obsessive need to have things in a particular order? Does trolling newspaper archives for hours at a time (all to make sure that a comma rests in the right place) qualify as a compulsive need for assurances?

Probably not. The DSM distinguishes obsession from worry (even excessive worry) about financial, work, and school problems.³⁷ Although many individuals working in the law are in fact obsessive,³⁸ and although a great deal of law review activity *appears* compulsive, the painstaking efforts of law review members do not (in and of themselves) rise to the level of a clinically-recognized anxiety disorder.

Within the rarefied universe of the law review, obsessing over split infinitives and compulsively checking for factual and technical accuracy

³⁴ See AM. PSYCHIATRIC ASS'N, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* 456-463 (4th ed. text rev. 2000).

³⁵ ERNEST HEMINGWAY, *ERNEST HEMINGWAY ON WRITING* 16 (Larry W. Phillips ed., 1984).

³⁶ See AM. PSYCHIATRIC ASS'N, *supra* note 34, at 457.

³⁷ See *id.*

³⁸ See Connie J.A. Beck et al., *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J.L. & HEALTH 1, 50 (1995-96) ("The base rate [in the general population] for obsessive-compulsiveness is 1.4-2%, yet nearly 21% of the male lawyers and 15% of the female lawyers in the study score above the clinical cutoff on the measure of obsessive-compulsiveness.").

are not viewed as pathological at all. Instead, these kinds of behavior are *encouraged*. It's good to be obsessive about the order of authorities in a footnote. It's good to be compulsive about verifying facts.

Accordingly, many law review members take a perverse pride in their neuroses. With wry, self-deprecating humor, members brag about their twisted infatuation with the editing process and discuss their favorite *Bluebook* rules. They boast about superhuman edits with chest-beating bravado, reminiscent of frat boys talking about shotgunning beer. Law review members who are known for being especially obsessive-compulsive are revered as superstars, and called in to work (James-Bond style) on difficult and high-profile edits.

Although the deeply held need for achievement explains some of the phenomena seen in law review offices, and although transforming the pathologies of obsessive-compulsive disorder into virtues further explains these phenomena, a crucial third element is still missing from this equation: *sadism*.

Not sadism in the clinical, *DSM* sense of the word, but a more nuanced, more pedestrian species. Something resembling the German concept of *Schadenfreude*: finding joy in someone else's misfortune. It is a cruel pleasure that belongs to the same genus as the sneer of the backseat driver or the smug satisfaction of the armchair quarterback. It is the bristling joy of a schoolgirl who has the occasion to correct her teacher in front of her classmates. This is, frankly, the malicious drive that motivates many editors: the ache to catch errors (both glaring and subtle) that the author missed, to make the writing stronger and clearer than the author could, and to know more about the opacities of the *Bluebook* than the author ever will. It gives them a sense of power and a sense of purpose.

There can be a strange and unwholesome pleasure in editing law review articles. When an editor catches a mistake, even a slight peccadillo of grammar, it can be surprisingly gratifying. When an editor discovers a proposition in the text that is not supported by the cited source, it's thrilling. It feels like a crime has been prevented. And when an editor discovers a grammatical error within a quotation, he or she can note this with the designation, "[sic]." This is positively elating, for it means that some previous editor was asleep at the wheel and allowed a mistake to go into print, but that the current editor was alert enough (and clever enough) to catch it. As a reward, the current editor may preserve the error for posterity, and furthermore, may draw the reader's attention to the mistake by adding the device "[sic]."

Some law review editors assert their identities by bludgeoning their authors with heavy-handed “Rambo” edits,³⁹ insisting on arbitrary (and occasionally incorrect)⁴⁰ rules. Manuscripts emerge from their desks wounded — hemorrhaging ink — and are returned to dread-filled authors who open the FedEx envelopes like they are suspect packages sent by the Unabomber.⁴¹ Other editors are far more restrained, offering useful comments, making reasonable (and reasoned) requests for changes and additions, and respecting the integrity of the author’s voice. The exemplary work of these “good” editors may seem thoughtful, heroic, or even (given that law review editors are not paid for their efforts, and given that authors rarely thank student editors by name in their biographical notes) altruistic.

But make no mistake: this is *not* altruism. Not even “good” editors are motivated by some inexplicable need to improve the scholarship of law professors they’ve never met. When they sacrifice their weekends to edit an article, it is not because law review editors are essentially kind. When they invest their evenings to correct grammar and verify sources, it is not because law review editors are fundamentally benevolent beings. It’s because they are strivers, and because they like to feel superior to the authors they’re editing.⁴²

It’s *Schadenfreude*. The editor knows that the authors will fear and tremble when the FedEx envelope arrives, and this feels *good*. The editor knows that the authors — high-powered law professors, all — will see the corrections and have to concede that the editor caught mistakes that they had missed. And *this* feels very good, too. The editor knows that the demands for more detail, for omitted and expanded sections, will rankle the authors, but what recourse will they have? To pull the piece? To surrender a secured publication and to go back to soliciting the manuscript?⁴³ Not bloody likely. At this point, the power lies with the

³⁹ See Juan F. Perea, *After Getting to Yes: A Survival Guide for Law Review Editors and Faculty Writers*, 48 FLA. L. REV. 867, 870 (1996) (“Take no prisoners. Slash and burn. Leave no sentence unaltered, no paragraph intact. Attack the text with apocalyptic zeal. This is a scary edit.”).

⁴⁰ See Lindgren, *supra* note 2, at 528-30.

⁴¹ See Ann Althouse, *Who’s to Blame for Law Reviews?*, 70 CHI.-KENT L. REV. 81, 82 (1994) (“By now, the mere sight of a FedEx envelope causes a pang of anxiety. You may need to wait a day or two for your emotions to settle down before you can bear to open it.”).

⁴² See Leo P. Martinez, *Babies, Bathwater, and Law Reviews*, 47 STAN. L. REV. 1139, 1140 (1995) (noting that “it would be surprising if law review editors did not develop a certain amount of arrogance”).

⁴³ See Sanger, *supra* note 18, at 523-24 (discussing problems with pulling piece from publication).

editor — not the author — and this feels *great*.

It's payback.

As a law student, an editor has inevitably endured humiliation and embarrassment at the hands of his or her professors. Whenever a student is called upon in class by some tyrannical would-be Kingsfield,⁴⁴ and blunders through the description of a case with a voice that quakes like puberty, it leaves a mental scar. Whenever a student strives for a top grade on an exam, but earns only a mediocre mark (or worse), it leaves a mental scar. Eventually, these scars add up and disfigure the souls of students who are accustomed to being the brightest pupils in the room.

The law review, however, affords members the unique opportunity to reclaim some of the personhood that has been stripped from them throughout the first-year curriculum⁴⁵ and to punish those who have humiliated them. Revenge is wrought with red pens. By eviscerating the written work of these authors (law professors), editors (law students) can convince themselves that the humiliation of the classroom and the mediocre grades do not matter. Each correction that an editor makes to a manuscript subordinates the author (demonstrating his or her fallibility) and thereby exalts the editor (demonstrating his or her ability). While it's unlikely that law review editors will have the opportunity to torture the *same* professors who embarrassed them in class, they will have many opportunities to antagonize *other* law professors (who presumably humiliate law students at their own universities). There is a certain malignant symmetry to the process. It may seem like wanton sport to the authors who have been victimized by the striver's sadism, but in many an editor's dark heart, it feels like justice.

⁴⁴ See JOHN JAY OSBORN, JR., *THE PAPER CHASE* (1971).

⁴⁵ See E. Joshua Rosenkranz, *Law Review's Empire*, 39 HASTINGS L.J. 859, 866-71 (1988); Note, *supra* note 15, at 2031-33.
