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Reassessing Professor Hibbitt's Requiem For Law Reviews

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REASSESSING PROFESSOR HIBBITTS'S REQUIEM FOR LAW REVIEWS

by

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Professor Hibbitts proposes to respond to the long-standing criticism of student-edited law reviews by encouraging law professors finally to "[e]scape the strait jacket of the law reviews by publishing their own scholarship directly on the World Wide Web."[1] Unfortunately, implementation of Professor Hibbitts's proposal is likely to make the quality of the Web worse, and to exacerbate the most important of the problems promoting criticisms of student-edited law reviews — poor quality.

Although many people misunderstand its nature, publishing is a process of assembling different types of added value into a bundle of features making up a published work. The particular manifestation of the different types of value changes radically as publishing technologies change. Professor Hibbitts is quite right in his careful analysis of how improvements in printing technology made it easier to establish law school based law reviews in the first place, and in his evaluation of how Internet technologies permit changes in the way modern law reviews are put together.

The principal shortcoming in Professor Hibbitts's argument is in his under valuation of elements of value other than the physical production of a printed work. It is the selection and editing that makes the publishing process valuable; not the printing press and the bindery. Indeed, the greatest risk of new information technologies is that by reducing barriers to entry associates with reproduction and distribution, the signal-to-noise ratio obscures the place of carefully selected and edited materials.

The details vary from law review to law review, but typically, an accepted article is edited three times, once for technical compliance with the *Bluebook* manual of citation, once for substance and clarity, and again by a senior editor. Every citation is checked to confirm that it supports the proposition for which it is offered. The author sees the article at least twice during the process, once after the manuscript has been edited, and again at the galley or page proof stage.

Next, the article is typeset (increasingly, this simply means that a word

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1. Bernard J. Hibbitts, *Last Writes? Re-assessing the Law Review in the Age of Cyberspace* (version 1.0, Feb. 5, 1996) <http://www.law.pitt.edu/hibbitts/last.htm > at text accompanying note 228.

processing file submitted by the author and edited by the law review staff is run through a photo typesetting machine), plates are made, and the volume of the law review containing the article is printed. The law review itself then usually takes care of order fulfillment for subscribers and special orders.

Now, consider the typical electronic publishing process on the World Wide Web. This author is familiar with Web-based publishing, having organized and supervised one of the major Web servers on the Internet devoted to legal information.[2] Practices vary from server to server, but the following description is typical. An author, frequently also the owner of a Web page, takes a word processing file of an article, sometimes in the same stage of development that it would be submitted to a law review, sometimes in a much earlier stage of development. He reformats it by hand or by use of macros or scripts to transform word processing formatting codes into html codes. He may also add a hypertext- linked table of contents. The author then places the article on the Web server. There is no acceptance or rejection process, and no third party editing.

While this process is certain to put more material into the domain of legal writing, it is also certain to reduce the average quality of that legal writing because no rejections will occur.

This is not a good idea. It may be desirable to use the Web as an additional mechanism for hosting works in progress for comment, but not for replacing the current law review mechanism with the one just described.

On the other hand, it probably is appropriate for student-edited law reviews to migrate to the Web. There is no particularly good reason to prefer the printing press and the mail room to the interaction between a Web server and a Web client, assuming all of the intended audience have access to the Web — and they surely will within the next year to two.

But to suppose that law reviews are about printing and mail rooms is completely to misunderstand what law reviews do. Even when law reviews move to the Web,[3] they should continue to do at least as much selection and editing as they do now.

A separate issue is whether editing should be done by law students or law faculty. Respectable arguments can be made that some contributions to the literature could be appreciated better by experienced faculty members as opposed to law students, although one can make an equally persuasive argument

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2. *See Villanova Center For Information Law & Policy* <http://www.law.vill.edu>.

3. All three Villanova reviews are available in full text form on the Web as well as in paper formats. The *Villanova Law Review* is available at <http://www.law.vill.edu/vls/law-review/index.html>. The *Villanova Environmental Law Journal* is available at <http://www.law.vil.edu/vls/journals/elj/index.html>. The VILLANOVA SPORTS & ENTERTAINMENT LAW JOURNAL is available at <http://www.law.vil.edu/vls/journals/vselj/index.html>.

that *good* writing can be appreciated by those without unusual levels of specialized education and experience.

Everyone who writes occasionally gets annoyed at the apparent obtuseness of an editor, but that happens with seasoned editors as well as neophytes, and I must confess, is as often the author's fault as the editor's.

In any event, law student editors are likely to work much more cheaply than law faculty editors, and there is no such thing as a free lunch. There is no empirical support for the idea that the market would support law reviews at ten or more times the present price, and that surely reflects the relative opportunity cost of law professors, who do a lot more writing than law students. Careful selection requires that a submitted work be carefully read, and reading takes as much time regardless of whether the publication method is electronic or paper-based. Similarly, careful editing is indifferent to the technology used.

However, Professor Hibbitts's more general idea of using Internet applications such as the World Wide Web to facilitate the development of good law review articles is worth considering. Too great a proportion of law review resources are expended in working with paper formats. The efficiency of an author's interaction with law review editors, and of law review editors' interaction with each other, can be improved by effective use of Web-based technologies. For example, an article could be submitted for consideration by posting it on the author's Web site; indeed, Professor Hibbitts' self-publication idea might be the first step instead of the last step in the publishing process. Then, law reviews interested in the piece could access the draft through the Web. Alternatively, a particular review could provide for submission to its own Web site, with access subsequently limited to an internal Intranet. Editorial comments and changes could be made directly to the posted version, as could author updates. When the editing process is complete, the html document could be locked by moving it to a different, public, directory on the Web site, at which point it would be "published."

I regularly use the Internet servers at the Villanova Center for Information Law and Policy as an electronic space for working on student-produced papers, and we are working out the most effective combination of technological tools and intellectual parts of the editing and writing processes. Other faculty members, and the legal writing staff, are working on the Web with LEXIS-NEXIS Folio Views and other technological tools to integrate Internet-based information technology into all aspects of legal education.

This is where our energy should go; not into reducing an important outlet for student participation in this process and exempting faculty from one of the more pervasive means for critical review of faculty scholarship.

Though I am enthusiastic about the potential of the World Wide Web to improve all kinds of legal communication, and would encourage any law review to hasten its movement to Web publishing, I think the idea of getting rid of student edited law reviews and replacing then with self publishing would be a blow both to legal scholarship and to the Information Superhighway.