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# Relics or Relevant: The Value of the Modern Law Review

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## **RELICS OR RELEVANT?: THE VALUE OF THE MODERN LAW REVIEW**

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### I. INTRODUCTION

The system of scholarly publication in law is starkly different [from other academic publications]. With a few exceptions, law reviews are edited by law students rather than by professors or other professionals. The law reviews are numerous, are published bimonthly or at more frequent intervals, are edited without peer review, and are seemingly unconstrained in length. Their staffs are large, but the members, being students, are inexperienced both in law and in editing.<sup>1</sup>

Judge Richard Posner's statement illustrates the litany of shortcomings and criticisms surrounding the American law review. Judges, practitioners, and legal scholars alike have scrutinized law reviews in varied fashions for many

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<sup>1</sup> Richard Posner, *Against the Law Reviews: Welcome to a World Where Inexperienced Editors Make Articles About the Wrong Topics Worse*, LEGAL AFFAIRS, Dec. 2004, available at [http://www.legalaffairs.org/issues/November-December-2004/review\\_posner\\_novdec04.msp](http://www.legalaffairs.org/issues/November-December-2004/review_posner_novdec04.msp).

decades.<sup>2</sup> The reviews are denounced for their mass publication and proliferation, organization, style and content, and lack of judicial citations by the courts.<sup>3</sup>

However, the purpose of this Note is to emphasize and reinforce the importance of the modern American law review in terms of student scholarship, opportunity, and academic value. While taking into account the views and sentiments of law review critics, this Note will attempt to demonstrate that law reviews remain an invaluable asset to law school students. This Note will also propose recommendations on how the modern law review can be reformed in an effort to reestablish their relevance in the legal community.

Part II is a brief examination of the origin, purpose, and growth of the American law review, while Part III will outline the assortment of prevailing law review criticisms. Part IV offers a rebuke to law review critics by emphasizing a review's value in terms of student scholarship, opportunity, and academic worth. Part V extends initiatives that law reviews can integrate into their systems in order to alleviate some of the problems associated with reviews. Finally, Part VI will provide a succinct conclusion and an author's plea for the continued and sustained existence of the American law review.

## II. THE ROOTS OF THE AMERICAN LAW REVIEW

This Note is not intended to summarize the history of the American law review, which has been done by many others.<sup>4</sup> However, it is important to examine the past in order to improve the future. Thus, a brief synopsis of the origin, growth, and purpose of the first law reviews is essential.

### A. *The Initiation and Expansion of the American Law Review*

The roots of the American law review stem from the nineteenth century with the University of Pennsylvania in 1852.<sup>5</sup> In 1887, Harvard University published the first law review to truly flourish.<sup>6</sup> Following suit, the majority of law

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<sup>2</sup> See Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38 (1937); see also Kenneth Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926 (1990).

<sup>3</sup> Geoffrey Preckshot, *All Hail Emperor Law Review: Criticism of the Law Review System and Its Success at Provoking Change*, 55 MO. L. REV. 1005, 1005 (1990).

<sup>4</sup> See Michael I. Swygart & Jon W. Bruce, *The Historical Origins, Founding, and Early Development of Student-Edited Law Reviews*, 36 HASTINGS L.J. 739 (1985); Alan W. Mewett, *Re-viewing the Law Reviews*, 8 J. LEGAL EDUC. 188 (1956); John Jay McKelvey, *The Law School Review: 1887-1937*, 50 HARV. L. REV. 868 (1937).

<sup>5</sup> Ronen Perry, *De Jure [sic] Park*, CONNTEMPLATIONS 39:1, 1 (2007), <http://www.conntemplations.org/pdf/perry.pdf> (last visited Dec. 15, 2007) (established as the *American Law Register* in 1852, UPenn's publication is the oldest continuously published legal periodical in the United States).

<sup>6</sup> Roger C. Cramton, *"The Most Remarkable Institution": The American Law Review*, 36 J. LEGAL EDUC. 1, 3-4 (1986).

schools throughout the country began forming law reviews, including the *West Virginia Law Review* in 1894.<sup>7</sup> The emergence of the law review coincided with the rise of the modern American law school in the late nineteenth century, as “[law schools and law reviews] were responses to the need of the legal profession for a more practical exegesis of the rules, precedents, and policy applicable to particular situations.”<sup>8</sup> Growing in status and prestige, reviews became a fixture of the American legal landscape and also spawned imitations across the country.<sup>9</sup>

As of 2009, the American Bar Association has approved a total of 199 law schools.<sup>10</sup> “Each [school] publishes or sponsors a general interest student-edited paper-based legal periodical, also known as the ‘flagship journal.’ Very often the general interest law review is accompanied by specialized, peer-edited or online legal periodicals.”<sup>11</sup> The following chart illustrates the considerable increase of law review publications since their conception in 1887:

Year	Number of Reviews
1928	33
1941	55
1955	78
1966	102
1979	182 <sup>12</sup>

With the spread of law schools and law school-sponsored journals in general, the current number of student-edited reviews is over 500, which equates to “one student-edited publication for every 279 law students.”<sup>13</sup> The Columbia University School of Law is responsible for publishing fourteen different school-sponsored journals alone.<sup>14</sup> Additionally, these law review statistics do not include the wide collection of other available legal publications, such as

<sup>7</sup> West Virginia University College of Law, *Welcome to the West Virginia Law Review*, [http://law.wvu.edu/student\\_life/west\\_virginia\\_law\\_review](http://law.wvu.edu/student_life/west_virginia_law_review) (last visited Feb. 28, 2009). Founded in February 1894 by Professor William P. Willey and established under the title of the *West Virginia Bar*, the *West Virginia Law Review* is the fourth oldest law review published in the United States.

<sup>8</sup> Cramton, *supra* note 6, at 2.

<sup>9</sup> Bernard J. Hibbitts, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615, 618 (1996).

<sup>10</sup> Am. Bar Ass’n, *ABA Approved Law Schools*, <http://www.abanet.org/legaled/approvedlawschools/approved.html> (last visited Feb. 28, 2009).

<sup>11</sup> Perry, *supra* note 5, at 55 (footnote omitted).

<sup>12</sup> Barbara H. Cane, *The Role of Law Reviews in Legal Education*, 31 J. LEGAL EDUC. 215, 220 (1982).

<sup>13</sup> See Karen Dybis, *100 Best Law Reviews*, THE NATIONAL JURIST 23 (Feb. 2008).

<sup>14</sup> Columbia Law School, *Student Journals*, [http://www.law.columbia.edu/current\\_student/student\\_service/Law\\_Journals](http://www.law.columbia.edu/current_student/student_service/Law_Journals) (last visited Feb. 28, 2009).

those published by the American Bar Association or the thousands of law firms who distribute monthly and annual newsletters nationwide.<sup>15</sup>

The legal profession is a large and infinitely-growing industry, with over 1.1 million attorneys in the United States in 2009.<sup>16</sup> “A profession of this magnitude supports an enormous variety of publications and specialized services that assist it in finding, understanding, and using relevant legal materials.”<sup>17</sup> Furthermore, the internet only adds to the surplus of legal literature that is placed in the public’s immediate hands. On March 13, 2009, a Google search of “legal journals” resulted in an astounding 48.1 million hits.

### B. *The Purpose of the American Law Review*

Searching for ways to booster not only their students but their academic institutions, ambitious law professors and students created law reviews as an opportunity for advancement on many different levels.<sup>18</sup> The first American reviews were created with four goals in mind: (1) connecting with alumni to promote law school relevancy and professional goodwill, (2) developing ties with local bar associations, (3) improving the institution’s academic status, and (4) providing students with superior legal training.<sup>19</sup>

First, “a law review [is able to] address a law school’s institutional need to gain and keep the support of alumni by providing a product that would bring news of the school to their attention on a regular basis.”<sup>20</sup> All educational institutions depend on their alumni for a variety of reasons; law schools are no different. Alumni provide a strong and powerful link between the institution and the real world.<sup>21</sup> Alumni can assist in the recruitment of future students, they can hire recent graduates, and they can contribute financially to a school’s endowment.<sup>22</sup>

Second, a law review supplies a crucial service to the legal profession and benefits the local bar association by publishing “reports and comments on current cases and articles [that] discuss problems of local interest.”<sup>23</sup> Law reviews also allow for practitioners to communicate among themselves and pro-

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<sup>15</sup> See Washington & Lee Law University School of Law, *Law Journals: Submissions and Rankings*, <http://lawlib.wlu.edu/LJ/index.aspx> (last visited Feb. 1, 2009) (stating that 1,521 “journals” are currently being published).

<sup>16</sup> Am. Bar Ass’n, *National Lawyer Population by State*, [http://www.abanet.org/marketresearch/2008\\_Natl\\_Lawyer\\_FINALonepage.pdf](http://www.abanet.org/marketresearch/2008_Natl_Lawyer_FINALonepage.pdf) (last visited Feb. 28, 2009).

<sup>17</sup> Cramton, *supra* note 6, at 1.

<sup>18</sup> Hibbitts, *supra* note 9, at 617.

<sup>19</sup> *Id.* at 619-620.

<sup>20</sup> *Id.* at 623.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> McKelvey, *supra* note 4, at 870(e); see also Stanley H. Fuld, *A Judge Looks at the Law Review*, 28 N.Y.U. L. REV. 915, 917 (1953).

vide a “source from which they could regularly glean information on the broader implications of new cases and new legislation.”<sup>24</sup> Particularly at the time of their inception, law reviews allowed a school to align itself with the bar:

Of course commercial legal journals and digests were already available, but the mass of information descending on the American legal community at the turn of the century was such that more law journals offering analyses, updates, and reviews were always welcome. A law school that chose to publish such a journal could gain increased professional recognition and influence . . . .<sup>25</sup>

Third, law reviews not only increase professional recognition and influence within the local bars, but they also strengthen a law school’s academic reputation.<sup>26</sup> It is no mistake that the mention of the *Harvard Law Review* or the *Yale Law Journal* conjures up certain sentiments of intellectual and academic enlightenment. Law reviews offer a school “an unprecedented academic opportunity.”<sup>27</sup> They provide a vital forum for faculty and student scholarship.<sup>28</sup> They also supply the pages to explore new and creative judicial theories, to examine current case law, and to investigate recent developments in the law.<sup>29</sup>

Fourth and finally, and perhaps most importantly, American law reviews were created to benefit and further the legal education of law students.<sup>30</sup> Providing an outlet for scholarship, law reviews provided “incentive[s] to students to do original work in the way of research.”<sup>31</sup> Furthermore, by putting law students in charge of running the law review, the value and educational importance of law reviews became even more critical.<sup>32</sup> This not only added to the additional experience of legal research and writing that a law review provides, but also forced students to focus on recent developments in case law in America and around the world.<sup>33</sup>

It was with these four specific goals that the first American law reviews were created. Harvard Law School’s ambitions for its review were explicitly articulated in its first issue:

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<sup>24</sup> Hibbitts, *supra* note 9, at 623.

<sup>25</sup> *Id.* (footnote omitted).

<sup>26</sup> Cramton, *supra* note 6, at 4.

<sup>27</sup> Hibbitts, *supra* note 9, at 625.

<sup>28</sup> McKelvey, *supra* note 4, at 870(a).

<sup>29</sup> *Id.* at 870(a), (f).

<sup>30</sup> Hibbitts, *supra* note 9, at 622.

<sup>31</sup> McKelvey, *supra* note 4, at 870(a).

<sup>32</sup> Hibbitts, *supra* note 9, at 622.

<sup>33</sup> Dexter Samida, *The Value of Law Review Membership*, 71 U. CHI. L. REV. 1721, 1724 (2004).

Our object, primarily, is to set forth the work done in the school with which we are connected, to furnish news of interest to those who have studied law in Cambridge, and to give, if possible, to all who are interested in the subject of legal education, some idea of what is done under the Harvard system of instruction. Yet we are not without hopes that the Review may be serviceable to the profession at large.<sup>34</sup>

The goals of the modern law review remain very much the same today. They continue to connect alumni to their respective institution, assist the local bar associations, improve academic reputations, and provide students with increased legal training. While all of these services are undoubtedly compelling, law reviews have come under consistently harsh scrutiny for many decades.

### III. CRITICISMS OF THE MODERN LAW REVIEW

Criticism of law reviews is “fashionable,” and critic after critic “lambastes the journals for their content and their style, and only the rare, obstinate defender attempts to counter the view that the principal medium of legal scholarship does nothing right.”<sup>35</sup> Today, the number of law review critics is vast, with many voicing the same opinions. This Note will investigate four specific perils of the American law review: mass publication and proliferation, law review organization and student-run publications, style and content, and the absence of demand illustrated by minimal law review citations by courts.<sup>36</sup>

#### A. *Mass Publication and Proliferation*

While scholarship can be very valuable, most of it is not.<sup>37</sup> “Whatever rich stew there might have been thins quickly into gruel through the sheer multitude of journals seeking fodder for their troughs. Slops fill the law reviews. Simply put, there are too many of them.”<sup>38</sup> All 199 ABA-approved institutions sponsor at least one law review and many schools sponsor several.<sup>39</sup> Unfortunately, “each look[] and read[] depressingly like the rest. Despite scattered at-

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<sup>34</sup> Harvard Law Review Editorial Board, *Notes*, 1 HARV. L. REV. 35 (1888).

<sup>35</sup> Max Stier et al., *Law Review Usage and Suggestions for Improvement: A Survey of Attorneys, Professors, and Judges*, 44 STAN. L. REV. 1467, 1467 (1992).

<sup>36</sup> See Preckshot, *supra* note 3, at 1005.

<sup>37</sup> See Lasson, *supra* note 2, at 928.

<sup>38</sup> *Id.*

<sup>39</sup> For example, recall that the Columbia University School of Law sponsors fourteen different journals alone. See also Harvard Law School, *Journals and Publications*, <http://www.law.harvard.edu/current/orgs/journals/> (last visited Feb. 28, 2009). Harvard Law School also sponsors fourteen separate journals.

tempts by editors to distinguish their journals by theme and discipline, redundancy abounds.”<sup>40</sup>

While the sheer volume of law reviews has risen dramatically over the years, the average number of pages in each issue is also considerably higher.<sup>41</sup> This increase in the overall number of publications, coupled with the additional issues and pages, has resulted in a massive influx of school-sponsored literature with articles that are “too long, too dull, and too heavily annotated . . . .”<sup>42</sup> In addition, today’s journals receive significantly more submissions than they did when first created, as some journals report that they now collect more than 1,000 submissions annually.<sup>43</sup> The legal publication system is “absurd,” and no norms have been developed to guide publication behavior.<sup>44</sup> Simply stated, the surplus of law reviews has over-saturated the market of legal literature.

### B. Law Review Organization: A Student-Run Publication

The large majority of American law reviews are run exclusively by student editors.<sup>45</sup> Generally, these students are between twenty-four and twenty-six years old and have minimal or no experience outside of their undergraduate educations.<sup>46</sup> While on the bench, Justice Oliver Wendell Holmes referred to law reviews as the “work of boys” and criticized counselors who had the nerve to reference them in argument.<sup>47</sup> More importantly though, “because student editors spen[d], at most, two years as law review staffers, all part-time, they [do] not become experienced editors.”<sup>48</sup> This inexperience results in the publication of poorly-written articles as students struggle “to separate the wheat from the chaff.”<sup>49</sup>

Because students are not trained or experienced editors, the quality of suggested revisions is often low.<sup>50</sup> Compounding the problem even further, it is not “pleasant for a mature scholar to be subjected to the supreme and irrevocable judgment of incompletely trained students. This may have a discouraging

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<sup>40</sup> Lasson, *supra* note 2, at 929.

<sup>41</sup> Preckshot, *supra* note 3, at 1010.

<sup>42</sup> Posner, *supra* note 1.

<sup>43</sup> Erik M. Jensen, *The Law Review Manuscript Glut: The Need for Guidelines*, 39 J. LEGAL EDUC. 383, 383 (1989).

<sup>44</sup> *Id.* at 385.

<sup>45</sup> Arthur Nussbaum, *Some Remarks About the Position of Student-Editors of the Law Review*, 7 J. LEGAL EDUC. 381, 381 (1955).

<sup>46</sup> Preckshot, *supra* note 3, at 1006.

<sup>47</sup> Charles E. Hughes, *Foreword*, 50 YALE L. J. 737, 737 (1941).

<sup>48</sup> Posner, *supra* note 1.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*



effect upon competent writers, and may even impair creative work . . . .”<sup>51</sup> Furthermore, some scholars believe that the individual author suffers because student editors have significant time and manpower to spend on each article, “often torment[ing] the author with stylistic revisions . . . . To student editors, the cost of an author’s time is zero, and the author is usually subject not to one, but to two or three rounds of editing.”<sup>52</sup>

The amount of editor turnover among individual law reviews exacerbates this dilemma even further. Students are only permitted to be law review members for a maximum period of two years. “There can be no accumulation of experience, so important in editorial work, when the [editorial] boards change annually. The transience of responsibility prevents steadiness of approach.”<sup>53</sup> While students can become familiar with the editing process in their two years of membership, graduation eschews the more experienced students out the door and in their place comes a round of new members. The amount of editor turnover is continuous and never-ending.

### C. *Law Review Style and Content*

“There are two things wrong with almost all legal writing. One is its style. The other is its content.”<sup>54</sup> With respect to content, many articles are scrutinized for being disconnected to the practical aspects of law.<sup>55</sup> “[A]mong our most adept navel-gazers,” law review writers are characterized as being out of touch with the realities of the legal world.<sup>56</sup> “[F]or every pure scholar we have a dozen-and-a-half of the innocent ersatz, for every diamond a heap of rhinestones.”<sup>57</sup> And obviously, undistinguished and mediocre authors are responsible for churning out articles that are practically useless.<sup>58</sup> Prominent law reviews are increasingly dedicated to abstract, theoretical subjects and less to practical topics that could benefit federal and state dockets.<sup>59</sup> Additionally, “lead articles . . . are often overwhelming collections of minutiae, perhaps substantively relevant at some point in time to an individual practitioner or two way out in the hinterlands—and that almost entirely by chance.”<sup>60</sup>

<sup>51</sup> Nussbaum, *supra* note 45, at 381.

<sup>52</sup> Posner, *supra* note 1.

<sup>53</sup> Nussbaum, *supra* note 45, at 381.

<sup>54</sup> Rodell, *supra* note 2, at 38.

<sup>55</sup> Blake Rohrbacher, *Decline: Twenty-Five Years of Student Scholarship in Judicial Opinions*, 80 AM. BANKR. L.J. 553, 553 (2006).

<sup>56</sup> Rodell, *supra* note 2, at 43.

<sup>57</sup> Lasson, *supra* note 2, at 927.

<sup>58</sup> Olavi Maru, *Measuring the Impact of Legal Periodicals*, 1 AM. B. FOUND. RES. J. 227, 229 (1976).

<sup>59</sup> Judith S. Kaye, *One Judge’s View of Academic Law Review Writing*, 39 J. LEGAL EDUC. 313, 314 (1989).

<sup>60</sup> Lasson, *supra* note 2, at 930.

With respect to style, the cynics are even harsher. “It may be hard to say whether good writers are born or made, but it’s painfully obvious that few of them are legal scholars. Law review prose is predominantly bleak and turgid.”<sup>61</sup> Gibberish,<sup>62</sup> dull and mollicoddled,<sup>63</sup> and patronizing<sup>64</sup> are all terms that have been used to describe law review syntax. As famous scholar Fred Rodell once said, “[w]hen I used to read law reviews, I used constantly to be reminded of an elephant trying to swat a fly.”<sup>65</sup>

Articles are notorious for using long sentences, awkward constructions, and “fuzzy-wuzzy” words that seem to apologize for daring to venture an opinion.<sup>66</sup> Far removed from the emotions, language, and understandings of most human beings, law review grammar and the law they seek to analyze, criticize, and explain is “lost in a sea of verbal molasses.”<sup>67</sup> Unfortunately, it is for these precise reasons that many pundits believe the large majority of law reviews go widely unread.

#### D. *Lack of Demand: Judicial Citations to Law Review Articles*

We do not need to worry about the consumers of law reviews because they really do not exist. A few professors who author texts must read some of the articles, but most volumes are purchased to decorate law school library shelves. The only purchasers of law reviews outside of academe are law firms which gladly pay for the volumes even though no one reads them.<sup>68</sup>

Law reviews are published primarily to serve their authors, not their readers.<sup>69</sup> Former Northwestern University School of Law Dean Harold Havighurst noted that:

[L]aw reviews are unique among publications in that they do not exist because of any large demand on the part of a reading public. Whereas most periodicals are published primarily in or-

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<sup>61</sup> *Id.* at 942.

<sup>62</sup> Robert W. Benson, *The End of Legalese: The Game is Over*, 13 N.Y.U. REV. L. & SOC. CHANGE 519, 520 (1985).

<sup>63</sup> Rodell, *supra* note 2, at 39.

<sup>64</sup> Julius G. Getman, *Colloquy: Human Voice in Legal Discourse*, 66 TEX. L. REV. 577, 581 (1988).

<sup>65</sup> Rodell, *supra* note 2, at 38.

<sup>66</sup> *Id.* at 39.

<sup>67</sup> Lasson, *supra* note 2, at 943.

<sup>68</sup> John E. Nowak, *Woe Unto You, Law Reviews!*, 27 ARIZ. L. REV. 317, 321 (1985).

<sup>69</sup> See Preckshot, *supra* note 3, at 1015 (opining that the groups with the most vested interests in law reviews—lead article authors and student editors—would never change the present law review system).

der that they may be read, the law reviews are published primarily in order that they may be written.<sup>70</sup>

While law reviews are high in supply, their demand is depressingly low since no real audience exists. Additionally, even when law reviews happen to be purchased by law libraries, alumni, or practitioners, this does not guarantee that they will be read.<sup>71</sup> Though some attorneys' offices have an extensive collection of law review publications, "practicing lawyers tend only to read law review articles on a specific recommendation from someone that an article bears very directly on a problem facing them."<sup>72</sup>

While it is difficult to quantify just how often law reviews are read, the best indicator is how often law reviews are cited by courts.<sup>73</sup> There have been two substantive findings in regards to law reviews and judicial citations: (1) courts most frequently cite journals that are normally regarded as elite; and (2) courts cite journal articles less frequently than ever before.<sup>74</sup> The number of citations to law reviews has steadily declined:

Time Period	Number of Citations
1971-1973	963
1981-1983	767
1991-1993	577
1996-1998	271 <sup>75</sup>

Student scholarship is also less relevant to judges, as judicial citation of student notes has plunged since 1980.<sup>76</sup> Judges cite older scholarship more often than newer scholarship, and academic writing is becoming less relevant to the bench and bar.<sup>77</sup> It is also noteworthy that the overwhelming majority of law review articles are cited not by courts or legislatures, but by one another.<sup>78</sup>

<sup>70</sup> Kaye, *supra* note 59, at 318 (citing Harold C. Havighurst, *Law Reviews and Legal Education*, 51 NW. U. L. REV. 22, 24 (1956)).

<sup>71</sup> Banks McDowell, *The Audiences for Legal Scholarship*, 40 J. LEGAL EDUC. 261, 268 (1990).

<sup>72</sup> Robert Weisberg, *Some Ways to Think About Law Reviews*, 47 STAN. L. REV. 1147, 1152 (1995).

<sup>73</sup> See Rohrbacher, *supra* note 55; Louis J. Sirico, Jr., *The Citing of Law Reviews by the Supreme Court: 1971-1999*, 75 IND. L.J. 1009 (2000) (providing statistical data on law review citations in Supreme Court decisions).

<sup>74</sup> Sirico, Jr., *supra* note 73, at 1009-11 (the seven journals most frequently cited are the Yale Law Journal, Harvard Law Review, Michigan Law Review, Stanford Law Review, University of Chicago Law Review, Virginia Law Review, and Columbia Law Review).

<sup>75</sup> *Id.* at 1011.

<sup>76</sup> See Rohrbacher, *supra* note 55, at 553.

<sup>77</sup> *Id.*

<sup>78</sup> Lasson, *supra* note 2, at 930.

For many years, the American law review has been attacked in a variety of negative onslaughts. Law review volume, organization, style and content, and the lack of judicial citations are just a few of the many flaws. Despite its detractors, though, American law reviews still hold meaning in today's society, especially to their student members.

#### IV. THE VALUE OF THE MODERN LAW REVIEW

Breakdowns abound with the American law review, both procedural and structural. Judge Posner has declared that “[t]he situation is basically hopeless, though fortunately not serious.”<sup>79</sup> He continues, “[b]ut so what? Law reviews have no market power. If other media for the publication of law-related scholarship are superior, the market will supply them.”<sup>80</sup>

However, with all due respect to Judge Posner and his like-minded cynics, these views are simply overstated and exaggerated. While changes are a necessity, the situation is indeed not hopeless because the American law review still holds immense value. The first American law reviews were created primarily to benefit the law student. It is with this same purpose that the modern law review continues to be priceless. Specifically, American law reviews provide students with an opportunity for additional legal training, prepare students for careers beyond law school, and serve as a tangible goal for students to attain during their first year of law school study.

##### A. *An Opportunity for More Legal Training*

The fundamental cornerstones of a solid legal education are research, writing, and analytic and logical thinking. Membership on a school's law review provides a student with an opportunity to stimulate all of these fundamental legal basics. All law students, regardless of law review membership, prepare for their legal careers by attending classes, reading casebooks, taking exams, and writing papers. Law review association simply gives students another outlet to cultivate their legal talents. “Even the staunchest of law review critics concede” that law review experience is a valuable addition to any student's legal education.<sup>81</sup>

In terms of research, law review members can improve this skill in two distinct ways: editing the works of professional authors and working on their own student notes. Throughout the editing process, students must immerse themselves in numerous books, periodicals, cases, and a legion of other legal

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<sup>79</sup> Richard A. Posner, *The Future of the Student-Edited Law Review*, 47 STAN. L. REV. 1131, 1135 (1995).

<sup>80</sup> *Id.* at 1136.

<sup>81</sup> Stier et al., *supra* note 35, at 1472.

publications. When faced with the daunting chore of “bluebooking”<sup>82</sup> hundreds and hundreds of footnotes, student editors are forced to research and locate sources as efficiently and effectively as possible. This process allows students to familiarize themselves with a variety of unique and diverse legal publications.<sup>83</sup>

Research skills are also enhanced when students endure the task of writing their own student notes. For many members, student notes are their first attempt at legal scholarship, which makes research all the more vital. Countless articles must be examined, read, and poured over with a keen eye. Law review members must spend infinite hours researching their topic before the writing process even begins in order to simply understand the topic’s basic principles. As such, students are provided with yet another opportunity to improve their researching skills.<sup>84</sup>

Another foundation for a quality legal education is legal writing, which law review membership serves admirably. On a smaller scale, student editors send internal memoranda amongst each other and also write the occasional memo to a professional author. On a larger scale, all law review participants are obligated to write a student note in order to become full-fledged members. This writing requirement encourages students to improve their writing skills, and as with any learned skill, the only way to improve is through repetition. Good writing is not easy,<sup>85</sup> and the only way to become a better writer is to continuously work and develop the craft. Writing their own notes simply affords students with another chance to improve writing clarity, potency, and efficiency.<sup>86</sup>

The final ingredient for a successful legal education is logical and analytical thinking. American law schools have one main function: to teach students how to think like a lawyer.<sup>87</sup> Once again, law review membership furthers

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<sup>82</sup> See Cane, *supra* note 12, at 225 (providing a precise definition for the common term “bluebooking,” a popular term law review students use to refer to editing or checking the work of authors).

<sup>83</sup> For me, the editing process provided an invaluable experience in improving my research skills. While “bluebooking” was often a painstaking task, it nonetheless provided me with an opportunity to develop my researching proficiency.

<sup>84</sup> During the writing of this Note, I researched the numerous articles cited in these footnotes, in addition to voluminous other related legal publications that did not require citation in the final version.

<sup>85</sup> See PETER E. ABRESCH, EASY READING WRITING: EASY READING ABOUT WRITING EASY READING 7 (2003) (“Easy reading is damn hard writing.”); see also JOSEPH BARBATO & DANIELLE S. FURLICH, WRITING FOR A GOOD CAUSE 148 (2000) (“Every writer I know has trouble writing.”).

<sup>86</sup> Perhaps obvious, this Note is my very first attempt at legal scholarship. As such, I have endured many of the trials and tribulations that frequently are associated with legal writing. Although torturous at times, this Note has allowed me to continuously practice and develop my writing.

<sup>87</sup> This topic has been written about at length. See, e.g., PHILIP C. KISSAM, THE DISCIPLINE OF LAW SCHOOLS: THE MAKING OF MODERN LAWYERS (2003); THE LAW SCHOOL EXPERIENCE: LAW, LEGAL REASONING, AND LAWYERING (Lissa Griffin & Bennett L. Gershman eds., 2000); W. SCOTT VAN ALSTYNE, JR. ET AL., THE GOALS AND MISSIONS OF LAW SCHOOLS (1990).

this goal. The editing process exposes a student to novel concepts and ideas because a student gets the opportunity to read accomplished legal authors. While writing their own notes, members delve into infinite sources and articles that might otherwise go unread. Law review membership strengthens and advances reading comprehension, logical reasoning, and analytic thinking through all of its assorted functions.<sup>88</sup> For these reasons alone, law review membership provides students with an additional foundation for a solid and diverse legal education.<sup>89</sup>

### B. *Preparation for a Career Beyond Law School*

American law reviews are “a wonderful proving ground for the lawyer-to-be.”<sup>90</sup> Law review membership necessitates that a member acquire various tools that any successful attorney must possess—efficiency, diligence, task prioritization, and time management. Lawyers are notoriously busy people; they serve multiple clients and multiple cases, and receive significant compensation for their efforts.<sup>91</sup> As such, it is necessary that attorneys learn how to properly budget and manage their time. Law review membership grants students an opportunity to improve these skills before stepping into actual practice. On top of their everyday academic commitments, law review students take on the additional responsibility of serving their reviews. Editing articles and writing notes is a major time commitment. 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.<sup>92</sup>

Furthermore, “bluebooking” is a rigorous and arduous task that every law review member must perform. Checking, re-checking, and validating voluminous sources requires perseverance and patience, two more attributes that a successful attorney must possess. “Bluebooking” also teaches precision, clarity, accuracy, and diligence. An editor must guarantee that sources are accurate and

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<sup>88</sup> Law Sch. Admission Council, *About the LSAT*, <http://www.lsac.org/LSAT/about-the-lsat.asp> (last visited Feb. 28, 2009) (stating that reading comprehension and analytic and logical reasoning are considered essential elements for success in law school).

<sup>89</sup> As an editor, I furthered my legal analysis skills by being privileged to read two different articles that I would have never been exposed to on my own volition. To view these articles, see Steven G. Gey, *Life After the Establishment Clause*, 110 W. VA. L. REV. 1 (2007) and Naomi Cahn & June Carbone, *Deep Purple: Religious Shades of Family Law*, 110 W. VA. L. REV. 459 (2007).

<sup>90</sup> Fuld, *supra* note 23, at 917.

<sup>91</sup> See U.S. Att’y Legal Servs., *Attorney Vital Statistics*, <http://www.usattorneylegalservices.com/attorney-vital-statistics.html> (last visited Feb. 28, 2009) (reporting that United States citizens spend approximately more than 150 billion dollars on legal fees annually).

<sup>92</sup> Law review membership has allowed me to further develop these skills. I have learned to be more proficient and economical with my time as I balance everyday school life with law review requirements, a skill that I hope serves me beyond the law school doors.

duly accredited, something that practicing attorneys must do when citing and vouching for cases and precedents to a judge presiding on the bench.<sup>93</sup>

Professionalism is another added benefit of law review association. Whether it is working with colleagues or professional authors, membership mandates that a student be professional in all aspects.<sup>94</sup> Being polite, respectful, and courteous are all traits that people should own, especially lawyers. Law reviews allow their members to gain a sense of professionalism while still in school, and they also call for effective communication. The student-to-student and student-to-author dialogue is constant. Without communication, a law review would never be able to push a new issue out the door. Extra opportunities to practice professionalism and communication also translate into practical experience, as each are needed to serve and represent clients effectively. Lack of communication is among the chief complaints that clients report against their attorneys.<sup>95</sup> However, law review membership stresses the importance of effective communication, which hopefully translates into actual practice when it comes to keeping clients informed, writing letters, responding to e-mails, or simply returning phone calls.

### C. *An Attainable and Tangible Goal for Students*

For the majority of law students, “the pressure to succeed academically is enormous.”<sup>96</sup> The admission standards for many schools are extremely high, and law schools only accept the best undergraduate students.<sup>97</sup> While struggling with the normal obstacles associated with first-year legal education, making law review serves as a tangible and attainable goal for first-year students.<sup>98</sup> Law

<sup>93</sup> My experience “bluebooking” has not been a pleasant one. However, it has taught me to be accurate, truthful, and patient. It will also be a beneficial tool that will assist me during my first large discovery request as a practicing attorney.

<sup>94</sup> Coming to law school directly from undergraduate school, I never had a chance to learn or practice professionalism, except during the limited time of summer jobs and internships. Law review has taught me to bring a sense of professionalism and responsibility to everything that I do, whether in law school or in my personal life.

<sup>95</sup> See STANLEY S. CLAWAR, *YOU & YOUR CLIENTS: A GUIDE TO CLIENT MANAGEMENT SKILLS FOR A MORE SUCCESSFUL PRACTICE* (2d ed. 1996); THE PRACTICAL LAWYER’S MANUAL ON LAWYER-CLIENT RELATIONS (Paul A. Wolkin ed., 1983).

<sup>96</sup> Stier et al., *supra* note 35, at 1473.

<sup>97</sup> See Internet Legal Research Group, *2008 Raw Data Law School Rankings*, <http://www.ilrg.com/rankings/law/index.php/1/asc/LawSchool/2008> (last visited Feb. 29, 2009). The upper first-tier law schools, such as Yale and Stanford, only accept approximately five to ten percent of all applicants. While third-tier schools have higher acceptance rates, they still hover around forty-five percent. See also West Virginia University College of Law, *About the College of Law*, [http://law.wvu.edu/about\\_us](http://law.wvu.edu/about_us) (last visited Feb. 28, 2009) (accepting around seventeen percent of applicants for the 2008-2009 school year).

<sup>98</sup> Throughout my first year of law school, I often struggled late at night with casebooks, statutes, and treatises. However, making law review was a personal goal that I had set which allowed me to persevere and overcome the struggles of my first year.

review students are often regarded as “elite” and are recognized as being the best among their peers in law school.<sup>99</sup> The selection process is highly competitive and ensures that only the best first-year students are chosen to become new members.<sup>100</sup> First-year grades, combined with writing competitions, function as a gatekeeper to ensure that only the finest first-year students are extended offers to join.<sup>101</sup>

Functioning as a type of “law school honor society,” law review members are rewarded for their hard work during the first year of legal studies. Being selected to a school’s law review is highly prestigious and can serve as a source of pride for many of its members. It also bestows a sense of accomplishment upon young law students and can be placed prominently on a student’s resume.

There are also several other benefits that membership on a law review can extend to its members, including better job offers and faster salary growth. The most prestigious jobs usually go to the students with the highest grades.<sup>102</sup> Statistics have demonstrated that former law review members and nonmembers look positively on legal journal experience when making hiring decisions for a firm.<sup>103</sup> “Based on anecdotal evidence, we [know] that judges and law firms, for example, frequently inquire whether applicants served on law review or published a note.”<sup>104</sup> Law review members also had greater success in obtaining law firm callback interviews in comparison to their nonmember classmates.<sup>105</sup> Not only is law review membership looked upon favorably during the hiring process, but law review members on average receive higher salaries than nonmembers.<sup>106</sup> Additionally, law review students employed by law firms enjoy faster associate salary growth than nonmembers.<sup>107</sup>

While Judge Posner and his concurring cynics may disagree, the American law review has retained its relevancy to the modern law school student. Law review membership provides an outlet for additional legal training and preparation for careers beyond the law school doors, and serves as a realistic

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<sup>99</sup> Stier et al., *supra* note 35, at 1491.

<sup>100</sup> Harold Marsh, *The Law Review and the Law School: Some Reflections about Legal Education*, 42 U. ILL. L. REV. 424, 425 (1947) (membership in law review is restricted to 2.5 percent to 17 percent of the entire student body).

<sup>101</sup> Cane, *supra* note 12, at 222. Law reviews select their members based on first-year grades, writing competitions, or a combination of the two. The *West Virginia Law Review* employs a combination.

<sup>102</sup> Stier et al., *supra* note 35, at 1473.

<sup>103</sup> *Id.* at 1487-88 (showing that judges, lawyers, and professors considered law review membership an important factor in hiring); see also Samida, *supra* note 33, at 1721.

<sup>104</sup> Stier et al., *supra* note 35, at 1487.

<sup>105</sup> Samida, *supra* note 33, at 1722.

<sup>106</sup> *Id.* (demonstrating a statistically significant relationship between associate salaries and law review membership).

<sup>107</sup> *Id.* at 1726.



and attainable goal for students in terms of prestige and hiring. However, despite these precious characteristics, there is room for considerable improvement. Today's law reviews are growing stale and changes need to be made to improve their quality. Luckily though, a complete overhaul of the system is not necessary and the adoption of minor changes can ensure that American law reviews remain relevant in today's legal society.

## V. TIME FOR CHANGE? IMPROVING THE LAW REVIEW

Undoubtedly, the American law review is constrained somewhat by its inherent infrastructure.<sup>108</sup> However, there are ways and means to improve and alleviate the four chief criticisms of American law reviews.<sup>109</sup> Specifically, law reviews can regain their position as a revered legal publication by making slight structural and procedural adjustments, separating themselves from other law review competitors, and writing about relevant, time-consuming, and controversial topics.

### A. *Minor and Subtle Adjustments*

Less editing, shorter articles, and minimal footnotes are simple modifications that law reviews can make to silence their detractors. One of the major pitfalls of student-run publications seems to be the law review students' need for incessant editing.<sup>110</sup> Authors are often hassled with stylistic revisions and subjected to several rounds of corrections. An easy solution to this problem is to simply limit the number of substantive edits. While some lesser quality articles may require more intensive revisions, it is important for student editors to remember that most authors are professional scholars. The majority of lead articles are written by law professors who carry extensive publishing credentials.<sup>111</sup> Indeed, publishing is often required for a professor to be offered tenureship.

Another minor adjustment to the problems associated with student editing is to get law school professors more involved in the law review process. While this suggestion may require law professors to take a more active role, this would minimize editorial inexperience. Faculty members could edit the actual text of articles, while student editors would be responsible for checking citation and footnote accuracy.<sup>112</sup>

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<sup>108</sup> See *supra* notes 45-53 and accompanying text (detailing the lack of editorial experience and high turnover rates).

<sup>109</sup> See *supra* Part III (criticizing the law reviews for mass publication and proliferation, organization, style and content, and lack of law review citations by courts).

<sup>110</sup> See *supra* notes 45-53 and accompanying text.

<sup>111</sup> Hibbitts, *supra* note 9, at 634.

<sup>112</sup> David M. Richardson, *Improving the Law Review Model: A Case in Point*, 44 J. LEGAL EDUC. 6, 8 (1994). The *Florida Tax Review* operates in this manner.

Mandating that articles be shorter is another tactic law reviews can employ as a way to offset the massive number of reviews in publication. While exact statistics are seemingly unavailable, the number of pages per law review volume is extraordinarily high.<sup>113</sup> Additionally, the majority of law reviews publish more than one issue per year.<sup>114</sup> With so many pages and so many issues, the problems of mass publication are magnified. Setting maximum page limits is a way to counterbalance the sheer number of law reviews in print today.

Publishing fewer issues and limiting the number of articles per issue are also other ways to compensate for the number of reviews in existence. By decreasing the number of pages and volumes, law reviews will also be able to publish issues faster. Rapid publication not only makes law reviews better, but has some major advantages for authors as well.<sup>115</sup> Being known for publishing faster than your competitors is another positive attribute that law reviews can trumpet in order to attract higher profile authors to publish in their reviews.

One final subtle adjustment that can be made to make law reviews more succinct is reducing the number of footnotes per article. Oftentimes, student editors are possessed “with trying to maximize the number of footnotes, citations, and cross-references in order to create the impression that everything in the article is proven fact.”<sup>116</sup> However, footnotes can be taxing to the reader as they tend to break up the flow of the text, making for a less enjoyable read. Minimal footnoting also has the corollary effect of making articles shorter.<sup>117</sup>

Less editing, shorter articles, and minimal footnotes help to alleviate three of the four major downfalls associated with law reviews. By making these minor adjustments, law reviews can lessen the stigma of mass publication, law review organization, and law review style and content. These suggestions can be easily implemented and require minimal effort on behalf of law review edi-

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<sup>113</sup> See Harvard Law Review, *About the Harvard Law Review*, <http://www.harvardlawreview.org/about.shtml> (last visited Feb. 1, 2009) (The *Harvard Law Review* “has roughly 2,000 pages per volume.”). See also Seton Hall University Law Review, *Law Review and University Information*, <http://law.shu.edu/journals/lawreview/about.htm> (last visited Feb. 1, 2009). (The *Seton Hall University Law Review* publishes “well over one thousand pages per year.”)

<sup>114</sup> See Columbia Law Review, *Welcome to the Columbia Law Review*, <http://www.columbialawreview.org/information/about> (last visited Feb. 28, 2009) (publishing eight issues a year); The Yale Law Journal, *About the Yale Law Journal*, [http://yalelawjournal.org/about\\_us.html](http://yalelawjournal.org/about_us.html) (last visited Feb. 28, 2009) (publishing eight issues per year); West Virginia University College of Law, *Welcome to the West Virginia Law Review*, [http://law.wvu.edu/student\\_life/west\\_virginia\\_law\\_review](http://law.wvu.edu/student_life/west_virginia_law_review) (last visited Feb. 28, 2009) (publishing three issues per year).

<sup>115</sup> Richardson, *supra* note 112, at 7. (“The principal advantage, of course, is that the author’s ideas can have a maximum effect.”)

<sup>116</sup> Posner, *supra* note 1.

<sup>117</sup> I am not advocating that footnotes need to be ignored, because proper citation instills support, credibility, and accuracy for an author’s work. However, by putting footnotes only when necessary and judicious, law review articles will benefit significantly.

tors. By embracing these simple solutions, law reviews can become stronger and more efficient.

### B. *Distinguishing Themselves From All the Rest*

“[E]ach looking and reading depressingly like the rest,”<sup>118</sup> the problems attenuated with mass publication of law reviews are multiplied. To combat this hindrance, law reviews should view themselves as “companies” that are selling a “product.” As such, reviews should engage in aggressive marketing, advertising, and branding campaigns in an effort to stand out from the rest of the reviews in publication.

Branding is the “distinctive identity of products and services.”<sup>119</sup> The history of branding traces back to ancient times as the Greeks and Romans were the first to practice branding by disseminating messages throughout the public to promote their products.<sup>120</sup> Ancient producers were known to use identifying symbols to brand their pots, metals, and ointments.<sup>121</sup>

Good brands build good companies.<sup>122</sup> “By identifying their products, [brands] have provided purchasers with a means of recognizing and specifying them should they wish to repurchase or recommend the products to others.”<sup>123</sup> In addition, brands also identify the source of the manufactured goods, protect the goodwill of the company, and help consumers draw conclusions about the goods they purchase.<sup>124</sup> Branding becomes especially important when the marketplace provides a number of choices that are seemingly identical in nature. “As products and services become indistinguishable, as competition creates infinite choices, as companies merge into faceless monoliths, differentiation is imperative.”<sup>125</sup>

With so many law reviews in publication today, it is vital for reviews to separate themselves from their competitors. Branding is one way to develop a stronger presence and name recognition in the law review market. In particular, law reviews can take advantage of the internet by creating more user-friendly and attractive websites. Websites are one way to make law reviews more accessible to the public at large. By utilizing websites as a focal point, law reviews can centralize their information. Reviews can easily upload their current issues

<sup>118</sup> Lasson, *supra* note 2, at 929.

<sup>119</sup> JUDITH LYNNE ZAICHKOWSKY, DEFENDING YOUR BRAND AGAINST IMITATION: CONSUMER, BEHAVIOR, MARKETING STRATEGIES, AND LEGAL ISSUES 2 (1995).

<sup>120</sup> BRANDING: A KEY MARKETING TOOL 13 (John M. Murphy ed., 1987).

<sup>121</sup> *Id.*

<sup>122</sup> ALINA WHEELER, DESIGNING BRAND IDENTITY: A COMPLETE GUIDE TO CREATING, BUILDING, AND MAINTAINING STRONG BRANDS 2 (2003).

<sup>123</sup> BRANDING, *supra* note 120, at 1 (listing types of famous brands, such as Coca-Cola, IBM, and Kodak).

<sup>124</sup> ZAICHKOWSKY, *supra* note 119, at 2.

<sup>125</sup> WHEELER, *supra* note 122, at 2.

to the site. This translates into fewer searches into overwhelming electronic databases and libraries and also ensures that people will be able to locate the reviews with more ease from their computer seat.

With articles uploaded to the website, reviews will be able to take advantage of computer technology in order to track website users. Specifically, they will be able to catalog information about who is reading their material and where these users are coming from. Websites also allow reviews to see which articles are being downloaded and which articles are not. By utilizing this technology, reviews can see what articles are the most popular and then capitalize on this information by publishing newer articles that are closely-related to the more fashionable topics.

In an attempt to attract additional users to their websites, reviews can require that their student members update their e-mail signature blocks to include contact information and a hyperlink to the law review's website. That way, any time a law review member sends out an external e-mail, the recipient will be able to click on the hyperlink and instantaneously access the law review's website.

Law reviews can also create specific logos and place those logos everywhere: on their website, on their letterhead, and on their issues.<sup>126</sup> By creating identifiable logos and marks, consumers will eventually be able to associate a law review with its symbol. Law reviews can develop slogans and marketing catchphrases, and externally send out a consistent message to ensure law review unity and credibility. As is the case with any populated industry, "a strong brand stands out in a densely crowded marketplace."<sup>127</sup>

Branding is merely one way for law reviews to separate themselves from their competitors. Another strategy is to insist that lead articles and student notes focus on state-specific issues. By spotlighting state-specific problems, law reviews will be better equipped to service local bar associations. This method would be extremely beneficial to the *West Virginia Law Review* since it is the only law school in the state of West Virginia. As such, it can take advantage of its position by writing solely on state-related matters. If practitioners and judges know that a law review writes exclusively on state issues, then they are more likely to read it in their day-to-day operations.

One final strategy that law reviews can implement to separate themselves from others is to enter the academic marketplace and aggressively solicit professional authors. This strategy can be especially beneficial for lower-tier law schools since authors generally try to get published in the more highly-regarded and widely-read publications. By reaching out to authors, law reviews may be able to draw more distinguished scholars to their reviews. Similar to large law firm hiring practices, law reviews can target and recruit influential

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<sup>126</sup> *Id.* at 11. (listing famous logos, such as the Nike Swoosh, the NBC Peacock, and the Apple for Apple computers).

<sup>127</sup> *Id.* at 2.

authors to publish in their pages because better authors make for a better product.<sup>128</sup>

Active solicitation can also be enhanced and progressed by producing law reviews that focus on a specific, narrowly-tailored topic. For example, the *West Virginia Law Review* recently employed this approach in one of its latest issues.<sup>129</sup> By dedicating an issue solely to the Religion Clauses, the *Review* was able to successfully attract the top scholars in the field, creating a more powerful issue.

Branding and marketing campaigns, state-specific articles, and active solicitation of professional authors are all easily deployable solutions that can offset the problems of mass publication and proliferation. If implemented, these strategies can help law reviews distance themselves from their competitors. Once again, the majority of these suggestions are not difficult to initiate, and by making these changes, a law review will be able to enhance its reputation and prestige by publishing a more credible product.

### C. *Timeliness: Writing About Relevant and Controversial Topics*

Courts simply do not cite to law reviews in their opinions as frequently as in the past.<sup>130</sup> Fortunately though, there is an easy remedy to cure this deficiency. Requiring authors to write about pertinent, time-consuming, and controversial topics will make law reviews more pertinent to courts. And there is nothing more relevant in today's world than the internet, cyberspace, and its interrelatedness with the law.

Between 1991 and 1992, the internet became popularized and widespread throughout the United States with the creation of the World Wide Web.<sup>131</sup> Today, the large majority of American households have access to the internet and personal computers.<sup>132</sup> Utilized at home, at school, and at work,

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<sup>128</sup> Another helpful analogy to illustrate the importance of soliciting authors is the modern recruitment of the Division I football player. Colleges and football programs spend significant time, money, and energy on individual athletes to ensure that the best talent is on their team. Likewise, law reviews can recruit and solicit highly-regarded authors to publish in their reviews.

<sup>129</sup> See John E. Taylor et al., *Introduction*, 110 W. VA. L. REV. i (2007). This issue developed from an earlier law review-sponsored symposium entitled "The Religion Clauses in the 21st Century."

<sup>130</sup> See *supra* notes 68-78 and accompanying text (providing statistics for judicial citations of law review articles).

<sup>131</sup> CHRISTOS J.P. MOSCHOVITIS ET AL., *HISTORY OF THE INTERNET: A CHRONOLOGY, 1843 TO THE PRESENT* 162 (1999).

<sup>132</sup> See U.S. Census Bureau, *Computer and Internet Use in the United States: 2003*, <http://www.census.gov/prod/2005pubs/p23-208.pdf> (last visited Jan. 11, 2009) ("In 2003, 70 million American households, or 62 percent, had one or more computers, up from 56 percent in 2001. In 1984, the proportion of households with a computer was 8 percent.").

computers touch all facets of daily life.<sup>133</sup> They are used for communicating, advertising, educating, gambling, shopping, accounting, and filing tax returns.<sup>134</sup>

In contrast, the average age of federal judge nominees is approximately fifty years old.<sup>135</sup> This means that the average federal judge was born around 1960, roughly thirty years before the popularization of the internet. This significant age gap places judges at a distinct disadvantage when it comes to cyberspace cases that concern the interactions between the internet and the law. As one federal judge succinctly stated, “[j]udges and legislators faced with adapting legal standards to the novel environment of cyberspace struggle with terms and concepts that the average American five-year-old tosses about with breezy familiarity.”<sup>136</sup> In an effort to regain their prominence, law reviews can capitalize on the internet’s novelty to judges by writing articles narrowly-tailored to cyberspace issues and problems. By doing so, law reviews can help courts adjust and adapt to the technological changes that have accompanied the twenty-first century.

“[N]ever before have we seen a space in which individuals, corporations, communities, governments and other entities can exist within and beyond the borders of the nation state in such an instantaneous, contemporaneous or ubiquitous manner.”<sup>137</sup> While the law has been forced to adapt to innovative technologies before, such as the telegraph, the radio, and the television set, the internet has resulted in a global space where sovereignty is largely undefined.<sup>138</sup> “Global computer-based communications cut across territorial borders, creating a new realm of human activity and undermining the feasibility—and legitimacy—of laws based on geographic boundaries.”<sup>139</sup> As the internet undoubtedly continues to grow and become even more entrenched in our daily lives, there is a great need for a strong judicial response to handle these cyberspace changes.<sup>140</sup>

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<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> See The Third Branch, *Judicial Selection is Study for Professor*, <http://www.uscourts.gov/ttb/sept01ttb/interview.html> (last visited Feb. 14, 2009) (interview with Dr. Sheldon Goldman, professor of political science at the University of Massachusetts).

<sup>136</sup> *Am. Libraries Ass’n v. Pataki*, 969 F. Supp. 160, 161 (S.D.N.Y. 1997) (quoting District Judge Loretta A. Preska).

<sup>137</sup> Georgios I. Zekos, *State Cyberspace Jurisdiction and Personal Cyberspace Jurisdiction*, 15 INT’L J.L. & INFO. TECH. 1, 1 (2007) (footnote omitted).

<sup>138</sup> *Id.* at 3. “Cyberspace is an amorphous space that does not occupy a set physical or geographic location.” *Id.* at 1.

<sup>139</sup> David R. Johnson & David Post, *Law and Borders: The Rise of Law in Cyberspace*, 48 STAN. L. REV. 1367, 1367 (1996).

<sup>140</sup> See FED. R. CIV. P. 5, 9, 14, 16, 24, 26, 33, 34, 37, 45, 50, 65.1 (listing the new package of amendments to address issues associated with “electronically stored information,” effective December 1, 2006).

As courts continue to struggle and adapt to the myriad of issues involving the interconnectedness of the law and cyberspace, American law reviews can take action by writing on these particular issues. This effort will hopefully result in more citations of law reviews by the courts as judges will begin to rely on law reviews to serve as primers for cyberspace basics. Articles that focus on electronic discovery,<sup>141</sup> service of process,<sup>142</sup> rules of civil procedure,<sup>143</sup> jurisdiction,<sup>144</sup> production of evidence,<sup>145</sup> and the internet in general<sup>146</sup> can all be helpful to the judiciary. By making a directed push towards publishing articles about cyberspace, courts will be able to once again rely on law reviews in their opinions.

An additional approach that law reviews can initiate to increase demand and judicial citations is to write on time-consuming issues. For example, articles focused on hard data and statistics can be beneficial to the bench. Often, judges and practitioners do not have the time or manpower to write articles focused on statistical analysis. On the other hand, law schools do not require any specific undergraduate degrees; there are mathematics, economics, and statistics majors walking the law school halls each day.<sup>147</sup> Law reviews can once again take advantage of their position by writing articles that collect and analyze hard data and statistics. Examples of these types of topics can range from articles on discrimination<sup>148</sup> and racial profiling in traffic stops and searches,<sup>149</sup> to articles about personal injury claims,<sup>150</sup> plea bargaining in criminal cases,<sup>151</sup> and recidi-

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<sup>141</sup> See Martin H. Redish, *Electronic Discovery and the Litigation Matrix*, 51 DUKE L.J. 561 (2001).

<sup>142</sup> See Jeremy A. Colby, *You've Got Mail: The Modern Trend Toward Universal Electronic Service of Process*, 51 BUFF. L. REV. 337 (2003).

<sup>143</sup> See Kenneth J. Withers, *Electronically Stored Information: The December 2006 Amendments to the Federal Rules of Civil Procedure*, 4 NW. J. TECH. & INTELL. PROP. 171 (2006).

<sup>144</sup> See Zekos, *supra* note 137, at 1.

<sup>145</sup> See Kimberly D. Richard, *Electronic Evidence: To Produce or Not to Produce, That is the Question*, 21 WHITTIER L. REV. 463 (1999).

<sup>146</sup> See Lawrence Lessig, *The Law of the Horse: What Cyberlaw Might Teach*, 113 HARV. L. REV. 501 (1999); see also Frank H. Easterbrook, *Cyberspace and the Law of the Horse*, 1996 U. CHI. LEGAL F. 207 (1996).

<sup>147</sup> Law Sch. Admission Council, *Getting Started: How Do I Prepare for Law School Education*, <http://www.lsac.org/AboutLawSchool/getting-started-questions.asp#howdoiprepareforlaw> school (last visited Feb. 28, 2009) ("As long as you receive an education including critical analysis, logical reasoning, and written and oral expression, the range of acceptable college majors is very broad. What counts is the intensity and depth of your undergraduate program and your capacity to perform well at an academically rigorous level.").

<sup>148</sup> See Julia Lamber et al., *The Relevance of Statistics to Prove Discrimination: A Typology*, 34 HASTINGS L.J. 553 (1983).

<sup>149</sup> See Melissa Whitney, *The Statistical Evidence of Racial Profiling in Traffic Stops and Searches: Rethinking the Use of Statistics to Prove Discriminatory Intent*, 49 B.C. L. REV. 263 (2008).

<sup>150</sup> See Michael Selmi, *Why Are Employment Discrimination Cases So Hard To Win?*, 61 LA. L. REV. 555 (2001).

vist rates for sex offenders.<sup>152</sup> Writing articles focused on data collection and statistical analysis can provide essential tools that judges and practitioners can rely upon in daily practice, which will hopefully result in increased judicial citations to law review articles.

Furthermore, law reviews should encourage members to write about controversial topics and themes in order to increase their demand among the public. Law review authors often have wide discretion and the freedom to write about any topics that they wish. On the other hand, courts are confined by legislative fiat and *stare decisis*, while active practitioners are limited by time constraints. Fortunately, law review students are not hampered by these barriers. Reviews should not be afraid to print articles that offer bold statements and daring predictions.<sup>153</sup> Contentious issues centered on the relationship between the Constitution and abortion or the Constitution and homosexual rights are possible breeding grounds for adventurous authors. While those are just two potential topics, there is unquestionably a large variety of debatable legal topics in existence today. By encouraging members to write on issues that inflame the human spirit, law reviews can acquire a broader and more diverse readership.

The recommendations extended here are intended to help law reviews overcome the various limitations facing them today. While the system itself is inherently imperfect, law reviews can improve their own standing by adjusting their structure, making concerted efforts to separate themselves from other reviews, and writing about relevant, time-consuming, and controversial topics. By undertaking some of these proposals, American law reviews can elevate their reputation and regain their prominence in today's legal community.

## VI. CONCLUSION

In order to understand the past, this Note began by examining the origin, purpose, and growth of the first American law reviews. As evidenced, many of the founding principles behind the creation of the first law reviews remain largely unchanged today. From there, Part III illustrated the pervasive criticisms encompassing law reviews. Mass publication, law review organization, style and content, and lack of judicial citations to reviews are the four chief charges that law review opponents have written about at considerable length.

However, Part IV attempted to prove that many of those flaws are not fatal. The modern law review continues to hold significant implications for law school students in terms of scholarship, opportunity, and academic value. Finally, Part V offered several recommendations that law reviews can easily implement to help reduce the cynical views. If adopted, these suggestions will be

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<sup>151</sup> See Stephanos Bibas, *Plea Bargaining Outside the Shadow of Trial*, 117 HARV. L. REV. 2464 (2004).

<sup>152</sup> See Lucy Berliner, *Sex Offenders: Policy and Practice*, 92 NW. U. L. REV. 1203 (1998).

<sup>153</sup> See Fuld, *supra* note 23, at 919.



able to help law reviews separate themselves from one another, while also strengthening the law review system as a whole.

Hopefully, this Note has proven that while the law review naysayers have valid and credible points, their views are simply overstated and exaggerated. Law reviews continue to hold immense and precedential value to law school students. By making subtle changes, reviews can be tweaked and adjusted to reform, refine, and update the product that they publish. While law reviews will always struggle with their inherent limitations, it is not too late to improve and revitalize American law reviews, restoring them to their proper place atop the legal publication totem pole.

Finally, it is my sincere hope that this Note does not simply add to the fodder that already exists. I intentionally wrote this Note to meet the minimum page limit requirement. I realize the footnoting is extensive, and this directly contradicts one of my proposed suggestions to make the law reviews better. However, I felt ample citation was needed to explicitly flush out the various problems and criticisms associated with the American law review. I tried to refrain from including fluff, while also attempting to embrace as much innovative, creative, and original thought as possible. As a current law student, I must mention that my educational and professional experience with the *West Virginia Law Review* has been exceptional. It has provided me with invaluable tools and significant legal training that I hope to carry with me into everyday practice.

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