EXCHANGE

An Author's Manifesto

James Lindgren†

I. CRIMES AGAINST HUMANITY

Our scholarly journals are in the hands of incompetents. I'm not saying that law review editors are stupid; I wish things were that simple. On the contrary, law review editors are smart—frequently smarter than the authors whose work they edit. But they often select articles without knowing the subject, without knowing the scholarly literature, without understanding what the manuscript says, without consulting expert referees, and without doing blind reads. Then they try to rewrite every sentence.

In short, student editors are grossly unsuited for the jobs they are faced with. Certainly, I was unsuited for my job on the staff of the University of Chicago Law Review. During my first year on the Review, I was appalled by what my fellow students (and I) were doing—selecting faculty articles and rewriting their prose. My response to my own feelings of inadequacy was to read a dozen style books. The following year, I was rewarded for my few months of study by being assigned the job of editing most

† Norman & Edna Freehling Scholar and Professor of Law, Chicago-Kent College of Law. B.A. 1974, Yale University; J.D. 1977, The University of Chicago. This essay was written while I was a visiting scholar at the Northwestern University and University of Chicago Law Schools. I particularly appreciate suggestions from Leo Katz, Richard Posner, Wendy Gordon, Jennifer Arlen, Philip Hamburger, Andrew Kull, Dan Polsby, Gary Lawson, Anita Bernstein, Jacob Corre, Lloyd Cohen, Richard Matasar, Richard McAdams, and Steve Heyman. Last, I wish to thank the editors of the University of Chicago Law Review for their restrained and extremely intelligent edit of this essay.
articles and student comments for English prose style. Although by law review standards I was a light editor, in retrospect I'm ashamed by my own complicity in war crimes against authors.

_This nonsense must stop._ We must turn our professional academic journals into professional academic journals. What I propose in this playfully extreme essay is to improve student writing, not to end it. I try to show what's wrong and how to start fixing it. We've failed as educators of our law review editors. We've asked them to do tasks that they are incompetent to do. And then we've given them almost no supervision. Ultimately, whose fault is this?—obviously not individual students', who operate in a world they did little to create and have little incentive to reform.

What kinds of abuses arise? Here are a few examples from my experience and that of my friends and acquaintances. Some are outrageous; others merely show the battlegrounds. In keeping with the usual style for essays such as this, I have removed the names of the journals to protect the guilty—although all but one of these stories involve elite law reviews. Indeed, the main law reviews at schools located in New Haven, Cambridge, and Chicago are honored with multiple entries.

1. While editing a symposium, the editors of one journal kept cutting down the length of an article by a pair of contributors from a nonelite law school, claiming that the arguments weren't worth publishing. Then by some strange process of osmosis, text cut from the pair's submission began appearing in the manuscript of a famous professor from the editors' home school. Apparently, the editors were pasting pieces of one manuscript into someone else's. The pair demanded that their work be published as submitted. The journal refused. The authors pulled their article and published it in a less elite review.

2. After a female economist (with both a Ph.D. and a law degree) had submitted a manuscript to a law review, the female editor-in-chief of the review asked the economist whether she understood the mathematical equations in the appendix to her manuscript. The economist answered, first,
that of course she did, she wrote the appendix herself. Second, the economist objected that such a question would not have been asked of a man. The editor agreed and apologized.

3. In competing for the right to publish an essay, the editors of one journal agreed to two conditions insisted on by an author. First, they would cut the piece only to improve it and would not cut it solely to reduce its length. Second, they would publish the appendix. Without a turnover in the board, the journal reneged on both promises.

4. One review accepted a manuscript and edited it, introducing over two hundred style errors into the manuscript. The author responded with a letter detailing the errors and providing excerpts from style manuals to illustrate them. The author requested either no style editing or a new, competent editor. The review refused. The author pulled the article, revised it, and years later published it in a faculty-edited law review.

5. A law journal recently tried to change case citations in a historical article to courts listed in The Blue Book, rather than the courts that actually decided them. When the author objected to these changes, he was threatened by an editor who warned that the journal had "a long memory."

6. A law review accepted a manuscript, praising it as the best-written article they were publishing that year. Then they tried to rewrite every sentence, saying that they were surprised to find so many errors. The only reason that they thought there were errors is that they had based their corrections on false folklore rules about proper prose style. When pressed, the editors honored their commitment to publish the text as the author wished.

7. One law review editor thought that many uses of the word "the" were errors. Following this bizarre rule of thumb, he took as many "thes" out of manuscripts as he could, thus reducing many sentences to a kind of pidgin.

8. An author publishing with a top review reported that an editor there believed that most participles were improper danglers. Accordingly, the editor systematically removed
them from the manuscript. Because the author was violating page limits, he capitulated to this nonsense.

9. Editors of one review recently tried to remove from an author's manuscript most split verbs (adverbs placed between the auxiliary and the rest of a compound verb). As H.W. Fowler and Wilson Follett make clear, however, this is the preferred place for the adverb. Yet by following the bizarre rule against split verbs, the editors were merely doing what many law reviews do. After looking into the matter, the review decided to rescind its rule against split verbs, thus permitting proper English.

10. A former editor of one journal admitted that during her year as an editor, the journal received an article that the editors very much liked from a professor at a nonelite law school. After much debate, they decided that they couldn't "take a chance" on that professor's law school. Later that year, they received an article in the same field from a professor at an elite law school, an article that they thought inferior. But they accepted it anyway.

11. Editors of one law review once rejected a comment that criticized an article they were about to publish because they thought that the comment was too devastating to the article. They said that the strength of the comment worked against their accepting it. They were embarrassed to be publishing the original article by one of their own faculty members and didn't want to spend any more space on it in their review.

12. One law review reputedly sorted submissions into piles, depending on the prestige of the law school from which the manuscript was submitted. The good pile got serious reads, the bad pile got something less.

13. A former editor of one top review admitted that the school of the submitter was a major consideration in deciding what to accept. He said that manuscripts from Harvard

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professors had to be really poor to be turned down. Even that would require extended debate.

The bizarre editing quirks mentioned in several of these examples are, of course, combined with the well-known student fetish about footnote form. As has been argued in the sociolinguistics literature, a rule-oriented approach to writing is a reflection of linguistic insecurity. Many student editors haven't read enough English literature to develop an ear for good writing. And it's too late for a sudden education. So they rush to the safety of rules. It matters not whether the rules are good rules or bad rules, just so the students have something to police, something over which they can achieve a feeling of mastery. Good writing to many of them becomes avoiding a wrong step.

There are other, more subtle problems that are at least exacerbated by student editing. For example, the extraordinary length of most legal articles is a reflection of the need to impress students. In scientific disciplines, on the other hand, there is constant pressure by outside referees to shorten articles. Although it's only my impression, I think that law review editors respond positively to the padding that weights down most law review articles, accepting long articles more readily than short articles. The faculty-edited journals that I have dealt with are much stricter about length than the student-edited journals. Most long articles would be better if they were half their length. If most journals insisted on page limits of thirty-five or fifty pages, authors would change their style, and the major journals could publish twice as many articles. More important, what they published might be readable by human beings.

Putting students in charge also biases article selection in another way. Contrary to some of the commentary on student-edited law reviews, their selection practices don’t merely reflect

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5 The fact that student editors then try to cut articles for length is not a refutation of my argument.

6 Judge Stanley Fuld argued that the reviews “depend on outsiders for articles, and since that is so, your subject matter is in part chosen for you and not by you . . . .” Stanley H. Fuld, A Judge Looks at the Law Review, 28 NYU L Rev 915, 916 (1953). One study argued that “few, if any, student editorial boards consciously plan in advance for the number of pages to be devoted to various legal subjects . . . . [U]ltimately [they] accept[ ]
the interests of law professors. One study\(^7\) of topics published by
the ten most frequently cited law reviews\(^8\) found that, except for
constitutional law, there is little relation between the number of
teachers in a major field and the number of faculty articles and
student notes on that subject in elite law reviews.\(^9\) Contracts, for
example, is the second most common teaching area, but elite law
reviews publish only a few contracts articles and student notes a
year.\(^10\) Some contracts teachers tell me that they are hesitant to
write in the area because of a lack of interest from student edi-
tors.

Nor do elite law reviews merely reflect what people practice.
Wills, divorces, real estate transactions, and criminal law are sta-
ples of many lawyers' livelihood. Indeed, in the Laumann-Heinz
study of the Chicago bar, real estate was the most common of
twenty-three specialties analyzed.\(^11\) Probate was the third most
common specialty, divorce was sixth, and criminal (defense) was
eighth.\(^12\) Yet elite law reviews are not interested in these topics.
All four placed at the bottom of the list of topics for faculty arti-
cles—criminal law (3%), property (2%), family law (1%), estates
(1%).\(^13\) Indeed, I do not think that the Yale Law Journal has
published a wills article in my lifetime.\(^14\)

\(^7\) Shirley Hoogstra and James Lindgren, What Elite Law Reviews are Publishing, unpublished manuscript (Dec 10, 1986) ("Hoogstra-Lindgren Study").


\(^9\) Hoogstra-Lindgren Study at 8 (Table 2).

\(^10\) Id.

\(^11\) Edward O. Laumann and John P. Heinz, Specialization and Prestige in the Legal Profession: The Structure of Deference, 1977 Am Bar Found Res J 155, 169-71 (Table 2).

\(^12\) Id. One would expect that these specialties would be even more common if the bar in smaller cities and towns were included.

\(^13\) Hoogstra-Lindgren Study at 11 (Table 4).

\(^14\) Yale has published articles in the Trusts and Estates area generally, but not, to my knowledge, a wills article.
So what do law review selection practices reflect? One study found that they reflect the interests of third-year law students looking forward to federal circuit court clerkships and practice in corporate law firms.\footnote{Hoogstra-Lindgren Study at 9.} Accordingly, the leading areas for law review faculty articles and student notes are constitutional law (22%), corporate law (12%), procedure (10%), and governmental law (9%).\footnote{Id at 5-7 (Table 1).}

Further, the two most often selected topics for faculty articles—constitutional law (19%) and corporate law (14%)\footnote{Id at 11 (Table 4).}—correspond to specialties where lawyers disproportionately represent major corporations, practice in firms rather than solo, make large incomes, and come from elite law schools.\footnote{Laumann and Heinz, 1977 Am Bar Found Res J at 169-71 (Table 2); Hoogstra-Lindgren Study at 10 (Table 3).} The four least common topics for faculty articles—criminal law (3%), property (2%), family law (1%), and estates (1%)\footnote{Hoogstra-Lindgren Study at 11 (Table 4).}—correspond to specialties where lawyers disproportionately have few major corporations as clients, practice alone, make smaller incomes, and come from nonelite law schools.\footnote{Laumann and Heinz, 1977 Am Bar Found Res J at 169-71 (Table 2); Hoogstra-Lindgren Study at 10 (Table 3).}

One doesn't have to be a "crit" to see a disturbing pattern here. Our scholarly journals are skewed away from faculty concerns toward student interests, interests that disproportionately serve elite segments of the corporate bar and the federal courts. This is hardly surprising: People find interesting what their own situations lead them to find interesting. What is surprising is that we tolerate it.

These, then, are the problems—elitism, a lack of scholarly values, aggressive editing, and perverse selection practices—in short, incompetence.

II. CRIMES COMMITTED BY PROFESSORS

So far my discussion has been one-sided—against the current style of student editing. Yet I don't mean to suggest that professors are just innocent lambs slaughtered by ruthless editors. Professors have also committed crimes. What are they?

The most common complaint against law professor authors is that they miss deadlines. That is certainly the complaint that can
most fairly be leveled at me. But it is also one of the most common complaints against student editors. My guess is that whoever holds more or less to deadlines complains about whoever doesn’t. While individual editors or authors may be reliable about deadlines, as groups neither professors nor editors are entitled to the moral high ground on deadlines. Certainly, I’m not. In defense of us professors, I would say that most of the time spent in responding to student revisions could be avoided by more professional, less aggressive editing.

More serious professorial misconduct occasionally surfaces. The national news media reported one case in which a law professor allegedly threatened his home law review editors with negative recommendations for jobs unless they reconsidered their rejection of his article. I know of one professor who was caught plagiarizing another professor’s article. Another professor lied to editors, falsely claiming that he had acceptances from other elite law reviews, and hoping for a “halo effect.” When the editor checked the professor’s story, the professor denied it. The editor contacted the professor’s law school, but that school’s administrators apparently didn’t want to hear the truth. The editor surmised that they were afraid that the dispute might derail the professor’s impending tenure.

Overall, when former editors become law professors, they speak much more about the crimes their own managing boards committed than the crimes the authors committed. As they begin to see things from the professors’ side, the hostility to student editing grows.

III. MITIGATING CIRCUMSTANCES: THE ADVANTAGES OF STUDENT EDITING

Having said what is bad about student editing, let me briefly suggest what is good. Although professors suffer, students on balance benefit from the practice. They learn because they must. Unfortunately, just when they gain a little experience, they move on and another board of novices takes over. Yet even this has its positive side. Editors of journals in some other fields become so entrenched that prejudices dominate selection for years. Some academic journals devoted to the study of a particular religion, for example, are reputed to be hesitant to publish work that

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21 In an uncharacteristic fit of discretion, I will decline to cite the New York Times article about the affair.
conflicts with that religion's holy book. In law, at least next year's board may have a different set of prejudices than this year's.

Also, because almost no respectable law school can afford not to have a law review, there are many more journals than needed, thus giving us more places to publish. The law schools pick up the tab. Further, because student editors value their time less than faculty editors, student journals allow multiple submissions, which are unethical in most other fields. It is this characteristic of student editing that makes me want to reform student editing, rather than to end it. If student journals stopped allowing multiple submissions without cutting the maximum article length down to thirty-five or fifty pages, the system would break down.22

Most professors would list the industriousness of student editors as an additional benefit, but (beyond a tolerance of multiple submissions) I find this energy so often misdirected that I long for a lazier style of editing.

IV. WE SHALL OVERCOME SOME DAY

A. What to Do: Faculty

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. As faculty members, we must begin to take responsibility for the monster that our predecessors created. We should begin to reassert control over the law reviews. This includes formally instructing student editors at our own schools about the proper role of editors of scholarly journals. We should encourage a maximum role for faculty in article selection. For some reviews, especially the weak ones, it may be wise to move to a symposium format in which faculty solicit and choose the articles, but students still run most other aspects of the journal. For reviews below the top tier, this will probably have the spill-over effect of increasing the quality, coherence, and usefulness of the journals.

22 To explain, a science journal may publish about 25 serious pieces of faculty scholarship a week, while a law review publishes only that many in a year. See James Lindgren, Why I Comment, 24 Conn L Rev 195, 198-99 (1991). Without multiple submissions, law articles would be almost impossible to place.
We must take seriously our obligation to train law review editors. A few schools are beginning to experiment with greater supervision. I have had training sessions on how to edit English prose for the Connecticut and Virginia Law Reviews. At Chicago-Kent, a law review oversight committee of three faculty members and two editors meets semi-regularly to select symposium topics, choose outside editors for them, and discuss editorial problems. Students still do almost all of the work outside of article selection. They seem comfortable with the system and like working with better scholarship than their predecessors published. When the Chicago-Kent Law Review switched over from a typical student-edited law review to a review publishing faculty-selected symposia, it immediately changed from an obscure, seldom-cited law review to one of the twenty most-cited law reviews (according to Shepard's data).\(^{23}\)

An even better system was set up at Michigan for the Michigan Journal of International Law. Students attend a one-credit seminar for editors, run by the law review advisor. When the top editors can't decide whether to accept an article, they bring it to the seminar for discussion. Thus every other week students present one or more manuscripts to their fellow editors and invited faculty, who have read the manuscripts.\(^{24}\) International scholars have suggested that this could in part explain how Michigan turned around its almost moribund international journal so quickly. And students find it helpful and "good for morale."\(^{25}\)

For reviews that receive manuscripts over the transom, we should encourage blind readings and evaluations, both within the review staff and by faculty consulted as referees. We should encourage the specialization of journals, not because specialization is good in itself, but because there are already too many general law reviews and specialization breeds editorial competence.

We should be willing to take on the substantial work of starting faculty journals. Faculty journals are far from perfect, but they are almost uniformly better-edited than student journals. I hear occasional complaints about faculty editing, but nothing like the chorus of boos that I hear about student editing.

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\(^{23}\) Rank is based on citation counts for the volumes beginning in 1987-89 and counted through the June, 1993 issue of Shepard's Law Review Citations.

\(^{24}\) Faculty in relevant areas of interest attend most, but not all, of the seminar sessions. This account is based on telephone conversations with Joe Weiler, Merritt Fox, John Jackson, and Tamilla Ghodsi, March 2, 1994.

Last, professors must begin to document the problems that we face. Anecdotes are useful, but basing generalizations on them is suspect. We must empirically examine the effects of elitism and sexism on article selection. With good data establishing elitism, for example, it might be easier to persuade law reviews to move to blind article selection.

At least one other field has assessed the influence of using students in scholarly activities. In the survey research field, researchers have studied the effects of using students in conducting survey interviews and their distorting influence on survey responses by subjects. They conclude:

[College students used as interviewers produce much larger response effects than other interviewers. The average response effect for interviewers under the age of 25 (mainly college students) was nearly three times larger than that for all other interviewers . . . . Other data reported by Sudman and Bradburn indicate that experience is important in reducing response effects; response effects are twice as high for inexperienced as for experienced interviewers . . . .] Training and supervision is perhaps more important for . . . [students] than for others. One must resist the temptation to believe that because students are highly motivated and bright, they will be able to cope with the interviewing task without the same training and supervision that is necessary with the more typical interviewer. 26

Although the distortions and errors introduced by bright, motivated students into law review publishing are harder to measure than the errors introduced into survey research, there is no reason to believe that the relative error rates are any lower in law publishing. Indeed, given the greater propensity of law students to change text and their much lower level of supervision by professionals, it is likely that the relative student error and distortion rates are much higher in law publishing than in survey research.

B. What to Do: Students

I address my comments to student editors with some hesitation. After all, do I really expect oppressors to give up their op-

pression voluntarily? There is hope—especially since most student editors are people of good will. Even the capitalists hypothesized by Marx and Engels were in part victims of their own power, trapped in a system of class oppression from which it was difficult for them to escape.

Accordingly, I call on student editors to refuse to let their minds and bodies be used in the systematic torture of English prose. Saying that you are only doing what you were taught to do by the prior managing board—that you are only following orders—is not good enough. You are independent moral agents. You are responsible for the evil that you do. Remember Socrates: he was wise because he knew what he didn’t know.27 Admit that you don’t know what you’re doing, and use that self-knowledge to reform your journals.

More specifically, what should reform-minded student reviews do? Reviews should:

1. Conceal the author’s identity, gender, and institutional affiliation from those selecting the articles;

2. If possible, use blind expert referees for those articles reaching the final cut;28

3. Announce presumptive page limits for articles in the review;

4. Make clear when accepting a manuscript whether it is too long and needs cutting;

5. If the manuscript does need cutting, make the author do it;

6. Keep editing suggestions to a minimum (if the text needs more than a few style suggestions a page, reject it in the first place);

27 The Apology of Socrates, in Plato, John Warrington trans, The Trial and Death of Socrates 29, 35 (Dutton, 1963) (“I am wiser than this man; neither of us really knows anything worth knowing, but he thinks he knows something when in fact he does not, whereas I, knowing nothing at all, make no pretence of doing so.”). I may not know how others should write, but I do know how I want to write.

28 To make this work, faculty have to be willing to read manuscripts on a few days’ notice.
7. Do very little to most manuscripts other than check the footnotes and conform them and the typesetting to the house style;

8. Try to institute a faculty-run editorial seminar—or at least seek out faculty training and advice as often as possible; and

9. Cooperate in research on elitism and sexism in article selection.

It's ironic that some reviews have been able to gain a competitive edge in bargaining for particular manuscripts by promising that they will suspend their normal aggressive text editing. Student work other than checking footnotes is so little valued by many authors that they are happier without it. Why not make this promise to every author? And if the article is too long, promise no text editing conditioned on the author cutting her manuscript to a specified length. A review that adopted this practice would have an advantage over competing reviews in getting articles. And, of course, any author would always welcome an honest suggestion by an editor to correct the handful of typographical errors (and other true mistakes) in her manuscript.

V. LAW PROFESSORS UNITE: WE HAVE NOTHING TO LOSE BUT OUR CHAINS

Just as there are good and bad authors, there are good and bad editors. At one time or another in my life, I'm sure I've seen—and been—all four of these characters. My grievance is not with any one person, it's with a culture and system that distorts the style and content of legal scholarship. Authors have been railing against student-edited law reviews for years, but little has changed. Articles are chosen by people who know little of the subjects underlying the works they evaluate. Some student editors have admitted that elitism plays a major role in choosing what to publish. Most student editors have no background that
would make them suitable for selecting articles, editing prose, or publishing. As educators, we have an obligation to train our students to do more professional work.

Student editors are perplexed by the hostility that their incompetence generates. Perhaps an analogy would lead them to understand more easily. Imagine that as a law student, you had spent many months writing what you believed would be a fine student note, a note that you hoped would land you a managing board position, a good clerkship, and ultimately perhaps a job. Then imagine that before you could submit this note, you had to give it to a group of bright high-school students who rewrote almost every sentence. Even if you were able to struggle through the process and talk them out of dozens of stupid mistakes, the resulting product would little resemble the work that you were so proud of. This is what it feels like. And it doesn’t happen just once, it happens almost every time we publish.

The net effects of student editing are biased article selection and a tedious sameness in prose style, a style reduced to the level of third-year law students. With the exception of a few dictionaries and holy texts, no great book was ever written by a committee. I recommend zero tolerance for wrongheaded prose editing. When student editors step over the line and we don’t tell them, they feed on our weakness and grow stronger. As victims of student editing, we must not remain silent. For our silence gives them power, a power that they will likely use to oppress others.