How Law Review and Law Journals Work

How one joins or becomes a member of a law review varies from one law school to another. At some schools, participants must be invited to join. Typically, these schools’ law reviews require invitees to have demonstrated exceptional academic prowess; that is, they must fall into the top 10, 15, or 20 percent of their first-year class based on grades. Other schools are more liberal and allow candidates to “write on.” This more egalitarian method is based on the philosophy that grades alone, for various reasons, are not the end all in assessing legal and writing skills. Students in these schools are invited to submit drafts and go to work for the law review cite-checking manuscripts, conducting office hours, answering the phones, and performing various other tasks. The law school usually awards minimal credit (such as one unit per semester) for the work of the invitees. Some schools’ law reviews use a combination of the preceding methods of joining, inviting top grade-getters with formal written invitations while still allowing other students to write on.

The invitee will work hard. It is not easy to publish a thick, bound volume of closely reviewed and edited, and sometimes highly technical, scholarly articles each year. Each article contains up to hundreds of legal citations, mostly in footnotes, to the sources and supporting materials for the facts and propositions stated in the article. The footnotes, in turn, may contain string citations of case, statutory, and secondary authorities. The basic purposes of legal citation are to identify the source being cited, distinguish it from other sources, and help the reader locate the source (whether it be a case, statute, ordinance, treaty, treatise, book, article, or whatever).

Invitees are given sections of an article (for example, a portion of the text containing 20 to 30 footnotes) to check. Cite-checking is the process of actually looking up the sources cited by the author and ascertaining whether they are in the correct form and support the stated propositions. After finding the source, the invitee must read it and make a critical judgment about whether it supports or does not support the author's proposition.

In addition, the invitees must carefully check citations for accuracy and style conformity with the elaborate rules and conventions contained in the Harvard Blue Book. Blue booking is a highly technical process that has in recent years been criticized by some notable legal scholars, including U.S. Court of Appeals Judge Richard Posner, for its fetish-like over-attention to trivial detail. Like it or not, however, it appears that the numerous and technical rules of the Harvard Blue Book are here to stay and will probably plague law review participants for decades to come.

While the process of cite-checking is very time consuming, it familiarizes the cite-checker with various source materials, including landmark decisions and articles in the field. In addition, the process requires the exercise of critical judgment about whether a legal authority supports a given proposition. Exercising such judgment is something you will do over and over again in the course of your legal career, albeit in very different situations. However, whether you are reviewing a colleague's brief or analyzing an opponent’s motion, exercising that critical judgment is the very essence of legal analysis. Participating in law review develops that skill.

Once the invitee meets all requirements for office and cite-checking hours and works during his free time to produce his own draft law review article of sufficient quality, he may be granted law review membership. Producing the requisite article usually takes several drafts, each of which is edited and critiqued by student law review editors who have gone through the process themselves already. These editors will help the student with writing style, citation form, and, to a lesser extent, the substantive aspects of his article. Depending on your editor's personality (or lack thereof), the experience can be a pleasant one filled with learning and helpful instruction, or it can seem like a frustrating encounter with an intellectual bully.

Slowly, with each redraft and through the editing process, the student's manuscript will change into a heavily footnoted, highly structured article. (Student articles, by the way, are not called “articles” in law review parlance; they are termed notes if they address only a particular case as their topic, and are termed comments if they have a broader subject. The term article is reserved for works by professors and other lawyers. The final published volume of a law review will include some student notes and comments, but will be comprised primarily of professional articles. For simplicity, however, we will use the common referent...
After still more drafts, each followed by more editing and criticism (as well as more work as a staff member), the students draft may reach a stage where it is of a very high and nearly publishable quality. At this stage, it will have easily gone through over half a dozen drafts, and perhaps over a dozen. Based on the judgment of the editors reviewing the work (usually the editor-in-chief, the student notes and comments editor, and the particular editor assigned to edit the students work), the student may then be invited to serve as an editor.

The complete transition from invitee to member to editor may take as little as one semester in the case of exceptional students, or as much as one and one-half years for others. Much will depend on the time and energy the student has to devote to her law review activities. Law school is certainly a demanding enough place without these additional law review burdens, and students participating should not be disappointed if they do not progress as rapidly as their law review peers.

For various reasons, the attrition rate of law review staffs is great. Many invitees and write-ons are weeded out by the onerous work requirements early on and abandon their articles in the early stages. Many feel they can expend only the time and effort it takes to obtain member status and thereafter abandon further work and writing, content with that level of accomplishment. Many, quite simply, cannot or choose not to keep up with the additional work augmenting the day-to-day grind of law school; they do not enjoy law review and value their free time too much to spend it that way. Very few attain the rank of editor by the end of the process; even fewer have their articles published in a law review, whether that of their own law school or another. To do either or both is evidence of diligence, perseverance, and the ability to work hard under trying conditions; it is no wonder that many law firms look favorably upon law school graduates who have been editors or have written published articles.

Law review is run by editors. The editor-in-chief is the most powerful and prestigious editor position. Other common editor positions that are well thought of are the managing editor, the articles editor, and the student notes and comments editor. The managing editor takes care of contracts and financial aspects of law review, including its arrangement with its publisher. The articles editor communicates with professionals whose articles have been accepted for publication and assigns the editing of their work. The student notes and comments editor performs the same function with student-written works.

Other editor posts include the research editor (who assigns cite-checking tasks to student members and invitees) and the executive editor. There may be many other editors with no specific responsibilities except to edit articles, a task common to all editors. The top editor positions are usually elected, with outgoing editors in the graduating class voting along with new editors, and perhaps members, who may be given half a vote. Other editor positions may simply be appointed by the editor-in-chief once the latter has been elected. The exact mechanics will differ, of course, from review to review.

There is no denying that there are politics involved in the functioning of law review. Decisions regarding whether to publish student articles or the articles of professors from the law reviews own school, for example, are always touchy. Decisions on who will make editor, made by the cabals of editors discussed previously, are similarly sensitive. Law review editors are aware that they must preserve and enhance the quality of their product and that admission to their ranks cannot be made easy; they also realize that they, because of their editing and guidance role, play a large part in the success or failure of member and editor candidates. Further, they realize that they can be blamed for bad or controversial decisions. At the same time, the editors have a large book to put out and are thus motivated to help others attain editor status so that they can help with the burdensome task.

As in all working situations, some editors, members, or other law review participants may not always get along. It is, however, crucial to the quality of the final product, the success of the law review program, and ultimately the reputation of the law school that they work together as smoothly and efficiently as possible toward putting out their publication.