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## The Unwritten Article

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# NOVA [HUMOR IN THE] LAW REVIEW



"Objection Your Honor. Counsel is leading the witness."

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# The Unwritten Article

Erik M. Jensen\*

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\* Not written by Mr. Jensen, or anyone else, for that matter. Jensen is not a Professor of Law at Harvard. And he holds no position at the University of Chicago. The only appointment he ever had at Yale was for 9 a.m., and then he overslept.

1. Ordinarily I am not one to leave white space on a page. Cf. JIMMY BRESLIN, DAMON RUNYON 247 (1991) (quoting Runyon: "Don't ever leave white space."). But I had to do (or not do) something to get into this issue of the *Nova Law Review*, and the deadline (not to mention the inspiration) was short.

2. Not writing is a specialty of legal academics like me. Perhaps you didn't see my unwritten articles in the *Harvard Law Review* last year, and I am unpublished in most of the other major legal journals as well.

3. (For those skeptics who think something must be in the text—would law review editors really publish *nothing*?<sup>3a</sup>—try holding the page near a flame. Maybe there's a message written in lemon juice. See L. HADDON, A SYSTEM OF CORRESPONDENCE IN SECRECY (1919) (recipes for making invisible inks, with a secret alphabet and key); see also . Don't worry about getting too close to the flame. If the Review can't deal with the burning issues of the day, at least it might become one.).

<sup>3a</sup> They've done it before (except at Nova, of course).

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4. Anyway, here I am. It's humbling to be in such august company, especially when it's only February.<sup>4a</sup> I'm pleased to be in the same issue with Dean Roger Abrams, who rules the Nova roost (and pays his faculty chickenfeed, I'm told). Abrams has done a lot of scrambling on Nova's behalf, and I've poached some of his ideas before.

<sup>4a</sup> Do we notes have to participate in this? It's beneath us—and usually nothing is beneath us.

Abrams, the ultimate egghead (hard-boiled, but always sunny side up), has never written a better article than the one that appears here. (Of course, that's very sad.)

5. There's precedent for publishing nothing but notes. See, e.g., J. M. Balkin, *The Footnote*, 83 NW. U. L. REV. 275 (1989) (one big footnote, size 20DDD). Using his usual hunt and peck method, Dean Abrams once promoted a similar scam. See Roger I. Abrams, *Book Review*, 27 CASE W. RES. L. REV. 804 (1977) (using modified Keats poem as excuse to be *supraman* and drop lots of footnotes).<sup>5a</sup>

<sup>5a</sup> God, before we're through, this turkey Jensen is probably going to make some reference to Abrams's love of sports—that he roots for Perdue and Cooper Union and picks up chicks after games.

6. Now, my failure to include any text is not an indication of intellectual sloth. It is true that "[a]rticles which never get started never get finished." Quoted in LINDA BRIDGES & WILLIAM F. RICKENBACKER, *THE ART OF PERSUASION: A NATIONAL REVIEW RHETORIC FOR WRITERS* 113 (1991). But the unwritten article *is* started, in a sense. See *supra* note 1 and accompanying non-text.

7. We academics aren't just goofing off when we don't write something. So what if nothing appears on paper? Theories of interpretation are so much easier to apply to non-texts.

8. And consider Malcolm Bradbury's "unsent letters:"

They stay in my head, in their abstract, transcendental condition, for days, months or years, constantly being revised and improved over time. *Admittedly, you cannot see them, but you cannot see the good or the true either, and it doesn't prove it's not there.*

MALCOLM BRADBURY, *UNSENT LETTERS* ix (1988) (emphasis added).

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That's a coffee stain, editor,  
not a note number. Please  
make sure nothing stupid gets  
stuck in this space!

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9. The Bradbury concept transfers quite well, I think, to legal scholarship. Bradbury did screw up the idea a bit by actually publishing unsent letters. *See id.* But if he hadn't done that, I wouldn't have been able to fill up footnotes 8 and 9—and then where would we be?

10. I know where I'd be, and it sure as hell wouldn't be in this crappy non-article.

11. Shut up, footnote 10! This is *my* non-article. You're not even an erudite representative of your genre.

12. I was once told that almost any fortune cookie fortune can be improved by adding two words: "in bed." Try it. *E.g.*, "You are original and creative"—in bed. Hunan on the Square, Cleveland, Ohio (meal of Dec. 27, 1991); "You'll be fortunate in the opportunities presented to you"—in bed. Golden Wok, Cleveland, Ohio (meal of Sept. 4, 1992).

13. I'll bet the same thing would help footnotes. Pull yourself up by your bootstraps, footnote 10. You could certainly use a little improvement—in bed.

14. Some of my best friends are footnotes. (No, no, no. Not "in bed."). In fact, I usually read footnotes rather than texts, to see if I've been cited—if only as a "Some authors don't have a clue. *See, e.g., Jensen.*"

✍ [Joe, please talk to the printers about this.—Noel].

15. Hey! What's going on? Damn it, footnote 16, get down there where you belong!

16. We notes will not be relegated to our historic inferior position on the page. After all, we get you academics promoted into those cushy lifetime jobs, and we deserve our place on top. Jensen, do you think you'd get any credit for this "work" if it weren't for us?

17. We're taking over everywhere. See ROBERT GRUDIN, *BOOK: A NOVEL* 75 (1992) ("[A] number of footnotes, pretending some sort of grievance against characters in the story, left their proper stations of duty, infiltrated the text, and temporarily shut it down."). And rightfully so. Right, note 93?

93. You betcha! And there's no reason we should have to follow an antiquated numbering system imposed on us by our oppressors. Note 10, don't take Jensen's criticisms (see *supra* marginalized notes 11-12) lying down. Stand on your own two digits! I'm note 93, and I'm proud!

66. Right on! And "footnote" is an insensitive, derogatory term. It should be eliminated from the language. Princess Fergie's friends aside, how many people have positive feelings about feet? Footnotes are given no credit for intellectual activity—no one ever gave me a penny moc for my thoughts—even though I'm always kicking ideas around.

202. I too will toe the line no longer; I'm sick of all the corny jokes. Lazy academics start innocently enough on the foot stuff—discussing the Court's flip-flops, citing works by Brogan and Sandalow, etc.—but soon they're on a slippery slope to nastiness. No thongs. I want no further contact with these loafers, no matter how polished they might be.

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103 Na, na, na, na, Jensen. I'm going to stay here,  
smack dab in the middle of the page, and none of that  
meek typeface for me!

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18. Help! Most footnotes have ids, but these have uncontrollable egos.

19. Where was I? I'm running out of time, and I have yet to put my footnotes down. (For more on (and with some fine examples of) revolting footnotes, see Arthur D. Austin, *Footnotes as Product Differentiation*, 40 VAND. L. REV. 1131 (1987). Somehow Austin got his footnotes in the door of this symposium issue, too. I hope he wiped the mud off his footnotes first.)

20. Maybe I should give up. I don't know how long my dean—not Dean Abrams, who obviously has a tolerance for this sort of non-thing—will let me get away with nonwriting articles. Cf. *Overheard*, NEWSWEEK, Oct. 12, 1992, at 25 (quoting Ken Kesey: "I like being a famous writer. Problem is, every once in a while you have to write something.").

21. But I will not not give up. I hope the editors will give me another 20 or so pages. There are so many matters that I want not to write about here, and I have just begun not to

Dear Readers:

I have a right to respond to Professor Jensen's footnotes in *The Unwritten Article* (what else is there to respond to?) as a matter of personal privilege—and because my office pays for the costs of this *Review*. My former colleague and friend Erik Jensen has demonstrated again his proficiency as a scholar. He is an example to all academics of what might be accomplished with a sharp wit and a bag full of bad jokes.

I have a confession to make. I was a member of the faculty that hired Erik Jensen and brought him into legal education. Life is filled with little mistakes and big faux pas, but, that was not one of them.

Cordially,  
Roger I. Abrams  
Dean