

Faculty Publications

2006

Death by Bluebook

Erik M. Jensen

Follow this and additional works at: http://scholarlycommons.law.case.edu/faculty_publications



Part of the [Legal Education Commons](#)

Repository Citation

Jensen, Erik M., "Death by Bluebook" (2006). *Faculty Publications*. Paper 280.
http://scholarlycommons.law.case.edu/faculty_publications/280

This Article is brought to you for free and open access by Scholarly Commons. It has been accepted for inclusion in Faculty Publications by an authorized administrator of Scholarly Commons.

Book Reviews

Death by Bluebook

THE LAW REVIEW. By S. Scott Gaille. 2002. Berkeley: Creative Arts Book Company. Pp. 166. \$15.95 (paperback only).

*Reviewed by Erik M. Jensen**

The University of Chicago Law School is an intense place, and law review is intense anywhere. Until I'd read *The Law Review*, however, I hadn't realized how intense things can get. *The Law Review*'s a novel, but, if it accurately portrays the Chicago experience – and its author, S. Scott Gaille, is a 1995 Chicago graduate and law review vet – Harvard and Stanford are romps in the meadow by comparison.¹ (Yale, too, but that should go without saying.)

And of course the book is accurate. I believe blurbs, and *The Law Review*, says a blurb on the back cover, “set[s] the record straight about how lawyers get their start.”² I therefore know that lawyers get their start by working very, very hard, but also by lying, conniving, swiving, blackmailing, and, yes, even murdering.³

* David L. Brennan Professor of Law, Case Western Reserve University.

1. I know from LEGALLY BLONDE (Metro-Goldwyn-Mayer Pictures 2001), which replaced SCOTT TUROW, ONE L (1977) as the definitive guide to the Harvard Law School, how tough that place is, but it's still bush league compared to Chicago. See also JAIME MARQUART & ROBERT EBERT BYRNES, BRUSH WITH THE LAW (2001) (suggesting it's possible to get through Harvard and Stanford doing *nothing*).

2. S. SCOTT GAILLE, THE LAW REVIEW (2002).

3. After *The Law Review*, Gerald Gunther's *Constitutional Law*, that big, heavy casebook with all the note material, may be protected by the Sec-

When a law review student suggests "helping [the editor-in-chief] to an untimely grave,"⁴ you have to take him seriously (even as you gag at the dialogue).

At other schools, students desperate to make (or to get the top jobs on) law review tear pages out of library books, hoping to get an edge on the competition. At Chicago, with its strong intellectual tradition, students apparently protect the books and instead deal with the competition directly. For the individuals involved – those who survive, anyway – it's a more economically efficient way to proceed.⁵ (For the school itself, it's messy, of course, but that's another problem.)⁶

"The *Law Review* just isn't important enough to kill someone over it," says narrator and hero Grayson Bullock at one point.⁷ Wrong, wrong, wrong, and Grayson, even though he's a still wet-behind-the-ears 1L just up from Texas, knows he's talking nonsense. What at first blush sounds like a misplaced sense of priorities is his way of conning an FBI agent who's investigating the murder but who's bewildered by the whole law review thing.⁸

The FBI may be oblivious, but, along with Grayson, *we* know that law review is deadly serious business.⁹ (The prose is often

ond Amendment as well as the First. *Heft generally* GERALD GUNTHER, CONSTITUTIONAL LAW (12th ed. 1991).

4. GAILLE, *supra* note 2, at 73.

5. That matters. "Chicago was second to Yale in the national rankings when I submitted my applications. But while Yale is the darling of the left, Chicago's the most respected law school among conservative thinkers." *Id.* at 8.

6. There are the clean-up costs – blood stains can be so hard to get out – but murder also interferes with important activities. The Chicago dean knows that *U.S. News and World Report* cuts no slack for on-campus murders: "We can't let this tragedy interfere with our publishing deadlines . . ." *Id.* at 100. Anyway, murders at Chicago are supposed to occur *off-campus*. As the narrator notes, "Hyde Park, particularly away from the University, was creepy at night." *Id.* at 46.

7. *Id.* at 116.

8. The agent says, "I've heard time and again how important this *Law Review* is. But it can't make you famous, can't make you rich. Why would seemingly rational and bright students put everything on the line to get on a journal run by a self-selected triad of students?" *Id.* at 115-16. (Sure sounds like an FBI man, doesn't it? I think it was J. Edgar Hoover who introduced the term "self-selected triad" into everyday language.)

9. Except maybe at Yale. *Cf.* STEPHEN L. CARTER, THE EMPEROR OF OCEAN PARK 82 (2002) ("[The narrator's brother] was there for the trivial –

deadly, too.)¹⁰ Making the review, becoming editor-in-chief, and all the rest of it are critical to a fulfilling life: court of appeals and Supreme Court clerkships, the pick of job offers, public acclaim. Law school at Chicago “would be the beginning of my ascent to public importance,” says Grayson, and he means it.¹¹ It all follows as the night the day.

With so much at stake, there’s little time for chitchat in the law review offices: everyone’s always “get[ting] back to editing my Supreme Court clerkship application.”¹² Nevertheless, the students do manage to work sex, and sex, and more sex into their busy schedules.¹³ Chicago is known for the life of the mind, but a lot that goes on in *The Law Review* makes use of tangible body parts instead. I now understand why Chicago students are reputed to spend so much time in the library.¹⁴

Even with sex, however, the behavior is purposive; these aren’t just random study gropes. Sexual partners must be carefully chosen with career goals in mind. Grayson “was hooked on Aris [an editor positioned near the top of the law review hierarchy and just about everywhere else that helps her career] and her world, a world where I could be a real player, writing important opinions on the Court of Appeals, maybe even the Supreme Court, eventually running for public office. Aris could be my intellectual companion and sparring partner.”¹⁵

like when I was trounced in the election for editor in chief of the law review – and for the profound . . .”).

10. See HARVEY SAWIKIN, *THE EDUCATION OF RICK GREEN, ESQ.* 104 (1995) (“Green now understood what made legal writing so hard to read. It was a language, like James Joyce’s, densely constructed to serve the author’s purpose, without undue regard for the reader’s ease.”).

11. GAILLE, *supra* note 2, at 29. This is the way people talk at Chicago. In 1967, I attended a welcoming session of new graduate students in Chicago’s Poli Sci department, where we were told, seriously, that we were there to do “the intellectual work of the world.”

12. *Id.* at 15.

13. Did I mention sex? Cf. SAUL BELLOW, *RAVELSTEIN* 2 (2000) (“I have always had a weakness for footnotes. For me a clever or wicked footnote has redeemed many a text.”). Isn’t this clever? Does it redeem the text? Oh, well.

14. One is reminded of Robert Maynard Hutchins’s reason for closing Rockefeller Chapel on the U. of C. campus at night: more souls were being conceived there than were being saved.

15. GAILLE, *supra* note 2, at 68.

“Sparring partner?” Well, yes. In addition to being openly and notoriously brilliant,¹⁶ Aris is a knockout. And she has money to boot. In fact, with one exception (to create class conflict, an essential component of any first-rate novel), all the top law review folks are as well-endowed as they are oversexed. Great apartments, cars, expensive booze, the works. As reported by Scott Gaille, the law review office is where the beautiful (albeit nasty) people gather.

I expect historians a century hence to turn to *The Law Review* to learn about the law review experience at the end of the twentieth century. Because of the book’s historical importance, I must correct a couple of misimpressions that could mislead twenty-second century scholars. For one thing, Grayson begins his story by writing: “It was a dreary October afternoon in 1992, but I was exactly where I wanted to be. I was starting law school at the University of Chicago”¹⁷ The dreary October part rings true, but the rest? As we know, law students at Chicago really want to be in New Haven, Cambridge, or Palo Alto, not marooned in Hyde Park. They aren’t in those other places because they didn’t get in.¹⁸

Future scholars should also skeptically view another aspect of student life described in this book. The law review folks defend the correlation between grades and merit, as one would expect from

16. Aris’s shows of erudition contrast with the girl back home in Texas, who “had to be reasonably smart to get into UT” but didn’t show it. *Id.* at 67. Her “apparent shallowness was not a matter of genetics but rather a learned trait.” *Id.*

17. *Id.* at 1. Starting law school is a mystical experience. Aris explains: “Anytime that we can put ourselves in a higher state of awareness, like starting law school – or traveling to a strange place on vacation – time, relatively speaking, moves more slowly.” *Id.* at 28.

18. They *should* want to be at Chicago – it’s the best law school in the best university in the country (and beyond) – and maybe Grayson really is smart enough to realize that. He says: “I had come to the University of Chicago because it was the intellectual capital of the world.” *Id.* at 4. Aris confirms their central place in the universe: “You’ll like it here. It’s about being something great, a part of something great.” *Id.* at 8. That’s all true, but it’s not what most U. of C. law students think when they arrive. (I’m like Grayson in one respect: I would have gone to Chicago’s law school. But I wasn’t admitted, and, as a result, I committed no serious crimes in law school, had no exciting experiences in library stacks or law review offices, and didn’t clerk on the Supreme Court. The rest of my life has also been a failure.)

people who, by definition, have succeeded academically.¹⁹ But they go beyond that: *they defend the care that professors give to the grading process.*²⁰ I've never heard of such a thing. I can believe murder resulting from law school intrigue,²¹ but this strains credibility.

These are quibbles, however, and, viewed in its entirety, looking to all the facts and circumstances, etc., etc., *The Law Review* is a major sociological event. It should be on the shelves of all scholars of legal education²² – if you can get it. You probably won't find the book in your neighborhood bookstore,²³ but you can order it online. Creative Arts Book Company (in Berkeley) has been around awhile – since 1968, according to its website.

I hadn't heard of Creative Arts before, but, among other things, it publishes ZYZZYVA books. I don't have a clue what that's about, but, now that I know everything important about how law reviews work, I just might give ZYZZYVA a try next. Whatever it is, it's got to be safer than dealing with a law review.

19. See *id.* at 30. And, amazingly enough, there's no hint in *The Law Review* that they cheated on their class work. Murder, yes. Crib sheets, no.

20. *Id.* How well you do depends on whether you spot enough issues. If you don't, your life is ruined. As Aris explains to Grayson, "[T]he difference between being a Supreme Court clerk and being average may amount to consistently seeing just a few more issues than the rest of your class." *Id.*

21. Internecine warfare is the norm in the law review setting. I've recently had an experience with a review in which an unsuccessful candidate for the Editor-in-Chief position led a quasi-coup, attempting to have the editorial board rescind already accepted offers of publication (including mine) and thus to humiliate the EIC. After the barbarians were repulsed on that issue, the articles editor assigned to my piece sat on it for months, apparently because she and the EIC had been summer associates at the same firm, and he got an offer and she didn't. (I learned these details from an anonymous e-mail, headed "Eric [sic] Jensen, I've got some advice for you.") *This really happened.*

22. You can put the shelves in the basement.

23. But then you won't find a neighborhood bookstore either.