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## Disclosure, Scholarly Ethics, and the Future of Law Reviews: A Few Preliminary Thoughts

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## DISCLOSURE, SCHOLARLY ETHICS, AND THE FUTURE OF LAW REVIEWS: A FEW PRELIMINARY THOUGHTS

Ronald K.L. Collins\* & Lisa G. Lerman\*\*

*The reader should know through what  
spectacles his adviser is viewing the problem.*<sup>1</sup>

—William O. Douglas  
*Washington Law Review* (1965)

Scholarship is the work-product of scholars. The word derives from the Latin *schola*, as in school. Hence, scholarship is related to education, which in turn is related to the advancement of human knowledge. By that measure, the best scholarship may increase our knowledge, both practical and theoretical. But when undisclosed bias affects that which is offered up as knowledge, it may unduly slant our understanding of life, law, and other things that matter. While bias-free knowledge may be a utopian ideal, it is, nonetheless, a principle worthy of our respect.

Case in point: According to the *Washington Post*,<sup>2</sup> the National Rifle Association has funded some of the scholarship propounding the view that the Second Amendment protects an individual right to own a gun. Before this sponsored scholarship, such an interpretation of the Amendment was regarded as tenuous.<sup>3</sup> Over three decades and a number

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\* Harold S. Shefelman Scholar, University of Washington, School of Law. By way of full disclosure, in the early 1990s I worked for the Center for Science in the Public Interest and was assigned to the Integrity in Science Project. My work included projects related to securing greater disclosure in professional journals.

\*\* Professor and Coordinator of Clinical Programs, The Catholic University of America, Columbus School of Law. I have written on a number of topics related to professional dishonesty, including *First Do No Harm: Law Professor Misconduct Toward Law Students*, 56 J. LEGAL EDUC. 86 (2006), and *Misattribution in Legal Scholarship: Plagiarism, Ghostwriting, and Authorship*, 42 S. TEX. L. REV. 467 (2001), both of which deal with the ethical obligations of legal scholars. The authors thank Professor Deborah Rhode, whose work on this issue is acknowledged below, for her thoughtful comments on this Essay.

1. William O. Douglas, *Law Reviews and Full Disclosure*, 40 WASH. L. REV. 227, 229–30 (1965) (address prepared for the annual *Washington Law Review* banquet, April 21, 1965).

2. Peter Finn, *How the NRA Helped Reshape Views of the Second Amendment*, WASH. POST, Mar. 14, 2013, at A1.

3. *Id.* Nelson Lund, the Patrick Henry Professor of Constitutional Law and the Second Amendment at George Mason University (a chair endowed by the National Rifle Association), said

of books and articles later, the United States Supreme Court, in 2008, recognized for the first time an individual, though limited, constitutional right to possess a gun.<sup>4</sup> The change has altered the political and regulatory framework and constrains attempts to stem the tide of gun violence in the United States. Whatever one makes of this, there is reason to believe that the success of a legal scholarship campaign funded by the NRA and the gun industry might well have affected the direction of the law.

It is not easy to decipher which articles on the Second Amendment were paid for by the gun lobby because very few of these articles include information about financial support, if any, for the work.<sup>5</sup> This is unsurprising because the vast majority of law reviews do not require disclosure of financial support or affiliations that might compromise the intellectual independence of their authors.<sup>6</sup>

One scholar reports that in 2008 only 5.5% of law review articles included acknowledgement of financial support for research.<sup>7</sup> Perhaps

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the idea that the Constitution protects an individual right to own a gun was previously regarded as “preposterous and just propaganda from gun nuts.” *Id.*

4. See *District of Columbia v. Heller*, 554 U.S. 570, 576–96 (2008).

5. Don Kates was identified in the *Washington Post* article, *supra* note 2, as one of the most prominent and prolific authors espousing the “NRA view” of the Second Amendment. Occasionally, he mentions in a biographical footnote at the beginning of each of his articles that he is “affiliated with the Pacific Research Institute,” a conservative think tank. A review of fourteen of Kates’ articles in journals published by law reviews at Hastings, Emory, Hamline, UCLA, Cardozo, William & Mary, Tennessee, Washington University, Michigan, Colorado, Fordham, Harvard, Northwestern, the University of San Francisco, Chicago, and Duke, turned up only one article (in the *Washington Law Quarterly*) in which he and his co-author acknowledged funding from the Julius Rosenthal Fund and the Kirkland & Ellis Research Fund of Northwestern University. (Kates’ co-author on this article was on the faculty at Northwestern.) See Daniel D. Polsby & Don B. Kates, Jr., *Of Holocausts and Gun Control*, 75 WASH. U. L.Q. 1237, 1237 n.1 (1997). In the other articles, Kates thanks individuals who perhaps contributed ideas, but says nothing about what financial support, if any, he might have received.

6. Professor Deborah Rhode notes that “[i]n fields other than medicine and science, many journals and professional societies lack disclosure requirements entirely, or do not mandate sufficiently specific information to gauge the likelihood of a bias.” Deborah L. Rhode, *The Professional Ethics of Law Professors*, 56 J. LEGAL EDUC. 70, 75 (2006). Other scholars also have criticized the legal academy for its failure to impose any standards of transparency, not to mention reliability and validity. See generally Lee Epstein & Charles E. Clarke, Jr., *Academic Integrity and Legal Scholarship in the Wake of Exxon Shipping*, Footnote 17, 21 STAN. L. & POL’Y REV. 33 (2010); Rory K. Little, *Law Professors as Lawyers: Consultants, Of Counsel, and the Ethics of Self-Flagellation*, 42 S. TEX. L. REV. 345 (2001); Thomas O. McGarity, *A Movement, a Lawsuit, and the Integrity of Sponsored Law and Economics Research*, 21 STAN. L. & POL’Y REV. 51 (2010).

7. Shireen A. Barday, *Punitive Damages, Remunerated Research, and the Legal Profession*, 61 STAN. L. REV. 711, 713 (2008). Larissa MacFarquhar reports in *The New Yorker* that Aaron Swartz, the brilliant computer genius who recently committed suicide, did the research that produced the data above. Larissa MacFarquhar, *Requiem for a Dream*, NEW YORKER, Mar. 11, 2013, at 48, 51. Swartz is said to have “downloaded a significant portion of the articles on the Westlaw legal-

half of these acknowledged donors are universities, which routinely support research and usually have no impact on the content.<sup>8</sup> Thus, almost ninety-five percent of law review articles included no information about whether the researcher received financial support for the work. Because virtually all law reviews have no disclosure policy, these authors are free to reveal or conceal the sources of their funding and their affiliations.<sup>9</sup>

In varying ways, legislators, regulators, and judges rely upon legal scholarship in developing law and policy and in writing, amending and interpreting legal rules. Scholars have time to delve deeply into the topics on which they write. At its best, their work is respected because of the depth of inquiry involved and because of their expertise. It is important, then, for legal scholars to exercise independent judgment and likewise to be open and candid with their audiences as to how they reached their conclusions.

## I. IMPARTIALITY AS A PROFESSIONAL NORM

American judges must recuse themselves from deciding matters if their “impartiality might reasonably be questioned . . . .”<sup>10</sup> Such impartiality is defined as the “absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues . . . .”<sup>11</sup> What is important is not only actual judicial integrity, but the appearance of integrity as well. It also is important for anyone involved in the judicial system to have full knowledge of those who judge them, including possible sources of bias.

Like judges, all lawyers are expected to uphold the administration of justice, and accordingly, to avoid conduct that exhibits bias. Commentary in the Model Rules of Professional Conduct explains it this way: “A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates [the Model Rules] when such actions are

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research database in order to analyze their sources of funding, in the hope of determining whether economic interests affected their conclusions. He gave the data to a Stanford law student, and she published an article in the *Stanford Law Review* based on his findings.” *Id.*

8. Barday, *supra* note 7, at 713.

9. *See id.* at 713.

10. MODEL CODE OF JUDICIAL CONDUCT R. 2.11(A) (2011).

11. *Id.* at Terminology.

prejudicial to the administration of justice.”<sup>12</sup> While this passage formally applies only to the conduct of lawyers representing clients, the basic principle underlying the rule certainly is relevant to legal scholars.

To be sure, we do not regulate legal scholars in the same way that we regulate judges and lawyers. Nevertheless, we expect scholars to embody high standards of integrity in the work that they do. While scholars do not decide cases, they publish articles that may influence the outcomes of cases and impact the development of the law. The legitimacy of legal scholarship depends on the integrity of the scholar’s work. Both the careful process that law schools undertake in reviewing the written work of a prospective faculty member, and the review process law journals engage in before they make an offer to publish, provide some safeguards of the disinterestedness and the integrity of the scholar’s work product. Even so, given current standards (or the lack of them), much legal scholarship is published without editorial knowledge or disclosure of the authors’ backgrounds and affiliations.

## II. TRANSPARENCY IN DISCLOSURE POLICIES

How much we value what is offered to us as fact depends on how information is presented and who presents it. This much is obvious from the way we speak, as in, “You cannot believe anything on Fox News,” or “Did you expect the *New York Times* to be objective?” So, too, some express skepticism when, for example, they hear of an environmental assessment prepared by either the Sierra Club or underwritten by Exxon-Mobil. To much the same effect, consider how we might judge a report on the causes of violence in America if the study were, on the one hand, conducted by the National Rifle Association, or, on the other hand, underwritten by the Coalition to Stop Gun Violence. Or how might we view the objectivity of a judge presiding over a case in which she or her spouse had a financial interest? In all of these instances and others, we would have suspicions. This is not to say that a bias-free result is impossible in every such instance. But it is to say that we do want to know of that potential for bias and we do want to know the facts or affiliations that may jeopardize what is offered to us as fact. In other words, *disclosure* is important; *transparency* matters; and the more we know about the speaker’s perspective and potential biases, the more likely we are to make truly informed, or at least better informed, decisions about the respective worth of what is published. The disclosure

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12. MODEL RULES OF PROF’L CONDUCT R. 8.4 cmt. 3 (2002).

ideal, as noted below, is one valued in science and other professional journals.

As of four years ago, nearly ninety percent of 256 medical journals had formal conflict of interest policies, which mandate various kinds of disclosures.<sup>13</sup> Many scientific journals have also adopted such policies, though less consistently than medical journals.<sup>14</sup> Such journals are not alone in their insistence on integrity and disclosure in scholarship. The American Historical Association has likewise expressed concerns in this area and requires disclosure. The Association's *Statement on Standards of Professional Conduct* declares that "[h]istorians should acknowledge the receipt of any financial support, sponsorship, or unique privileges (including special access to research material) related to their research, especially when such privileges could bias their research findings."<sup>15</sup> The American Political Science Association also expressed similar concerns in its *Guide to Professional Ethics*:

With respect to any public scholarly activity including publication of the results of research, the individual researcher: . . . bears sole responsibility for publication; . . . should disclose all relevant sources of financial support; . . . should indicate any condition imposed by financial sponsors or others on research publication, or other scholarly activities; and . . . should conscientiously acknowledge any assistance received in conducting research.<sup>16</sup>

Though these disclosure policies are clearly the norm for such journals, they are largely unheard of among legal journals. What is stressed in the former is strikingly absent in the latter. While a debate rages on among science journals about the need for even stricter policies requiring disclosure of funding sources<sup>17</sup> and enforcement practices,<sup>18</sup>

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13. See Jared A. Blum, Kalev Freeman, Richard C. Dart, & Richelle J. Cooper, *Requirements and Definitions in Conflict of Interest Policies of Medical Journals*, 302 JAMA 2230, 2230 (2009) ("Most journals that officially endorsed International Committee of Medical Journal Editors guidelines had [conflict of interest] policies . . .").

14. See generally Jessica S. Ancker & Annette Flanagin, *A Comparison of Conflict of Interest Policies at Peer-Reviewed Journals in Different Scientific Disciplines*, 13 SCI. ENG. ETHICS 147 (2007).

15. *Statement on Standards of Professional Conduct*, AM. HISTORICAL ASS'N (June 8, 2011), <http://historians.org/pubs/Free/ProfessionalStandards.cfm> (last visited Apr. 12, 2013).

16. AM. POLITICAL SCI. ASS'N, A GUIDE TO PROFESSIONAL ETHICS IN POLITICAL SCIENCE 9 (2d ed. 2008), available at <http://www.apsanet.org/imgtest/ethicsguideweb.pdf>.

17. See, e.g., Editorial, *Add a Healthy Dose of Skepticism*, WASH. POST, Oct. 23, 2012, at E3 ("Health-care research is rife with potential conflicts of interest. Pharmaceutical firms have provided almost 60 percent of all biomedical research funding in the United States, raising questions about the integrity of some drug studies. In January 2007, the online journal PLOS published an

there is a disconcerting silence in the world of law reviews. Law reviews almost uniformly do not ask authors and contributors if their work is funded by outside sources that would have a stake in the findings or conclusions of their work. Similarly, law reviews do not ask authors and/or contributors if their current or past affiliations are with groups that have a significant stake in their work. Silence is the norm; ignorance is the governing rule. Consider the following five hypothetical scenarios:<sup>19</sup>

- A “scholar” writes a law review article on contractual breaches and remedies in connection with digital content contracts but fails to disclose that within the past year a software company hired him to work on precisely such issues in order to diminish corporate liability.
- A “scholar” writes on tort reform without disclosing that she was of counsel to the Institute for Legal Reform, which the U.S. Chamber of Commerce funds.<sup>20</sup>
- A public interest lawyer authors a long article on the First Amendment rights of tobacco companies to advertise their products without disclosing that her organization had received funding from tobacco companies.<sup>21</sup>
- A “scholar” writes a review of a new book about the Second Amendment without disclosing that she helped organize an amicus brief in favor of strict gun control laws.
- A “scholar” writes a critique of the Securities Exchange Commission’s antitrust policies without disclosing that he

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analysis of nutrition studies involving soft drinks, juice or milk; it found that more than half had industry funding. More important, the studies’ conclusions directly correlated with who funded them.”).

18. See Merrill Goozner, *Unrevealed: Non-Disclosure of Conflicts of Interest in Four Leading Medical and Scientific Journals*, INTEGRITY IN SCIENCE (July 12, 2004), available at [http://cspinet.org/new/pdf/unrevealed\\_final.pdf](http://cspinet.org/new/pdf/unrevealed_final.pdf).

19. See generally Ronald K.L. Collins, *A Letter on Scholarly Ethics*, 45 J. LEGAL EDUC. 139 (1995) (discussing various conflicts of interest and calling on law reviews to establish disclosure policies).

20. See Joanne Doroshow, *The Secret Chamber of Commerce and its “Tort Reform” Mission*, HUFFINGTON POST, Oct. 28, 2009, [http://www.huffingtonpost.com/joanne-doroshow/the-secret-chamber-of-com\\_b\\_337634.html](http://www.huffingtonpost.com/joanne-doroshow/the-secret-chamber-of-com_b_337634.html) (“In 1998, the U.S. Chamber [of Commerce] created the ILR to pursue the Chamber’s so-called ‘tort reform’ agenda: protecting corporations from liability, weakening the civil jury system and blocking the courthouse door for sick and injured Americans.”).

21. See generally Philip J. Hilts, *Nader Assails A.C.L.U. on Tobacco Industry Gifts*, N.Y. TIMES, July 30, 1993, at A12 (stating that “starting in 1987 the A.C.L.U. had accepted large sums of money from tobacco companies, including \$500,000 from the Philip Morris Companies Inc.” and such sums were not publicly disclosed).

worked on such issues for a corporate law firm the year before he became a law professor.

Such scenarios are neither novel nor new. As far back as fifty-seven years ago, Congressman Wright Patman (D-TX) issued a report complaining of the failure to disclose conflicts of interest in law review articles.<sup>22</sup> The report documented multiple instances in which professors were paid by interested entities financed by “the defenders of price discrimination, basing-point pricing practices, and other monopolistic practices.”<sup>23</sup> Of course, one could offer many newer examples to drive home the same conceptual point. The time is long overdue for us to stop turning a blind eye to such practices. Law reviews should adopt meaningful disclosure policies. If for no other reason, this should be done to help curb the perception of bias and help enhance the ideal of transparency by providing more needed information to readers.

True scholars should aspire to intellectual independence, to unbiased consideration of the topics studied, or at least to disclosure of possible sources of bias in the scholar’s work. In this context, bias refers to “inclination or prejudice for or against one person or group, especially in a way considered to be unfair . . . .”<sup>24</sup> Admittedly, bias is a many colored flag in that it is incredibly difficult to determine as to what exactly it is or is not. We may never rid ourselves of all our biases (for better or worse), be they political, religious, cultural, economic, class, or simply the kind of arbitrary biases so many mortals have. We can, however, manage biases and attempt to identify them so that readers of law reviews may better judge the respective merit of the articles they read.

The goal is not to eliminate any and all potential sources of bias, but to identify them to readers. Some biases, or at least the potential for such, are so great that to ignore them and remain silent would be an

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22. H.R. REP. NO. 84-2966, at 227 (1956) [hereinafter Patman] (“That article adroitly failed to disclose that the author is affiliated with a law firm presently opposing the Government in a pending case arising under the Robinson-Patman Act.”). *See also id.* at 34 (regarding a law review author who failed to report receipt of \$13,000 from the Business Advisory Council, an interested party). For an extended discussion of the Patman report, see Chester A. Newland, *The Supreme Court and Legal Writing: Learned Journals as Vehicles of an Anti-Trust Lobby?*, 48 GEO. L.J. 105, 112 (1959) (“[T]he authors of many [articles or reports] have been either partisan advocates or unknown; and that prominent scholars have been hired by antitrust defendants to promote big business views ‘in highly respected publications in the form of law review articles and economic reviews.’”).

23. Patman, *supra* note 22, at 31–38.

24. *Bias Definition*, OXFORD DICTIONARIES, <http://oxforddictionaries.com/definition/english/bias> (last visited Mar. 18, 2013); *see* FED. R. EVID. 702 (regarding the admission of expert scientific testimony); *see also* *Daubert v. Merrell Dow Pharm. Inc.*, 43 F.3d 1311, 1317 (9th Cir. 1995) (discussing the reliability of expert evidence when such experts are paid).



affront to any scholarly endeavor worthy of the name. Consider what would happen in the following four hypothetical situations if there were no disclosure as to the real or likely conflicts of interest:

- A law review hosts a symposium on the costs and benefits of deregulation in the area of health care—co-sponsored by a national insurance company.
- A law review holds a conference on regulating environmental pollution. An international oil company provides honoraria to some of the participants and generously funds the conference.
- A law review publishes a print symposium on Judicial Nominations—either the Federalist Society or the American Constitution Society underwrites the conference and selects some of the speakers.
- A law review publishes a print symposium on the question of “fetal personhood”—either Planned Parenthood or Focus on the Family finances the conference and selects all of the participants.

How should law review editors screen articles for conflicts of interest that may taint the work? What disclosures should they require of authors submitting articles for publication? Which of that information should they insist be disclosed to readers in articles that they publish? While the above-mentioned hypotheticals suggest various ethical issues, the most obvious step is that law reviews should require authors to disclose funding sources, both at the time that an article is submitted for review by the journals, and in print if the article is published. Is that really a debatable point? Would it not seem practically and ethically strange if such conflicts were not disclosed? We may debate the conflicts’ significance and magnitude, the character and extent of disclosure that should be required, and what to do about certain conflicts of interest. However, these hypotheticals tell us that we must require some level of disclosure. And yet, American law reviews rarely, if ever, require such disclosure.

It cannot be denied: scholars like the patina of objectivity. Like Aristotle or Aquinas (or, if you prefer, Herbert Wechsler<sup>25</sup>), we like to fancy ourselves as being objective. And if a professor *really* tries to be objective when she analyzes an issue in an article,<sup>26</sup> she might

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25. See generally Herbert Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1 (1959) (arguing that because Constitutional adjudication must be different from and free of “the ad hoc in politics,” the Court must adhere to neutral principles in deciding constitutional questions).

26. See generally Arthur Miller, *The Myth of Objectivity in Legal Research and Writing*, 18

understandably hesitate to disclose that two years earlier (before she became a law professor) she litigated similar issues on behalf of the very industry that is now the subject of her academic scrutiny. Though the fact that she once did this work does not alone demonstrate bias or reveal some deficiency in her analysis, she should disclose the work because it is relevant to understanding her perspective. Disclosure will help readers make better-informed judgments. The information obtained by disclosure is but part of the criteria readers use to evaluate an article. Such information may alert us to a potential problem, which may or may not affect how we assess a work.

### III. TRANSPARENCY FOR LEGAL SCHOLARS

In an important but often-ignored statement, the American Association of Law Schools (AALS) has endorsed a “Statement of Good Practices by Law Professors in the Discharge of their Ethical and Professional Responsibilities.”<sup>27</sup> These recommendations urge that scholars be intellectually honest in their work. They must be free to criticize the work of others, but must not use false information, distort facts, or fail to acknowledge evidence relevant to the subjects of their study.<sup>28</sup> The Statement endorses the kind of disclosure we urge on our readers in this Essay:

A law professor shall *disclose* the material facts relating to receipt of direct or indirect payment for, or any personal economic interest in, any covered activity that the professor undertakes in a professorial capacity . . . . Disclosure of material facts should include: (1) the conditions imposed or expected by the funding source on views expressed in any future covered activity and (2) the identity of any funding source, except where the professor has provided legal representation to a client in a matter external to legal scholarship under circumstances that require the identity to remain privileged under applicable law. If such a privilege prohibits disclosure the professor shall generally describe the interest represented.<sup>29</sup>

Virtually all American law reviews, somewhat surprisingly, have not recognized these standards or adopted their own versions of them. The

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CATH. U. L. REV. 290 (1969) (contesting the possibility of truly objective legal scholarship).

27. AALS *Handbook: Statements of Good Practices*, ASS’N AM. LAW SCH. (May 2003), [http://www.aals.org/about\\_handbook\\_sgp\\_eth.php](http://www.aals.org/about_handbook_sgp_eth.php) (last visited Apr. 12, 2013).

28. *Id.*

29. *Id.* (emphasis added).

AALS statement also advocates for the following:

A law professor shall also disclose the fact that views or analysis expressed . . . were espoused or developed in the course of either paid or unpaid representation of or consultation with a client [if a reasonable person would think that the professor's position was affected by the work] . . . . A law professor should make . . . all disclosures discussed in this policy [early in the process, including] . . . when the professor is invited to produce the written work for publication or to make a presentation or when the professor submits the written work for publication or delivers the presentation.<sup>30</sup>

Notably, the AALS and other similar professional societies expect and even demand disclosure from their members. By contrast, something is sorely amiss in the world of legal scholarship if law reviews have no formal ethical polices governing conflicts and biases.

For all of the above reasons and others, we echo Professor Michael Closen's long-standing call on law review editors to adopt conflict of interest and disclosure policies.<sup>31</sup> "In keeping with [the] notions of the highest of ethical conduct," he stressed, "the law reviews should insist that contributors of articles disclose any interest that they may have in the issues addressed and the positions advocated. Such disclosure[.]" he added:

[S]hould appear in the first footnote of the article and should include such matters as the fact that the author is employed by a party or retained by clients with an interest in the issue, that the author was paid a fee or compensated somehow for the preparation of the article, or that the author regularly practices in the subject area addressed by the article.<sup>32</sup>

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30. *Id.* Notwithstanding what is set out in the text, it should be noted that the *Stanford Law Review* and the *Yale Law Journal*, along with the *Human Rights Law Review*, do have disclosure policies. See *Article Submissions: Ethics Policy*, STAN. L. REV., <http://www.stanfordlawreview.org/submissions/print/article> (last visited May 20, 2013); YALE LAW JOURNAL, VOLUME 123 SUBMISSION GUIDELINES § 5: CONFLICTS OF INTEREST, *available at* [http://www.yalelawjournal.org/images/documents/123\\_ylj\\_general\\_submission\\_guidelines%202-15-13.pdf](http://www.yalelawjournal.org/images/documents/123_ylj_general_submission_guidelines%202-15-13.pdf) (last visited May 20, 2013); *Human Rights Law Review: Conflict of Interest Policy*, HUM. RTS. L. REV., [http://www.oxfordjournals.org/our\\_journals/hrlr/for\\_authors/conflict.html](http://www.oxfordjournals.org/our_journals/hrlr/for_authors/conflict.html) (last visited May 20, 2013); see also *Journal of Philosophy, Science & Law: Submission Information for Authors*, J. PHIL. SCI. & L., <http://www6.miami.edu/ethics/jpsl/submission.html> (last visited May 20, 2013).

31. See Michael L. Closen, *A Proposed Code on Professional Responsibility for Law Reviews*, 63 NOTRE DAME L. REV. 55, 58 (1988).

32. *Id.* Consistent with some of this ethical spirit, the American Law Institute has adopted its own conflicts of interest policy. See AM. LAW INST., CONFLICTS OF INTEREST POLICY §§ II, IV (adopted

Writing in this very law review forty-eight years ago, Justice William O. Douglas had the foresight to call on law review editors to do what they still sorely need to do now:

I do not propose a law. Rather I propose an editorial policy that puts in footnote number one the relevant affiliations of the author. If the article is paid for, I would not necessarily require the disclosure of the amount of the fee; the fact that there was a fee would be sufficient. If there were no fee but a client's interest was reflected in the article, I would want disclosure of that client's identity. If the author [were] a free-lancer in a particular field, I would want a general statement that his professional interest lay in the direction of certain types of litigation.<sup>33</sup>

Such an editorial policy, he added, "would put the law reviews on a high, respected plane, and would give them new prestige and vigor . . . ."<sup>34</sup> It is an admirable goal. Given that, it is quite fitting that the editors of the *Washington Law Review* should heed Justice Douglas' call and adopt, as they now have, their own unique Disclosure Policy.<sup>35</sup>

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Oct. 23, 2009), available at [http://www.ali.org/doc/Conflicts\\_Policy.pdf](http://www.ali.org/doc/Conflicts_Policy.pdf) (last visited Apr. 12, 2013); see also Tamara Piety, "A Necessary Cost of Freedom"? *The Incoherence of Sorrell v. IMS*, 62 ALA. L. REV. 1, 42, n.203 (2012) (stating that because "in the past there was no well-developed norm about financial disclosures, law reviews [are] particularly vulnerable to being used" in ways that distort the ideal of the "marketplace of ideas").

33. Douglas, *supra* note 1, at 232. Some scholars urge that the American Law Institute still has work to do in this arena. See generally Elizabeth Laposata, Richard Barnes, & Stanton Glantz, *Tobacco Industry Influence on The American Law Institute's Restatements of Torts and Implications for its Conflict of Interest Policies*, 98 IOWA L. REV. 1 (2012). These authors disclose that the research for their article was supported by a grant from the National Cancer Institute (listing the grant number) and mention that the funding agency had no say in the research or its conclusions. The authors also disclose relevant institutional affiliations. *Id.* at 1 nn.d1, a1, aa1 & aaa1.

34. Douglas, *supra* note 1, at 232.

35. Professor Collins helped draft the *Washington Law Review*'s Disclosure Policy, available at <http://www.law.washington.edu/WLR/disclosure.aspx>.