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## Navigating the Article Selection Process: An Empirical Study of Those With All the Power-- Student Editors

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# NAVIGATING THE LAW REVIEW ARTICLE SELECTION PROCESS: AN EMPIRICAL STUDY OF THOSE WITH ALL THE POWER— STUDENT EDITORS

By Leah M. Christensen\* and Julie A. Oseid\*\*

## INTRODUCTION

Anyone who enters the legal academy knows the pressure for new law professors to publish or perish.<sup>1</sup> The use of student editors as the “gatekeepers” of legal scholarship is a distinctive feature of the legal academy.<sup>2</sup> The majority of academic literature is peer-reviewed.<sup>3</sup> In other disciplines and in other countries, experts review the submitted work.<sup>4</sup> Although there are a handful of peer-reviewed legal journals, the majority of legal publications are edited by students.<sup>5</sup>

Yet, even with student editors holding the keys to academic success, few empirical studies have explored what factors student editors consider most important

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\*\* Assistant Professor of Law, University of St. Thomas School of Law. B.A. University of Minnesota, Duluth; J.D. University of Minnesota. The order in which the authors' names are listed is not intended to suggest a primary and secondary author. We consider each author's contribution to have been equally important and essential. Because one name had to come first, we decided to follow tradition and list them alphabetically. We would like to thank the Legal Writing Institute and scholarship committee for generously funding a portion of this research with a 2007 Summer Research Grant. We give special thanks to Eugene Volokh, Professor of Law at UCLA Law School, for his suggestions and comments on this project. We thank Amy Bergquist, former Editor-In-Chief of the Minnesota Law Review, for her helpful comments and ideas on this project. Amy went so far beyond the call of duty by responding to our repeated questions, even while she was studying for the bar exam, that our debt of gratitude to her will probably never be repaid. We thank Nicholas Loch, Administrative Assistant at the University of Minnesota Law Review, for his help. We thank Andrea Specht, former editor of the St. Thomas Law Journal and former Judicial Clerk to the Honorable Justice Paul H. Anderson, for her helpful comments on the early draft of the survey. We also thank Laura Hammargren, Editor-In-Chief of the University of St. Thomas Law Journal and Professor Susan McGuigan for their comments on the initial draft of the survey. We thank our wonderful research assistant Casey Smedstad for her work in researching the history of law review article selection. Last, but certainly not least, we thank our excellent research assistant, Matthew Schwandt, for his tireless work in compiling the survey data. We could not have completed this project without his help and we suspect that graphs, rankings, and editor comments will be swimming through his head for many years to come.

<sup>1</sup> See e.g., Phillip F. Postlewaite, *Publish Or Perish: The Paradox*, 50 J. LEGAL EDUC. 157, 159 (2000) (stating that a tenure candidate's scholarship is more important than a candidate's teaching, collegiality and professional service in any tenure decision).

<sup>2</sup> Howard A. Denmark, *The Death of Law Reviews Has Been Predicted: What Might Be Lost When the Last Law Review Shuts Down?*, 27 SETON HALL L. REV. 1, 6 (1996).

<sup>3</sup> *Id.* at 7; see also Howard A. Denmark, *Improving Litigation Against Drug Manufacturers for Failure to Warn Against Possible Side Effects: Keeping Dubious Lawsuits from Driving Good Drugs Off the Market*, 40 CASE W. RES. L. REV. 413, 433 (1989-90) (describing the prevalence and role of peer review in scientific publishing).

<sup>4</sup> *Id.* at 7. See, e.g., Stephen Lock, *A Different Balance: Editorial Peer Review in Medicine* 23-55 (1986).

<sup>5</sup> *Id.*; see also Carol Sanger, *Editing*, 82 GEO. L.J. 513, 513 (1993) (discussing the prevalence of student editors in the legal academy and the problems associated with this practice).

when making article selection decisions. The study reported in this Article attempts to shed light on this process and provide suggestions for new law professors as they navigate the law review article submission process.

Although criticism of student-edited law reviews has been around for a long time,<sup>6</sup> it seems that many editors, professors and sympathizers have begun discussing the topic once again. A recent theme in legal “blogs” is that law review article selection is heavily biased toward author credentials.<sup>7</sup> For example, a former articles committee chair of the *Harvard Law Review* wrote that the increased volume of submissions gives rise to “pressure on student editors to make ill-informed, snap decisions about articles . . . and to give excessive consideration to proxies like the author’s prominence, school, and prior publications.”<sup>8</sup> The selection procedures utilized by editors may be particularly hard on professors at lower ranked schools.<sup>9</sup>

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<sup>6</sup> See, e.g., Steven Bradford, *As I Lay Writing: How to Write Law Review Articles for Fun and Profit*, 44 J. LEG. EDUC. 13 (1994); Dennis J. Callahan and Neal Devins, *Law Review Article Placement: Benefit or Beauty Prize*, 56 J. LEGAL EDUC. 374, 374 (2006); Roger C. Cramton, “The Most Remarkable Institution”: *The American Law Review*, 36 J. LEG. EDUC. 1 (1986); Christian C. Day, *In Search of the Read Footnote: Techniques for Writing Legal Scholarship and Having it Published*, 6 LEG. WRITING 229 (2000); Ira Mark Ellman, *A Comparison of Law Faculty Production in Leading Law Reviews*, 33 J. LEG. EDUC. 681 (1983); James W. Harper, *Why Student-Run Law Reviews?*, 82 MINN. L. REV. 1261 (1998); Richard S. Harnsberger, *Reflections About Law Reviews and American Legal Scholarship*, 76 NEB. L. REV. 681 (1997); Bernard J. Hibbitts, *Yesterday Once More: Skeptics, Scribes, and the Demise of Law Reviews*, 30 AKRON L. REV. 267 (1996); Kenneth Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926 (1990); Terri LeClercq, *The Nuts and Bolts of Article Criteria and Selection*, 30 STETSON L. REV. 437 (2000); Jordan H. Leibman & James P. White, *How the Student-Edited Law Journals Make Their Publication Decisions*, 39 J. LEG. EDUC. 387 (1989); Phil Nichols, *A Student Defense of Student Edited Journals: In Response to Professor Roger Cramton*, 1987 DUKE L.J. 1122 (1987); Richard A. Posner, *The Future of the Student-Edited Law Review*, 47 STAN. L. REV. 1131 (1995); Richard A. Posner, *Goodbye to the Bluebook*, 53 U. CHI. L. REV. 1343 (1986); Max Stier et al., *Law Review Usage and Suggestions for Improvement: A Survey of Attorneys, Professors, and Judges*, 44 STAN. L. REV. 1467 (1992); Michael D. Stokes, *How to Get Your Article Published by a Law Review*, 71 ABA J. 144 (Oct. 1985); Michael I. Swygert & Nathaniel E. Gozansky, *Senior Law Faculty Publication Study: Comparisons of Law School Productivity*, 35 J. LEG. EDUC. 373 (1985); Dan Subotnik & Glen Lazar, *Deconstructing the Rejection Letter: A Look at Elitism in Article Selection*, 49 J. LEG. EDUC. 601 (1999); The Articles Editors, *A Response*, 61 U. CHI. L. REV. 553 (1994); Carl Tobias, *Manuscript Selection Anti-Manifesto*, 80 CORNELL L. REV. 529 (1995); and William C. Whitford, *The Need for an Exclusive Submission Policy for Law Review Articles*, 1994 WIS. L. REV. 231 (1994).

<sup>7</sup> There have been a number of blogs, or web logs, related specifically to issues concerning the legal academy. “Blawg.com” provides a list of 62 legal blogs, including the “law professor blogs network,” <http://lawprofessors.typepad.com>. By “blogs,” we mean those web logs where readers can post comments about particular issues in an interactive format.

<sup>8</sup> Randy Kozel, *Are Law Reviews Really Rubbish?* (Nov. 15, 2004) (Richard A. Posner and Randy Kozel debate) (available at [http://www.legalaffairs.org/webexclusive/debateclub\\_posner1104.msp](http://www.legalaffairs.org/webexclusive/debateclub_posner1104.msp)). Another editor wrote:

I had to set some fairly arbitrary and unfair screening procedures simply to keep my head above the flood...Many law reviews apparently do Lexis/Westlaw searches to see how many times a particular author has been cited in legal publications and rank the authors that way.

Seth Rogers, *Concurring Opinions, Spring Law Review Submission Season*, [www.concurringopinions.com/archives/2006/02/spring\\_rev.html](http://www.concurringopinions.com/archives/2006/02/spring_rev.html) (Feb. 2, 2006). Yet another blogger wrote:

A friend recently told me that she had been called by a law review about one of her manuscripts. The articles editor apologized for rejecting the manuscript and explained

A simple but worthwhile question in this debate is whether this selection process is fair. The fairness and impartiality of article selection is important to new law professors. For them, success in the legal academy may be tied to what, where and how often they publish in the appropriate law journal.<sup>10</sup> New law professors face not only the quantitative expectations of how many published articles are required for promotion and tenure, but also the qualitative expectations about what types of articles “count” for promotion and tenure.<sup>11</sup> The problem is that these qualitative requirements may be left

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that the rejection had been made without reading the paper because the editors had mistakenly misclassified my friend’s school as being in a lower tier law school. Now that they realized their error, the editor told her, they wanted to consider the article on the merits.

Andrew Morriss, *The Volokh Conspiracy, Median LSAT Scores and Law School Rankings*, [http://www.volokh.com/archives/archive\\_2005\\_08\\_07-2005\\_08\\_13.shtml#1123523518](http://www.volokh.com/archives/archive_2005_08_07-2005_08_13.shtml#1123523518) (Aug. 8, 2005).

<sup>9</sup> One blogger noted:

If her school’s position in the rankings counts against her chances of getting published, she may find herself in a Catch-22 situation; the only way to get published in good journals is to improve her personal name-recognition...but the only way to improve her personal name-recognition is to get published.

Henry, Crooked Timber, *Law Reviews and Meritocracy*, <http://crookedtimber.org/2005/08/08/law-reviews-and-meritocracy> (Aug. 8, 2005).

<sup>10</sup> If law professors teaching at middle-ranked law schools will rarely have their articles reviewed by law review editors at higher-ranked law journals, should promotion and tenure committees expect them to publish at these journals? Although not all promotion and tenure committees have such “ranking” requirements for promotion, it is likely that some do have such written or unwritten policies regarding the qualitative expectations for publication. See Nancy Levit, *Scholarship Advice for New Law Professors in the Electronic Age*, 16 WIDENER L.J. 947, 949 (2007) (noting that qualitative requirements may include “a good journal placement for the article”); see also, David Monsma, *The Academic Equivalence of Science and Law: Normative Legal Scholarship in the Quantitative Domain of Social Science*, 23 T.M. COOLEY L. REV. 157, 209 (2006) (pointing out that law faculty members seeking promotion or tenure should publish their work in the “most prestigious journals possible”); David A. Rier, *The Future of Legal Scholarship and Scholarly Communication: Publication in the age of Cyberspace*, 30 AKRON L. REV. 183, 185 (1996) (arguing that “[g]rowing publication pressures on faculty have made law reviews key gatekeepers in the selection, tenuring, and promotion of law professors”).

<sup>11</sup> Professor Nancy Levit points out that although many schools’ promotion and tenure guidelines state the number of publications required, there is often a *qualitative* threshold as well. Levit, *supra* note \_\_\_ at 949-950. Levit provides examples of the qualitative standards used by various law schools. *Id.* at 950 n. 15. For example, at Northwestern University School of Law, the standards state: “Candidates for promotion or tenure must demonstrate excellence in scholarship . . . . The members of the committee will read and evaluate the candidate’s publications . . . [and] will urge the faculty to do likewise . . . . [N]o fewer than five professors in peer institutions, who are well qualified to evaluate the candidate’s published work, [will] submit written evaluations.” *Id.* Professor Levit points out that, for other promotion standards, the qualitative standard invites a comparison of the candidate’s work with the contributions of peers and/or with the stated mission of the law school. *Id.* Levit noted that Emory University asks whether the candidate’s publications “constitute significant contributions to learning in the candidate’s area of work as measured by national, or, where appropriate, international standards” and states that “[t]he committee also should take into account the relative standing of the candidate in comparison with other scholars of the same generation who are doing comparable work.” *Id.* In addition, “the committee should consider how the candidate’s work contributes to the advancement of the mission of the Law School and the University.” *Id.* The qualitative requirements may “depend on a number of factors including: positive reads by the senior faculty members in [the candidate’s] field, a good journal placement for the article, lots of citations, and approval from outside readers.” *Id.* at 950.

unwritten or unstated.<sup>12</sup> The increased competition for publication space coupled with the potential bias of the current system towards author credentials is a disturbing trend for a majority of new professors in the legal academy. If student editors rely upon author credentials as a “proxy” for quality, then we need to explore this reality more openly.

This study seeks to explore these questions and add to the growing body of empirical research on law review selection. The present study examines how law review editors at all levels of the law school “tier” system (e.g., Top 15, Top 25, Top 50, Top 100, Third Tier, Fourth Tier and Specialty Journals)<sup>13</sup> weigh the importance of author credentials, topic, format, and timing of an article submission in making their selection decisions. Although the study found that most editors consider each of these factors to some degree, the data also suggests that the higher-ranked journals rely more heavily on author credentials than lower-ranked journals. Specifically, editors at higher-tiered law schools were highly influenced by where an author has previously published. Further, while not a single editor at a Top 15 school considered an author’s practice experience in making a publication decision, a majority of the editors at lower-tiered journals rated practice experience as an important factor in article selection. In addition, the study participants almost unanimously agreed that they were influenced by the topic of an article yet there were important differences among the law schools concerning the actual topics about which they would be most or least likely to publish. In addition to describing the survey results in more detail, this article will offer specific commentary from the student editors about their process of selecting law review articles.

Part I of this Article discusses the literature about law review article selection focusing on the prior empirical research on this topic. Part II describes the present study, including the participants, the survey, and the methodology for the collection, analysis and interpretation of the data. Part III sets out the results of the study and explains the various conclusions that might be drawn from the data. Part IV presents the written commentary of the law review editors in response to the survey questions based upon three recurring themes: (1) the poor quality of submitted articles; (2) the large volume of submissions; and (3) the frequency of “trading up.” Part V offers some advice for new law professors negotiating through the article selection process.

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<sup>12</sup> *Id.* For example, faculty members may have varying perceptions about whether a particular article “counts” for promotion and tenure (for example, if the article was solicited for a symposium or published in a specialty journal). *Id.*

<sup>13</sup> By “tier” system, we are referring to the hierarchy of law schools used generally by publications like the U.S. News and World Report, and the Washington and Lee Law School: Law Journals: Submissions and Rankings, <http://lawlib.wlu.edu/LJ/index.aspx>. Although there are numerous debates about the rankings themselves, their validity, etc., it appears to be generally accepted within the legal academy that law schools are ranked to some degree. For the purposes of the survey which forms the basis of this research, we relied on 2006 U.S. News and World Report (hereinafter USN&WR) rankings to determine the law review segments or tiers used in this study. Further, when we refer to “tier” ranges in this study, we define tier ranges as follows: Top 15 (1-15); Top 25 (16-25); Top 50 (26-50); Top 100 (51-100); 3d tier (per USN&WR 2006 rankings); and 4th tier (per USN&WR 2006 rankings). We occasionally refer to Top 10 which refers to a law school ranked 1-10.

## I. PRIOR RESEARCH ON LAW REVIEW SELECTION

Prior to the present study, there have been four empirical studies exploring how law review editors select articles for publication.<sup>14</sup> This next section will summarize the research and literature concerning article selection and law reviews.

In 1983, Professor Ira Mark Ellman sought to determine whether higher-ranked law reviews saved a disproportionate amount of space in their journals for articles written by law professors at their own schools, i.e., in-house publishing.<sup>15</sup> Ellman interviewed 23 leading law journals<sup>16</sup> and found that many of these law reviews held a significant percentage of their journal space for articles written by professors at their own schools: the Virginia Law Review published 47% in-house; Stanford Law Review 35%; Harvard Law Review 33%; and the University of Chicago Law Review 29%.<sup>17</sup> Ellman's data suggested that "the major law reviews publish the work of their own faculty disproportionately often."<sup>18</sup>

In 1989, Jordan H. Leibman and James P. White, two professors from Indiana University, analyzed the article selection process.<sup>19</sup> Leibman and White visited 37 law reviews to conduct personal interviews and to discover how they processed and evaluated manuscripts.<sup>20</sup> One factor Leibman and White were concerned with was the manuscript review procedures.<sup>21</sup> Leibman and White's interviewees consisted of editors-in-chief, senior articles editors, or groups of editors, including managing editors.<sup>22</sup> The study results were revealing. Editors at a high-impact journals admitted that an author's credentials were a significant factor in article selection -- their articles were "fast tracked."<sup>23</sup> Leibman and White observed that:

One resourceful editor argued for the relevance of the author's credentials by suggesting that what some authors had to say on a subject was of interest to readers simply because of who was saying it. Most interviewees, however, simply conceded that famous authors are granted a presumption of excellence, but that the presumption is easily rebutted by inferior manuscripts.<sup>24</sup>

Like Ellman, Leibman and White confirmed that the problem of in-house publishing exists: "When authors are resident faculty members . . . the pressures on

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<sup>14</sup> However, there have been numerous journal articles on the subject generally. *See supra* note \_\_\_\_.

<sup>15</sup> *See* Ellman, *supra* note \_\_, at 685.

<sup>16</sup> *Id.* at 681-82 (as ranked on the Carter Report).

<sup>17</sup> *Id.* at 685.

<sup>18</sup> *Id.* at 692.

<sup>19</sup> *See* Leibman & White, *supra* note \_\_, at 387.

<sup>20</sup> *Id.* at 390. Six also responded via mail, bringing the sample for the study to 43 journals. Out of the law reviews that responded, thirteen were considered "high-impact journals," nine "medium impact journals," and sixteen "low-impact journals." *Id.* at 393.

<sup>21</sup> *Id.* at 391.

<sup>22</sup> *Id.* at 394.

<sup>23</sup> *Id.* at 396 n.39.

<sup>24</sup> *Id.* at 405.

students to say yes do exist, and most of the editors acknowledged them.”<sup>25</sup> Leibman and White found that editors at top journals suggested that their faculty had an advantage over others, but their work would be turned down if it was considered inferior.<sup>26</sup> Leibman and White suggested a potential solution for the problem of in-house publishing: if blind review was conducted at the first manuscript screening, and a resident authors’ manuscript was selected, preferential treatment could ensue.<sup>27</sup> In order to have the “edge” in final selection, however, authors would first have to pass the blind review stage.<sup>28</sup>

In 1998, Deborah Jones Merritt explored the relationship between law professors’ teaching and research.<sup>29</sup> Merritt studied 832 tenure track professors,<sup>30</sup> and found that “[t]he prestige of a professor’s J.D. school . . . showed a significant positive relationship with publishing an article in a top-twenty journal.”<sup>31</sup> In addition, “[p]rofessors who had clerked for the U.S. Supreme Court published more articles than their colleagues and were more likely to place those articles in top journals.”<sup>32</sup> Merritt also learned that “[p]rofessors who began teaching at the most prestigious schools were significantly more likely than other professors to publish in the top twenty journals.”<sup>33</sup>

Most recently, in 2006, Jason P. Nance and Dylan J. Steinberg, two former University of Pennsylvania law review editors, surveyed law journals to determine how publication decisions were made.<sup>34</sup> Nance and Steinberg asked editors to consider 57 different factors as possible influences in their process of deciding whether to make an offer of publication.<sup>35</sup> Nance and Steinberg agreed that it was “generally assumed that, to a significant degree, Articles Editors use an author’s credentials as a proxy for the quality of scholarship.”<sup>36</sup> Their survey confirmed this belief.<sup>37</sup> Their results indicated that the top five positive influences on article selection were: (1) “The author is highly influential in her respective field;” (2) “The article fills a gap in the literature;” (3) “The topic would interest the general legal public;” (4) “The author has published frequently in highly ranked law reviews;” and (5) “The author is employed at a highly ranked law school.”<sup>38</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 420-21.

<sup>28</sup> *Id.* at 421.

<sup>29</sup> See Jones Merritt, *supra* note \_\_\_, at 765.

<sup>30</sup> *Id.* at 767.

<sup>31</sup> *Id.* at 813.

<sup>32</sup> *Id.* at 813.

<sup>33</sup> *Id.* at 813-14.

<sup>34</sup> See Nance & Steinberg, *supra* note \_\_\_. Nance and Steinberg sent e-mails to 400 law reviews for the 2005-2006 year. *Id.* They received 191 responses from 164 journals. *Id.*

<sup>35</sup> *Id.* at 12.

<sup>36</sup> *Id.* at 5.

<sup>37</sup> *Id.* at 13-14.

<sup>38</sup> *Id.* Nance and Steinberg also found that “although Articles Editors are eager to publish articles by notable scholars, they are not reluctant to make offers of publication to less-well-known authors.” *Id.* at 14. Their conclusions, in part, were as follows: “[M]ore prestigious journals give a more moderate weight to a variety of factors rather than allowing one factor to be dispositive. It also appears that they rely somewhat less heavily on selecting articles from prestigious authors, although they are less willing to publish work from non-typical authors and are more likely to count an author’s lack of credentials against her.” *Id.* at 28.

In addition to the four empirical studies described above, there have been many journal articles written more generally on the topic of law reviews.<sup>39</sup> These articles tend to discuss the various strengths and weaknesses of the student-run journals, provide hints for publishing articles, suggest various strategies for law review reform, and discuss the problems associated with in-house publishing.

For example, in 1999, Dan Subotnik and Glen Lazar wrote on the topic of in-house publishing,<sup>40</sup> which has the effect of “feathering the school’s nest.”<sup>41</sup> Subotnik and Lazar found that at the top-ranked schools, over 20% of the published articles were written by in-house faculty.<sup>42</sup> Their data suggested the “virtual impossibility, for an author at a third- or fourth-tier law school, of getting an article published in a top-9 journal.”<sup>43</sup> They wrote:

If editors at the top journals do not conduct blind reviews of submitted articles (and we know they don’t), then selection will likely be grounded to some extent on a basis other than quality. And if, in fact, editors’ selections of articles are based on extraneous factors such as the rank of the author’s school, and if the selections of articles become defined as the best, then we have a closed circle begging for criticalist denunciation.<sup>44</sup>

In yet another article critiquing student-run law reviews, James Lindgren anecdotally described instances in which editors made questionable decisions:

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<sup>39</sup> See, e.g., Arthur D. Austin, *The “Custom of Vetting” as a Substitute for Peer Review*, 32 ARIZ. L. REV. 1 (1990); Arthur D. Austin, *Footnote Skullduggery and Other Bad Habits*, 44 U. MIAMI L. REV. 1009 (1990); Richard Delgado, *How to Write a Law Review Article*, 20 U.S.F. L. REV. 445 (1986); Stephen R. Heifetz, *Efficient Matching: Reforming the Market for Law Review Articles*, 5 Geo. Mason L. Rev. 629 (1997); John Paul Jones, *In Praise of Student-Edited Law Reviews: A Reply to Professor Dekanal*, 57 U.M.K.C. L. REV. 214 (1989); Levit, *supra* note \_\_\_, at 947; Frances Olsen, *The Role of Student-Run Journals in Opening North American Law*, 39 ALTA. L. REV. 678 (2001); Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38 (1936).

<sup>40</sup> Subotnik & Lazar, *supra* note \_\_\_, at 601.

<sup>41</sup> *Id.* at 605.

<sup>42</sup> *Id.* at 607.

<sup>43</sup> *Id.* at 607.

<sup>44</sup> *Id.* at 605. Charles W. Collier wrote on institutional authority and its effects on law reviews, “[T]hree specific circumstances of student-edited law reviews (lack of time, lack of expertise, lack of independence) dictate reliance on three specific—and often overlapping—forms of institutional authority (well-known authors, authors affiliated with well-known institutions, in-house authors).” Charles W. Collier, *Intellectual Authority and Institutional Authority*, 42 J. LEG. EDUC. 151, 172 (1992) (describing his experiences as an articles editor at Stanford Law Review). Collier suggested a blind-review process as he recalled that “about half of the submitted articles were rejected unread on the basis of inappropriate methodology or subject matter or even title.” *Id.* at 169. Collier’s memories further support the existence of the use of author credentials and in-house publishing in article selection:

Articles by well-known authors . . . or from authors at well-known, prestigious institutions—such as Harvard, Yale, and Michigan—were automatically given a full first reading. And articles by Stanford law professors came to us with such a heavy presumption in their favor that they were almost never rejected, regardless of their quality.

*Id.*

A former editor of one journal admitted that during her year as an editor, the journal received an article that the editors liked very much from a professor at a non-elite 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.<sup>45</sup>

Lindgren himself once conducted an informal experiment in which he submitted identical articles, "on the same day in the same mailbox—part on Chicago-Kent stationery and part on University of Chicago stationery."<sup>46</sup> From the University of Chicago stationery, he received offers from Penn and Northwestern, while his best offer from the Chicago-Kent stationery was from Arizona.<sup>47</sup> In total, Lindgren received 2.5 times as many acknowledgments for the Chicago stationery as he did from the Kent stationery.<sup>48</sup>

The debate over how student editors make publication decisions and whether their decisions are appropriate will continue on for some time. The present study seeks to answer some of these questions by going to the source of those with much of the power: student editors. Although there are certainly limits to the ability to generalize our findings, the results provide important empirical data about how law review editors at all tiers of law schools make article selection decisions.

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<sup>45</sup> Lindgren, *supra* note \_\_\_, at 530. Lindgren described another editor of a top review who admitted that the author's school was a major factor in article selection. *Id.* A manuscript from Harvard had to be "really poor" to be turned down, and even that required "extended debate." *Id.*

<sup>46</sup> See Subotnik and Lazar, *supra* note \_\_\_, at 610.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* Lindgren also criticized the practice of article selection in the realm of article subject matter. Lindgren, *supra* note \_\_\_, at 531-32. Lindgren believed that the journals are skewed toward student interest, "interests that disproportionately serve elite segments of the corporate bar and the federal courts." *Id.* at 533. Lindgren concluded by stating, "These then, are the problems—elitism . . . and perverse selection practices—in short, incompetence." *Id.* In response to Lindgren, the Articles Editors from the University of Chicago submitted a defense of student-run journals. See The Articles Editors, *supra* note \_\_\_, where the Editors admitted, "Concerning elitism, it surely happens that editors sometimes select articles on the basis of credentials rather than merit, perhaps due to insecurity about their ability to evaluate merit." *Id.* at 554. If an editor failed to seek faculty advice when their substantive knowledge of an article topic was lacking, the Editors wrote that "perhaps [the editors] should rely on author credentials rather than their own judgments. After all, professors get jobs at elite law schools precisely because they are good, original writers." *Id.* In 2004, Posner also criticized law reviews by calling the student editors "inexperienced both in law and editing." Richard A. Posner, *Against the Law Reviews*, 2004-DEC. LEGAL AFF. 57, 57 (2004). Posner stated that the student-edited journal is "incomprehensible" to scholars in other fields. *Id.* Natalie C. Cotton, a former Senior Editor of the University of Pennsylvania Law Review, responded to Posner. Natalie C. Cotton, *The Competence of Students as Editors of Law Reviews: A Response to Judge Posner*, 154 U. PA. L. REV. 951, 951 (2006). Cotton argued in defense of student-edited journals stating that "while students do encounter challenges in running scholarly publications, they are quite competent to select and edit legal scholarship." *Id.* Cotton compared article selection to exam grading, i.e., "good exams and bad exams are easy to identify." *Id.* at 953. Like a professor grades an exam "by identifying the attributes that are desirable for articles and evaluating them along those dimensions, student editors easily eliminate many from consideration and sort the remainder." *Id.* at 961.

## II. THE PRESENT STUDY

### A. *Survey Design and Dissemination*

The purpose of the survey used in this study was to find out what factors student editors relied upon most heavily in making publication decisions. In creating the survey, we sought to explore a wide variety of topics that might influence student editors at all law schools. A qualitative survey methodology<sup>49</sup> was adopted in order to access a large number of student editors, and to enable the editors' responses to be compared across different groups and/or law school tiers.<sup>50</sup> A 10 page self-completion survey<sup>51</sup> was designed focusing on the following factors: author credentials; topic; title; star footnote; cover letter; reserved space; article format; timing of submission; review process; law review culture; "trading up;" and the "biggest surprise" about selecting articles for your journal.<sup>52</sup> We left space for the editors to comment specifically about any one of the factors if they had additional information to provide. Several editor comments are included in Part III (Survey Results) of this article. The responses to the "biggest surprise" question provided the qualitative data which will be discussed in Part IV of this article.

We initially ran a pilot or pre-test of the survey study by sending the survey out to various law review editors and several experts/law professors in the field asking them to make suggestions about the clarity of the questions or additional items that we should include or omit.<sup>53</sup> After receiving feedback from these sources, we modified the survey accordingly. A copy of the final survey is attached as Appendix A.

We disseminated the final survey using an electronic email format by accessing the general email addresses of the top 300 law reviews on the Washington and Lee

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<sup>49</sup> In designing and conducting the survey, we utilized a qualitative survey methodology which is typical in social science research. Survey research is a way of gathering data from study participants who are representative of some population, in our case, student editors of law reviews, and this type of research uses an instrument composed of both open-ended and closed questions. See, e.g., <http://www2.chass.ncsu.edu/garson/pa765/survey.htm> (noting that surveys are the "dominant form of data collection in the social sciences, providing for efficient collection of data over broad populations, amenable to administration in person, by telephone, and over the Internet).

<sup>50</sup> See, e.g., Adrienne C. Testa and Lester M. Coleman, *Accessing Research Participants in Schools: A Case Study of a UK Adolescent Sexual Health Survey*, 21 HEALTH EDUC. RES. 21, No. 4, 518, 520 (2006).

<sup>51</sup> Self-completion questionnaires are preferable to face-to-face interviews in terms of reducing reporting bias both across a large number of sensitive topics, i.e., confidential law review practices, and specifically among younger respondents, i.e., student populations. *Id.* As a result, we used a self-completion survey or questionnaire in order (1) to eliminate potential interviewer and non-response biases associated with collecting sensitive information face to face (due to the sensitive nature of what student editors might perceive as "confidential" information concerning article selection); (2) to collect information in a standardized format to enable reliable and consistent comparisons between groups; and (3) to allow us to collect data from a large number of respondents time-efficiently. *Id.*

<sup>52</sup> We also had a final question asking editors what factors they considered to be more important relative to one another. The final question asked participants to rank the following factors in order of importance: Author credentials; Topic; Title; Author Attribution (Star Footnote); Cover Letter; Reserved Space; Format; Timing; Thoroughness of Article; and Advanced "Buzz."

<sup>53</sup> We sent the pilot survey out to two law review editors at our own school, one judicial clerk at a regional state supreme court, and two law professors.

website.<sup>54</sup> We also sent hard copies of the survey to approximately 25 law reviews that did not accept electronic submissions directly.<sup>55</sup> To have an even response rate among all tiers of law schools, we also followed up our electronic requests with personal phone calls directly to several high-ranking law reviews requesting that editors respond to the survey. We received 63 responses to the survey which included both survey responses and qualitative comments by the student editors. The responses were distributed relatively evenly among the different tiers of law schools.<sup>56</sup>

## ***B. Data Analysis***

A computer database was created to analyze the survey data and each response was entered based upon the eleven categories of questions that made up the survey.<sup>57</sup> We then calculated the percentage of respondents answering any particular question in the affirmative or negative, and analyzed participants' responses to the factor questions, i.e., "Which factors do you consider most relevant . . ." also based upon a percentage calculation. For the Final Rankings section,<sup>58</sup> we calculated the average percentage of respondents ranking a particular factor in each segment. The respondents' qualitative comments regarding each question were also entered into the database.

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<sup>54</sup> See Washington and Lee Law School: Law Journals: Submissions and Rankings, <http://lawlib.wlu.edu/LJ/index.aspx>. We sent the survey via the Washington and Lee website, but we used the USN&WR rankings for assigning law schools to specific tiers and/or segments.

<sup>55</sup> Many of the top-ranked law reviews were exceedingly difficult to contact because there was not a general email address where we could send the survey or because the schools did not want to participate in the survey.

<sup>56</sup> The survey instrument allowed respondents to mark the "tier" or ranking of their law school while remaining anonymous. We stated explicitly that in any reporting of the data, editor responses would remain anonymous. The "tiers" and/or rankings of the law schools were broken down as follows: Top 15; Top 25; Top 50; Top 100; 3d Tier; 4th Tier; Other, i.e., Specialty Journal.

<sup>57</sup> The different categories were: author credentials, topic/title/star footnote/cover letter, reserved space, format, timing/parameters of submission, review process, law review culture, selecting student members/editors, "trading up," final ranking of potential factors, and biggest surprise about selecting articles. Within these categories there were three basic types of questions: 1) those requiring a "yes" or "no" response; 2) those that asked the respondent to rank certain criteria; and 3) those that sought actual respondent comments. The answers to these questions were given a separate column within the spreadsheet. "Yes" or "no" answers were coded with the number one to simplify tallying the number of respondents who indicated a "yes" or "no" answer to a particular question. The law schools were then segmented by their rank range, i.e., Top 15, Top 25, Top 50, Top 100, 3d Tier, 4th Tier, and Specialty Journals.

<sup>58</sup> The Final Rankings Section was the last question we asked on the survey requesting that respondents rank all the factors relative to each other.

### III. SURVEY RESULTS

We asked law review editors to answer eleven categories of questions related to their decision making process with respect to offering or denying publication to authors. Of those eleven categories, the data revealed three categories that offered compelling insight into the editors' decision making process: (1) an author's credentials; (2) the topic and title of an article as well as the cover letter and abstract; and (3) the editors' overall rankings of factors that influence their publication decisions. This next section will discuss the survey results with regard to these three main categories. The survey results are reported as follows: Top 15 (1-15); Top 25 (16-25); Top 50 (26-50); Top 100 (51-100); 3d tier (per USN&WR 2006 rankings); 4th tier (per USN&WR 2006 rankings); and Specialty Journals.

#### *A. Author Credentials*

We asked law review editors whether they were influenced by the credentials of the author submitting an article, including where the author teaches; where the author graduated from law school; where the author has published previously, and whether the editors were influenced by the author's practical experience, if any. Overall, the results support that law review editors, particularly those at higher ranked schools, are heavily influenced by author credentials.

##### *1. Are You Influenced by Where an Author Now Teaches?*

A majority of respondents from nearly every school segment indicated they are influenced by the law school where an author teaches.

**Table 1: Respondents Influenced by Where Author Teaches**

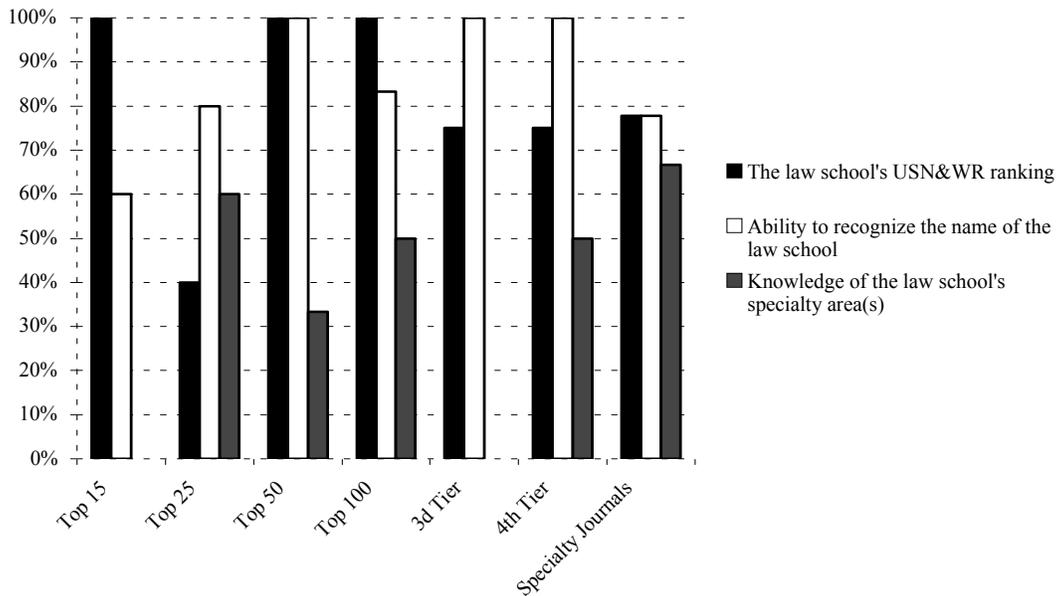
<b>School Segments</b>	<b>Percentage of Respondents Who Answered 'Yes'</b>
Top 15	83%
Top 25	100%
Top 50	60%
Top 100	100%
3d Tier	67%
4th Tier	44%
Specialty Journals	75%

These results suggest that top ranked law schools are very concerned with an author's credentials. There is a decline in the percentage of respondents who answered "yes" to this question among the 3d and 4th tier segments. One 4th tier respondent explained, "[r]ealistically, we know that we cannot publish the best articles from the best

authors.”<sup>59</sup> The fact that the top law schools are heavily influenced by where the author teaches may also reflect the popular notion that higher-ranked law journals publish articles about theory whereas lower-ranked law schools publish articles that are either written by or useful to practitioners.<sup>60</sup>

In addition to agreeing that they are influenced by where an author teaches, the law review editors also ranked additional factors related to where an author teaches, including a law school’s USN&WR ranking,<sup>61</sup> the general reputation of the school, and whether the law school where the author teaches is known for any particular specialty.

**Table 2: Other Factors Relating to Where an Author Teaches**



As the table shows, a law school’s USN&WR ranking plays a very influential role in publication decision making. However, a respondent’s ability to *recognize* the name of a law school seems to play an even greater role in deciding who to publish. While knowledge of a law school’s specialty area(s) is not altogether unimportant to many school segments, the specialty journal respondents, as might be expected, considered this factor most important.

<sup>59</sup> Quoted response from an editor at a 4th Tier law journal to the question, “Are you influenced by the law school where the author now teaches?”

<sup>60</sup> See Mitchell Nathanson, *Taking the Road Less Traveled: Why Practical Scholarship Makes Sense for the Legal Writing Professor*, 11 LEG. WRITING 329, 345 (2005) (discussing how elite law reviews prefer to publish theoretical over practical topics).

<sup>61</sup> By USN&WR, we mean the U.S. News and World Report rankings of 2006.

2. *Are You Influenced By Where an Author Graduated From Law School?*

A majority of respondents from every segment, with the exception of the Top 15 and 4th tier, indicated that they were influenced by where an author graduated from law school.

**Table 3: Respondents Influenced by Where an Author Graduated from Law School**

<b>School Segments</b>	<b>Number of Respondents Who Answered 'Yes'</b>
Top 15	33%
Top 25	100%
Top 50	60%
Top 100	100%
3d Tier	67%
4th Tier	38%
Specialty Journals	67%

The table above suggests that the school where an author graduated plays a significant role in making publication decisions (with the exception of the Top 15 and 4<sup>th</sup> tier schools). However, the fact that only one-third of respondents from the top 15 segment answered “yes” to this question is not unexpected. Editors at the top 15 journals may be aware that for a professor to be employed at a top law school, he or she must have graduated from a prominent law school as well. Similarly, the lower percentage of respondents who answered “yes” among the 4th tier segment is not surprising. Like their responses to the previous question, the 4th tier respondents appeared less concerned with an author’s academic affiliation than with his or her practice experience or whether the author submitted an article offering pragmatic insight for practitioners.

While the majority of the school segments were influenced by where an author graduated, many of the respondents qualified their “yes” answer with an explanatory statement. One top 100 respondent commented, “This is a factor to consider, but it is very minimal. The younger the professor, the more important this factor.”<sup>62</sup> Similarly, another respondent from the same segment stated, “This is a pretty minor influence, especially if the author has been out of school and working/teaching for a while.”<sup>63</sup> While these explanatory statements seem to downplay the significance of this factor, respondents who provided such statements nonetheless indicated that this factor does influence student editors.

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<sup>62</sup> Quoted response from an editor at a top 100 law journal to the question, “Are you influenced by the law school where the author graduated?”

<sup>63</sup> *Id.*

3. *Are You Influenced By The Number/Name(s) of the Other Law Reviews Where an Author Has Published?*

A substantial portion of respondents, especially those from the higher-ranked schools, indicated that they were influenced by where an author has published previously.

**Table 4: Respondents Influenced by the Number/Name(s) of Other Law Reviews Where the Author Has Published**

School Segments	Number of Respondents Who Answered 'Yes'
Top 15	83%
Top 25	100%
Top 50	80%
Top 100	100%
3d Tier	67%
4th Tier	56%
Specialty Journals	75%

While 3d and 4th tier respondents seemed to be less concerned about where an author published previously (compared to higher-ranked schools), this was still a significant factor for all. In addition to where an author has previously published, the respondents also ranked additional factors that influenced their publication decisions.

**Table 5: Other Factors Relating To Where an Author Has Published**

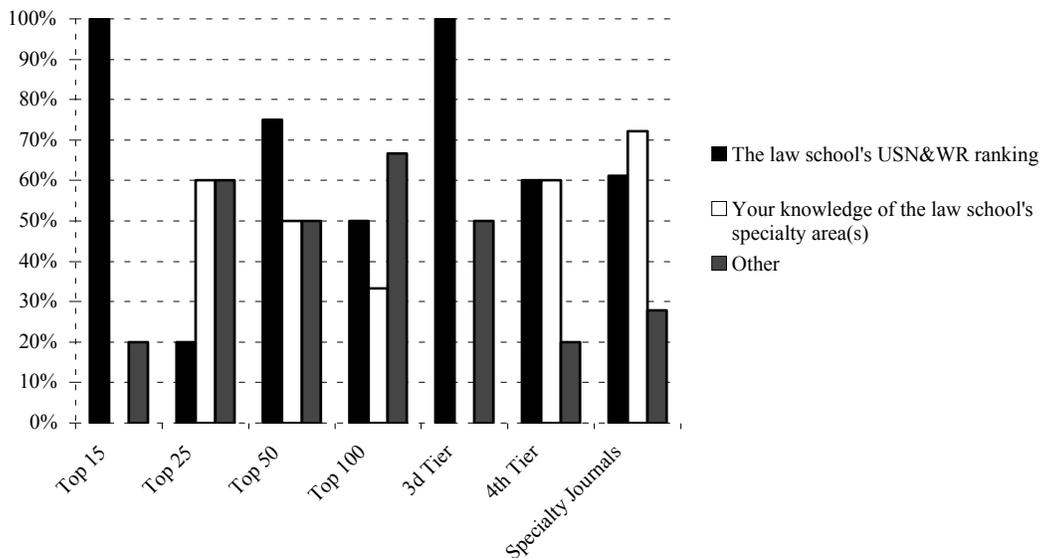


Table 5 illustrates that respondents were most influenced by the USN&WR's ranking of other schools where an author has published. Respondents' knowledge of a

law school’s specialty area appears somewhat relevant with 50% or more of those surveyed among the top 25, top 50, top 100, and 3d tier segments indicating that they were influenced by this factor. Some of the responses enumerated in the “other” category included the Washington & Lee “rankings,” the journal’s ranking itself, and the consistency with which an author has published in highly ranked journals.

4. *Do You Consider the Number of Times Author Has Published Previously?*

A majority of respondents from nearly every school segment indicated that they consider the number of times an author has published previously.

**Table 6: Respondents Who Consider Number of Times an Author Has Published Previously**

<b>School Segments</b>	<b>Number of Respondents Who Answered 'Yes'</b>
Top 15	50%
Top 25	100%
Top 50	80%
Top 100	100%
3d Tier	83%
4th Tier	88%
Specialty Journals	75%

The results for the top 15 segment suggest that they are more influenced by the *names* of the journals in which an author has been published and less concerned with the *number* of times an author has published. In contrast, a majority of respondents from the other school segments indicated that the number of times an author has published is a very important factor.

5. *Do You Consider an Author's Practice Experience?*

None of the top 15 respondents considered an author's practice experience in making publication decisions and only a slim majority of the other top-ranked segments answered "yes" to this question. In contrast, this factor was more influential to editors among the 3d and 4th tier school segments.

**Table 7: Respondents Who Consider Author's Practice Experience**

<b>School Segments</b>	<b>Number of Respondents Who Answered 'Yes'</b>
Top 15	0%
Top 25	60%
Top 50	60%
Top 100	67%
3d Tier	83%
4th Tier	78%
Specialty Journals	63%

One top 100 respondent commented that an author's practice experience is a consideration, "[p]articularly if the author is saying something novel."<sup>64</sup> This respondent cautioned, however, that when an author writes about a subject matter outside his or her area of expertise, there is a possibility that the author's perspective may not be novel but rather "just wrong."<sup>65</sup>

A sizable majority of 3d and 4th tier respondents indicated that practice experience is a consideration, thus further supporting the theory that 3d and 4th tier schools are more interested in articles that will prove useful to practitioners. One 4th tier respondent explained, "We love to find authors who have practice experience because they tend to write practical articles. At a tier [four] school you get published because your article is useful to someone and not because your journal has name recognition."<sup>66</sup>

***B. Topic/Title/Cover Letter***

We also asked law review editors several questions about the topic and format of the article including: whether the inclusion of a "hot topic" made a difference; which topics they were most or least likely to publish; the title of an article; whether a "catchy" title made a difference; how much time the respondents spent reading an article before making a publication decision; and whether they read the cover letter or abstract accompanying the submission. The responses indicated that the amount of time an editor considered any of these factors was highly dependent upon an article's overall quality.

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<sup>64</sup> Quoted response from an editor at a top 100 law journal to the question, "Do you consider the author's practice experience?"

<sup>65</sup> *Id.*

<sup>66</sup> Quoted response from an editor at a 4th Tier law journal to the question, "Do you consider the author's practice experience?"

### 1. Are You Influenced by the Topic of an Article?

Respondents almost unanimously agreed that they were influenced by the topic of an article.

**Table 8: Respondents Influenced by Article Topic**

School Segments	Number of Respondents Who Answered 'Yes'
Top 15	100%
Top 25	100%
Top 50	80%
Top 100	100%
3d Tier	100%
4th Tier	100%
Specialty Journals	92%

The topic of an article is clearly important to student editors. A top 50 respondent commented: “I am most interested in publishing controversial topics—those ideas that are most likely to get cited.”<sup>67</sup>

### 2. Does Inclusion of a “Hot Topic” Make a Difference?<sup>68</sup>

Most respondents – particularly those among the higher-ranked school segments – indicated that the inclusion of a “hot topic” does not make a difference in article selection.<sup>69</sup> Interestingly, one top 15 respondent who answered “yes” (i.e., that topic is important) commented, “We pretend it doesn’t make a difference.”<sup>70</sup> Some of the other respondents who answered “yes” to this question, however, were quick to point out that the inclusion of a “hot topic” in an article may actually have a negative impact. For example, a top 15 respondent warned, “Don’t try to tie [a] paper into [a] hot topic if it is not *really* about that issue.”<sup>71</sup>

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<sup>67</sup> Quoted response from an editor at a top 50 law journal to the question, “Are you influenced by the topic of the article?” Interestingly, this editor made this comment despite indicating that the “topic” of the article was “not” influential.

<sup>68</sup> The survey question was, “Does inclusion of a ‘hot topic’ in the title make a difference?” Based on respondent comments, the student editors seemed to interpret the question as asking whether an author’s selection of a “hot topic” made a difference. Because student editors did not respond specifically as to whether the inclusion of a “hot topic” in the title made a difference, we are reporting “hot topic” as part of general topic considerations.

<sup>69</sup> Christensen-Oseid Survey Spreadsheet, § 202 (on file with the authors) (hereinafter “Survey Spreadsheet”).

<sup>70</sup> Quoted response from an editor at a top 15 law journal to the question, “Does the inclusion of a ‘hot topic’ in the title make a difference?”

<sup>71</sup> *Id.*

A majority of respondents from the 3d and 4th tier segments indicated that the inclusion of a “hot topic” does make a difference.<sup>72</sup>

### 3. *Which Topics Are You Most or Least Likely to Publish?*

Among the top 15 segment, there was a general consensus that while a broad range of topics are likely to get published, narrow topics such as tax, civil procedure, and admiralty usually do not get published.<sup>73</sup> Furthermore, articles with a pragmatic approach, such as professional responsibility and law school pedagogy, are unlikely to yield publication offers.<sup>74</sup> The top 25 segment’s responses bore a similar topic breakdown but with a slight preference for constitutional law issues.<sup>75</sup> Top 50 respondents said that they look for insightful articles on topics that have not already been discussed by other journals.<sup>76</sup> The top 100 responses to this question provided no common theme, yet there was a slight emphasis toward timely articles.<sup>77</sup> The majority of 3d tier respondents were most likely to publish timely issues while 50% expressly stated that they were least likely to publish articles on law school pedagogy.<sup>78</sup> Fourth tier respondents indicated preferences for a rather diverse range of topics, yet articles that were timely, practicable, and citable were most favored.<sup>79</sup> A few 4th tier respondents commented that they were not looking for philosophical or theoretical articles but rather those involving practical legal analysis.<sup>80</sup>

### 4. *Are You Influenced by the Title of the Article?*

Most respondents were influenced by the title of an article.

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<sup>72</sup> Survey Spreadsheet, *supra* §§ 202.300-400 (on file with the authors).

<sup>73</sup> Survey Spreadsheet, *supra* § 202.15 (on file with the authors).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at § 202.25.

<sup>76</sup> *Id.* at § 202.50.

<sup>77</sup> *Id.* at § 202.100.

<sup>78</sup> *Id.* at § 202.300.

<sup>79</sup> *Id.* at § 202.400.

<sup>80</sup> *Id.*

**Table 9: Respondents Influenced by Article Title**

<b>School Segments</b>	<b>Number of Respondents Who Answered 'Yes'</b>
Top 15	83%
Top 25	60%
Top 50	80%
Top 100	50%
3d Tier	83%
4th Tier	67%
Specialty Journals	50%

The table above shows that the title of an article is highly influential to student editors. There were not, however, any particular gradational trends among the school segments.

*5. Do “Catchy” Titles Make a Difference?*

Most respondents among the higher-ranked school segments indicated that “catchy” titles did not make a difference while those among the 3d and 4th tiers found “catchy” titles influential.

Respondents from virtually every school segment included comments to their response to this question that seemed to qualify their answers. For example, one top 15 respondent explained that a “catchy” title and the inclusion of a “hot topic” negatively influenced publication decisions.<sup>81</sup> Many comments among the other highly-ranked school segments were similar in nature, with one top 50 respondent declaring, “‘Catchy’ titles rarely help, and they sometimes predispose us to view the article in a negative light—particularly if they include references to pop culture that are only tangentially related to the article.”<sup>82</sup>

The remaining segments employed a less fervent tone in their comments with respect to this question. The 3d tier respondents did not offer quite as many explanatory comments, but one respondent from this segment did indicate that “a ‘catchy’ title can have a negative impact if [the reader] cannot tell anything about the subject.”<sup>83</sup> In contrast, the data appears to suggest that 3d and 4th tier journals may be more open to publishing articles with “catchy” titles. Among those surveyed in the 4th tier, one respondent merely commented that these factors do make a difference, “but not much.”<sup>84</sup>

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<sup>81</sup> Response from an editor at a top 15 law journal. Another respondent from the same segment concurred with the notion that a “catchy” title poses a negative influence. *See* Response from an editor at a top 15 law journal.

<sup>82</sup> Quoted response from an editor at a top 50 law journal to the question, “Do ‘catchy’ titles make a difference?”

<sup>83</sup> Quoted response from an editor at a 3d tier law journal to the question, “Do ‘catchy’ titles make a difference?”

<sup>84</sup> Quoted response from an editor at a 4th tier law journal to the question, “Do ‘catchy’ titles make a difference?”

In a similar vein, one specialty journal respondent explained, “be careful because we will joke about titles [that are] too catchy and [will] revise them if selected.”<sup>85</sup>

*6. How Much Time Do You Spend Reading the Article Before Making a Decision About Publication?*

Most respondents spent between 5-30 minutes reading an article before making a publication decision.<sup>86</sup> However, many of the respondents also indicated that they spend between 31-60 minutes or that they read the entire article before making such decisions.<sup>87</sup>

It seemed to be the quality of an article more than anything that determined the amount of time an editor spent reading it. An article deemed to be of high quality frequently commanded more of an editor’s time and was read in its entirety.<sup>88</sup> Many respondents indicated that an article will *only* receive an offer of publication if it has been read in its entirety.<sup>89</sup> On the other hand, articles that appear to be of poor quality will often be rejected within the first 5-30 minutes of reading.<sup>90</sup> One top 15 respondent advised, “[I]t’s extremely important to get across your central point quickly, and also to quickly provide a sense of why the article is important and worth publishing.”<sup>91</sup> Illustrative of this point, one top 50 respondent stated, “Most rejections involve less than ten minutes of review . . . .”<sup>92</sup> The following table illustrates the amount of time editors at different school segments spent reading articles before making article selection decisions.

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<sup>85</sup> Quoted response from an editor at a specialty law journal to the question “Do ‘catchy’ titles make a difference?”

<sup>86</sup> Survey Results Spreadsheet, *supra* § 202 (on file with the authors).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

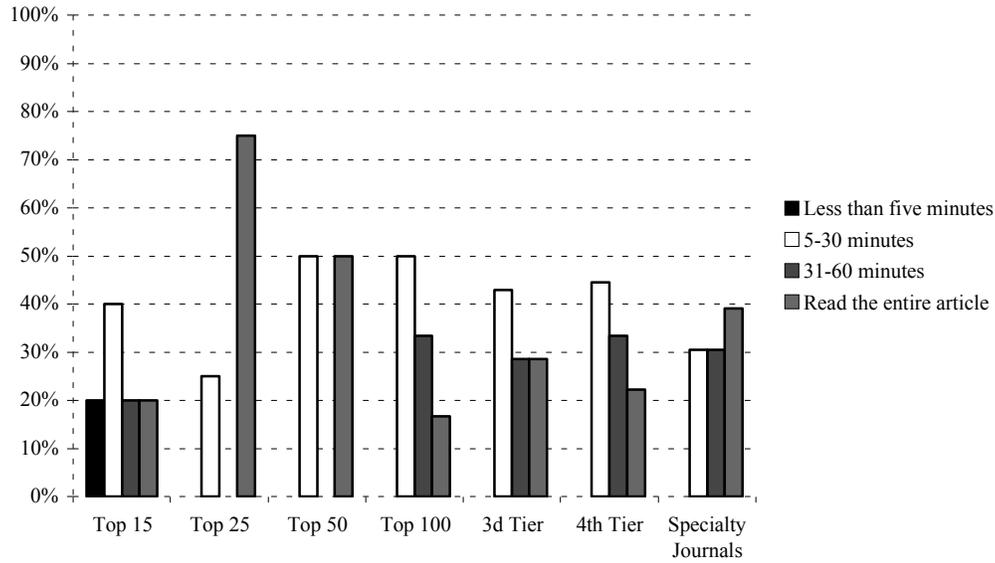
<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> Quoted response from an editor at a top 15 law journal to the question, “How much time do you spend reading the article before making a decision about publication?”

<sup>92</sup> Quoted response from an editor at a top 50 law journal to the question, “How much time do you spend reading the article before making a decision about publication?”

**Table 14: Time Spent Reading an Article Before Making a Publication Decision**



*7. Do You Read the Cover Letter?*

While some school segments are more interested in reading cover letters than others, a majority of respondents from every segment answered “yes” to this question.<sup>93</sup> Interestingly, however, one top 25 respondent commented, “mistakes and poor grammar in the cover letter negatively impacts the treatment of the article.”<sup>94</sup> In addition, a top 100 respondent who answered “no” to this question explained, “We rarely pay much attention to a separate cover letter or an attached C.V. (just another document to open), but we do pay attention to comments/notations in the email that accompanies the article.”<sup>95</sup>

*8. Do You Read the Abstract at the Beginning of the Article?*

Nearly all of the higher-ranked school segments read the abstract at the beginning of an article. In addition, top 50 and specialty journal respondents appeared to depend upon abstracts more than cover letters. One top 50 respondent explained, “A good abstract helps a LOT!”<sup>96</sup> The opposite appears to be true for 4th tier respondents, who read cover letters more frequently than abstracts. Third tier respondents appear to read cover letters and abstracts equally.

<sup>93</sup> Survey Spreadsheet, *supra* § 202 (on file with the authors).

<sup>94</sup> Quoted response from an editor at a top 25 law journal to the question, “Do you read the cover letter?”

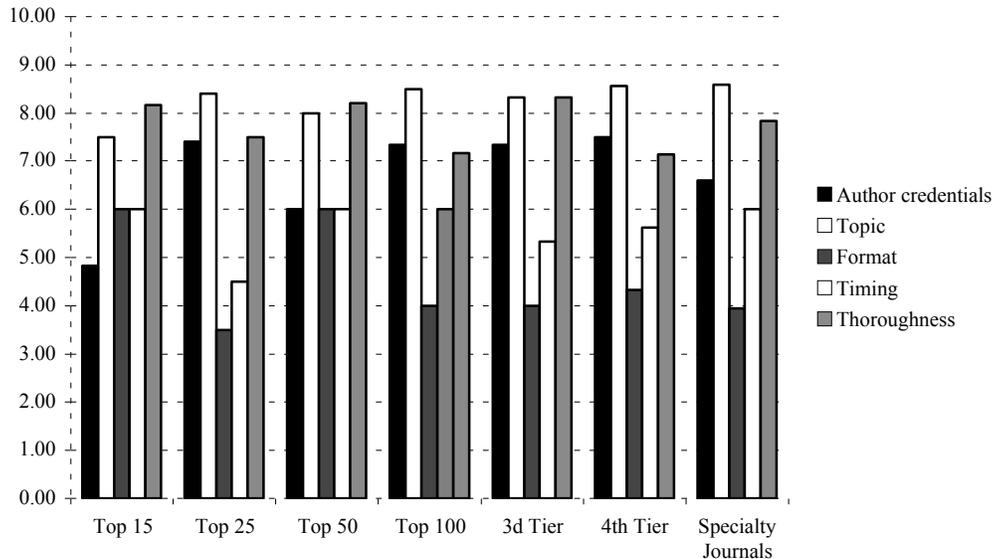
<sup>95</sup> Quoted response from an editor at a top 100 law journal to the question, “Do you read the cover letter?”

<sup>96</sup> Quoted response from an editor at a top 60 law journal to the question, “Do you read the abstract at the beginning of the article?”

### 3. Final Rankings

Finally, we asked the respondents to rank ten factors<sup>97</sup> in order of their importance in selecting articles for publication (with one being the least important factor and ten being the most important factor).<sup>98</sup>

**Table 15: Most Important Factors in Selecting Articles for Publication<sup>99</sup>**



As the above table illustrates, the respondents rated topic, thoroughness, and author credentials, in that order, as the most important factors for determining publication selection. Each individual school segment adhered to this pattern in large part. However, there were a few interesting variances.

Respondents among the top 15 segment rated the thoroughness of an article as the most important factor in determining whether to make an offer of publication. Every respondent in this segment rated thoroughness as an 8, 9 or 10 (out of 10). In this segment, topic was the second most important factor involved in making publication decisions followed by timing.<sup>100</sup> Interestingly, however, two respondents from the top 15 segment indicated that while the factors listed in our final rankings section were relevant, they were “purely secondary” in the selection process.<sup>101</sup> According to one of these respondents, “The only thing that really matters is whether the article seems well-written and makes an important and interesting point.”<sup>102</sup> The other respondent remarked that

<sup>97</sup> The ten factors included: Author Credentials; Topic; Title; Format; Timing; Thoroughness; Author Attribution (Star Footnote); Cover Letter; Reserved Space; and Advanced Buzz.

<sup>98</sup> The actual survey employed a scale with one being the most important factor and ten being the least important factor. We inverted the respondents’ rankings in order to present a more conventional and intuitive graphical representation of the rankings.

<sup>99</sup> Survey Spreadsheet, *supra* § 203 (on file with the authors).

<sup>100</sup> *Id.* at § 203.15.

<sup>101</sup> *Id.*

<sup>102</sup> Quoted response from an editor at a top 15 law journal to the Final Rankings section of the survey.

“persuasiveness of argument” and “quality of writing” were paramount considerations.<sup>103</sup> One specialty journal respondent explained, “By far the most important criterion is the persuasiveness and originality of the argument; the above factors only come into play should the article be sufficiently persuasive and original.”<sup>104</sup>

Among the other school segments, topic and thoroughness rotated in and out of the position for most important factor.<sup>105</sup> The other major factors, including author credentials and timing, also changed positions slightly among these segments.<sup>106</sup>

#### IV. QUALITATIVE OBSERVATIONS

In addition to the survey results detailed above, several qualitative observations can be made based upon the written commentary provided by the student editors. The survey allowed editors to provide additional comments both at the end of each of the ten major categories and at the end of the entire survey in response to the final question, “What has been your biggest surprise about selecting articles for publication?”<sup>107</sup> Some of the editors’ comments made after each of the ten major categories have already been included in the prior section on quantitative survey results. In reviewing the additional comments made by the editors to the “biggest surprise” question, three major themes emerged.<sup>108</sup> First, the editors were almost universally surprised by the poor quality of many of the articles submitted for publication.<sup>109</sup> Second, editors were overwhelmed with the volume of articles.<sup>110</sup> Finally, many editors shared their frustration with expedited review and “trading up.”<sup>111</sup>

##### *A. Poor Quality of Submitted Articles – “[I was surprised by] how few really interesting and important articles there are out there.”<sup>112</sup>*

Many editors commented that they were most surprised by the poor quality of the submissions. This comment was made universally from editors at schools ranked at all different levels, and from specialty journals. This was by far the most common comment

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<sup>103</sup> *Id.*

<sup>104</sup> Quoted response from an editor at a specialty law journal to the Final Rankings section of the survey.

<sup>105</sup> Survey Spreadsheet, *supra* §§ 203.25-400 (on file with the authors).

<sup>106</sup> *Id.*

<sup>107</sup> This was Question 11 on the survey (hereinafter Question 11).

<sup>108</sup> Thirty-one out of thirty-seven editors from the non-specialty journals responded to the final question on the survey. Seventeen out of twenty-four of the specialty journal editors responded to the question.

<sup>109</sup> Four out of the five editors from the top 15 journals noted surprise about the poor quality of articles. Sixteen of the thirty-one editors from the non-specialty journals commented about the poor quality of articles. At slightly over half the respondents, this was the comment made most often by editors at non-specialty journals. This was also the most common comment from specialty journal editors with six out of seventeen noting the poor quality of articles.

<sup>110</sup> Ten out of the thirty-one respondents from the non-specialty journals commented about the volume of articles. Four out of the seventeen specialty journal editors commented about the large volume. Only one editor, who worked for a specialty journal, was surprised about the lack of submissions.

<sup>111</sup> Eight out of the thirty-one respondents from the non-specialty journals noted frustration with trading up. Five of the seventeen respondents from specialty journals noted frustration with trading up.

<sup>112</sup> Quoted response from an editor at a top 15 law journal to Question 11.

made by respondents from the top 15 law schools, with four out of five editors expressing surprise about the poor quality of articles.<sup>113</sup>

The “poor quality” comment encompassed several observations. Editors commented that interesting articles suggesting new legal theories were rare. Editors noted that many articles were poorly written or poorly researched. Editors also expressed frustration at poor proofreading, improper citation form, incorrect grammar, and misspellings in the submitted articles. Several editors noted that it was not difficult to pick out the good articles, at least in part because so many of the articles were simply not very good.

The following comments are representative of student editors’ remarks about the poor quality of the articles:

I work for a top 10 journal, and I feel we haven’t read many articles that we were enthusiastic about. We’ve tried to avoid lowering our standards as much as possible, but we’ve been forced to lower them somewhat.<sup>114</sup>

So many of [the articles] are so poorly written. Authors should honestly evaluate their work and not waste our time with articles we could never accept.<sup>115</sup>

[I was most surprised by the] [m]ediocre quality of most submissions [and the] paucity of truly creative new theoretical arguments.<sup>116</sup>

[I was most surprised by] how bad a significant majority of submissions are.<sup>117</sup>

[A] very small percentage [of the 1,000 submitted articles] with much of a chance at all. Also, more from the production side than the selection side: the citation quality (substance and form) tends too often to be too low. My suspicion is that many authors rely on student research assistants to “fill in” the footnotes. They do a marginal to shoddy job, and then the author relies on the journal editors to do it right. I was really appalled with papers with hundreds of mis-citations to statutes and regs, and cavalier reference to case authority. We are trying to do an ever better job at the articles stage of identifying authors who intend to foist off their research and editing responsibilities and weed them out in the first place. The simple answer to your survey is that good articles are a pleasure to read. They are interesting, informative, and intelligent. There’s no backdoor around that.<sup>118</sup>

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<sup>113</sup> See *supra* note \_\_\_\_.

<sup>114</sup> Quoted response from an editor at a top 10 law journal to Question 11.

<sup>115</sup> Quoted response from an editor at a top 15 law journal to Question 11.

<sup>116</sup> Quoted response from an editor at a top 15 law journal to Question 11.

<sup>117</sup> Quoted response from an editor at a top 25 law journal to Question 11.

<sup>118</sup> Quoted response from an editor at a top 50 law journal to Question 11.

Even the rare editor who made a positive comment about the quality of the submitted pieces also pointed out the poor quality of other submissions, “[I was most surprised by] the wide range of quality – some submissions are excellent while others, frankly, seem like first year undergraduate work.”<sup>119</sup>

**B. “Volume!”<sup>120</sup>**

Editors were also surprised by the sheer number of submissions. One editor from a top 25 law school wrote the single, striking word “Volume!” in response to the question about the biggest surprise in selecting articles for publication.<sup>121</sup> Several other editors from the top 50 law schools reported that they received between 1,500 and 2,000 articles per year.<sup>122</sup> One top 25 journal kept track of the number of submissions by week.<sup>123</sup> The following table is a record of the 2006 journal year and starkly shows just how many submissions were sent to this particular journal:

2/20-2/26	105
2/27- 3/5	186
3/6- 3/12	235
3/13-3/19	104
3/20-3/26	181
3/27- 4/2	130
4/3- 4/9	50
4/10-4/16	49
4/17-4/23	28
4/24-4/30	30
5/1- 5/7	17
5/8- 5/14	16
5/15-5/21	11
5/22-5/28	22
5/29- 6/4	19
6/5- 6/11	12
6/12-6/18	7
6/19-6/25	11
6/26- 7/2	14
7/3 -7/9	6
7/10-7/16	10
7/17-7/23	17
7/24-7/30	25
7/31- 8/6	55

<sup>119</sup> Quoted response from an editor at a top 100 law journal to Question 11.

<sup>120</sup> Quoted response from an editor at a top 15 law journal to Question 11.

<sup>121</sup> Quoted response from an editor at a top 25 law journal to Question 11.

<sup>122</sup> Response from an editor at a top 50 law journal to Question 11 as “over 2,000 submissions per year.” An editor at another top 50 law journal indicated, “We get something like 1,500 per year. It is very overwhelming.”

<sup>123</sup> Survey response and additional email correspondence with the Editor-in-Chief and administrative assistant from this top 25 journal on file with the authors.

8/7- 8/13	101
8/14-8/20	154
8/21-8/27	129
8/28- 9/3	153
9/4- 9/10	103
9/11-9/17	77
9/18-9/24	63
9/25-10/1	27
10/2-10/8	32
10/9-	
10/15	26
10/16-	
10/22	14

This total of 2,219 includes all articles submitted before the 2006 volume was filled on October 22.

The overwhelming volume of submissions is coupled with tremendous pressure on the student editors to work hard and make efficient decisions:

When I first became a Lead Articles Editor, I planned to read each article thoroughly before making a decision on that article. That, however, proved unrealistic as my inbox overflowed with submissions. I gave the articles as much time as I could, however, the first few pages (especially the thesis statement), the roadmap paragraphs of each section, and the conclusion of each article became my focal points.<sup>124</sup>

[I was most surprised by] the number of submissions we get due to tools like ExpressO allowing authors to “spam” every law review on the planet with their articles. In the short-term, this has definitely resulted in us spending much less time on each article and we are more likely to reject an article for nit-picky reasons (lazy footnoting, cheesy title, lots of passive voice).<sup>125</sup>

[I was most surprised by] the tedium. It’s a tremendous amount of work.<sup>126</sup>

[I was also surprised] by the increasing volume of overall submissions over the last 3-5 years due to electronic options. This has also led to an increase in submissions from practitioners, foreign law professors, and law students at other schools, constituencies which we do not typically publish.<sup>127</sup>

<sup>124</sup> Quoted response from an editor at a top 50 law journal to Question 11.

<sup>125</sup> Quoted response from an editor at a top 100 law journal to Question 11.

<sup>126</sup> Quoted response from an editor at a top 25 law journal to Question 11.

<sup>127</sup> Quoted response from an editor at a top 25 law journal to Question 11.

One top 25 law school with meticulous record keeping reported dramatic increases in annual submissions from 2001 (1,181 submissions) to 2006 (2,219 submissions).<sup>128</sup> Although somewhat difficult to measure because editorial boards at law schools turn over every year, the volume problem is likely to remain, and perhaps even increase in the future. As easy as it is for a law professor to almost instantaneously submit to several hundred journals, it is just that easy for practitioners, foreign law professors, non-law school professors, law students, graduate students, undergraduate students, and potentially anyone who can navigate the electronic law review submission systems.

***C. Frustration with Trading Up – “[Authors] would sell you into slavery if Harvard asked them to.”<sup>129</sup>***

The final common theme was the editors’ frustration with authors “trading up” to a higher ranked journal. Surprisingly, this was a complaint even among journals ranked in the top 15. Not surprisingly, the problem was even more pronounced at lower-ranked schools.

Editors noted:

I’ve also been surprised at how often authors are willing to trade up in order to achieve minor increases in prestige. Once this year we took an article away from the journal ranked one spot below us, only to lose it to the journal one spot above us that same day. You would think professors would have more loyalty to the first “top” journal to accept their work. It seems like buying a new car and haggling with the dealer over a \$20 difference in price.<sup>130</sup>

I guess I was also surprised at how much the expediting system allows authors to trade up, and how much wasted time that makes for us.<sup>131</sup>

[I was most surprised by] [t]he insanity of the expedited review process and “trading up.”<sup>132</sup>

Selecting the good ones isn’t hard. It’s convincing that author to publish with *you*. If you think an article is good, chances are another journal does too. So you have to convince the author to go with you instead of that other journal. Which is difficult, because if that other journal is at a school ranked above yours, you’re dead. Authors are brutal. They are so calculating it’s scary. They would sell you into slavery if Harvard asked them to. . . . For one issue I made at least two dozen offers before we got

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<sup>128</sup> Survey response and additional email correspondence with the Editor-in-Chief and administrative assistant from this top 25 journal on file with the authors.

<sup>129</sup> Quoted response from an editor at a top 100 law journal to Question 11.

<sup>130</sup> Quoted response from an editor at a top 10 law journal to Question 11.

<sup>131</sup> Quoted response from an editor at a top 25 law journal to Question 11.

<sup>132</sup> Quoted response from an editor at a top 50 law journal to Question 11.

to four articles, and our school is well within the Top 100. It's just a numbers game, and as frustrating as authors may find the process, it's even worse for the law reviews.<sup>133</sup>

[I was most surprised by] the games that have to be played with the authors. We are dealing with professors, who should seek to serve as examples for the law students with whom they are interacting. I had some very pleasant interactions with professors who made this process fun and exciting. I have frequently been impressed with the quality of the intellectual endeavors that the professors have undertaken and the professionalism with which they interact with students. However, the negative experiences stand out as what I will remember from the articles selection process. Professors have made commitments to me and then backed out two weeks later, after receiving a "better" offer (meaning from a higher ranked school). Authors have simply never turned in drafts of articles that were promised. Considering that each of the people with whom I am dealing is a member of the profession that I hope to be joining very soon, I have found the experience disheartening and an unfortunate commentary on lawyers.<sup>134</sup>

The editors' comments relating to these three themes: the poor quality of the articles, the staggering number of submissions, and the frustration of "trading up" were made so frequently that we can only assume that almost all law journals encounter these challenges on a regular basis.

## **V. SOME PRACTICAL SUGGESTIONS FOR NEW PROFESSORS TO NAVIGATE THE CURRENT LAW REVIEW ARTICLE SELECTION SYSTEM**

Several scholars have suggested that law reviews should change the way they select articles. For example, Professor James Lindgren suggested in 1994 that editors use blind review,<sup>135</sup> but blind review has not been adopted by many law reviews.<sup>136</sup> Others have noted that American law school academic publishing is unique because professors publish primarily in student-edited journals. In all other areas of the academy, and in the

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<sup>133</sup> Quoted response from an editor at a top 100 law journal to Question 11.

<sup>134</sup> Quoted response from an editor at a top 100 law journal to Question 11.

<sup>135</sup> Lindgren, *supra* note \_\_\_, 538 (suggesting that law reviews should "[c]onceal the author's identity, gender, and institutional affiliation from those selecting the articles."). A blind review would require that authors remove all identifying information from the article. An administrative assistant at the law review would then assign an anonymous number to the submission. Student editors who had no knowledge of the author's credentials could thus not be biased by those credentials and in turn would make publication decisions based on the value of the article itself. This is a common practice used in law schools to evaluate students. Philip C. Kissam, *Conferring with Students*, 65 UMKC L. REV. 917, 924-25 (2007) (law schools have used anonymous grading since the 1960s). It is not a common practice for law reviews.

<sup>136</sup> Some student-edited and some peer-reviewed journals use anonymous submission procedures. See <http://www.lwionline.org/publications/lwjjournal.asp#submit>. The Yale Law Journal Pocket Part also uses anonymous submission procedures. <http://yalelawjournal.org/submissions.html>.

legal academy in other countries, professors publish in either peer-edited journals<sup>137</sup> or in journals jointly edited by students and faculty.<sup>138</sup> Peer-edited journals are unlikely to ever dominate the legal academy because of the tremendous amount of time required, and because serving on a law review is still considered a valuable learning experience for law students.<sup>139</sup>

So what is a new law professor to do? We offer three practical tips for achieving success in the current law review article selection system: (1) send in high quality work; (2) use these survey results and your law school's rules to find the best placement for your articles; and (3) help your law school redefine "success" for faculty scholarship.<sup>140</sup>

### ***A. Send in high quality work.***

The survey results pointed to one overwhelming recommendation that we pass on to new law professors: send in high quality work. Student editors look for high quality articles both in regard to content and form. They want to publish interesting articles with

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<sup>137</sup> Professor James Lindgren notes:

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.

Lindgren, *supra* note \_\_\_, at 535.

Professor Ronen Perry agrees:

For a non-American scholar, and even for American scholars in all disciplines but law, the most intriguing feature of the American law review is the absolute control by second and third-year students of the entire publication process. Law students are the gatekeepers and ultimate fashioners of legal scholarship. They appraise the relative worth of numerous submissions, select a handful for publication, and edit them. This is uncommon in other jurisdictions, or in other disciplines where academic periodicals are normally peer-reviewed and peer-edited.

Ronen Perry, *De Jure [sic] Park*, 39 CONN. L. REV. CONNTEMPLATIONS 54, 55 (2007).

<sup>138</sup> Professor Perry proposed that journals should be jointly edited by students and faculty, which is the system used in several other countries like Israel, Australia, and Canada:

The underlying principle is quite simple: let students perform every task not requiring unique academic expertise, with minimally required faculty supervision, and let faculty appraise academic quality (in the narrowest sense) and propose substantive revisions. That way we can enjoy the best of both worlds; professional quality control, efficient allocation of resources (researchers focusing solely on the advancement of knowledge), and educational benefits.

Perry, *supra* note \_\_\_, at 58 (footnotes omitted).

<sup>139</sup> *Id.* at 55-56; see also John T. Noonan, Jr., *Law Reviews*, 47 STAN. L. REV. 1117, 1118 (1994) ("[Law reviews] provide the best – I am tempted to say the only – kind of education: education by peers. . . . One has to engage in intellectual combat; and the law review is, or can be, the most stimulating of environments for this civil combat."). When student editors make publication decisions they may be willing to take risks on new approaches or new scholars that faculty experts may not be willing to take. Deborah L. Rhode, *Legal Scholarship*, 115 HARV. L. REV. 1327, 1356-57 (2002).

<sup>140</sup> An excellent source of advice for new law professors publishing currently is Nancy Levit's article, *Scholarship Advice for New Law Professors in the Electronic Age*. Levit, *supra* note \_\_\_. Levit shares advice under the following categories: know the rules, size matters, topic selection, of research agendas and intellectual gigolos, block out time for writing, just do it!, push the print button, read about writing, attend "rookie camp," make friends with your librarians, seek feedback on drafts, sending articles to law reviews, dealing with law review editors, and disseminate and market. *Id.* Our limited pieces of advice stem from the primary findings from our survey results.

new approaches. They also care about technical writing including: grammar, punctuation, spelling, citation form, proofreading, and easy-to-read formats.

Thus, we suggest that professors should make an effort to send in high quality work. On the content side, professors might consider asking colleagues who are experts in the subject matter of their article to review their work prior to sending it to the law reviews. If seeking expert advice is too intimidating, new professors might also consider asking a peer colleague to review the work. On the technical side, most law schools are filled with excellent editors-- in the form of student research assistants or administrative assistants. New law professors would be well served to spend a portion of their research funds on hiring an excellent editor to proofread their final draft before submitting it for publication.<sup>141</sup>

***B. Use the survey results and knowledge of your law school's rules to find the best placement for your articles.***

Once you start publishing, you will be faced with several questions about the process:

*Placement:* Should I place my article at a highly ranked specialty journal or at a lower-ranked general journal?<sup>142</sup> Is it better to start publishing in lower-tiered general journals or wait until I have an offer from a highly ranked journal?

*Topic:* Will my subject area satisfy the promotion and tenure requirements? Is it acceptable to publish in a couple of different areas in my early years, or should I focus on only one area? Can I publish in a subject area if I am not teaching in that area?

*Quantity:* Does this law school value quantity of publications over quality?<sup>143</sup> What are the “real” rules regarding publication.<sup>144</sup> Exactly how many articles should I publish each year?<sup>145</sup>

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<sup>141</sup> Some professors seem to believe technical matters are a job for the law review editors at the school where their article will be published. Our survey results indicate that a professor is unlikely to have access to those law review editors when the article is rejected based on its poor technical form.

<sup>142</sup> There is some controversy about whether an article published in a highly ranked law school's specialty journal is “inherently stronger in terms of quality and rank” than articles published in a lower ranked law school's general journal. See Monsma, *supra* note \_\_, at 208-09.

<sup>143</sup> Most of the recent commentary on this topic suggests that law schools value a new law professor's quantity of scholarship over its quality. See, e.g., David P. Bryden, *Scholarship About Scholarship*, 63 U. COLO. L. REV. 641, 643 (1992) (quality is somewhat less important than quantity because quantity is easier to measure and specialists do not evaluate works outside their field); Rhode, *supra* note \_\_, at 1355 (“So, too the fragmentation of faculty expertise and the lack of consensus about what constitutes the most useful scholarship have placed a premium on quantity over quality.”); Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705,751 (1998) (Schiltz notes that many commentators have noted that this emphasis on quantity over quality results in bad writing).

<sup>144</sup> Anecdotally, tenured professors often advise new professors to double the stated quantity requirements. Levit, *supra* note \_\_, at 952 (“A very important consideration on most faculties – but one that is only rarely spelled out in the governing rules – is the importance of a steady stream of publications (rather than the same amount of work done at the last minute).”).

<sup>145</sup> Some research has been conducted on business school faculty production:

Generally speaking, the rate varies from two to three publications over a period of five years to one quality journal every other year, to a rate at some schools of “one publication per year.” The decision surrounding the rate of publication can be as elusive and

*Trading Up:* Does this law school have any general parameters about trading up (for example, is it an unwritten rule that we do not trade up within a certain level (say top 10, top 25, top 50)?

New law faculty must familiarize themselves with the university's culture and politics by considering "the formal policies and procedures set out in a university faculty handbook . . . [and they] 'must learn the institutional culture in order to identify unwritten policies and expectations.'"<sup>146</sup> New professors need to learn the rules for their law school by reading the promotion and tenure guidelines, and they need to consider how the "real" rules may differ from the "posted" rules.<sup>147</sup>

### ***C. Help your law school redefine "success" for faculty scholarship.***

There are several steps to take in helping your law school define "success" for faculty scholarship. First, consider informing senior faculty members how today's student editors decide which articles to publish. Next, be frank with your faculty about the reality of publication opportunities for new professors teaching at your law school.

You may want to share these survey results and conclusions with the senior faculty. Many probably served on their alma mater's law review, but they may not be aware of how dramatically the law review submission process has changed in recent years. They may not know that submissions are now so astonishingly numerous that editors are forced to review each submission very quickly. They may not consider that a critical criterion for article selection is where the author currently teaches. Further, they may not understand that the odds of any new professor publishing in a top-tier journal are heavily weighted against the new professor, and the odds are astronomical for a new professor teaching at a non-top 25 law school.<sup>148</sup> Although commenting on the publication requirement for business school faculty, the following comment applies equally to law school faculty: "One observation that is crystal clear is that if an

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"controversial as the composition of the top-tier list with faculty arguing over what quantity of publications is 'enough' or 'tenurable.'" Significantly, another study comments that "[u]nless authors at the same university decide to write jointly authored papers, the probability of three untenured faculty in the same department publishing two or more top tier articles in 5 years is very low."

Monsma, *supra* note \_\_\_, at 216-17 (quoting Susan Athey & John Plotnicki, An Evaluation of Research Productivity in Academic IT, 3 Comm'ns of the Ass'n for Info. Sys. Art. 7, 2-4 (Mar. 2000), available at <http://www.pitt.edu/~ckemercet/Athey%20and%20Plotnicki%2000.pdf>).

<sup>146</sup> *Id.* at 196.

<sup>147</sup> See Schiltz, *supra* note \_\_\_, at 718 (comparing "real" and "posted" rules for unethical conduct to the "real" and "posted" rules for speed limits which vary among different communities). These survey results may also help a professor increase the "value" attributed to her published articles. For example, professors may be able to add "value" to articles published by specialty journals because specialty journals judge articles less on author credentials and more on the high quality of the article itself. For the same reasons, articles selected by blind review or peer reviewers may have added "value."

<sup>148</sup> Assuming that each of the top 15 journals publish approximately 12 articles per year for a total of 180 articles and further assuming that top journals receive 2300 submissions per year, any professor has a .08 percent chance of publishing in a top 15 law review.

institution sets a rigorous standard based on a small set of top-tier journals, few of its junior faculty will be either tenured or promoted.”<sup>149</sup>

Sharing these survey results may also help promotion and tenure committees redefine “success.” Promotion and tenure guidelines could be modified so that committees consider factors in addition to the number and placement of articles. A new professor should consider that promotion and tenure guidelines related to faculty scholarship may focus almost single-mindedly on the number of articles, the length of those articles, and the placement of the articles more than the quality of the article itself. To be fair, promotion and tenure committees may conduct “outside reviews” by asking professors in other law schools to review and comment upon the value of the scholarship. Promotion and tenure committees may also look to the number of times a professor’s scholarship is cited by others to determine its impact. However, what seems to be a gaping omission in many promotion and tenure reviews is the committee’s consideration of whether a given professor’s scholarship is “making a difference.” For example, how often has the professor presented the scholarship ideas at conferences? Has the scholarship been posted on commonly visited websites? Has the professor’s article been downloaded often from public sites? Admittedly, there are some problems with each of these considerations, but the problems do not seem any different from the problems surrounding the traditional considerations.<sup>150</sup>

One possible solution would be for promotion and tenure committees to put the burden on professors asking for advancement to show, by any number of ways, that their scholarship is having an impact on the legal academy. The burden could be met in several ways, including a showing that a professor’s ideas impact her students. Kent Syverud agreed with his law school faculty colleague: “The startling truth is that, with the exception of a few dozen law professors, our ideas will improve the world more through our students than through our writing.”<sup>151</sup>

## CONCLUSION

Others have speculated that, at some unknown time in the future, law professors may not be required to publish in student-edited law journals to succeed on the tenure track.<sup>152</sup> Maybe we are members of a dying breed, like law students from past

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<sup>149</sup> Monsma, *supra* note \_\_\_\_, at 217 (quoting Susan Athey & John Plotnicki, An Evaluation of Research Productivity in Academic IT, 3 Commc’ns of the Ass’n for Info. Sys. Art. 7, 2-4 (Mar. 2000), available at <http://www.pitt.edu/~ckemercet/Athey%20and%20Plotnicki%2000.pdf>).

<sup>150</sup> For example, counting the number of times an article has been cited by courts or other authors may well give an accurate picture of the influence of the scholarship. But it may not. The article may be cited several times by the author’s friends in the legal academy who know the game and know that promotion and tenure committees will be looking for a citation count. Downloads from a public website like SSRN may give an accurate picture of the influence of the scholarship. But it may not. The article may be downloaded by the author’s friends in the academy, who hope to help the author establish a citation count.

<sup>151</sup> Kent D. Syverud, *Taking Students Seriously: Guide for New Law Teachers*, 43 J. LEGAL EDUC. 247, 259 (1993) (Syverud points out that this colleague also had an international reputation for his writing).

<sup>152</sup> The Connecticut Law Review recently started an online companion and its inaugural contributors commented about the topic, “Do Law Reviews Matter?”. See generally, Matthew T. Bodie, *Thoughts on the New Era of Law Review Companion Sites*, 39 CONN. L. REV. CONNTEMPLATIONS 1(2007); John Doyle, *The Business of Law Reviews*, 39 CONN. L. REV. CONNTEMPLATIONS 30 (2007); Paul Horwitz, “Evaluate Me!”: *Conflicted Thoughts on Gatekeeping in Legal Scholarship’s New Age*, 39 CONN. L. REV.

generations who were required to wear suits and ties to class. In 1936, Fred Rodell wrote *Goodbye to Law Reviews* and penned his famous line: “There are two things wrong with almost all legal writing. One is its style. The other is its content.”<sup>153</sup> Seventy years later, the student-edited law review is going strong. Maybe something like the Internet or an attempt to follow the publication customs in non-law disciplines will ultimately eliminate student-edited law reviews, but we doubt it will happen anytime soon. The benefits of free student labor and the strong tradition of student-edited law reviews make us suspect that student-edited law reviews will be around for a long while.

Our primary goal in conducting the survey was to learn what really mattered to those with all the power – the student editors. Our secondary goal was to share that information with new professors to help them navigate the law review article submission process.

Most of the survey results did not reveal any particularly shocking information. Yet, confirmation of long-held suspicions is valuable. Deborah Rhode notes that empirical research can often be criticized, “[Empirical research] results may appear too obvious; they “‘merely’ confirm what everybody (especially in retrospect) ‘already knows.’”<sup>154</sup> The quantitative and qualitative survey results support many professors’ suspicions about why some law review articles are published, and others are rejected. Now we know: author credentials, topic, and other factors like format, timing, and thoroughness influenced student editors as they made publication decisions.<sup>155</sup>

We did find some surprises. We could not have predicted the overwhelming number of student editors who were surprised by the poor quality of submitted articles. We did not realize that the volume of articles submitted is increasing at such an alarming rate in just the past five years. Although we might have predicted that law journals at lower-ranked schools would be frustrated with “trading up,” we did not suspect that this would be a problem in the top-ranked journals as well.

Our survey results revealed valuable information, some of it predictable and some of it surprising. Most importantly, we hope the insights we received from those working in the trenches of the law reviews, the student editors, will help new law professors at all law schools as they strive for personal and professional success.

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CONNTEMPLATIONS 38 (2007) ; Stephen I. Vladeck, *The Law Reviews vs. the Courts: Two Thoughts From the Ivory Tower*, 39 CONN. L. REV. CONNTEMPLATIONS 68 (2007); Perry, *supra* note \_\_\_\_.

<sup>153</sup>Rodell, *supra* note \_\_\_\_, at 38. Rodell claimed he was writing “probably my last law review article” because he did “not care to contribute further to the qualitatively moribund while quantitatively mushroom-like literature of the law. *Id.*”

<sup>154</sup> Rhode, *supra* note \_\_\_\_, at 1354 (citing Peter H. Schuck, *Why Don’t Law Professors Do More Empirical Research?*, 39 J. LEGAL EDUC. 323, 331 (1989)) (Rhode argues in favor of more empirical studies).

<sup>155</sup> Because many authors served on law review editorial boards, they know that selecting articles is a difficult task. The quality of submissions and the volume of articles have long been issues, but the problems have escalated dramatically in the recent years. Authors have also learned, from personal experience on law reviews or from submitting articles, that trading up is an issue.

APPENDIX A

**LAW REVIEW SURVEY**

To: Editor-in Chief, Articles Editor and/or Assistant Editors

From: Leah Christensen Julie Oseid  
[lmchristense@stthomas.edu](mailto:lmchristense@stthomas.edu) [jaoseid@stthomas.edu](mailto:jaoseid@stthomas.edu)  
651-962-4869 651-962-4948  
Assistant Professors of Law  
University of St. Thomas School of Law (Minneapolis)

Date: 04/13/07

Re: Completing a Short (20-minute) Survey Regarding Selecting Articles for Publication

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Dear Student Editor,

We are writing an article to help newer law professors unravel the mysteries of how to submit and publish articles in student-edited law reviews/journals. Although all law professors are required to do this for our promotion and tenure, there is no "guide" to help any of us along the way. Yet we often hear the unwritten rules or suggestions from our more senior colleagues. Are they true? As the entities that do the selection of articles for publication in your law review/journal, what is most important to you? Is it the topic of the piece, the school where the professor teaches, the title, the format, the submission method? Do you like ExpressO? Do you like receiving cover letters and C.V.'s from authors?

We have put together a very short survey of these types of questions. We would like to compile the results and write an article that includes suggestions about how law professors can more successfully navigate the law review process. We believe this will be the article out there that provides this information.

It would be very helpful to know the type of school at which you currently study, i.e., top 25, top 50, top 100, 3<sup>rd</sup> tier, etc., as well as your law review title, i.e., editor in chief, lead articles editor, etc. We want you to be as open and honest as possible, so in our published article we will not identify either the law school of the survey responder's name. We would also be interested in your written comments (space provided below) if you are willing to provide any additional information.

Thank you for your help with this important project. Please feel free to contact us if you have any questions or any comments on the survey process.

To begin the survey, please hit the reply key, and then record your answers. When you are finished answering all questions, hit send. Thank you again.

**LAW REVIEW SURVEY**

This survey was completed by:  
(title only, name if desired)

I work for a:  
(provide journal type, i.e., law review, specialty journal, electronic journal, etc.)

The law school I attend is ranked as follows:

Top 10	___
Top 25	___
Top 50	___
Top 100	___
3 <sup>rd</sup> Tier	___
4 <sup>th</sup> Tier	___

Other (please specify):

If you would be willing to talk with us and/or comment upon your answers further, please provide your contact information:

Name:

Email:

Phone:

Please answer the following questions about the process you use to select articles for publication. Please place an "X" in the space provided to designate your answer as either "yes" (Y) or "no" (N).

Additional space is provided at the end of each category for your written comments.

### 1. Author Credentials

1. Are you influenced by the law school where the author now teaches? Y\_\_ N\_\_
  - a. If yes, which of the following factors do you consider?  
(Check all that apply)
    - i. the law school's USN&WR ranking \_\_\_\_\_
    - ii. your ability to recognize the name of the law school \_\_\_\_\_
    - iii. your knowledge of the law school's specialty area(s) \_\_\_\_\_
2. Are you influenced by the law school(s) where the author has previously taught? Y\_\_ N\_\_
  - a. If yes, which of the following factors do you consider?  
(Check all that apply)
    - i. the law school's USN&WR ranking \_\_\_\_\_
    - ii. your ability to recognize the name of the law school \_\_\_\_\_
    - iii. your knowledge of the law school's specialty area(s) \_\_\_\_\_
3. Are you influenced by the law school where the author graduated? Y\_\_ N\_\_
  - a. If yes, which of the following factors do you consider most influential?
    - i. the law school's USN&WR ranking \_\_\_\_\_
    - ii. other (please list): \_\_\_\_\_
4. Are you influenced by the number/name(s) of the other law reviews where the author has published? Y\_\_ N\_\_
  - a. If yes, which of the following factors do you consider most influential?  
(Check all that apply)
    - i. the law school's USN&WR ranking \_\_\_\_\_
    - ii. your knowledge of the law school's specialty area(s) \_\_\_\_\_
    - iii. other (please list): \_\_\_\_\_
5. Do you consider the number of the times the author has published? Y\_\_ N\_\_
6. Do you consider the author's practice experience? Y\_\_ N\_\_
7. Are you influenced by the courses the author teaches? Y\_\_ N\_\_
8. Please rank in order the other factors that you consider (1 being most important and 4 being least important; please do not rank a factor if you do not consider it):
  - a. Author's judicial clerkship experience \_\_\_\_\_
  - b. Author's rank in graduating class \_\_\_\_\_
  - c. Author's honors in law school \_\_\_\_\_
  - d. Author's reputation in the topic area \_\_\_\_\_

Comments:

### 2. Topic/Title/Star Footnote/Cover Letter

1. Are you influenced by the topic of the article? Y\_\_ N\_\_
  - a. What topics are you most likely to publish?
  - b. What topics are you least likely to publish?
2. Are you influenced by the title of the article? Y\_\_ N\_\_
  - a. Do "catchy" titles make a difference? Y\_\_ N\_\_
  - b. Does inclusion of a "hot topic" in the title make a difference? Y\_\_ N\_\_

3. If you are a specialty journal, how closely related to your specialty journal must the topic be?
  - a. Very closely related \_\_\_\_\_
  - b. Closely related \_\_\_\_\_
  - c. Somewhat related \_\_\_\_\_
  - d. Other: \_\_\_\_\_
4. Are you influenced by the author's attribution footnote (also known as the star footnote) in the article? Y\_\_N\_\_
  - a. If yes, are you influenced by the use of recognizable names in that footnote? \_\_\_\_\_ Y\_\_N\_\_
  - b. If yes, are you influenced if the article has been part of a presentation? Y\_\_N\_\_
5. Are you influenced by "advance buzz" about the article? Y\_\_N\_\_
6. Do you read the cover letter? Y\_\_N\_\_
7. Do you read the abstract at the beginning of the article? Y\_\_N\_\_
8. On average, how many pages of the article do you read before making a decision about publication?
9. Are these the first pages of the article? Y\_\_N\_\_
10. How much time do you spend reading the article before making a decision about publication?
  - i. Less than five minutes \_\_\_\_\_
  - ii. 5-30 minutes \_\_\_\_\_
  - iii. 31 – 60 minutes \_\_\_\_\_
  - iv. Read the entire article \_\_\_\_\_

Comments:

### 3. Reserved Space

1. Do you reserve space for any authors? Y\_\_N\_\_
  - a. If yes, do you reserve space for the faculty members at your law school? Y\_\_N\_\_
  - b. If yes, do you reserve space for articles recommended by faculty members at your law school? Y\_\_N\_\_
  - c. If yes, do you reserve space for articles that you have solicited? Y\_\_N\_\_
    - i. If yes, which of the following influence your decision to solicit articles:  
(1 being most important and 3 being least important; please do not rank a factor if you do not consider it)
      1. recommendation of faculty members \_\_\_\_\_
      2. name recognition of author \_\_\_\_\_
      3. timeliness of article's topic \_\_\_\_\_
2. Do you reserve space for any particular topics? Y\_\_N\_\_
  - a. If yes, what topics do you reserve space for? \_\_\_\_\_

Comments:

### 4. Format

1. Are you influenced by the length of the article? Y\_\_N\_\_
  - a. If yes, are you more or less likely to publish an article over 40 pages long?  
\_\_\_\_\_ Less Likely \_\_\_\_\_ More Likely
2. Are you influenced by the perceived thoroughness of the article? Y\_\_N\_\_
3. Are you influenced by the use of correct law review format (i.e., single-spaced with footnotes rather than endnotes)? Y\_\_N\_\_
4. Are you influenced by whether the citations are formatted in accord with the citation manual your law review uses?  
Y\_\_N\_\_

Comments:

### 5. Timing/Parameters of Submission

1. Is there a season in which you receive the majority of your submissions? Y\_\_N\_\_
  - a. If yes, please mark the season in which you receive the most submissions:
    - i. January/February \_\_\_\_\_
    - ii. March \_\_\_\_\_
    - iii. April/May \_\_\_\_\_
    - iv. June/July \_\_\_\_\_
    - v. August \_\_\_\_\_
    - vi. September \_\_\_\_\_
    - vii. October/November \_\_\_\_\_
    - viii. December \_\_\_\_\_
  
2. Is there a best time for an author to submit to your law review in terms of maximum opportunity for placement? Y\_\_N\_\_
  - a. If yes, please mark the time when it is the best to submit to your review in terms of maximum opportunity for placement:
    - i. January/February \_\_\_\_\_
    - ii. March \_\_\_\_\_
    - iii. April/May \_\_\_\_\_
    - iv. June/July \_\_\_\_\_
    - v. August \_\_\_\_\_
    - vi. September \_\_\_\_\_
    - vii. October/November \_\_\_\_\_
    - viii. December \_\_\_\_\_
  
3. Do you prefer electronic submission of articles over the traditional "paper" method? Y\_\_N\_\_
  - a. If yes, which of the following do you use? (please rank your preference 1 to 3 with 1 being the most preferred)
    - i. ExpressO \_\_\_\_\_
    - ii. Another national electronic database \_\_\_\_\_
    - iii. Your journal's/school's website \_\_\_\_\_
  
4. Has the availability of electronic submission increased the number of articles you receive each academic year? Y\_\_N\_\_
  
5. Do you keep track of the number of articles you receive each month? Y\_\_N\_\_
  
6. Do you accept anonymous submissions? Y\_\_N\_\_  
 If you do NOT accept anonymous submissions, have you ever considered doing so? Y\_\_N\_\_

Why or why not?

Comments:

## 6. Review Process

1. Do you look at expedited articles first? Y\_\_N\_\_
  - a. If yes, do you examine all expedited articles before you begin reviewing other articles? Y\_\_N\_\_
  
2. Do you use the expedited review process available from ExpressO? Y\_\_N\_\_
  - a. If yes, do you give preference to authors who have contacted you directly either by phone or by e-mailing your law review? Y\_\_N\_\_
  - b. If no, do you prefer to have authors contact you directly either by phone or by e-mailing your law review? Y\_\_N\_\_
  
3. Who has the primary role in selecting articles (please rank all that apply from 1 to 4 with 1 being the most primary):
  - a. Editor in Chief \_\_\_\_\_
  - b. Articles Editors \_\_\_\_\_
  - c. All Law Review Editors \_\_\_\_\_
  - d. All Law Review Members \_\_\_\_\_
  - e. Other (please list): \_\_\_\_\_
  
4. Do you identify the lead article for an issue at the time you select that article? Y\_\_N\_\_
  - a. If not, how do you select the lead article?

Comments:

## 7. Law Review Culture

1. Do you believe your law journal has a distinct culture or reputation (i.e., is very selective, goes after the most highly ranked authors, is topic specific, etc.)? Y\_\_N\_\_
2. If yes, how would you describe that culture/reputation?
3. Did you receive formal training once you became a member of the law review? Y\_\_N\_\_
  - a. If yes, did your training encompass editorial skills? Y\_\_N\_\_
  - b. If yes, did your training encompass citation form? Y\_\_N\_\_
  - c. If yes, did your training encompass advice about the types or kinds of articles the law review seeks to publish? Y\_\_N\_\_

Comments:

#### 8. Selecting Student Members/Editors

1. How do you select students for your law review?
  - a. Class rank after first year? Y\_\_N\_\_
    - i. If yes, what percent are selected in this way?
  - b. Write-on competition? Y\_\_N\_\_
    - i. If yes, what percent are selected in this way?
  - c. Combination of class rank and write-on competition? Y\_\_N\_\_
    - i. If yes, please briefly describe your process:
  - d. Faculty recommendations? Y\_\_N\_\_
    - i. If yes, what percent are selected in this way?
  - e. Other (please describe):
2. How do you select editorial board members?
  - a. Current board members vote for new board members? Y\_\_N\_\_
  - b. All 3L law review members vote for new board members? Y\_\_N\_\_
  - c. All current law review members vote for new board members? Y\_\_N\_\_
  - d. Other (please describe):

Comments:

#### 9. “Trading Up”

1. Does your law review contend with the problem of authors “trading” up? Y\_\_N\_\_
  - a. If yes, do you make more offers than you have space available, knowing that some authors may trade up? Y\_\_N\_\_
  - b. If yes, do you give shorter “turn around” times for authors to accept or decline? Y\_\_N\_\_
2. Have you seen an increase in “trading up” since the use of electronic submissions? Y\_\_N\_\_

Comments:

#### 10. Final Ranking of Potential Factors

Please rank the following 10 categories in their order of importance as you select articles for publication with 1 as the most important factor and 10 as the least important factor. If two or more factors are tied on your scale, you may assign the same number to all those factors (for example, if Topic and Timing tie as your most important selection factor then place a 1 by each).

Author credentials	_____
Topic	_____
Title	_____
Author attribution (star) footnote	_____
Cover letter	_____
Reserved space	_____
Format of article	_____
Timing	_____
Thoroughness of article	_____
Advance “buzz” about the article	_____

Comments:

#### 11. Biggest Surprise about Selecting Articles:

What has been your biggest surprise about selecting articles for publication?

**THANK YOU!!!!**