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THE LAW REVIEW ARTICLE SELECTION PROCESS:

RESULTS FROM A NATIONAL STUDY

Jason P. Nance & Dylan J. Steinberg***

I. INTRODUCTION

In the mid-1990s, the topic of the student-edited law review was very much on the minds of legal scholars and law review editors. In 1994, the *University of Chicago Law Review* published a series of essays addressing the role of students in the law review publication process.¹ The following year, the *Stanford Law Review* conducted a law review conference entitled “Law Review Conference.”² Although there were many calls for further research into the

* J.D., University of Pennsylvania Law School, 2006. Articles Editor, Volume 154, University of Pennsylvania Law Review. Law Clerk to the Honorable Kent A. Jordan, U.S. Court of Appeals for the Third Circuit. 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 valuable. Because one name had to come first, we have chosen to list them alphabetically.

** J.D., University of Pennsylvania Law School, 2006. Articles Editor, Volume 154, University of Pennsylvania Law Review. Law Clerk to the Honorable Stewart Dalzell, U.S. District Court for the Eastern District of Pennsylvania. We would like to thank our colleagues on the University of Pennsylvania Law Review, particularly Michael Areinoff, Tabea Hsi, Rachael Kuilema Klein, and Allison Sheedy. We are grateful to everyone who provided feedback on the early drafts of our survey, including Catherine Struve, Kristin Madison, Kermit Roosevelt, R. Polk Wagner, Kalpana Kotagal, Devanshu Patel, Ruth Sternglantz, and Indraneel Sur. Thanks also to Bill Henderson and all the participants in the forum on this Article conducted at the Empirical Legal Studies Blog, <http://www.elsblog.org>, on August 14 and 15, 2007. Finally, and most importantly, we want to thank our colleagues at other journals who took the time to respond. Without their tremendous response, far beyond what we had any right to expect, we would have been unable to complete the kind of analysis that we present here.

¹ See Wendy J. Gordon, *Counter-Manifesto: Student-Edited Reviews and the Intellectual Properties of Scholarship*, 61 U. CHI. L. REV. 541 (1994); James Lindgren, *An Author’s Manifesto*, 61 U. CHI. L. REV. 527 (1994) [hereinafter Lindgren, *Author’s Manifesto*]; The Articles Editors of the University of Chicago Law Review, *A Response*, 61 U. CHI. L. REV. 553 (1994).

² The papers from this conference were published in the Law Review’s Summer 1995 issue. *Law Review Conference*, 47 STAN. L. REV. 1117 (1995).

functioning of the law review,³ few, if any, studies were undertaken or published as a result.⁴

After nearly a decade of relative dormancy, the topic appears to be active again. In December 2004, the *Harvard Law Review* conducted a survey of nearly 800 law school faculty, almost ninety percent of whom agreed that articles were, in general, too long.⁵ Judge Posner, the keynote speaker at the Stanford conference, has returned to the fray, removing his action from the pages of the law reviews themselves to the more generally-circulated *Legal Affairs*.⁶ And once again, student editors have felt the need to defend themselves against the onslaught of criticism.⁷ But still there has been little serious study of this important but widely-criticized institution. Though critics complain about the process, their understanding of how legal journals decide what to publish is generally limited to their own experiences, either as editors when they were in law school or as authors.

It was against this backdrop that we designed our survey and circulated it to the editors at about 400⁸ student-edited law reviews⁹ asking a set of questions designed to peel back the curtain that has shrouded the article selection process. We received 191 responses from 163 different journals.¹⁰ Though, as might be expected from

³ See, e.g., Gordon, *supra* note 1, at 542 (“[M]ore empirical research into the review process should be undertaken.”); Lindgren, *Author’s Manifesto*, *supra* note 1, at 537 (“We must empirically examine the effects of elitism and sexism on article selection.”).

⁴ In a survey published in 1992, a group of then-recent Stanford Law School graduates led by Max Stier surveyed the consumers of law reviews: practicing attorneys, professors, and judges. Max Stier et al., *Law Review Usage and Suggestions for Improvement: A Survey of Attorneys, Professors, and Judges*, 44 STAN. L. REV. 1467 (1992). The only published empirical study of law review selection practices prior to 2007 that our research uncovered is from 1989. See Jordan H. Leibman & James P. White, *How the Student-Edited Law Journals Make Their Publication Decisions*, 39 J. LEGAL EDUC. 387, 390 (1989).

⁵ Harvard Law Review, Manuscript Submission, <http://www.harvardlawreview.org/manuscript.shtml> (last visited May 1, 2008).

⁶ Richard A. Posner, *Against the Law Reviews: Welcome to a World Where Inexperienced Editors Make Articles About the Wrong Topics Worse*, LEGAL AFF., Nov.–Dec. 2004, at 57.

⁷ See Natalie C. Cotton, Comment, *The Competence of Students as Editors of Law Reviews: A Response to Judge Posner*, 154 U. PA. L. REV. 951, 953 (2006).

⁸ Because the survey was sent by e-mail, we do not know which publications actually received it. After eliminating out-of-date addresses and journals that appeared to have ceased to publish, our best guess is that we had valid contact information for between 390 and 400 journals.

⁹ Throughout this Article we use the term “law review” to refer to any student-edited legal periodical publishing scholarship, not just to the leading or most prestigious journal at a given school.

¹⁰ The mere fact that students at over forty percent of the publications we surveyed took the time to respond to an unsolicited e-mail survey should give some indication of the degree of interest in this topic.

an exploratory survey, the results raise at least as many questions as they answer, we hope that the introduction of significant empirical data into the debate can refocus the conversation about how best to structure the changing world of legal scholarship.

Our Article proceeds in four parts. Part II places our survey in its proper context by reviewing some of the criticisms of the student-edited law review, particularly with regard to article selection, that have been raised in the published literature. Part III provides an overview of our methodology, both for the survey itself and for our statistical analysis. Part IV reviews the quantitative results of our analysis and examines what they tell us about the selection process. Part V briefly summarizes the findings we consider to be most salient and discusses their implications.

II. THE CRITICISMS OF THE STUDENT-EDITED LAW REVIEW

The subject of the student-edited law review has generated far more than its share of published invective. While scholars' discontent with the institution is unsurprising given its importance to the progress of their careers (no doubt there is much grumbling behind closed doors about the activities of tenure and promotion committees as well), it is unusual that so much of the grumbling about law reviews takes place in public and is printed by the law reviews themselves. A few examples will serve to highlight the level of disdain that the institution of the student-edited law review receives from its detractors:

- Professor James Lindgren opens his essay on the subject with a section entitled "Crimes Against Humanity" that begins "[o]ur scholarly journals are in the hands of incompetents";¹¹
- Professor Bernard Hibbitts complains that "the concept of law students exercising quality control over legal scholarship borders on the oxymoronic";¹² and
- Judge Richard Posner finds that "what is wrong is the law reviews' failure, and perhaps inability, to adapt to the changing nature of American law and American legal scholarship."¹³

¹¹ Lindgren, *Author's Manifesto*, *supra* note 1, at 527 (capitalization omitted).

¹² Bernard J. Hibbitts, *Yesterday Once More: Skeptics, Scribes and the Demise of Law Reviews*, 30 AKRON L. REV. 267, 291 (1996).

¹³ Richard A. Posner, *The Future of the Student-Edited Law Review*, 47 STAN. L. REV. 1131, 1131 (1995) [hereinafter Posner, *Future*].

Although the most vitriolic of the criticism has been directed at the line-editing process and the perceived atrocities of the law review style,¹⁴ it is in the article selection process that student editors wield the greatest power over scholars. Given the importance of article placement in tenure and promotion decisions and in reaching the intended audience,¹⁵ claims that law reviews use the wrong criteria or (worse) no criteria at all in selecting articles cause understandable angst among authors. Professor Carl Tobias's assessment, for example, that "most editors possess strong predilections and act on them compulsively when making publication offers"¹⁶ should strike fear into the heart of every author, especially because, despite the efforts of some commentators to illuminate those predilections based on what the journals publish, the article selection process is largely a black box.

Because this Article seeks to open that black box, it is useful to review the sorts of specific criticisms that have been levied against the student editors of law reviews regarding article selection. Perhaps the most common claim is that student editors, much of whose time is spent enforcing the rules of the Bluebook, are overly influenced by the number and complexity of an author's footnotes. As Tobias puts it, "journals prefer to publish exhaustively footnoted tomes which appear conventional."¹⁷ Professor Kenneth Lasson has suggested that, as a result, "[t]he notes often take on a life of their own, snuffing out whatever line of logic the writer seeks to impart."¹⁸ The Stier survey found that, across the board, law review readers felt that articles were too heavily footnoted.¹⁹ Many have also criticized the complexity of the Bluebook itself.²⁰

¹⁴ See, e.g., James Lindgren, *Fear of Writing*, 78 CAL. L. REV. 1677, 1678 (1990) [hereinafter Lindgren, *Fear of Writing*].

¹⁵ See Cotton, *supra* note 7, at 954 (noting that "authors, especially professors seeking tenure, care where they place articles" and "the prestige of the journal in which an article is placed is somehow a signal of the article's quality"); see also Trotter Hardy, *Review of Hibbit's Last Writes?*, 30 AKRON L. REV. 249, 251 (1996) ("[T]he academic profession, the practicing bar, and judges, all tend to treat articles in certain reviews with more respect than others.").

¹⁶ Carl Tobias, *Manuscript Selection Anti-Manifesto*, 80 CORNELL L. REV. 529, 530 (1995).

¹⁷ *Id.* at 530; see also Posner, *Future*, *supra* note 13, at 1134 (suggesting that "the number and length of the footnotes in [an article]" has become a proxy for its value).

¹⁸ Kenneth Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926, 940-41 (1990).

¹⁹ Stier et al., *supra* note 4, at 1498.

²⁰ E.g., Richard A. Posner, *Goodbye to the Bluebook*, 53 U. CHI. L. REV. 1343, 1343 (1986); Leibman & White, *supra* note 4, at 422 ("Law review citation form is silly and should be dumped.").

Given that one of the few aspects of the editing process that nearly everyone agrees students are qualified to take on is the checking of citations and that these checks (not to mention the picayune details of formatting the citations) occupy (some would argue unnecessarily) much of the editors' time, it would not be surprising to find that this was a matter of some concern to Articles Editors.²¹ Nevertheless, if this criticism is accurate, Articles Editors' excessive focus on the condition of the footnotes might prevent important articles in need of some revision from landing in the caliber of journal they deserve. This is one of several areas in which the complaints levied against student Articles Editors are wrapped up with a concern that law reviews are not meeting the needs of their readers or are not publishing the "right" articles by the "right" authors.²²

A related claim is that, in an effort to overcome the inexperience of student readers, authors feel compelled to include large, expository sections that place their insight in the context of existing scholarship. Thus, Professor Lindgren is of the opinion that "law review editors respond positively to the padding that weights down most law review articles, accepting long articles more readily than short articles."²³ The Stier survey found that law review readers felt that articles were too long,²⁴ so this is another area where the selection process may be adversely affecting the law reviews' ability to meet the needs of the scholarly community. The Stier study also found, however, that attorneys and judges frequently use law reviews for "a general overview of existing law," using them in much

²¹ Although the staff members responsible for selecting articles have many different titles, we will use the term "Articles Editors" to refer to them.

²² This concern is predicated on an assumption that the proper goal of a law review is to reward the best scholarship with publication. As we discuss below, because the law reviews are themselves independent agents focused on other goals, this assumption is, perhaps, unreasonable. See *infra* notes 99–100 and accompanying text.

²³ Lindgren, *Author's Manifesto*, *supra* note 1, at 531. Since Lindgren's article was published in 1994, a number of the most well-regarded law reviews have adopted policies expressing a preference for shorter articles. See, e.g., Univ. of Pa. Law Review, Guidelines for Submission, <http://www.pennumbra.com/submissions> ("We strongly prefer articles under 35,000 words (including footnotes). We will continue to publish manuscripts over 35,000 words if the length is merited. We encourage the submission of essays (manuscripts of approximately 10,000 words)."); see also Georgetown Law Journal et al., Joint Law Review Statement on Article Length, available at <http://www.law.georgetown.edu/journals/glj/JointStatement.html> (last visited May 1, 2008). Though it is too early to tell for sure what effect, if any, this has had, the adoption of similar policies by a number of journals appears to have resulted in significantly shorter articles.

²⁴ Stier et al., *supra* note 4, at 1498.

the same way as treatises.²⁵ Although those groups, like professors, wanted articles to be shorter, it is possible that it is precisely these expository introductions that are of the most value to practitioners and judges.²⁶

Though these are potentially valuable criticisms, they represent facts that, if they are generally known,²⁷ authors can deal with prior to publication. The need to include expository sections and footnotes may slow authors down²⁸ and reduce the number of manuscripts submitted,²⁹ but it should not prevent anyone who understands the rules of the game from getting published. Of more concern are criticisms that skew the substantive content of the articles that get offers of publication.

One criticism in this area is that Articles Editors' attentions are too likely to be swayed by "hot, trendy or cute topics."³⁰ Whether this is of concern, of course, depends on one's view of the purpose of law reviews. Since many readers of law reviews use them "To Track Current Developments in a General Area of Interest or Practice" and "To Identify New Approaches Toward or Developments in Specific Legal Topics,"³¹ a focus on what is trendy might, in fact, serve readers well. On the other hand, articles on trendy topics will become stale quickly. Given the relatively protracted editing and publishing process at law reviews,³² law reviews may frequently find themselves publishing articles that are already out-of-date if they concentrate on these topics.³³

²⁵ *Id.* at 1485–86.

²⁶ The fact that Stier found that judges and practitioners also felt law review articles were too theoretical lends credence to this theory. *Id.* at 1498–99. Attorneys and judges would appear to be less interested in articles' theoretical conclusions and more interested in their summary and analysis of the state of the law.

²⁷ Of course, these criticisms, though frequently discussed, can hardly be said to have a strong factual basis. This Article should, to some degree, address that, and authors should now have some data on how much they need to worry about their expositions and footnotes.

²⁸ Or, more likely, result in more work for student research assistants.

²⁹ Many scholars feel that this would be a desirable result. See Erik M. Jensen, *The Law Review Manuscript Glut: The Need for Guidelines*, 39 J. LEGAL EDUC. 383, 383–384 (1989) (discussing the effects of the enormous volume of manuscripts that is submitted to law reviews); Tobias, *supra* note 16, at 531 (positing that the large number of manuscripts helps to make article selection a "crapshoot"); William C. Whitford, *The Need for an Exclusive Submission Policy for Law Review Articles*, 1994 WIS. L. REV. 231, 231 (1994).

³⁰ Tobias, *supra* note 16, at 530; see also Jensen, *supra* note 29, at 385 ("[W]e should limit our condemnation of [student editors] to those matters for which they richly deserve it—their excessive desire for sexy topics, for example . . .").

³¹ Stier et al., *supra* note 4, at 1486 tbl.6.

³² Often, in our experience, an offer of publication will be made and accepted well more than a year before the finished piece is available in print.

³³ See Lasson, *supra* note 18, at 933. In response to this problem as well as a desire to be

Judge Posner has expressed concern that, although law students are trained in doctrinal analysis and are likely competent to select and edit articles that engage in it, the current trend toward interdisciplinary and theoretical articles leaves law reviews ill-equipped to perform their appointed tasks.³⁴ His claim is that student editors were “quite good by the scholarly standards prevailing” during the so-called Golden Age of the law review, which lasted until about 1970.³⁵ During the 1970s and ’80s, however, “[d]octrinal scholarship as a fraction of all legal scholarship underwent a dramatic decline to make room for a host of new forms of legal scholarship.”³⁶ According to Judge Posner, this change left Articles Editors floundering in a “scholarly enterprise[,] vast reaches of which they could barely comprehend.”³⁷ The solution, says Judge Posner, is to let the law reviews focus on doctrinal scholarship and “leav[e] to the growing number of faculty-edited journals the principal responsibility for screening, nurturing, improving, and editing nondoctrinal scholarship.”³⁸ It is not clear that Posner’s predicted trend towards faculty-edited journals has continued.³⁹ In any case, there are certainly not enough of those journals to provide outlets for all of the important interdisciplinary work that scholars are producing.

It appears to be generally assumed that, to a significant degree, Articles Editors use an author’s credentials as a proxy for the quality of her scholarship. As a result, many commentators have suggested that law reviews adopt a blind article selection policy.⁴⁰

able to address rapidly changing areas of the law, a number of prominent law reviews have added online supplements, focused to differing degrees on presenting shorter, less heavily edited and footnoted articles on current topics. See, e.g., U. of Pa. L. Rev., PENNumbra, <http://www.pennumbra.com> (last visited May 1, 2008); Yale L.J., Pocket Part, <http://yalelawjournal.org> (last visited May 1, 2008). To some degree, this mantle has also been taken up on blogs written by prominent legal scholars. See, e.g., Concurring Opinions, <http://www.concurringopinions.com> (last visited May 1, 2008); The Volokh Conspiracy, <http://www.volokh.com> (last visited May 1, 2008).

³⁴ Posner, *Future*, *supra* note 13, at 1133.

³⁵ *Id.* at 1132–33 (emphasis omitted).

³⁶ *Id.* at 1133; see also William M. Landes & Richard A. Posner, *The Influence of Economics on Law: A Quantitative Study*, 36 J.L. & ECON. 385, 407 (1993) (noting the increase of citations to law and economics scholars in law review articles).

³⁷ Posner, *Future*, *supra* note 13, at 1133.

³⁸ *Id.* at 1136.

³⁹ *But see* Press Release, Harvard University, HLS Professors Start Faculty-Edited Legal Journal (July 9, 2007), available at http://www.law.harvard.edu/news/2007/07/09_journal.php (announcing the launch of the *Journal of Legal Analysis*).

⁴⁰ E.g., James Lindgren, *Reforming the American Law Review*, 47 STAN. L. REV. 1123, 1129 (1995) [hereinafter Lindgren, *Reforming*]; Gordon, *supra* note 1, at 545; Leibman & White, *supra* note 4, at 420.

The *Yale Law Journal* was among the first to do so.⁴¹ Some have noted that the use of proxies for scholarship quality may be driven at least in part by the volume of manuscripts that law reviews—particularly prestigious, general interest publications—must sift through.⁴² It may be that student editors use author credentials as a means of dealing with the large number of manuscripts submitted.⁴³ At a journal that receives over 2000 submissions a year and has only five Articles Editors, some proxies are necessary and author credentials may be among the best available.⁴⁴

As Harold Havighurst famously commented in 1956, “Whereas most periodicals are published primarily in order that they may be read, the law reviews are published primarily in order that they may be written.”⁴⁵ He went on to note that law reviews derive most of their value “from the training which the superior students receive in writing the notes and comments.”⁴⁶ It is clear, however, that (at least many) professors seeking an outlet for their scholarship are unwilling to surrender their work to the fulfillment of such an educational mission.

The criticism has certainly been heartfelt and it has, for the most part, been directed at the law review system in general rather than degenerating into *ad hominem* attacks against particular publications or editorial staffs. Very rarely, however, has the criticism been supported by anything more systematic than anecdotal evidence. As an example of the abuses he decries, Professor Lindgren lists thirteen of the more egregious examples from his own experience and that of his friends and acquaintances.⁴⁷ Judge Posner does not rely on anecdotes, but merely notes that “[i]t should be obvious that in the performance of these tasks the reviews labor under grave handicaps.”⁴⁸

⁴¹ Lindgren, *Reforming*, *supra* note 40, at 1129.

⁴² See Gordon, *supra* note 1, at 541 n.3.

⁴³ See *supra* note 29.

⁴⁴ This is really no different than acknowledging that law schools that receive large numbers of applicants must use LSAT scores and undergraduate GPA as proxies for determining who to admit. Although it is certain that some “diamonds in the rough” are lost by this process, it is a necessary evil when dealing with a high volume of applications.

⁴⁵ Harold C. Havighurst, *Law Reviews and Legal Education*, 51 NW. U. L. REV. 22, 24 (1956).

⁴⁶ *Id.*

⁴⁷ See Lindgren, *Author's Manifesto*, *supra* note 1, at 528–31.

⁴⁸ Posner, *Future*, *supra* note 13, at 1132.

The one significant exception until this year was Jordan Leibman and James White's study published in 1989.⁴⁹ Leibman and White conducted in-person interviews with Articles Editors at thirty-seven student-edited law reviews.⁵⁰ They concluded that "data confirm that editorial practices do vary significantly among the journals, and, as a result, the large number of law reviews ensures that interesting and persuasive ideas affecting and involving the legal system generally find expression in periodicals operating at appropriate levels of influence."⁵¹ Further, "virtually any meritorious article can find some sort of publication outlet."⁵² Their determination of the goals of manuscript selection was unsurprising: ensuring that all articles met the journal's minimum quality standards, picking the highest quality articles for which the journal could reasonably expect to obtain publication rights, and addressing any "topical imperatives" that the journal as a whole or a particular issue might have.⁵³

With regard to the specific criticisms leveled at student-edited journals, Leibman and White found some of them to be at least partly accurate. Journals do, in fact, use author credentials as a proxy for quality:

The editors at high-impact journals conceded that the authors' credentials played a significant role in article selection—works by such authors were, at the least, "fast tracked." Second, the editors were impressed when authors already had several publications in the field—a circumstance generally associated with full-rank status. Third, experienced authors are likely to produce better works, or at least the works of greater breadth favored by the high-impact journals.⁵⁴

⁴⁹ Leibman & White, *supra* note 4, at 387.

⁵⁰ *Id.* at 390. Leibman and White limited their survey to the "principal" journal at each institution. *Id.* at 391.

⁵¹ *Id.* at 390.

⁵² *Id.* at 394. As online legal research has become ubiquitous over the last ten years, this has become even more true. In 1989, getting published in a journal such as the *Harvard Law Review* that was available in nearly all law libraries might actually increase the potential audience for an article. Now, however, as long as the article is published in a journal that is indexed by Westlaw and/or Lexis, it will be available to essentially all researchers.

⁵³ *Id.* at 402. All of this assumes that there is such a thing as "article quality." Even at peer-reviewed journals, there will be much disagreement among editors about which articles are of the highest quality.

⁵⁴ *Id.* at 396 n.39. Also, there is the notion that "well-known authors are held more likely to produce publishable manuscripts than new ones." *Id.* at 404.

While famous authors may be “granted a presumption of excellence . . . the presumption is easily rebutted by inferior manuscripts.”⁵⁵ Further, outside the realm of the most well-known authors, some editors felt that author identity was less important to them than it might be in a peer-review regime “because only a few writers are familiar to law students and because there are fewer political pressures on students to select certain authors’ works for publication.”⁵⁶ Editors did feel some pressure to publish work from their own faculty and sometimes gave authors from their own institution extra consideration.⁵⁷

On the other hand, contrary to the contentions of some critics, they found that journals tended to shy away from “hot” topics on which much had recently been written in favor of “fresh” topics.⁵⁸ Also, journals expressed a preference for articles that were accompanied by a cover letter, particularly if it could “give some background into the topic, its importance, and perhaps . . . include reference to relevant literature by other writers.”⁵⁹

Generally speaking, Leibman and White found that a recommendation to reject by a single initial reader was dispositive.⁶⁰ Editors acknowledged that this could mean that worthwhile articles fell through the cracks.⁶¹ At most journals, however, no single editor could make an offer of publication without some consensus.⁶² A few journals have some faculty review process prior to an offer of publication, though there was a great deal of variance in how frequently faculty input was sought and whether the faculty recommendation was dispositive or advisory.⁶³

Leibman and White conclude their article with a series of seventeen recommendations.⁶⁴ It is notable that, in the nearly twenty years since the article was published, almost no progress has been made towards implementing any of these recommendations. Much of this is due to problems of maintaining institutional memory and creating long-term plans in publications whose entire management turns over every year. It is perhaps this problem,

⁵⁵ *Id.* at 405.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 404.

⁵⁹ *Id.*

⁶⁰ *Id.* at 406.

⁶¹ *See id.*

⁶² *See id.* at 407–08.

⁶³ *Id.* at 408.

⁶⁴ *Id.* at 418–24.

rather than any fundamental shortcoming of students as editors, that has most constrained law reviews.

Though Leibman and White were able to confirm some of the most widely acknowledged criticisms of the law review selection process, in particular the bias toward well-known and oft-published authors, most of the denigration of the law review process remains purely anecdotal. Further, because Leibman and White studied a relatively small number of journals and only the lead journal at any given school, their data gave them a limited ability to identify ways in which journals tended to differ. Their interviews allowed them to provide a nuanced analysis of the subjects they discussed but did not lend itself to quantitative analysis.

In the past year, Leah M. Christensen and Julie A. Oseid have conducted and published a study similar in intention to ours.⁶⁵ Their study was both smaller⁶⁶ and more focused⁶⁷ than that we report on here. Like Leibman and White, Christensen and Oseid collected some qualitative data to support their results.⁶⁸ Like our study, Christensen and Oseid found that many of the factors that have been the subject of criticism from legal academics are considered by Articles Editors during the selection process.⁶⁹

With that view of the debate as it has raged thus far, we proceed to look at our survey and its results.

III. RESEARCH INSTRUMENT AND METHODOLOGY

A. Developing Questionnaire Items

Our objective was to identify factors that influence the article selection process. As this was an exploratory study, we sought to cast our net as widely as possible, listing items that tapped into potential factors such as the interest the article will generate, author prestige, peer support, the author's practical experience,

⁶⁵ See Leah M. Christensen & Julie A. Oseid, *Navigating the Law Review Article Selection Process: An Empirical Study of Those With All the Power—Student Editors*, 59 S.C. L. REV. 465 (forthcoming 2008) (manuscript at 2), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1002640 (follow "Download from Social Science Research Network" hyperlink under "SSRN Electronic Paper Collection").

⁶⁶ Christensen and Oseid received responses from sixty-one publications. *Id.* (manuscript at 10).

⁶⁷ Christensen and Oseid concentrated on which factors played any role in the selection process rather than the relative weight of those factors. *See id.* (manuscript at 11).

⁶⁸ *See, e.g., id.* (manuscript at 11–12 & 12 n.60).

⁶⁹ *Id.* (manuscript at 34).

manner of submission, the personal interest of the editor, the familiarity of the editor with the author, the author's professional credentials, diversity, footnote quality, the difficulty of preparing the article for publication, the originality, creativity and persuasiveness of the arguments, the potential the article has to influence legal scholarship, and article length. Because abstract concepts are difficult to quantify and measure using a single question, we developed a pool of items that tapped dimensions of those concepts to create constructs.⁷⁰ We measured these items on a seven-point Likert-type scale: (-3) *strong negative influence*, (-2) *negative influence*, (-1) *weak negative influence*, (0) *no influence*, (1) *weak positive influence*, (2) *positive influence*, and (3) *strong positive influence*.

In addition, we included a section that was designed to ascertain which factors editors considered to be more important relative to one another. Those factors included the potential to influence legal scholarship, persuasiveness of the arguments, originality of the arguments, readability of the article, timeliness of the topic, potential to change substantive law, and the notability of the author. We asked the editors to rank order the factors with (1) being most important and (7) being least important.

We also included various miscellaneous questions at the end of the survey that addressed journal policies on how offers of publication are made, how many submissions the journal expects to receive in a year, faculty involvement in the publication process, and preemption checking policies.

B. Panel of Experts / Field Test

We consulted with a panel of experts to improve the validity⁷¹ of the instrument. Specifically, our panel assisted us with content validity.⁷² Our panel of experts consisted of current and former

⁷⁰ A construct is a "[c]oncept that the researcher can define in conceptual terms but cannot be directly measured (e.g., the respondent cannot articulate a single response that will totally and perfectly provide a measure of the concept) or measured without error." JOSEPH F. HAIR, JR. ET AL., *MULTIVARIATE DATA ANALYSIS* 579 (5th ed. 1998).

⁷¹ "Validity reflects the degree to which a measure actually measures what it purports to." EUGENE F. STONE, *RESEARCH METHODS IN ORGANIZATIONAL BEHAVIOR* 43 (1978).

⁷² An instrument is content valid "to the extent that items making up the measure are a representative sample of the domain of items associated with the variable being measured." *Id.* at 51. Content validity is judgmental and subjective. FRED N. KERLINGER, *FOUNDATIONS OF BEHAVIORAL RESEARCH* 458 (2d ed. 1973); STONE, *supra* note 71, at 52. A panel of experts normally judges content validity. KERLINGER, *supra*, at 459.

Articles Editors for the University of Pennsylvania Law Review. We also consulted several faculty members at the University of Pennsylvania Law School. We asked each member of the panel to read the survey, comment on additional items we should include or items we should omit, and comment on the readability and clarity of the questions. Each panel member provided valuable feedback, and we modified the instrument accordingly.

C. Sample

The population for this study was those authorized to extend offers of publication on behalf of their journals in the 2005–06 school year.⁷³ We obtained our list of legal journals and each journal's contact information from a database created by LexisNexis. We sent an email to each journal explaining the purpose of the survey and asking the individual receiving the email to forward the survey to all individuals authorized to extend offers of publication. Our email contained a link to our survey, which was presented over the Internet through an online survey service.⁷⁴ When the e-mail address LexisNexis provided was incorrect, we searched for a contact address online and re-sent the survey. We sent emails to the journals three times over a four-month period. Approximately 400 journals received our survey over that time period, and 164 journals responded. The total number of responses we received was 191 because we received multiple responses from seventeen of the journals. When we received multiple responses from editors from one journal, we aggregated their responses to analyze items addressing formal journal policies, but did not aggregate them to analyze items addressing factors that influence the article selection process.

⁷³ From our experience, law journals normally designate a few individuals, who we refer to as Articles Editors, to read submissions and extend offers of publications. Our research reveals, however, that some journals allow an editor, usually the Editor-in-Chief, to extend an offer without consulting fellow editors. Of the 191 journal editors who responded to the question "I can make an offer of publication without consulting fellow editors," 49, or 25.7%, answered affirmatively. Nevertheless, before an offer is made, an average of 3.5 editors read the article (3.2 for specialty journals and 3.7 for law reviews) and an average of 2.75 editors must agree to extend an offer before an offer is made (2.45 for specialty journals and 3.06 for law reviews).

⁷⁴ After evaluating a number of possible services, we selected Hosted Survey, <http://www.hostedsurvey.com> (last visited May 1, 2008).

D. *Social Desirability Bias*

As with any study whose data is self-reported, our methodology is subject to the effects of Social Desirability Bias.⁷⁵ In an attempt to minimize these effects, the survey was taken anonymously and respondents were told that results would only be reported in aggregate. Further, with the possible exception of our questions about the influence of author race and gender, none of the questions raised the level of controversy that is associated with the most severe bias effects.⁷⁶ As Zorn suggests, survey data of the sort we collected here could be supplemented by data about what law reviews actually publish.⁷⁷ Data about actual publication patterns is influenced not only by editors' evaluations of the articles but also authors' decisions about where to publish and logistical issues that may prevent a particular journal from making an offer on a particular submission.⁷⁸ Further, when one considers that a law review may consider as many as 2,000 submissions and publish only a dozen pieces, data drawn from actual publication patterns draws on a much smaller sample than we were able to explore here.

E. *Construct Validity and Reliability of Measures*

As previously explained, we sought to measure abstract concepts called constructs that are difficult to observe directly.⁷⁹ We operationalized those constructs, defining them in terms of "observable and measurable responses."⁸⁰ Construct validity is

⁷⁵ Posting of Christopher Zorn to Empirical Legal Studies Blog, http://www.elsblog.org/the_empirical_legal_studi/2007/08/forum-post-3-me.html (Aug. 14, 2007, 15:51 EST).

⁷⁶ See, e.g., Matthew J. Streb et al., *Social Desirability Effects and Support for a Female American President* 3, <http://americandemocracy.nd.edu/workshops/documents/StrebPaper.pdf> (last visited May 1, 2008) ("Nowhere is social desirability more of a problem than when respondents are asked their opinions on controversial issues, such as race and gender.").

⁷⁷ Zorn, *supra* note 75.

⁷⁸ During our year on the Law Review, for example, our committee decided early on not to publish more than two articles in any particular substantive area of the law. Thus, by the middle of the submission season, our decisions were guided as much by considerations of what articles we had already decided to publish as our subjective evaluation of the submissions we received.

⁷⁹ See HAIR ET AL., *supra* note 70, at 579.

⁸⁰ See FREDERICK J. GRAVETTER & LARRY B. WALLNAU, *STATISTICS FOR THE BEHAVIORAL SCIENCES: A FIRST COURSE FOR STUDENTS OF PSYCHOLOGY AND EDUCATION* 17 (4th ed. 1996) (stating that because "constructs are hypothetical and cannot be observed" directly, researchers create operational definitions, meaning that they define the constructs in terms of "observable and measurable response[s]").

important because it demonstrates that the operational definitions we created were appropriate for the constructs we sought to measure.⁸¹ Factor analysis⁸² is a reliable method to establish construct validity.⁸³ As such, we submitted fifty-six items to a principal-components factor analysis⁸⁴ using varimax rotation.⁸⁵ The analysis produced eighteen factors explaining 70.0% of the variance associated with those items. Using Kaiser's stopping rule,⁸⁶ we included only factors that had Eigen values of at least one.

The factor analysis produced factor loadings⁸⁷ that were strong, ranging from .88 to .35, with forty-six of the fifty-six items having factor loadings of .50 and above.⁸⁸ On the whole, the items grouped in a logical and explainable fashion.⁸⁹ We made a few minor modifications to create stronger conceptual measures based on both empirical and theoretical grounds.⁹⁰ We display the items making

⁸¹ See STONE, *supra* note 71, at 52.

⁸² Factor analysis is a method using complex linear algebra to reduce a large number of items to a smaller number of measures called factors by discovering which items are measuring various dimensions of an underlying, latent variable. KERLINGER, *supra* note 72, at 427, 569. This is accomplished by generating artificial dimensions called factors that are "highly correlated with each of the items measuring" some aspect of those factors. EARL BABBIE, *THE PRACTICE OF SOCIAL RESEARCH* 449 (9th ed. 2001).

⁸³ KERLINGER, *supra* note 72, at 427.

⁸⁴ While there are several different models researchers can use to obtain factor solutions, principal-components factor analysis is the most commonly reported type and is used in a wide array of scientific disciplines. Fred B. Bryant & Paul R. Yarnold, *Principal-Components Analysis and Exploratory and Confirmatory Factor Analysis*, in *READING AND UNDERSTANDING MULTIVARIATE STATISTICS* 99, 107 (Laurence G. Grimm & Paul R. Yarnold eds., 1995).

⁸⁵ The factors are difficult to interpret without rotating them to obtain simple structure. *See id.* at 105 (explaining that "it is desirable[,] for the sake of interpretation," to conduct an appropriate rotation of the factors). There are several types of rotations that researchers may use to achieve simple structure, with varimax rotation being one of the types most frequently employed. *Id.*

⁸⁶ Kaiser's stopping rule, a commonly-used tool for determining the number of factors to extract, retains factors with Eigen values of at least one, which is equivalent to the variance of one standardized variable. *Id.* at 103.

⁸⁷ Factor loadings denote the "[c]orrelation between the original variables and the factors." HAIR ET AL., *supra* note 70, at 89. If the loadings are squared, they represent how much variance in the original variables is explained by the factor. *Id.*

⁸⁸ The rule of thumb is that, in a sample size of 100 or more, factor loadings greater than .30 meet minimal practical significance; loadings .40 or greater "are considered more important;" and loadings of .50 or greater are of considerable importance. *Id.* at 111; Bryant & Yarnold, *supra* note 84, at 106.

⁸⁹ Although we have not included the specific results of the factor analysis in this Article to save space, they will be made available upon request from either of the authors.

⁹⁰ *See, e.g.,* Wayne K. Hoy & Meagan Tschannen-Moran, *The Conceptualization and Measurement of Faculty Trust in Schools: The Omnibus T-scale*, in 2 *THEORY AND RESEARCH IN EDUCATIONAL ADMINISTRATION* 181 (Wayne K. Hoy & Cecil G. Miskel eds., 2003) (making

up each of our constructs in the section that follows. The factor loadings are listed in Table 1. Item numbers correspond to those listed in Table 2 below.

minor modifications to factors to create stronger conceptual measures). The minor modifications we made are as follows. One of the eighteen factors contained two items, "The author tells you that she is only submitting the article to a limited number of journals" and "The author received her legal degree from a highly ranked law school." We included the former item in factor "Manner of Submission," where the factor loading was .36, and the latter item in factor "Author Prestige," where it loaded at .19. Item "The author is highly influential in her respective field" loaded under factor "Practical Experience" (.48), but it was a better conceptual fit to include the item in factor "Author Prestige," where it loaded weakly at .39. We moved item "A draft version of the article has been frequently downloaded from SSRN" from factor "Adequacy of Footnotes," where it loaded negatively at -.35, to "Article Demand," where it loaded at .33. Item "Articles on similar topics have not been published in your journal recently" loaded negatively on factor "Originality of Manuscript." Because that item overlapped with item "Your journal published a major article on a similar topic last year" when we reversed the scores, we decided to eliminate the former item from our study. Item "The author has a legal graduate degree (LLM/SJD)" loaded weakly under factor "Author Is Atypical," but it was a better conceptual fit to include that item in factor "Graduate Degree," where it loaded at .29. Finally, item "The author participated on law review while in law school" loaded under factor "Familiarity with Author." Because this was not a good conceptual fit and we did not find another appropriate place for the item, we did not use this item further in our study.

Item No.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
2	.76	-.08	.12	0	.05	0	.14	0	0	.04	-.04	0	.04	-.13	.15	-.21	.14	-.07
19	.75	0	.10	-.07	-.10	-.09	.08	-.11	-.13	-.26	-.02	-.06	.05	.17	-.16	.11	0	-.08
4	.74	0	-.08	.10	.09	-.08	.06	-.13	0	0	0	-.06	.07	-.05	.08	-.24	-.07	.09
17	.67	-.10	0	-.2	-.07	-.13	.08	-.39	-.09	-.04	0	0	0	.10	0	.16	0	-.04
20	.53	-.06	-.03	-.11	.13	-.08	.17	-.04	-.13	-.14	-.19	-.17	-.16	.30	-.07	.15	-.26	0
30	-.05	.83	0	0	.05	.07	0	.10	-.04	0	.05	.07	.05	0	0	.07	-.05	-.04
31	-.07	.80	.13	-.05	.11	.14	.12	0	-.08	.07	0	0	.15	-.04	0	.22	0	0
32	0	.77	.08	-.09	-.04	.07	.17	.08	0	.18	.17	.11	-.06	-.06	0	0	0	-.05
33	-.14	.68	.15	-.26	.05	.22	-.18	.05	.13	0	-.06	-.14	0	0	0	-.05	.10	-.05
22	.05	.17	.82	0	.17	.07	.06	0	0	.04	.05	.07	.09	-.12	0	.07	0	.05
23	-.07	.10	.75	-.05	.21	0	.06	.09	-.04	.14	0	0	.28	-.10	0	.07	-.09	0
11	.13	0	.62	-.13	-.05	-.06	0	.08	-.06	.09	-.04	-.26	0	.16	.04	.15	.06	-.10
10	.25	.11	.50	-.07	.11	-.11	.35	-.19	0	-.09	-.09	-.36	0	0	-.15	.20	0	0
24	-.35	.05	.49	-.22	.15	0	.07	.38	.15	.15	0	-.06	.09	.14	.06	-.07	.10	.04
51	0	0	0	.80	-.14	0	0	-.06	.09	-.13	.07	-.06	-.06	.09	.10	0	0	0
50	-.06	-.07	-.09	.79	0	-.07	0	0	.11	.10	-.08	0	0	.13	0	0	0	-.04
52	-.07	-.20	-.11	.73	-.06	-.13	-.04	0	.07	0	0	.04	-.07	.23	0	-.06	.07	0
43	.05	.07	.24	-.09	.73	.06	0	.11	.09	0	-.13	0	.08	0	.07	.11	-.05	0
45	-.04	.13	.14	.19	.64	.16	0	.06	-.05	.12	.16	.05	-.12	-.08	-.11	-.13	.05	0
42	.09	0	.21	-.16	.61	0	-.10	-.05	-.05	-.05	.38	-.12	.08	-.09	-.17	0	.07	-.07
47	0	-.07	-.12	-.32	.52	-.05	.29	.04	.05	.15	.16	.13	-.16	0	.07	0	-.15	0
46	.12	.23	-.11	-.08	.40	.08	.08	.20	-.19	0	.32	.10	.21	0	-.21	0	0	-.24
35	-.11	.11	0	-.06	0	.82	0	0	0	.10	.06	.07	.10	0	.04	0	.11	-.10
34	-.10	.32	-.04	-.17	.16	.75	.04	.05	.05	0	-.10	-.07	.12	0	0	0	.05	-.09
36	-.10	.13	.10	0	.04	.60	.07	-.07	.17	.07	0	0	.08	.05	.15	.43	.10	.15
12	0	.04	.27	0	-.12	.12	.72	-.12	-.09	-.05	0	-.12	0	.13	.09	0	.10	-.11
8	.24	-.08	-.16	0	.08	.06	.69	.10	0	-.15	0	.12	-.07	0	.10	0	0	.13
13	.14	.22	.17	.10	.09	-.04	.60	-.09	0	.08	-.10	-.05	.04	.18	0	0	.09	-.05
9	.42	0	0	-.10	.23	-.04	.45	-.18	0	-.12	.16	0	.21	0	0	0	0	0
5	0	.24	.13	-.14	.18	-.20	.38	.12	0	.07	-.15	.04	.13	-.14	-.13	.21	.28	-.10
18	-.31	-.12	0	.06	.06	0	0	.75	.25	.14	.13	-.05	.06	0	0	.12	0	.08
16	-.14	.13	.06	0	.16	0	-.14	.72	.19	.21	0	-.13	.14	-.16	0	.09	.13	.04
1	-.30	.17	.20	-.15	0	0	-.08	.52	.17	0	.05	-.10	-.12	.13	.13	.30	.13	-.15
27	-.05	0	0	.12	.04	.07	0	.15	.88	.10	.08	.11	0	0	.10	0	0	0
28	-.15	-.07	-.06	.13	0	0	0	.20	.84	.07	.11	.11	0	.09	.05	.07	0	.04
39	0	-.05	-.04	.20	0	.33	.20	.23	.35	.03	-.11	.16	.21	-.32	-.12	.03	-.25	.04
14	-.12	-.12	0	.04	.11	.06	-.11	.15	.07	.84	0	-.08	.08	.04	.08	0	0	-.07
15	-.14	.06	.20	-.10	0	.08	0	.10	.11	.81	.04	0	.05	0	0	.08	0	0
41	.05	0	.04	.04	.14	0	0	.09	.05	0	.86	0	-.06	0	0	-.04	.05	.08
40	-.12	.13	0	0	.06	0	-.05	0	.12	0	.83	-.05	.12	.05	0	0	0	0
25	0	.14	0	0	.05	0	-.05	-.08	.08	0	0	.87	0	0	0	0	0	.04
26	0	-.04	-.10	-.06	0	0	.04	-.06	.12	-.09	-.06	.83	0	.06	.11	.07	.07	.06
21	0	.12	.16	-.05	.06	.20	-.11	0	.09	.10	.04	0	.66	-.07	.12	.17	-.15	.21
29	.10	-.08	.20	-.08	0	.20	.13	.15	-.16	-.05	.10	.10	.64	.17	.14	-.09	-.07	-.19
7	.04	.15	.15	-.27	0	-.12	-.04	0	.21	.28	-.10	-.10	.49	-.08	-.07	.05	.28	.07
53	.09	0	0	.32	-.04	0	.07	0	.05	0	0	0	.08	.74	-.05	-.06	-.06	.08
54	.04	-.10	0	.26	-.17	.16	.26	.04	0	0	0	.13	-.13	.63	-.08	-.11	0	0
55	-.10	-.10	-.17	.21	.12	-.27	.10	-.33	.12	.24	-.11	0	.07	.46	.05	.08	.20	0
49	0	-.08	-.08	-.07	-.13	0	.13	-.06	.07	.11	.04	.05	0	.05	.77	0	.05	.09
44	0	.15	.09	.14	.09	.10	0	.13	.11	0	-.10	.11	.19	-.16	.70	0	-.09	0
48	0	.19	0	-.17	.40	-.04	.14	0	.11	0	.10	0	.21	0	-.45	-.17	0	0
3	-.17	.11	.22	0	-.05	0	-.06	.22	.10	0	-.05	.08	.05	-.07	0	.71	.04	-.11
38	.05	.35	.07	.08	.18	.30	.11	.20	-.11	.29	0	.09	.05	-.12	-.11	.42	-.13	.06
37	.09	.14	.11	.06	-.09	.23	.22	-.07	0	.24	.11	0	.39	-.16	-.08	.42	.04	0
6	0	-.04	-.05	.06	-.04	.25	.21	.10	0	0	.05	.10	-.10	0	0	0	.82	.08
57	0	-.13	0	0	0	-.13	0	.07	.04	-.13	0	.08	.09	.12	.15	-.04	.11	.84
56	.18	-.11	.04	.11	.23	-.23	.13	.06	.06	-.21	-.16	-.26	.19	.12	.17	.18	.17	-.45

Table 1 - Factor Loadings

We ascertained the reliability⁹¹ of each construct by computing the internal consistency coefficient estimate alpha (Cronbach's alpha).⁹² For exploratory studies, researchers are encouraged to obtain alphas of around .60.⁹³ Our Cronbach's alphas generally exceeded this standard, but four of the seventeen alphas fell below it, which should be taken into account when interpreting our findings. We report the Cronbach's alpha for each of the measures in the following section.

F. Analytic Approach

In analyzing our data, we first conducted a descriptive analysis on our items, then on our constructs. We report the results from that analysis, listing the mean and standard deviation for each item and construct from strongest positive influence to strongest negative influence. We next disaggregated the results to determine whether results were significantly different based on the prestige of the journals involved. We tested the significance of those differences using Analysis of Variance (ANOVA) and a post hoc test called the two-tailed Tukey test, a commonly used post hoc test for "evaluating the significance of all possible differences between . . . means."⁹⁴ We also report other findings throughout the results section as appropriate.

IV. OUR RESULTS

The bulk of the survey asked Articles Editors to consider the influence of fifty-seven possible factors that they might consider during the process of deciding whether to make an offer of

⁹¹ A measure is reliable if it produces similar results when used to "measure the same set of objects again and again." KERLINGER, *supra* note 72, at 405. For additional information regarding the reliability of measures, see generally GERALD R. ADAMS & JAY D. SCHVANEVELDT, UNDERSTANDING RESEARCH METHODS 103 (2d ed. 1991); BABBIE, *supra* note 82, at 140; ROBERT F. DEVELLIS, SCALE DEVELOPMENT: THEORY AND APPLICATION 24-41 (1991) (including an in depth chapter discussion of reliability).

⁹² Although there are several tests researchers can employ to measure reliability, the internal consistency method is frequently used when there is only one form of measurement available. STONE, *supra* note 71, at 48. The most common method used to measure the internal consistency of an instrument is the Cronbach's alpha. HAIR ET AL., *supra* note 70, at 118; STONE, *supra* note 71, at 48-51.

⁹³ HAIR ET AL., *supra* note 70, at 118.

⁹⁴ GEOFFREY KEPPEL, DESIGN AND ANALYSIS: A RESEARCHER'S HANDBOOK 173-75 (3d ed. 1991).

publication.⁹⁵ For each of these, we asked the editors to quantify⁹⁶ the influence that the factor, if known to the editor, would have on his or her decision to make an offer of publication.

Table 2 summarizes the results for each item, listing the mean and standard deviation for each. Items are ranked from strongest positive influence to strongest negative influence.

Item No.	Item	M	SD
24	The author is highly influential in her respective field.	2.53	0.74
45	The article fills a gap in the literature.	2.22	0.74
42	The topic would interest the general legal public.	2.17	0.75
18	The author has published frequently in highly ranked law reviews.	1.93	1.01
1	The author is employed at a highly ranked law school.	1.82	0.87
46	The article provides enough background explanation so that one not familiar with the particular field can understand the relevant issues.	1.80	0.85
43	The topic has been discussed in the news in the past year.	1.73	0.92
16	The author has a large number of previous publications.	1.64	0.89
48	Articles on similar topics have not been published in your journal recently.	1.62	0.92
22	The author has practice experience related to the manuscript submitted.	1.47	0.87
11	The author is a judge.	1.42	1.07
35	The article has been reviewed by the author's peers at your law school.	1.40	1.01
23	The author has teaching experience related to the manuscript submitted.	1.34	0.92
33	The article is accompanied by the author's curriculum vita or resume.	1.33	0.93
47	The topic is one you consider to be controversial	1.32	1.02
41	The topic interests you personally.	1.25	0.86
3	The author received her legal degree from a highly ranked law school.	1.16	0.87
34	The article has been reviewed by the author's peers.	1.13	0.96
36	You have received an unsolicited communication from one of the author's peers supporting the article.	1.06	1.01
29	The author is a professor at your law school.	1.05	1.28
30	The article is accompanied by a cover letter.	0.99	0.87
31	The cover letter is personally addressed to your journal.	0.96	0.92
38	The author is only submitting the article to a limited number of journals.	0.94	0.95
32	The author's submission includes an abstract.	0.91	0.85
28	The author has a current offer of publication from a highly ranked law review.	0.84	1.32
21	The author has published with your journal before.	0.73	1.02
40	You have taken a class in the subject matter the author addresses.	0.58	0.69
5	The author has a legal graduate degree (LLM/SJD).	0.56	0.80
15	The author holds an endowed professorship.	0.55	0.83
39	A draft version of the article has been frequently downloaded from SSRN.	0.46	0.89
7	The author participated on law review while in law school.	0.44	0.70
6	The author has a graduate degree in a non-legal field.	0.43	0.90
14	The author is tenured.	0.43	0.71
27	The author has a current offer of publication from another journal.	0.43	0.89
10	The author is a practitioner.	0.18	1.19
25	The author is female.	0.14	0.42
26	The author is a member of a racial minority.	0.13	0.44
12	The author teaches at an institution other than a law school.	-0.07	0.77
20	The author has not published an article for several years.	-0.22	0.51
57	The article is less than 20,000 words.	-0.23	0.82
13	The author teaches outside the United States.	-0.24	0.96

⁹⁵ As noted above, we subsequently dropped two of those items from our analysis. See *supra* text accompanying note 90.

⁹⁶ The question asked "For the following, indicate the degree to which the stated fact, if true and known to you, would influence your decision to make an offer of publication." Each of the factors was rated on a seven-point scale: "[s]trong negative influence; negative influence; minor negative influence; no influence at all; weak positive influence; positive influence; strong positive influence." For analysis, we quantified these responses on a scale from -3 to 3.

19	The author has never published in a highly ranked law review.	-0.33	0.61
44	The topic is one about which many articles are currently being written.	-0.34	1.37
2	The author is employed at a poorly ranked law school.	-0.50	0.80
4	The author received her legal degree from a poorly ranked law school.	-0.55	0.69
17	The author has no previous publications.	-0.72	0.85
54	The article cites sources that will be difficult to locate.	-0.92	0.92
56	The article is more than 35,000 words.	-0.95	1.07
53	The citations do not conform to your journal's citation format.	-1.15	0.87
51	Parentheticals are generally missing from the footnotes.	-1.18	0.76
49	Your journal published a major article on a similar topic last year.	-1.20	1.06
50	The article contains several missing footnotes.	-1.51	0.78
8	The author does not have a legal degree.	-1.52	1.00
52	Many citations do not include specific page numbers of the sources the author cites (pincites or jumpcites).	-1.57	0.90
9	The author is a student.	-1.95	1.12
55	The article contains numerous typographical and grammatical errors.	-2.24	0.82

Table 2 - Descriptives for Construct Items

Even at this high level, this survey confirms that editors use author credentials extensively to determine which articles to publish. “The author is highly influential in her respective field,” “The author has published frequently in highly ranked law reviews,” and “The author is employed at a highly ranked law school” are all among the top five positive factors. It is interesting to note that, although these author credentials are very strong positive factors, their inverses, “The author has never published in a highly ranked law review” and “The author is employed at a poorly ranked law school,” are weak negative factors.⁹⁷ This would tend to indicate 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. If author credentials were truly being used as a proxy for article quality, we would expect the negative factors to carry significantly greater weight than they do. This is similar to Leibman and White’s finding that famous authors might be “granted a presumption of excellence.”⁹⁸ Leibman and White do not mention a corresponding negative effect for less well-known authors.

Looking a bit more deeply at these results, another possible reason for the use of author credentials in the selection process emerges. Indeed, all of the top five positive factors are concerned, to a greater or lesser degree, with publishing articles that are likely to

⁹⁷ To make this point even more starkly, while 69.11% of respondents said that employment at a highly ranked law school was a strong positive factor or a positive factor, only 6.28% of respondents said that employment at a poorly ranked law school was a strong negative factor or a negative factor. 41.36% of respondents said that employment at a poorly ranked law school had no influence at all.

⁹⁸ See Liebman & White, *supra* note 4, at 405.

be read and cited frequently. This suggests the possibility that Articles Editors are concerned with increasing the prestige of their journals. Publishing high-profile authors is certainly one way of accomplishing that objective. So Articles Editors may be using author credentials, as a proxy not for quality of scholarship, but for potential interest of their readership in the article. Although author credentials can fairly be regarded as a relatively poor proxy for quality, they are certainly one of the factors that are likely to generate intense interest in an article.

This possibility highlights perhaps the most significant problem with the criticism that has been levied against the law review process. That criticism tends to operate under the assumption that top law reviews should publish the "best" legal scholarship.⁹⁹ Thus, this assumption goes, the proper reward for writing a truly original and significant piece of legal scholarship is publication in a highly-ranked journal. This fails to account, however, for the fact that law reviews are independent agents that may have their own goals, separate from publishing the best legal scholarship. Chief among those, of course, is the goal of increasing journal prestige. Since journal prestige is generally measured by citation counts,¹⁰⁰ Articles Editors have an incentive to publish not the "best" scholarship, but that which will be most widely read and cited. While that goal may correlate to some degree with an abstract notion of academic excellence or importance, it also draws on a number of other factors such as author notoriety or prestige, and the frequency with which related topics are addressed in legal academic writing. Thus, it is possible to explain editors' tendency to gravitate towards articles by well-known authors at prestigious institutions, or to articles in certain subject areas (most notably constitutional law), not as a product of their inability to recognize academic excellence, but as the result of a rational desire to increase the prestige of their own publications.

Our results also show that the inclusion of an expository introduction is a significant positive factor. This probably represents a need for authors to place their articles in context so that student editors can understand how their work breaks new ground.¹⁰¹ One might also make the argument, however, that students, as significant consumers of law reviews, understand the

⁹⁹ Commentators, of course, differ significantly on how "best" should be determined.

¹⁰⁰ See *infra* notes 146-47 and accompanying text.

¹⁰¹ See *supra* note 23 and accompanying text.

usefulness of those expository sections to basic research in new areas.¹⁰²

It is clear that, while they are selecting articles for the quality of their scholarship, Articles Editors also have an eye on the difficulty of preparing an article for publication.¹⁰³ Six of the ten most important negative factors are directly related to the expected difficulty of the editing process. It is interesting, however, that grammatical and typographical errors, undoubtedly the easiest errors to address during editing, have the strongest negative impact on an article's chances for selection. This probably represents an underlying concern that a poorly proofread article may have been hastily put together and is indicative of low-quality research or scholarship.

There are several factors whose influence is significantly lower than might have been expected. As noted above, if one were to believe that author prestige was being used as a proxy for the quality of scholarship, we would expect the negative effect of a lack of author prestige to be higher. Instead, we find that a lack of previous publications and association with poorly ranked law schools are relatively unimportant factors.¹⁰⁴ It also tends to weigh against the use of author credentials as a proxy for scholarship that possession of a non-legal advanced degree, perhaps the most effective proxy for scholarship in interdisciplinary work, is a relatively weak descriptor.¹⁰⁵ Because the total number of publication slots at the top law reviews is quite limited, however, the fact that Articles Editors actively pursue articles from prestigious authors certainly has a significant negative effect on the ability of relatively unknown authors to get published in the top journals. Many of the available slots in those law reviews are

¹⁰² See *supra* notes 25–26 and accompanying text. It could be interesting to compare the rate at which authors (particularly judges and treatise writers) cite expository introductions to the rate at which they cite the article's central argument.

¹⁰³ We did not ask what role the Articles Editors have in the actual editing process. We know anecdotally that this involvement varies from journal to journal. It appears, however, that even in situations where the Articles Editors have a limited role in preparing the article for publication, they are reluctant to inflict difficult editing problems on their peers.

¹⁰⁴ The two notable exceptions are student authors and authors without legal degrees. It appears that law reviews view themselves as an outlet for trained lawyers rather than a place for scholarly discussion of the law in general.

¹⁰⁵ As with any survey of this sort, there is some concern that these results may be skewed by a self-reporting bias. In such a subjective area as article selection, however, it is difficult to get data on the factors that are considered in any other way. Short of asking Articles Editors to evaluate a set of articles that have been controlled for certain factors, we are unlikely ever to have data on this subject that does not present some risk of such a bias.

consumed by the current offerings of the most prestigious authors.

Additionally, very few editors seem to take any significant notice of author diversity. The factors “the author is female” and “the author is a member of a racial minority” were among the least significant, with more than 85% of respondents reporting that they had no influence on publication decisions.¹⁰⁶

There are two other factors whose influence is surprisingly weak, but this appears to be because some law reviews consider them positives while others consider them negatives. “The topic is one about which many articles are currently being written,” the so-called “hot topic” factor, is a weak negative factor at -0.34 but has the highest standard deviation of any single factor in our survey. While 72.63% of respondents considered it to be either a weak influence or to have no influence at all, 8.95% rated it either a positive influence or a strong positive influence and 18.42% rated it either a negative influence or a strong negative influence. Thus, while it would appear that a small percentage of Articles Editors actively seek out trendy topics, most do not, and some assiduously avoid them.¹⁰⁷ This is notable since an excessive focus on trendy or cute topics is one of the most common criticisms of the current selection process.¹⁰⁸

The other factor with a surprisingly weak influence but a high standard deviation is the existence of another offer from a highly ranked law review. Although this factor has an overall weak positive effect,¹⁰⁹ it also has a high standard deviation. The positive influence is highest among the top 25 journals in the Washington & Lee survey, with a mean value of 1.54, and lowest among journals in tiers 7 & 9, with mean values of 0.22 and 0.15, respectively. Given that lower ranked journals are likely to be unable to compete with offers from highly ranked journals, this deviation probably represents a decision by some lower ranked journals not to pursue those articles or to actively avoid them.¹¹⁰

We next look at the individual descriptives as we have grouped them into constructs. The constructs, in order from greatest positive influence to greatest negative influence, are listed in

¹⁰⁶ As noted above, this finding is particularly subject to the effects of Social Desirability Bias. See *supra* note 76 and accompanying text.

¹⁰⁷ This may, to some degree, be explained by specialty journals' higher interest in “timely” articles. See *infra* note 167 and accompanying text.

¹⁰⁸ See *supra* notes 30–33 and accompanying text.

¹⁰⁹ The overall mean value is 0.86.

¹¹⁰ The mean value in tier 8, however, is 1.20, which this analysis does not explain.

Table 3.

Construct	Mean	Std. Dev.	Cronbach's α
Interest Article Will Generate	1.85	0.57	.67
Author Prestige	1.82	0.65	.79
Peer Support	1.20	0.81	.76
Practical Experience	1.11	0.77	.74
Manner of Submission	1.02	0.68	.82
Personal Interest of Editor	0.92	0.70	.76
Familiarity with Author	0.89	0.95	.52
Article Demand	0.58	0.85	.72
Author Established at Home Institution	0.49	0.71	.80
Graduate Degree	0.49	0.65	.26
Author Diversity	0.13	0.38	.81
Lack of Professional Credentials	-0.46	0.52	.79
Article Length	-0.59	0.62	.25
Lack of Originality of Manuscript	-0.77	1.00	.51
Author Is Atypical	-0.94	0.68	.65
Adequacy of Footnotes	-1.42	0.69	.79
Difficulty of Preparing for Publication	-1.43	0.66	.61

Table 3 - Raw Means for Constructs

The single most important construct, consistent with our analysis of the individual descriptives,¹¹¹ is "Interest Article Will Generate."¹¹² As we discussed above, it appears that Articles Editors are strongly motivated by a desire to increase the prestige of their journals and to publish articles that will be widely read and cited.

¹¹¹ See *supra* notes 97–101 and accompanying text.

¹¹² See Table 4.

	<i>M</i>	<i>SD</i>
Interest Article Will Generate	1.85	0.57
• The article fills a gap in the literature.	2.22	0.74
• The topic would interest the general legal public.	2.17	0.75
• The article provides enough background explanation so that one not familiar with the particular field can understand the relevant issues.	1.80	0.85
• The topic has been discussed in the news in the past year.	1.73	0.92
• The topic is one you consider to be controversial.	1.32	1.02

Cronbach's $\alpha = .67$

Table 4 - Interest Article Will Generate

The primary aspect of journal prestige, and the one that Articles Editors are most able to affect with their publication decisions, is the frequency with which a journal's articles are cited by judges or other scholars. In addition to a general desire to increase the prestige of an institution with which they are associated, editors' desire for journal prestige may have a practical impact on the articles they are able to publish. Because legal journals, unlike scholarly journals in other disciplines, allow authors to submit to multiple publications simultaneously,¹¹³ an inevitable competition for the most desirable articles develops. Because authors generally choose to publish with the most prestigious¹¹⁴ journal that has made them an offer, an increase in a journal's prestige will allow it to compete more effectively for the articles it wants to publish. As we can well remember the disappointment of deciding to make an offer on an article only to lose it to a "better" journal, it is easy to understand why editors would place a great value on increasing

¹¹³ See Jensen, *supra* note 29, at 384 ("The practice of multiple submissions horrifies practitioners of other scholarly disciplines . . .").

¹¹⁴ Though there is no consistent measure of journal prestige, it appears largely to track the frequency with which that journal's articles are cited in other publications and in judicial opinions. That is the measure we used when we disaggregated our constructs by journal prestige. See *infra* note 146 and accompanying text.

journal prestige.

The next most important factor, very close behind "Interest Article Will Generate," is "Author Prestige."¹¹⁵ Again, as we discussed above, this is likely viewed in part as a proxy for quality of scholarship and partly as a means for increasing journal prestige. This factor includes only the positive aspect of author reputation. The negative aspects, which are grouped into the factor "Lack of Professional Credentials," are detailed in Table 15.

Author Prestige	1.82	0.65
• The author is highly influential in her respective field.	2.53	0.74
• The author has published frequently in highly ranked law reviews.	1.93	1.01
• The author is employed at a highly ranked law school.	1.82	0.87
• The author has a large number of previous publications.	1.64	0.89
• The author received her legal degree from a highly ranked law school.	1.16	0.87

Cronbach's $\alpha = .79$

Table 5 - Author Prestige

Articles Editors appear to take seriously the opinions of an author's colleagues and peers in making publication decisions. The "Peer Support" construct is quite significant, as is shown in Table 6. Given the influence of this factor, it is notable, however, that editors seek the advice of faculty relatively infrequently. When we asked how frequently the editors asked a faculty member to read the article prior to making an offer of publication, only 8.84% said they always did and 47.51% never did so. Editors appear to be more confident selecting articles that have been reviewed but are, for whatever reason, reluctant to seek out such reviews themselves.¹¹⁶ This suggests that authors would be well-served to ensure that

¹¹⁵ See *infra* Table 5.

¹¹⁶ It is one of the weaknesses of our approach as contrasted with that of the Leibman and White approach that we cannot explore this result more deeply. This is one of many areas of follow-up research that should be explored, especially given the frequency with which commentators have suggested greater faculty involvement in the selection process. See, e.g., Lindgren, *Author's Manifesto*, *supra* note 1, at 536; Posner, *Future*, *supra* note 13, at 1136-37.

Articles Editors are aware of significant peer support or interest where it exists. Peer Support is, of course, another factor that is indicative to Articles Editors of the interest an article will generate within the scholarly community. An article that has already been widely reviewed is more likely to produce significant interest upon publication.

Peer Support	1.20	0.81
• The article has been reviewed by the author's peers at your law school.	1.40	1.01
• The article has been reviewed by the author's peers.	1.13	0.96
• You have received an unsolicited communication from one of the author's peers supporting the article.	1.06	1.01

Cronbach's $\alpha = .76$

Table 6 - Peer Support

The next most significant construct is "Practical Experience," whose factors are reviewed in Table 7 below. This may be another, less powerful, proxy for scholarship quality. This practical experience may also increase Articles Editors' trust of the authors' analysis. A significant number of journals, however, are reluctant to publish articles written by practitioners. In total, 25.13% of respondents rated that as a negative influence.¹¹⁷

¹¹⁷ See *infra* note 152 and accompanying text.

Practical Experience	1.11	0.77
• The author has practice experience related to the manuscript submitted.	1.47	0.87
• The author is a judge.	1.42	1.07
• The author has teaching experience related to the manuscript submitted.	1.34	0.92
• The author is a practitioner.	0.18	1.19

Cronbach's $\alpha = .74$

Table 7 - Practical Experience

The manner in which an article is submitted, including the existence of supporting materials, also has some positive influence on publication decisions.¹¹⁸ The positive effect of supporting materials may be explained by journals' use of author-related proxies in their selection processes. Abstracts and cover letters may also help direct Articles Editors to the salient points an article makes. They may also provide an opportunity to indicate peer support, where it exists.¹¹⁹

Manner of Submission	1.02	0.68
• The article is accompanied by the author's curriculum vita or resume.	1.33	0.93
• The article is accompanied by a cover letter.	0.99	0.87
• The cover letter is personally addressed to your journal.	0.96	0.92
• The author is only submitting the article to a limited number of journals.	0.94	0.95
• The author's submission includes an abstract.	0.91	0.85

Cronbach's $\alpha = .82$

Table 8 - Manner of Submission

¹¹⁸ See *infra* Table 8.

¹¹⁹ See *supra* note 116 and accompanying text.

Although editors do not seem to be drawn as strongly to “hot” topics as many commentators have assumed,¹²⁰ they are drawn to topics they are personally interested in.¹²¹ This may represent editors using their own interest as a proxy for that of their readers or it may just be that editors are more comfortable working with topics that they have some familiarity with. Although we did not ask about whether Articles Editors were involved in the editing process as well, at a significant number of journals, the editors who select what to publish also work on the editing process. That will, of course, be more enjoyable if the articles are about topics that interest them.¹²²

Personal Interest of Editor	0.92	0.70
• The topic interests you personally.	1.25	0.86
• You have taken a class in the subject matter the author addresses.	0.58	0.69

Cronbach's $\alpha = .76$

Table 9 - Personal Interest of Editor

While personal interest of the editors may introduce an element of randomness into the selection process, because of the large number of journals available and the lack of tremendous disparities in prestige, this is unlikely to have a significant effect on where articles are published. This should only have an effect if the article is about a topic that fails to pique the interest of editors at all the journals in which an article might be published, but is academically significant for some reason. Because the ranks of the professoriate are largely filled with the law review editors of a few years ago, it is hard to imagine that this situation arises frequently.

The editors' familiarity with an author also has some impact on the publication decision.¹²³ This may represent another proxy for

¹²⁰ See *supra* text accompanying note 108.

¹²¹ See *infra* Table 9.

¹²² Even where Articles Editors are not involved in editing, they may take their own interest as a proxy for the interest of their colleagues who will have to edit the piece. This is another area in which the journals' status as independent agents may cause them to deviate from the publication of the “best” scholarship. Since the editing process represents an enormous investment of student time, it is hardly surprising that editors are drawn to working on articles they personally find interesting.

¹²³ See *infra* Table 10.

good scholarship. It may also reflect a policy on the part of some journals to give some degree of preference to authors from the journals' home institution¹²⁴ or a hope that familiar authors will be easier to work with. We are hard pressed to believe that this is a serious problem. It would be difficult to claim seriously that the law review selection process is so important that editors have a duty to set aside knowledge that a particular author has made their predecessors' lives more difficult by missing deadlines or making unreasonable editing requests. This is another reason that some journals may be reluctant to adopt a blind reading policy.¹²⁵

Familiarity with Author	0.89	0.95
• The author is a professor at your law school.	1.05	1.28
• The author has published with your journal before.	0.73	1.02

Cronbach's $\alpha = .52$

Table 10 - Familiarity with Author

Table 11 details the next most important construct, "Article Demand." We wanted to know whether some journals use the interest of other journals or SSRN users as proxy for article quality. While it appears that this happens to some degree, it has a limited influence. As discussed above, some editors even consider the interest of other journals to be a negative factor.¹²⁶

¹²⁴ Leibman and White found that there was some bias in favor of local authors, but that it was far from dispositive. Leibman & White, *supra* note 4, at 405–06. Some have expressed concern over this state of affairs. See Gordon, *supra* note 1, at 545. It seems beyond doubt, however, that authors would, in general, like to receive some degree of special treatment from their home institution. Certainly there is great variance in the influence that local authorship has. While 11.58% of our respondents said it was a strong positive factor, 13.16% considered it a negative factor.

¹²⁵ See *supra* note 40 and accompanying text.

¹²⁶ See *supra* notes 109–10 and accompanying text.

Article Demand	0.58	0.85
• The author has a current offer of publication from a highly ranked law review.	0.84	1.32
• A draft version of the article has been frequently downloaded from SSRN.	0.46	0.89
• The author has a current offer of publication from another journal.	0.43	0.89

Cronbach's $\alpha = .72$

Table 11 - Article Demand

The next two constructs, "Author Established at Home Institution"¹²⁷ and "Graduate Degree"¹²⁸ are both potentially high-quality proxies for article quality. Given that, these constructs are surprisingly weak.

Author Established at Home Institution	0.49	0.71
• The author holds an endowed professorship.	0.55	0.83
• The author is tenured.	0.43	0.71

Cronbach's $\alpha = .80$

Table 12 - Author Established at Home Institution

¹²⁷ See *infra* Table 12.

¹²⁸ See *infra* Table 13.

Graduate Degree	0.49	0.65
• The author has a legal graduate degree (LLM/SJD).	0.56	0.80
• The author has a graduate degree in a non-legal field.	0.43	0.90

Cronbach's $\alpha = .26$

Table 13 - Graduate Degree

As mentioned above,¹²⁹ the weakness of these factors and "Lack of Professional Credentials"¹³⁰ tends to cast doubt on the assumption that student editors consider author credentials as a proxy for article quality. There are other independent reasons, most notably the effect on a journal's prestige, why editors might want to publish articles by well-known authors, and these may be a significant motivation for students to take account of author prestige. Since these factors are not particularly strong indicators of the prestige that an article will bring to the journal, the relative weakness of these factors lends credence to that analysis.

As mentioned above, and as detailed in Table 14, "Author Diversity" has no significant impact on article selection overall. This is, perhaps, surprising to some who might assume that some sort of affirmative action exists in the selection process.

Author Diversity	0.13	0.38
• The author is female.	0.14	0.42
• The author is a member of a racial minority.	0.13	0.44

Cronbach's $\alpha = .81$

Table 14 - Author Diversity

Our survey included a number of questions designed to uncover any bias that editors might have against less prestigious authors. If editors generally make publication decisions primarily or largely on

¹²⁹ See *supra* note 104 and accompanying text.

¹³⁰ See *infra* Table 15 and accompanying text.

the basis of authorship, then we would expect some or all of these factors to be significant. As Table 15 shows, however, none of these items appear significant. Indeed, "Lack of Professional Credentials" is the weakest of the negative constructs.

Lack of Professional Credentials	-0.46	0.52
• The author has no previous publications.	-0.72	0.85
• The author received her legal degree from a poorly ranked law school.	-0.55	0.69
• The author is employed at a poorly ranked law school.	-0.50	0.80
• The author has never published in a highly ranked law review.	-0.33	0.61
• The author has not published an article for several years.	-0.22	0.51

Cronbach's $\alpha = .79$

Table 15 - Lack of Professional Credentials

In 2004, a number of the top law reviews adopted a policy stating a strong preference for articles shorter than 35,000 words.¹³¹ While it appears that most journals have not adopted similar policies,¹³² the policy does appear to have made most submissions significantly shorter.¹³³ Those shorter manuscripts began to appear during the 2005–06 submission season, the same period we conducted our survey. That change in the pool of submission may explain the relatively weak effect of article length.

¹³¹ See *supra* note 23.

¹³² Over 73% of respondents in our survey said their journal had no specific length restrictions.

¹³³ While we have no empirical evidence of this, the vast majority of submissions we received during 2005–06 were shorter than 35,000 words. Based on conversations with our colleagues from previous years, this was a significant change.

Article Length	-0.59	0.62
• The article is more than 35,000 words.	-0.95	1.07
• The article is less than 20,000 words.	-0.23	0.82

Cronbach's $\alpha = .25$

Table 16 - Article Length

It appears that, in general, Articles Editors are somewhat more likely to publish work that deals with original topics. As can be seen in

Table 17, both a similar article published in the same journal in the past year and a saturation of a particular topic¹³⁴ have a negative effect on publication decisions. These factors can both be viewed as proxies for the originality of an article's argument.

Lack of Originality of Manuscript	-0.77	1.00
• Your journal published a major article on a similar topic last year.	-1.20	1.06
• The topic is one about which many articles are currently being written.	-0.34	1.37

Cronbach's $\alpha = .51$

Table 17 - Lack of Originality of Manuscript

¹³⁴ See also *supra* note 108 and accompanying text (noting the common criticism that Articles Editors focus too much on trendy topics during the article selection process).

It is probably difficult for student editors to recognize truly original arguments because their exposure to the existing literature is limited. While the originality of an author's arguments can, to some degree, be explored through the preemption checking process,¹³⁵ it is difficult to identify an argument that truly breaks new scholarly ground without a deeper understanding of the existing literature than a preemption check is likely to provide. It is also worth noting that only 48.62% of editors responding to our survey said their journal always performed a preemption check before extending an offer and 16.02% said that they never did so.¹³⁶

Articles Editors view law reviews as an outlet for legal professionals. Although the lack of most author credentials has a less significant effect than we might expect,¹³⁷ the lack of professional legal credentials is a relatively strong negative factor. In general, as Table 18 details, editors appear to have a preference for publishing work by American law school faculty.

Author Is Atypical	-0.94	0.68
• The author is a student.	-1.95	1.12
• The author does not have a legal degree.	-1.52	1.00
• The author teaches outside the United States.	-0.24	0.96
• The author teaches at an institution other than a law school.	-0.07	0.77

Cronbach's α = .65

Table 18 - Author Is Atypical

The two most influential negative constructs both have to do with the work involved in the editing process once an article has been selected. Those critics of the law review system who decry editors'

¹³⁵ See Cotton, *supra* note 7, at 963 (“[T]he well-developed ‘preemption check’ process reveals whether a thesis is unique.”).

¹³⁶ We found no significant differences in this construct based on the regularity with which journals performed preemption checks. If these criteria were being used as proxies for the preemption check itself, we would expect it to exert more influence at the journals that do not always check for preemption before making an offer of publication. There is no such trend in the data.

¹³⁷ See *supra* Table 15 and accompanying text.

preoccupation with footnotes¹³⁸ will undoubtedly find ammunition in Table 19. It is clear that, when considering how much work will be required to prepare an article for publication, Articles Editors pay a great deal of attention to the adequacy of the footnotes. For better or worse, law review editors view the quality and comprehensiveness of the citations as a key measure of article quality. In fact, two of the three individual items in the "Difficulty of Preparing the Article for Publication" construct are also citation-related.¹³⁹ Perhaps this is because the checking and formatting of citations is work that law review editors know they are qualified to do and with which they generally feel quite comfortable by the time they are participating in the selection process.¹⁴⁰ Any trepidation Articles Editors may feel about their ability to select articles on the basis of their scholarship appears to resolve itself in a strong aversion to publishing articles that may be difficult to shepherd through the publication process.¹⁴¹ Overall, it seems clear that editors seek to publish articles that already largely meet their stylistic requirements¹⁴² rather than those that will require extensive editing to conform to a journal's style guide.

¹³⁸ See *supra* notes 17–20 and accompanying text.

¹³⁹ See *infra* Table 20.

¹⁴⁰ Although we did not ask about this, we believe that, by and large, publication decisions are made by third-year law students who have already spent at least a year working on the journal and becoming familiar with the editing and citation checking processes.

¹⁴¹ Many authors have expressed frustration with the quality of student editors' copy-editing abilities. See, e.g., Lindgren, *Fear of Writing*, *supra* note 14, at 1677–78. Those authors should, perhaps, take heart that Articles Editors are disinclined to make offers of publication where they feel extensive editing is necessary. The problems that Lindgren and others have raised most likely arise from the failure of those same editors to rein in the more aggressive editing style of the more junior editors who tend to carry the bulk of the editing load at most publications.

¹⁴² Authors may, of course, and do argue that the stylistic requirements journals impose are misguided and overly technical. See *supra* note 20. That is not, however, a valid criticism of the selection process. Once a journal has made certain stylistic decisions, Articles Editors should try to enforce them not only in the editing process but in the selection process as well. This is another area in which the journals' independent goals express themselves and cause them to deviate from making decisions based only on article quality.

Adequacy of Footnotes	-1.42	0.69
• Many citations do not include specific page numbers of the sources the author cites (pincites or jumpcites).	-1.57	0.90
• The article contains several missing footnotes.	-1.51	0.78
• Parentheticals are generally missing from the footnotes.	-1.18	0.76

Cronbach's $\alpha = .79$

Table 19 - Adequacy of Footnotes

Difficulty of Preparing the Article for Publication	-1.43	0.66
• The article contains numerous typographical and grammatical errors.	-2.24	0.82
• The citations do not conform to your journal's citation format.	-1.15	0.87
• The article cites sources that will be difficult to locate.	-0.92	0.92

Cronbach's $\alpha = .61$

Table 20 - Difficulty of Preparing the Article for Publication

The next section of our survey asked editors to rank seven general criteria from most important (1) to least important (7). The raw results of that ranking are displayed in Table 21.

Construct	Mean Rank
Potential to influence legal scholarship	3.23
Persuasiveness of the arguments	3.30
Originality of the arguments	3.42
Readability of the article	3.61
Timeliness of the topic	4.05
Potential to change substantive law	4.17
Notability of the author	4.92

Table 21 - Ranking of Publication Criteria

“Potential to influence legal scholarship” was the most important factor, followed closely by “Persuasiveness and originality of the arguments.” The importance of “Potential to influence legal scholarship” strengthens our observation that Articles Editors are concerned with raising the prestige of their journals through the article selection process. Given this focus, however, “Potential to change substantive law” was less important than might otherwise be expected.¹⁴³

The least important criterion, by a significant margin, was “Notability of the author.” The last-place ranking of author notability is surprising because, among our descriptives, “Author is highly influential in her respective field” was the most important. One possible reading of this discrepancy is that, when students recognize that the article does not have the potential to influence legal scholarship, or the arguments are not persuasive, original, or timely, then the notability of the author will not be enough to lead to an offer of publication. When, however, a student editor is unable to analyze the persuasiveness or originality of the arguments, she is likely to fall back on author reputation. Another possible reading of

¹⁴³ Perhaps Articles Editors are already aware that law reviews, which once had the potential to significantly impact the work of judges and legislators, are now largely ignored by those groups. See, e.g., Adam Liptak, *When Rendering Decisions, Judges Are Finding Law Reviews Irrelevant*, N.Y. TIMES, Mar. 19, 2007, at A8. Citations in case law are still a significant portion of the Washington & Lee rankings of law journal influence, however. Washington & Lee Law School, *Law Journals: Submissions and Ranking, Ranking Methodology*, <http://lawlib.wlu.edu/LJ/method.asp> (last visited May 1, 2008).

this situation is that Articles Editors realize that they rely heavily on author credentials as a proxy, but would, ideally, rather make their decisions on other grounds. It is also possible that the high value placed on publishing important authors is driven not by the inability of students to evaluate the relative quality of scholarly work, but by the understanding that well-known authors are more likely to produce highly influential scholarship.¹⁴⁴ The fact that this section of the survey has separated that aspect of author identity from generalized author notability may account for the apparent discrepancy between the results in this section and those for the individual descriptives. Finally, Christopher Zorn has suggested that this discrepancy may be caused by Social Desirability Bias, since editors know that they “shouldn’t” make decisions based on author prestige.¹⁴⁵

We next disaggregated the results to determine whether results were significantly different based on the prestige of the journals involved. As the best available proxy for journal prestige, we used the annual Washington & Lee citation rankings.¹⁴⁶ We used the 2006 combined rankings including only student-edited journals in our ranking set. We then grouped the journals into nine cohorts by overall rank.¹⁴⁷ Journals that were unrepresented in the rankings were assigned to the lowest-ranking cohort.

¹⁴⁴ See *supra* text accompanying note 98.

¹⁴⁵ See Zorn, *supra* note 75.

¹⁴⁶ These rankings are available on the internet. Washington & Lee Law School, Law Journals: Submissions and Ranking, <http://lawlib.wlu.edu/LJ> (last visited May 1 2008). We also analyzed the data grouping journals by the U.S. News & World Report ranking of the host school. This produced similar results to our Washington & Lee grouping, so we discarded that analysis as an inferior proxy for journal prestige.

¹⁴⁷ The Washington & Lee survey assigns each journal a numerical ranking between 1 and 540 based on the frequency with which that journal’s articles have been cited in judicial opinions and in other law reviews over the past ten years. See Ranking Methodology, *supra* note 143. We constructed our ranking tiers by including sixty-five ranking places in each. The top tier was further subdivided into journals ranked 1-25 and 26-65. Although there is some variation, we received responses from approximately twenty of the journals in each tier. The complete list of responding journals, separated by tier, is presented in Appendix A. See *infra* app. A.

Construct	1	2	3	4	5	6	7	8	9	Total
Interest Article Will Generate ^a	1.46 (.52) (n = 28)	1.90 (.43) (n = 20)	1.90 (.56) (n = 24)	1.93 (.65) (n = 20)	1.98 (.49) (n = 19)	1.78 (.51) (n = 26)	2.00 (.47) (n = 16)	1.93 (.76) (n = 15)	2.04 (.55) (n = 20)	1.85 (.57) (N = 188)
Author Prestige ^b	1.46 (.63) (n = 25)	1.97 (.47) (n = 20)	2.13 (.44) (n = 24)	1.75 (.73) (n = 20)	1.62 (.54) (n = 18)	1.99 (.59) (n = 25)	1.74 (.79) (n = 18)	1.79 (.72) (n = 15)	1.83 (.74) (n = 20)	1.82 (.65) (N = 185)
Peer Support	0.86 (.61) (n = 28)	1.20 (.74) (n = 20)	1.53 (.69) (n = 24)	1.18 (.75) (n = 20)	1.30 (1.02) (n = 18)	1.12 (.77) (n = 26)	1.10 (.89) (n = 17)	1.07 (.85) (n = 14)	1.53 (.92) (n = 20)	1.20 (.82) (N = 187)
Practical Experience ^c	0.33 (.61) (n = 28)	0.73 (.53) (n = 20)	1.05 (.59) (n = 24)	1.10 (.58) (n = 20)	1.21 (.67) (n = 19)	1.50 (.68) (n = 25)	1.40 (.65) (n = 18)	1.63 (.83) (n = 15)	1.41 (.85) (n = 20)	1.11 (.77) (N = 189)
Manner of Submission ^d	0.57 (.44) (n = 28)	0.84 (.64) (n = 20)	1.15 (.56) (n = 24)	0.85 (.62) (n = 19)	1.20 (.59) (n = 19)	1.15 (.68) (n = 26)	1.15 (.79) (n = 17)	0.89 (.65) (n = 15)	1.48 (.81) (n = 19)	1.02 (.68) (N = 187)
Personal Interest of Editor	1.02 (.71) (n = 28)	1.03 (.80) (n = 20)	0.94 (.78) (n = 24)	1.05 (.74) (n = 20)	0.95 (.66) (n = 19)	0.77 (.55) (n = 26)	1.09 (.64) (n = 17)	0.80 (.70) (n = 15)	0.58 (.63) (n = 20)	0.92 (.70) (N = 189)
Familiarity with Author	0.45 (.82) (n = 28)	0.83 (.78) (n = 20)	1.15 (.83) (n = 24)	1.10 (1.03) (n = 20)	0.97 (1.05) (n = 19)	0.94 (.88) (n = 25)	0.97 (.96) (n = 18)	0.77 (1.13) (n = 15)	0.95 (1.12) (n = 20)	0.89 (.95) (N = 189)
Article Demand ^e	0.94 (.66) (n = 28)	0.82 (.74) (n = 20)	0.83 (.72) (n = 23)	0.72 (.80) (n = 20)	0.39 (.73) (n = 18)	0.35 (.82) (n = 25)	0.10 (1.29) (n = 16)	0.67 (.76) (n = 14)	0.23 (.86) (n = 20)	0.58 (.85) (N = 184)
Author Established at Home Institution	0.20 (.61) (n = 28)	0.55 (.67) (n = 20)	0.52 (.70) (n = 24)	0.55 (.86) (n = 20)	0.39 (.74) (n = 19)	0.75 (.74) (n = 26)	0.56 (.54) (n = 18)	0.70 (.84) (n = 15)	0.25 (.57) (n = 20)	0.49 (.71) (N = 190)
Graduate Degree	0.35 (.41) (n = 27)	0.70 (.64) (n = 20)	0.31 (.60) (n = 24)	0.43 (.78) (n = 20)	0.53 (.61) (n = 19)	0.44 (.73) (n = 26)	0.46 (.70) (n = 18)	0.47 (.61) (n = 15)	0.75 (.73) (n = 20)	0.49 (.65) (N = 189)
Author Diversity ^f	0.45 (.61) (n = 28)	0.08 (.24) (n = 20)	0.17 (.46) (n = 24)	0.08 (.24) (n = 20)	0.06 (.24) (n = 18)	0.06 (.26) (n = 25)	0.00 (.00) (n = 18)	0.03 (.13) (n = 15)	0.15 (.46) (n = 20)	0.13 (.38) (N = 188)
Lack of Professional Credentials ^g	-0.60 (.59) (n = 28)	-0.56 (.61) (n = 20)	-0.88 (.46) (n = 24)	-0.46 (.46) (n = 20)	-0.32 (.56) (n = 19)	-0.29 (.40) (n = 24)	-0.22 (.45) (n = 18)	-0.18 (.41) (n = 15)	-0.36 (.33) (n = 20)	-0.46 (.52) (N = 188)
Article Length ^h	-0.63 (.70) (n = 28)	-0.65 (.61) (n = 20)	-0.52 (.45) (n = 24)	-0.55 (.67) (n = 20)	-0.95 (.78) (n = 19)	-0.67 (.73) (n = 26)	-0.56 (.43) (n = 17)	-0.13 (.23) (n = 15)	-0.47 (.53) (n = 20)	-0.59 (.62) (N = 189)
Lack of Originality of Manuscript	-0.75 (.90) (n = 28)	-0.80 (.91) (n = 20)	-0.69 (.91) (n = 24)	-0.70 (1.03) (n = 20)	-0.84 (1.31) (n = 19)	-0.94 (1.32) (n = 26)	-0.97 (.99) (n = 17)	-0.47 (.74) (n = 15)	-0.70 (.74) (n = 20)	-0.77 (1.00) (N = 189)
Author Is Atypical ⁱ	-1.15 (.67) (n = 28)	-1.30 (.60) (n = 20)	-1.23 (.66) (n = 24)	-0.91 (.64) (n = 20)	-0.83 (.81) (n = 19)	-0.88 (.61) (n = 26)	-0.79 (.47) (n = 18)	-0.73 (.66) (n = 15)	-0.61 (.65) (n = 19)	-0.94 (.68) (N = 189)
Adequacy of Footnotes ^j	-0.90 (.72) (n = 28)	-1.23 (.60) (n = 20)	-1.17 (.67) (n = 24)	-1.40 (.44) (n = 20)	-1.88 (.60) (n = 19)	-1.53 (.63) (n = 26)	-1.73 (.64) (n = 17)	-1.60 (.57) (n = 15)	-1.75 (.61) (n = 20)	-1.42 (.68) (N = 189)
Difficulty of Preparing Article for Publication ^k	-1.12 (.51) (n = 28)	-1.32 (.56) (n = 20)	-1.36 (.61) (n = 24)	-1.53 (.78) (n = 20)	-1.84 (.55) (n = 19)	-1.54 (.65) (n = 26)	-1.51 (.72) (n = 17)	-1.40 (.62) (n = 15)	-1.43 (.79) (n = 20)	-1.43 (.66) (N = 189)

Table 22 - Raw Means and Standard Deviations of Constructs by Washington & Lee Law School Law Journal Rankings¹⁴⁸

¹⁴⁸ Standard deviations are in parentheses. We conducted a one-by-eight one-way between subjects analysis of variance (ANOVA) on each construct to determine whether there are significant differences among group means. A super-scripted letter indicates there was at least one significant difference among the means at $p < .05$. We conducted two-tailed Tukey post-hoc tests to ascertain which means were significantly different at $p < .05$. Results

The first notable observation about this disaggregation is that “Interest Article Will Generate” appears to be less crucial to the top 25 journals than to the other respondents in our survey.¹⁴⁹ There is a negative linear trend,¹⁵⁰ but that is caused almost entirely by the relatively low importance for tier 1. Although article interest is less important to the top tier of journals than the other journals we surveyed, it is still at least as important as any other factor. It may be, however, that editors at the most prestigious journals are less concerned about the need to generate an audience for their articles than those at other journals.

Indeed, the four most significant positive factors and the two most significant negative factors are all noticeably less important for the top 25 journals than the average across the dataset. This suggests that the top journals are able to consider and weigh more factors in their decision making process. Our data does not reveal why this should be true, particularly because the top 25 journals are generally dealing with the largest number of total submissions. It may be that, because those journals are most likely to be able to get publication rights to the articles they are interested in, they can quickly eliminate many submissions from consideration and give a more thorough consideration to the relatively small subset of articles that are serious publication candidates.

“Author Prestige” is important across the board.¹⁵¹ Like “Interest Article Will Generate,” it is least significant among the top 25

correspond to the super-scripted letters next to the constructs.

a Significant differences exist between groups 1 and 5; 1 and 7; 1 and 9.

b Significant differences exist between groups 1 and 3.

c Significant differences exist between groups 1 and 3; 1 and 4; 1 and 5; 1 and 6; 1 and 7; 1 and 8; 1 and 9; 2 and 6; 2 and 7; 2 and 8; 2 and 9.

d Significant differences exist between groups 1 and 3; 1 and 5; 1 and 6; 1 and 9.

e Significant differences exist between groups 1 and 7.

f Significant differences exist between groups 1 and 2; 1 and 4; 1 and 5; 1 and 6; 1 and 7; 1 and 8.

g Significant differences exist between groups 3 and 5; 3 and 6; 3 and 7; 3 and 8; 3 and 9.

h Significant differences exist between groups 5 and 8.

i Significant differences exist between groups 1 and 9; 2 and 9; 3 and 9.

j Significant differences exist between groups 1 and 5; 1 and 6; 1 and 7; 1 and 8; 1 and 9; 2 and 5; 3 and 5.

k Significant differences exist between groups 1 and 5.

¹⁴⁹ The difference is statistically significant only between the top 25 cohort and groups 5, 7, and 9.

¹⁵⁰ We describe a relationship in which one factor increases in importance while prestige increases as a positive linear relationship and a relationship in which one factor increases in importance while prestige *decreases* as a negative linear relationship.

¹⁵¹ In every cohort, “Author Prestige” and “Interest Article Will Generate” are the two most significant positive factors.

journals.

“Practical Experience” displays a negative linear trend. When we disaggregated each of the individual questions in that factor,¹⁵² we found that, although each of them has a negative linear trend, they operate somewhat differently. “[A]uthor is a judge” is a positive factor overall, but it becomes very significant at the lower ranked journals. Teaching experience and practical experience are somewhat less important, but still exhibit negative linear trends. “[A]uthor is a practitioner” is particularly interesting in that it is a negative factor for the top three cohorts,¹⁵³ but becomes a relatively important positive factor at the lower-ranked journals. We see similar, but weaker, trends with the “Author Is Atypical” factor. It seems that the relatively prestigious journals view themselves strongly as an outlet for academics and, to a lesser extent, judges. Lower ranked journals, however, are willing to publish interesting scholarship from practicing attorneys, students, or scholars from other disciplines.¹⁵⁴

“Manner of Submission” exhibits a negative linear trend as well. Like a number of other factors, this is least important to the top 25 journals. This is somewhat surprising since those journals generally receive the largest number of submissions, so one might expect these factors to help editors identify those articles that deserved of a closer look. Instead, it appears that they are most important to the lower-ranked journals.

“Personal Interest of Editor” is one of a relatively small number of otherwise minor factors that exhibit a *positive* linear relationship, becoming more important as prestige increases. This may be because editors at the more prestigious journals have the luxury of including their own personal preferences as a significant factor in the selection process, allowing them to work on articles they are

¹⁵² “[A]uthor is a judge”: (1) = 0.57; (2) = 0.85; (3) = 1.54; (4) = 1.55; (5) = 1.63; (6) = 1.69; (7) = 1.67; (8) = 2.0; (9) = 1.70.

“[A]uthor has practice[al] experience relating to the manuscript submitted”: (1) = 0.86; (2) = 1.10; (3) = 1.67; (4) = 1.45; (5) = 1.42; (6) = 1.76; (7) = 1.78; (8) = 1.93; (9) = 1.60.

“[A]uthor has teaching experience relat[ing] to the manuscript submitted”: (1) = 0.54; (2) = 1.45; (3) = 1.29; (4) = 1.30; (5) = 1.37; (6) = 1.76; (7) = 1.67; (8) = 1.80; (9) = 1.30.

“[A]uthor is a practitioner”: (1) = -0.64; (2) = -0.50; (3) = -0.29; (4) = 0.10; (5) = 0.42; (6) = 0.73; (7) = 0.50; (8) = 0.80; (9) = 1.05.

¹⁵³ These represent journals ranked 1–130 in the Washington and Lee survey. See *Law Journals: Submissions and Ranking*, *supra* note 146.

¹⁵⁴ Since specialty journals are typically lower ranked in the Washington and Lee survey than general interest publications, this trend is probably related to the similar trend that we see by journal type. See *infra* note 164 and accompanying text.

personally interested in.

“Article Demand” is another factor that exhibits a positive linear relationship, particularly when the offer of publication is from a highly-ranked law review.¹⁵⁵ Because authors would, in general, prefer to publish with more prestigious journals,¹⁵⁶ those journals are able to compete to publish the most desirable articles. Some journals may even use offers from competing journals as a sort of screening mechanism, a way of selecting which articles from the enormous piles of submissions to focus their attention on. Lower ranked journals, by contrast, may feel that they will be unable to convince an author with an offer from a more prestigious journal to seriously consider the possibility of placing an article in their journal. It is worth noting that, to the degree that authors were willing to make their decisions between competing publication offers on the basis of reputation for quality editing rather than historical prestige, journals could rapidly rise in stature by developing and enforcing author-friendly editing procedures.¹⁵⁷ Similar to the effect of the article length criteria instituted by a few top-ranked journals, which seem to have significantly affected the overall pool of submissions,¹⁵⁸ a declaration by a few very significant authors that they would only publish with journals that adopted certain editing policies would likely cause those policies to spread like wildfire. Of course, authors seeking tenure or promotion may have to focus on prestige.¹⁵⁹

“Author Diversity” is another factor with a positive linear trend. Although it is of almost no importance in any other cohort, it has some influence at the top 25 journals. Again, this is probably

¹⁵⁵ “[A]uthor has a current offer of publication from another journal”: (1) = 0.68; (2) = 0.60; (3) = 0.54; (4) = 0.80; (5) = 0.37; (6) = 0.28; (7) = -0.11; (8) = 0.60; (9) = 0.00.

“[A]uthor has a current offer of publication from a highly ranked law review”: (1) = 1.54; (2) = 1.00; (3) = 1.17; (4) = 1.00; (5) = 1.56; (6) = 0.48; (7) = 0.22; (8) = 1.20; (9) = 0.15.

¹⁵⁶ It is somewhat curious that this is the case. See Cotton, *supra* note 7, at 954–55 (wondering “why authors so covet placement in the *Yale Law Journal* or the *Harvard Law Review*”). Given the general dissatisfaction, at least in some quarters, with the law review publication process, one might expect that professors would instead give preference to journals with which they or their colleagues have had positive experiences, especially since the existence of electronic databases means that authors need not rely on journal prestige to develop an audience for their articles. But this is clearly not the case. See Lasson, *supra* note 18, at 948–49 (“To be published, even cited, in an Ivy League law review is considered to be a feather in one’s professional cap. To be spurned by the *East Parsippany Journal of Nursery School Law*, on the other hand, is ignominy most bitter . . .”).

¹⁵⁷ One cannot help but note the comparison with the development of corporate law in Delaware.

¹⁵⁸ See *supra* notes 131–33 and accompanying text.

¹⁵⁹ See *infra* notes 160–62 and accompanying text.

caused by those journals' ability to be more selective in what they choose to publish.

"Lack of Professional Credentials" is a slight negative influence overall, but it is more influential at the more prestigious journals. Interestingly, this is most influential, not at the most prestigious journals, but in tier 3. It may be that the top journals are more willing to take a risk on publishing a "tenure piece" by a less highly credentialed author.

"Adequacy of Footnotes" and "Difficulty of Preparing Article for Publication" behave similarly. Both are strong negative factors across the board, but particularly so at less prestigious journals. It may be that those journals have fewer resources—both capital and labor—at their disposal and so must exercise more care with the articles they select in order to be sure they can complete the editing process in a timely fashion.

In general, it appears that the more 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. It may be that the reliance of tenure and promotion committees on the relative prestige of the journals publishing a candidate's work¹⁶⁰ is not entirely misplaced as those journals may give an article deeper consideration before making a publication offer. Because the most prestigious journals tend to be general interest publications¹⁶¹ this may encourage faculty seeking promotion and tenure to write for a more general audience rather than writing highly technical and specific articles that are more likely to be published by a specialty journal.¹⁶²

We next examined the rankings of publication criteria, again as disaggregated by Washington & Lee ranking tier. Those results appear in Table 23.

¹⁶⁰ See Russell Korobkin, *Ranking Journals: Some Thoughts on Theory and Methodology*, 26 FLA. ST. U. L. REV. 851, 858 (1999) (noting that a small number of publications in highly prestigious publications may be sufficient to secure tenure or promotion but that a larger number of publications in less prestigious journals may be required).

¹⁶¹ Only four of the responding publications in our top two tiers are specialty journals, all of them at Harvard. See *infra* app. A.

¹⁶² In addition to the Washington and Lee survey, scholars have attempted to rank the specialty journals in particular interest areas. See, e.g., Gregory Scott Crespi, *Ranking the Environmental Law, Natural Resources Law, and Land Use Planning Journals: A Survey of Expert Opinion*, 23 WM. & MARY ENVTL. L. & POL'Y REV. 273, 280 tbl.I (1998).

Item	1 (n = 24)	2 (n = 20)	3 (n = 24)	4 (n = 19)	5 (n = 19)	6 (n = 21)	7 (n = 17)	8 (n = 15)	9 (n = 20)	Total (N = 179)
Potential to influence legal scholarship	3.17 (1.71)	3.25 (1.71)	3.79 (2.32)	3.58 (2.19)	2.21 (1.27)	2.76 (1.61)	3.12 (2.09)	3.73 (1.87)	3.35 (1.84)	3.22 (1.92)
Persuasiveness of the arguments	2.79 (1.59)	3.65 (1.63)	4.00 (1.62)	3.11 (1.79)	3.00 (1.76)	2.81 (1.44)	2.59 (1.50)	3.67 (2.09)	4.10 (1.55)	3.31 (1.71)
Originality of the arguments	2.88 (2.07)	3.55 (2.09)	4.17 (2.08)	3.21 (1.87)	3.37 (1.77)	3.38 (2.22)	3.47 (1.97)	3.47 (2.00)	3.40 (2.16)	3.44 (2.02)
Readability of the article	3.79 (1.59)	3.60 (1.90)	3.42 (1.64)	4.11 (1.79)	3.63 (1.98)	3.38 (1.43)	3.35 (1.80)	4.07 (2.34)	3.25 (1.80)	3.61 (1.78)
Timeliness of the topic ^a	5.44 (1.47)	4.60 (1.90)	4.08 (2.15)	4.05 (1.96)	3.89 (1.94)	3.57 (2.04)	3.65 (2.00)	3.53 (2.20)	3.00 (1.78)	4.04 (2.01)
Potential to change substantive law	3.75 (1.67)	4.45 (1.93)	3.91 (2.23)	4.47 (1.95)	3.53 (2.01)	4.48 (2.27)	4.76 (1.86)	3.60 (2.03)	4.60 (2.14)	4.17 (2.02)
Notability of the author	5.63 (1.84)	4.40 (2.37)	4.54 (2.25)	5.05 (2.27)	4.63 (1.89)	4.67 (2.33)	5.18 (2.13)	4.80 (2.04)	5.20 (1.77)	4.91 (2.10)

Table 23 - Raw Means and Standard Deviations of Publication Criteria Rankings by Washington & Lee Law School Law Journal Rankings¹⁶³

Notability of the author and timeliness of the topic are clearly the least important factors for the top 25 journals. Timeliness exhibits a negative linear trend, becoming significantly less important at the top journals.

We also disaggregated the results by journal type, separating the general interest law reviews from the specialty journals. The results of that analysis for the constructs are displayed in Table 24.

¹⁶³ Participants were asked to rank the above characteristics that they consider most important in deciding to extend an offer of publication, with 1 = most important and 7 = least important. Standard deviations are in parentheses. We conducted a one-by-eight one-way between subjects analysis of variance (ANOVA) on each construct to determine whether there are significant differences among group means. We conducted a two-tailed Tukey post-hoc test to ascertain which means were significantly different at $p < .05$. Results correspond to the super-scripted letters next to the constructs.

^a Significant differences exist between 1 and 6; 1 and 9.

Construct	Law Reviews	Specialty Journals	Total
Interest Article Will Generate	1.81 (.58) (n = 91)	1.89 (.56) (n = 98)	1.85 (.57) (N = 189)
Author Prestige*	1.70 (.67) (n = 89)	1.92 (.61) (n = 97)	1.82 (.65) (N = 186)
Peer Support	1.12 (.81) (n = 91)	1.27 (.84) (n = 97)	1.20 (.81) (N = 188)
Practical Experience*	0.86 (.73) (n = 92)	1.34 (.73) (n = 98)	1.11 (.77) (N = 190)
Manner of Submission	0.97 (.68) (n = 92)	1.06 (.68) (n = 96)	1.02 (.68) (N = 188)
Personal Interest of Editor	0.99 (.73) (n = 92)	0.84 (.66) (n = 98)	0.92 (.70) (N = 190)
Familiarity with Author*	0.68 (.94) (n = 92)	1.09 (.92) (n = 98)	0.89 (.95) (N = 190)
Article Demand	0.61 (.91) (n = 90)	0.55 (.79) (n = 95)	0.58 (.85) (N = 185)
Author Established at Home Institution	0.48 (.71) (n = 93)	0.50 (.71) (n = 98)	0.49 (.71) (N = 191)
Graduate Degree	0.44 (.61) (n = 92)	0.54 (.69) (n = 98)	0.49 (.65) (N = 190)
Author Diversity	0.18 (.43) (n = 92)	0.09 (.33) (n = 97)	0.13 (.38) (N = 189)
Lack of Professional Credentials	-0.47 (.54) (n = 92)	-0.46 (.50) (n = 97)	-0.46 (.52) (N = 189)
Article Length	-0.65 (.67) (n = 92)	-0.53 (.57) (n = 98)	-0.59 (.62) (N = 190)
Lack of Originality of Manuscript	-0.86 (1.00) (n = 92)	-0.68 (1.00) (n = 98)	-0.77 (1.00) (N = 190)
Author Is Atypical*	-1.19 (.62) (n = 93)	-0.70 (.65) (n = 97)	-0.94 (.68) (N = 190)
Adequacy of Footnotes	-1.34 (.72) (n = 92)	-1.50 (.65) (n = 98)	-1.42 (.69) (N = 190)
Difficulty of Preparing Article for Publication	-1.42 (.68) (n = 92)	-1.44 (.63) (n = 98)	-1.43 (.66) (N = 190)

Table 24 - Raw Means and Standard Deviations of Constructs by Journal Type¹⁶⁴

There are four constructs that exhibit a significant difference

¹⁶⁴ Responses are on a scale of -3 to 3, where -3 = a strong negative influence, 0 = no influence, and 3 = a strong positive influence. Standard deviations are in parentheses. We conducted a one-by-two one-way between subjects analysis of variance (ANOVA) on each construct to determine whether there are significant differences between group means. The asterisk (*) indicates the difference was significant at $p < .05$.

when disambiguated this way. Specialty journals are more willing to publish work by atypical authors, particularly if they have significant practical experience. This is unsurprising, given that those journals tend to publish material focused on a narrower audience. Within a specialty journal's field, there may be significant scholarship from other disciplines or from practitioners specializing in that field that may be relevant. Though our survey doesn't address this, it may also be that there are specialties that are over-served, meaning that there are more publication slots in relevant specialty journals than there are good articles being written by law school faculty. This may force those journals to widen their sphere of potential authors in order to fill their issues with worthwhile pieces.

Specialty journals also rely more heavily on author prestige and familiarity with particular authors than do general interest publications. This may be, in part, an attempt to counterbalance their increased publication of atypical authors. In other words, specialty journals may return to a relatively narrow stable of atypical authors who are known to produce quality legal scholarship. It is also certainly true that a specialty journal, if it has a way to maintain this information over a period of years,¹⁶⁵ will have experience with many of the authors who publish in that journal's field of interest and will likely publish certain authors regularly. That information is, of course, valuable when Articles Editors try to predict what the editing process will hold for a particular submission. Given that some have suggested increased specialization of journals as a way of increasing editor competency and reducing their need to rely on proxies for article quality,¹⁶⁶ it is interesting that the specialty journals rely more heavily on author prestige than do general interest law reviews.

¹⁶⁵ Commentators have frequently noted the annual turnover of the editorial boards of nearly all law reviews. See, e.g., Lindgren, *Author's Manifesto*, *supra* note 1, at 534. While this has some advantages, see *id.* ("Editors of journals in some other fields become so entrenched that prejudices dominate selection for years."), it makes it difficult for the journals to develop any significant institutional memory.

¹⁶⁶ E.g., *id.* at 536. But see Gordon, *supra* note 1, at 547 ("I think that what the professoriat has to offer is the ability to cross subject-matter and doctrinal lines, and to utilize the interrelationships that exist in the real world. A drastic increase in the number of specialized journals might work against this possibility.").

Our final analysis was to examine differences in the ranking of publication criteria based on journal type. These results appear in Table 25.

Publication Criterion	Law Reviews (n = 86)	Specialty Journals (n = 94)	Total (N = 180)
Potential to influence legal scholarship	3.17 (1.95)	3.28 (1.90)	3.23 (1.92)
Persuasiveness of the arguments	3.13 (1.68)	3.46 (1.72)	3.30 (1.70)
Originality of the arguments	3.58 (2.16)	3.28 (1.90)	3.42 (2.02)
Readability of the article	3.51 (1.80)	3.69 (1.75)	3.61 (1.77)
Timeliness of the topic*	4.43 (1.91)	3.70 (2.05)	4.05 (2.01)
Potential to change substantive law	4.00 (1.91)	4.32 (2.10)	4.17 (2.02)
Notability of the author	5.02 (2.12)	4.82 (2.08)	4.92 (2.10)

Table 25 - Raw Means and Standard Deviations of Publication Criteria by Journal Type¹⁶⁷

The only statistically significant difference is that editors at specialty journals rank timeliness as more important than their colleagues at general interest publications.

V. CONCLUSIONS

While our hope is that this Survey will serve as a jumping off point for further empirical research in this area, there are a number of interesting observations that arise from our preliminary findings.

Our data confirm much of what Leibman and White found and what authors have widely assumed to be true. We found, for example, that Articles Editors like to publish articles from well-known and widely-respected authors. The obvious concern with this is that an author's prominence might put stars in the eyes of editors and prevent them from closely scrutinizing her work before making an offer of publication. Our data suggest, however, that rather than assuming that prominent authors have produced top-notch scholarship, Articles Editors consider an author's reputation

¹⁶⁷ Participants were asked to rank the above characteristics that they consider most important in deciding to extend an offer of publication, with 1 = most important and 7 = least important. Standard deviations are in parentheses. We conducted a one-by-eight one-way between subjects analysis of variance (ANOVA) on each construct to determine whether there are significant differences among group means. An asterisk (*) indicates that means were significantly different at $p < .05$.

because publishing work by respected authors is one way to increase a journal's prestige. It also suggests that journal prestige, rather than the publication of quality legal scholarship, may be the most significant driver of publication decisions.

Our survey demonstrates that Articles Editors are very conscious of the difficulties that an article may present in the editing process. An article that fails to conform to a journal's stylistic requirements is significantly less likely to receive an offer of publication.

Our data also revealed some factors that were far less influential than had previously been believed. The concern that editors' heads are turned by hot or trendy topics draws very little support from our findings. It also appears that, whatever law students in general may believe about the prudence of affirmative action programs in hiring or law school admission, author diversity plays almost no role in the article selection process except at the most prestigious journals.

It is our hope that these findings will lend some structure to the ongoing debate about how best to use students in the law review publication process. Now that we have some data on what criteria student editors actually apply, it is easier to consider whether they are sufficiently well-trained to make those evaluations and whether those are the proper criteria. On a more practical note, armed with these findings, authors will likely be better equipped to navigate the publication process and place their articles where they believe they ought to be published.

APPENDIX A

Respondents by Washington & Lee Tier

Tier 1 (1–25)

California Law Review

Cornell Law Review

Duke Law Journal

Fordham Law Review

Georgetown Law Journal

Harvard Civil Rights-Civil Liberties Law Review

Michigan Law Review

Minnesota Law Review

New York University Law Review

Northwestern University Law Review

Texas Law Review

UCLA Law Review
University of Pennsylvania Law Review
Vanderbilt Law Review
Yale Law Journal

Tier 2 (26–65)

Akron Law Review
American University Law Review
Boston College Law Review
Buffalo Law Review
Connecticut Law Review
Georgia Law Review
Harvard Journal of Law and Public Policy
Harvard Journal of Law & Technology
Harvard Journal on Legislation
Hastings Law Journal
Houston Law Review
Indiana Law Journal
Iowa Law Review
University of Illinois Law Review
Wake Forest Law Review

Tier 3 (66–130)

Albany Law Review
American University International Law Review
Arizona State Law Journal
Boston College Third World Law Journal
Brigham Young University Law Review
Cardozo Arts & Entertainment Law Journal
Columbia Human Rights Law Review
Columbia Journal of Transnational Law
Cornell International Law Journal
Fordham Intellectual Property, Media & Entertainment Law
Journal
Harvard Human Rights Journal
Indiana Law Review
Journal of Corporation Law
Kentucky Law Journal
Michigan Journal of Race & Law
San Diego Law Review
University of Cincinnati Law Review

University of Michigan Journal of Law Reform
Vanderbilt Journal of Transnational Law
William and Mary Journal of Women and the Law
Yale Journal of Law and Feminism

Tier 4 (131–195)

Annual Survey of American Law
Brooklyn Journal of International Law
Delaware Journal of Corporate Law
Drake Law Review
Fordham International Law Journal
Hastings Constitutional Law Quarterly
IDEA: The Journal of Law and Technology
Marquette Intellectual Property Law Review
Marquette Law Review
New York University Review of Law and Social Change
Review of Litigation
Rutgers Law Journal
Santa Clara Computer and High Technology Law Journal
Stanford Journal of International Law
Temple Law Review
Texas Journal of Women and the Law
UCLA Journal of International Law and Foreign Affairs
University of Kansas Law Review
University of San Francisco Law Review
William Mitchell Law Review

Tier 5 (196–260)

Brigham Young University Journal of Public Law
Georgetown International Environmental Law Review
Georgetown Journal of International Law
Hamline Journal of Public Law and Policy
Hastings International and Comparative Law Review
Idaho Law Review
Journal of Dispute Resolution
Journal of Intellectual Property Law
Journal of Labor and Employment Law
Journal of Transnational Law and Policy
Maine Law Review
Penn State Law Review
Regent University Law Review

Syracuse Law Review
Vermont Law Review
West Virginia Law Review
Willamette Law Review
Yale Journal of Law and the Humanities

Tier 6 (261–325)

Arkansas Law Review
Brandeis Law Journal
Colorado Journal of International Environmental Law and Policy
Columbia Journal of Asian Law
Elder Law Journal
Georgia State University Law Review
Golden Gate University Law Review
Harvard Latino Law Review
Hofstra Labor & Employment Law Journal
Nevada Law Journal
New England Journal on Criminal and Civil Confinement
New Mexico Law Review
Nova Law Review
Pace Law Review
Richmond Journal of Law & Technology
Saint Louis University Public Law Review
Seattle University Law Review
Southern Illinois University Law Journal
UCLA Entertainment Law Review
UCLA Pacific Basin Law Journal
UCLA Women's Law Journal
University of Dayton Law Review
University of Miami Inter-American Law Review
Vanderbilt Journal of Entertainment Law & Practice

Tier 7 (326–390)

Buffalo Intellectual Property Law Journal
Campbell Law Review
Columbia Journal of European Law
Journal of Environmental Law and Litigation
Journal of Law and Public Policy
New York Law School Law Review
North Dakota Law Review
Oklahoma Law Review

Penn State Environmental Law Review
San Diego International Law Journal
St. Thomas Law Review
Temple Political and Civil Rights Law Review
Thomas M. Cooley Law Review
Transnational Law & Contemporary Problems
University of Memphis Law Review
Wayne Law Review
Western New England Law Review
Willamette Journal of International Law and Dispute Resolution

Tier 8 (391–455)

American Journal of Trial Advocacy
Animal Law
Annual Review of Banking & Financial Law
Asian Pacific American Law Journal
Cardozo Journal of Conflict Resolution
Connecticut Public Interest Law Journal
DePaul Business & Commercial Law Journal
Environs: Environmental Law and Policy Journal
Florida Journal of International Law
Georgetown Journal of Law and Public Policy
Indiana Health Law Review
Journal of Law and Health
Roger Williams University Law Review
Southwestern Journal of Law and Trade in the Americas
University of Baltimore Law Review

Tier 9 (456–540 and unranked)

Art and Museum Law Journal
Connecticut Insurance Law Journal
Houston Journal of Health Law and Policy
Intellectual Property Law Journal
Journal of Juvenile Law and Policy
Law and Business Review of the Americas
Missouri Environmental Law and Policy Review
Oregon Review of International Law
Pacific Rim Law & Policy Journal
Pierce Law Review
Regent Journal of International Law
Rutgers Journal of Law and Religion

Rutgers Journal of Law and Urban Policy
Seton Hall Circuit Review
Tennessee Journal of Law and Policy
The Transnational Lawyer
Transactions: The Tennessee Journal of Business Law

APPENDIX B

Text of Survey Instrument

For the following, indicate the degree to which the stated fact, if true and known to you, would influence your decision to make an offer of publication:

Scale: Strong negative influence; negative influence; minor negative influence; no influence at all; weak positive influence; positive influence; strong positive influence.

SECTION I: AUTHOR

1. The author is employed at a highly ranked law school.
2. The author is employed at a poorly ranked law school.
3. The author received her legal degree from a highly ranked law school.
4. The author received her legal degree from a poorly ranked law school.
5. The author has a legal graduate degree (LLM/SJD).
6. The author has a graduate degree in a non-legal field.
7. The author participated on law review while in law school.
8. The author received academic honors as a law student.
9. The author clerked for a judge after graduating from law school.
10. The author does not have a legal degree.
11. The author is a student.
12. The author is a practitioner.
13. The author is a judge.
14. The author teaches at an institution other than a law school.
15. The author teaches outside the United States.
16. The author is a full-time professor.
17. The author is tenured.
18. The author holds an endowed professorship.
19. The author has a large number of previous publications.

20. The author has no previous publications.
21. The author has published frequently in highly ranked law reviews.
22. The author has never published in a highly ranked law review.
23. The author has not published an article for several years.
24. The author has published with your journal before.
25. The author has practice experience related to the manuscript submitted.
26. The author has teaching experience related to the manuscript submitted.
27. The author is highly influential in her respective field.
28. The author is female.
29. The author is a member of a racial minority.
30. The author has a current offer of publication from another journal.
31. The author has a current offer of publication from a highly ranked law review.
32. A draft version of the article has been frequently downloaded from SSRN.
33. The author is a professor at your law school.

SECTION II: ACCOMPANYING DOCUMENTS AND ARTICLE FORMAT:

1. The article is accompanied by a cover letter.
2. The author's submission includes an abstract.
3. The cover letter is personally addressed to your journal.
4. The article is accompanied by the author's curriculum vita or resume.
5. The article has been reviewed by the author's peers.
6. The article has been reviewed by the author's peers at your university.
7. You have received an unsolicited email from one of the author's peers supporting the article.
8. The author tells you that she is only submitting the article to a limited number of journals.

SECTION III: TOPIC OF ARTICLE:

1. You have taken a class in the subject matter the author addresses.
2. The topic interests you personally.

3. The topic would interest the general legal public.
4. The topic has been discussed in the news in the past year.
5. The topic is one about which many articles are currently being written.
6. The article fills a gap in the literature.
7. The article provides enough background explanation so that one not familiar with the particular field can understand the relevant issues.
8. The topic is one you consider to be controversial.
9. Articles on similar topics have not been published in your journal recently.
10. Your journal published a major article on a similar topic last year.

SECTION IV: EDITING:

1. The article contains several missing footnotes.
2. Parentheticals are generally missing from the footnotes.
3. Many citations do not include the page numbers of the sources the author cites (pincites or jumpcites).
4. The citations do not conform to the Bluebook.
5. The footnotes contain sources that are difficult to locate.
6. The article contains numerous typographical and grammatical errors.
7. The article is more than 35,000 words.
8. The article is less than 20,000 words.

SECTION V: ARTICLE LENGTH:

Which of the following best describes your journal's policy regarding article length:

- We have no length restrictions
- We have a preference for articles with fewer than _____ words (including footnotes)
- We do not publish articles with more than _____ words except in special circumstances
- We do not consider for publication articles with more than _____ words

SECTION VI: PUBLICATION CRITERIA:

Rank order the following characteristics that you consider most

important in deciding to extend an offer of publication, with 1 = most important and 7 = least important. Please use each number only one time.

- Originality of the arguments
- Persuasiveness of the arguments
- Potential to influence legal scholarship
- Potential to change substantive law (through influencing legislators or judges)
- Readability of the article
- Notability of the author
- Timeliness of the topic

SECTION VII: SELECTION PROCESS

1. I can reject a submission without consulting my fellow editors(Yes/No)
2. I can make an offer of publication without consulting my fellow editors(Yes/No)
3. Before an offer of publication is made, how many editors must read the article?
4. How many of those must agree for an offer to be made?
5. Approximately how many submissions do you expect to receive this year?
6. How frequently do you ask a faculty member to read the article before extending an offer of publication (always/occasionally/never)?
7. How frequently do you conduct a preemption check using Lexis or Westlaw(always/occasionally/never)?
8. Does submitting an article via the methods(s) specified on your website make it more likely that you will select the article than if the article is submitted via a submission service such as ExpressO? Please explain.
9. Does submitting the same article in two successive submission cycles affect the article's chances of selection the second time around? Please explain.
10. How soon during the year does your volume tend to fill up?
11. Approximately how many articles will your journal publish this year?

