

THE VALUE OF LEGAL WRITING, LAW REVIEW, AND PUBLICATION

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ABSTRACT

While highly developed communication skills contribute substantially to success in other professions and in our personal relationships, legal research and writing is likely the foundation for a successful career in the law. Law review articles are cited by judges in their opinions, by Congress and regulatory authorities in the making of law, and regulations and policy. Any great legal orator, litigator, or Supreme Court Justice will need the benefit of quickly recognizing legally significant fact patterns, the ability to conduct research regarding statutory and case law, and the ability to make compelling, cogent legal arguments. The experience gained from legal research and writing sharpens all these tools.

I'm hopeful this Article may become a required-reading as one of the first assignments for all incoming first-year law students, or even before any classes begin. Presented first is a brief examination of why lawyers do not write well. Second, is a description of the law review: its value; a brief history of the American law journal experience; the editor selection process; who does what on law reviews; and the number and type of law journals. Thoughts about the writing process and important considerations regarding law review writing in particular are then presented. Reflections by recent law journal editors about their law review experiences are offered, along with suggestions about how authors may improve their manuscripts. Following that, the who, what, where and when of the publication process is covered. Comments about the Social Sciences Research Network (SSRN) are presented, then followed by a brief discussion about the currency value of citations. I believe this Article starts a

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fresh conversation about the importance and value of legal writing, law review, and law journal publication.

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I. OVERVIEW

While there appears to be no question that “good legal research and writing skills are vital to the practice of law . . . [s]urprisingly, there [is] widespread agreement that new lawyers do not write well.”¹ Indeed, “[w]riting skills do not get the recognition, priority, and resources they deserve even though they permeate the daily life of lawyers in every facet of the legal profession.”²

This Article reflects on the value of legal scholarship, its usefulness, the importance of legal research and writing, and the law review or law journal publication process in particular.³ It is my hope that this Article may become a required reading for all incoming first-year law students. This is not another treatment of “how to” improve your grammar, punctuation, or argument organization. Many excellent texts and articles about legal research and writing already exist.⁴ This Article starts a fresh conversation about the importance and value of legal writing, law review, and law journal publication. Presented first is a brief examination of why lawyers do not write well.⁵ Second is a description of the law review experience: its value; a brief history of the American law journal; the editor selection process; who does what on law reviews;⁶ and the number and

1. Susan Hanley Kosse & David T. Ritchie, *How Judges, Practitioners, and Legal Writing Teachers Assess the Writing Skills of New Law Graduates: A Comparative Study*, 53 J. LEG. EDUC. 80, 80 (2003); see generally Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603 (2007).

2. Kathleen Elliott Vinson, *Improving Legal Writing: A Life-Long Learning Process and Continuing Professional Challenge*, 21 TOURO L. REV. 507, 517 (2005).

3. I use the terms law review, legal articles (includes “law” and “journals”), and law journal synonymously throughout this Article. See generally Fred R. Shapiro & Michelle Pearse, *The Most-Cited Law Review Articles of All Time*, 110 MICH. L. REV. 1483 (2012).

4. See generally JAMES A. GARDNER ET AL., LEGAL ARGUMENT: THE STRUCTURE AND LANGUAGE OF EFFECTIVE ADVOCACY (LEXIS-NEXIS, 2nd ed. 2007); Jon D. Hanson, *Ideology, Psychology, and Law* (Harvard Law Sch. Pub. Law & Legal Theory, Working Paper Series No. 12-18, 2012); Almas Khan, *A Compendium of Legal Writing Sources*, 50 WASHBURN L.J. 395 (2011); Almas Khan, *Designing and Teaching the Legal Writing Curriculum: A Selected Bibliography*, GEO. U. L. CTR.—CTR. FOR LEGAL ENG. 1-24 (2012) (providing an excellent bibliography); Gerald Lebovits, *Cracking the Code to Writing Legal Arguments: From IRAC to CRARC to Combinations in Between*, 82 N.Y. ST. B. ASS’N J. (2010); Judith B. Tracy, *I See and I Remember; I Do and Understand: Teaching Fundamental Structure in Legal Writing Through the Use of Samples*, 21 TOURO L. REV. 297 (2005); Lawrence J. Trautman et. al, *IRAC! IRAC! IRAC!: How To Brief A Supreme Court Opinion* (Sept. 14 2017) (pre-publication draft); Sarah Valentine, *Legal Research as a Fundamental Skill: A Lifeboat for Students and Law Schools*, 39 U. BALT. L. REV. 173 (2010); Laurel Currie Oates & Anne Enquist, THE LEGAL WRITING HANDBOOK: ANALYSIS, RESEARCH, AND WRITING (Wolters Kluwer L. & Bus. 5th ed. 2010).

5. See *infra* Part II.

6. See *infra* Part III.

type of law journals.⁷ Thoughts about the writing process and important considerations regarding law review writing is then presented.⁸ Reflections by recent law journal editors about their law review experience is offered next, along with suggestions about how authors may improve their manuscripts.⁹ Following that, the who, what, where, and when of the publication process is covered.¹⁰ Comments about the Social Sciences Research Network (SSRN) and Legal Scholarship Network (LSN) follow.¹¹ Finally, I conclude that despite the long hours and loss of sleep, law students benefit greatly from participation in law review.¹²

II. THE VALUE OF LEGAL RESEARCH AND WRITING

While highly developed communication skills contribute substantially to success in other professions and in our personal relationships, legal research and writing is likely the foundation for a successful career in the law. Undoubtedly, “lawyers speak and write for a living.”¹³ Judges cite law review articles in their opinions, and law review articles are considered by Congress and regulatory authorities in the making of law, regulations and policy.¹⁴ Any great legal orator, litigator, or Supreme Court Justice will need the benefit of quickly recognizing legally significant fact patterns, the ability to conduct research regarding statutory and case law, and the ability to make compelling, cogent legal arguments.¹⁵ U.S.

7. See *infra* Part IV.

8. See *infra* Part V.

9. See *infra* Part VI.

10. See *infra* Part VIII.

11. See *infra* Part IX.

12. See *infra* Part XI.

13. Joseph Kimble, *The Best Test of a New Lawyer's Writing*, 89 MICH. BAR J. 40, 40 (2010).

14. See Luis Aguilar, Commissioner, U.S. Sec. & Exch. Comm'n, Remarks at the New York Stock Exchange: Cyber Risks and Boardroom Conference (June 10, 2014) (citing Lawrence J. Trautman & Kara Altenbaumer-Price, *The Board's Responsibility for Information Technology Governance*, 28 J. MARSHALL J. COMPUTER & INFO. L. 313 (2011)); see generally Michelle M. Harner & Jason A. Cantone, *Is Legal Scholarship Out of Touch? An Empirical Analysis of the Use of Scholarship in Business Law Cases*, 19 U. MIAMI BUS. L. REV. 1 (2011) (discussing how and why judges invoke legal scholarship in business law cases and how specialty journals are cited by judges with increased frequency); Kristen K. Robbins-Tiscione, *The Inside Scoop: What Federal Judges Really Think About the Way Lawyers Write*, 8 J. LEGAL WRITING INST. 257 (2008); Derek Simpson & Lee Petherbridge, *An Empirical Study of the Use of Legal Scholarship in Supreme Court Trademark Jurisprudence*, 35 CARDOZO L. REV. 931 (2014); Lawrence J. Trautman, *Cybersecurity: What About U.S. Policy?*, 2015 U. ILL. J.L., TECH. & POL'Y 341 (2015); Lawrence J. Trautman, *Congressional Cybersecurity Oversight: Who's Who & How It Works*, 5 J.L. & CYBER WARFARE 147 (2016), available at <http://ssrn.com/abstract=2638448> [<https://perma.cc/VD75-JHTB>]; Ruth C. Vance, *Judicial Opinion Writing: An Annotated Bibliography*, 17 J. LEGAL WRITING INST. 197 (2011); James Boyd White, *Legal Knowledge*, 115 HARV. L. REV. 1396 (2002).

15. See sources cited *supra* note 14.

Circuit Judge Wade McCree, Jr. says, “[a]ll of us have had seemingly brilliant ideas that turned out to be much less so when we attempted to put them on paper Every conscientious judge has struggled, and finally changed his mind, when confronted with the ‘opinion that won’t write.’”¹⁶ The experience gained from legal research and writing sharpens all these tools.¹⁷ Professor Sandra K. Miller contends:

[A]cademic legal scholars serve a critical function. Typically, we have no financial interest in the outcome of the legal issues we address. Whether the matter concerns minority investor rights or contractual remedies, we search for the alternative that provides justice. We struggle to offer recommendations that achieve fairness, consistency, coherence, and notice. And I truly believe that our uncensored and independent criticism of the law is central to the functioning of a democracy.¹⁸

Professor Lucien Dhooge observes that a “main purpose of legal scholarship is to influence the law.”¹⁹ In addition, “legal scholars write to ‘improve the quality of life by persuading judges and legislators and government executives to change the law.’”²⁰ Professor Douglas Abrams writes that: “the discipline of committing arguments to paper can focus thinking more clearly than mere contemplation or oral discussion can. As author John Updike put it, writing ‘educates the writer as it goes along.’ Indeed, said California Chief Justice Roger J. Traynor, writing is ‘thinking at its hardest.’”²¹

Professor Yale Kamisar observes that George Orwell’s motivation for writing—the factor that required him to write “had often been a ‘sense of injustice’ and that for much of his career he started to write a book ‘because there is some lie that I want to expose’ or ‘some fact to which I want to draw attention.’”²² Professor Miller reminds us of how our society suffers from the failure of legal regulation with examples of: “the tainted toothpaste, the lead in

16. Douglas E. Abrams, *But “Will It Write”? How Writing Sharpens Decision-Making*, 3 PRECEDENT 61, 61 (2009).

17. *See id.*

18. Sandy Miller, *Editor’s Corner: Why Legal Research and Writing?*, 45 AM. BUS. L. J. V, v-vi (2008).

19. Lucien J. Dhooge, *Toward a Global and Digital Age: The American Business Law Journal*, 2000-2010, 50 AM. BUS. L. J. 43, 48 (2013) (citing Susan L. Martin, *Editor’s Corner*, 37 AM. BUS. L. J. V, v (2000)).

20. *Id.*

21. Abrams, *supra* note 16, at 61 (citing John Updike Biography and List of Works, and Roger J. Traynor, *Some Open Questions on the Work of State Appellate Courts*, 24 U. CHI. L. REV. 211, 218 (1957)); *see generally* Shawn G. Nevers, *Thorough Academic Legal Research Will Improve Your Papers*, 38 STUDENT LAW. 8 (2009).

22. Yale Kamisar, *Why I Write (and Why I Think Law Professors Generally Should Write)*, 41 SAN DIEGO L. REV. 1747, 1751 (2004) (citing George Orwell, *Why I Write*, in THE ORWELL READER 390-95 (1956)).

children's toys, the bridges that collapse as contractors skimp on building materials, the building code violations that erupt into infernos, the minority shareholder who unwittingly sells to the majority for a modest price on the eve of a clandestine merger paying billions."²³ Compelling legal topics abound, as Professor Stephanie M. Greene helps to put the importance of legal scholarship into perspective when she observes that:

After witnessing the near collapse of the financial services industry, we are no longer so confident about our legal and regulatory system. Perhaps the silver lining to our dark clouds is our renewed commitment to getting it right—improving our securities laws, redefining the balance between state and federal environmental regulations, and finding a way to protect ourselves from terrorism while still upholding fundamental human rights that have been at the foundation of American society.²⁴

It is hard to comprehend that, only during the past twenty-five to thirty years or so “law schools have begun to see the importance of rigorous legal writing courses.”²⁵ Much of the pressure on law schools to improve their graduate’s legal writing skills comes from the American Bar Association that states, “[l]egal writing is at the heart of law practice, so it is especially vital that legal-writing skills be developed and nurtured through carefully supervised instruction.”²⁶ Professor Jack Sammons eloquently states that lawyers have a “moral obligation to write well.”²⁷ Professors Megan E. Boyd and Adam Lamparello observes:

Perhaps the most important skill you will learn and develop throughout your career is the ability to write effectively. In the “real world,” writing matters because, whether it is a motion to dismiss for failure to state a claim, a motion for summary judgment, a trial or appellate brief, or an arbitration statement, writing is an important vehicle by which you advocate for your client. Consequently, your ability to write persuasively and convince a court that your position is justified by the facts, consistent with the law, and based upon principles of fairness is critical.²⁸

The work product of published law reviews makes a substantial contribution to the body of legal knowledge and maturing corpus of jurisprudence.²⁹ Frank

23. Sandra K. Miller, *Editor's Corner: Are Law Reviews Peer-Reviewed?*, 45 AM. BUS. L. J. v, v (2008).

24. Stephanie M. Greene, *Editor's Corner: Improving Internal Governance in Unincorporated Business Entities*, 46 AM. BUS. L.J. v, v (2009).

25. Kosse & ButleRitchie, *supra* note 1, at 93.

26. Kimble, *supra* note 13, at 40 (citing Council of the Section of Legal Education and Admissions to the Bar, *Long-Range Planning for Legal Education in the United States*, 29 (1987)).

27. See generally Jack L. Sammons et. al, *The Lawyer's Moral Obligation to Write Well*, THE COMPLETE LAW. 1-3 (Feb. 2009).

28. Megan E. Boyd & Adam Lamparello, *Legal Writing for the Real World: A Practical Guide to Success*, 46 J. MARSHALL L. REV. 487, 487 (2013).

29. Marilyn Odendahl, *Former editors say Law Review experience invaluable*, IND. LAW.

Sullivan, Jr. served as a Justice on the Indiana Supreme Court for nineteen years, and is now Professor at the Indiana University School of Law.³⁰ During his service on the Indiana Supreme Court, Justice Sullivan “regularly read the scholarly journals and required his clerks to do a survey of law review literature wherever he was researching and drafting an opinion. The articles were helpful in gaining a better understanding of a provision in a statute or the Constitution.”³¹ Given an avid appetite for relevant legal scholarship, are colleges producing an adequate supply of skilled writers?

A. Why Don't Lawyers Write Well?

Many are concerned about the lack of strong research and writing skills in the legal profession.³² For example, Amy Vorenberg and Margaret Sova McCabe state that “[a]ttorneys and judges complain of newer lawyers’ seeming unfamiliarity with legal writing, grammar and concise style.”³³ Wayne Schiess teaches legal writing at the University of Texas School of Law and contends that “nine complex and connected factors” account for why “significant improvement in legal writing will be difficult if not impossible to achieve.”³⁴ These factors are:

- [1.] The Writing High School and College Students Do is Usually Self-expression or Knowledge-Telling, Not Analysis[;]
- [2.] Legal Writing Courses Must Cover Legal Research, the Conventions of Legal English, Objective Written Legal Analysis, and Persuasive Written Legal Analysis; This Leaves Little Time to Focus on Fine Points and Writing Style[;]
- [3.] Law Schools Do Not Adequately Train Students in Legal Drafting[;]
- [4.] Lawyers Imbibe Lots of Poor Writing from Judicial Opinions and Other Required Reading[;]
- [5.] Lawyers Rely on Form Documents That Are Poorly Written[;]
- [6.] In Writing Legal Analysis, Many Digest the Authorities Superficially; In Drafting Agreements, Many Understand the Transactions Superficially[;]
- [7.] The Time Pressure of Law Practice Doesn't Allow Enough Revising and Editing to Produce a Quality Product[;]

(Apr. 9, 2014), <http://www.theindianalawyer.com/former-editors-say-law-review-experience-invaluable/PARAMS/article/33841> [perma.cc/L3CW-GLSY].

30. *Meet our Faculty & Staff: Frank Sullivan, Jr.*, IND. U. ROBERT H. MCKINNEY SCH. OF LAW, <https://mckinneylaw.iu.edu/faculty-staff/profile.cfm?Id=325> [perma.cc/L5DQ-LE2J] (last visited Jan. 4, 2018).

31. Odendahl, *supra* note 29.

32. See Amy Vorenberg & Margaret Sova McCabe, *Practice Writing: Responding to the Needs of the Bench and Bar in First Year Writing Programs*, 2 PHX. L. REV. 1, 2 (2009).

33. *Id.*

34. See Wayne Schiess, *Legal Writing Is Not What It Should Be*, 37 S.U. L. REV. 1, 1 (2009).

[8.] Some Lawyers Have a Misguided Sense of Professionalism, Leading to a Formal Writing Style that Ignores Audience Needs[; and]
[9.] Many Lawyers are Complacent, Believing Their Writing is Above Average or Better[.]³⁵

Often, it is possible for “extremely bright and capable people to graduate from law school without ever having had to produce a substantial, well-written, and extensively researched paper.”³⁶ None of us are born writing properly; and, somewhat like the skills of a great surgeon, you can never be too good at your craft. Professor Ian Gallacher observes “[r]esearch conducted among those who review law student and junior lawyer writing, however, suggests that the students are wrong to assume that their writing skills are adequate to cope with the demands placed on them in law school and in practice.”³⁷ Susan Hanley Kosse and David T. ButleRitchie provide the following list of why lawyers don’t write well, presented here as **Exhibit One**.

Exhibit One

Reasons Why Lawyers Don’t Write Well

1. [B]ecause they did not take a legal writing class in law school.
2. [B]ecause law schools devalue legal writing classes.
3. [B]ecause they do not get enough practice in law school.
4. [B]ecause poor writing promotes their economic interests.
5. [B]ecause of inertia.
6. [B]ecause of deficiencies in their early education.
7. [B]ecause the profession offers very little continuing education on improving writing skills.
8. [B]ecause of time and financial constraints.
9. [B]ecause they do not know they write badly.
10. [B]ecause of the Generation X factor (in the case of new lawyers).
11. [B]ecause of technology.
12. [B]ecause they do not write regularly.³⁸

B. Law School Writing Experience

A survey of 740 students conducted by Professor Ian Gallacher at seven different law schools gathered and presents self-evaluations by incoming law students of their reading, writing, and research habits, and allows us to better

35. *Id.* at 2-22.

36. Kosse & Ritchie, *supra* note 1, at 94.

37. Ian Gallacher, ‘Who are Those Guys?’ *The Results of a Survey Studying the Information Literacy of Incoming Law Students*, 44 CAL. W. L. REV. 151, 186 (2007).

38. Kosse & Ritchie, *supra* note 1, at 93.

understand the nature and dimensions of the problems facing law students during their first year in law school.³⁹ Gallacher's results indicate that "incoming law students read substantially more than the national average... will experience some reading problems in their first year . . . overestimate their writing skills . . . their research skills; and that law schools must take student writing and research deficits into account when developing skills criteria."⁴⁰ Professor Gallacher observes:

Students must learn how to construct documents that are appropriate to their purpose and to consider how best to achieve that purpose, and they learn how to synthesize facts and law to predict, or advocate for, a particular outcome. Students also learn crucial lessons about professional empathy—the need to consider how the reader of a document is thinking in order to provide the reader with the information necessary to consider an issue at the moment the reader needs that information—and professional behavior, most notably drafting genre-appropriate documents that are submitted according to strict deadlines. In short, legal research and writing programs help students begin the process of discovering their professional identities as lawyers.⁴¹

So what is the path to better student writing preparation? The typical first year legal writing experience consists of "foundational topics, including an introduction to law and legal writing, case reading and briefing, statutory analysis, and legal analysis, to the fundamentals of legal research, legal citation, and legal writing style."⁴² Legal writing is only taught during the first year at most law schools, and "[t]ypically, students learn predictive writing in the fall. The semester usually ends with students writing a long memo analyzing how a court would likely resolve a legal problem. The spring is devoted to teaching students to write and argue persuasively."⁴³ Professor Anne Enquist reports that "working harder and working smarter [are] the keys to success in law school," and with legal research and writing.⁴⁴ Professor Harold Southerland observes:

39. Gallacher, *supra* note 37, at 1.

40. *Id.* at 3.

41. Ian Gallacher, *Enigma: A Variation on the Theme of Legal Writing's Place in Contemporary Legal Education*, 1 J. EXPERIENTIAL LEARNING 60, 68-69 (2015).

42. Almas Khan, *supra* note 4, at 2; see generally Sandra Meredith, *First Year Law Students, Legal Research Skills and Electronic Resources* (Univ. of Oxford Faculty of Law Studies Research Paper Series, Working Paper No. 42, 2006).

43. Vorenberg & McCabe, *supra* note 32, at 6; see generally Susan L. DeJarnatt & Mark C. Rahdert, *Preparing for Globalized Law Practice: The Need to Include International and Comparative Law in the Legal Writing Curriculum*, 17 LEGAL WRITING 3 (2011) (given the increased importance of international law, argues for including a comparative and international perspective in the legal research and writing curriculum).

44. See Anne M. Enquist, *Unlocking the Secrets of Highly Successful Legal Writing Students*, 82 ST. JOHN'S L. REV. 609, 669 (2008).

The second and third years of law school comprise almost exclusively substantive courses, and the writing most students are actually required to do consists largely of note-taking. What was learned in legal writing is soon forgotten. It should come as no surprise that when the occasion to write does arise—in a clerking job, for law journals, moot court, or the occasional paper course—the results are often disappointing They seldom had occasion to practice their writing, either in secondary school or in college, such ancient rituals as the daily theme or the weekly essay having fallen by the wayside because most teachers, especially those in secondary schools, don't have the time to read, correct, and comment on dozens of essays, requiring rewrites where necessary.⁴⁵

Professors Boyd and Lamparello report that “[m]any young attorneys also express concern that their law school experience did not adequately prepare them to be good legal writers.”⁴⁶ Professor Kathleen Elliott Vinson explains:

Good legal writing follows sophisticated legal thinking; thus, expecting law graduates to perfect legal writing while they are novices in the legal field is not realistic. Therefore, their poor writing should not necessarily be attributed to law school Efforts to improve legal writing should not end after graduation from law school. As lawyers transition into practice and their legal analysis skills become more sophisticated throughout their career, lawyers need to make a professional, educational, and intellectual commitment to continue improving their writing skills beyond the classroom.⁴⁷

Vorenberg and McCabe write that “the last twenty-five years have seen few substantive changes in legal writing curricula. The upshot is a disconnect between what students learn in legal writing classes and what professional legal writing skills they need once they graduate.”⁴⁸ Experience has taught professors Miriam E. Felsenburg and Laura P. Graham that “it is of the utmost importance that legal writing professors design ‘a better beginning’ for their first-year students . . . giving students a fuller, clearer orientation to the study of law in general[; t]his orientation should emphasize the process of legal analysis as the foundation for all other law school learning.”⁴⁹ Felsenburg and Graham:

45. H.P. Southerland, *English as a Second Language—or Why Lawyers Can't Write*, 18 ST. THOMAS L. REV. 53, 54 (2005).

46. Boyd & Lamparello, *supra* note 28, at 487.

47. Vinson, *supra* note 2, at 511.

48. Vorenberg & McCabe, *supra* note 32, at 3.

49. See Miriam E. Felsenburg & Laura P. Graham, *A Better Beginning: Why and How to Help Novice Legal Writers Build a Solid Foundation by Shifting Their Focus From Product to Process*, 24 REGENT U. L. REV. 83, 86 (2011); see generally Kristen K. Robbins-Tiscione, *A Call to Combine Rhetorical Theory and Practice in the Legal Writing Classroom*, 50 WASHBURN L.J. 319 (2011); Sheila Rodriguez, *Using Feedback Theory to Help Novice Legal Writers Develop Expertise*, 86 U. DET. MERCY L. REV. 207 (2009); Carrie W. Teitcher, *Legal Writing Beyond*

[S]uggest[] three specific ways that legal writing professors can design their courses and teaching practices to facilitate students' receptivity to this process: (1) setting clear, realistic goals and objectives for the first semester of legal writing [and communicating them transparently]; (2) deliberately encouraging students to be more active metacognitive learners; and (3) providing more opportunities for students to pre-write and to 'write to learn' before asking them to 'write to communicate' to a legal reader.⁵⁰

"When carefully prepared," observes Professor Gallacher, "with assignments that are as rich, nuanced, and realistic as possible, legal writing programs can offer all students a consistent and valuable experience that helps them to begin the process of developing a professional identity along with the development of the core lawyering skills."⁵¹ In summary, "improving legal writing is a life-long learning process and a continuing professional challenge . . . [l]awyers must pay more than lip service to produce better legal writing. After all, 'perhaps no aspect of legal life is more important, yet more widely misunderstood, than legal writing.'"⁵²

C. The Writing Sample

If you read and retain nothing else from this Article—and you are currently a law student, or aspire to be a law student, remember this—you will need at least one, or possibly more samples of writing to get a job.⁵³ Therefore, a significant component of your law school strategy should include successfully writing one or more articles appropriate for publication. Professor Herbert Ramy observes that "[m]ost employers require that prospective employees submit a writing sample. Even if an employer does not request one during the initial résumé gathering stage, one will be requested should you be called in for an interview."⁵⁴ Professor Rick Bales says that, "[w]riting a scholarly article on a legal topic is a wonderful way to become intimately familiar with a particular area of the law. It impresses clients . . . [i]t enhances the writer's reputation among other lawyers, and may lead to referrals."⁵⁵ Professor Mark Wojcik states, "imagine the impact . . . upon a potential employer if you . . . submit a copy of an article you published

Memos and Briefs: An Annotated Bibliography, 5 J. ASS'N LEGAL WRITING DIRECTORS 133 (2008); Jennifer Murphy Romig, *The Legal Writer's Checklist Manifesto*, 8 LEGAL COMM. & RHETORIC 93 (2011).

50. Felsenburg & Graham, *supra* note 49, at 86.

51. Gallacher, *supra* note 41, at 77.

52. Vinson, *supra* note 2, at 513-14.

53. Herbert N. Ramy, *Creating a Writing Sample 1* (Suffolk Univ. Law Sch. Research Paper No. 09-25, Apr. 23, 2009).

54. *See id.* at 1.

55. Rick Bales, *Writing for Publication*, 66 BENCH & BAR KY. 34, 34 (2002).

in a bar association newsletter or a scholarly journal.”⁵⁶ Wojcik contends that publications impress employers because:

*First, getting published shows that you can write Second, getting published shows that you have a genuine interest in a specific area of the law Third, if you publish a couple times on a specific topic, you’ll start to be viewed as an expert Fourth, getting published shows that you know how to get clients.*⁵⁷

Professor Ramy writes, “[a]bove all else, employers want to read a writing sample that demonstrates strong analytical skills For example, if the employer engages in a great deal of intellectual property work, a piece on the Digital Millennium Copyright Act may be an appropriate choice for a writing sample.”⁵⁸

III. THE LAW REVIEW / JOURNAL EXPERIENCE

Several modern American law reviews claim title to being the earliest to be published. Founded in 1852 under the name the *American Law Register*, *The University of Pennsylvania Law Review* claims the title of the oldest law review in the United States.⁵⁹ However, German scholar Reinhard Zimmermann gives credit to Harvard Law School, as follows:

Eight students (among them John Henry Wigmore) established the *Harvard Law Review* on the basis of an informal student discussion group in 1887. Their initial goals were quite modest: ‘Our object, primarily, is to set forth the work done in the school with which we are connected,’ they wrote, ‘to furnish news of interest to those who have studied law in Cambridge, and to give, if possible, to all who are interested in the subject of legal education, some idea of what is done under the Harvard system of instruction.’ But they also offered, especially to their own professors, a suitable organ of publication, and the *Harvard Law Review* soon became an integral part of the ‘Harvard system’ This led to a scientificization of legal education which was bound to induce the creation of scholarly periodicals modeled on the *Harvard Law Review*: first at Yale (1891), then at Pennsylvania (1896), Columbia (1901), Michigan (1902), and Northwestern University in Chicago (1906).⁶⁰

56. Mark E. Wojcik, *Get Published*, 37 *STUDENT LAW*. 24, 24 (2008).

57. *Id.* at 24-26 (emphasis in original).

58. Ramy, *supra* note 53, at 1.

59. *Law Review*, UNIV. PENN. LAW, <https://www.law.upenn.edu/journals/lawreview/> [perma.cc/9P4G-3CEH] (last visited Apr. 1, 2018); *but see generally* Ross E. Davies, *The Original Law Journals*, 12 *GREEN BAG* 2d 187 (2009) (reporting that thirty legal periodicals started before 1850 and twenty-four failed before that date; five of the remaining six failed before 1866).

60. Reinhard Zimmermann, *Law Reviews: A Foray Through a Strange World*, 47 *EMORY L.J.* 659, 670 (1998).

The Georgetown Law Journal “employs approximately 100 law students—about 50 in their graduating year who serve in editorial positions and 50 in intermediate years who serve as staff. The staff collect and check sources, performing technical edits and checking for typographical errors.”⁶¹ Administration of daily Journal activities is conducted by upper-class students. Professor Christian Day says:

Law reviews serve a number of useful purposes: they provide outlets for academic thought for faculty; they provide an avenue for the development of the law; they affect legislation and judging; they serve as reference material; they permit the profession and academy to question orthodoxy; they provide student training; they serve as a vital credential for students and law faculty; they are the heritage of legal education and modern legal thought⁶³

A. *Why Law Review?*

Despite long hours and loss of sleep, law students benefit greatly from participation in law review. I reached that conclusion after investing hundreds of hours in research for this Article and after discussing the topic with many judges, attorneys and those who formerly served on law review. Law professor Josephine Potuto believes that serving on law review provides “experience in managing an enterprise and acting in concert with peers. They introduce students to a wide array of legal subjects whose exploration goes deeper into discrete questions than [students encounter in] class discussion.”⁶⁴ Scott J. Atlas, former Editor-in-Chief of the *Texas Law Review* asks the basic question regarding his law review experience—“why did we do it?”⁶⁵ Moreover:

Why would so many law students, most with excellent academic records and attractive work prospects, agree to spend two years of late nights and long weekends eating cold pizza and drinking tepid coffee, straining to find every last case on an obscure point of federal common law, or debating endlessly the relative merits of whether to include a comma before the “and” among items in a series? Why would we forsake our family and friends night after night, weekend after weekend, attempting

61. *About the Journal*, GEORGETOWNLAWJOURNAL, <https://georgetownlawjournal.org/about> [perma.cc/GP3V-9Q3W] (last visited Apr. 1, 2018).

62. *Id.*

63. Christian C. Day, *The Case for Professionally-Edited Law Reviews*, 33 OHIO N.U. L. REV. 563, 563 (2007).

64. Josephine R. Potuto, *Whose Article Is It Anyway? Student Editors and Law Reviews*, 49 IND. L. REV. 609, 617 (2016) (citing James C. Oleson, *You Make Me [Sic]: Confessions of a Sadistic Law Review Editor*, 37 U.C. DAVIS L. REV. 1135, 1140 (2004)).

65. Scott J. Atlas, *Why Did We Do It?*, 75 TEX. L. REV. 9, 9 (1996).

to proof copy before a deadline in the ever-present hope that the [*Texas Law Review*] would appear on subscribers' desks before the end of the month appearing on the cover.⁶⁶

Josephine Potuto states, “[j]ust as writing exposes gaps in an [author’s] knowledge and forces writers to develop closely their train of thought, argument, organization, and sequencing and development of points, law review editing hones a law student’s legal analysis and feel for thematic development and organization.”⁶⁷ In November 1915, Cornell Law Dean Edwin Hamlin Woodruff:

[A]rgued that the Cornell Law Quarterly would ‘justify its existence if it can reach and be helpful to . . . lawyers who might otherwise give their attention exclusively to the routine of practice’ and noted the ‘pedagogical value . . . within the college itself’ for the students who worked on the journal. Woodruff wrote that the journal ‘would not fail of its purpose, if it substantially enhances the spirit of mutual service between the College of Law and Cornell Lawyers; if it aides in some degree to foster any needed reform in the law, or to give help by intelligent discussion and investigation toward the solution of legal problems; and if it satisfies within the college itself among the students and faculty a desire to advance . . . the cause of legal education in a larger sense.’⁶⁸

University of California Hastings Law Professor Lois Weithorn served as President of the *Stanford Law Review* and reports that her time “working on the

66. *Id.*

67. Potuto, *supra* note 64, at 617.

68. See *History*, CORNELL LAW REV., <http://cornelllawreview.org/about-us/cornell-law-review-history/> [perma.cc/P85A-YNGE] (last visited Apr. 1, 2018); see generally Randall P. Bezanson, *Reflections on the Iowa Law Review Past and Future*, 75 IOWA L. REV. 829 (1990); Willard L. Boyd & Randall P. Bezanson, *Ninety Years of the Iowa Law Review: The Personalities, Policies, and Events that Shaped an Enduring Tradition in Iowa Legal Education*, 91 IOWA L. REV. 1 (2005); Willard L. Boyd, *Judging the Iowa Law School*, 75 IOWA L. REV. 819 (1990); Arthur L. Goodhart, *The Jubilee of the Iowa Law Review*, 50 IOWA L. REV. 1 (1964); Alfred Harsch et. al, *The Early Years*, in WASHINGTON LAW REVIEW HISTORY, 1919-1988, 3 (Anne Badgley & Richard Gans eds., 1988); N. William Hines, *The Iowa Law Review: A Tradition of Excellence*, 75 IOWA L. REV. 821 (1990); Richard O. Kummert et. al, *Emergence of the “Modern” Review*, in WASHINGTON LAW REVIEW HISTORY 1919-1988, 47 (Anne Badgley & Richard Gans eds., 1988); Mason Ladd, *The Iowa Law Review: Maturity of Fifty Years*, 50 IOWA L. REV. 5 (1964); John R. McDonough, *The Stanford Law Review: In The Beginning*, 20 STAN. L. REV. 401 (1968); Colleen Kristl Pauwels, *Hepburn’s Dream: The History of the Indiana Law Journal*, 75 IND. L. J. i (2000); W. Michael Reisman, *The Vision and Mission of The Yale Journal of International Law*, 25 YALE J. INT’L L. 263 (2000); Frank R. Strong, *The Iowa Law Review at Age Fifty*, 50 IOWA L. REV. 12 (1964); Leslie H. Buckler, *The Twenty-Fifth Anniversary of the Virginia Law Review*, 25 VA. L. REV. 1 (1938-39); Willard A. Zellmer et. al, *The Middle Years*, in WASHINGTON LAW REVIEW HISTORY, 1919-1988, 29 (Anne Badgley & Richard Gans eds., 1988).

Stanford Law Review was among the most memorable experiences of law school, and [her] life.”⁶⁹ Key benefits included:

- (1) **Broadening one’s “legal” horizons:** As a member of a law review board or staff, one reads a lot of scholarship. It is a wonderful way to be exposed to subject matter one might not otherwise encounter in one's studies or career.
- (2) **Developing one’s writing, editing, and Blue-booking skills:** Whatever career one chooses post-graduation, it is likely that legal writing will be a component. Whether or not one publishes his or her own note, the opportunity to review and edit the work of others helps to hone one's own writing skills. That said, the opportunity to write and publish a note is an extraordinary one. For many students, this is the only opportunity they will have to publish their written work. The benefits of writing and publishing a note are infinite. Not only does one build skills that will serve him or her for a lifetime, but the satisfaction of having developed and created a piece of original scholarship is substantial. One also learns how to listen to and integrate constructive criticism about one's writing. Furthermore, having published a note can only help your career, whatever you choose to do. Finally, although Blue-booking and other systems of legal citation can be tedious to learn, one needs to learn them, and law journal work burns those details into the neural pathways of your brain. After your journal work, you will never be able to tolerate a period or space in the wrong place in a citation again!
- (3) **Developing one’s critical thinking skills:** Whereas it may be relatively easy to read a piece of scholarship and decide whether you agree or disagree with the thesis, whether you think it is well-reasoned or poorly-reasoned, or whether you think it is well-written or poorly-written, it is much more challenging to provide to the author the necessary feedback to improve the piece. The demands of this task force students to develop their reasoning powers in ways not available in most classroom contexts.
- (4) **Making decisions that can affect the field of law** (as well as the careers of professors): I know of no other field in which students are put in positions of authority to make decisions regarding what gets published in the most prestigious journals in their field. In exercising this authority, students on journals have the opportunity to affect

69. Lois Weithorn, *Participating on a Law Journal*, UNIV. CAL. HASTINGS COLL. LAW, <http://journals.uchastings.edu/journals/weithorn/index.php> [https://perma.cc/68JN-EH5N] (last visited Apr. 1, 2018).

scholarly discourse. They are forced to evaluate the state of a particular area of scholarship, and decide whether a given piece makes a significant contribution beyond what is already published.⁷⁰

Additional answers given for the value of law review include “we received enormous satisfaction from the final product We knew that some of our end product would help legal advocates fashion their arguments, judges decide their cases, and possibly even legislators reform the law.”⁷¹ Additional benefits reported by Atlas include, “we enhanced our own skills. We recognized that our efforts on the *Review* would inevitably improve our analytical, research, writing, and editing skills. We understood that in the end, we would be better lawyers. We discovered that many potential employers recognized this and sought us out.”⁷² Zimmermann concurs that, “it remains certain that being a member of a law review can bring a student significant career advantages. Many law firms attach considerable value to such membership when they decide whom to hire[.]”⁷³

Next, a common goal of review publication creates community from a united work effort. Following service at the *Texas Law Review*, “editors have gone on to distinguished careers in academia, the profession, and public service, including (but by no means limited to) the judiciary.”⁷⁴ The *Duke Law Journal* believes that:

[I]ts members benefit from the analytical and writing skills they develop through the *Journal* experience. Although *Journal* membership is a valued credential for legal practice, obtaining a clerkship, or securing a faculty position, editors gain much more: the satisfaction of having made significant contributions to important legal scholarship, the opportunity to publish their own work, and the experience of working closely with fellow students to produce eight issues each academic year. As a staff editor, you will screen, cite check, and edit a broad range of legal scholarship, as well as contribute to the published notes of fellow student editors. As a member of the *Journal's* Executive Committee, you can actively participate in the selection of manuscripts for publication. Third-year editors have the opportunity to publish their own scholarship in the *Journal*. The *Journal* is committed to publishing a large number of student-written pieces each year.⁷⁵

Legal publishing is recognized as being on the critical path toward becoming a tenure-track law professor.⁷⁶ Indeed, “it would be fair to say that the single best

70. *Id.*

71. *See* Atlas, *supra* note 65, at 9.

72. *Id.* at 9-10.

73. Zimmermann, *supra* note 60, at 676-77.

74. Atlas, *supra* note 65, at 10.

75. *Journal Life*, DUKE LAW, <https://dlj.law.duke.edu/about/journal-life/> [perma.cc/39RW-UAZR] (last visited Apr. 1, 2018).

76. Tracey E. George & Albert H. Yoon, *The Labor Market for New Law Professors*, 11 J.

ticket to a job in law teaching is to have published at least one article since graduating law school Publications increasingly make and break candidates.”⁷⁷ Of the 2007-2008 entry-level law professor class of applicants, thirteen percent of all candidates had their highest-ranking publication in a law journal ranked 1-100; eighteen percent in a law review ranked 101 to 300; and fourteen percent in a law journal ranked below 300.⁷⁸ Four percent of candidates had published at least one book and thirteen percent listed other publications.⁷⁹ Lynne N. Kolodinsky, Alumni Relations Editor for Volume 99 (2013-2014) of the *Cornell Law Review* observes that, “[i]n an economic period in which many commentators argue that it is prohibitively expensive for students to attend anything but the nation’s top-ranked law schools (and some argue that attendance is not worthwhile even at those schools), being a member of law review is more important than ever.”⁸⁰

Many former law journal editors continue to make significant contributions in their professional lives.⁸¹ While any attempt to list these is destined to failure by omission, among the notable are President Barack Obama.⁸² Many Supreme Court Justices served as student law review editors, including: Samuel Alito, Felix Frankfurter, John G. Roberts, Jr., and Sonia Sotomayor.⁸³ In addition, Justices Stephen Breyer, Ruth Bader Ginsburg, Elena Kagan, Anthony Kennedy, and Antonin Scalia, “were, at earlier points in their careers, full-time law professors.”⁸⁴

B. How Law Review Works: Selection

What should an entering law student know about the law journal process?

EMPIRICAL LEGAL STUD. 1, 18 (2014).

77. Brian Leiter, *Information and Advice for Persons Interested in Teaching Law*, UNIV. CHI. THE LAW SCH., <https://www.law.uchicago.edu/careerservices/pathstolawteaching> [perma.cc/M54E-SSW2] (last visited Feb. 8, 2018).

78. See George & Yoon, *supra* note 76, at 23.

79. *Id.*

80. Lynne N. Kolodinsky, *The Law Review Divide: A Study of Gender Diversity on the Top Twenty Law Reviews* 32 (Cornell L. Libr. Prize for Exemplary Student Research Papers, Paper 8, 2014).

81. See Atlas, *supra* note 65, at 10.

82. Fox Butterfield, *First Black Elected to Head Harvard’s Law Review*, N.Y. TIMES (Feb. 6, 1990), <https://www.nytimes.com/1990/02/06/us/first-black-elected-to-head-harvard-s-law-review.html> [perma.cc/XWT2-PBER].

83. Brent E. Newton, *Law Review Scholarship in the Eyes of the Twenty-First Century Supreme Court Justices: An Empirical Analysis*, 4 DREXEL L. REV. 399, 401 n.7 (2012); see also *About the Court: Current Members*, U.S. SUP. CT., <https://www.supremecourt.gov/about/biographies.aspx> [perma.cc/WT92-37BE] (last visited Apr. 30, 2018) (observing that Justice Sotomayor served as an editor of the *Yale Law Journal*).

84. Newton, *supra* note 83, at 401; *About the Court: Current Members*, *supra* note 83.

The selection process for law review differs among law schools. Typically, first-year grades may be a primary selection criterion. For example, “The fifteen highest-ranking members of the second-year class are invited to join the *Virginia Law Review* based on grades from their first two semesters. Up to five members of the third-year[s] . . . if, after four semesters, they have achieved the minimum grade-point-average qualifications from the previous year.”⁸⁵ At the better law reviews, individual responsibilities will likely include some time during the summer academic break. Because of the significant required commitment, the *Michigan Law Review* looks for a strong work ethic in candidates.⁸⁶

During the first year on the *Law Review*, Associate Editors spend approximately 150 hours gathering sources and checking citations for articles that the *Law Review* will publish. They also research, and write a substantial piece of novel legal scholarship. During their second year on *Law Review*, many of our members will critique and edit the work of leading scholars. Some will guide and develop legal scholarship from the ground up, and others will manage a complex production system. Hard work is a consistent theme throughout. The second characteristic is a cooperative and enthusiastic attitude. The *Law Review* publishes eight issues annually. Our schedule requires the energy and care of many people working in concert. Teamwork, dedication, and the ability to work collaboratively with a group of diverse and committed peers are crucial to the *Law Review*. In evaluating applicants, the *Law Review* will consider the following materials:

- (a) a completed Writing Competition submission;
- (b) grades from the six required first-year courses, plus legal practice;
- (c) a personal statement; and
- (d) a Note proposal.

The *Law Review* has no GPA cutoff. An applicant’s performance in the Writing Competition is a more significant factor in the selection process than her GPA. The *Law Review* application process is blind. Student reviewers will only see an applicant’s Competition ID number.⁸⁷

C. The Writing Competition

A competitive writing exercise is commonly used by law reviews in the selection process for new members. Approximately twenty-five second-year

85. *Becoming a Member*, VA. LAW REVIEW, <http://www.virginialawreview.org/about/becoming-a-member> [perma.cc/T9NS-BVAA] (last visited Apr. 1, 2018).

86. Prospective Applicant Packet from Mich. Law Review to Students (Apr. 1, 2014), available at <http://michiganlawreview.org/wp-content/uploads/2014/09/applicant-packet.pdf> [perma.cc/4583-DH2L] [hereinafter Prospective Applicant Packet].

87. *Id.*

students receive offers of membership from the *Notre Dame Law Review* each year, including fifteen of those having the top end-of-first-year grades.⁸⁸ “The remaining ten slots are filled through the Writing Competition held each spring upon completion of final examinations. The Writing Competition includes an editing assignment and the production of a Note based on a uniform topic with a closed universe of sources.”⁸⁹ Assume *arguendo* that you already know how to write. Patrick Eoghan Murray, Senior Editor for Volume 60 of the *UCLA Law Review* (2012-2013) recommends the following guidance to those at the end of their first year of law school:

Straight-laced, no nonsense, efficient steps that will have you cranking out high-quality legal scholarship faster than you ever thought possible. Well before the competition starts, you’ll know what’s expected of you. Every time you look up a bluebook citation, it will be instantly available on your computer. Each sentence you type will be in the correct format required by the law review graders. And your personal statement will smartly highlight your successes Typically, law reviews that select membership based on performance on a writing test require a particular work product. This product contains two main things: a writing portion and a production test. The writing portion is typically a short piece of legal scholarship you must write, addressing a prompt chosen by the law review editors. The production test is usually a set of footnotes from a law review article that contain both substantive and technical errors you must correct. Some law reviews also ask for a personal statement. Each of these components measure different skills and have strict requirements you must follow Law reviews typically begin to publicize their write-on competition sometime during your second semester of the first year of law school Some useful questions you can ask [at the official information sessions] are the following:

- What are the important dates (any training and information sessions, beginning date, due date and time)?
- What are the official rules of the competition?
- How long the writing component should be, and what formatting is required?
- What kind of sources you are allowed to use when preparing the writing component?
- How you should make corrections in the production test (track changes, red pen, etc.)?
- What is the relative importance of each component of the work product for grading purposes?

88. *Membership*, NOTRE DAME LAW REVIEW, <http://ndlawreview.org/about/membership/> [perma.cc/8WXXV-7HKE] (last visited Apr. 1, 2018).

89. *Id.*

The information you get from law review members can be supplemented by looking at previous examples of successful applications, which can usually be found in your law library.⁹⁰

In advance of the competition, Murray advises that candidates obtain an online copy of the BlueBook and create both a document template and a personal statement.⁹¹

D. Who Does What on Law Review?

Others attempting to conduct scholarly research about law reviews report that many editors-in-chief are “unwilling to share . . . information given their desire to preserve the complete confidentiality and anonymity of their processes.”⁹² By design, the inner workings of law review are often widely misunderstood outside its membership.⁹³ Almost like a secret society, members at many law reviews are sworn to confidentiality.⁹⁴ This accounts for relatively little being written previously on the subject.⁹⁵ The folkway of silence at many reviews contributed significantly to the time required to research and write this paper.

In general, the primary tasks of law review are separated into two basic groups: 3L senior members (in their second year of law review); and 2L (apprentice) students, new to law review.⁹⁶ Some specialized law reviews employ 1L submissions readers, a potential opportunity for ambitious students who desire early review experience.⁹⁷ Professor Ross E. Davies reports that “In 1940, it took on average 28 students to publish 1,152 pages of legal scholarship—about 41 pages per law review student staff member. In 1990, it took on average 97 students to publish 1,930 pages—about 20 pages per staffer,”⁹⁸ a production rate that appears to have leveled-off to maintain this rate during recent years.⁹⁹ Like most things in law school, once selected for law review membership, participation continues to be highly competitive.¹⁰⁰ Allen Mendenhall reports that “student editors continue to compete with one another, seeking higher ranks within editorial hierarchies. Being the editor-in-chief or senior articles editor improves

90. Patrick Eoghan Murray, *Write On: A Guide to Getting on Law Review* 5-6 (Apr. 12, 2014) (unpublished manuscript) (on file with manuscript author).

91. *Id.*

92. See Kolodinsky, *supra* note 80, at 20.

93. See *id.*

94. *Id.*

95. *Id.*

96. *Id.* at 16.

97. *Id.*

98. Ross E. Davies, *The Increasingly Lengthy Long Run of the Law Reviews: Law Review Business 2012—Circulation and Production*, 3 J. L. 247, 256 (2013).

99. See *id.*

100. Allen Mendenhall, *Bypassing Bias: How Law Reviews Circumvent Favoritism*, 26 ACAD. QUESTIONS 166, 167 (2013).

one's resume Voting or evaluations of academic performance establishes the hierarchies."¹⁰¹ Law Review operations or procedural manuals apparently are considered highly proprietary, with a long standing policy not to distribute these materials at many journals.¹⁰² At the macro level, journal functions fall into three basic categories: submissions, editorial, and business functions. Some journals host a conference or symposium, which allows them to craft articles from those presented by invited speakers. During recent years, with many journals starting an online companion publication, and some publishing exclusively online; new tasks and organization positions result. Many law reviews appear to use the term "senior" to either signify a person or persons responsible for oversight of a particular function; or, to indicate typically third year law students (second year of law review) to contrast with those in their first year of service to the journal.¹⁰³ Zimmermann notes that the numerous job

. . . titles reflect not only the strictly hierarchical structure of the law review but also the departmental responsibilities governing distribution of the work. Since this work is extensive and time-consuming and must be carried out together with regular studies, it is no wonder that the law review boards have grown bigger and bigger.¹⁰⁴

Although the terminology may differ slightly among law journals, a basic outline of generalized, primary job titles and responsibilities follow.

E. Editor-in-Chief

This is the law journal's Chief Executive Officer, with responsibility and supervisory authority for law review production.¹⁰⁵ One law review states that "The Editor-in-Chief (EIC) has ultimate responsibility for all of the *Law Review's* operations and activities and is the primary source of short- and long-term planning. The EIC acts as the *Law Review's* liaison with the Law School's administration and student body."¹⁰⁶ At the *University of Illinois Law Review* responsibilities of the Editor-in-Chief include:

- a. with the recommendations of other Board members, appointing editors to assist the Board;

101. *Id.*

102. *Id.*

103. Zimmermann, *supra* note 60, at 672.

104. *Id.*

105. This title seems to be used interchangeably at some law reviews with that of "President," for example, at the *Harvard Law Review* and the *Stanford Law Review* (currently) and *Minnesota Law Review* (April 1955 through June 1989).

106. *Editorial Board*, GEORGE WASH. LAW REVIEW, <https://www.gwlr.org/current-masthead/editorial-board/> [<http://perma.cc/E6KR-5TLY>] (last visited Apr. 30, 2018) [hereinafter GEO. WASH. L. REV.].

- b. establishing the overall publication schedule, and supervising the Managing Editor's implementation of that schedule;
- c. coordinating the process for selection of lead articles;
- d. extending formal offers to those articles selected for publication;
- e. chairing meetings of the Board of Editors;
- f. handling Law Review correspondence and public relations;
- g. supervising and coordinating the activities of appointed editors;
- h. performing, along with the Managing Editor, Executive Editor, and Executive Production Editor, all second, mechanical, and final edits. The Editor-in-Chief shall coordinate the second, mechanical, and final edits among the Editor-in-Chief, the Managing Editor, the Executive Editor, and the Executive Production Editor;
- i. reviewing final author page proof changes;
- j. acting as liaison with administration in completing progress, status, and year-end reports (this does not preclude other Board or Law Review Members from consulting faculty and the Dean's office);
- k. acting in extraordinary situations that may arise, which are not within the provisions of these By-laws, if the action would be distinctly beneficial to the Law Review. The Board must ratify the action at the earliest opportunity;
- l. exercising the authority to break a tie vote of the Board on any matter requiring the approval of a majority of the Board of Editors. To break such a tie, the Editor-in-Chief may cast one additional vote;
- m. negotiating with prospective authors regarding the standard publication agreement and, when necessary, amending the standard agreement to procure lead articles and book reviews for publication.¹⁰⁷

Zachary Baron Shemtob, Editor-in-Chief (EIC) of Volume 103 of *The Georgetown Law Journal* says "Being Journal EIC entails far more managing than editing, so I've learned a great deal about navigating personalities and conflicts. On the editing side, I've learned to dig deep into any piece of writing and really separate the wheat from the chaff."¹⁰⁸ Mark Kubisch, EIC for Volume 90 (2014-2015) of the *Notre Dame Law Review* notes that "Law Review is an invaluable experience because it promotes the development of critical legal skills—namely, attention to detail and the ability to quickly determine whether or not a source actually supports what it claims to support."¹⁰⁹ *The Cornell Law*

107. By-Laws of the University of Illinois Law Review, Article III, The Board of Editors (B)(1) Editor-in-Chief (Mar. 5, 2014), available at <https://illinoislawreview.org/wp-content/ilr-content/bylaws.pdf> [<http://perma.cc/ES34-X8ZN>].

108. E-mail from Zachary Baron Shemtob, Editor-in-Chief, *The Georgetown Law Journal*, Georgetown University Law Center, to Lawrence J. Trautman (Aug. 18, 2014, 17:01 CST) (on file with author).

109. E-mail from Mark Kubisch, Editor-in-Chief, Vol. 90 *Notre Dame Law Review*, to Lawrence J. Trautman (Aug. 21, 2014, 14:09 CST) (on file with author).

Review's EIC of Volume 99 (2013-2014), Joshua Wesneski, reflects that "Journal work covers such a wide range of skills: attention to detail, organization, critical reading, and substantive understanding of the law. Even beyond that, though, working on a journal teaches some of the fundamental teamwork and collaborative thinking principles that are essential to the legal practice."¹¹⁰ Kayleigh Scalzo, Editor-in-Chief of *The George Washington Law Review* (2010-2011) states "[m]y law review experience instilled a life-long devotion to written precision and attention to detail. It is a weighty responsibility to shepherd scholarly writing to publication, and there is little room for error. This is a valuable experience for all young lawyers, regardless of particular practice."¹¹¹ Jordan Weber, Editor-in-Chief of the *Harvard Business Law Review*'s Volume IV (2013-2014) believes "For all the hours that students put in for free on law journals, they ought to be getting something worthwhile in return. For me, I am confident I often gained a better understanding of the law while working with authors . . . than I did through classroom study."¹¹²

F. Executive Editors

Responsibilities of the Executive Managing Editor at the *Indiana Law Review* include "taking the articles and notes from manuscript form to final publication [and she] . . . has the following duties: 1. planning the production phase of each issue; 2. distributing and evaluating editing assignments; 3. setting deadlines for all editing assignments; and 4. completing page proofs of each article."¹¹³ The Executive Managing Editor also conducts page proofs and manuscript edits of every note and article with the Editor-in-Chief.¹¹⁴ *The George Washington Law Review* observes that "The Senior Managing Editor (SME) is primarily responsible for ensuring that the *Law Review* is published on time. The SME controls the flow, direction, and timing of production work and has responsibility for the final form of the publication."¹¹⁵ At the *Florida State University Law Review* Bylaws state that:

There shall be four Executive Editors. The Executive Editors shall:

a. have responsibility for and authority over all technical aspects of each

110. E-mail from Joshua Wesneski, Editor-in-Chief, Vol. 99 *Cornell Law Review*, to Lawrence J. Trautman (Aug. 22, 2014, 9:45 CST) (on file with author).

111. E-mail from Kayleigh Scalzo, Editor-in-Chief, *The George Washington Law Review*, to Lawrence J. Trautman (Sept. 7, 2014, 12:39 CST) (on file with author).

112. E-mail from Jordan Weber, Editor-in-Chief, Vol. IV, *The Harvard Business Law Review*, Harvard University Law School (Aug. 19, 2014, 21:46 CST) (on file with author).

113. *Indiana Law Review Bylaws*, IND. UNIV., ROBERT H. MCKINNEY SCH. OF LAW., <https://mckinneylaw.iu.edu/ilr/bylaws.html> [<http://perma.cc/B9KN-B3L2>] (last visited Apr. 30, 2018).

114. *Id.*

115. *GEO. WASH. L. REV.*, *supra* note 106.

issue and the management of the mechanical processes of publishing the Review, subject to the authority of the Editor-in-Chief;

- b. perform a complete substantive and stylistic edit of each issue at all appropriate stages of production;
- c. participate in member training for subediting;
- d. conduct all author correspondence and author review editing;
- e. assume such further duties and responsibilities as the Editor-in-Chief shall designate.¹¹⁶

Mark Berghausen served as Executive Editor for the *Northwestern University Law Review* (2010-2011 Editorial Board) and recalls that his responsibilities were to “polish a cite-checked paper into a publishable article. I updated formatting . . . proofread for usage, citations, and print errors . . . communicated and negotiated with authors both finicky and gracious . . . coordinated galley proof eyeballing. And I sent the final go-ahead to the printer.”¹¹⁷ Kelly Volkar was Executive Editor for Volume 47 of the *UC- Davis Law Review* (2013-14) and recalls that her job was to make sure

[E]very article was error free and suitable to be published as a professional piece of academia. I would ensure full compliance with The Bluebook and make sure all pieces were internally consistent with one another in terms of punctuation and grammar. In the mean time I got to read incredibly thought-provoking articles written by well-regarded professors, and know that I was helping them convey their important message free of typos.¹¹⁸

G. Managing Editors

At the *Connecticut Law Review* “The Managing Editor assists the Editor-in-Chief in formulating policy”¹¹⁹ Another law review states “[t]he Managing Editors are the principal assistants in preparing each issue for publication. Managing Editors may be responsible for performing substance checks throughout the editing process, as well as editing page proofs and book proofs before final publication.”¹²⁰ The Bylaws for the *University of Miami Law Review* states that:

116. Bylaws of Fla. State Univ. Law Review, Article III (B0(2) Executive Editor (Feb. 4, 2015), available at <http://www.law.fsu.edu/docs/default-source/journals/bylaws/LawReviewBylaws.pdf> [<http://perma.cc/MUD7-L7X6>].

117. E-mail from Mark E. Berghausen, Executive Editor, (2010-2011), Northwestern University Law Review, to Lawrence J. Trautman (Sept. 7, 2014, 16:23 CST) (on file with author).

118. E-mail from Kelly Volkar, Executive Editor, (2010-2011), University of California-Davis Law Review, to Lawrence J. Trautman (Oct. 25, 2014, 23:17 CST) (on file with author).

119. *Bylaws, Article VI (2) Managing Editor*, CONN. INS. LAW REVIEW, <http://insurancejournal.org/bylaws/> [<http://perma.cc/9YEJ-WTYQ>] (last visited May 22, 2018) [hereinafter CONN. INS. L. REV.]

120. See GEO. WASH. L. REV., *supra* note 106.

The managing Editor of the *Review* shall represent the Editor-in-Chief in the administrative business of the *Review*; shall maintain detailed financial records; shall maintain records of all editorial assignments and accomplishments of officers, members, and candidates; and shall perform such other duties as from time to time the Editor-in-Chief or the Executive Board may assign.¹²¹

Paul Costa served as Managing Editor for Volume 44 (2011-2012) of the *Connecticut Law Review* and describes his responsibilities as: “to (i) serve as the primarily liaison with all authors and our publisher, and (ii) manage and coordinate all production work, including oversight of all editors and committees.”¹²² Leah D’Aurora Richardson, Managing Editor for Volume 90 of the *North Carolina Law Review* recalls that her duties were to “train the 39 2L staff members, manage both the cite-checking assignments of the staff members and the editing assignments of the 27 Law Review Board members, format all articles and comments, and edit article and comments just as every other Board member.”¹²³

H. Senior Articles Editor and Articles Editor

At *The George Washington Law Review*, “The Senior Articles Editor (SAE) is generally responsible for soliciting Articles and overseeing the review of unsolicited manuscripts to decide which are worthy of publication The SAE is the primary point of contact with authors, potential authors, and Law School faculty. The SAE also supervises the articles-editing process.”¹²⁴ The Bylaws for the *Akron Law Review* define the duties of Articles Editors as follows:

(a) The Articles Editors are primarily responsible for acquisition and selection of professional articles. When reviewing submissions to the Law Review, the Articles Editors shall note any deficiencies with footnotes, and make the correction of these deficiencies a condition of offering a publication agreement. If there are substantial deficiencies in footnotes, the submission should, as a general rule, be rejected without further consideration. If footnotes are acceptable or workable, the Articles Editors shall make a final determination on whether to offer a publication agreement to the author.

121. Bylaws of Univ. of Miami Law Review, Article V (4) Managing Editor (Apr. 2009), available at <https://lawreview.law.miami.edu/wp-content/uploads/2011/12/UMLR-Bylaws.pdf> [<https://perma.cc/RS5L-GERK>] (emphasis in original).

122. E-mail from Paul Costa, Managing Editor, Volume 44, *Connecticut Law Review*, to Lawrence J. Trautman (Sept. 17, 2014, 20:25 CST) (on file with author).

123. E-mail from Leah D’Aurora Richardson, Managing Editor, Volume 90, *North Carolina Law Review*, to Lawrence J. Trautman (Oct. 18, 2014, 19:48 CST) (on file with author).

124. GEO. WASH. L. REV., *supra* note 106.

(b) The Articles Editors shall be responsible for communicating with the authors of articles he or she chooses to publish, and for ensuring that prompt acceptance or rejection letters are sent to authors who submit articles for possible publication. Each Articles Editor is responsible for ensuring that each author he or she accepts for publication returns a signed Publication Agreement.

(c) In each year that the School of Law holds a Symposium, the Articles Editors are also responsible for coordinating with the School of Law administration in order to compile publishable quality essays or articles for a Symposium edition of the Akron Law Review. In any year where there is no Symposium amenable to a Symposium issue, the Articles Editors may compile a thematic issue in lieu of the Symposium edition.

(d) Each Articles Editor shall aid in evaluation and grading of Law Review member Notes and write-on competition submissions as assigned.

(e) At least two (2), but no more than four (4), students shall be chosen for this position.¹²⁵

EIC Zach Shemtob (Volume 103) of *The Georgetown Law Journal* explains the process this way.¹²⁶ Articles are randomly allocated by the SAE upon receipt to Articles Editors for screening.¹²⁷ “If the article meets the AE’s approval, it then proceeds to Committee, or a formal vote by the entire Articles Committee (including the EIC). If the article receives an adequate averaged score, the author is then given an offer of publication.”¹²⁸ Taylor French, 2013-2014 Articles Editor at the *Michigan Law Review* believes that “*Law Review* is great for exposing students to a bunch of different areas of substantive law. Cite checking is more than just Bluebooking—one of a cite checker’s jobs is to make sure that cited sources provide adequate support for the textual propositions made by authors.”¹²⁹ Anna Hayes held the title of Executive Articles Editor at the *Florida Law Review*, Volume 65 (2013-2014), where she “managed an Articles Review Board, and made all final decisions about which 39 articles to publish from the 2500+ submissions in 2013.”¹³⁰

Samuel Boro recalls that his stint as Senior Articles Editor for Volume 63 of the *American University Law Review* “was the most intellectually stimulating activity I participated in at law school. Despite the collective wisdom of previous editors, the one-year tenure makes for a steep learning curve and a feeling of

125. Bylaws of Univ. of Akron Sch. of Law, Editorial Board, Publication and Subscription Manager, and Law Review Staff, Articles Editors 4 (Nov. 6, 2002).

126. See Shemtob, *supra* note 108.

127. See *id.*

128. See *id.*

129. Prospective Applicant Packet, *supra* note 86.

130. E-mail from Anna Hayes, Executive Articles Editor, Volumes 65 and 66, *Florida Law Review*, to Lawrence J. Trautman (Sept. 29, 2014, 11:27 CST) (on file with author).

always needing to know a little bit more to do the job well.”¹³¹ Mr. Boro recalls that “the most difficult part of my job was making confident decisions about articles concerning unfamiliar areas of the law. To learn the new area quickly I had to marshal the knowledge of my editors and my professors to make a decision quickly.”¹³² Kara Altenbaumer-Price, Articles Editor of Volume 34 at the *Texas Tech Law Review* recalls her job as to “review and revise articles submitted by practicing attorneys, professors, and other external authors in order to ensure that all content was accurate, up to date, and properly cited. Articles editors were also responsible for ensuring content was up to the standards of my university's law review.”¹³³

I. Senior Notes Editor

At the *Cornell Law Review* Notes Editors “are responsible for developing, selecting and editing the submissions generated by third-year members of the Law Review.”¹³⁴ For many students, given the policy of not accepting student written full length articles at other law reviews, a Note may prove the best opportunity to produce an impressive writing sample. At *The George Washington Law Review*:

The Senior Notes Editor (SNE) oversees the note writing process by which all Members produce a Note of publishable quality. The SNE also manages the selection of Notes for publication in the *Law Review*. In addition, the SNE is responsible for composing the *Law Review* journal writing competition for first-year and transfer students.¹³⁵

The *Cornell Law Review* states:

Each admitted Associate is also required to submit a publishable Note to the *Law Review* by a pre-determined deadline. Standards and deadlines for submission are set by the Senior Notes Editor and the Notes Office, which consists of five additional Notes Editors. The Notes Office considers finished Notes throughout the year for potential publication in the *Law Review*, and advises Associates on both standards and possible topics by which new Notes may be developed for publication. Notes Editors then assist at every stage of a Note's ongoing development, and review the Note at pre-determined points in the gestation process to

131. E-mail from Samuel D. Boro, Senior Articles Editor, Volume 63, American University Law Review, to Lawrence J. Trautman (Sept. 1, 2014, 20:58 CST) (on file with author).

132. *Id.*

133. E-mail from Kara Altenbaumer-Price, Articles Editor, Volume 34, Texas Tech Law Review, to Lawrence J. Trautman (Sept. 22, 2014, 12:08 CST) (on file with author).

134. *Membership, Prospective Associates, Responsibilities*, CORNELL LAW REVIEW, <http://cornelllawreview.org/membership/> [<https://perma.cc/U3XK-2PTJ>] (last visited Feb. 8, 2018) [hereinafter CORNELL L. REV.]

135. GEO. WASH. L. REV., *supra* note 106.

determine whether an Associate is on track to meeting the Note elevation requirement. Successful completion of a Note is believed to be among the most rewarding points in a law student's career.¹³⁶

At the *NYU Law Review*, Senior Notes Editor Michele A. Yankson, Volume 88-89 (2013-2014) describes her duties as to “do substantive editorial work on student Notes and manage administration of the Notes Department. For example, I assigned Notes Editors to third-year and second-year Notes authors, and facilitated communication between editors and authors, including scheduling and attending development conferences for second-year authors to discuss progress.”¹³⁷ Jennifer Vagle, who served as Note and Comment Editor for Volume 38 (2010-2011) of the *Pepperdine Law Review*, recalls that “The most challenging part of my job was assisting with topic selection. Because a quality paper requires a substantial investment of time, students should select topics that interest them. Unsurprisingly, when we reviewed final submissions, it was clear which students were passionate about their topics—and which weren’t.”¹³⁸

J. Senior Development Editor

Selection and recruitment of the upcoming class of editors is an important function for every law review. Communication and marketing of the benefits of Law Review membership to busy, over-worked students during their first year of law school can prove to be a daunting task. The job title and job description for Senior Development Director or Development Director seemed to have substantially different meaning or structure at a number of law reviews.¹³⁹ For example, Editor-in-Chief Zach Shemtob of Volume 103 of the *Georgetown Law Journal* reports that in their organizational structure “The Senior Development Editor is in charge of funding and planning events (banquets, alumni dinners, meet-and-greets, etc.).”¹⁴⁰ Having a somewhat more detailed organizational structure than many law journals, and by virtue of seeming to have separated this function for efficiency into two discrete parts; Shemtob explains that “The Senior Development and Member Development/Diversity Editor help arrange events together. The MD/DE also collects and evaluates applicants' personal statements, as well as makes sure the Journal is a comfortable and accommodating environment for everyone.”¹⁴¹

At the *Stanford Law Review*, the function of ensuring diversity and inclusion is the primary responsibility of the Senior Development Editor.¹⁴² The issue of

136. CORNELL L. REV., *supra* note 134.

137. E-mail from Michele Yankson, Senior Notes Editor, Volume 88-89, *NYU Law Review*, to Lawrence J. Trautman (Sept. 22, 2014, 10:31 CST) (on file with author).

138. E-mail from Jennifer Vagle, Note and Comment Editor, Volume 38, *Pepperdine Law Review*, to Lawrence J. Trautman (Oct. 6, 2014, 15:30 CST) (on file with author).

139. *See* Shemtob, *supra* note 108.

140. *Id.*

141. *Id.*

142. *See Membership Information*, STANFORD LAW REVIEW, <https://www.stanfordlawreview>.

student diversity at law schools and among institutions such as law review is profoundly important—so that all aspects of our society are well represented in access to and the crafting of future laws.¹⁴³ Professor Minna J. Kotkin states that “it is time for boards of editors to examine their selection processes for unconscious gender bias.”¹⁴⁴ The *California Law Review* deserves special mention for publication of Diversity Editor Amy DeVaudreuil’s 2003 essay, which exposed “institutional racism in its own ranks.”¹⁴⁵ As evidence of the demonstrated commitment to diversity among its membership, the *Stanford Law Review* lists:

- Institutionalizing efforts to recruit diverse candidates by adding a focus on diversity to the responsibilities of the Senior Development Editor in charge of membership;
- Critically reviewing the candidate exercise with experienced professor to minimize the exercise’s disparate impact upon students of color;
- Hosting informational sessions and outreach events for students of color and other underrepresented communities; and
- Reaching out individually to students [and especially women] from typically underrepresented career interests (corporate, business, public interest, and others).¹⁴⁶

In her statistical analysis of membership among the Washington and Lee rated top twenty law reviews, *Cornell Law Review* veteran Lynne Kolodinsky

org/about/ [https://perma.cc/PS7D-KMWR] (last visited Apr. 30, 2018).

143. Cynthia Grant Bowman et. al, *The First Century: Celebrating 100 Years of Legal Scholarship: History: Race and Gender In The Law Review*, 100 NW. U.L. REV. 27, 28 (2006).

144. Minna J. Kotkin, *Of Authorship and Audacity: An Empirical Study of Gender Disparity and Privilege in the ‘Top Ten’ Law Reviews*, 31 WOMEN’S RTS. L. REP. 385, 437 (2010); see generally Rachel J. Anderson, *From Imperial Scholar to Imperial Student: Minimizing Bias in Article Evaluation by Law Reviews*, 20 HASTINGS WOMEN’S L.J. 197 (2009); Bowman et. al, *supra* note 143; Nancy Leong, *A Noteworthy Absence*, 59 J. LEGAL EDUC. 279 (2009).

145. See generally Amy DeVaudreuil, *Silence at the California Law Review: Silence at Boalt Hall: The Dismantling of Affirmative Action*, 91 CALIF. L. REV. 1183 (2003); *Commencement 2012: URI to award honorary degrees to noted author, business leaders and attorney*, URI TODAY (Apr. 24, 2012), <https://today.uri.edu/news/commencement-2012-uri-to-award-honorary-degrees-to-noted-author-business-leaders-and-attorney/> [https://perma.cc/7UK5-GGU5] (noting that while serving as diversity editor her essay was published “imploing the Law Review to examine and remedy the effects the absence of underrepresented students of color had on the journal and, as a result, on legal scholarship and the legal profession itself”).

146. *Membership Information*, *supra* note 142; see generally Lawrence J. Trautman, *Corporate Boardroom Diversity: Why Are We Still Talking About This?*, 17 SCHOLAR 219 (2015) (discussing the pathways for women in the legal profession to achieve high levels of top management positions and become corporate directors).

finds:

Because there are any number of explanations for why women might be affirmatively opting out of law school or law review participation, this is a difficult concept to quantify. I posit only that women are, as evidenced by the seven out of top twenty law reviews with no gender disparity in their membership, entirely able to succeed in law school and gain law review membership. The gender disparity that does remain may very well be a result of women affirmatively choosing not to participate in law reviews. This, in turn, could be a function of a school's writing competition demands, or the school's culture more generally.¹⁴⁷

K. Administrative Editor and Business Manager

This function appears under many different names on law review mastheads. As an example, Bylaws for the *Connecticut Insurance Law Journal* state:

The Administrative Editor shall be responsible for overseeing the Journal's financial, technical and administrative affairs. The Administrative Editor shall prepare a budget, maintain any financial records, incur expenses and enter into business transactions on behalf of the Journal, make disbursements of money as necessary, solicit subscriptions and advertisements, prepare and enforce the office hours schedule, maintain updated membership and alumni data, handle requests for reprints and copyright information, and prepare printer bid specifications. The Administrative Editor assists the Editor-in-Chief in formulating policy.¹⁴⁸

Business Manager seems to be the title given to the finance and administrative officer at some reviews. Elsewhere, duties of the Business Editor are defined by the Bylaws at *Gonzaga Law Review* to include maintaining "a consistent increase of subscriptions by acting as the coordinator of promotional events to attract new subscribers and to also to retain our current subscribership . . . serve as the liaison of these promotional events between the Editorial Board, the Review staff, the Law School faculty, staff, and students."¹⁴⁹ Further specified duties include:

- i. The Business Editor is responsible for maintaining and updating the Review website. This includes, but is not limited to, the uploading of recent articles (as a commitment to Open Source Journaling);
- ii. Assign and supervise primary editing, cite and source editing, and final editing;
- iii. Identify materials that must be requested from the author or through

147. See Kolodinsky, *supra* note 80, at 39-40.

148. See CONN. INS. L.J., *supra* note 119.

149. See Bylaws of Gonzaga Law Review, § 3(E) Business Editor (June 11, 2013).

interlibrary loan in order to complete cite and source editing, and obtain these materials prior to the time the manuscript is assigned for cite and source editing;

- iv. Ensure professional, timely editing of each manuscript assigned to his or her Cite & Source Team;
- v. Perform primary, technical, and initial final resolves of each manuscript assigned to his or her Cite & Source Team;
- vi. Ensure textual agreement with footnotes and citation accuracy of each manuscript assigned to his or her Cite & Source Team;
- vii. Supervise all Review members assigned to his or her Cite & Source Team;
- viii. Train each Editorial Staff member assigned to his or her Cite & Source Team in the Review's cite and source procedures;
- ix. Train each Associate Editor assigned to his or her Cite & Source Team in the Review's primary and final editing procedures;
- x. Any other duties delegated by the Editor-in-Chief.¹⁵⁰

At many law schools the law journal benefits from the continuity and skills of a professional publications coordinator. Such is the case at the USC Gould School of Law and *Southern California Law Review*, which houses approximately 60 student members each of the *Interdisciplinary Law Journal*, *Southern California Law Review* and *Southern California Review of Law and Social Justice*.¹⁵¹ Thomas C. Callahan, Business Manager, processes revenue and royalty transactions and subscriptions, assists student editors with budget preparation, handles copyright issues, and conducts numerous other tasks.¹⁵² Kathleen Chojnicki, Business Manager for the *Columbia Law Review* says "As Manager of the *Review*, I am responsible for the journal's day-to-day business operations and for overseeing the timely publication of the eight books produced each academic year. As Treasurer for the *Review*, I work with the auditor in maintaining an accurate set of books."¹⁵³

L. Senior Online Editor

The Senior Online Editor is responsible for the Journal's online companion publication.¹⁵⁴ During recent years, while some reviews such as the highly-rated

150. *Id.*

151. *Academic Journals and Moot Court*, USCGOULD, <http://gould.usc.edu/students/journals/> [<https://perma.cc/5QZF-NNTD>] (last visited Apr. 30, 2018) [hereinafter U. S. CALIF., GOULD SCH. OF L.].

152. Thomas C. Callahan, LINKEDIN, <https://www.linkedin.com/in/tomcallahan3/> (last viewed Sept. 25, 2016).

153. E-mail from Kathleen Chojnicki, Business Manager, Columbia Law Review, to Lawrence J. Trautman (Sept. 9, 2014, 9:56 CST) (on file with author).

154. *See CLR Online*, COLUMBIA LAW REVIEW, <http://columbialawreview.org/content->

Yale Journal of Law & Technology have emerged as on-line only editions, an online supplement has been added to complement the traditional full paper editions at many other reviews such as at the *Columbia Law Review*, *The Yale Law Journal*, and the *New York University Law Review*.¹⁵⁵ As stated by the *Columbia Law Review*, “the *Review* expanded its audience [in 2008] with the launch of an online supplement to its print issues. *Columbia Law Review Online*, [in 2008 referred to as *Sidebar*] brings together a diverse group of legal scholars, practitioners, community leaders, and judges, into one forum for the discussion of pressing legal issues.”¹⁵⁶

Nicholas Bruno, Chief Online Content Editor for Volume 93, recalls that his job “was to solicit authors for the *Texas Law Review Online Journal* . . . as well as to supervise the editing process of all the online content pieces.”¹⁵⁷ Kelley Burd-Huss, Senior Online Editor for the *Wisconsin Law Review* (2013-2014), “managed and planned the *Review*’s online presence; solicited, edited and published articles—and is primarily responsible for the technical upkeep of the *Law Review*’s website, and sometimes is the primary editor of an online piece under the EIC.”¹⁵⁸ Ryan Goellner serves as Blog Chair for Volume 83 (2014-2015) at the *University of Cincinnati Law Review*.¹⁵⁹ He believes the most challenging part of his responsibilities includes “having to work through the full law-review publication process (i.e., substantive, grammatical, and Bluebook editing), albeit on a smaller scale, with about eight students attempting to publish four articles each semester. Personally overseeing 100 pages of articles as they work towards publication is a sizeable task.”¹⁶⁰

M. Symposium Editor

From her experience as former President of the *Stanford Law Review*, Professor Lois A. Weithorn observes that:

By developing and sponsoring symposia, law journal staff can bring together scholars and practitioners who may not have had the opportunity to interact previously; or may not have jointly addressed a particular

type/clro/ [https://perma.cc/V88Q-W8PY] (last visited Apr. 30, 2018) [hereinafter COLUM. L. REV.]; *Forum*, YALE LAW JOURNAL, https://www.yalelawjournal.org/forum [https://perma.cc/4VRY-XEDM] (last visited Apr. 30, 2018); *Online Features*, N.Y.U. LAW REVIEW, http://www.nyulawreview.org/online-features [https://perma.cc/XDY5-K8H8] (last visited Apr. 30, 2018).

155. See sources cited *supra*, note 154.

156. See *About the Review*, COLUMBIA LAW REVIEW, https://columbialawreview.org/about-the-review-2/ [https://perma.cc/V7S8-L2KA] (last visited May 22, 2018).

157. E-mail from Nicholas M. Bruno, Chief Online Content Editor, Volume 93, *Texas Law Review*, to Lawrence J. Trautman (Sept. 14, 2014, 17:55 CST) (on file with author).

158. E-mail from Kelley Burd-Huss, Senior Online Editor (2013-2014), *Wisconsin Law Review*, to Lawrence J. Trautman (Sept. 30, 2014, 14:38 CST) (on file with author).

159. E-mail from Ryan Goellner, Blog Chair, Volume 83 (2014-2015), *University of Cincinnati Law Review*, to Lawrence J. Trautman (Oct. 20, 2014, 16:21 CST) (on file with author).

160. *Id.*

question or topic. Law students can use their creativity and their sense of what issues need scholarly attention to focus experts on particularly subjects. In doing so, one gets the opportunity to contact and invite these individuals to attend the symposium, and gets to organize and host the event.¹⁶¹

N. Members or Staff

During their first year of service, novice law review participants are described in various ways among law reviews. Often the title will refer to the functional job description, but without the word “senior” attached. For example, a 3L Senior Articles Editor position may carry the title of simply Articles Editor for members serving the first year of law review service. At other law reviews, all first year students serving on law review carry the title “member” (*University of Illinois Law Review*,¹⁶² and *The University of Chicago Law Review*¹⁶³); or “staff” (*Columbia Law Review*,¹⁶⁴ *Minnesota Law Review*,¹⁶⁵ *UCLA Law Review*,¹⁶⁶ *Vanderbilt Law Review*,¹⁶⁷ *Southern California Law Review*,¹⁶⁸ and the *William & Mary Law Review*¹⁶⁹); “associates” (*The George Washington Law Review*¹⁷⁰); or simply “editors” (the *Yale Law Journal*¹⁷¹). Listed on the *Emory Law Journal* masthead, first year staff appear as “candidates for the board.”¹⁷²

161. Weithorn, *supra* note 69.

162. *Current Issue*, ILL. LAW REVIEW (2018), <https://illinoislawreview.org/current-issue/> [<https://perma.cc/DUX3-HYVR>].

163. *Masthead*, UNIV. CHI. LAW REVIEW, <http://lawreview.uchicago.edu/masthead> [<https://perma.cc/NUK5-NZYV>] (last visited Apr. 30, 2018).

164. *See Masthead*, COLUMBIA LAW REVIEW, <https://columbialawreview.org/columbia-law-review/> [<https://perma.cc/V3F8-WJZS>] (last visited May 22, 2018).

165. *See Masthead*, MINN. LAW REVIEW (Aug. 2017), <http://www.minnesotalawreview.org/wp-content/uploads/2017/08/Vol.-102-Masthead.pdf> [<https://perma.cc/9N6R-8BLR>].

166. *Masthead*, UCLA LAW REVIEW, <https://www.uclalawreview.org/masthead/> [<https://perma.cc/4ZHY-J2WX>] (last visited Apr. 30, 2018).

167. *Masthead*, VANDERBILT LAW REVIEW, <https://www.vanderbiltlawreview.org/about/masthead/> [<https://perma.cc/37AR-UKG2>] (last visited Apr. 30, 2018).

168. *See* U. S. CALIF., GOULD SCH. OF L., *supra* note 151.

169. *Masthead*, WILLIAM & MARY LAW REVIEW, <https://wmlawreview.org/masthead> [<https://perma.cc/ZP5W-9QZ9>] (last visited Apr. 30, 2018).

170. *Masthead*, GEORGE WASH. LAW REVIEW (2017), <https://www.gwlr.org/current-masthead/> [<https://perma.cc/3QQL-GPWL>].

171. *Masthead*, YALE LAW JOURNAL, <https://www.yalelawjournal.org/masthead/volume-128> [<https://perma.cc/F97S-J33F>] (last visited May 22, 2018).

172. *See Masthead*, EMORY LAW JOURNAL (2017), <http://law.emory.edu/elj/masthead.html> [<https://perma.cc/42KC-P68X>].

O. Duties of an Executive Board

An example of general responsibilities for an Executive Board is provided by the *New England Law Review* Bylaws which state:

As the management of the Law Review, the Executive Board shall:

1. Select a printer for the *Law Review*;
2. Prepare and submit the annual budget to the school's Office of the Controller;
3. Administer the Summer Writing Competition;
4. Conduct and supervise any and all business during the summer recess;
5. Set review dates for Associate Writing Requirements;
6. Determine eligibility for promotion to the status of Editor based upon the satisfactory completion of all other duties of an Associate;
7. Evaluate the satisfactory completion of all other duties of an Associate based primarily upon a review of written work records;
8. Promulgate written guidelines and standards for reviewing Associate articles and ensure that such guidelines are delivered to each Associate; and
9. Review annually the By-laws and propose amendments¹⁷³

P. Decision to Publish

The decision process resulting in extending an offer to publish varies among law reviews.¹⁷⁴ For example, the Bylaws of the *BYU Law Review* state:

- a. When deciding what professional pieces shall be published in the Law Review, the following rules shall apply:
 1. Decisions to extend publication offers to professional authors shall be made by a majority of the Lead Articles Editors, subject to the subsequent approval of the Editor in Chief.
 2. If the Editor in Chief rejects a piece, the author of that piece may still be extended an offer to publish if the Lead Articles Editors approve the piece unanimously.
- b. When deciding what student pieces shall be published in the Law Review, the following rules shall apply:
 1. According to the anonymous review process set forth in the Policies and Procedures, decisions to extend publication offers

173. *NELR By-Laws*, Chapter IV §1, Duties of the Executive Board (A), at 8, NEW ENG. LAW REVIEW (June 1, 2014), <https://newengrev.com/about-us/nelr-bylaws/> [<https://perma.cc/XWG9-U5SG>].

174. *See id.* at Chapter VIII, Selection of Content for Publication in the Law Review; *see also* Bylaws of the *BYU Law Review*, Article 5 §3, Publication Decisions (2014) [hereinafter *BYU L. REV.*]

to student authors shall be made by a majority of the Lead Note and Comment Editors, subject to the subsequent approval of the Editor in Chief.

2. If the Editor in Chief rejects a piece, the author of that piece may still be extended an offer to publish if the Lead Note and Comment Editors approve the piece unanimously.
3. The Lead Note and Comment Editors shall not perform expedited reviews of student pieces. All decisions regarding the extension of publication offers for student pieces shall be made in accordance with the scheduled submission drops published to the BYU law students.
4. The Law Review shall not extend conditional offers for the publication of student pieces.
5. Lead Note and Comment Editors shall provide timely feedback to students whose pieces are not accepted for publication in accordance with the Policies and Procedures.
6. All parties involved with student submissions have a good-faith obligation to maintain the integrity of the anonymous review process.¹⁷⁵

IV. NUMBER AND TYPE OF LAW JOURNALS

John Doyle observes that “Numerous rankings of law journals have been published over the years, most based on citation counts, though other bases exist, such as author prominence (1000 points for authors who are [U.S.] Presidents, 850 points for [U.S.] Senators, [etc.]) and expert peer opinion.”¹⁷⁶ The Washington & Lee University School of Law cites 1,646 different publications in its submissions and rankings of law journals for the period 2006-2013,¹⁷⁷ 989 for the United States alone.¹⁷⁸ Alena Wolotira, Co-Editor of the *Current Index to*

175. BYU L. REV., *supra* note 174.

176. See John Doyle, *The Law Reviews: Do Their ‘Paths of Glory Lead But to the Grave’?*, 10 J. APP. PRAC. & PROCESS 179, 182 (2009) (citing Robert M. Jarvis & Phyllis Coleman, *Ranking Law Reviews by Author Prominence—Ten Years Later*, 99 LAW LIBR. J. 573 (2007)); see generally Gregory Scott Crespi, *Ranking International and Comparative Law Journals: A Survey of Expert Opinion*, 31 INT’L L. 869 (1997); 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 (1998).

177. See generally *Law Journals: Submissions and Ranking, 2006-2013, All Subjects, All Countries by Impact Factor Only*, WASH. & LEE L. LIBR.; Tania Voon & Andrew D. Mitchell, *Professors, Footnotes and the Internet: A Critical Examination of Australian Law Reviews*, 9 LEGAL EDUC. REV. 1 (1998) (distinguishing the way law journals operate in Australia from those in North America); Bruce Ryder, *The Past and Future of Canadian Generalist Law Journals*, 39 ALBERTA L. REV. 625 (2001) (contrasting Canadian with U.S. law journals).

178. See generally *Law Journals: Submissions and Ranking, 2006-2013, All Subjects, All*

Legal Periodicals, reports that the total number of law journals has grown significantly during recent years primarily because:

Law reviews are an excellent marketing tool for law schools. For those institutions that have always been considered prestigious and do not need to market to prospective students, the law journals further the school by attracting the best and brightest in scholarly submissions . . . law journals present an opportunity for schools to have its name seen, recognized, and discussed by those who read it and submit articles for publication to it . . . Between 1962 and 2004, at least fourteen law schools changed the title of one of their journals to include the name of the law school sponsoring the journal.¹⁷⁹

A. Rapid Growth of Online-Only Journals

Several online-only law reviews have enjoyed tremendous growth in ranking and prestige during recent years.¹⁸⁰ As early as 1996, Professor Bernard Hibbitts reported that “new computer-mediated communications technologies embodied in WESTLAW, LEXIS, and the Internet’s so-called ‘electronic journals’ have subtly begun to change and improve the law review system.”¹⁸¹ Professor Randall Bezanson observes that “fundamental change is now in the air. It is driven by technology and economics, not passing academic conceits. Like newspapers, law reviews are finding the cost of the printed word and the bound issue and volume too much to bear: printing contracts, paper and ink, postage, and so on.”¹⁸² Bradley Martineau, former Editor-in-Chief of the *University of Pittsburg Law Review* (2000-2001) notes that “By taking advantage of technological advances, especially the Internet, law reviews and legal journals can reduce the time it takes to publish an issue. In addition, these technological advances allow legal publications to offer many new features and services for both the authors and the readers.”¹⁸³

Despite fewer years of publication when compared to much older publications among the 989 U.S. journals listed and ranked by Washington and

Countries by Impact Factor Only, WASH. & LEE LAW LIBR..

179. Alena L. Wolotira, *From a Trickle to a Flood: A Case Study of the Current Index to Legal Periodicals to Examine the Swell of American Law Journals Published in the Last Fifty Years*, 31 LEGAL REFERENCE SERVS. Q. 150, 162-63 (2012).

180. Katharine T. Schaffzin, *The Future of Law Reviews: Online-Only Journals*, 32 TOURO L. REV. 243, 248 (2016).

181. Bernard J. Hibbitts, *Last Writes? Re-Assessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615, 617 (1996).

182. Randall P. Bezanson, *Introducing the Iowa Law Review Bulletin*, 95 IOWA L. REV. BULL. 1, 1 (2009).

183. Bradley J. Martineau, Essay: *The Future of Law Reviews and Legal Journals From A Student Editor’s Perspective*, 2 U. PITT. J. TECH. L. & POL’Y 1, 1 (2001).

Lee, several reviews have achieved stellar growth.¹⁸⁴ For example, when ranked by impact factor, now publishing just its 9th volume, the *Journal of Legal Analysis*¹⁸⁵ is ranked 25th among the 989 U.S. journals. Now in Volume 21, the *Stanford Technology Law Review*¹⁸⁶ is ranked 32nd. In its 19th volume, the *Yale Journal of Law and Technology*¹⁸⁷ is ranked 37th; the *Harvard National Security Journal*,¹⁸⁸ published first during 2010 is ranked 54th; the *Columbia Science and Technology Law Review*,¹⁸⁹ ranked 65th; the *Richmond Journal of Law & Technology*,¹⁹⁰ ranked 83rd; and the *Duke Law & Technology Review*,¹⁹¹ ranked 117th.

B. Specialty Journals and Categories

Wolotira observes that “[w]hile the number of law reviews has stayed proportionately related to the number of law schools, there has been a large increase in specialized journals over the last thirty years.”¹⁹² Wolotira believes that “once schools had an established general law review, most schools started adding specialized journals because there was a student base to support them and because they are a good way to differentiate themselves from other law schools.”¹⁹³

Specialty journals and subject area categories listed by Washington & Lee

184. WASH. & LEE L. LIBR., *supra* note 177.

185. *See About the journal*, JOURNAL OF LEGAL ANALYSIS, <https://academic.oup.com/jla> [<https://perma.cc/5E57-ZB8S>] (last visited Apr. 30, 2018).

186. *See Overview*, STANFORD TECH. LAW REVIEW, <http://journals.law.stanford.edu/stanford-technology-law-review> [<https://perma.cc/GYK3-VQAA>] (last visited Apr. 30, 2018).

187. *See Yale Journal of Law & Technology*, YALE UNIV., <http://yjolt.org/> [<https://perma.cc/RD98-V7PJ>] (last visited Apr. 30, 2018).

188. *See HARVARD NAT'L SEC. JOURNAL*, <http://harvardnsj.org/> [<https://perma.cc/KC3M-B3VA>] (last visited Apr. 30, 2018).

189. *See About Us*, COLUMBIA SCI. & TECH. LAW REVIEW, <http://www.stlr.org/about-us/> [<https://perma.cc/GS59-SVBD>] (last visited Apr. 30, 2018).

190. *See About*, RICHMOND JOURNAL OF LAW & TECH., <http://jolt.richmond.edu/index.php/about-2/> [<https://perma.cc/6BMC-WP25>] (last visited Apr. 30, 2018).

191. *See About DLTR*, DUKE LAW & TECH. REVIEW, <http://dltr.law.duke.edu/about/> [<https://perma.cc/WM7C-V3MK>] (last visited Apr. 30, 2018).

192. *See* Wolotira, *supra* note 179, at 160.

193. *Id.* at 161.

include: Administrative Law;¹⁹⁴ African Law;¹⁹⁵ Agriculture;¹⁹⁶ Air & Space;¹⁹⁷ Animals;¹⁹⁸ Arts, Entertainment and Sports;¹⁹⁹ Asian Law;²⁰⁰ Banking and Finance;²⁰¹ Bankruptcy;²⁰² Civil Litigation and Dispute Resolution;²⁰³ Civil Rights;²⁰⁴ Commercial Law;²⁰⁵ Communications Law, Media and Journalism;²⁰⁶ Comparative Law;²⁰⁷ Constitutional Law;²⁰⁸ Corporations and Associations;²⁰⁹ Criminal Law and Procedure;²¹⁰ Criminology;²¹¹ Economics;²¹² Education Law;²¹³ Elder Law;²¹⁴ Employment;²¹⁵ Energy Law;²¹⁶ Environment, Natural Resources

194. *See generally*, Ronald K. L. Collins, *Litigation Scholarship* (Univ. Wash. Sch. Law Research Paper No. 2013-22, 2013).

195. The author notes that of the 20 journals listed by the Washington and Lee compilation of submissions and rankings for the period 2009-2016 under the category "African Law," none are published in the United States.

196. Washington and Lee lists 3 journals published in the United States for this category.

197. Washington and Lee lists 2 journals published in the United States for this category.

198. Washington and Lee lists 4 journals published in the United States for this category.

199. Washington and Lee lists 25 journals published in the United States for this category.

200. Washington and Lee lists 49 journals for this topic, of which 9 are published in the United States.

201. *See generally* Utpal Bhattacharya et. al, *What's Hot in Finance?* (2008-2012), (unpublished paper, Kelly Sch. of Bus.); Emanuel Kohlscheen, *The Journal Rankings of Central Banks*, (Study Ctr. Gerzensee, Working Paper No. 11.05, 2011). The Washington and Lee lists 10 journals published in the United States for this category.

202. *See* Robert M. Lawless, *The General Role Played By Specialty Law Journals: Empirical Evidence from Bankruptcy Scholarship*, 80 AM. BANKR. L.J. 523, 546 (2006). The Washington and Lee lists 13 journals published in the United States for this category.

203. Washington and Lee lists 28 journals published in the United States for this category.

204. Washington and Lee lists 16 journals published in the United States for this category.

205. Washington and Lee lists 76 journals published in the United States for this category.

206. Washington and Lee lists 13 journals published in the United States for this category.

207. Washington and Lee lists 19 journals published in the United States for this category.

208. *See generally* William J. Turnier, *Tax (and Lots of Other) Scholars Need Not Apply: The Changing Venue for Scholarship*, 50 J. LEGAL EDUC. 189 (2000) (observing that Constitutional law is the topic of about 18% of current [2000] law journal articles). Washington and Lee lists 21 journals published in the United States for this category.

209. Washington and Lee lists 23 journals published in the United States for this category.

210. *See generally* Turnier, *supra* note 208 (observing that Criminal law is the topic of about 10% of current [2000] law journal articles). Washington and Lee lists 34 journals published in the United States for this category.

211. Washington and Lee lists 26 journals published in the United States for this category.

212. Washington and Lee lists 31 journals published in the United States for this category.

213. Washington and Lee lists 7 journals published in the United States for this category.

214. Washington and Lee lists 4 journals published in the United States for this category.

215. Washington and Lee lists 11 journals published in the United States for this category.

216. Washington and Lee lists 13 journals published in the United States for this category.

and Land Use;²¹⁷ Estates and Trusts;²¹⁸ Ethics;²¹⁹ European Law;²²⁰ Evidence;²²¹ Family Law;²²² Gender, Women and Sexuality;²²³ General;²²⁴ Governmental Law;²²⁵ Health, Medicine, Psychology and Psychiatry;²²⁶ Human Rights;²²⁷ Immigration Law;²²⁸ Insurance Law;²²⁹ Intellectual Property;²³⁰ International Law;²³¹ International Trade;²³² Jurisprudence and Legal Theory;²³³ Legal History;²³⁴ Legal Profession and Legal Education;²³⁵ Legislation;²³⁶ Maritime Law;²³⁷ Minority, Race and Ethical Issues;²³⁸ Property Law;²³⁹ Public Policy, Politics and the Law;²⁴⁰ Religion;²⁴¹ Religious Legal Systems;²⁴² Research,

217. See generally Linda K. Breggin et. al, *Trends in Environment Law Scholarship 2008-2013*, 44 ENVTL. L. REP. 10657 (2014). Washington and Lee lists 55 journals published in the United States for this category.

218. Washington and Lee lists 10 journals published in the United States for this category.

219. Washington and Lee lists 15 journals published in the United States for this category.

220. Washington and Lee lists 6 journals published in the United States for this category, 53 for all countries.

221. Washington and Lee lists 1 journal published in the United States for this category.

222. Washington and Lee lists 17 journals published in the United States for this category.

223. See generally Taunya Lovell Banks & Penelope Andrews, *Two Colored Women's Conversation about the Relevance of Feminist Law Journals in the Twenty-first Century*, 12 COLUM. J. GENDER & L. 498 (2003); Danne L. Johnson, *It's A Scandal: Can Minority Women in the Legal Academy Be Gladiators?*, 12 SEATTLE J. SOC. JUST. 349 (2013); Sarah E. Ricks, *The Yale Journal of Law and Feminism Twenty Years Ago: Reflections from Our Founding Members*, 20 YALE J. L. & FEMINISM 247 (2009). Washington and Lee lists 30 journals published in the United States for this category.

224. Washington and Lee lists 244 journals published in the United States for this category.

225. Washington and Lee lists 6 journals published in the United States for this category.

226. Washington and Lee lists 35 journals published in the United States for this category.

227. Washington and Lee lists 14 journals published in the United States for this category.

228. Washington and Lee lists 2 journals published in the United States for this category.

229. Washington and Lee lists 3 journals published in the United States for this category.

230. Washington and Lee lists 53 journals published in the United States for this category.

231. Washington and Lee lists 110 journals published in the United States for this category.

232. Washington and Lee lists 18 journals published in the United States for this category.

233. Washington and Lee lists 13 journals published in the United States for this category.

234. Washington and Lee lists 10 journals published in the United States for this category.

235. Washington and Lee lists 21 journals published in the United States for this category.

236. Washington and Lee lists 3 journals published in the United States for this category.

237. Washington and Lee lists 9 journals published in the United States for this category.

238. Washington and Lee lists 38 journals published in the United States for this category.

239. Washington and Lee lists 7 journals published in the United States for this category.

240. Washington and Lee lists 91 journals published in the United States for this category.

241. Washington and Lee lists 6 journals published in the United States for this category.

242. Washington and Lee lists 2 journals published in the United States for this category.

Writing and Libraries;²⁴³ Science, Technology and Computing;²⁴⁴ Social Sciences;²⁴⁵ Taxation;²⁴⁶ Torts;²⁴⁷ Transportation;²⁴⁸ and War, Conflicts and the Military.²⁴⁹ Journals may also be stratified into whether they are U.S.-based, by specific country of origin, or whether published in the English language.²⁵⁰ Other criteria includes whether the journal is student edited, peer-edited, or refereed; whether the journal is available in printed format or online-only, and either ranked or non-ranked.²⁵¹ Ranking criteria used includes impact factor, journal cites, currency factor, case cites, case cites/cost, or combined score.²⁵² For example, a user may want to look at a list of the top fifteen U.S. Science, Technology and Computing journals ranked only by impact factor for the period 2006-2016 (latest available as we go to press).²⁵³ Exhibit Two presents such a result.²⁵⁴

Using bankruptcy journals as a proxy for specialty reviews, Professor Robert M. Lawless finds that “to get cited in the law reviews one should publish in general law reviews and join the faculty of a highly ranked school. Highly ranked general law reviews get cited more than lower ranked general law reviews.”²⁵⁵ In addition, Lawless observes that “general law reviews as a group get cited more frequently than specialty journals as a group. Legal academics get cited more than nonacademics. Academics at highly ranked schools get cited more than academics at lower ranked schools.”²⁵⁶

Peter C. Ormerod states:

[w]hile there are costs and drawbacks to specialized journals, they can also provide unique opportunities. Most significant of these opportunities are, first, the ability to reach a specialized audience and, second, the ability to discuss technical issues in greater detail than a general-interest journal might have space or tolerance for.²⁵⁷

243. Washington and Lee lists 4 journals published in the United States for this category.

244. Washington and Lee lists 38 journals published in the United States for this category.

245. Washington and Lee lists 18 journals published in the United States for this category.

246. *See generally* Turnier, *supra* note 208 (observing that taxation accounts for about 2% of articles published around 2000 vs. 12% 50 years prior). Washington and Lee lists 36 journals published in the United States for this category.

247. Washington and Lee lists 2 journals published in the United States for this category.

248. Washington and Lee lists 2 journals published in the United States for this category.

249. Washington and Lee lists 8 journals published in the United States for this category.

250. *See generally* WASH. & LEE L. LIBR., *supra* note 177.

251. *Id.*

252. *Id.*

253. *Id.*

254. *See* Exhibit Two, *infra*.

255. Lawless, *supra* note 202, at 542.

256. *Id.*

257. E-mail from Peter C. Ormerod, Law faculty, Western Carolina University, to Lawrence J. Trautman (Jan. 8, 2018, 09:21 EST) (on file with author).

According to professor Ormerod:

An excellent and recent illustration of these advantages is a 2016 article in the *Harvard Journal of Law and Technology* by Steven M. Bellovin, Matt Blaze, Susan Landau, and Stephanie K. Pell, entitled “It’s Too Complicated: How the Internet Upends Katz, Smith, and Electronic Surveillance Law.”²⁵⁸

Exhibit Two

Search Results for Top 15 U.S. “Science, Technology and Computing Journals
(Ranked by Impact Factor)

The screenshot shows the Washington and Lee University School of Law Law Library website. The page title is "Law Journals: Submissions and Ranking, 2009 - 2016". The navigation menu includes Contact, About, Methodology, Combined score, Impact-factor, and Currency-factor. The main content area is divided into two sections: "1. Choose Journal Criteria" and "2. Choose Ranking Criteria".

1. Choose Journal Criteria

- Science, Technology and Computing (dropdown menu)
- US (dropdown menu)
- Search Journal Name: [text input]
- Language: English, or Non-English
- Subject Type: General, or Specialized
- Edit Type: Student-edited, or Peer-edited, or Refereed
- Format: Print, or Online-only
- Ranking: Ranked, or Non-ranked
- Ranked Journal Range (e.g. 15,17-25): [1-15]
- Impact Factor Weight (0..1): [0.33]

2. Choose Ranking Criteria

Year	Combined Score	Impact Factor	Journal Cites	Currency Factor	Case Cites	Cites/Cost
2016	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Access Past Surveys

Export to Spreadsheet

Submit

For Editorial Information by Journal

- Choose journals from list below
- Emails only, or Full Editorial Info
- Submit Request

Rank | **Journal** | **Impact 09-16**

1	Harvard Journal of Law & Technology	2.03
2	Stanford Technology Law Review [online]	1.56
3	Yale Journal of Law & Technology [online]	1.47
4	Columbia Science and Technology Law Review [online]	1.16
5	Michigan Telecommunications and Technology Law Review	1.14
6	Journal of High Technology Law [online]	1.09
7	Berkeley Technology Law Journal	1.05
8	Richmond Journal of Law and Technology [online]	1.01
9	North Carolina Journal of Law & Technology	0.98
10	Journal of Technology Law & Policy	0.9
11	Virginia Journal of Law & Technology [online]	0.87
12	Hastings Science & Technology Law Journal (2009-)	0.86
13	Duke Law & Technology Review [online]	0.85
14	Vanderbilt Journal of Entertainment and Technology Law	0.8
15	University of Illinois Journal of Law, Technology & Policy	0.77

Source: Washington and Lee University School of Law
Reprinted with permission

The article’s technical sophistication is what makes it valuable, and I’m not sure flagship law reviews would have the ability to publish it in the same or a substantially similar form.²⁵⁹

258. *Id.*; see generally Steven M. Bellovin et. al., *It’s Too Complicated: How the Internet Upends Katz, Smith, and Electronic Surveillance Law*, 30 HARV. J. L. & TECH. 1 (2016).

259. E-mail from Peter C. Ormerod, *supra* note 257.

V. WRITING

To be successful, authors need to write for their intended audience and target publication venue.²⁶⁰ Wide variety exists among publications.²⁶¹ Manuscript style and citation format are profoundly different among various academic disciplines.²⁶² Legal research and writing has unique language and style requirements unlike all other academic disciplines.²⁶³ Most law journal articles will require an investment of hundreds of hours to complete. This one did. The successful author's goal will be to embrace this language of manuscript style and give editors an enjoyable read, with no reason to summarily dismiss the manuscript.

A. The Secret to Writing Is to Write

Several years ago, I had an epiphany about writing. My insight came from a line uttered by movie actor Sean Connery in the movie "Finding Forrester," which seems to capture the secret to successful writing. In the movie, Connery plays the role of an author who has had one great novel and then becomes reclusive.²⁶⁴ Connery assumes the role of mentor to a young inner-city writing prodigy.²⁶⁵ For me, the great moment in the movie comes when they sit down before typewriters and Connery says to his pupil—"The first key to writing is . . . [pause] . . . to write"²⁶⁶ Again, my conclusion as "*Lesson One*" is that a basic axiom to the achievement of productivity in writing—*is to write*. Professor Yale Kamisar puts it this way:

If a person who has not yet written her first law review article were to ask me for advice, the first thing I would say is: Start writing as soon as you can. Cut to the chase. Starting to write doesn't mean that you won't do any more 'research.' You almost certainly will. Don't assume that you do research for a given amount of time and then do the writing for another period of time. You will (or should) find yourself doing both, back and forth. The best way to find holes in your argument is to start

260. Debra R. Cohen, *Competent Legal Writing -- A Lawyer's Professional Responsibility*, 67 U. CIN. L. REV. 491, 520 (1999).

261. Zimmermann, *supra* note 60, at 664.

262. William A. Hilyerd, *Using the Law Library: A Guide for Educators - Part III: Oh, Statute (or Regulation), Where Art Thou?*, 34 J.L. & EDUC. 101, 102 (2005).

263. Harry T. Edwards, *Essay: Another Look at Professor Rodell's Goodbye to Law Reviews*, 100 VA. L. REV. 1483, 1490 (2014).

264. FINDING FORRESTER (Columbia Pictures Corp. Jan. 12, 2001).

265. *Id.*

266. See *Finding Forrester (2000)*, *Quotes*, IMDB, <http://www.imdb.com/title/tt0181536/quotes> [<https://perma.cc/56D5-L9D7>] (last visited Apr. 1, 2018); see generally David A. Rasch & Meehan Rasch, *Overcoming Writer's Block and Procrastination for Attorneys, Law Students, and Law Professors*, 43 N.M. L. REV. 193 (2013).

writing. The best way to find out you can't support something you assumed you could easily support is to start writing. Composing your thoughts will usually cause you to do more research, more focused research. And the additional research will often lead you to revise some of the statements you originally made—or to add some statements you should have made in the first place.²⁶⁷

For this Article I decided to solicit cogent tips from those who have had great publishing success and impact on their profession. Who better to learn from than the most prolific among us?

Stanford Law School professor Mark Lemley teaches antitrust, computer and internet law, intellectual property and patent law, and serves as Director of Stanford's LLM Program in Law, Science and Technology.²⁶⁸ The Stanford Law School website states that he has authored “seven books (most in multiple editions) and 162 articles . . . including the two-volume treatise *IP and Antitrust*. His works have been cited more than 245 times by courts, including 13 times by the United States Supreme Court . . . articles have appeared in 23 of the top 25 law reviews . . . and in multiple peer-reviewed and specialty journals.”²⁶⁹ His work having been cited more than 14,000 times, he is “one of the most cited legal scholars of all time. He has published 9 of the 100 most-cited law review articles of the last twenty years, more than any other scholar, and a 2012 empirical study named him the most relevant law professor in the country.”²⁷⁰ In a refreshing response to my question about his secret to productivity he states, “I have no kids and no blog.”²⁷¹ Although this observation alone may not help you, regarding schedule discipline he states, “I do not have a set schedule. I try to set aside one day a week with no meetings; sometimes that day is productive, sometimes not. All you can do is create the opportunity to write and hope the muse strikes.”²⁷² *Lesson Two, create the opportunity.*

UCLA Law professor Stephen Bainbridge is a national treasure when it comes to corporate governance scholarship, having eighty-nine papers posted to SSRN and having been downloaded over 130,000 times as of January 1, 2018.²⁷³ In an exchange of emails about how and when he finds time to write, Professor

267. Kamisar, *supra* note 22, at 1750-51 n.10.

268. *Directory, Mark A. Lemley, William H. Neukom Professor of Law*, STANFORD LAW SCH., <https://www.law.stanford.edu/profile/mark-a-lemley> [<https://perma.cc/2SH5-BQF8>] (last visited Jan. 5, 2018).

269. *Id.*

270. *Id.*

271. E-mail from Mark Lemley, William H. Neukom Professor of Law, Stanford Law School, to Lawrence J. Trautman (Sept. 2, 2014, 11:24 CST) (on file with author).

272. *Id.*

273. *SSRN eLibrary Database Search Results for Stephen M. Bainbridge*, http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=16596 [<https://perma.cc/3D7V-7KK4>] (last visited Jan. 5, 2018).

Bainbridge recommends a particular prior blog post which captures one of his typical days while he is on sabbatical.²⁷⁴ I did the math and the approximate results are as follows: reading of the *Wall Street Journal* with breakfast (thirty minutes); social media related—e-mail, Facebook, Twitter, blogging (three hours, fifty-six minutes); take distinguished judge and lawyers to lunch (two hours, I note, that this time could have been used to research and write); identifiable journal type research and writing (four hours, thirty-nine minutes).²⁷⁵ Therefore, even while on sabbatical, Professor Bainbridge devoted over eight hours to research and writing and social media interaction on relevant legal topics. Accordingly, it appears that the Bainbridge secret to writing productivity embraces *Lesson One*.²⁷⁶

Law Professor Glenn Harlan Reynolds has fifty-two articles posted on SSRN having been downloaded over 115,000 times as of March 14, 2018.²⁷⁷ Without being prompted by my “Finding Forrester” story, Professor Reynolds observes that “[t]he key is sitting down at the computer and getting started. Most procrastination occurs before fingers hit the keyboard My schedule is pretty fluid but almost always includes a couple of hours at the computer first thing in the morning, and again at night.”²⁷⁸ Again, *Lesson One*.²⁷⁹

B. Writing for Your Audience

Cornell Law Professor Lynn Stout says, “[o]ne of the secrets of effective writing is to focus not on demonstrating how smart you are, but on communicating with the reader. Bear in mind that he or she may not be an expert on the topic.”²⁸⁰ *Lesson Three, write so the reader will enjoy and understand.*

274. E-mail from Stephen M. Bainbridge, William D. Warren Distinguished Professor of Law, UCLA School of Law, to Lawrence J. Trautman (Sept. 3, 2014, 12:37 CST) (on file with author) (citing Stephen Bainbridge, *A day in the life of a law professor on sabbatical*, PROFESSORBAINBRIDGE.COM (Jan. 5, 2012), <http://www.professorbainbridge.com/professorbainbridge.com/2012/01/a-day-in-the-life-of-a-law-professor-on-sabbatical.html> [perma.cc/3HJC-UE9V]).

275. Bainbridge, *supra* note 274.

276. Kamisar, *supra* note 22, at 1750-51 n.10.

277. SSRN *eLibrary Database Search Results for Glenn Harlan Reynolds*, SSRN, http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=45302 [perma.cc/U2HL-X8N9] (last visited Mar. 16, 2018).

278. E-mail from Glenn H. Reynolds, Beauchamp Brogan Distinguished Professor of Law, University of Tennessee College of Law, to Lawrence J. Trautman (Sept. 2, 2014, 11:26 CST) (on file with author).

279. Kamisar, *supra* note 22, at 1750-51 n.10.

280. E-mail from Lynn Stout, Distinguished Professor of Corporate & Business Law, Cornell University, to Lawrence J. Trautman (Sept. 2, 2014, 11:12 CST) (on file with author); *see generally* Douglas E. Abrams, *What Great Writers Can Teach Lawyers and Judges: Wisdom From Plato to Mark Twain to Stephen King (Part 1)*, 4 PRECEDENT 16 (2010); Douglas E. Abrams, *What Great Writers Can Teach Lawyers and Judges: Wisdom From Plato to Mark Twain to Stephen King (Part*

Steven Pinker is Johnstone Professor of Psychology at Harvard University and Chairman of the Usage Panel of the American Heritage Dictionary.²⁸¹ Professor Pinker believes that bad writing results because “[i]t simply doesn’t occur to the writer that her readers don’t know what she knows . . . [they] can’t divine the missing steps that seem too obvious to mention And so the writer doesn’t bother to explain the jargon, or spell out the logic or supply the necessary detail.”²⁸² Pinker recommends circulating a draft to those “similar to your intended audience . . . [and] show a draft to yourself, ideally after enough time has passed that the text is no longer familiar . . . you will find yourself thinking, ‘What did I mean by that’ or ‘How does this follow?’ or, all too often, ‘Who wrote this crap?’”²⁸³

Stanford University’s Vivek Wadhwa also talks about the importance of a conversational style when he observes, “[m]y secret is that I speak my mind and write as if I was talking to a friend. I usually write when I am traveling or just have free time—it is a way of collecting my thoughts and [a way to organize] these. I learn by teaching.”²⁸⁴ Professor Mike Koehler says, “There is really no secret as far as I am concerned. I am passionate about my subject; knowledgeable about my subject as informed by, among other things, real-world practice experience; and enjoy adding my voice to the marketplace of ideas through

2), 5 PRECEDENT 21 (2011) (stressing the fundamentals of precision, conciseness, simplicity, and clarity); John M. DeStafano, *On Literature as Legal Authority*, 49 ARIZ. L. REV. 521 (2007) (surveying the use of poetry, fiction and drama by the court to develop substantive law); Judith D. Fischer, *Why George Orwell’s Ideas About Language Still Matter for Lawyers*, 68 MONT. L. REV. 129 (2007) (emphasizing Orwell’s advice about the importance of clear, plain English comports with today’s legal writing style); Judith D. Fischer, *Abraham Lincoln as a Legal Writer*, 11 NEV. L.J. 82 (2010) (suggesting today’s lawyers might profitably emulate Lincoln’s close study of great literature as well as his clear, succinct writing style); M.H. Sam Jacobson, *A Checklist for Drafting Good Contracts*, 5 J. ALWD 79 (2008); Nancy Levit, *Legal Storytelling: The Theory and the Practice—Reflective Writing Across the Curriculum*, 15 L. LEGAL WRITING 259 (2009) (concentrates on the theory of narrative or storytelling); Alex B. Long, *[Insert Song Lyrics Here]: The Uses and Misuses of Popular Music Lyrics in Legal Writing*, 64 WASH. & LEE L. REV. 531 (2007); Joan A. Magat, *Beware the ‘Monological Imperatives’: Scholarly Writing for the Reader* (Duke Law Sch. Legal Stud., Working Paper No. 162); Jessica Price, *Imagining the Law-Trained Reader: The Faulty Description of the Audience in Legal Writing Textbooks*, 16 WIDENER L.J. 983 (2007); Bret Rappaport, *Tapping the Human Adaptive Origins of Storytelling by Requiring Legal Writing Students to Read a Novel in Order to Appreciate How Character, Setting, Plot, Theme, and Tone (CSPTT) are as Important as IRAC*, 25 T.M. COOLEY L. REV. 267 (2008).

281. Steven Pinker, *When Being Too Smart Ruins Writing*, WALL ST. J., Sept. 27, 2014, at C3.

282. *Id.*

283. *Id.*

284. E-mail from Vivek Wadhwa, Fellow, Arthur & Toni Rembe Rock Center for Corporate Governance, Stanford University, to Lawrence J. Trautman (Sept. 2, 2014, 23:34 CST) (on file with author).

writing.”²⁸⁵ Responding to my question about whether he devotes a set number of hours to writing, Professor Koehler answers:

Five years ago I founded the website *FCPA Professor* and have since written about the FCPA and related topics nearly every day. My post on *FCPA Professor* are not typical blog posts, but more often than not forms of mini-scholarship that I then incorporate into more traditional scholarship in law reviews and journals.²⁸⁶

Even non-lawyers may offer great advice about how to write. For example, Harvard Business School Professor Michael Jensen (founder of the Social Sciences Research Network “SSRN”) is author of 134 papers posted to SSRN, which have been downloaded 973,698 times, with 14,473 citations.²⁸⁷ Professor Jensen states that his writing success “is all about thinking hard and carefully about things and paying attention to things that actually matter in the world, even if the profession does not think so at the time.”²⁸⁸

C. Writing, Editing Style Sheet and Citation Format

There are a number of issues that authors new to law review publishing will want to know, preferably before they begin to write for any particular publication venue. Considerable time and effort will be saved if these requirements are addressed before the writing process begins or during the earliest stages of research and writing.

For citation form, most law reviews follow *The Bluebook: A Uniform System of Citation*, which is compiled by the editors of the *Columbia Law Review*, the *Harvard Law Review*, the *University of Pennsylvania Law Review*, and *The Yale Law Journal*.²⁸⁹ Other helpful publications include the *ALWD Citation Manual: A Professional Citation System*²⁹⁰ and *The Redbook: A Manual on Legal Style*.²⁹¹ For legal writers, Professor Judith D. Fischer provides a contemporary review of

285. E-mail from Mike Koehler, Assistant Professor, Southern Illinois University School of Law, to Lawrence J. Trautman (Sept. 2, 2014, 13:51 CST) (on file with author).

286. *Id.*

287. SSRN *eLibrary Database Search Results for Michael C. Jensen*, SSRN, http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=9 [perma.cc/N555-ENGW] (last visited Jan. 5, 2018).

288. E-mail from Michael C. Jensen, Jesse Isidor Straus Professor of Business Administration, Emeritus, Harvard Business School, to Lawrence J. Trautman (Sept. 2, 2014, 12:25 CST) (on file with author).

289. *Vol. 124 Style Sheet*, YALE L.J., http://www.yalelawjournal.org/files/Vol.124StyleSheet_xgznyy9.pdf [perma.cc/Q7EZ-WR95] (citing THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION, (Columbia Law Review Ass’n. et al. eds., 19th ed., 2010)).

290. ASSOCIATION OF LEGAL WRITING DIRECTORS & DARBY DICKERSON, ALWD CITATION MANUAL: A PROFESSIONAL SYSTEM OF CITATION (4th ed. 2010).

291. BRYAN A. GARNER, THE REDBOOK: A MANUAL ON LEGAL STYLE (3d ed. 2013).

Strunk and White's *The Elements of Style*.²⁹² In addition, decisive citation form for certain state authorities are also available.²⁹³ The style and citation preferences of the particular journal in which you seek to publish should be consulted. If you are new to publishing, I would recommend that you look to *The Yale Law Journal* Style Sheet as an adequate general guide.²⁹⁴

D. Length Limitations

Length limitations will differ according to the type of submission: articles; essays; book reviews; or online supplements.²⁹⁵ For example, *The Yale Law Journal Forum* offers content “authored by professors, practitioners, and students, and they are generally shorter, timelier, and accessible to a general audience. Submissions are reviewed by the Forum & Features Committee without knowledge of the authors’ identities.”²⁹⁶ *The New York University Law Review* states that the *N.Y.U. Law Review Online* “prefers Essays and Comments of 6,500 words or fewer, including footnotes.”²⁹⁷ These submissions will be reviewed on a rolling basis, and may include responses, essays, comments, and any other original legal scholarship.²⁹⁸ Because of a general consensus that many full-length law review articles are just too long, a joint statement regarding articles length is adopted at many journals, and appears here as Appendix A.²⁹⁹ Typical of the article size limitations of many law journals is the statement “*The Columbia Law Review* has a strong preference for accepting pieces between 20,000 and 37,000 words (including footnotes).”³⁰⁰

E. Conflicts of Interest

Most law reviews require disclosure of any relevant family or personal

292. See generally Judith D. Fischer, *A Contemporary Take on Strunk and White for Legal Writers*, 15 SCRIBES J. LEGAL WRITING 127 (2013).

293. See, e.g., TEXAS LAW REVIEW, THE GREENBOOK: TEXAS RULES OF FORM (12th ed. 2010).

294. See Vol. 124 Style Sheet, *supra* note 289; see generally William B.T. Mock, *When a Rose Isn't 'Arose' Isn't Arroz: A Guide to Footnoting for Informational Clarity and Scholarly Discourse*, 34 INT'L J. LEGAL INFO. 87 (2006); Darby Dickerson, *Reducing Citation Anxiety*, 11 SCRIBES J. LEGAL WRITING 85 (2007); Douglas E. Abrams, *Those Pesky Footnotes - Part I*, 1 PRECEDENT 19 (2007); Douglas E. Abrams, *Those Pesky Footnotes - Part II*, 1 PRECEDENT 20 (2007).

295. See, e.g., *infra* notes 314-17.

296. *Submissions*, YALE LAW JOURNAL, <https://www.yalelawjournal.org/submissions> [perma.cc/N6N7-4EV4] (last visited Mar. 16, 2018).

297. *Submissions*, N.Y.U. LAW REVIEW, <http://www.nyulawreview.org/submissions> [perma.cc/PQZ4-D2G3] (last visited Mar. 16, 2018).

298. *Id.*

299. See, e.g., *Submissions*, UNIV. PENN. LAW REVIEW, <http://www.pennlawreview.com/submissions/jointstatement.php> [perma.cc/W6P2-TDNK] (last visited March 16, 2018).

300. *Submissions Instructions*, COLUMBIA LAW REVIEW, <http://columbialawreview.org/submissions/> [perma.cc/3HX9-J99R] (last visited Mar. 16, 2018).

conflicts of interest, including sources of funding that authors receive during the research or writing of their manuscript. For example, in addition to these items, *The Yale Law Journal* requires that “[a]uthors must also disclose their involvement in any litigation that is referenced in or relevant to the Article, Essay, Book Review, or *YLJ Forum* piece. The *Journal’s* publication offers are all contingent upon authors’ compliance with this conflict-of-interest policy.”³⁰¹ Authors submitting to the *Stanford Law Review* “must disclose any conflicts of interest. This includes any financial interest that may be affected by the results or conclusions in the submission. This also includes any source of outside funding for the submission that may have affected or biased the assumptions, results or conclusions in the submission”³⁰² The *Stanford Law Review* continues to state:

If the funding helped pay for the expenses associated with the project (travel, data compilation, simulations, etc.), we simply ask that the connection be noted and the organization thanked. We do not, however, publish pieces for which the author was paid taxable income by an organization other than the relevant employer—that is, income from an outside organization or corporation that merely benefited the author, rather than funded the expenses of a project.³⁰³

F. Editing and Circulating for Comment

Nothing is more important to good writing than to rewrite and edit, rewrite and edit, and rewrite and edit. Professor Patricia Grande Montana says, “[t]he purpose of a rewrite in legal writing, as with other writing, is to resolve any inconsistencies and fill in gaps, strengthen the analysis and reasoning, and present the information in the clearest way possible.”³⁰⁴ Kayleigh Scalzo, Editor-in-Chief of *The George Washington Law Review* (2010-2011) states that “[I]aw journal editors reviewing submissions are likely poring over a number of articles, and a well-edited, well-organized piece stands out.”³⁰⁵ Professor Montana further observes:

The work of Flower and Hayes, Perl, and others establishes that revision is not a unique stage in composing. Rather, it is a thinking process that can occur at any time the writer chooses to evaluate or review his or her text. It is also a process that encourages writers to evaluate their work

301. *Vol. 124 Style Sheet*, *supra* note 289.

302. *Article Submissions*, STANFORD LAW REVIEW, <https://www.stanfordlawreview.org/submissions/article-submissions/> [perma.cc/PG5U-WB9X] (last visited May 22, 2018).

303. *Id.*

304. Patricia Grande Montana, *Better Revision: Encouraging Student Writers to See Through the Eyes of the Reader*, 14 J. LEGAL WRITING 291, 291 (2008) (citing Christopher M. Anzidei, *The Revision Process in Legal Writing: Seeing Better to Write Better*, 8 J. LEGAL WRITING 23, 43 (2002)).

305. E-mail from Kayleigh Scalzo, *supra* note 111.

from the reader's perspective.³⁰⁶

University of the Pacific McGeorge School of Law Professor Michael Vitiello believes that this revision process "is a very important issue . . . ultimately it may be what makes law review worthwhile."³⁰⁷ Unlike with a professional book or commercial journalism, most authors of law review manuscripts do not have professional editors to provide constructive comments to their drafts.³⁰⁸ To complicate matters further, most non-lawyers have neither the skills, background, nor patience to provide a helpful review of your draft.³⁰⁹ "[T]he ability to effectively revise one's own work," Professor Montana observes, is a skill that requires law students "to set aside his or her perspective as a writer and review the draft from the reader's standpoint It is from the vantage point of the reader that writers are able to see whether they communicated the entire analysis and whether the presentation is clear."³¹⁰ Professor Douglas Abrams tells the wonderful story of editing the Declaration of Independence.³¹¹ According to historian Pauline Maier:

Jefferson's draft 'revealed both splendid artistry and signs of haste'. Most of the approximately eighty changes Congress made to the draft Declaration enhanced its persuasive force by tightening or simplifying the message. Jefferson, for example, alleged that the King had 'suffered the administration of justice totally to cease in some of these states'; Congress rewrote the charge to read more directly that 'He has obstructed the administration of justice.'

Congress also aroused Jefferson's lifelong resentment, however, for deleting a few lengthier passages that the Committee of Five had accepted a week earlier. One deleted passage (denounced as a 'vituperative, turgid and unfair indictment' by one historian, and as 'patently false' by another) blamed the King for the slave trade, perhaps to salve Jefferson's own conscience as a slaveholder torn by human bondage. Another deleted passage displaced reason with emotion In all, the Founding Editors excised about a quarter of Jefferson's

306. See Montana, *supra* note 304, at 308 (citing Carol Berkenkotter, *Decisions and Revisions: The Planning Strategies of a Publishing Writer*, 34 C. COMPOSITION & COMM. 156 (1983) & Donald M. Murray, *Response of a Laboratory Rat: Or, Being Protooled*, 34 C. COMPOSITION & COMM. 169 (1983)).

307. E-mail from Michael Vitiello, Distinguished Professor of Law, University of the Pacific McGeorge School of Law, to Lawrence J. Trautman (Dec. 7, 2015, 3:02PM PST) (on file with author).

308. 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, 981 (2006).

309. See Mendenhall, *supra* note 100, at 4.

310. Montana, *supra* note 304, at 291-92.

311. See generally Douglas E. Abrams, *America's Founding Editors*, 2 PRECEDENT 12 (2008).

submission, including a few rambling clauses and sentences.³¹²

Modernly, the lesson to be learned from history is to embrace the editing process, and consider yourself fortunate if you can find the talent to help you improve your draft. What's needed is to find someone with great skills, willing to provide a highly critical review of your writing. The more critical, the better, and the earlier in your writing process, the better. It usually proves to be a waste of time to impose on well-meaning loved ones for their assessment. Almost always, this will result in comments like "Good job, I enjoyed it;" or, "I thought it was particularly well written." Instances where your family member or significant other has a legal background is an obvious exception to this observation.

So, for the rest of us, offering to reciprocate with someone whose opinion is particularly valuable may be an option. Students may have success by soliciting help from a veteran of law review editing experience. Faculty colleagues are often reluctant to be too critical of their colleagues on the same faculty. Therefore, many law professors reciprocate with colleagues at other schools who have a similar subject matter interest. According to Yale Kamisar, many law professors circulate "drafts of their work to three or four colleagues" for comments.³¹³ Often, comments are solicited from "people on *other* law faculties who teach in the same field. Moreover, in order to pick up helpful criticism, a growing number of law professors present drafts of their work at various workshops held around the country."³¹⁴ I have been pleasantly surprised by the excellent comments received by virtue of circulating my drafts widely to those individuals cited in a particular manuscript. Because much of my research tends to include papers at the pre-publication stage—typically, I ask authors to confirm that my citations for their work are correct and I mention my appreciation for any comments they may have to improve the manuscript.

G. Ethics and Plagiarism

Laura Dickson observes that "[p]lagiarism has been described as an epidemic plaguing the nation, but it is not a novel concept."³¹⁵ The *Gonzaga Law Review*

312. *Id.* (citing PAULINE MAIER, *AMERICAN SCRIPTURE: MAKING THE DECLARATION OF INDEPENDENCE* 99 (1997)); CARL L. BECKER, *THE DECLARATION OF INDEPENDENCE: A STUDY IN THE HISTORY OF POLITICAL IDEAS* 135, 194 (1942) (showing Congress' edits); DAVID MCCULLOUGH, *JOHN ADAMS* 134 (2001); JOSEPH J. ELLIS, *AMERICAN SPHINX: THE CHARACTER OF THOMAS JEFFERSON* 59 (1996); ROBERT LECKIE, *GEORGE WASHINGTON'S WAR: THE SAGA OF THE AMERICAN REVOLUTION* 255 (1992) (describing the deleted passage as vituperative); GARY B. NASH, *THE UNKNOWN AMERICAN REVOLUTION: THE UNRULY BIRTH OF DEMOCRACY AND THE STRUGGLE TO CREATE AMERICA* 208 (2005) (describing the deleted passage as patently false).

313. Kamisar, *supra* note 22, at 1756; *see also* Anna P. Hemingway & Jennifer M. Lear, *When You're the Editor*, 33 PA. LAW. (2011).

314. Kamisar, *supra* note 22, at 1756-57.

315. Laura A. Dickson, *Paradigms of Plagiarism: Fair Use and Plagiarism Detection Software in A.V. ex rel. Vanderhye v. iParadigms, LLC*, 89 N.C. L. REV. ADDENDUM 29 (2011).

defines plagiarism as “the act of attributing another’s words or ideas as one’s own.”³¹⁶ Bylaws for the *Gonzaga Law Review* state the following

1. The Review does not have a numerical standard for the number of words that can be used in text without the use of quotation marks.
2. The Review shall look at plagiarism questions on a case-by-case basis, looking at the totality of the circumstances for each occurrence.
3. Safe guidelines suggest quotations around three words lifted directly from a source. However, the more unique a word or phrase is, the greater need to use quotations.
4. When considering whether language should be quoted, the Review considers: (1) is the word or phrase a term-of-art; (2) is the word or phrase unique to the source; and (3) could the word or phrase have been re-written.³¹⁷

Laura Dickson states that “[d]espite plagiarism’s historical presence, it is a real problem in academic institutions that threatens, not only the original work of those who are victimized by this type of intellectual thievery, but also jeopardizes the continued intellectual growth of society.”³¹⁸

The *Stanford Law Review* observes that “law reviews have been unique in failing to articulate basic ethics standards. These failures threaten the validity, credibility, prestige and potential of student-run law reviews.”³¹⁹ Accordingly:

(I) *Originality*: Articles must be the original work of the author or authors identified on the submission, except for material in the public domain or material from other works that are properly cited or included with the permission of the rights owners. The article, in whole or in part, must not have been published before.

(II) *Replicability*: At a minimum, empirical works must document and archive all datasets so that third parties may replicate the published findings. These datasets will be published on our website. The Law Review will make narrow exceptions on a case-by-case basis,

316. See Bylaws of Gonzaga Law Review, Article V, §1 (A) Plagiarism Defined 24 (June 11, 2013).

317. *Id.*

318. Dickson, *supra* note 315, at 29-30. See generally Kim D. Chanbonpin, *Legal Writing, the Remix: Plagiarism and Hip Hop Ethics*, 63 MERCER L. REV. 597 (2012); Judith D. Fischer, *Avoiding Plagiarism in Legal Documents*, 68 KY. BENCH & BAR 68 (2006); Gerald Lebovits, *Legal Writing Ethics – Part 1*, 77 N.Y. ST. BAR ASS’N J. 64 (2005).

319. *Article Submissions (Closed)*, STANFORD LAW REVIEW, <https://www.stanfordlawreview.org/submissions/article-submissions-closed/> [<https://perma.cc/B8R7-CLA3>] (last visited May 22, 2018).

particularly if the datasets involve issues of confidentiality and/or privacy.³²⁰

VI. EDITORS DISCUSS IMPROVING YOUR SUBMISSION

Who better to comment on the discipline of legal research and writing for law review than those who have served as Editors of their law journals and had a little time to reflect on their experiences? The following comments are reflective of each individual's views only, and not representative of, endorsed by, or in any way attributable to either their respective Law Reviews or their current law firm or other affiliations. Therefore, with the belief that experienced review editors may have valuable suggestions about how authors may improve the likelihood of manuscript acceptance, the following hints were received from my solicitations.

A. Improving Your Manuscript

One particularly useful way to look at this is to ask the questions “What exactly constitutes a ‘home run’ article for a law review?” “What steps may be taken by authors to improve submissions and improve the likelihood of acceptance?” and maybe most important of all to law review editors, “How and on what basis are Law Journals ranked by Washington and Lee and others?” covered later in this Article under the topic heading *How Washington and Lee Ranks Law Reviews*.³²¹

1. What exactly constitutes a ‘home run’ article for a law review?

David Ciarlo, Editor-in-Chief for Volume 86 (2012-2013) of the *Southern California Law Review* says “[a]lthough ‘home run’ articles often bear certain attributes, there is no formula for a perfect article. Important articles are timely and original. They deftly apply a novel, nonobvious perspective to a murky legal question. They identify a problem and articulate workable solutions while addressing potential counterarguments.”³²² Professor Robert C. Bird, Editor-in-Chief for Volume 50 of the peer-reviewed *American Business Law Journal* states “We choose the most impactful articles, the ones that make the most interesting contributions and the ones that we think will have an impact on the literature, the broader literature and society, and that is our focus.”³²³ Anna P. Hayes, Executive Articles Editor of the *Florida Law Review*, Volume 65 (2013-2014) says:

A ‘home run’ article is one that is timely, and unique. When considering whether something is timely, we look at the topic addressed and how

320. *Id.*

321. *See infra* Part VIII.B.

322. E-mail from David Ciarlo, Editor-in-Chief, Volume 86, *Southern California Law Review*, to Lawrence J. Trautman (Oct. 15, 2014, 12:30p.m. CST) (on file with author).

323. Robert C. Bird et. al, *Panel Session: The American Business Law Journal at Fifty: Past, Present, and Future*, 50 AM. BUS. L.J. 159, 177-178 (2013).

much interest it will garner immediately, and whether it can continue to garner interest for eight years. We also look to whether the author has written something unique, with ideas that have not been published or addressed before, or that adds something new to an existing debate.³²⁴

What are the characteristics of the very best articles? David Ciarlo observes that “[t]he truly unique articles are not only interesting and identify a problem but are also useful. They offer feasible solutions to fundamental problems and often become foundations for legal precepts. Additionally, they are consistently sound in logic and clear in prose.”³²⁵ Samuel Boro, Senior Articles Editor for Volume 63 at the *American University Law Review* observes:

When we reviewed articles we tried to hold in our minds the image of a tree. With over 3000 submissions a year, we wanted the articles we published to be a trunk or a branch, and not a small twig or leaf. The articles we published were hopefully conversation starters or additions to the conversation that others would want to engage with. Twigs and leaves should grow off of our article, rather than our articles being the end of a conversation. Given the large number of submissions, we often (sometimes unfortunately) had to discard articles that may have been good articles, but presented themselves in the wrong way. If the article was far too short or far too long in word count we could put it to the side and only review it later if another journal made an offer on it. If the article was very short on footnotes, we took that as a sign that the article was either not well researched at that point in time, or the burden on our junior staff would be too great considering the reward of a completed article. If an author is concerned about whether their article meets the particular law review’s standards, he or she should contact the editors to find out. When we looked through author’s citations, we were able to make some other estimations about the quality and relevance of the article by seeing if the author engaged with the leading scholars in that field. Probably most important, however, would be our experience reading the article. Did the author organize the article in a way that the reader could easily follow the argument? Did the author provide a well organized analysis so that a future author would see the way to use this article in their own research? The author might be able to fulfill this second question by considering how their work will be received by other scholars, whether it is through a cogent argument or a highly quotable phrase.³²⁶

324. E-mail from Anna Hayes, *supra* note 130.

325. *See* Ciarlo, *supra* note 322.

326. E-mail from Samuel D. Boro, *supra* note 131.

2. *What steps may be taken by authors to improve submissions and improve the likelihood of acceptance?*

When considering a journal publishing venue without a particular topical focus, Charles H. Davis, Editor-in-Chief (2012-2013) of *The George Washington Law Review* recommends that authors select “(1) . . . topics with a broad appeal, or, if choosing a more narrow focus, maybe attempt to incorporate a more quantitative approach; and (2) the more polished the article is from an editing perspective at the time of submission, the more favorably the Law Review will treat the article.”³²⁷ Dane Barca, Editor-in-Chief of the *Hastings Law Journal*, Volume 64 (2012-2013) says,

I thought of my volume as the product, not the individual articles. I wanted a well-rounded portfolio: some things practical and some things more academic. Because of the unfortunate turn in the manner in which articles are accepted (namely professors exploiting a system where lower-ranked journals effectively serve as the review teams for higher-ranked journals), there are no home runs. I ran a top tier journal, and only had about one in five professors accept my offers of publication. And yes, Washington and Lee rankings matter.³²⁸

Gerald Lebovits is a judge for the New York City Civil Court, Adjunct Professor at Columbia, Fordham and NYU Law Schools—and a prolific legal writer. To improve submissions, Judge Lebovits recommends that authors provide “the editors a complete draft, with perfect citations and quotations and a complete source file—the same file a good law-review editor would compile.”³²⁹ Kayleigh Scalzo says “[a]uthors are well served by thoroughly editing and polishing their drafts prior to submission. This may seem self-evident, but article submissions are sometimes on the ‘rougher’ side of ‘rough draft.’”³³⁰ Jonathan Gingerich says:

Regarding how authors can improve their chances of publication, the main factor in publication decisions is that authors should write interesting, well argued articles. Some other factors play a role. Some submissions have terrible looking citations and footnotes when they come in, and it's a bit harder for journals to agree to publish these articles. Sometimes they do, but journals have to decide if the article is great enough to warrant devoting additional editorial resources to getting

327. E-mail from Charles H. Davis, Editor-in-Chief, *The George Washington Law Review* (2012-2013), to Lawrence J. Trautman (Sept. 3, 2014, 19:30 CST) (on file with author).

328. E-mail from Dane Barca, Editor-in-Chief, *Hastings Law Journal* (2012-2013), to Lawrence J. Trautman (Sept. 29, 2014, 20:35 CST) (on file with author).

329. E-mail from Gerald Lebovits, Judge, New York City Civil Court, Adjunct Professor, Columbia, Fordham, and NYU law schools, to Lawrence J. Trautman (Sept. 2, 2014, 12:30 CST) (on file with author).

330. E-mail from Kayleigh Scalzo, *supra* note 111.

it in shape for publication. Some authors also submit off topic articles to [specialty] journals, presumably because their institution pays their . . . submission fees and they just submit to everything. But if someone submits an article that doesn't have anything to do with gender to the *Journal of Law and Gender*, we'd just throw it out.³³¹

David Ciarlo believes that authors could improve their probability of receiving an offer to publish by “seeking guidance from professors and practitioners for potential topics. Also, attentively scour media sources for unanswered questions and unclear areas of law. Moreover, write clearly and concisely. Edit and cite diligently and use headings as a road map. Finally, grab the reader’s attention with a captivating introduction and conclusion.”³³² Former *Texas Tech Law Review* Articles Editor, and now highly-published legal scholar, Kara Altenbaumer-Price recommends:

Authors can best improve their submissions by including content that is different from what is being offered to other law reviews and not simply jumping on the bandwagon of the latest topic, unless your submission tackles the subject du jour in a novel way or offers new information or sources not seen before. Another important factor to consider is that law reviews are often staffed by very busy, overachieving law students who are probably already stretched too thin. Offering them a solid submission that starts out relatively clean and well cited will also up your chances of being selected over an article that may be good from a substantive perspective but that would require substantial editing, rewriting, or citation revisions.³³³

Another thoughtful suggestion is offered by Anna Hayes based on her experience at the *Florida Law Review*. She states:

Authors could improve their probability of receiving an offer to publish by including a cover letter that clearly and concisely tells the journal applied to why their piece will garner attention in the legal field. The cover letter should not simply repeat the abstract, but should let the reviewing journal know in one page why publishing the piece will benefit the journal. Another way to get immediate attention for me was always if the author had experienced success with articles published in the recent past on related issues. Excellent research and correct

331. E-mail from Jonathan Gingerich, Executive Editor, Vol. 45, *Harvard Journal of Law and Gender* and Student Writing Executive Editor, *Harvard Civil Rights-Civil Liberties Law Review* to Lawrence J. Trautman (Sept. 29, 2014, 13:20 CST) (on file with author).

332. See Ciarlo, *supra* note 325.

333. E-mail from Kara Altenbaumer-Price, *supra* note 133.

Bluebooking can prompt the Review to offer publication to an otherwise borderline article, and vice-versa; if an article will require a lot of editing before publication, we may decline to offer on an otherwise interesting article.³³⁴

B. What About Specialty Reviews

As we have already discovered, specialty topic area reviews cover many areas of legal inquiry. It seems reasonable to assume that editors of highly specialized journals likely find it more difficult to attract a significant volume of quality manuscripts than the most highly rated general law reviews. It just seems hard to believe that law journals covering a narrow topic subject area receive several thousand unsolicited manuscripts a year such as the *Harvard Law Review*.³³⁵ Jonathan Gingerich served as Managing Editor of the Harvard Journal of Law and Gender—and as Student Writing Executive Editor of the *Harvard Civil Rights-Civil Liberties Law Review*, Volume 45. He observes:

[B]ased on my experience at Harvard, I would say that specialty journals generally don't have the same time commitments from their editors that general law reviews do. The staff of specialty journals like the Harvard Journal of Law and Gender and the Harvard Civil Rights-Civil Liberties Law Review may be as large as the staff of the Harvard Law Review, but probably only a handful of editors are spending 15 or 20 hours a week working on the journal, while my impression is that each editor on the Law Review makes a significantly bigger time commitment. Of course, specialty journals also publish fewer issues and receive fewer submissions than general law reviews, and I don't think that the amount of time spent reviewing each submission and editing each accepted article is much different. Specialty law journals do receive fewer submissions than general law reviews, but at least at JLG and CR-CL, we received hundreds of submissions every year, and we received more good submissions than we had room to publish. However, both of these journals are pretty well regarded and ranked highly in the Washington and Lee rankings, so I don't know if this experience is mirrored at all specialized journals.³³⁶

Those who edit and publish these journals face unique challenges. For example, Western Carolina University Professor Debra Burke served as 2015-16 editor of the *Journal of Legal Studies Education (JLSE)*, a publication of the Academy of Legal Studies in Business (ALSB).³³⁷ Professor Burke says, “I think our challenge might be unique because our subject matter is pedagogy directed

334. E-mail from Anna Hayes, *supra* note 130.

335. See E-mail from Jonathan Gingerich, *supra* note 331.

336. *Id.*

337. See generally Debra D. Burke & Hollye Moss, *Editor's Corner The Journal of Legal Studies Education: Quality and Impact*, 33 J. LEGAL STUD. EDUC. 175 (2016).

to . . . specific populations . . . Unlike other specialty law reviews, if the JLSE doesn't accept it, the outlet market is limited."³³⁸ For example, "if you write a paper on labor law and submit it to Berkeley's specialty journal, if they don't want it, you have another 200 law reviews to submit it to—not so with the JLSE."³³⁹ Professor Burke continues that common mistakes she sees in submissions to the JLSE include "Bluebook errors, for sure, definitely [many] mistakes. The other shortcomings would be a less than thorough literature review and a less than thorough exploration of pedagogical literature to support the application of the practices adopted to teaching business law."³⁴⁰

Jordan Weber, Editor-in-Chief for Volume IV of the *Harvard Business Law Review* (2014), says that the major challenge to specialty topic journals such as ours is "competing for top articles with 'flagship' law reviews that are often perceived as better places for academics to publish. We can and do overcome this challenge, but we certainly see some authors struggle with deciding between a top specialty journal and a more traditional law review."³⁴¹ Laura Bedson, Editor-in-Chief, Volume 21, *Richmond Journal of Law and Technology* (2014-2015) observes:

The major challenge to specialty topic journals such as ours is article selection. JOLT prides itself on publishing cutting-edge articles that further discussion in the legal technology world, but the Journal also recognizes the importance of being accessible to a broad audience. Finding articles that strike that balance while still furthering the mission of the Journal is a task that requires mindful attention and dedication.³⁴²

VII. IMPORTANCE OF PEER REVIEW

A. Importance of Peer Review

In many academic settings, it is critically important that your journal publication appears in a peer-reviewed venue. John Doyle observes that "[a]rticles submitted to law reviews are very rarely peer reviewed, in the sense of being routinely sent out for evaluation by external experts who are ignorant as to the identity of the articles' authors."³⁴³ Alena Wolotira provides us with definitions, reporting that "'Peer-edited' journals are those that are 'edited by professionals in the field,' and 'Refereed' journals (also called peer-reviewed

338. E-mail from Debra Burke, Asst. Dean, School of Business, Western Carolina University, to Lawrence J. Trautman (Oct. 6, 2016 1:25PM EST) (on file with author).

339. *Id.*

340. *Id.*

341. E-mail from Jordan Weber, *supra* note 112.

342. E-mail from Laura Bedson, Editor-in-Chief, Vol. XXI, *The Richmond Journal of Law and Technology*, to Lawrence J. Trautman (Sept. 24, 2014, 8:44 CST) (on file with author).

343. *See* Doyle, *supra* note 176, at 185-86.

journals) are those that ‘routinely send article submissions on for peer review by members of a diverse professional group.’³⁴⁴ The *Stanford Law Review* observes that “[p]eer review not only enhances an article’s quality, but guarantees originality. It is our practice to subject submissions to peer review, albeit in a form amenable to the typical law review selection timeframes.”³⁴⁵ Particularly among some business schools, student edited law journals (including the ones most highly ranked) may have lesser value toward hiring decisions, promotion and tenure than peer-reviewed journals.³⁴⁶ The value of peer review and editorial bias among journals remains highly controversial.³⁴⁷ For example, Allen Mendenhall believes that the competitive nature of student-edited law reviews results in law journal editors being “less able than peer reviewers to facilitate ideological uniformity or to become complacent in their duties—and law reviews will exhibit greater ideological diversity and publish more quickly and efficiently than peer-reviewed journals.”³⁴⁸

B. Supreme Court Review

Edited by Professors Dennis J. Hutchinson, David A. Strauss and Geoffrey R. Stone,³⁴⁹ *The Supreme Court Review (SCR)* is rated the number one peer-edited or refereed journal out of 332 total by Washington and Lee for both combined score and impact factor.³⁵⁰ The “*SCR* is written by and for legal academics, judges, political scientists, journalists, historians, economists, policy planners, and sociologists[,]” providing “an in-depth annual critique of the Supreme Court and its work.”³⁵¹

C. American Business Law Journal

The *American Business Law Journal (ABLJ)* is a highly selective, double-blind, peer reviewed, quarterly law review published by the Academy of Legal Studies in Business.³⁵² The *ABLJ* is rated first by Washington and Lee among the

344. Wolotira, *supra* note 179, at 157.

345. *Article Submissions*, *supra* note 302.

346. *See, e.g.*, OFFICE OF THE VICE PROVOST FOR FACULTY & ACADEMIC AFFAIRS, GUIDELINES FOR TENURE AND PROMOTION REVIEWS AT INDIANA UNIVERSITY BLOOMINGTON, (Ind. Univ. Mar. 19, 2015), available at http://vpfaa.indiana.edu/docs/promotion_tenure_reappointment/pt-revised-review-guidelines.pdf [perma.cc/R8BV-PUPG] (stating on page six that “[p]eer reviewed publications are given greater weight than those that are not”).

347. *See generally* Mendenhall, *supra* note 100, at 2.

348. *Id.*

349. *The Supreme Court Review*, UNIV. CHI. LAW SCH., <http://www.law.uchicago.edu/supremecourt/supremecourt.html> [https://perma.cc/563X-XMMB].

350. *See* WASH. & LEE L. LIBR., *supra* note 177.

351. *The Supreme Court Review*, *supra* note 350.

352. *See generally* *ALSB Publications*, ACAD. LEGAL STUDIES BUS., <http://www.alsb.org/alsb-publications> [https://perma.cc/3UE8-B6JR] (last visited May 3, 2018). American Business Law Journal articles published in the past few years and cited, often repeatedly, in top-tier law journals

36 peer-edited or refereed journals listed in the category “Commercial Law” by impact factor; first among 7 peer-edited or refereed journals in the category “Corporations and Associations” by impact factor; and third of 331 total peer-edited or refereed journals in all categories by impact factor.³⁵³ Professor Robert C. Bird writes that the *ABLJ* publishes “thoughtful scholarship on a variety of topics related to business law and legal studies in business. The journal is a scholarly leader in its field, having a highly selective acceptance rate and publishing high-quality articles that continue to have a broad influence in their respective disciplines.”³⁵⁴ Professor Robert W. Emerson, Managing Editor for Volume 51 of the *ABLJ* observes that “[p]eer review is highly important for professors who need to be able to show professional scholarly impact at their colleges and universities. In the peer review process, experts are called in to validate the contribution of the proposed publication.”³⁵⁵ Professor Bird served as Editor-in-Chief for Volume 50 of the *ABLJ* and is credited with an excellent job of assembling the *Journal’s* Fiftieth Anniversary issue, celebrating the *Journal’s* first half century and providing a wonderful history of the changes in focus of legal scholarship over time.³⁵⁶

besides just the American Business Law Journal include: Robert C. Bird & John D. Knopf, *Do Disability Laws Impair Firm Performance?*, 47 AM. BUS. L.J. 145 (2010); Norman D. Bishara & Michelle Westermann-Behaylo, *The Law and Ethics of Restrictions on an Employee’s Post-Employment Mobility*, 49 AM. BUS. L.J. 1 (2012); Larry A. DiMatteo, *Strategic Contracting: Contract Law as a Source of Competitive Advantage*, 47 AM. BUS. L.J. 727 (2010) (discussing Contract Law); Robert W. Emerson, *Franchising and the Parol Evidence Rule*, 50 AM. BUS. L.J. 659 (2013) (discussing Franchise Law); Stephanie Greene & Christine Neylon O’Brien, *Exceeding Authorized Access in the Workplace: Prosecuting Disloyal Conduct Under the Computer Fraud and Abuse Act*, 50 AM. BUS. L.J. 281 (2013) (discussing Employment Law); Robert W. Emerson, *Franchise Encroachment*, 47 AM. BUS. L.J. 191 (2010); Gideon Mark, *Private FCPA Enforcement*, 49 AM. BUS. L.J. 419 (2012); Gideon Mark, *RICO’s Extraterritoriality*, 50 AM. BUS. L.J. 543 (2013) (discussing Securities Regulation); Philip M. Nichols, *The Business Case for Complying with Bribery Laws*, 49 AM. BUS. L.J. 325 (2012) (discussing International Law); Robert Sprague & Mary Ellen Wells, *The Supreme Court as Prometheus: Breathing Life into the Corporate Supercitizen*, 49 AM. BUS. L.J. 507 (2012) (discussing Corporate Speech).

353. See WASH. & LEE L. LIBR., *supra* note 177.

354. See Bird et. al, *supra* note 323, at 160.

355. Interview with Robert W. Emerson, Managing Editor, Vol. 51, American Business Law Journal, in Gainesville, Fl. (Oct. 31, 2014).

356. As Editor-in-Chief, Robert C. Bird’s labor of love produced the following collection documenting a history of legal scholarship as follows: Robert C. Bird, *Editor’s Corner: A Moment of Reflection*, 50 AM. BUS. L.J. v (2013); Robert C. Bird, *The Intellectual and Social Antecedents to the American Business Law Journal*, 50 AM. BUS. L.J. 1 (2013); Robert C. Bird, *A Great Debt of Gratitude: An Interview with John Donnell*, 50 AM. BUS. L.J. 195 (2013); Bird et. al, *supra* note 323; Dhooge, *supra* note 19; Larry A. DiMatteo, *Fifty Years of Contract Law Scholarship in the American Business Law Journal*, 50 AM. BUS. L.J. 105 (2013); Virginia G. Maurer, *A Decade of Technology and Transition: The American Business Law Journal, 1990-1999*, 50 AM. BUS. L.J. 29

Editor-in-Chief for *ABLJ* Volume 52, Professor Emerson, states “At the *ABLJ* we really try to make sure that our reviewers are experts (either corporate law professors or lawyers) in the particular subject matter area of law addressed by the article they are asked to review.”³⁵⁷ Professor Daniel Cahoy served as Editor-in-Chief for the *ABLJ* and observes that the journal uses a unique “triple-blind review process.”³⁵⁸ By way of contrast, in the more standard double-blind review process, “the author is blinded as to who’s reviewing. The reviewers are blinded as to the identity of the author. In this case [*ABLJ*], the articles editor that oversees the review process is also blinded until a decision is made.”³⁵⁹ Cahoy further describes the perceived benefit of this review process as follows:

[W]e really solidified [this process] as a mechanism that we use in every case to ensure that we are making the most objective decision that we can on every article. I say it’s internal because we don’t communicate it with every letter that goes back to an author. It’s not always apparent when you just look at the face of the journal, but we think it’s very, very important for preserving the integrity of the journal. And I think it makes us feel even prouder of the content that comes out, because we know it meets the highest objective standards of quality.³⁶⁰

Professor Cahoy observes that it is often difficult for legal scholars to receive meaningful feedback during the publication process, stating:

“Of course you can workshop your articles, you can present it at conferences . . . but once you’ve decided to send it in, you may be finished, depending on the journal you submit it to. [However the *ABLJ*] provides help and substantive comments that allow you to improve your piece and be truly proud of what it is that you publish at the end of the game.”³⁶¹

Former *ABLJ* Editor-in-Chief Professor Joan Gabel says “not only do we engage in peer review . . . we do so in a way that is absolutely ambassadorial of the collegial nature of our academy.”³⁶² Professor Stephanie Greene concurs about the value to authors provided by the *ABLJ*’s working relationship structure between author and editor, stating that authors receive:

[F]eedback and input . . . I’ve never gotten . . . from a [traditional] law review. So the idea that you have scholars who are really helping you

(2013); Daniel T. Ostas, *The ABLJ at Fifty: Celebrating a Wealth of Scholarly Contributions*, 50 AM. BUS. L.J. 63 (2013); O. Lee Reed, *Advancing the Scope and Mission: The American Business Law Journal, 1980-1989*, 50 AM. BUS. L.J. 21 (2013).

357. Emerson, *supra* note 355.

358. See Bird et al., *supra* note 323, at 172.

359. *Id.*

360. *Id.*

361. *Id.* at 163.

362. *Id.* at 173.

improve your article, I think, is very unique. You realize, ‘Wow, my article has come a long way since when I first submitted it.’ Even though you don’t want to do so much work initially, you might not want to, but you realize this has been well worth it.³⁶³

Professor Greene’s tenure as *ABLJ* Editor-in-Chief, saw creation of the *ABLJ Invited Scholars Colloquium*.³⁶⁴ Professor Jamie Prenkert believes the *Colloquium* helps authors:

[G]et a bird’s-eye view of what it’s like for their work to be discussed among people who have read it, and read it carefully, without the author’s ability to interject, to defend, or to clarify, so that the work has to stand on its own, and they can hear what that’s like. The format for the colloquium that we’ve followed for the last three years is that for roughly forty-five minutes to an hour everyone except the author of the work discusses the work itself, including substantive issues, effectiveness, clarity of the thesis, ways in which the work might be contracted or expanded, and whether it’s engaged the appropriate literature. And the author not only does not speak, but is not allowed to speak during that time. The author can only listen. It’s a really great way for that work to be evaluated on its own and for the author to hear how that is.³⁶⁵

VIII. THE PUBLISHING PROCESS

A. Where to Publish/Why Journal Ratings Matter

Deciding where to submit your article for publication should reflect serious consideration. Law journals usually “do not pay authors for scholarly work, and so authors with multiple offers of publication will choose the law review that provides the greatest status and the widest distribution of their work.”³⁶⁶

While Washington and Lee currently lists 1,646 law reviews or journals,³⁶⁷ hundreds of other special interest or academic journals may be appropriate for your manuscript. For career advancement in an academic setting other than a law

363. *Id.*

364. *Id.* at 166.

365. *Id.* at 167.

366. Dan Hunter, *Walled Gardens*, 62 WASH. & LEE L. REV. 607, 633 (2005); see generally Gerald Lebovits, *Academic Legal Writing: How to Write and Publish*, 78 N.Y. ST. B.A. J. 64 (2006); but see generally Alfred L. Brophy, *The Signaling Value of Law Reviews: An Exploration of Citations and Prestige*, 36 FLA. ST. U. L. REV. 229 (2009) (contending that while articles in the most elite journals receive more citations on average than the less elite, but still highly regarded, other journals studied, some articles in the less elite journals are more heavily cited than many articles in even the most elite journals. Therefore, be wary of judgments about quality based on place of publication).

367. WASH. & LEE L. LIBR., *supra* note 177.

school, each college or university department may have its own criteria for which publication venues count toward tenure and advancement, and how much weight can be assigned to each publication outlet. As an example, for hiring and tenure purposes many business school departments will only credit authors whose work appears on either the *Financial Times* list,³⁶⁸ or the University of Texas at Dallas list of 24 publications used to compile a ranking of the 100 top business schools by research impact.³⁶⁹ Authoring law journal articles may have currency toward tenure at business schools if they are ranked above a certain specified rank by Washington and Lee.³⁷⁰ Lawyers interviewing for law firm jobs may also discover a difference in value of article publication, depending on its subject matter and the journal ranking in which a particular work is published.³⁷¹ A number of specialty journals might be considered if your paper addresses a particular topic focus.³⁷² For example, the *Harvard Journal of Law & Technology*,³⁷³ *Yale Journal of Law & Technology*,³⁷⁴ *Boston University Journal of Science and Technology Law*,³⁷⁵ *Santa Clara High Technology Law Journal*,³⁷⁶ *Columbia Science and Technology Law Review*³⁷⁷ or *Richmond Journal of Law & Technology*³⁷⁸ might be appropriate for a paper written about the Legal aspects of Bitcoin.³⁷⁹

B. How Washington and Lee Ranks Law Reviews

Perhaps the single most important topic to law review editors is “how and on

368. See *50 Journals used in FT Research Rank*, FIN. TIMES, (Sept. 12, 2016), <http://www.ft.com/intl/cms/s/2/3405a512-5cbb-11e1-8f1f-00144feabdc0.html#axzz3BETAanhv> [perma.cc/4L6H-NACK] (listing the 50 journals employed by the Financial Times in compiling their Business School research rank, included in the Global MBA and EMBA rankings).

369. See *The UTD Top 100 Business School Research Rankings*TM, UNIV. TEX. AT DALL., <http://jindal.utdallas.edu/the-utd-top-100-business-school-research-rankings/index.php> [perma.cc/U54N-ZTV2] (last visited May 3, 2018).

370. See E-mail from Dane Barca, *supra* note 328.

371. See E-mail from Peter C. Ormerod, *supra* note 257.

372. See *id.*

373. See HARVARD JOURNAL LAW & TECH., <http://jolt.law.harvard.edu/> [perma.cc/QND8-35RS] (last visited Mar. 14, 2018).

374. See *About Yale Journal of Law & Technology*, YALE, <http://yjolt.org/about> [perma.cc/974T-CS8V] (last visited Mar. 12, 2018).

375. See *About Journal of Science and Technology Law*, B.U., <http://www.bu.edu/jostl/> [perma.cc/5UKT-4XGY] (last visited Mar. 12, 2018).

376. See *Santa Clara High Technology Law Journal*, SANTA CLARA UNIV., <http://digitalcommons.law.scu.edu/chtlj/> [perma.cc/45M9-C7C2] (last visited Mar. 12, 2018).

377. See *The Columbia Science and Technology Law Review*, COLUMBIA, <http://www.stlr.org/> [perma.cc/G45Z-YVKP] (last visited Mar. 12, 2018).

378. *Richmond Journal of Law and Technology*, UNIV. RICHMOND, <http://jolt.richmond.edu/> [https://perma.cc/YJ2K-Z47U] (last visited Mar. 12, 2018).

379. See generally Lawrence J. Trautman, *Virtual Currencies: Bitcoin & What Now After Liberty Reserve, Silk Road, and Mt. Gox?*, 20 RICH. J.L. & TECH. 13 (2014).

what basis are Law Journals ranked by Washington and Lee and others"? It appears that the motivation of editors and the editorial board for all law reviews is to achieve higher ranking among their peer journals, by publishing articles that become highly cited. What then do editors believe will catapult their relative standing upward to achieve greater prominence among the almost one thousand American law journals and reviews? How does the law review publication strategy translate into what editors consider when reviewing article submissions? To answer these questions, here is a look at Washington and Lee's articulated ranking methodology:

Counted citations are those which cite journal volumes published in the preceding eight years. The reason for this limit is to prevent a bias in favor of long-published journals. Thus the study is concerned only with citations to current scholarship. The search results give only the number of citing documents, and do not show where a citing article or case cites to two or more articles in a cited legal periodical. Sources for the citation counts are limited to documents in Westlaw's JLR database (primarily U.S. articles), and in Westlaw's ALLCASES database (U.S. federal/state cases). The searches conducted in those databases generally use the Bluebook format in use in the U.S. (volume journal [page] year) [*but the searches are flexible in allowing the year to occur within 8 words of the journal name.*]

The list includes cited periodicals that began publication after the survey period began. Rank results based on total citation counts are unfair to those periodicals, and whenever a journal recently began publication a warning has been supplied next to the periodical name, in the form of a parenthetical date such as "(2001-)". [*Both impact-factor and combined-score rankings do make an allowance for how recently the journal began publishing.*]

Legal periodicals which appear to have ceased publication (even though they were published during a part of the survey period) are not included.³⁸⁰

Given Washington and Lee's ranking criteria (immediately above), it is reasonable to assume that law review editors everywhere will adopt a ranking optimization strategy by selecting articles for publication that appear to have the greatest likelihood of future citations.³⁸¹

380. *Most-Cited Legal Periodicals*, WASH. & LEE SCH. LAW, <http://law2.wlu.edu/library/mostcited/method.asp> [perma.cc/G4NF-WXA4] (last visited Mar. 12, 2018).

381. *See id.*

C. Submissions

The Georgetown Law Journal receives more than 2,000 annual submissions, “many of them outstanding scholarly work. Unfortunately, space is limited and only a relatively small number of those articles can be selected for eventual publication.”³⁸² Because most law journals are student edited, and second and third year law students tend to have law firm or other important work experiences scheduled for their summers, the optimal season for law journal submissions will be during early August and again in January. For example, during the Summer of 2014, the *Harvard Law Review* states:

There is no best time to submit a manuscript to the *Review*. We will never reject an article for lack of space; rather, we will hold it over for consideration by the next volume. While we encourage contributors to submit articles as soon as they are ready, we do not review articles between mid-May and the beginning of August, so there is no need to rush during this period.³⁸³

Authors should not expect every journal to be available to receive their submissions—law journals reach capacity and close down for new submissions.³⁸⁴ For many years ExpressO was the exclusive practical journal submission management tool for authors.³⁸⁵ Simply make a selection from the long list of possible journals available to receive submissions, load up your electronic file, cover letter, and personal vita, pay a nominal fee for each submission, and you are done.³⁸⁶ During recent years, Scholastica has also entered the market to assist both authors and journal editors, with some journals requiring use of one or the other services on an exclusive basis.³⁸⁷ While many journal websites will indicate a preference for one of these services, many law journals will provide an email address allowing authors to make their submissions directly to the journal.³⁸⁸ A

382. *Submissions*, GEORGETOWN LAW JOURNAL, <https://georgetownlawjournal.org/submit> [perma.cc/SAE8-QYAC] (last visited Mar. 12, 2018).

383. *Submissions*, HARVARD LAW REVIEW, <http://harvardlawreview.org/submissions/> [perma.cc/NGR6-67QC] (last accessed Mar. 12, 2018).

384. SCHOLASTICA, <https://scholasticahq.com/> [perma.cc/7CPM-2RP2] (last visited Mar. 12, 2018).

385. See EXPRESSO, LAW REVIEW SUBMISSIONS GUIDE 2014-14: SUBMISSION TIPS & LAW REVIEW RANKINGS (2013), available at http://law.bepress.com/assets/images/expresso/ExpressO_Submission_Guide_2013-14.pdf [perma.cc/GMC6-NARV].

386. See generally Allen Rostron & Nancy Levit, *Information for Submitting Articles to Law Reviews & Journals*, (Univ. of MO., Jan. 26, 2018), available at <http://ssrn.com/abstract=1019029> [perma.cc/ETA6-RQGW].

387. See SCHOLASTICA, *supra* note 384.

388. See *Submissions Instructions*, *supra* note 300 (“We accept and manage submissions exclusively through Scholastica.”).

few law journals still accept paper submissions; however, the clear preference appears to be for electronic submission utilizing either ExpressO or Scholastica.³⁸⁹

D. Restrictions on Student Authorship

Many law reviews will not accept submissions of students from other schools.³⁹⁰ Some journals, while not accepting student work for inclusion as an Article or Essay, may encourage students to submit Notes, Comments, or, in some cases Essays.³⁹¹ In addition, some journals will consider Articles or Essays that are co-authored by a student if one of the co-authors is not a student.³⁹² Many law journals encourage publication of student notes, essays, comments or other publications in their online supplement as a benefit of law review membership.³⁹³

E. Anonymity

Many reviews employ a manuscript peer-review or refereed submission process, which requires that your manuscript be stripped of any author identifying information.³⁹⁴ This requirement will demand close compliance, particularly if you are using services such as ExpressO or Scholastica to submit your article.³⁹⁵ Journals using peer-review will also tend to take more time in their review process and typically require an author to grant an exclusive period of time to accommodate the review.³⁹⁶ Jonathan Gingerich observes:

There are some costs to [the journal] adopting a blind review policy, including the administrative costs of ensuring that an article is appropriately blinded before it is reviewed. But these costs are likely outweighed by the benefits of adopting a blind review model, such as decreased reliance on letterhead prestige, better perceptions of the journal's review process by potential authors, and, theoretically, publication of higher quality articles.³⁹⁷

389. See *Faculty Publication Tips*, UW NAVIGATION, <http://www.uwyo.edu/lawlib/facultyservices/faculty.html> [perma.cc/C6WH-W6MK] (last visited Mar. 12, 2018).

390. See *id.*

391. See *id.*

392. See *Submissions*, *supra* note 297.

393. See GEO. WASH. L. REV., *supra* note 106; CORNELL L. REV., *supra* note 134.

394. See *Submissions*, *supra* note 383.

395. See *Submissions*, *supra* note 297.

396. See *American Business Law Journal: Author Guidelines*, WILEY ONLINE LIBRARY, [http://onlinelibrary.wiley.com/journal/10.1111/\(ISSN\)1744-1714/homepage/ForAuthors.html](http://onlinelibrary.wiley.com/journal/10.1111/(ISSN)1744-1714/homepage/ForAuthors.html) [perma.cc/3H7F-BS4S] (last visited Mar. 12, 2018) (observing that “[b]ecause the [Journal] uses blind refereeing, the manuscript must not identify the author,” and that the consideration of manuscripts is normally complete within six weeks of their receipt).

397. Jonathan Gingerich, *A Call for Blind Review: Student Edited Law Reviews and Bias*, 59

F. Exclusivity Preference

Exclusivity of submission seems to be the preference of the highest rated law journals and reviews.³⁹⁸ For example, the *Stanford Law Review* states:

If your preference is to publish in the *Stanford Law Review*, we strongly recommend that you submit your manuscript to us exclusively, at least ten days before submitting it to other journals. Because we undertake a very thorough review of all submissions, we are typically unable to make quick acceptances when faced with exploding offers from other journals.³⁹⁹

G. The Review Process

Complaints about law review article selection are amply available in the literature.⁴⁰⁰ Understandably, every author is disappointed when their brilliant manuscript representing months or years of hard work receives modest interest upon submission. Here are a few thoughts about what to expect. The articles department of the *UCLA Law Review* “attempts to review every article within eight weeks of its receipt.”⁴⁰¹ As noted earlier, peer-reviewed or refereed journals will likely require a longer period of time to obtain completed reviews.⁴⁰²

J. LEGAL EDUC. 269, 269 (2009).

398. See *Article Submissions*, *supra* note 302.

399. *Id.*

400. See, e.g., Potuto, *supra* note 64, at 609 (citing Jason P. Nance & Dylan J. Steinberg, *The Law Review Article Selection Process: Results from a National Study*, 71 ALB. L. REV. 565, 571 (2008)); Alfred L. Brophy, *The Emerging Importance of Law Review Rankings for Law School Rankings, 2003-2007*, 78 U. COLO. L. REV. 35, 35-36 (2007); Roger C. Cramton, “The Most Remarkable Institution”: *The American Law Review*, 35 J. LEGAL EDUC. 1, 7-8 (1986); Erik M. Jensen, *The Law Review Manuscript Glut: The Need for Guidelines*, 39 J. LEGAL EDUC. 383, 385 (1989); Jordan H. Leibman & James P. White, *How the Student-Edited Law Journals Make Their Publication Decisions*, 39 J. LEGAL EDUC. 387, 396 n.39 (1989); Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38, 45 (1936) (presenting an early and damning critique of law reviews); Robert Weisberg, *Some Ways to Think About Law Reviews*, 47 STAN. L. REV. 1147, 1148 (1995); and Albert H. Yoon, *Editorial Bias in Legal Academia*, 5 J. LEGAL ANALYSIS 309, 309 (2013) (finding that, with few exceptions, law reviews publish more articles from faculty at their own institution than from faculty at other law schools, law review publications of their own faculty are cited less frequently than publications of outside faculty, and law faculty publish their lesser-cited articles in their own law review relative to their articles published in other law reviews, suggesting that legal scholarship, in contrast to other academic disciplines, exhibits bias in article selection at the expense of lower quality).

401. *Submission Guide for Scholars*, UCLA LAW REVIEW, http://www.uclalawreview.org/?page_id=2408 [perma.cc/EJ8M-QXZE] (last visited Mar. 12, 2018).

402. See *American Business Law Journal: Author Guidelines*, *supra* note 396.

H. Offers, Expedited Review, and Acceptances

When an offer is received, typically the author will have seven days to consider and respond.⁴⁰³ Many authors will send a notice to more attractive (higher rated) law reviews informing them of the offer and identifying the journal making the offer to publish.⁴⁰⁴ During this time allotted for the author's decision, if a more attractive offer is received, the newer seven day decision period may be used to solicit further indications of interest.⁴⁰⁵ This new request is known as an "expedited review."⁴⁰⁶ Manuscript submission services such as ExpressO and Scholastica assist in the automated communication of these acceptances and request for expedited review.⁴⁰⁷ It appears some highly-ranked journals will not even look at articles which have not received an offer somewhere else. The *UCLA Law Review* "generally require[s] a minimum of ten days to complete an expedited review."⁴⁰⁸ An author requesting an expedited review should notify journal editors of receipt of the publication offer, stating "[a]uthor [and] co-author's first and last names[,] [t]itle of the Article[,] [a]uthor's deadline[,] [a]uthor's e-mail address and/or phone number (please indicate times you may be reached)[] and [n]ame of the competing journal."⁴⁰⁹

I. Copyright and the Rise of Open-Access Publishing

So, if you receive an offer to publish your manuscript, who owns the copyright, what are your rights as author, and how much will it cost for someone to gain access to your article? A comprehensive treatment of this issue is far beyond the scope of this Article. However, some of the basic issues and considerations are covered here. First, most publication agreements differ from each other and should be read with great care.⁴¹⁰ The specifics of your publication agreement will determine who owns the copyright of the manuscript subsequent to publication and for what specified purposes.⁴¹¹ Therefore, your rights as the author will be crafted by the terms and conditions of the publication agreement,

403. See *Submissions*, *supra* note 383.

404. See *Faculty Publication Tips*, *supra* note 389.

405. See *id.*

406. *Id.*

407. See EXPRESSO, *supra* note 385, at 14; see also *Expedite Requests*, SCHOLASTICA (Sept. 21, 2016, 1:24 PM), <http://help.scholasticahq.com/customer/en/portal/articles/1008634-expedite-requests> [perma.cc/6334-DCMW].

408. *Submissions*, UCLA LAW, <https://law.ucla.edu/student-life/law-reviews-and-journals/journal-of-environmental-law-and-policy/submissions/> [perma.cc/J5D8-AC36] (last visited Mar. 13, 2018).

409. *Id.*

410. See Benjamin J. Keele, *Copyright Provisions in Law Journal Publication Agreements*, 102 LAW LIBR. J. 269, 272 (2010).

411. *Id.* at 269.

which may or may not be open to negotiation with the publisher.⁴¹²

Open access publishing may be defined as “the ready availability of content on the internet [sic] unfettered by payment, licensing restrictions, or the need to subscribe to a service.”⁴¹³ Academic journals are expensive and of particular importance, “[i]n theory, [*open access*] bridges the information divide that currently separates those who can afford the often prohibitive publisher fees, and those who cannot.”⁴¹⁴ One study reports that the cost of academic and scientific periodicals has “increased at four times the rate of inflation since 1986.”⁴¹⁵ As a result, “[a]ll over the country research libraries are canceling subscriptions to academic journals, because they are caught between decreasing budgets and increasing costs.”⁴¹⁶ Corresponding to the rapid growth of the Internet, the concept of *open access* scholarship is just a few years old.⁴¹⁷ Regarding Open Access, *The Duke Law Journal* states:

The *Duke Law Journal* is among the few leading legal journals that make the full content of all articles published in the *Journal* available free. [The *Duke Law Journal*’s] decision to adopt the Open Access Law Principles promulgated by Open Access Law Program gives our authors the ability to reach a worldwide audience and, in concert with other journals adopting the principles, increases the volume of freely available legal scholarship.⁴¹⁸

Donovan, Watson, and Osborne observe that *open access* raises questions among librarians, publishers and faculty about whether *open access* “should replace or supplement traditional print texts and journals.”⁴¹⁹ Authors must determine “the relative prestige of a digital-only version as compared to the

412. See generally *id.*; Michael N. Widener, *Safeguarding ‘The Precious’: Counsel on Law Journal Publication Agreements in Digital Times*, 28 J. MARSHALL J. COMPUTER & INFO. L. 217 (2010).

413. James M. Donovan et. al, *The Open Access Advantage for American Law Reviews*, EDISON 2015-03A, J. PAT. & TRADEMARK OFF. SOC’Y 2 (2015) (citing *Open Access*, SCHOLARLY PUBL’G & ACAD. RES. COAL. [SPARC], <http://www.arl.org/sparc/openaccess/why-oa.shtml> [<https://perma.cc/4B4D-A9GP>] (last visited May 22, 2018)) (“By Open Access, we mean the free, immediate, availability on the public Internet of those works which scholars give to the world without expectation of payment – permitting any user to read, download, copy, distribute, print, search or link to the full text of these articles, crawl them for indexing, pass them as data to software or use them for any other lawful purpose.”).

414. *Id.* at 3.

415. Robert Darnton, *A World Digital Library Is Coming True!*, 61 N.Y. REV. OF BOOKS, no. 9, May 22, 2014, available at <http://www.nybooks.com/articles/2014/05/22/world-digital-library-coming-true/> [perma.cc/NU9A-MGBA].

416. *Id.*

417. See *id.*

418. *Open Access*, DUKE LAW JOURNAL, <http://dlj.law.duke.edu/about/submissions/open-access/> [perma.cc/27QK-2KSB] (last visited Mar. 13, 2018).

419. Donovan et. al, *supra* note 413, at 2.

[A]ugust paper editions.”⁴²⁰ Also at issue is “[w]hose responsibility should it be to collect and post these files, and to determine which publishers permit which versions[.]”⁴²¹ Donovan, Watson, and Osborne state:

Most of these questions will resolve *themselves as relevant market forces interact to bring about* the adoption of a new standard for scholarly publishing and preservation. Although the details of this emerging paradigm have yet to be determined, little doubt remains that the current traditional print model with its associated spiraling subscription costs is not sustainable, and that open access principles will play an influential role in the creation of an alternative.⁴²²

J. The Acceptance Agreement and Open Access

The model publication agreement for the *Minnesota Law Review*⁴²³ incorporates Open Access Law Journal principles,⁴²⁴ and is reproduced as Appendix B to this Article.⁴²⁵

420. *Id.* at 2-3.

421. *Id.* at 3.

422. *Id.* (emphasis added).

423. *Publication Agreement*, MINN. LAW REVIEW, <http://webcache.googleusercontent.com/search?q=cache:http://www.minnesotalawreview.org/wp-content/uploads/2011/02/LR-Publication-Agreement.docx> [perma.cc/9K52-73VN] (last visited Mar. 13, 2018).

424. *See generally* Alissa Centivany, *Paper Tigers: Rethinking the Relationship between Copyright and Scholarly Publishing*, 17 MICH. TELECOMM. & TECH. L. REV. 385 (2011); Richard A. Danner, *Supporting Scholarship: Thoughts on the Role of the Academic Librarian*, 39 J. L. & EDUC. (2010); Richard A. Danner, *Open Access to Legal Scholarship: Dropping the Barriers to Discourse and Dialogue*, 7 J. INT'L COM. L. & TECH. 65 (2012); Richard A. Danner, *The Durham Statement on Open Access One Year Later: Preservation and Access to Legal Scholarship*, (Duke Law Sch., 2010); Lisa Di Valentino, *Open Access and Legal Publishing: An Annotated Bibliography*, (Univ. Mass. Amherst, 2010); Thomas Eger et. al, *The Determinants of Open Access Publishing: Survey Evidence from Germany*, 39 EUR. J. L. & ECON. 475 (2015); Graham Greenleaf et. al, *Free Scholarship: Developing a National Legal Scholarship Library* (UNSW Law, Research Paper No. 2013-60, 2013); Edward T. Hart, *Indexing Open Access Law Journals...Or Maybe Not*, 38 INT'L J. LEGAL INFO. 19 (2010); Jessica D. Litman, *The Economics of Open-Access Law Publishing*, 10 LEWIS & CLARK L. REV. 779 (2006); Ian Ramsay, *SSRN and Law Journals - Rivals or Allies?*, 40 INT'L J. LEGAL INFO. 134 (2012); James G. Milles, *Redefining Open Access for the Legal Information Market*, 98 LAW LIBR. J. 619 (2006); Carol A. Parker, *Institutional Repositories and the Principle of Open Access: Changing the Way We Think About Legal Scholarship*, 37 N.M. L. REV. 431 (2007); Lawrence B. Solum, *Download It While Its Hot: Open Access and Legal Scholarship*, 10 LEWIS & CLARK L. REV. 841 (2006).

425. *See infra* Appendix B.

K. Working with Editors

Working with editors may differ substantially among journals. Bradley Martineau describes the process at student-edited reviews this way: “First, student editors are assigned to an author’s article. Each student’s edit can take anywhere from two to three weeks, depending on the length of the author’s article.”⁴²⁶ Next, “[o]nce the author reviews the student’s edits and makes any additional changes . . . [t]he editor then incorporates the approved changes into what is commonly called ‘clean copy’ . . . [which] passes onto the next student editor assigned to the author.”⁴²⁷

If the author has done a great job with footnotes, the journal editors should have an easy time of documenting and verifying each footnote. The editing process is described by the *Cornell Law Review* as follows:

Editing is carried out in two stages, ‘proving’ and ‘teching,’ the first of which is primarily to verify and correct the substantive content of an article, and the second of which is to resolve issues relating to layout and remove whatever remaining substantive errors remain within. Associates are herein responsible to the Law Review’s Managing Editors, who oversee the intermediate and final editing of every article, the Articles Editors, who are responsible for selecting and editing the submissions generated by professors and practitioners, and Notes Editors, who are responsible for developing, selecting and editing the submissions generated by third-year members of the Law Review.⁴²⁸

IX. SOCIAL SCIENCES RESEARCH NETWORK (SSRN)

Widespread growth and availability of the Internet enabled development of the Social Sciences Research Network (SSRN) in 1994.⁴²⁹ Founded by Michael C. Jensen and Wayne Marr in 1992,⁴³⁰ the SSRN “is devoted to the rapid worldwide dissemination of social science research and is composed of a number of specialized research networks in each of the social sciences.”⁴³¹ Today, communication among academic researchers is enhanced by the “early distribution of research results by distributing [s]ubmitted abstracts and by soliciting abstracts of top quality research papers around the world.”⁴³² Law

426. Martineau, *supra* note 183, at 3.

427. *Id.*

428. *Membership, Prospective Associates, Responsibilities, supra* note 134.

429. See generally Noam Cohen, *Now Professors Get Their Star Rankings, Too*, N.Y. TIMES (June 9, 2008), http://www.nytimes.com/2008/06/09/business/media/09link.html?_r=0 [perma.cc/A7NM-N3A2].

430. See Michael C. Jensen, *ABOUT SSRN*, SSRN.COM (Feb. 2, 2012), <https://www.ssrn.com/update/general/mjensen-20th.html> [perma.cc/LDR3-D9DP].

431. *Leading Social Science Research Delivered to Your Desk Top Daily*, SSRN, https://www.ssrn.com/institutes/home_bd.html [perma.cc/327S-WS6K] (last visited Mar. 13, 2018).

432. *Id.*

professor Dan Hunter observes, “I post draft articles to SSRN in order to gather comments from other scholars and to grant access to my ideas to anyone who might be interested.”⁴³³

Scholars benefit from SSRN’s database containing over 785,122 abstracts, 664,705 full text papers at March 13, 2018, along with research papers from a number of Fee Based Partner Publications.⁴³⁴ Publication of an author’s contact information facilitates scholarly community and the flow of research between scholars.⁴³⁵ According to SSRN President Gregg Gordon, downloads of scholarly articles averaged more than one million per month during 2016,⁴³⁶ with full-text downloads growing during 2016 to over 100 million since inception.⁴³⁷ SSRN also contributes to a community among academicians by providing information about conferences, calls for papers, other announcements and job postings.⁴³⁸ SSRN Chairman Michael C. Jensen states:

SSRN’s objective is to provide worldwide distribution of research to authors and their readers and to facilitate communication among them at the lowest possible cost. In pursuit of this objective, we encourage authors to upload their papers to SSRN (without charge). And any paper an author uploads to SSRN is downloadable for free, worldwide

SSRN does not take copyright on any paper posted to SSRN. SSRN takes only a non-exclusive, revocable license (revocable at any time by the author or copyright holder) to distribute an author’s work.⁴³⁹

Shapiro and Pearse observe that “SSRN remains one of the most popular subject-matter repositories for faculty, commanding popularity for its download counts.”⁴⁴⁰ Shapiro and Pearse further believe that “[s]uch download or ‘click’ metrics provide a broader or more inclusive sense of impact than traditional citation because they help capture a sense of the visibility of one’s scholarship, particularly beyond the legal scholars who write in law reviews and social science journals.”⁴⁴¹ As another measure of impact reflecting recent technological change, “download metrics potentially include popularity among a broader audience of readers, such as non-scholars or people who view or read an article but might not

433. Hunter, *supra* note 366, at 609.

434. *Browse, SSRN eLibrary Statistics*, SSRN, <https://papers.ssrn.com/sol3/DisplayAbstractSearch.cfm> [perma.cc/2N49-LZT3] (last visited Mar. 13, 2018).

435. *Id.*

436. *See* Gregg Gordon, *SSRN’s 2016 Year-End Update Letter*, SSRN, <https://www.ssrn.com/en/index.cfm/2016-year-end-pres/> [perma.cc/2HNA-2WCL] (last visited Mar. 13, 2018).

437. *Id.*

438. *See generally* Susan Duncan, *Demystifying the SSRN Process: How to Make it Work for You* (Louis D. Brandeis Sch. of Law, 2008).

439. Jensen, *supra* note 430.

440. *See* Shapiro & Pearse, *supra* note 3, at 1515.

441. *Id.* at 1516.

have occasion to reference it It is arguable that papers with higher download counts skew more favorably toward newer articles.⁴⁴² I have found it particularly useful to check the SSRN database for overlooked recently posted papers just before sending my final manuscript for publication. On more than one occasion, this has enabled me to add timely new information to a manuscript about to be published.

On May 17, 2016, SSRN Founder and Chairman Michael C. Jensen announced a ownership change, whereby “SSRN is joining Mendeley and Elsevier to coordinate . . . development and delivery of new products and services.”⁴⁴³

Legal Scholarship Network

Professor Lawrence A. Cunningham reports that “[t]he Legal Scholarship Network (LSN) repository of online scholarly works . . . promote[s] appreciation of scholarship’s ultimate value: disseminated knowledge. LSN provides real-time data comprehensively, potentially counts all works by all scholars, and implicitly incorporates survey data from the universe of scholars.”⁴⁴⁴ Believing that “[t]he purpose of scholarship is to generate and disseminate knowledge,” Cunningham states that “[c]ritically, the scholar is also devoted to disseminating discovered knowledge for the sake of enriching the public store of learning. A researcher who does not share knowledge is not a scholar; teachers who do not publish are not scholars.”⁴⁴⁵ As a synopsis, Cunningham states:

Traditional academic contribution studies in law selectively measure both productivity (pages in selected journals) and impact (citations on Westlaw to certain faculty at a few dozen schools) or use surveys of a few hundred persons. Controversial as all this is, LSN expands the picture considerably, to invite inclusion of all production, by all professors, and by anyone wishing to use the network. While offering resources to improve traditional bibliometric exercises, LSN also provides a unique capacity to promote self-reflection and has the potential to map a platform to provide equivalent prominence to teaching.⁴⁴⁶

442. *Id.*

443. Michael C. Jensen, *From the Desk of Michael C. Jensen, Chairman, SSRN* (May 17, 2016), <http://www.ssrn.com/en/index.cfm/ssrn-joins-mendeley-elsevier/> [perma.cc/C8N3-B37Y].

444. Lawrence A. Cunningham, *Scholarly Profit Margins and the Legal Scholarship Network: Reflections on the Web 3* (Bos. Coll. Law Sch., Faculty Papers, 2005).

445. *Id.* at 8.

446. *Id.* at 24.

X. CURRENCY VALUE OF CITATIONS

A. Currency Value of Citations

To a considerable extent, academic citations have become the currency and measurement of legal scholarship.⁴⁴⁷ Richard Posner writes that citation analysis provides important insight into “social phenomena such as reputation, influence, prestige, celebrity, the diffusion of knowledge, the rise and decline of schools of thought, *stare decisis* (that is... previous decisions—precedents), the quality of scholarly output, the quality of journals, and the productivity of scholars, judges, courts, and university departments.”⁴⁴⁸ Constitutional law, a specialty area where few attorneys actually practice, disproportionately represent the bulk of current legal scholarship.⁴⁴⁹ However, “[f]aculty publication in business-law areas, in contrast, is likely to be a good proxy for the quality of the business-law education that the students receive (and business law tends to be more lucrative than other areas of practice)[.]”⁴⁵⁰

Citations “allow a reader to verify the accuracy of the author’s assertions, and allow authors to receive credit for their ideas when other authors use them. They also allow researchers to quickly locate valuable information.”⁴⁵¹ Lawrence Solum states that “the new reality of the legal academy is that your ability to produce excellent legal scholarship will determine how far your connections and credentials (or lack thereof) will take you.”⁴⁵² With particular regard to the hiring of law professors:

For many years, candidates were selected for interviews at the [Faculty Recruitment Conference] on the basis of the same old credentials and connections, but at some point (many would say the early 1980s), the rules of the game began to change. In baseball, a similar change is

447. See Shapiro & Pearse, *supra* note 3, at 1484 (citing J.M. Balkin & Sanford Levinson, *How To Win Cites and Influence People*, 71 CHI. KENT L. REV. 843, 843 (1996)); see generally Tom Ginsburg & Thomas J. Miles, *Empiricism and the Rising Incidence of Coauthorship in Law*, 2011 U. ILL. L. REV. 1785 (2011); Gary M. Lucas, Jr., *Measuring Scholarly Impact: A Guide for Law School Administrators and Legal Scholars*, 165 U. PA. L. REV. ONLINE 165 (2017); Gregory C. Sisk et al., *Scholarly Impact of Law School Faculties in 2012: Applying Leiter Scores to Rank the Top Third*, 9 U. ST. THOMAS L.J. 842 (2012); Gregory C. Sisk et al., *Scholarly Impact of Law School Faculties in 2015: Updating the Leiter Score Ranking for the Top Third*, 12 U. ST. THOMAS L.J. 100 (2015).

448. Richard A. Posner, *The Theory and Practice of Citations Analysis, with Special Reference to Law and Economics* 3 (Univ. Chi. Law Sch., John M. Olin Law & Econ., Working Paper No. 83, 1999).

449. Richard A. Posner, *Law School Rankings*, 81 IND. L.J. 13 (2006).

450. *Id.* at 22.

451. Murray, *supra* note 90, at 8.

452. Lawrence B. Solum, *The New Realities of the Legal Academy*, in BECOMING A LAW PROFESSOR: A CANDIDATE’S GUIDE 2 (Brannon P. Denning et. al. eds., Am. Bar Ass’n, 2010).

associated with Billy Beane, the manager of the Oakland Athletics, who defied conventional wisdom and built winning teams despite severe financial constraints by relying on statistically reliable predictors of success. The corresponding insight in the legal academy (developed by hiring committees at several law schools) was that the best predictor of success as a legal scholar was a record of publication. It turns out that law school grades, law review offices, and clerkships are at best very rough indicators of scholarly success. But those who successfully publish high quality legal scholarship are likely to continue to do so.⁴⁵³

The gauge of an author's impact on scholarship has:

[B]een evaluated through tabulation of citations to their writings. Citation counts have been utilized in assessing scholars' work for purposes of grant awards, tenure, or promotion decisions. Those using citation data for evaluative purposes have justified such use by pointing to research demonstrating a high correlation between the total of citations to a scientist's or scholar's writings and judgments by peers of the 'productivity,' 'significance,' 'quality,' 'utility,' 'influence,' 'effectiveness,' or 'impact' of scientists and their scholarly products.' One investigator has gone so far as to say that 'citations and peer rankings appear to be virtually the same measurement.'

....

Even with their acknowledged limitations, citation counts are attractive as relatively objective tools for assessing scholarly impact. They can be used not only to gauge the impact of a given author or writing, but also to identify which writings are the most frequently cited, taken to be a rough measure of the writings which have had the most extensive impact.⁴⁵⁴

Unlike journals and reviews in many other academic disciplines, an accurate count of author citations does not seem to be as readily available for many law journals and reviews.⁴⁵⁵ This seems to be due, in part, to the fragmented publication of law school journals as opposed to a relatively concentrated few major publishers of academic journals in other disciplines (Emerald, Kluwer, Oxford University Press, Reed Elsevier, Thomson Reuters, and Wiley Blackwell). In addition, the Bluebook citation convention of placing footnotes at the bottom of the page rather than an easily-scannable list appearing at the end of an article may have historically led to the slower reporting of legal citations.

B. Publish or Perish

Publish or Perish is a software program "designed to empower individual

453. *Id.* at 1-2.

454. Shapiro & Pearce, *supra* note 3, at 1485.

455. See generally Theodore Eisenberg & Martin T. Wells, *Ranking Law Journals and the Limits of Journal Citation Reports* (Cornell Legal Stud., Research Paper No. 12-30, 2012).

academics to present their case for research impact to its best advantage.”⁴⁵⁶ The software uses data from Google Scholar and Microsoft Academic Search and provides analysis generating the following metrics: total number of papers and total number of citations; average citations per paper, citations per author, papers per author, and citations per year; Hirsch’s h-index and related parameters; Egghe’s g-index; the contemporary h-index; three variations of individual h-indices; the average annual increase in the individual h-index; the age-weighted citation rate; [and] an analysis of the number of authors per paper.⁴⁵⁷ Used by academic administrators, faculty deans, and academics applying for tenure, promotion, or a job, “[c]itations can also be used to tell stories about academics, journals and fields of research.”⁴⁵⁸

XI. CONCLUSION

Lawyers write for a living. This Article reflects on the value of legal scholarship, the usefulness, the importance of legal research and writing, and the law review or law journal publication process in particular. My conclusion is that, despite long hours and loss of sleep, law students benefit greatly from participation in law review. I discuss the importance and value of legal writing, law review, and law journal publication.⁴⁵⁹ First, a brief examination of why lawyers do not write better is presented.⁴⁶⁰ Next, a description of the law review experience, including: its value⁴⁶¹; a brief history of the American law journal experience⁴⁶²; the journal membership selection process⁴⁶³; who does what at law reviews⁴⁶⁴; and the number and type of law journals is offered.⁴⁶⁵ Thoughts about the writing process and important considerations regarding law review writing in particular are then presented.⁴⁶⁶ Reflections by recent law journal editors of their law review experience are offered next.⁴⁶⁷ Then, the who, what, where and when

456. See Anne-Wil Harzing, *Publish or Perish*, HARZING (Feb. 6, 2016, 4:10 PM), <http://www.harzing.com/pop.htm> [perma.cc/D5ZS-EQ93].

457. *Id.*

458. Anne-Wil Harzing, *The Publish or Perish Book*, HARZING (Feb. 6, 2016, 4:10 PM) <http://www.harzing.com/popbook.htm> [perma.cc/Q5QA-YJ6K].

459. See *supra* Parts II-III.

460. See *supra* Parts II.A-B.

461. See *supra* Part III.A.

462. See *supra* Part III.

463. See *supra* Part III.B.

464. See *supra* Parts III.D-O.

465. See *supra* Part IV.

466. See *supra* Part V.

467. See *supra* Part VI.

of the publication process is covered.⁴⁶⁸ Comments about the Social Sciences Research Network (SSRN) and Legal Scholarship Network (LSN) are followed by a brief discussion about the currency value of citations.⁴⁶⁹ Hopefully, this Article adds to the conversation about the importance and value of skilled legal writing, law review, and contributions made by journal publication.

468. *See supra* Part VIII.

469. *See supra* Part IX.

APPENDIX A: JOINT STATEMENT REGARDING ARTICLES LENGTH

The following statement reflects the commitment of 11 leading law journals across the country to play an active role in moderating the length of law review articles. Specifically, law reviews at Columbia, Cornell, Duke, Georgetown, Harvard, Michigan, Stanford, Texas, U. Penn., Virginia, and Yale have endorsed the statement below.

In mid-December, the Harvard Law Review conducted a nationwide survey of law faculty regarding the state of legal scholarship. Nearly 800 professors completed the survey and submitted their feedback. Complete tabulations of the survey will soon be available on the web. Importantly, the survey documented one particularly unambiguous view shared by faculty and law review editors alike: the length of articles has become excessive. In fact, nearly 90% of faculty agreed that articles are too long. In addition, dozens of respondents submitted specific comments, identifying the dangers of this trend and calling for action. Survey respondents suggested that shorter articles would enhance the quality of legal scholarship, shorten and improve the editing process, and render articles more effective and easier to read.

The law reviews listed above are very grateful for the constructive feedback and wish to acknowledge a role in contributing to this unfortunate trend in legal scholarship. To the extent that the article selection or editing process encourages the submission and publication of lengthier articles, each of the law reviews listed above is committed to rethinking and modifying its policies as necessary. Indeed, some have already done so. The vast majority of law review articles can effectively convey their arguments within the range of 40-70 law review pages, and any impression that law reviews only publish or strongly prefer lengthier articles should be dispelled. Ultimately, individual law reviews will have to decide for themselves how best to resolve these concerns. Please know, however, that editors across the country are cognizant of the troubling trend toward longer articles and are actively exploring how to address it.

APPENDIX B: THE PUBLICATION AGREEMENT

Special thanks to the Minnesota Law Review for permission to reprint their model publication agreement which follows:

Minnesota Law Review Model Publication Agreement

This is a publication agreement between Professor XXX (the “Author”) and the Minnesota Law Review Foundation (the “Foundation”), regarding a written work entitled “XXX” (the “Article”).

1. License of Copyright.

a. The Author hereby retains all rights, title, and interest in the copyright of the Article and grants to the Foundation a nonexclusive license to print, reprint, publish, distribute, and allow limited classroom photocopying of the Article.

b. The above license includes: the right of first publication of the Article; the right to authorize the electronic reproduction of the Article by Lexis, Westlaw, and by any other electronic means; the right to authorize others to reproduce the Article for noncommercial purposes; and the right to use only a portion of the Article in all of the aforementioned situations.

c. The Author agrees to require that the *Minnesota Law Review* be given credit as the original publisher in any republication of the Article authorized by the Author. Such credit shall include a proper citation to the Article’s original publication in the *Minnesota Law Review*, which identifies the Author, the volume, the journal, the first page, and the year of the Article’s original publication or which indicates that publication in the journal is forthcoming where appropriate.

d. The Author agrees to allow the *Minnesota Law Review* to solicit a response to the Article, to be published in the online companion to the *Minnesota Law Review*, *Headnotes*.

2. Foundation’s Covenant.

a. The Foundation agrees to publish the Article in Volume 95 of the *Minnesota Law Review*.

b. The Foundation promises to send to the Author, within a reasonable time after the Article has been published, an electronic copy of the published version of the Article if the Foundation has such a copy within its possession, custody or control at or about the time of publication, and as part of the Foundation’s normal publishing operations.

c. The Foundation will provide the Author with two free copies of the bound issue in which the Article appears and fifty free reprints of the Article as per its normal policy. The Author will have the opportunity to order additional reprints at the Author’s expense before the issue containing the Article goes to press.

3. Author’s Warranties.

a. The Author warrants that the Article is original and that the Author

is its sole author and owner; that neither the Article nor any part of it has been previously published. For purposes of this paragraph, making a copy of the Article accessible over the Internet, including, but not limited to, posting the Article to a database accessible over the Internet, does not constitute prior publication so long as the as such copy indicates that the Article is not in final form, such as by designating such copy to be a “draft,” a “working paper,” or “work-in-progress.”

b. The Author warrants that all drafts of the Article that the Author makes available on the Internet or elsewhere prior to publication will state that the Article is forthcoming in Volume 95 of the *Minnesota Law Review*.

c. The Author warrants that the Article contains no libelous or otherwise unlawful material and does not infringe any proprietary right at common law or any statutory copyright; and that the Author will hold harmless and indemnify the Foundation against any and all suits, claims, demands or recoveries, including damages, costs, expenses, and attorney's fees, which may be made, taken, or incurred at any time against the Foundation which are based on either violation of proprietary right or copyright laws, or libelous or injurious matter in the Article.

4. Editing the Article.

a. The Author and the Foundation agree to cooperate in preparing the Article for publication. The Author agrees to make all revisions reasonably requested by the Foundation within the timelines established by the Foundation.

b. The Author acknowledges and agrees that the Foundation has the right to make the revisions necessary, in its discretion, to bring the Article in conformance with the standards of scholarly legal publishing.

5. The Author agrees and acknowledges that the Foundation's performance of its obligations under this contract is good consideration for the Author's performance of his or her obligations under this contract, and that neither the Foundation nor any of its agents owe any further consideration to the Author.

I HAVE READ THE TERMS OF THIS AGREEMENT AND AGREE FULLY WITH THE SAME.

Signed: _____ Date: _____
XXX

Signed: _____ Date: _____
XXX, Editor-in-Chief

