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## Dear Student Editors, We Need Your Help

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## DEAR STUDENT EDITORS, WE NEED YOUR HELP

JESSICA LYNN WHERRY\*

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Dear Student Editors,

I want to tell you a story. Well, actually several stories. Or maybe multiple versions of the same story. But a story, nonetheless. Here goes.

A law professor submits an article to you, and her article is rejected. At the time of that submission and rejection, her title was “adjunct professor.” That same law professor submits the same article, and her article is accepted for publication. This time, her submission comes with a higher-ranked law school’s letterhead and her upgraded title of “professor.”

Two law professors submit an article with a title that draws an analogy to swimming. The article is rejected. The article is revised, but with substantively the same content and a brand new title that includes the words “underpinnings” and “theoretical.” The article is accepted for publication; it receives multiple offers (including an offer from a journal that rejected the first submission).

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A law professor writes an article and submits it to a peer-reviewed journal as well as to student-edited law reviews and journals. The peer-reviewed journal accepts the article almost immediately and offers to publish it. The author wants to wait to hear back from the student-edited law reviews and journals. The author receives only rejections from student-edited journals and publishes her article in the peer-reviewed journal. The article is recognized by judges as particularly responsive to changes in legal practice, and the author's contribution further enhances the peer-reviewed journal's reputation.

A law professor who teaches at a law school with a "rank not published" by U.S. News is an expert on Arab and Muslim American identity and legal issues. He is Muslim-American. His manuscript submissions are routinely rejected by student-edited journals, while non-Muslim-Americans writing in similar areas with less personal and professional expertise are published.

Several of these stories were among those heard at a discussion group at the annual gathering of law faculty, the 2016 Association of American Law Schools (AALS) Annual Meeting.<sup>1</sup> A common thread among these stories is the possibility that publication decisions are not necessarily based on the substantive quality of the scholarship. Instead, there may be multiple influences on a student editor's decision to offer a place in her journal.

During the AALS Annual Meeting, the discussion group focused on ways in which faculty and law journal editorial boards can increase the diversity of the authors accepted for publication in law journals. The group also brainstormed about ways that journal leadership can develop internal policies that would increase the diversity of the authors published in the journal. The group addressed these goals by asking the following questions: "1) Why is this discussion needed, and what prompted each person to want to participate on this panel?; 2) Why is author diversity important to the participants as well as more generally to the legal community and beyond?;

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1. AALS Discussion Group, *Increasing Author Diversity in Legal Scholarship: Individual and Institutional Strategies* 1, 52 (2016) [https://www.aals.org/wp-content/uploads/2015/12/AM2016\\_finalprogram.pdf](https://www.aals.org/wp-content/uploads/2015/12/AM2016_finalprogram.pdf) (AALS 110th Annual Meeting Program, on file with author). The designated speakers were Sahar Aziz (Texas A&M University School of Law), Ann Bartow (University of New Hampshire School of Law), Khaled Beydoun (Barry University Dwayne O. Andreas School of Law), Adrienne Davis (Washington University in St. Louis School of Law), Martha Ertman (University of Maryland Francis King Carey School of Law), Nancy Leong (University of Denver Sturm College of Law), Andrea Loretta McArdle (City University of New York School of Law), Paula Monopoli (University of Maryland Francis King Carey School of Law), Shari Motro (The University of Richmond School of Law), Angela Onwuachi-Willig (University of Iowa College of Law), Carol Sanger (Columbia University School of Law), Milena Sterio (Cleveland-Marshall College of Law at Cleveland State University), Kristen Konrad Tiscione (Georgetown Law).

3) What do we mean by author diversity?; and 4) What changes are desirable, and what changes are feasible, at the personal, institutional, and law school levels?"<sup>2</sup>

It makes sense that evaluating a manuscript submission is a complex task, and this essay (with apologies) does not offer a simple solution. It does, however, offer ideas for a more thoughtful, purposed approach to publishing legal scholarship. Student editors are busy, usually genuinely interested in and dedicated to their publication, and faced with competing interests. Not that you have any interest in what my experience was, but I do want you to know I was a senior managing editor of a journal during law school. And I have been an editor of a leading legal writing journal since 2011. Both of these experiences contribute to my ideas here.

Law professors are also busy. Many are not under the same employment-seeking pressures as law students, but many law professors are under pressure to write, and even more pressure to publish to stay employed. For some law professors, there are challenges in getting their articles accepted for publication. There are many theories about why placing a piece can be challenging for some. These challenges were discussed at the standing-room-only author diversity in legal scholarship discussion group at the 2016 AALS Annual Meeting.

Many of the panelists had anecdotes about why some articles are chosen over others, why some authors receive multiple offers and others do not. Law faculty have some sense of the process for reviewing article submissions because many of us<sup>3</sup> were student editors on our own student-edited law review or journal. We don't have a comprehensive sense of whether these anecdotes are universal in article selection by student-edited law reviews and journals. But we do have some sense that there are things—ideas, assumptions, conventions—that are getting in the way of advancing scholarship both in terms of substantive topics and variety of authors. For example, one professor reported that student editors typically favor articles on “constitutional law” just because they are on the subject of constitutional law.<sup>4</sup> Other student editors seem to disfavor practical scholarship, scholarship about legal writing, and other scholarship that is viewed as “less than.”<sup>5</sup>

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2. *Id.*

3. When I use “us” or “we,” I do not intend to speak for all law faculty but only those who share my concerns.

4. See James P. Nance & Dylan J. Steinberg, *The Law Review Article Selection Process: Results from a National Survey*, 71 ALB. L. REV. 565, 585 (2008).

5. See David Hricik & Victoria S. Salzmann, *Why There Should be Fewer Articles Like This One: Law Professors Should Write More for Legal Decision-Makers and Less for Themselves*, 38 SUFFOLK U. L. REV. 761, 766–67 (2005).

Of course there is also the reality that at least some of the submissions you review are not of publishable quality for any number of reasons. We are not really concerned about that here except to the extent that some subpar scholarship might mask itself in a recognized name or law school.

Here is the thing: we need your help. We need you, your ideas, your energy, as well as your commitment to justice and to doing something worth doing. We know being an editor on a journal can at times be more of a pain than a valuable experience. We also know thinking big picture about your law review or law journal is challenging because your involvement is limited to one or two academic years. That's why we are writing to you, because we want to start a conversation to which we, your potential authors, can contribute. We also want to support you in your role as student editor.

We are supporting you; we are not questioning you. We are not questioning your abilities, your commitment, your overwhelming pressures to do many things well as a law student, your interest in our ideas, or your decisions. We are questioning the entrenched process in which we too were student editors. We are thinking about ways for you to be the generation to change things, ways for us to work with you toward common goals. With all the talk about change in legal education, we think there is an opportunity for growth and innovation in the world of law reviews and law journals. And we have some ideas about what that growth and innovation could look like, especially in terms of the process for article selection.

As a start to thinking about the why and how to transform the role of law review and law journal, we offer the following ideas. For the most part, we are posing these suggestions as "what ifs." What if your journal made one or more of these changes? Would the change make your journal experience more valuable? Would the change increase the diversity of published scholarship? Would the change create an opportunity for your journal to lead the way in innovation?

Let's start with some logistics that could have a substantial effect on publication decisions and the overall quality and diversity of legal scholarship. Of course these changes come with administrative burdens (time), but these burdens would lessen over time after an initial transition period. Also, not doing something just because it is administratively burdensome is not a good reason to avoid change. This is too important of an opportunity to miss.

#### REQUIRE BLIND SUBMISSIONS

Even unintentionally, it seems that authors who regularly publish and authors who are affiliated with the "top" law schools are more likely to have articles accepted and published. We get it. We know you see

hundreds, even thousands, of submissions during a submission cycle. It makes sense that there are some markers for quick decision-making to consider or reject an article. But have you ever thought about whether an author's law school affiliation reflects the quality of the submission or whether the author's reputation is overvalued?

There probably is some favorable influence on your decision-making process when you review an article from a Harvard Law School professor and an unfavorable influence when you review an article from a professor affiliated with a law school you have never heard of.<sup>6</sup> A blind submission process does not mean you will suddenly publish only unknown authors, or that you will stop publishing authors with strong reputations. Nor does it mean that the prestige of your own journal will suddenly tank. It really just means those potentially influencing factors will not be at play. This is an opportunity for you to more fully evaluate an article on its merits.<sup>7</sup>

#### IMPLEMENT A PEER REVIEW PROCESS

Article selection is a daunting task not only because of the volume but also because of the challenges in evaluating the substance of the articles. Most student editors are third-year law students and although they often have a strong academic record, some legal experience, and a broad base of knowledge based on coursework, it's not likely that student editors are experts on every topic. That's okay. It's not that a lack of expertise means you are incapable of making decisions, but why not get some help from people who are experts?

One way to get that additional help is through peer review.<sup>8</sup> Using peer

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6. This "letterhead privilege" might be "the result of a rational desire to increase [a journal's] prestige." 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 n.156 (2010); see also Nance, *supra* note 4, at 612–13.

7. For a discussion of how to do blind submissions, including some likely challenges and resolutions, see Jonathan Gingerich, *A Call For Blind Review: Student Edited Law Reviews and Bias*, 59 J. LEGAL. EDUC. 269, 276–78 (2009).

8. Peer-reviewed law journals "remain an exception rather than the rule." *Id.* at 269–70. "This stands in stark contrast to publishing practice in most other academic disciplines, where journals are almost always peer reviewed." *Id.* at 270 n.1. For additional thoughts on peer review in student-edited law reviews and journals, see Richard A. Posner, *Foreword: The Peer Review Experiment*, 60 S.C. L. REV. 821, 821–22 (2009); John P. Zimmer & Jason P. Luther, *Peer Review as an Aid to Article Selection in Student-Edited Legal Journals*, 60 S.C. L. REV. 959 (2009).

There are numerous approaches to designing a peer review. The following list of questions is an example of a Peer Review Comment Sheet used by Legal Communication & Rhetoric: JALWD.

1. Comments on specific criteria

review would give reliable information in brief that you could use in addition to your existing process of article selection. Peer review would not have to be implemented full cloth to be effective. You could consider it for borderline articles or articles on emerging areas of law, or just any time you want some additional information before making a decision.

Enlist your law faculty or authors your journal has already published to help. True, they won't all respond, but some will, especially those who value a relationship with your journal and see the long view of contributing to stronger, more dynamic scholarship in the field. If you are not sure whom to ask, start with your former legal writing professor.

You could test it out with a handful of articles, or even one. Ask a professor at your school who writes in the same or similar subject area to review the article. Give the professor a discrete list of questions to answer and a deadline. Use the input to decide whether to publish, to solicit the

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1.1. Usefulness: does the article make a worthwhile or interesting contribution to the practice or theory of legal writing, research, public speaking, or other lawyering skills? Although the article need not have to have immediate and concrete applications, it should at least be interesting and thought-provoking.

1.2. Uniqueness, importance, and value: is the article meaningful and a valuable contribution?

1.2.1. Is it non-repetitive of other published works? Does it use the existing scholarship in the field and expand upon it? Or, if not, does it explain why?

1.2.2. Does the article fit within the context of the literature in the field to the extent you know it?

1.3. Rigor of reasoning and analysis: does the article show sufficient depth and soundness of reasoning? Is it intellectually honest rather than self-aggrandizing?

In a piece that applies theory, is the theory explained sufficiently? Logically? Understandably?

1.4. Rigor of research: does the article appear to rely on original sources rather than citing mainly secondary sources for the data or conclusions of primary material?

1.4.1. Ex: non-rigor would include a heavy reliance on another law review article or text, for propositions that came from original interdisciplinary or scientific data.

1.4.2. Note: if this is an essay, the rigor requirement is somewhat relaxed.

1.5. Organization and readability: is the work structurally sound? Does the piece communicate well? Does it give insight in an interesting way? Is an intelligent, human voice apparent?

2. Overall evaluation: Do you recommend that the piece be published in LC&R?

2.1. If there is something that has not been answered above but that you would like us to know, please include the feedback here.

2.2. If you recommend publication with significant changes, please indicate that as well. We do work with authors if the premise and reasoning is otherwise sound.

professor to write a response, or to start a conversation with that professor about scholarship in a particular subject area. If you cannot find a faculty member willing to help you with this, I will help you, as the middle-woman responsible for finding a peer reviewer, soliciting input, and ensuring a timely response.<sup>9</sup>

Peer review could help your article selection process, even if only to confirm your judgment. It could also increase scholarly interest in your journal. For example, if a tax law professor is asked to peer review a tax article that is potentially forthcoming in your journal, that professor might want to write a response or a corollary for submission to your journal, or just might otherwise gain respect and awareness of your journal and seek to publish in it. Your journal could reap benefits from both sides.

#### TRACK DATA

Have you ever wondered about the demographics of your journal's authors? Professor Minna Kotkin studied female authorship in the "top ten" law reviews and the results indicated "the possibility of" disparity favoring men.<sup>10</sup> Specifically, she calls out to you "to examine [your] selection processes for unconscious gender bias."<sup>11</sup>

I know that might be the last thing on your mind when you've got so many balls in the air. But this is another significant gap that you could fill. No one is accusing you of wanting to publish only white male authors but wouldn't it be helpful and informative to have the data on how many white male authors are published, or even just male versus female authors? And, you could track the demographic data of authors whose articles are rejected, which could be even more interesting.<sup>12</sup> Remember, collecting the data gives you a concrete opportunity to think about the process and results of your journal's article selection. Journals could also share their results with each other to look for patterns on which to focus first. Or even to

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9. I'm serious. Email me, [jlc287@law.georgetown.edu](mailto:jlc287@law.georgetown.edu).

10. Kotkin, *supra* note 6, at 387–88; see also Nancy Leong, *Discursive Disparities*, 8 FIU L. REV. 369, 372–74 (2013); Ann Bartow, *Where are the women? Another post about gender disparities at elite law journals*, FEMINIST LAW PROFESSORS BLOG (Apr. 30, 2009, 6:16 PM), <http://www.feministlawprofessors.com/2009/04/where-are-the-women-another-post-about-gender-disparities-at-elite-law-journals/>. If you have a few minutes, go to <http://www.feministlawprofessors.com/> and search "where are the women." There is additional data available about the low numbers of women as published authors and as student editors.

11. Kotkin, *supra* note 6, at 437.

12. This data collection, compilation, and study? I'll help you with that, too. You know how to reach me.



discover best practices and discuss how to implement those best practices in other journals.

#### REQUIRE AUTHORS TO SUBMIT SOURCE MATERIAL

We've heard that sometimes decisions about whether to publish are driven by the potential difficulty in collecting source material during the editing phase. At least one panelist at the AALS discussion group mentioned hearing that articles citing lots of books or other sources categorized as not easy to find typically do not receive offers to publish.

The value of the efficiency of getting materials from Westlaw and Lexis cannot be overstated, but it should not be exclusively responsible for a publication decision. For articles containing citations to books, government reports, or other material that may not be available at the touch of your laptop, consider an approach that conditions acceptance of the article on the author's delivery of those sources. That's standard procedure for at least one peer-reviewed journal.<sup>13</sup> You won't have to worry about alienating authors; authors want to be published, and they will take this step if that's what stands in the way of publishing. (And this step probably means a few paid hours of research assistant work for a fellow law student.)

In addition to these potential logistical changes to the article selection process, there are also substantive changes a law review or journal could make to increase the diversity of scholarship, to give editors a more rewarding experience, and ultimately to contribute to the growth of legal scholarship.

#### FEATURE NEW AUTHORS

What would happen if in each issue or just once per volume your journal intentionally published a piece by a new author? Your journal could take credit for helping the author build her scholarly reputation, and your journal would also establish a strong relationship with new scholars. You might get more exclusive submissions; you might get more acceptances of your offers. You might get that oft-cited article every law journal hopes to

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13. Legal Communication & Rhetoric has a policy of requiring authors to submit copies of original sources: "All accepted authors will be asked to provide copies of source materials that are unavailable through normal legal research methods." *Submissions, Legal Communication & Rhetoric*, ASSOC. OF LEGAL WRITING DIR., <http://www.alwd.org/lcr/submissions/> (last visited May 20, 2016). Even though it can be logistically challenging for an author (or an author's research assistant), the system ultimately works because the author is self-interested in having the article published. Most books and other sources not available through electronic databases can easily be scanned and sent to editors by email, thus further lessening the administrative burden on both sides.

publish.

Within the academy, there are networks and programs for helping junior scholars develop. Student editors could play a role in developing these programs by targeting a new author or two. Authors might be focused on aiming for the best placement, but they also would likely appreciate your journal's new author feature that would highlight an article rather than just be one of several articles in a typical issue.

#### MAKE ROOM FOR PRACTICAL, PEDAGOGICAL, SKILLS-BASED SCHOLARSHIP

As much as law professors hear from the bench and bar about how graduating law students are not prepared for practice, many law schools are adept at teaching and training their students for any practice. Many law schools have engaged in true innovation, while others have expanded existing opportunities without fully embracing innovation. Your journal could play a significant role in this ongoing and likely long-lasting conversation about changes in legal education.

For example, your journal could expose legal education's weaknesses in a way that could lead to more effective responses, or at least more informed responses. Or your journal could showcase true innovation through publication of articles that demonstrate creative thinking written by authors genuinely committed to the quality of legal education. Imagine an article about incorporating writing into the second year, an article that discusses learning theory as well as practical how-to implementation, essentially giving law faculty a ready-made template for doing something similar in their own courses. An article like that would offer both practical and theoretical insights to the dialogue about legal education. Your journal could contribute to the evolution of legal education—not just the academic discussions about legal education but also the actual evolution of legal education as an institution.

#### COLLABORATE WITH LAW FACULTY AND STUDENT EDITORS AT OTHER LAW SCHOOLS

Many law reviews and law journals have faculty advisors and these advisors play various roles, ranging from advisor in name only with no involvement to actively participating in the article selection process. Even with faculty involvement, are there any opportunities for big picture discussions about process, product, or the journal in general?

One known characteristic of law reviews and journals is the ever-revolving editorial boards. That the board changes hands each year is not a bad thing; indeed, it means more opportunities for more students. But the problem with this regular turnover is the resulting lack of time for

reflection and planning. You and your fellow student editors might already have all of these ideas but the implementation window is too short and you are likely to legitimately focus on other things, such as classes and employment.

But what if there was some sort of regional or national collaborative board consisting of student editors and faculty? A board to think about these big picture logistics and substantive issues; a board with some continuity among membership; a board to assess changes and make recommendations. This board could easily communicate electronically and hold an annual meeting or symposium on the student editor role in legal scholarship, or even on legal scholarship more broadly. The value of this kind of collaboration is limitless, from faculty offering guidance and support to student editors to faculty learning from student editors.

There is already a model for this type of collaboration. On April 10, 2015, the University of Maryland Francis King Carey School of Law; the Maryland Law Review; and the Women, Leadership & Equality Program presented a roundtable discussion on increasing author diversity.<sup>14</sup> The roundtable included both faculty and students from several regional law schools. The roundtable included a session on how student editorial boards can contribute to increasing author diversity; this session had three student Editors-in-Chief and was moderated by a law professor. Another session of student editor panelists was entitled, “Getting Your Article Selected: Five Things Journal Editors Look For in Faculty Submission.”

Imagine that. You could be a panelist on similar panels and offer critical information and conversation to law faculty. This is not an opportunity merely to share your experience and ideas, but to develop deeper connections with faculty, contribute to the development of legal scholarship, and ultimately be part of a process that yields diverse, valuable, and intellectual scholarship.

#### VALUE YOUR LAW REVIEW OR JOURNAL EXPERIENCE

You’ve likely read some of the criticism about and in support of law reviews and journals.<sup>15</sup> And you’ve probably experienced hours, if not

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14. Jason Hawkins, *Roundtable on Increasing Author Diversity in Legal Scholarship: Program and Bibliography*, U. of MD. (Apr. 10, 2015). [http://digitalcommons.law.umaryland.edu/wle\\_2015a/1](http://digitalcommons.law.umaryland.edu/wle_2015a/1). Of the panelists, moderators, and other speakers at the roundtable, there were 3 males and 14 females. This assumes that the names listed in the agenda were names typically associated with male or female. Of the student editors-in-chief participating in the panel, 2 of 3 were female.

15. See, e.g., Richard A. Posner, *The Future of the Student-Edited Law Review*, 47 STAN. L. REV. 1131 (1995); Richard A. Wise et al., *Do Law Reviews Need Reform? A Survey of Law Professors, Student Editors, Attorneys, and Judges*, 59 LOY. L. REV. 1

entire days, lost to source collection and Bluebooking. And you may have concluded that those processes are not valuable uses of your time. Or maybe you enjoy those tasks and see a value in terms of developing attention to detail, seeing a large project through from start to finish, and other similar translatable tasks. Most of your authors did that work, too. We know it is not a great way to spend a Saturday. Or any day. If you can feel more invested in the process, understand how much of an impact your decisions have on law faculty and legal scholarship, you might find the tedium an acceptable part of the more important role you play. You might also gain valuable professional development skills along the way.<sup>16</sup>

#### REMEMBER WHY YOU WENT TO LAW SCHOOL AND BE CRITICAL

Did you go to law school so that you could be held to traditional choices, make the same decisions as your predecessors just because they made them, or to blindly follow the crowd? Even if some of your drive was beaten out of you as a first-year law student, you hold a position of power as a student editor. You have a real ability to enact change, to revolutionize legal scholarship. Okay, revolutionize might be taking it too far, but you get the point.

The ideas here are just starting points, not a prescription for what your journal must do. If you don't like these ideas, let's discuss. Why don't you like them? Are they too hard to implement? What can law faculty do to help the process? When you are making decisions because that's the way the journal has always done it, at least give yourself a chance to think about whether that's the right way. Are there better ways? Or just other ways? Shouldn't a journal charged with engaging with legal scholarly communities have the ability to critique its own process and product?<sup>17</sup>

In the end, your journal experience will be what you make of it. And law faculty will continue to rely on you and future student editors. There are opportunities for all of us, and we look forward to hearing from you.

In gratitude for the work you do and for considering this essay,

JLW

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(2013).

16. See Karen D. Thornton, *Using Student-Edited Law Reviews to Teach Critical Professional Skills*, 40 J. LEGAL PROF. 163, 163–65 (2016) [hereinafter Thornton, *Professional Skills*]; see also Karen D. Thornton, *It's Not Purely Academic: Using Practitioners to Increase the Rigor and Practical Learning in Scholarly Writing*, 20 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 87, 87–95 (2013) <http://info.legalsolutions.thomsonreuters.com/pdf/perspec/2012-winter-spring/2012-winter-spring-1.pdf>.

17. See Thornton, *Professional Skills*, *supra* note 16, at 176–77.

