

# THE NUTS AND BOLTS OF ARTICLE CRITERIA AND SELECTION

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Little scholarship focuses on the actual experience of creating a dynamic law review or journal. What little that has been printed about journals focuses specifically on over-editing and has been written by professors who may have their own best interests in mind.<sup>1</sup> This Article offers concrete advice for new journal editors and begins what I hope is a series of articles educating students who are eager to learn a new craft. Law students who are ambitious enough to join a journal staff do not always have an editorial background or training; that is, the majority were not professional editors or publishers before attending law school. Nevertheless, the institution of law school expects these inexperienced new staff members and editors to know what articles to choose immediately, which authors to solicit, and how to add to an article's validity through cite checks and line editing. Some student editors handle the implied standards of excellence by pretending that they know what to do, while others repeat the previous year's editorial techniques and mistakes. In the end, most spend an enormous amount of time reading, editing, and then re-editing and worrying about their work.

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1. To generate provocative discussions in your editorial offices, see Ann Althouse, *Who's to Blame for Law Reviews?*, 70 Chi.-Kent L. Rev. 81 (1994), Arthur Austin, *Footnote Skulduggery and Other Bad Habits*, 44 U. Miami L. Rev. 1009 (1990) (footnotes omitted in article title), James Lindgren, *Reforming the American Law Review*, 47 Stan. L. Rev. 1123 (1995), Gregory E. Maggs, *Just Say No?*, 70 Chi.-Kent L. Rev. 101 (1994), Michael D. McClintock, *The Declining Use of Legal Scholarship by Courts: An Empirical Study*, 51 Okla. L. Rev. 659 (1998), Richard A. Posner, *The Future of the Student-Edited Law Review*, 47 Stan. L. Rev. 1131 (1995), and Robert Weisberg, *Some Ways to Think about Law Reviews*, 47 Stan. L. Rev. 1147 (1995). The most vitriolic article about law reviews to date is James Lindgren, *Fear of Writing*, 78 Cal. L. Rev. 1677 (1990) (attacking the sixth edition of the *Texas Law Review Manual on Style*, which was published in 1990 by the Texas Law Review Association).

The following pieces were written to actually cause editors to smile: James D. Gordon, III, *Law School: A Survivor's Guide* 61 (Harper Perennial 1994) (which includes a chapter entitled *Law Review and Other Cocurricular Programs*), and John F. Bramfeld, *Love Those Law Reviews*, 5 Scribes J. Leg. Writing 101 (1994-1995).

This Article first stresses the importance of educating the incoming staff concerning the following: article and author selection, the decision process, the process of acceptance and rejection, and special issue books. Second, this Article focuses on informing potential authors about a journal's specific editorial decision-making process. Finally, this Article anticipates two common pitfalls most new editors should prepare for and thus avoid.

### *I. EDUCATING THE INCOMING BOARD*

Law journal members should begin educating next year's staff the day the new staff is chosen. That education should include both a formal exchange of information and an informal shadowing of the current editor. To help the incoming staff, the current staff should make sure that all job descriptions are in writing and recently updated to reflect actual practice. Current editors need to speak separately with the staff members or editors who replace them. These initiation or orientation sessions will provide the greatest help if you include anecdotes whenever possible. During the transition stage, when the current and incoming editors are in the same space, each current editor also should begin transferring responsibility so that questions can be answered and incoming editors are not overwhelmed with an entirely new job with no nearby mentor to offer advice.

Current journal members should detail the journal's approach to the editing process. For example, some journals edit only egregious errors after they have accepted an article; some journals provisionally accept an article and require the author to make changes, while other journals actually offer organizational changes or content changes. Each year's staff and editorial board need to agree — before they ever solicit, accept, or edit an article — about the degree of editing that they are willing to do and the degree that the group believes is both responsible and appropriate.

#### *A. Teach Them How to Solicit Articles and Authors*

Many journals receive more submissions than they can publish within the next millennium, while others, particularly new journals or specialty journals, frequently have to scramble to find acceptable articles. To solicit articles, a journal may want to send out a mass mail or e-mail announcement. Unfortunately, a new journal may encounter budget restrictions. However, a new journal can overcome this problem by directing its focus to a more narrow audience,

perhaps chosen from specialty lists obtained from the American Bar Association, American Association of Law Schools, state bars, or specialty bars.<sup>2</sup> A journal also needs to review its current web page, evaluating the page's professional appearance and frequently updating it to include both general and specific topic solicitations.

Established journals, on the other hand, can take advantage of a call for papers in a current issue. Editors will have to be fairly forward-thinking for this technique to work. Perhaps a journal's next issue can contain a paper call for an issue devoted to a specific topic with a due date of Fall 2002. In addition, announcing a future topic on JURIST, a Web-based legal information service, can help legal authors who have an article in progress and are looking for a forum.<sup>3</sup>

Successful editors have learned to consult their own faculty for the names of authors who have works in progress or who gave a provocative paper at a conference. Faculty also frequently hear about other faculty members with grants or faculty members involved in empirical studies. Some faculty may be willing to help solicit the articles for each issue or for special issues.<sup>4</sup> At some schools, students solicit the articles and submit them to faculty advisors, who then choose the articles and return them to the students for the editing process. Your faculty advisor also might agree to post the call for papers on an e-mail listserv like LawProf.<sup>5</sup>

The journal's institution may have a faculty member who has not yet committed a piece that would complement the articles already chosen for the next issue. Ask. It should be the job of each editor to court the faculty for articles. Even if a faculty member has nothing to offer at that moment, he or she will know that the journal is receptive. Interestingly, many junior faculty members are hesitant to offer a piece to their own institution, fearing that the editors will feel pressured or will disdain something from the "home team." The journal needs to inform them otherwise.

Beyond faculty referrals, a journal staff needs to do some nitty-gritty homework and systematically review the authors lists from similar journals; see who is writing about hot topics, who is

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2. Another excellent source for law review listings is Michael H. Hoffheimer, *Anderson's Directory of Law Reviews* (Anderson Publg. Co. 1999).

3. U. Pitt. Sch. of L., *JURIST, The Legal Education Network* <<http://www.jurist.law.pitt.edu>> (accessed Nov. 30, 2000).

4. The *Chicago-Kent Law Review* has adopted this type of system. Exec. Bd. of Chi.-Kent L. Rev., Student Authors, *The Symposium Format as a Solution to Problems Inherent in Student-Edited Law Journals: A View from the Inside*, 70 Chi.-Kent L. Rev. 141 (1994).

5. LAWPROF, an e-mail listserv, is a large forum for American law professors.

publishing in-depth analysis or empirical conclusions, who publishes only in top- or middle-tiered journals, who has political leanings, and whose articles contain more footnotes than text. None of these bits of information should be the end-all of a journal's research, but all of them can help stimulate the investigation.

In a law school with several journals, some editorial boards are generous about passing along articles they cannot, for whatever reason, accept. New specialty journals can gain valuable lead time by contacting the passed-along author with an acceptance, explaining that the article exactly fits their needs and their audience. One editor reported that an author was insulted to have been "traded away" and cautioned that each editorial board should inform authors if the journals commingle submissions. Other editors reported the opposite; handed down (or up), authors were delighted that a receptive journal wanted their submissions.

Last, a journal should make use of the school's alumni. Ask former editors and staff, former students, and former employers if they know of someone researching a topic that would enhance your journal. People are generally helpful in these win-win requests; not only will the journal be grateful to the alumnus, but the author will learn that someone recommended him or her. The bottom line is that authors want to be published!

A solicitation letter will have the greatest success if it includes the following:

- a promised (or even expected) publication date;
- a review of on-time issues already published;
- a selected list of authors or topics the journal has published;  
and
- your journal's editing philosophy or staff expertise in a specific area.

#### B. Explain the Journal's Use of Special Issues

In addition to publishing a variety of topics (law reviews) or general topics in a limited area (specialized journals), journals can also plan a special issue devoted to an announced topic:

- **Colloquia/Symposia.** The “pluses” are that the speakers are already chosen and committed to preparing material for a specific topic, and, if published as “speeches,” little editing is required. The “minuses” are that speakers rarely create finished products before speaking. Usually, their notes or drafts are difficult for student editors to work with. Editing these speeches takes an unusual amount of time, and speakers who have prepared and delivered the speech rarely meet the additional publication deadline.
- **Announced Topic.** A one-topic issue definitely will appeal to a particular audience and, more importantly, to a prospective group of authors. Experience shows, though, that your staff may have to scramble to fill an issue when two authors withdraw or cannot make the deadlines. In addition, one topic may be of interest to only a limited group of readers, or the topic may not be timely by the publication date.<sup>6</sup>
- **Dedications.** A dedication issue has a sentimental appeal to a specific audience. Unfortunately, the submissions tend to repeat each other, authors relate anecdote rather than fact, and history may obscure the honoree.
- **Survey of Law for a Particular Topic, State, or Court.** A survey is useful to a specific audience, and it can have historical value. The flip sides are inherent: lack of timeliness and a narrowed audience.

### C. Explain the Decision-Making Process

Each journal has a unique method for choosing which submissions to accept. Experienced editors have concluded that it is essential that the method be agreed on by the entire staff and editorial board and then put in writing. Later, when the inevitable disagreements begin, the board can refer to the policy. Among other questions, your policy should address the following:

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6. One journal reported that its editors had waited more than a year for a national public official to deliver an essay on a particular housing issue. By the time his aide had edited and submitted it, the housing law had changed, but the staff felt they had to publish it anyway.

- Who reads the submissions? How many editors or staff members read each?
- How many votes or rejections create a decision?<sup>7</sup>
- Who will be responsible for this edit? What if it is a technical topic?
- What are the journal's major emphases (e.g., hot topic, innovative approach, highly respected author,<sup>8</sup> interdisciplinary approach, careful footnotes, advancing education, understanding creative approach, topic not a repeat of earlier issues, topic important to the institution, etc.)?
- How do the chosen emphases relate to a journal's audience (e.g., international business, law and society, or law and economics, etc.)?
- Does the faculty advisor take part in the decision-making process? If so, what role (e.g., initial screening, topic selection, etc.)?

A journal's answers to the policy questions above depend on the type of institutional structure and oversight of each law school. In some schools, students do everything and are responsible for everything, including the following: creating the law journal, funding it, soliciting articles, choosing topics and articles, editing, and publishing. In other law schools, students solicit articles, then read and evaluate them, but they pass their preliminary choices through a faculty advisor to screen before the journal agrees to accept them.

Attached as appendices to this Article are a few examples of article evaluation forms that a journal can prepare and utilize.

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7. Editors at the University of New Mexico School of Law's *Natural Resources Journal* pass a submission around and accept it only if someone agrees to accept responsibility for editing it.

8. Dan Subotnik and Glen Lazar investigated which authors get published and speculated about authors' credentials in *Deconstructing the Rejection Letter: A Look at Elitism in Article Selection*, 49 J. Leg. Educ. 601 (1999). A recent issue of the *University of Chicago Journal of Legal Studies*, 29 J. Leg. Stud. 1 (2000), is partially devoted to the intriguing question of who publishes where and why.

#### D. Establish Procedures for Acceptance and Rejection

Journals should develop a format for acceptance and rejection letters that reflects the journal's personality. Acceptance letters naturally are more fun to write and receive; everyone is reluctant to write a rejection letter. Therefore, the editorial board should step in and create formats that must be used or that can be adjusted to each submission.

Depending on journal policy, editors may want to create several levels of acceptance:

- accept enthusiastically;
- accept with suggestions; or
- accept with required changes.

Overwhelmingly, experienced editors believe that authors will pull a submission if a journal requires major changes, but in other scholarly disciplines this is "standard operating procedure." Perhaps legal writers have assumed the world is waiting for their original, singular ideas and that there is always another journal that will publish these ideas as submitted. This topic makes a great discussion among journal staff, but in almost eighteen years, I have never heard it discussed by law faculty.

#### *II. INFORMING AUTHORS ABOUT THE JOURNAL'S SPECIFIC CRITERIA*

To educate the authors who plan to submit to a journal, current staff should first agree on the journal's goals and rules. Then, each volume should have the criteria for article acceptance printed on the inside-front or inside-back page. Specifically, a journal should let prospective authors know how to format pages and footnotes. If authors must include a disk formatted to a specific word processor, then announce both the requirement and specific format needed. Similarly, if a general-topic journal will not accept international, admiralty, or state-specific articles, those restrictions also should be spelled out to save prospective authors the time and expense — as well as the journal's time and expense — of communication.

When the staff receives a submission, a staff member should send a postcard, e-mail, or short letter acknowledging its receipt.<sup>9</sup> This acknowledgment is a perfect time to include a reminder of the journal's policies and even a tentative or firm date for the acceptance or rejection notice. A pleasant consequence of this advance notice might be that the staff will not have to field repeated calls from authors asking for the status of their submissions.

Either in this acknowledgment letter or the following acceptance letter, include an anticipated date for the completed editorial edit and the tentative date for the author's changes and corrections, that is, the author's turnaround time. Obviously, informed authors are less likely to create major deadline problems if they can reserve a certain period for reviewing editors' changes in advance.

### *III. BEWARE OF TRADITIONAL AND PAINFUL PITFALLS*

Editors at the National Conference of Law Reviews 2000 (NCLR) offered sadly repetitive, negative experiences in article selection. Specifically, they warned of two problems: last year's unfinished books and multiple submissions.

The first problem is a bitter one. The board that chooses the articles does not finish its job before graduating. Few journals have a strong policy in effect that keeps boards from ignoring their responsibilities to their authors and the journal. Why? It makes sense for each journal to add a finish-or-die requirement into its policies. Because so many different schools have had similar problems with half-edited articles and unpublished books, the policies might need to offer realistic alternatives, such as the following: the new board will send the material to the publisher as is (a drastic measure); if the old staff wants to list journal experience on résumés or the masthead, they must remain through the summer (an unpopular and frequently unrealistic measure); the new staff will complete last year's work instead of its own and add its names to the editorial masthead (potentially life-threatening, but satisfying); or as a last resort, the new staff will contact the authors and begin the process anew.

Of course, these solutions would be unnecessary if each board and staff fulfilled its obligations and finished that year's work on schedule. The current staff realistically cannot edit and publish both

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9. Most publishers ask authors to include a self-addressed, stamped envelope (SASE) or postcard if they want an acknowledgement of receipt.



last year's and this year's books in a professional manner. When the staff tries to perform the near impossible, it must lower standards for both years' publications and must give up too many nights and weekends and too much study time. Even when type A, super-hero staffs give 110%, the results are less professional journals and less satisfied student editors. Law school administration and faculty intend for the journal experience to teach students to evaluate publications, to give them practice editing others' prose, and to provide publication credit. They do not intend the journal experience to destroy the staff's grades, social life, or nerve endings. But these can be the results if the journal policies do not protect the staff.

The second major headache editors experience is a political one. Many authors simultaneously submit legal articles to numerous journals. Then after one journal accepts the article, the author writes or calls the other journals considered "more prestigious" and leverages his or her acceptance into an expedited decision from them. Remember that most academic disciplines do not allow simultaneous submission. They strictly censor an author who is discovered to have submitted an article and caused more than one editorial board to waste precious time. How law reviews evolved into a publishing anomaly that *expects* simultaneous submission is a subject for another article, but current editorial boards need to discuss what they plan to do if (when) an author calls attempting to leverage another journal's acceptance. The logical solution would be to congratulate the author on the first acceptance and ask to see something he or she writes in the future. Back in the real world, your board should discuss this problem and articulate possible responses.<sup>10</sup>

If every editorial board agreed that an earlier acceptance was a binding contract between the author and publisher,<sup>11</sup> then legal writers necessarily would submit articles to only the journals they expected to publish the article. A delightful consequence would be a reduced workload for your staff and editors. In addition, specialty journals and "lower-tiered" journals would have more thoughtful submissions and could commit more time to reading and discussing without worrying that another school's staff might scoop them.

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10. The NCLR set forth a *Model Code of Ethics*, which was approved in March 1992. Michael L. Clozen & Robert M. Jarvis, *NCLR Model Code of Ethics: Final Text and Comments*, 75 Marq. L. Rev. 509, 512-528 (1992).

11. Perhaps not too surprisingly, the American Association of Law Schools's Model Author/Journal Agreement does not mention this possibility. AALS, *Publications, Deans' Memos, Memorandum 98-24* <[www.aals.org/98-24.html](http://www.aals.org/98-24.html)> (accessed Nov. 30, 2000).

Perhaps future NCLR conferences can discuss the NCLR's *Model Code of Ethics* and debate this policy change. Certainly a journal staff should begin the discussion as soon as possible.

#### *CONCLUSION*

Regardless of the size or the specialty of a journal, article selection is a critical part of any publication's success. Teaching the incoming staff members and editors about the publication's decision-making process and the established criteria for article selection is necessary to ensure that the journal operates smoothly and effectively. With good training and set goals, any publication should be able to avoid the mistakes common to every journal.

## **APPENDIX A**

### **Published Guidelines for Evaluators: A**

(from Texas Review of Litigation)

## **APPENDIX B**

### **Published Guidelines for Evaluators: B**

(from Texas Journal of Women and the Law)

## **APPENDIX C**

### **Published Guidelines for Evaluators: C**

(from Texas International Law Journal)