

## PRACTICAL TIPS FOR PLACING AND PUBLISHING YOUR FIRST LAW REVIEW ARTICLE

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Many law reviews are only open to the top 10% of the class or to students who excel in a writing competition.<sup>1</sup> While a high percentage of law schools now have at least one journal in addition to the law review, the reality is that well over half of the students enrolled in law school today do not have the opportunity to serve as a law review or journal staff member. Without that experience, those students-turned-lawyers who wish to publish legal scholarship after graduation are left in the dark about where to begin the process. I was one of those individuals, but over the last eight years, I have regularly published legal scholarship. Recently, my former students and other young attorneys have started asking me for advice. This essay—directed at emerging scholars who seek to publish their scholarship shortly after entering the legal profession—is a compilation of the advice I have shared.

Whether you are writing an appellate brief or promoting a potential piece of legal scholarship, proper presentation can be a difference-maker. By following the ten steps below, you may nudge law journal editors in the right direction and maximize the placement of your law journal article submission.

(1) The law journal submission process is no different than everything else associated with law school and legal practice. It requires thoughtful preparation. But you should not fear this extra effort because you have invested hundreds of hours into this major scholarly work and owe it to yourself to do the best you can to place it in a journal commensurate with the effort you have invested.

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1. Menachem Wecker, *Law Review Leads to Legal Jobs, Recruiters Say*, U.S. NEWS (Jan. 19, 2012, 9:00 AM), <http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2012/01/19/law-review-leads-to-legal-jobs-recruiters-say>.

Failure to properly prepare will result in an unsatisfying placement.

(2) Now that your article is complete, you need to find a suitable journal for it. But where can you access a complete list of law journals? Washington & Lee Law School's website provides a one-stop list of every law journal, accessible here: <http://lawlib.wlu.edu/LJ/>. At the moment, there are about 1000 law journals in the United States, and new journals are being added by law schools every year. Despite the submission-to-publication ratio mentioned above, in my experience working with students and young lawyers, original and well-written articles stand a reasonably high probability of receiving an offer of publication. While some people are happy simply to receive any offer, in my opinion, an "outstanding" placement for your first article would be anywhere upwards from 250; any offer upwards of 400 would be "excellent"; and any offer upwards of 500 would "probably be worth accepting barring a reasonable basis to believe it will place higher in the future." Obviously, any offer of publication is a thrill and is humbling, but if you are not entirely satisfied with your offers, contact a former professor or someone with writing experience who you trust, and the areas in need of improvement will be identified. The best times of year to submit an article are August/September and February.

(3) Your first publication is your most important one (at least at the beginning of your career). In my experience, journal selection committees evaluate scholarship largely (but not exclusively) on the merits of the article. When a few articles are competing for a final spot, it is not uncommon for editors to look beyond the face of the article to the author's publication history and practice experience prior to rendering a decision. (If external factors were not likely to be considered, why do most law journals require authors to submit their CV?). Consequently, the CV you submit must be clean and polished as if you are submitting it to an employer. Describe your law practice and list all serious, previously published work and any speaking engagements where you have demonstrated expertise in the area of law your submission concerns.

(4) In his seminal book on the subject of publishing legal scholarship, Professor Eugene Volokh suggests that law students should consider publishing outside their home school and that journals "should adopt a policy of advising their students to send their

article out for competitive publication.”<sup>2</sup> While I wholeheartedly agree that aspiring authors should seek to publish outside their home school, in my opinion, students should avoid publishing their work in any journal while they are still students—unless the journal is willing to publish the work as an article rather than as a student note or a comment. You have probably never heard this advice before, and it may sound counter-intuitive. But I have come to believe this as true because, in my experience, judges, scholars, and attorneys are less likely to cite student-authored scholarship than they are to cite attorney-authored scholarship. As a corollary, you are likely to secure a better placement as an attorney. Think about it: if the work was strong enough to be accepted by a journal while you were a student, it is surely strong enough to be accepted by a journal when you are an attorney. But at that juncture, it will no longer carry the “scarlet letter” of student-authorship. In this context, a little patience may help your work make a longer-lasting impact.

That said, I agree with Professor Volokh that it tends to be better to publish in journals outside of your law school because publishing elsewhere extinguishes any cloud of favoritism that may hang over your article otherwise. In other words, if you are a graduate of Doe Law School and publish your work in the Doe Law Review before you graduate, the reader will know it was one of the better submissions from the students/law review staff at Doe Law School, but it is not likely to have much staying power because student-authored work is rarely cited (and even when student-authored work does provide material worth citing, readers will often try to find a more credible source to cite because of the long-standing bias against student-authored scholarship). Even if you publish your article in the Doe Law Review after you graduate, the reader may suspect that someone did you a favor, and that may undercut the credibility of your article.<sup>3</sup>

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2. EUGENE VOLOKH, *ACADEMIC LEGAL WRITING* 261 (4th ed. 2010).

3. *Id.* (“People who see a home-school Note publication on a resume may assume the student was on the journal, and discount the publication because journals tend to publish their own students’ work with less quality screening than they use for outside work. But when people see a publication in a journal at a different school, they’ll realize that the article was competitively selected, and might think more highly of it.”); *see also*, Albert H. Yoon, *Editorial Bias in Legal Academia*, 5 *J. LEGAL ANALYSIS* 309, 330–36 (2013) (reviewing empirical data and concluding that law reviews are systematically biased in favor of publishing articles by their own faculty, the bias in favor of publishing the school’s own faculty results in lower quality articles, and that faculty tend to publish their lower quality articles in their own school’s law reviews).

(5) Apply to a range of journal ranks—a few top, many in the middle, some at the bottom. You can frequently “trade-up” if you receive an offer from a journal that is not as highly ranked as you might wish. How do you “trade-up?” In the past, if I have received a reasonably strong offer but would prefer to place it somewhere slightly higher (or more geographically appropriate if I am writing on state law or the law of a specific federal circuit), I may contact my ideal destination and inform them of my offer and ask them to conduct an “expedited review” along with my promise that if they accept my piece, I will sign a contract with them. This is a common and accepted practice, but I would discourage you from contacting more than one journal with this offer. And I would, of course, encourage you to always keep your word.

(6) Titles are important. Actually, they are really important. So choose a title that implies you are a serious thinker, not a corny, witty, or silly title that no judge or attorney is going to consider the merits of, let alone cite in an opinion or brief.<sup>4</sup> “Good legal writers try to make their titles short, straightforward, and punchy.”<sup>5</sup> Although I have not always followed this advice, I generally agree with Professor Garner, with one caveat: Shorter titles tend to be more general. You want to avoid a title so short and general that it suggests a proposition broader than your article reasonably attempts to prove.

(7) What should you attach along with the draft of your article? In addition to your article and your CV, you must decide whether you wish to attach a cover letter or whether you intend to paste a reduced version of a formal cover letter in the body of the e-mail addressed to the submissions editor. Your goal is to attract the reader’s attention. That might not happen if they have to open a cover letter, so I suggest you craft a succinct note to the editor and paste it in the body of your e-mail. However, if you are submitting to an elite journal (say top fifty), a formal letter on letterhead might be more appropriate because the higher ranked journals frequently consider articles by (often large) committees. Faculty input may even be solicited.

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4. See, e.g., Orin S. Kerr, *A Law Review Title Pun That Has Run Its Course*, WASH. POST (May 6, 2014), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/05/06/a-law-review-title-pun-that-has-run-its-course/> (identifying seven law review publications, mostly student notes, from the last two years drawing on the feline pun implicit in the name of the seminal Fourth Amendment case, *Katz v. United States*, 389 U.S. 347 (1967)).

5. BRYAN A. GARNER, *THE ELEMENTS OF LEGAL STYLE* 75 (2nd ed. 2002).

If you submit a letter on letterhead, be sure to obtain your firm or judge's approval first. You may wish to create your own personal letterhead independent of your professional affiliation. There is nothing unethical about identifying your professional affiliation in your letter since you are merely stating a fact. But if you are working for a judge or a government agency, you need to consider speaking to your supervisor about any restrictions, particularly if you are writing on an area where you are actively practicing. If you are clerking for a judge, do not reveal confidences about cases you have worked on as a law clerk. If you are working for the government, do not take a position contrary to your agency while you are still employed by that agency.

(8) Never make representations or assertions that you cannot support. This seems obvious, but it is an easy rule to overlook. For example, if you assert that "this is the first work of legal scholarship to argue X," you need to have the research to prove it because you may be asked to do so at some point in the future. As Ron Swanson reminds Tom Haverford in the series finale of *Parks and Recreation*, "[w]hatever you write is going to have your name on it," and credibility is equally as essential to an author as it is to a lawyer.

(9) Consider coauthoring. On one hand, coauthoring has the possibility of complicating a process that most of us have historically been plenty comfortable with handling on our own. Yet I believe there are at least two particularly strong reasons to consider coauthoring with a professor or perhaps a colleague a few years your senior. First, the writing process at a law firm or as a law clerk is a collaborative process. No matter where you are employed, unless you are a solo practitioner, when you enter practice someone is going to be reviewing your written work. Second, you can learn a great deal about substantive law and the practice of law by writing with someone whom you respect who has been in practice for a few years. In reflecting on my first publication (and a number of drafts I have read from students over the last few years) I have found that young authors are frequently able to prepare about 80% of a draft, and then they hit a wall. While they are happy with what they have produced, they know it is not complete or thorough enough for publication. In some situations, a mentor may help you battle through the final stages of the writing process to the point where it is still ethical for you to claim sole authorship. Other times, it may be appropriate to offer your mentor coauthorship

credit, or he/she may request it. Depending on your mentor's reputation, their affiliation with your work may actually improve its placement possibilities. Trust your instincts, but keep your options open. Coauthoring articles can be an extremely rewarding and enjoyable experience.<sup>6</sup>

(10) Do not be afraid to ask a contact to make certain your article is reviewed by the selection committee. Journals may receive up to 2000 submissions for approximately twenty slots. Never ask a journal member to explicitly accept your submission, but to the best of my knowledge there is nothing unethical about asking a journal member to make certain your submission is reviewed.

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Remember, the same best practices that apply when you are writing an appellate brief to be filed in court apply when you are writing a scholarly article. Appellate briefs are carefully crafted for the purpose of making it easy for the court to rule in your client's favor. A similar logic applies when you draft an article. The easier you make it for the journal to select your submission, the more likely it is that you will enjoy the success of placing it.

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6. See Nancy Leong, *Best Practices for Coauthoring Legal Scholarship*, PRAWFSBLAWG (May 18, 2012, 2:09 PM), <http://prawfsblawg.blogs.com/prawfsblawg/2012/05/best-practices-for-coauthoring-legal-scholarship.html> (discussing the benefits of and best practices for coauthoring legal scholarship).