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ESSAY

DEFINITE ARTICLES: USING THE *LAW REVIEW ARTICLE TYPE INDICATOR*[®] TO MAKE LAW REVIEW PUBLISHING DECISIONS

ERIC A. CHIAPPINELLI*

Every year close to two thousand law review articles (mostly written by law professors) are circulated among about two hundred student-edited law journals.¹ This number does not include roughly four thousand student works by journal members.² The semiannual process by which the two thousand articles by nonstudents are matched with journals has been described elsewhere so I will not elaborate here.³

What I will say here is that the process is exhausting for both authors and editors. Stephen R. Heifetz estimates that prestigious law reviews spend three thousand hours a year simply screening articles; much more time is then invested in making publication decisions about the articles deemed worthy of serious consideration.⁴ Less prestigious law reviews receive fewer submissions each year but probably spend the same amount of time per article in

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1. Stephen R. Heifetz, *Efficient Matching: Reforming the Market for Law Review Articles*, 5 GEO. MASON L. REV. 629, 636 n.20 (1997) (noting that recently the *Georgetown Law Journal* receives 1700 articles annually).

2. I estimate that each student-edited journal has a staff of around 60 members, of whom half are second-year students required to produce a piece "of publishable quality." Thirty student pieces at 200 journals is 6000 pieces. I believe that at most journals probably two-thirds of the student pieces are considered for publication.

3. See Heifetz, *supra* note 1; Jordan H. Leibman & James P. White, *How the Student-Edited Law Journals Make Their Publication Decisions*, 39 J. LEGAL ED. 387 (1989). The process is essentially semiannual because the bulk of law review articles are completed and submitted either at the beginning or the end of the academic year.

4. See Heifetz, *supra* note 1, at 635.

making publication decisions. If the average law review receives even one hundred fifty articles each year and spends, say, ten hours reading and considering each article, the total person-hours spent on selecting law review articles is a staggering three hundred thousand. Put another way, the aggregate time spent in making publication decisions is roughly equivalent to the time billed these days by five first-year associates at a large law firm. The time spent by the authors of those two thousand articles in submitting them to the law reviews, communicating with law review editors, and accepting (one hopes) an offer of publication adds another five hundred hours to the total.⁵

A number of authors have suggested ways in which the law review article selection process might be made more rational.⁶ Arthur Austin suggests that law professors use vetting to short circuit close scrutiny by law reviews.⁷ Vetting is the process of having famous professors review one's article in draft so that one can mention them in the first footnote. The theory is that good vetting signals law review editors that the article is of high quality, thus reducing the time the editors need to spend in screening and making publication decisions.

A number of law reviews, especially those just below the very top rank, use a technique called the "exploding offer."⁸ It has been customary for a law review to agree that an offer it extends shall remain open for two weeks. Virtually the only purpose that this time period serves, however, is to allow the author to contact law reviews he or she considers to be superior and to try to weasel an offer out of one of them. Sometimes this works. An exploding offer is simply a refusal by the law review to keep its offer open for more

5. Submitting articles to law reviews typically entails giving your secretary a disk with the article, a form cover letter, and a list of every law review in the country and saying, "Here, please make 200 copies of my article, mail merge the cover letters, sign my name, address and stuff the envelopes, and mail them out. The end of the day will be fine." Communicating with law reviews and accepting an offer take up the remaining 14½ minutes per article. Actually, this description is a bit idealized. Law professors seldom say "please."

6. See Arthur D. Austin, *The "Custom of Vetting" as a Substitute for Peer Review*, 32 ARIZ. L. REV. 1 (1989); see also James Lindgren, *An Author's Manifesto*, 61 U. CHI. L. REV. 527 (1994); Carl Tobias, *Manuscript Selection Anti-Manifesto*, 80 CORNELL L. REV. 529 (1995).

7. See Austin, *supra* note 6.

8. See Lisa Anderson, *Law Journals Attack "Shopping" of Manuscripts*, N.Y. TIMES, July 12, 1995, at B4.

than a day or two in hopes the author will not have enough time to parlay it into an offer from a more prestigious journal. Sometimes this works. The exploding offer plays heavily on the risk-aversion of almost all law professors. Rather than risk having no offer at all, and acutely aware of the flaws in his or her article, a law professor will generally accept an exploding offer.

Stephen R. Heifetz has suggested that a market model might efficiently match articles and law reviews.⁹ Under this scheme a central clearinghouse triannually would receive articles and rank-ordered lists of up to ten law reviews per article from authors. The clearinghouse would then send copies of the articles to the law reviews and ask them to rank the articles. Finally, the clearinghouse, using an algorithm, would pair up articles and law reviews so that the matings were pareto optimal.

Yet I believe that the core problem in the law review article selection process is the information asymmetry between authors and law reviews. If a way could be found to reduce this information disparity, the article selection process could proceed more swiftly and, presumably, more accurately. So let me begin by describing the kinds of information authors and law reviews want to know and then I will unveil my revolutionary approach to ameliorating the information disparity.

Law reviews want to publish the "best" articles they can get.¹⁰ Writing twelve years ago, however, Leibman and White were dismayed to find that most law reviews have not articulated, even for internal use, the criteria by which they will judge an article's quality.¹¹ Further, little consensus seems to exist among law reviews as to the qualities that make an article "good."¹² Nonetheless, Leibman and White report that the more prestigious reviews value articles that are trendy, pretentious, and theoretical.¹³ Most law reviews also want articles from well-regarded, or at least well-known, professors. This is so because

9. See Heifetz, *supra* note 1, at 659-63.

10. See *id.* at 641-42.

11. See Leibman & White, *supra* note 3, at 414.

12. See *id.* at 413-16.

13. See *id.* at 415. Actually, Leibman and White were more euphemistic than that. They wrote that "the high-impact [read prestigious] journals more often emphasized innovation, sophistication, and theory." *Id.*

many people in the legal community do not actually have time to read articles. They judge a review by its cover.¹⁴ Just as the journal in which an article appears is an indirect signal of the article's quality,¹⁵ so an author's fame, or more indirectly, an author's affiliation, signals a journal's quality.

It also seems clear that every law review wants articles that are well written and technically sound. That is, they want articles in which most sentences are already footnoted in conformance with *The Bluebook*.¹⁶ The obvious motivation for this desire is so that the law review editors will have less work to do in editing the text and preparing the manuscript for publication. As a further refinement, law reviews prefer authors who are easy to work with. For law review purposes, this means authors who are polite, who do not quibble over proposed edits, and who return edited drafts to the reviews on time.

In the law review article selection process, a considerable information disparity exists between the student editors and the articles' authors. All authors identify their school affiliation, but students may not know the relative prestige of the author's school. If an author is truly well known, at least one of the early readers should recognize that fact.¹⁷ However, mistakes can happen. Even the worthiest Homer¹⁸ can nod. Moreover, many authors have similar names. Student editors cannot always be certain that the article they are reviewing was actually written by *the* big name.¹⁹ What's more, even if the review editors could quickly ascertain these two data, the other two criteria, which we may categorize as

14. This is why most journals print their tables of content on the cover.

15. See Heifetz, *supra* note 1, at 639.

16. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (17th ed. 2000).

17. Not least because well known authors typically spend much of the cover letter telling the law reviews just how well known they are.

18. Or Marge.

19. For example, editors may easily be unsure about such professors as Anne S. Emanuel or Juliet Gilbert, let alone Barbara Black, Barbara A. Black, Bernard S. Black, Charles L. Black, Jr., and Jerry P. Black, Jr. See ASSOCIATION OF AM. LAW SCHS., THE AALS DIRECTORY OF LAW TEACHERS 1999-2000, at 423, 483, 281-82. And what of the work of Professor Martin William "Nut" Shell? See *id.* at 885. Postmodern student editors might champion the articles of professor of law Professor Law or her evil twin, Professor Lawless. See *id.* at 635.

“quality” and “amount of work required,” can only be evaluated by reading the article.

Until now. Now an amazingly powerful tool is available to law reviews that promises to reduce substantially the amount of time that they need to devote to selecting articles. Further, and more importantly, this tool permits law reviews to make a much more accurate assessment of an article’s overall worth. If this tool were used routinely at the nation’s law reviews, the review experience would be less time consuming, more fruitful, and generally more pleasant for law review editors and authors. Perhaps it is not too much to hope that the beneficial effects would slop over to other aspects of the law school experience. Professors, who would now place their articles more easily and more appropriately, would be nicer in class. Law review editors, who would now have more time on their hands, might actually do the assigned class reading;²⁰ some might even attend class.²¹ This amazing new tool is the Law Review Article Type Indicator[®] (LRATI).

Before describing the LRATI[®], let me relate the way in which I developed this instrument. When I read for pleasure, I like to multi-task. Not long ago, I was multitasking Carl Jung’s *Psychologische Typen*²² and Fred Rodell’s *Goodbye to Law Reviews*.²³ It suddenly occurred to me that law review articles, like newborn babies, have distinctive, immutable characteristics.²⁴ It was clear to me that many of the problems endemic in law reviews could be obviated if editors only knew the latent characteristics of the articles they were evaluating. This began my search for the types and archetypes of law review articles. While I am open to suggestions for improving the LRATI[®] from others who read this Article and use the LRATI[®], I am fairly well convinced that I have identified the core characteristics that make articles desirable to law reviews.

20. Or do the assigned weekly reflective essay in their required personal journals, which will count for one-third of their overall course grades.

21. Or co-facilitate the optional ungraded collaborative group role-playing simulation exercises.

22. C.G. JUNG, *PSYCHOLOGISCHE TYPEN* (1921).

23. Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38 (1936).

24. Another similarity is that both have a 40-week gestation period in which early morning nausea is common. Both also occasionally stink to high heaven.

Once I identified those types, my second challenge was to devise a valid instrument that law reviews could use. The LRATI[®] was the result. The LRATI[®] assesses law review articles using four bipolar measures.²⁵ Two of these measures focus on the article itself. The other two measures focus on the article's author. Together these scales capture the qualities that most concern law reviews when they consider articles for publication.

SUBSTANTIVE APPROACH AND TECHNICAL MERITS

The two LRATI[®] measures that focus on the article examine the article's substance and its technical merit. Law review articles tend to take one of two substantive approaches. Some law review articles are cutting-edge pieces that take a trendy area of the law (or, failing that, constitutional law) and treat it in a style that is au courant, such as personal narrative. Other law review articles examine a time-honored area of the law (or, failing that, civil procedure) and treat it in a traditional, case-centered, chronological method using simple declarative sentences.

Similarly, when one looks at the technical merits of an article two basic styles emerge. In the first style, arguments flow logically, there is a strong introduction with a good road map, subheadings are accurate and informative, and the copious (though not pedantically excessive) footnotes are in *Bluebook* form. The author indicates that he or she has little pride of authorship and encourages the review editors to make textual changes involving both style and substance. This author also communicates to the review the belief that footnotes are the exclusive domain of the review and that the author will dutifully write more footnotes if desired and, in fact, will ship to the law review any footnote sources the review cannot easily locate, up to and including the original Magna Carta.

The second style of technical merit is the article in which footnotes rarely, if ever, appear (apart from the first footnote in which the author describes every credential he or she possesses²⁶). The arguments are incoherent when they are not inchoate.

25. This is particularly appropriate because many law professors are bipolar.

26. Not for nothing is this footnote, denoted by an asterisk, called a "star cite."

Extended metaphors break down almost immediately. Elemental rules of grammar and spelling seem to be ignored. What few footnotes there are contain vague allusions to material in foreign languages and often simply say: "Note To Law Review: Find appropriate source and document with pinpoint cite here. Thanks."²⁷

AUTHOR STATUS AND AUTHOR AFFILIATION

As it is with the intrinsic merits of the article, so it is with the author. The second two scales of the LRATI[®] seek to identify the primary characteristics of law review authors. Again, there are two bipolar scenarios. In the first, the professor is a famous authority. He or she is well known to the general public or at any rate to those in the legal community. His or her views are often sought out by *The New York Times* or National Public Radio on a wide variety of issues. This professor has published prolifically in law reviews, has written treatises, and has appeared as counsel in several notable Supreme Court cases. At the other end of the spectrum is the professor who is not well known for anything. In fact, many colleagues may not recognize this professor outside the law school building. This professor has not published much—perhaps not anything—since the grant of tenure. Even then, he or she wrote only the bare minimum needed to get tenured. How it is that this professor even produced the current article is something of a mystery; his or her research assistants should not be queried any too closely about their contributions.

Likewise for the author's school. One paradigm is the famous, national, highly competitive law school. It is on everyone's list of the top 10 schools in the country.²⁸ Students and faculty alike would kill to be there. The very mention of its name can silence critics. The other paradigm is the school that no one knows. If it's lucky, the school has its location in its name so that at least people don't say, "Where's *that*?"²⁹

27. Those who have been through the article publication process either as authors or as editors will see that this is described rather too broadly. Law professors rarely say "thanks."

28. This list, of course, has about 20 schools on it.

29. *Cf. supra* note *. Compare also the University of Washington, Washington University,

These four bipolar scales are neatly captured in the LRATT's[®] rubrics:

Doctrinal-PC [DP]. This scale measures whether the article's subject matter and treatment are more traditional or more modern.

Celestial-Hell [CH]. This scale describes the likely nature of the editing process for this Article. Is the technical state of the article such that the process will go smoothly, or will it be difficult?

No name-Big name [NB]. This measure assesses the relative importance of the author in the legal field.

Top Ten-Generic [TG]. Finally, this measure is a continuum between the schools that are at the very top of the law school food chain and those that are essentially fungible.

Completing the LRATI[®] will produce a four-letter type for any given article. This type can then be compared to the categories below to see whether an offer of publication should be extended.

The following letter combinations signal *Stars* [PB]:

PCBT
PHBT
PCBG
PHBG

The following letter combinations signal *Keepers* [(P or B) and (C or T)]:

PCNT
PHNT
PCNG
DCBT
DHBT
DCBG

and George Washington University, only one of which is located in our Nation's capital, not the site of Capital University, which is in Ohio. The ur-university in this regard is, of course, American University, whose law school is officially known as Washington College of Law.

The following letter combinations signal *Fillers* [DN and (C or T)]:

DCNT
DCNG
DHNT

The following letter combination signals a *Loser*:

DHNG

Once an article's LRATI[®] type is known, the protocol for extending an offer is relatively straightforward. *Stars* should be accepted immediately, the author courted shamelessly with such enticements as lead article status and hands-off editing. None of these tactics will work, though, and the author will place the article elsewhere. *Keepers* should also be accepted immediately, given an exploding offer, and the author should be given no special accommodations.

Fillers should be accepted only if submitted in the late fall, normally the time when a review is worried that it may not have enough articles to produce the requisite number of issues. *Fillers* will constitute the bulk of any law review's annual output. *Losers* should be rejected out of hand.³⁰ *Losers* will constitute the bulk of any law review's annual submissions.

Now that I have described the four LRATI[®] scales, I turn to a description of the instrument itself. It consists of twenty forced-choice questions to be answered by the author and sent to the review along with the article. The questions cover each of the four scales and, when properly evaluated, provide an amazingly accurate assessment of a law review article's publishable quality. The questions appear to the author to be randomized so that he or she cannot "game" the instrument. The complete LRATI[®] appears as Appendix A to this Article. The LRATI[®] Answer Sheet, which appears as Appendix B to this Article, will be available only to law

30. The only exception to the LRATI[®] is if an article, although a *Loser* according to the LRATI[®], is written by a faculty member at the law review's school. In this case the article should be accepted and accorded lead article status.

reviews. Almost no law professor will discover that the LRATI[®] Answer Sheet is published at the end of this Article, however, because no law professor looks at law review articles except to find his or her own name.³¹ Even the ten law professors named in footnote 19, *supra*, (who are, by the way, the only law professors except me who will look at this Article) are unlikely to discover the LRATI[®] Answer Sheet, because when law professors discover their own name in someone else's article they only read the paragraph or footnote in which their name appears.³²

LAW REVIEWS' RESPONSE TO AUTHORS

The LRATI[®] will go a long way toward reducing the information asymmetries that plague the article selection process. But it cannot eliminate those disparities. More particularly, the LRATI[®] does nothing to help generate the information that law professors lack when they send articles out to law reviews. Law professors want to know, first, the relative prestige of the various law reviews. The prestige of law reviews is not precisely linear. Rather, the reviews tend to fall into hierarchies with anywhere from several to several dozen reviews in each. Although these hierarchies are not objective, my guess is that if all law professors were surveyed there would be a great deal of agreement on the various hierarchies and the law reviews each level comprises.³³

When a law professor receives an offer from a law review, he or she first identifies the hierarchical level of the review. In fact, the professor need not do any new thinking on this score because he or she surely had the hierarchies in mind when he or she sent out the article for consideration. Human nature being what it is, though, the receipt of an offer from a particular review usually causes that review to move upward by one hierarchy in the professor's mind.

31. This is accomplished by running daily automatic LEXIS and Westlaw searches for the law professor's name. There is, of course, absolutely no significance to the fact that the Westlaw law review database is "TP-All."

32. I am so convinced of the truth of this statement that I hereby offer \$10 to each professor named in footnote 19 who certifies to me that he or she read this offer without being tipped off by someone else. See *Carlill v. Carbolic Smoke Ball Co.*, 1 Q.B. 256 (1893).

33. Actually, if all law professors were surveyed only about 10 would respond.

Next, the professor will consult the librarians at his or her school to determine whether the offering review publishes its issues in a timely manner. Unless the offering review is significantly late in its publication schedule, the professor's approach will be to accept the offer unless another offer can be cajoled out of a review at a higher level. If such an offer can be obtained, it will, in turn, be accepted, unless, again, another offer can be cajoled out of a review at an even higher level.

Thus, except in rare circumstances in which the professor has some special reason to accept or decline an offer from a particular review, the three things he or she needs to know are, first, where does this review rank? Second, how far behind are its editors in their publishing schedule? And third, can I get another offer from a better review? All three data are necessary for an author to commit an article to a particular review, but law professors lack information only about this third question.

To solve this asymmetry I have developed a response form that law reviews should send out to law professors as soon as they receive a submission. It would allow authors to gauge their chances of getting an offer from each law review. The form (the Chiappinelli Response to Authors Postcard, or "CRAP"), reproduced as Appendix C, is an editor-friendly, plain-English, check-the-box kind of response. It could easily be printed on a standard 4"-by-6" postal card and mailed to each author. Knowing both the law reviews' relative statuses and the likelihood that a particular review's issues will come out on time, authors could make valid decisions just by considering the CRAP they receive.

In conclusion, the LRATI[®] bids fair to revolutionize the law review article selection process. LRATI[®] promises to be a valid predictor of law review article quality and author temperament. The selection and publication of law review articles will be quicker, more accurate, and will take place with less rancor and fewer interpersonal conflicts than ever before. Law reviews that choose to give authors CRAP, regardless of whether they use CRAP in conjunction with LRATI[®], will find that authors are less intrusive in the selection process.

Appendix A

The Law Review Article Type Indicator[®]

Instructions: The following two pages contain twenty questions. For each one, please circle (a) or (b) on the answer sheet that follows.

1. This Article is critical
 - (a). of current law.
 - (b). of critical theory.
2. I believe that "[m]etaphors in the law are to be
 - (a). narrowly watched." *Berkey v. Third Ave. Ry.*, 155 N.E. 58 (1926) (Cardozo, J.).
 - (b). watched like a hawk."
3. At faculty meetings I'm typically
 - (a). respectful of other's views.
 - (b). absent.
4. Our law school is on the cutting edge because of our CRTs—that is, our
 - (a). Critical Race Theorists.
 - (b). Cathode Ray Tubes.
5. When you see the word "text" in this Article it means
 - (a). I'm not referring to the footnotes.
 - (b). I forgot to add an "e" to the end.
6. When law review editors change my sentence structure they usually
 - (a). improve the article's readability.
 - (b). live to regret it.
7. The style of my house is best described as
 - (a). Dutch colonial.
 - (b). Post-colonial.
8. Since 1992, according to *U.S. News and World Report*, our law school has been
 - (a). ranked in the top 50.
 - (b). a subscriber.
9. I graduated from law school
 - (a). before 1968 or after 1978.
 - (b). between 1968 and 1978.
10. *The Bluebook: A Uniform System of Citation* is
 - (a). an indispensable, if turbid, compendium of standards and rules for legal citation.
 - (b). a tool of hegemonic abomination imposed by rule-bound, lucrecentric, *soi-disant* "editors" at four inbred, involuted, insular, ideosocratic, and self-referential law reviews.

11. Every course I teach has at least one
- (a). drafting exercise.
 - (b). ampersand in the title.
12. At our law school, the editor-in-chief of the law review usually
- (a). clerks on the Second Circuit.
 - (b). passes the bar on the second try.
13. The Introduction of this Article tells the reader about
- (a). Part II (the problem), Part III (prior approaches), Part IV (shortcomings of prior approaches), and Part V (my approach).
 - (b). the summer of my second year in law school when my roommate treated me badly.
14. When I'm searching an electronic legal database, I'm most comfortable being
- (a). boolean.
 - (b). on drugs.
15. On gift occasions I like to give
- (a). something the recipients wouldn't buy for themselves.
 - (b). reprints.
16. Our law school typically rejects applicants whose
- (a). LSAT is below the 95th percentile.
 - (b). checks bounce.
17. This Article asserts
- (a). that the expansion of supplemental jurisdiction is ill-advised.
 - (b). the primacy of me as a person.
18. When I outline my Article before drafting it, I use these headings:
- (a). I.A.1.a.i.(a).(i).
 - (b). "outline"?
19. In classes, I use
- (a). a casebook.
 - (b). my casebook.
20. When they're not teaching, most of the faculty at our law school are
- (a). pushing back the frontiers of human understanding.
 - (b). pushing back the dessert cart at the faculty club.

Authors: Check this box if you are submitting this Article to the law review at your own school.

Law Reviews: If this box is checked, make an offer *regardless* of the Article's type.

Appendix B

LRATT[®] Answer Sheet

1. (a)(b)	2. (a)(b)	3. (a)(b)	4. (a)(b)
5. (a)(b)	6. (a)(b)	7. (a)(b)	8. (a)(b)
9. (a)(b)	10. (a)(b)	11. (a)(b)	12. (a)(b)
13. (a)(b)	14. (a)(b)	15. (a)(b)	16. (a)(b)
17. (a)(b)	18. (a)(b)	19. (a)(b)	20. (a)(b)
$\overline{\text{D}}$ $\overline{\text{P}}$	$\overline{\text{C}}$ $\overline{\text{H}}$	$\overline{\text{N}}$ $\overline{\text{B}}$	$\overline{\text{T}}$ $\overline{\text{G}}$

Directions for Scoring

First add the circles in the (a) columns and place the sums at the bottom of the columns. Do the same for the (b) columns.

Now you have four pairs of numbers. Circle the letter below the larger number of each pair. The resulting four letters are the Article's type. The Article's type dictates the publishing decision that should be made:

STARS [PB]	KEEPERS [(P or B) and (C or T)]	FILLERS [DN and (C or T)]	LOSERS DHNG
PCBT	PCNT	DCNT	
PHBT	PHNT	DCNG	
PCBG	PCNG	DHNT	
PHBG	DCBT		
	DHBT		
	DCBG		

Appendix C

Chiappinelli Response to Authors Postcard

(CRAP)

Dear Author:

Yes, we've gotten your Article and . . .

- | | |
|---|---|
| <ul style="list-style-type: none"> - we will read it. - we might read it. - we would read it if you were from a bigger-name school. - we won't read it until you call with an offer from another law review (<i>NB</i>: We have friends everywhere, so don't even think about lying). - we're still at our summer jobs so we won't look at it for six months. - it has been assigned #01-14,287. Good luck. - we're currently reviewing articles for Volume 43. We hope to publish Volume 39, number 2 within the next three months. | <ul style="list-style-type: none"> - we won't ever read it. - we got many very fine articles in addition to yours, and, as you know, our space is limited, so unfortunately we won't be making you an offer. - even a cursory glance shows it hasn't got a prayer at this law review. - just discovered that last year's lead articles editor wedged it, and 274 other submissions, behind his desk eight months ago. Sorry we were unable to contact you sooner. |
|---|---|

We use the LRATI[®] to make publication decisions, so you may be sure we will contact you with our decision shortly.

Sincerely,

 Articles Editor