

**LETTERHEAD BIAS AND THE DEMOGRAPHICS OF ELITE  
JOURNAL PUBLICATIONS**

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*This article is the result of the most extensive audit of U.S. law review articles ever undertaken. It presents and discusses the findings of an audit of articles published in the top fifty U.S. law reviews from 2014–2018 inclusive. Analyzing over 4,500 articles and the demographics of almost 6,000 authors, it demonstrates through hard data that: (i) letterhead bias is a*

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*real phenomenon; (ii) some journals have high rates of publishing their own faculty's work, a phenomenon that tends to be worse in higher-ranked journals; (iii) overseas authors stand a very low probability of being published in a top fifty U.S. law review; (iv) there is no real correlation between a journal's ranking and the extent to which it publishes practitioner-authored work; and (v) articles in more highly ranked journals have a greater tendency toward being co-authored.*

*These findings reveal some hard truths about the elite U.S. law review market, grounded in hard data, both for aspiring authors and editorial boards across the U.S. They further question the integrity and credibility of the student-edited journal model and have profound implications including for hiring; promotion; tenure; performance appraisal; and the extent to which rankings, perceptions, and biases operate as surrogates for an informed assessment of merits. Institutions must do better to ensure quality journal scholarship and to protect student editors from conflicts of interest and self-serving faculty. The paper concludes that only the universal adoption of a fully blind article selection process can offer redemption.*

## I. INTRODUCTION

Rumors abound in corridors, faculty lounges, and “angsting threads”<sup>1</sup> across the U.S.: what can I do to maximize my chances of placing an article in a top journal? Should I target some journals while avoiding others? Will my institutional affiliation help or hinder my chances of publication? Do some journals largely act as a vehicle for publishing their own faculty members’ articles? Are my chances reduced by being a practitioner, and are there some more practitioner-friendly outlets? Are sole or co-authored articles preferred? Do overseas scholars have a realistic chance of placing their article in a top U.S. journal? Academics are right to survey their prospects and strategize to improve them, for publication achievements strongly influence hiring, promotion, tenure, and performance appraisal. It seems that everyone

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1. *PrawfsBlawg* opens an “angsting thread” each Spring and Fall where law professors, mostly anonymously, seek guidance, strategize, speculate, gossip, worry, and despair about law journals’ biannual submission cycles. See, e.g., *Submission Angsting Fall 2019*, PRAWFSBLAWG (July 23, 2019), <https://prawfsblawg.blogs.com/prawfsblawg/2019/07/submission-angsting-fall-2019.html> [<https://perma.cc/22HA-EAMY>].

has a theory or view to express on these questions, though rarely, if ever, are these based on hard data.<sup>2</sup>

This Article provides answers to such questions based on hard data, in the largest and most extensive audit of U.S. law journal articles ever undertaken, surveying the work of over 4,500 articles and almost 6,000 authors. Hard data is desirable because “[v]ery rarely . . . has the criticism [of law reviews] been supported by anything more systematic than anecdotal evidence.”<sup>3</sup> Statistically grounded analysis, if properly conducted, provides a more methodologically robust foundation than anecdotes on which to assert claims of dysfunctionality. In addition to being one of the few analyses of the U.S. law journal system based on hard data,<sup>4</sup> and being the largest audit of U.S. law journals ever undertaken, this study has the added value of being conducted by an “outsider”: a non-U.S. legal academic for whom publishing legal articles in peer-reviewed journals is the norm and for whom the student-edited model appears foreign and eccentric. This author therefore brings a more objective perspective, with no institutional links or “axe to grind” in the U.S. system, as well as increased awareness of the special challenges faced by overseas authors that have not, hitherto, been documented by many of the commentators who have written in this field.<sup>5</sup> Furthermore, this study penetrates the macro-level analysis by identifying specific journals and does not shy away from highlighting anomalous or objectionable practices where they arise. It is therefore

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2. A useful overview of the submission system is given by Brian Galle. Brian Galle, *The Law Review Submission Process: A Guide for (and by) the Perplexed*, SSRN (Aug. 12, 2016, 10:52 AM), <https://ssrn.com/abstract=2822501> [<https://perma.cc/6UWW-UDHD>]. The law review system in general is described in Jordan H. Leibman & James P. White, *How the Student-Edited Law Journals Make Their Publication Decisions*, 39 J. LEGAL STUD. EDUC. 387 (1989), and Kevin M. Yamamoto, *What’s in a Name? The Letterhead Impact Project*, 22 J. LEGAL STUD. EDUC. 65, 67–72 (2004).

3. Jason P. Nance & Dylan J. Steinberg, *The Law Review Article Selection Process: Results from a National Study*, 71 ALB. L. REV. 565, 572 (2008).

4. In relation to what this article labels “self-publication,” a study was conducted in the early 1980s but covered half the audit period of the present study, less than half the number of journals as the present study, and less than a quarter the number of articles as the present study. Ira Mark Ellman, *A Comparison of Law Faculty Production in Leading Law Reviews*, 33 J. LEGAL EDUC. 681 (1983). Leibman and White conducted a qualitative, interview-based study of a slightly smaller number of journals than included in the present study. Leibman & White, *supra* note 2. Nance and Steinberg carried out a survey-based study which covered many more journals than the present study, but adopted a semi-quantitative methodology based on student editor responses, rather than observations of actual publications. Nance & Steinberg, *supra* note 3. It also covered a single academic year. *Id.* Other survey-based studies were conducted by Max Stier et al., *Law Review Usage and Suggestions for Improvement: A Survey of Attorneys, Professors, and Judges*, 44 STAN. L. REV. 1467 (1992); Leah M. Christensen & Julie A. Oseid, *Navigating the Law Review Article Selection Process: An Empirical Study of Those with All the Power — Student Editors*, 59 S.C. L. REV. 175 (2007); Barry Friedman, *Fixing Law Reviews*, 67 DUKE L.J. 1297 (2018); and 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 (2013).

5. See *infra* Part V.

distinguishable from previous studies as more extensive, comprehensive, and objective than its predecessors. It is also, unlike most of its predecessors, not merely survey-based.<sup>6</sup>

The study presents and discusses the findings of an audit of the top fifty U.S. law journals (“T50”), as defined by the *Washington and Lee Law Journal Rankings*, over a period of five calendar years from 2014 through 2018. It documents the trends and patterns in the demographics of 5,791 authors across 4,593 articles. The research provides statistical evidence of “letterhead bias”<sup>7</sup> and demonstrates that the phenomenon intensifies at higher-ranked law schools. It also reveals that some journals publish a disproportionate number of their own faculty’s articles, with the practice most egregious at the *Virginia Law Review*, *New York University Law Review*, and *Harvard Law Review*. This practice is, likewise, most intense at higher-ranked journals. Overseas authors have particularly low prospects of publishing in a T50 journal, and there is little correlation between journal ranking and the extent to which a given journal publishes practitioner-authored articles. Finally, a greater proportion of co-authored articles tend to feature in higher-ranked than lower-ranked journals.

The significance of this article’s data-centric approach is that rumors, anecdotes, and theories can be grounded — or dispelled — on the basis of verifiable, quantitative data. The data presented does, however, reveal some hard truths both for aspiring authors and editorial boards across the U.S., and further questions the integrity and credibility of the student-edited journal model. The article does not suggest that student editors are, across the board, engaged in improper conduct, or that deserving articles are never published in top journals. Rather, it exposes and highlights flaws that can enable stakeholders to push more forcefully for changes that will make the law review market more open, fair, and transparent. The Article concludes that the only feasible solution is for blind review to be universally adopted in journals’ selection processes. As faculty members in the U.S. and beyond depend on publication credentials for performance-related pay, hiring, promotion, or tenure,<sup>8</sup> the more objectionable the data shows the journal system to be, the greater should be their impetus to demand change. As the broader legal community relies on universities to maximize the quality of their journal scholarship, the more that publication decisions seem to be based on criteria other than merit,<sup>9</sup> the greater the entitlement of the

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6. See *supra* note 4.

7. See *infra* Part III.

8. It was found through survey-based research that “law professors expressed considerable dissatisfaction with the current system of law reviews . . . [.] agreed that law reviews requires [sic] major changes . . . [.] and [.] were also concerned about the effect of law reviews on their careers.” Wise et al., *supra* note 4, at 52.

9. Ronald J. Krotoszynski, Jr. wrote that the “[t]he rules of the game strongly suggest . . . that factors unrelated to pure merit (however defined) will play an important role in a given

community to feel cheated. It is time that changemakers were armed with the data they need to demand better of law reviews.

## II. METHODOLOGY

The study audited the T50 general (“flagship”) journals in the 2017<sup>10</sup> *Washington and Lee Law Journal Rankings* (“*W&L*”). A list of the audited journals can be found in 1.<sup>11</sup> In identifying the target journals for the study, selection based on *W&L* was chosen over selection of the flagship journals of the T50 ranked law schools in the *U.S. News and World Report* (“*U.S. News*”) rankings,<sup>12</sup> as *W&L* is a journal ranking rather than an institutional ranking. While the “consensus” is that legal academics rank journals according to *U.S. News*,<sup>13</sup> *W&L* provides hard data on article impact and citations, and thus serves as a more quantified and scientific ranking of journals.<sup>14</sup> As Timothy T. Lau observed, there are various problems with using the *U.S. News* rankings to rank journals themselves, and “by using the *U.S. News & World Report* rankings of law schools to rank journals, legal academics are taking the rankings far beyond their intended use and essentially are ranking journals based on factors that have little to do with the journals themselves.”<sup>15</sup> In any event, the *U.S. News* rankings retained an important place in this study, as they provided the law school rankings used in the determination of institutional prestige for the purposes of

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law review’s publication decision.” Ronald J. Krotoszynski, Jr., *Legal Scholarship at the Crossroads: On Farce, Tragedy, and Redemption*, 77 TEX. L. REV. 321, 330 (1998). Dan Subotnik and Glen Lazar wrote that “if, in fact, editors’ selections of articles are based on extraneous factors such as the rank of the author’s school, and if the selected articles become defined as the best, then we have a closed circle begging for criticalist denunciation.” Dan Subotnik & Glen Lazar, *Deconstructing the Rejection Letter: A Look at Elitism in Article Selection*, 49 J. LEGAL EDUC. 601, 605 (1999).

10. At the time of writing, this was the most recent version of the rankings available. The author received confirmation from Washington and Lee University School of Law (to which the author expresses thanks) that they had updated the published 2017 ranking for technical reasons, over a period of time, after the ranking’s initial publication. The 2017 ranking that was used as the basis for this study can therefore no longer be found on the Washington and Lee website, *W&L Law Journal Rankings*, WASH. & LEE U. SCH. L., <https://managementtools4.wlu.edu/LawJournals> [<https://perma.cc/X5DQ-2T5Z>], as the “Combined Scores” were changed after the bulk of the research had been concluded. Accordingly, 1 sets out the 2017 ranking used as the basis for this study, which was the official ranking at the time of initial data compilation. It also details each journal’s “Combined Score,” calculated by Washington and Lee, and its Journal Median Assigned Score. *See infra* Annex 1.

11. *See infra* Table 1.

12. *Best Law Schools*, U.S. NEWS & WORLD REP., <https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings> [<https://perma.cc/MD8W-DPLG>].

13. Timothy T. Lau, *A Law and Economics Critique of the Law Review System*, 55 DUQ. L. REV. 369, 374 (2018).

14. Nance & Steinberg, *supra* note 3, at 589 n.114, 603.

15. Lau, *supra* note 13, at 376. *See also infra* Part III.

investigating letterhead bias, namely a bias in favor of, or against, an article based on the institutional affiliation(s) of its author(s).

The audit period covered articles published during the calendar years from 2014 through 2018. An audit period spanning five calendar years offered a wide enough sample while maintaining statistical manageability.<sup>16</sup> In addition, as editorial boards tend to turn over on an annual basis (with the entire journal staff tending to turn over every two years), the idiosyncrasies of a single editorial board<sup>17</sup> should not have undue statistical influence (no more than 20% per journal) on the overall trends for that journal. The audit focused on long-form articles and did not include shorter essays, notes, and case comments.<sup>18</sup> The decision to focus on long-form articles was made because these articles are widely regarded as the most influential and significant contributions published by journals. They are — by contrast with other forms of journal output — where most original scholarship is presented to the world; they are the primary venue where new arguments, theories, and evidence are set out; and, importantly, they are also what tend to count most for the performance appraisal, promotion, tenure, and hiring decisions to which academics are subject. For example, a long-form article published in a prestigious journal may be the difference between obtaining or failing to obtain tenure, whereas a case comment in a prestigious journal will often count for little at all. The separation of long-form articles from shorter pieces was fairly straightforward for most journals. Online-only work was also excluded from the scope of the study, as that is not (yet) considered to carry the same weight of reputation, credibility, and consequence as work published in print sources.

Finally, the audit excluded symposium issues. It is generally understood, particularly in the U.S., that publication of an article in a symposium edition is less prestigious than the publication of an article in a non-symposium edition of the same journal. This difference is likely to do with the mechanics of symposium editions, which may — though will not always — comprise a polished version of papers presented at a symposium, seminar, or conference. All else being equal, it will typically be easier to secure an invitation to present at an event of that nature (thus potentially guaranteeing or significantly boosting one's prospects of publishing in the associated journal) than to secure a publication spot in a non-symposium edition of the same journal. Accordingly, the study excluded symposium editions from the scope of the audit, as they might skew the data. With these parameters applied to the

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16. A previous study regarded a two- or three-year audit period as sufficient to establish validity. *See* Ellman, *supra* note 4, at 686.

17. *See* Leibman & White, *supra* note 2, at 413–14.

18. The audit included student-authored long-form articles, though these were not as numerous as staff-authored long-form articles.

T50 journals, there were, as noted, 4,593 articles audited, representing the work of 5,791 authors.

The study investigated a number of factors, of which the following are discussed and presented in this article. First, it examined the correlation between the *W&L* journal ranking and the median *U.S. News* ranking of the primary institution with which that journal's authors were affiliated. This sought to test the extent to which an author's institutional affiliation affects — positively or negatively — their prospects of publishing in a given journal, and to measure this across the T50 journals in search of a trend or pattern. The data shows a strong degree of correlation in this regard, indicating letterhead bias.<sup>19</sup>

Second, the study analyzed the proportion of authors published by a given journal affiliated with the same institution as that of the journal (for example, the proportion of authors in the *Yale Law Journal* that were primarily affiliated with Yale University). This correlation is essentially a special kind of letterhead bias. The data reveals a surprising spread in this regard, from journals with a very low rate of self-publication — of just 0.7% in the lowest instance (*Boston College Law Review*) — to those with a disproportionately high rate of self-publication, peaking at 24.0% (*Virginia Law Review*).<sup>20</sup>

Third, the study measured the proportion of authors published in a given journal who were primarily affiliated with an overseas institution, i.e., outside of the U.S. This was to test the perception that it is difficult for overseas authors to publish in top U.S. law journals and to interrogate the extent to which some journals were more “overseas-friendly” than others. The data reveals that T50 journals generally published overseas authors at a low rate, and that eleven of those journals did not publish the work of any overseas authors over a period of at least five calendar years.<sup>21</sup>

Fourth, because some believe that it is difficult for practitioners to publish in top U.S. law journals, the study measured the proportion of academic, practitioner, and judicial authors in each journal. The data reveals that practitioners never comprised more than 15.9% of authors in any one journal (*Fordham Law Review*), and that three journals did not publish the work of any practitioners over a period of at least five calendar years.<sup>22</sup>

Finally, the study assessed the proportion of sole-authored to co-authored publications per journal, to investigate whether there is an apparent preference for sole- over co-authored work, or vice versa, at a given journal, and whether there is any correlation with a journal's

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19. See *infra* Figure 1.

20. See *infra* Table 1.

21. See *infra* Tables 5–6.

22. See *infra* Tables 8–9.

standing in the *W&L* rankings.<sup>23</sup> The data reveals that a greater proportion of co-authored articles was more likely to feature in higher-ranked journals than in lower-ranked journals. However, in the absence of submissions data, it could not be concluded that a co-authored article was more likely to be published in a higher-ranked journal than in a lower-ranked journal.

The methodology specific to each factor under investigation is discussed in its respective Part. However, two further, general methodological points should be made at this juncture. First, the potential for errors in compiling article and author information that formed the raw data for this study was significantly reduced, as the data compilation exercise was duplicated: it was conducted separately and in full, by two research assistants, neither of whom had knowledge of who the other research assistant was at that stage; and at the end the data was compared, and any discrepancies checked and rectified. Second, all percentages given in this paper are rounded to the nearest 0.1% unless stated otherwise.<sup>24</sup>

### III. LETTERHEAD BIAS

Legal academics generally favor a system of blind review in article selection,<sup>25</sup> i.e., that the article selection process is “blind” as to the identity of the author and the institution(s) with which the author is affiliated. Most of those academics also want the entire selection process to be blind.<sup>26</sup> This is intrinsic to the notion that articles should be selected for publication on their merits, including their quality, accuracy, originality, timeliness, and relevance. While it is by no means impossible for student editors to assess articles on the basis of these factors, it has already been well-documented that student editors face challenges in that regard.<sup>27</sup> One of the principal risks is that the institutional affiliation of the author(s) becomes a surrogate for assessing the article on its own merits.<sup>28</sup> As put by Richard A. Posner:

How baffling must seem the task of choosing among articles belonging to disparate genres . . . . Few student editors, certainly not enough to go around, are competent to evaluate non-doctrinal scholarship. So

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23. See *infra* Part VII. The study also measured other metrics, such as the proportion of male and female authors per journal and the rank/seniority of authors per journal; however, this data may be presented and discussed in a future paper.

24. Accordingly, percentages do not always add exactly to 100%.

25. See Wise et al., *supra* note 4, at 71.

26. See *id.* at 55–56.

27. See *infra* note 143.

28. See Friedman, *supra* note 4, at 1314–16.

they do what other consumers do when faced with uncertainty about product quality; they look for signals of quality or other merit. The reputation of the author, corresponding to a familiar trademark in markets for goods and services, is one, and not the worst. Others, and these dysfunctional, are the congeniality of the author's politics to the editors, the author's commitment to gender-neutral grammatical forms, the prestige of the author's law school, a desire for equitable representation for minorities and other protected or favored groups, the sheer length of an article, the number and length of the footnotes in it, and whether the article is a "tenure article" on which the author's career may be riding.<sup>29</sup>

Ronald J. Krotoszynski, Jr., added that not only did many law reviews use author reputation as a "shorthand," but they also used the "author's institutional affiliation as a convenient proxy for gauging the probable merit of a submission."<sup>30</sup> In this way, an "identical article submitted by a person holding an academic appointment at the Yale Law School will probably receive a stronger law review placement than it would if submitted by a person holding an appointment at LSU."<sup>31</sup> The use of author credentials as a proxy for the quality of their scholarship by student editors was elsewhere described as "generally assumed[.]"<sup>32</sup> and student editors have been described as being "forced to rely on some proxy for merit."<sup>33</sup>

The study sought to examine the extent to which the institutional affiliation of authors appears to influence the publication decisions of T50 journals.<sup>34</sup> This phenomenon is neatly described as letterhead bias,

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29. Richard A. Posner, *The Future of the Student-Edited Law Review*, 47 STAN. L. REV. 1131, 1133–34 (1995) (internal citations omitted).

30. Krotoszynski, Jr., *supra* note 9, at 329. James Lindgren claimed that "[o]ne law review reputedly sorted submissions into piles, depending on the prestige of the law school from which the manuscript was submitted. The good pile got serious reads, the bad pile got something less." James Lindgren, *An Author's Manifesto*, 61 U. CHI. L. REV. 527, 530 (1994).

31. Krotoszynski, Jr., *supra* note 9, at 329.

32. Nance & Steinberg, *supra* note 3, at 571. Richard A. Wise et al. found that "though professors at the top ranked law schools believed that law reviews place too great an emphasis on a law professors' [sic] reputation and law school affiliation in article selection, they believed it was significantly less of a problem than did the professors at lower ranked schools." Wise et al., *supra* note 4, at 41. That is hardly surprising considering that faculty at top-ranked law schools seem to do rather well out of letterhead bias. *See infra* Part III.

33. Subotnik & Lazar, *supra* note 9, at 611.

34. The institutional affiliation of authors is of course not the only non-merits criterion that can be used to evaluate submissions. Christensen and Oseid found in their survey-based study that student editors were also influenced by the law school from which an author graduated, the journals in which an author had previously published, and the number of times an author had previously published. *See* Christensen & Oseid, *supra* note 4, at 190–93.

and there has been a hitherto unproved<sup>35</sup> feeling that it exists. For example, a PrawfsBlawg post stated that “[e]veryone has a sense that letterhead bias exists but no one can prove it.”<sup>36</sup> Kevin M. Yamamoto described it as a “widespread deeply held belief by law professors . . . that law reviews are unfairly prejudiced and biased in favor of papers from authors at higher ranked, or more prestigious, institutions[.]”<sup>37</sup> adding that “several authors have reported having such a bias while they were articles editors on law review[s].”<sup>38</sup> Yamamoto and a colleague sought to test the phenomenon of letterhead bias by having his colleague, who was visiting a more highly ranked and prestigious institution, submitting an article to law reviews using two different letterheads: one from the more prestigious, and one from the less prestigious, institution. They were disappointed to find that there was “no statistical difference between the two groups[.]”<sup>39</sup> though this finding, Yamamoto added, could have been because the higher-ranked institution was not ranked highly enough to establish a favorable bias.<sup>40</sup> Though an interesting and laudable attempt to prove the existence of letterhead bias, its conclusion — that letterhead bias was not proved — was anticlimactic for the many people who were confident that the phenomenon existed. Yamamoto’s findings do not, however, seem to have been matched by an earlier, similar experiment conducted by James Lindgren.<sup>41</sup>

Previous studies have statistically proven that author credentials feature prominently in editorial decisions. Jason P. Nance and Dylan J. Steinberg’s survey showed that “editors use author credentials extensively to determine which articles to publish.”<sup>42</sup> Of fifty-seven possible factors that might influence publication decisions, “[t]he author is highly influential in her respective field” was the most positive influence affecting publication decisions.<sup>43</sup> Of more relevance to letterhead bias, “[t]he author is employed at a highly ranked law school” was the fifth most positive influence affecting publication decisions,<sup>44</sup> and

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35. Christensen and Oseid found that a “majority of respondents from nearly every school segment indicated they are influenced by the law school where an author teaches.” *Id.* at 188. While this is a useful finding, it does not quantify the actual incidence of publications measured by letterhead.

36. Michael J.Z. Mannheimer, *Anecdotal Evidence of Letterhead Bias*, PRAWFSBLAWG (May 27, 2011, 1:22 PM), <https://prawfsblawg.blogs.com/prawfsblawg/2011/05/anecdotal-evidence-of-letterhead-bias.html> [<https://perma.cc/PEF5-W8TQ>]. Galle, *supra* note 2, at 11, observes that letterhead bias “probably” exists.

37. Yamamoto, *supra* note 2, at 65.

38. *Id.* at 65 n.2; *see also* Christensen & Oseid, *supra* note 4, at 188.

39. Yamamoto, *supra* note 2, at 94.

40. *Id.* at 89–90.

41. *See* Subotnik & Lazar, *supra* note 9, at 610.

42. Nance & Steinberg, *supra* note 3, at 584.

43. *Id.* at 583.

44. *Id.*

“[t]he author is employed at a poorly ranked law school” was the thirteenth most negative influence affecting publication decisions.<sup>45</sup> Leah M. Christensen and Julie A. Oseid found in their study that a “majority of [survey] respondents from nearly every school segment indicated [that] they are influenced by the law school where an author teaches.”<sup>46</sup>

While the results of these previous studies were useful and illuminating, the present study sought to measure the existence of letterhead bias in a more statistically comprehensive, data-centric manner. It did so by measuring the correlation between institutional prestige and incidence of publication in the T50 journals according to a Journal Median Assigned Score (“JMAS”). This was measured separately from the incidence of publishing the work of authors affiliated with the same institution as that of the publishing journal, which is a special kind of letterhead bias.<sup>47</sup>

Each institution was allocated an Institutional Assigned Score (IAS) based on its standing in the 2019 *U.S. News* rankings. The higher an institution was ranked in the *U.S. News* rankings, the higher its IAS. The IAS was calculated based on the number of positions in the *U.S. News* rankings, namely 193, minus the position of a given institution in the ranking. Thus, for the highest-ranked institution, Yale University, the IAS was calculated as 193 minus 1, resulting in an IAS of 192. The second highest-ranked institution, Stanford University, had an IAS of 191 (193 minus 2). The third highest-ranked institution, Harvard University, had an IAS of 190 (193 minus 3). And so on.<sup>48</sup> In the *U.S. News* rankings, the bottom quartile of institutions were grouped together as “Rank Not Published.” This group of institutions was effectively tied in 145th place in the rankings, and thus each had an IAS of 48 (193 minus 145). A small number of institutions were unranked,<sup>49</sup> for a variety of reasons that have been set out by *U.S. News*.<sup>50</sup> As factors other than reputation or prestige determined the placement of these institutions in the rankings, they were excluded from the calculation of the

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45. *Id.* at 584. However, Nance and Steinberg interpret this “prestige” indicator as a “relatively unimportant factor.” *Id.* at 586.

46. Christensen & Oseid, *supra* note 4, at 188.

47. *See infra* Part IV.

48. The reason for calculating an IAS, rather than simply using the *U.S. News* ranking for calculation of each journal’s JMAS, was that the latter would have resulted in a positive (rather than negative) linear trend in the study’s linear regression model. *See infra* Figure 1. While no less statistically accurate, this would have been graphically counter-intuitive.

49. These were Arizona Summit Law School, Concordia University, Inter-American University, Lincoln Memorial University, Pepperdine University, Pontifical Catholic University of Puerto Rico, Thomas Jefferson School of Law, University of North Texas at Dallas, University of Puerto Rico, and Whittier College.

50. Robert Morse, Kenneth Hines & Elizabeth Martin, *Methodology: 2020 Best Law Schools Rankings*, U.S. NEWS & WORLD REP. (Mar. 28, 2019, 2:04 PM), <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology> [<https://perma.cc/F67N-HXW6>].

JMAS.<sup>51</sup> As IASs were based on the *U.S. News* rankings, any author who was primarily affiliated with an institution other than one featured in the *U.S. News* rankings was excluded from the calculation of the JMAS. There were therefore four categories of authors excluded from the JMAS: (1) authors affiliated with an institution that was unranked in this version of the *U.S. News* rankings, e.g., Pepperdine University; (2) authors affiliated with a U.S. institution that did not feature in the *U.S. News* rankings for law, e.g., Northern Arizona University; (3) authors affiliated with a non-U.S. institution; and (4) authors whose primary designation was “practitioner” or “judicial.” The authors to whose affiliated institution an IAS was assigned are hereinafter referred to as “Eligible Authors.”<sup>52</sup>

Each journal was assigned a JMAS. This value was calculated as a median of the respective IASs of all Eligible Authors published by that journal in its non-symposium editions.<sup>53</sup> A journal with a higher JMAS tended to publish authors affiliated with institutions more highly ranked in the *U.S. News* rankings. A journal with a lower JMAS tended to publish authors affiliated with institutions less highly ranked in the *U.S. News* rankings. The full list of JMASs for the T50 journals is presented in 1, ranging from *Harvard Law Review* with the highest JMAS of 187, to *Lewis & Clark Law Review* with the lowest JMAS of 119. The resulting JMASs of each of the T50 journals are relatively high. All of the T50 journals, with the exception of *Lewis & Clark Law Review*, had

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51. See *infra* Figure 1.

52. Eligible Authors included authors affiliated with a university whose law faculty was listed in the *U.S. News* rankings in 2019, but who were themselves affiliated with a faculty other than law (for example, psychology or political science). Those Eligible Authors’ respective IASs were nevertheless assigned on the basis of the law faculty’s position in the *U.S. News* ranking. There were two principal reasons for this. First and foremost, it would have been methodologically inappropriate to use the *U.S. News* rankings for law faculties where an author was affiliated with a law faculty, and the *U.S. News* rankings for other faculties or general university rankings where the author was affiliated with a faculty other than law. This could have led to skewed and methodologically questionable data. Second, legal peers would likely tend to evaluate an institution based on its subject (law) reputation rather than its general reputation (for example, Harvard Law School as opposed to Harvard University); thus, the perception of institutional prestige attached to a given author would likely be influenced by its law ranking rather than its non-law or general university ranking (there may be exceptions, such as Princeton University, which of course does not have a law faculty; although an author affiliated with Princeton University would in any event fall outside the definition of Eligible Authors for the purposes of this metric). Institutions with a significant difference in their law subject and general rankings in the *U.S. News* rankings included the University of Michigan (ranked 9th for law; ranked joint 25th overall), Ohio State University (ranked joint 34th for law; ranked joint 52nd overall), Yeshiva University (Benjamin N. Cardozo School of Law) (ranked joint 52nd for law; ranked joint 97th overall), and the University of Houston (ranked joint 59th for law; ranked joint 185th overall). In any event, the majority of academic authors in the audit were affiliated with law faculties, rather than non-law faculties; thus, the statistical effect of this methodological decision should be limited.

53. Median was used instead of average (mean) as some journals’ average scores deviated significantly from their respective median scores, which could have led to more skewed data. It was therefore decided that the median score offered a better representation of the data group.

a JMAS of 120 or over, a score in the top half of possible JMASs.<sup>54</sup> *Lewis & Clark Law Review* was only marginally outside this range with a JMAS of 119. For forty-nine of the T50 journals, the median ranking of institutions with which published authors were affiliated was therefore in the top half of the *U.S. News* rankings.

It is illuminating to observe the clear correlation between the *W&L* ranking of the publishing journal and the median *U.S. News* ranking of the primary institution with which its authors were affiliated. This correlation is demonstrated in Figure 1, which shows the results of a linear regression model with the JMAS (y-axis) for each of the T50 journals (x-axis).

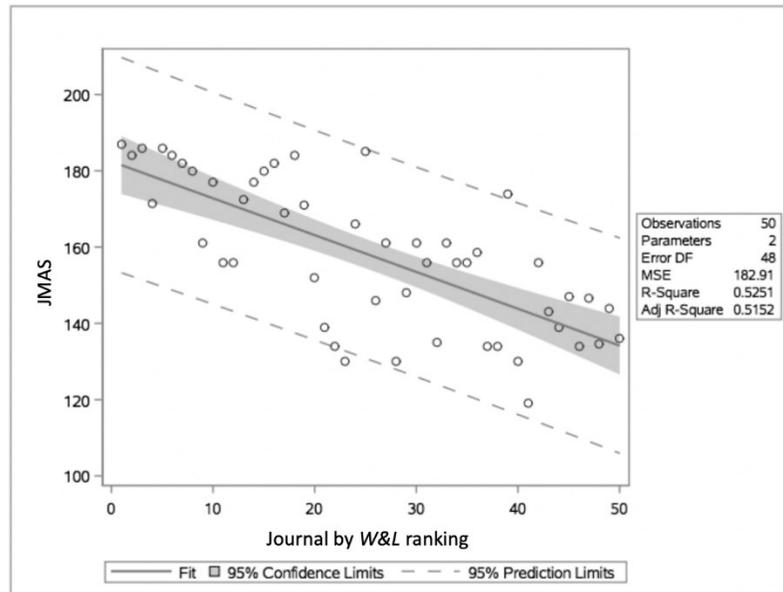


Figure 1: Linear Regression Model for Journal Ranking Versus JMAS

As one moves down the rankings, from the top-ranked T50 journal (on the far left of the x-axis) to the lowest-ranked T50 journal (on the far right of the x-axis), the median JMAS steadily reduces. In other words, as one proceeds down the *W&L* journal rankings, the ranking of the median institution with which the journal's authors are affiliated tends to decrease in a fairly stable manner. There is, to put it simply, a clear correlation between the *W&L* ranking of the publishing journal

54. The highest possible JMAS would have been 192 (if all Eligible Authors published by a journal were affiliated with Yale University), and the lowest possible JMAS would have been 48 (if all Eligible Authors published by a journal were affiliated with institutions in the lowest quartile of the *U.S. News* rankings).

and the institutional prestige of its authors.<sup>55</sup> A number of analytical observations can be made on the basis of this data, but the degree to which there is a correlation between *W&L* journal ranking and JMAS is evidence of the relative credibility and reliability of the *W&L* journal rankings. This study did not attempt to correlate journal prestige derived from *U.S. News* ranking with JMAS, for reasons already explained,<sup>56</sup> but the fact that there is such a significant correlation between *W&L* journal ranking and JMAS reinforces the credibility of the decision to base journal ranking on *W&L*.

Before proceeding to a macro analysis of the data, it is useful to make some local observations. First, Figure 1 shows that the JMASs of nine out of the top ten ranked journals are tightly grouped around the overall median regression trend across the T50 journals. The JMASs of the bottom eight journals in the T50 ranking are also tightly grouped around the overall median regression trend. In other words, there is a very strong degree of correlation in the top 20% and bottom 16% of the T50 journals. The strength of correlation is weaker in the middle segment, for journals ranked between the 11th and 42nd positions, but the general correlation is still present even in the middle segment, with a number of journals in that range remaining close to the overall median regression trend.

Second, there are some outliers, which sit beyond the 95% prediction limits. These are *Cardozo Law Review*, which had an abnormally low JMAS (130) relative to its *W&L* ranking, and *Southern California Law Review*, which had an abnormally high JMAS (174) relative to its *W&L* ranking. In other words, one would have expected *Cardozo Law Review* to publish work authored by academics at more highly ranked institutions in *U.S. News* given its position in the *W&L* ranking, though it is not suggested that *Cardozo Law Review*'s abnormally low JMAS is a cause for criticism. Rather, it may be evidence of an absence, or a lesser prevalence, of letterhead bias at that journal. Furthermore, the relative difference in the standing of *Cardozo Law Review* in *W&L* (23rd) and of Benjamin N. Cardozo School of Law in *U.S. News* (joint 52nd) could partially explain this finding. Meanwhile, one would have expected the *Southern California Law Review* to publish work authored by academics at lower ranked institutions in *U.S. News* given its position in the *W&L* ranking. While it cannot be ruled out that *Southern California Law Review*'s abnormally high JMAS is evidence of letterhead bias at that journal, it is capable of being explained by the University of Southern California's higher (in relative terms) placement in *U.S.*

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55. The R-squared value of 0.5251 means that over half of the observed variation in JMASs can be explained by variation in the *W&L* journal ranking.

56. See *supra* Part II.

*News*,<sup>57</sup> which, as noted, often drives authors' publication preferences. Journals with JMASs only marginally within the 95% prediction limits included *Florida Law Review* (relatively low JMAS of 134 relative to its *W&L* ranking),<sup>58</sup> *University of Chicago Law Review* (relatively high JMAS of 185 relative to its *W&L* ranking),<sup>59</sup> and *Connecticut Law Review* (relatively low JMAS of 130 relative to its *W&L* ranking).<sup>60</sup> In short, relatively wide discrepancies between *W&L* and *U.S. News* rankings appear to form a significant part of the explanation for these outliers.

As for the macro analysis, it might be said that Figure 1 graphically illustrates an obvious phenomenon: that "better" journals will tend to publish the work of "better" authors. There is of course a temptation to regard more highly ranked journals as "better," and to some extent they may well be "better," but there are several objections to, or qualifications upon, that view which ought to be made clear. First, the JMAS findings do not establish that better journals tend to publish the work of better authors. They establish that more highly ranked journals tend to publish the work of authors affiliated with more highly ranked institutions. A more highly ranked journal or institution is not necessarily "better" (in terms of the quality and originality of scholarship, for example) than a lower-ranked counterpart, particularly where the difference in their respective rankings is not great. Second, every institution, be it the "best" or the "worst" law school, has academic staff whose work is of a higher quality and others whose work is of a lower quality. Even in a highly ranked institution, there will be staff whose work is of a lower quality, who benefit from, or trade on, the higher-quality work of their colleagues. The institutional affiliation of that author therefore begins to act as a surrogate for an assessment of the submitted article on its own merits. It is also eminently possible for "better" scholarship to derive from a scholar in a lower-ranked institution than from one in a higher-ranked institution.

Third, a number of authors take on an aura, sometimes bordering on a celebrity status, and their work is simply deemed to be of a publishable and indeed commendable standard simply because of the identity of its author.<sup>61</sup> Those authors might enjoy a "presumption of

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57. While the *Southern California Law Review* was ranked 39th in *W&L*, the University of Southern California was ranked 17th in *U.S. News*.

58. The *Florida Law Review* was ranked 22nd in *W&L*, but the Levin College of Law at the University of Florida had a lower rank in relative terms in *U.S. News*, at joint 31st.

59. The *University of Chicago Law Review* was ranked 25th in *W&L*, but the Law School at the University of Chicago was ranked much more highly in relative terms in *U.S. News*, at 4th.

60. The *Connecticut Law Review* was ranked 28th in *W&L*, but the School of Law at the University of Connecticut had a much lower rank in relative terms in *U.S. News*, at joint 52nd.

61. A similar finding was made by Leibman & White. See Leibman & White, *supra* note 2, at 404. In Friedman's survey, 82.4% of journal respondents cited "author's high profile" as

excellence,” and they might enjoy a “fast track” in the publication decision-making process.<sup>62</sup> However, many scholars will be able to think of one or more “celebrity” authors whose work is perhaps not of the high quality that everyone assumes it to be. While that is not necessarily entirely attributable to the institutional affiliation of the celebrity author, it must be asked how the author attained that status, and their institutional affiliation may be part of the explanation.

Fourth, what makes a journal “better” in the eyes of all might not be the quality of the scholarship contained therein. Instead, some readers may gauge journal prestige as measured by, for example, citation counts.<sup>63</sup> Given that the *W&L* rankings are partly calculated on the basis of citation counts<sup>64</sup> — and that citation rates can be higher due to factors other than quality of scholarship<sup>65</sup> — and that the *U.S. News* rankings are strongly influenced by peer perception (and not necessarily verifiable attributes of quality), it is a mistake to assume that journal rankings and institutional rankings are indicia of quality. In other words, it is a mistake to conflate a higher-ranking journal or institution with a “better” journal or institution, and to conflate a lower-ranking journal or institution with a “worse” journal or institution.

Figure 1 does not provide incontrovertible proof that, as one proceeds up the *W&L* rankings (or one moves from right to left on the x-axis in Figure 1), institutional affiliation increasingly becomes a surrogate for an objective assessment of the submitted article on its own merits. *W&L* and *U.S. News* rankings, while not solely grounded in independently verifiable attributes of quality, will neither be detached from considerations of quality. Moreover, one must consider this factor in light of the broader context and findings of the study. It may (and probably will) be the case that institutional affiliation is not a surrogate for an objective assessment of the article on its own merits at all journals or on all editorial boards. The point is that there is evidence supporting the contention that affiliation does act as a surrogate, at least at

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a factor playing a role in their respective decisions to make an offer of publication. Friedman, *supra* note 4, at 1369; *see also* Nance & Steinberg, *supra* note 3, at 583–85 (suggesting that student editors may use author credentials for decision-making either because they presume that works by high-profile authors are of higher quality or because high-profile authorship generates reader interest).

62. Leibman & White, *supra* note 2, at 405.

63. *See* Nance & Steinberg, *supra* note 3, at 585. Citations scholarship became so fashionable as to be branded “legal citology,” J. M. Balkin & Sanford Levinson, *How to Win Cites and Influence People*, 71 CHI.-KENT L. REV. 843, 843 (1996), with whole issues being dedicated to the topic, *see, e.g.*, Symposium, *Symposium on Trends in Legal Citations and Scholarship*, 71 CHI.-KENT L. REV. 743 (1996); Symposium, *Interpreting Legal Citations*, 29 J. LEGAL STUD. 317 (2000).

64. *See W&L Law Journal Rankings: Combined-Score Ranking*, WASH. & LEE U. SCH. L., <https://managementtools4.wlu.edu/LawJournals/Default4.aspx> [https://perma.cc/TR9N-QG55].

65. For example, citation rates can be higher because of the identity of the author.

some journals. A journal with a relatively low JMAS, such as *Lewis & Clark Law Review* with a JMAS of 119, is not necessarily publishing “bad” scholarship, or scholarship that is any worse than scholarship published by journals with a higher JMAS — for the reasons already given. Neither will this JMAS necessarily be fully explained by the much higher standing of the *Lewis & Clark Law Review* in *W&L* relative to the standing of Lewis & Clark Law School in *U.S. News*,<sup>66</sup> though that difference may form part of the explanation. It is possible, for example, that a lower JMAS could be explained by more open-minded editorial boards conducting a more objective assessment of submitted articles on their own merits, and the fact that *Lewis & Clark Law Review* has the lowest JMAS of the T50 journals should be viewed in the context of its other relevant statistics. It has one of the lowest rates among the T50 journals in terms of publishing its own faculty members’ work, at 1.4%.<sup>67</sup> It has the joint third-highest rate of practitioner-authored publications, at 8.1%,<sup>68</sup> and third-highest rate of judicial-authored publications, at 2.7%.<sup>69</sup> It also has the third-highest rate of overseas-authored articles, at 12.2%.<sup>70</sup> These statistics, viewed together, may suggest that *Lewis & Clark Law Review* operates one of the most open-minded and objective assessments of published articles among the T50 journals. A more negative explanation, though probably unlikely, cannot be ruled out, which is that the journal operates some kind of quota or target for these categories of publication. Whatever the explanation, it appears that institutional affiliation serves less as a surrogate for an objective assessment of submitted articles on their own merits at *Lewis & Clark Law Review* than is true of a number of other T50 journals.

By contrast, *Harvard Law Review* has the highest JMAS of all T50 journals, at 187. This JMAS means that the median Eligible Author published in the *Harvard Law Review* was affiliated with a law school with the standing of New York University School of Law. This finding does not mean anything conclusive in and of itself. However, it must also be viewed in the context of *Harvard Law Review*’s other relevant statistics. *Harvard Law Review* has the third highest rate among the T50 journals for publishing its own faculty members’ work, at 20.0%.<sup>71</sup> That rate is almost double that of *Yale Law Journal*, at 10.1%,<sup>72</sup> and

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66. The *Lewis & Clark Law Review* was ranked 41st in *W&L*, but Lewis & Clark Law School had a much lower rank in *U.S. News*, at joint 95th.

67. See *infra* Table 3.

68. See *infra* Table 8.

69. See *infra* Table 10.

70. See *infra* Table 5.

71. See *infra* Table 2. *Harvard Law Review*’s high JMAS will be partly (but not fully) explained by its high rate of self-publication.

72. See *infra* note 127 and accompanying text.

well above the T50 journal average of 7.7%.<sup>73</sup> *Harvard Law Review's* academic-, practitioner-, and judicial-authored rates are within the normal parameters of practice across the T50 journals.<sup>74</sup> However, it has one of the lowest rates for publishing overseas-authored articles, with not one of sixty authors published in the five calendar years under audit having their primary affiliation with an overseas institution.<sup>75</sup> This rate stands in contrast to the journal's main rival, *Yale Law Journal*, which had an overseas-authored publication rate of 3.8%<sup>76</sup> — still low, but above the T50 journal average rate of 3.1%.<sup>77</sup> Taken together, these statistics suggest that one cannot with confidence exclude the possibility that *Harvard Law Review's* high JMAS is explained by the use of institutional affiliation as a surrogate for an objective assessment of articles on their own merits.

This practice is not only a cause for concern for those authors affiliated with lower-ranked U.S. institutions or overseas institutions, who aspire to have their work published in *Harvard Law Review* (and who can see, based on hard data, the relative hopelessness of that aspiration). The practice may also cause concern for those that consume the scholarship of that journal, who want to be assured that its articles are selected for publication on the basis of their merits, and not, wholly or partly, according to some other criteria. While available data do not prove that its articles are, wholly or partly, selected according to criteria other than merits, the data may generate the reasonable perception that merits form only part of the selection criteria. Those authors who manage to have their work published in *Harvard Law Review* may also be viewed with suspicion: “How did they manage to publish in that journal?” the skeptics may inquire. For some authors the answer will simply be that their article is, on an objective assessment of its own merits, excellent, and deserving of publication in such a prestigious and respected journal. Nevertheless, are those authors not also inhibited by the journal's seemingly anomalous publication trends, such that people may doubt the intrinsic merits of what may objectively be an excellent article? If factors other than merits are influencing publication decisions, it is questionable who are the real beneficiaries of this policy or practice.

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73. See *infra* Table 1.

74. *Harvard Law Review's* practitioner rate was 3.4% (the average among T50 journals being 3.9%), and its judicial rate was 1.7% (the average among T50 journals being 1.4%). See *infra* Table 7.

75. See *infra* Table 6.

76. See *id.*

77. See *infra* Part V.

## IV. SELF-PUBLICATION

Editorial boards should, in order to maintain the integrity and credibility of their journals, ensure that a sufficiently diverse range of authors and institutions is represented. This is not about setting targets or meeting quotas, but about ensuring that there is not a disproportionate bias toward certain kinds of authors or institutions; unless that is the express policy of the journal, which is a decision for each journal's staff to make. Any policy, formal or informal, that favors or disfavors particular categories of author should generally, in the interests of transparency, be made clear to submitting authors.

It is particularly important that a journal does not disproportionately favor its own faculty members' articles over those from other institutions.<sup>78</sup> First, as a matter of fairness, the successive editorial boards of a highly ranked journal should not abuse or misuse their position by disproportionately promoting the articles of their own faculty members. If they do so, whether as a matter of policy or practice, members of that institution can benefit from the status and prestige of publishing in that highly ranked journal without their articles being selected wholly, or even partly, on the basis of merit. Articles submitted by aspiring authors at other institutions, including more meritorious articles, therefore begin at a disadvantage, as such a journal simply does not operate a level playing field in terms of accessibility to publication. That is neither good for aspiring authors at other institutions, nor for the (objective) quality of scholarship carried in the top journals, and therefore not good for the academics, judges, practitioners, and students that consume their scholarship.

There is a high risk of conflicts of interest between student editors and faculty members of the same institution. Barry Friedman described the "risks of bias, real and perceived," in this situation as "overwhelming."<sup>79</sup> It may be the students that are at fault: editors might attempt to win favor with a professor in their own faculty by publishing their article in their journal, perhaps in the hope of a more favorable grade, a positive reference, or the establishment or promotion of personal connections.<sup>80</sup> It may instead, or in addition, be the faculty members that are at fault: the temptation for some academics to apply overt or covert pressure on student editors at their home faculty's journal might be too great for some to resist. While one would hope that such a practice does

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78. For the sake of brevity, the incidence of a journal publishing the work of a faculty member affiliated with the same institution as that of the journal is referred to as self-publication.

79. Friedman, *supra* note 4, at 1351.

80. Posner wrote that student editors faced "some penalty, no doubt, for angering professors, especially at one's own law school." Posner, *supra* note 29, at 1132.

not exist, some have reported that it does.<sup>81</sup> Jordan H. Leibman and James P. White's survey found that:

When authors are resident faculty members, however, the pressures on students to say yes do exist, and most of the editors acknowledged them. Interestingly, the problem was less acute at the low-impact journals, which actively seek articles and often find that the best available to them are from their resident faculty . . . . At high- and medium-impact journals, many editors conceded that their faculty members did have an edge, but if their work was judged inferior, it was regularly turned down. In such cases, the rejection is usually presented to the author as a consensus decision, but not surprisingly the senior articles editor or editor-in-chief was often uncomfortable when acting as the messenger of bad tidings. Although the interviewees generally reported that their professors took turndowns with good grace, there can be little doubt that the relationship has at least the potential to distort the manuscript review process.<sup>82</sup>

The study measured the extent to which each T50 journal published the work of its own faculty members during the audit period.<sup>83</sup> Table 1 reveals that, across the audit period, an average of 7.5% of authors published by a T50 journal were affiliated with the same institution as that of the journal in question. The average proportion of such authors so published, per T50 journal, was similar, at 7.7%. This figure does not seem egregious, though it is perhaps still higher than where it ought to be. A lower figure may inspire greater confidence that a home affiliation is not significantly influencing publication decisions.

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81. See Ken Levy, *US Law Reviews' Dirty Game: Review by Student*, TIMES HIGHER EDUC. (Nov. 12, 2015), <https://www.timeshighereducation.com/opinion/us-law-reviews-dirty-game-peer-review-by-student> [<https://perma.cc/2UDE-L6NE>].

82. Leibman & White, *supra* note 2, at 405–06.

83. Note that symposium issues were excluded from the audit. In relation to methodology, it should be noted that a co-authored article might have one of its co-authors affiliated with the same institution as that of the journal, while the other co-author was affiliated with a different institution. The study could have focused on the proportion of articles with at least one co-author affiliated with the same institution as that of the journal (thus using a “per article” rather than “per author” measure). However, it was felt that the more methodologically sound metric was to focus on the proportion of authors published in their home journal, because if a “per article” measure had been used, one would have to account for what could be described as compounded bias. For example, in relation to *Harvard Law Review*, an article with two co-authors (one Harvard-affiliated, one non-Harvard-affiliated) could not be counted in the same way as an article with three Harvard-affiliated co-authors. This would have introduced additional methodological complexity and increased potential for methodological error that could not be accommodated in the capacity of this study.

Table 1: Proportion of Authors Published by the Journal of their Home Institution<sup>84</sup>

	<u>Home institution</u>	<u>Other institution</u>
Proportion of authors in T50 journals	7.5%	92.6%
Maximum proportion of authors in any one journal	24.0%	99.3%
Minimum proportion of authors in any one journal	0.7%	76.0%
Average proportion of authors per journal	7.7%	92.3%
Standard deviation	5.9%	5.9%
Median proportion of authors per journal	5.3%	94.7%

The top ten journals ranked by the highest self-publication rates are presented in Table 2. *Virginia Law Review*, *New York University Law Review*, and *Harvard Law Review* led these figures with at least one in five authors published by each of them affiliated with the same institution as the publishing journal.

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84. Including authors who concurrently served on the editorial board of the journal in question; excluding authors with no affiliation and whose affiliation could not be traced using reasonable efforts (seven authors out of a total of 5,791 authors, i.e., 0.1%). Excluding these seven authors is of minimal statistical significance.

Table 2: Top Ten Journals Ranked by the Highest Proportion of Articles Authored by Members of their Home Institution

	<u>Journal</u>	<u>Percentage</u>	<u>Raw Figures</u>
1	Virginia Law Review	24.0%	31 of 129 authors
2	New York University Law Review	20.4%	19 of 93 authors
3	Harvard Law Review	20.0%	12 of 60 authors
4	University of Chicago Law Review	17.3%	17 of 98 authors
5	Columbia Law Review	16.5%	13 of 79 authors
6	California Law Review	15.4%	16 of 104 authors
7	Michigan Law Review	15.3%	13 of 85 authors
8	Duke Law Journal	14.9%	13 of 87 authors
9	UCLA Law Review	14.6%	20 of 137 authors
10	University of Pennsylvania Law Review	14.6%	30 of 206 authors

The journal with the highest self-publication rate was *Virginia Law Review*, with 24.0% of its authors published during the audit period being affiliated with the University of Virginia. This is more than three times the average of 7.7% for T50 journals. This means that almost one in four authors published by *Virginia Law Review* was affiliated with the University of Virginia, which, all else being equal, makes it less likely that an author affiliated with any other institution would be published in the *Virginia Law Review* than in any other T50 journal.<sup>85</sup> Dan Subotnik and Glen Lazar wrote: “Imagine, for example, that one-fourth of the articles appearing in the *Harvard Law Review* are by Harvard faculty. One inference that could be drawn is that the *Law Review* is . . .

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85. Assuming an equal number of publication slots available at each journal.

feathering the school's nest."<sup>86</sup> It so happens that *Harvard Law Review's* rate is slightly lower, at 20.0%, but *Virginia Law Review* substantially meets Subotnik and Lazar's hypothetical criterion for establishing institutional self-interest.

The self-publication rate of *Virginia Law Review* was so disproportionately high that the data supports the proposition that the editorial board favors those authors when making publication decisions.<sup>87</sup> In a previous study conducted by Ira Mark Ellman, *Virginia Law Review* was found to have the highest "in-house pages" rate (47%) of the journals subject to investigation.<sup>88</sup> That compounds the current study's finding that *Virginia Law Review* has a self-publication rate of 24.0%. It is highly improbable that almost one in four authors would be affiliated with any one institution, let alone the same institution as that with which the journal was affiliated, if the journal operated a blind article selection process. At the time of writing, there was no information on the *Virginia Law Review* website about the journal's policy on the anonymity of authors or blind review; it simply stated that the provision of "[r]esumes and other biographical information" by authors was optional.<sup>89</sup> One can reasonably deduce, however, that this journal does not operate a blind review policy, unless its having the highest self-publication rate in the current study, and the highest in-house pages rate in the Ellman study, is a great, but highly improbable, statistical accident.

Another observation that raises further, serious questions about *Virginia Law Review's* journal or institutional practices is the proportion of University of Virginia School of Law ("VLS") faculty members that have published articles in *Virginia Law Review*.<sup>90</sup> At the time of writing, there were 87 resident faculty members at VLS, of whom 81 listed their publications on their respective staff profile pages.<sup>91</sup> Of those 81 faculty members, 50 (61.7%) had published at least one article in *Virginia Law Review*.<sup>92</sup> Moreover, of those 50 faculty members, 12 (24.0%) had published a single article in *Virginia Law Review*, while

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86. Subotnik & Lazar, *supra* note 9, at 605.

87. Subotnik and Lazar denounced the University of Virginia as operating a "veritable caste system" in the context of the *Virginia Law Review's* publication practices. *Id.* at 607. Friedman described the more general practice as one of "nepotism." Friedman, *supra* note 4, at 1351.

88. Ellman, *supra* note 4, at 685 (calculating, for twenty-three journals from September 1979 to June 1982, the proportion of all pages in each journal that were written by journal-affiliated authors).

89. *Articles & Essays*, VA. LAW REVIEW, <http://www.virginialawreview.org/submissions/articles-essays> [<https://perma.cc/L4SC-F2HM>].

90. At any time, not merely during the audit period.

91. See *Resident Faculty*, UNIV. OF VA., <https://www.law.virginia.edu/faculty/photo-view> (click on a faculty member's portrait to access, then the "publications" tab for publication information) [<https://perma.cc/EC2P-R2K4>].

92. This does not include other University of Virginia journals, such as *Virginia Journal of International Law* or *Virginia Tax Review*.

38 (76.0%) had published two or more articles in the *Review*. Considering that the journal had the highest rate of self-publication among all T50 journals, at over three times the average figure among those journals, it is all the more insightful that 61.7% of VLS faculty members that had declared their publications had at least one article published in *Virginia Law Review*, and that 46.9% of VLS faculty members that had declared their publications had two or more articles published in the *Review*. Although the journal did not declare anywhere on its website a preference for publishing the work of VLS faculty members, given that it also did not make any statement on the anonymity of submitting authors or a blind review process, the data strongly suggests that *Virginia Law Review* prefers work authored by VLS faculty members. Put crudely, *Virginia Law Review* appears — both in this study and in the Ellman study — to be operated as a vehicle for publishing the work of its own university’s staff. A policy or practice to that effect would not be in the spirit of transparency, even-handedness, or a predominantly merits-based selection of articles.

Other journals with disproportionately high self-publication rates included *New York University Law Review* (20.4%), *Harvard Law Review* (20.0%), *University of Chicago Law Review* (17.3%), and *Columbia Law Review* (16.5%); all well above the average figure across the T50 journals. *New York University Law Review* meanwhile claimed to operate an “extensive review process,”<sup>93</sup> and to represent the “rich diversity — of ideas, identities, and viewpoints — within the greater society.”<sup>94</sup> *Harvard Law Review* claimed to operate an “anonymous review process” by at least two editors, but noting, however, that “many pieces go through substantially more stages of review, including an Articles Committee vote, a preemption check, faculty peer review, and a vote by the body of the *Review*.”<sup>95</sup> If *Harvard Law Review* operates a (partly) anonymous review process, how does it explain that one in five of its published authors is primarily affiliated with Harvard University?<sup>96</sup> Could faculty peer review be the weak link in this process, with the work of scholars from other institutions being subjected to negative,

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93. *Submissions*, N.Y.U. LAW REVIEW, <https://www.nyulawreview.org/submissions> [<https://perma.cc/YK5L-NDND>].

94. *About*, N.Y.U. LAW REVIEW, <https://www.nyulawreview.org/about> [<https://perma.cc/9XDT-EUWH>]. In the Ellman study, *New York University Law Review* had a similar “in-house pages” rate of 19%. Ellman, *supra* note 4, at 685.

95. *Submissions*, HARVARD LAW REVIEW, <https://harvardlawreview.org/submissions> [<https://perma.cc/ZS34-5394>].

96. See *supra* Table 2. Additionally, in the Ellman study, *Harvard Law Review* had an “in-house pages” rate of 33%, and was in that study also the third highest of the audited journals. Ellman, *supra* note 4, at 685.

internal peer review?<sup>97</sup> Are there sufficient firewalls in place to mitigate the potential for cronyism, where a Harvard author can secure a favorable peer review from a Harvard colleague without the student editorial board knowing about it?<sup>98</sup> *University of Chicago Law Review* stated that it removes identifying author information when a piece is sent out for peer review,<sup>99</sup> but does not state that review is blind within the journal's editorial board. *Columbia Law Review* also has a practice of sending articles for peer review.<sup>100</sup> It is noteworthy that *Columbia Law Review* had the fifth highest rate of self-publication among the T50 journals, despite receiving around 2,000 submissions annually.<sup>101</sup> The underlying reasons for these high rates of self-publication may vary between journals, and it is only right to acknowledge that the underlying reasons might not be within the control of the student editors.<sup>102</sup> The policies or practices behind self-publication are nevertheless in few people's interests. The only real beneficiaries would appear to be the small number of authors whose work is successfully placed in those journals on the whole or partial basis of institutional affiliation and any student editors that might directly or indirectly benefit from this practice. This bias is certainly not in the interests of the majority of authors, nor of academia or research scholarship more broadly.

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97. Wise's survey found that law professors, student editors, attorneys, and judges were all slightly in favor of peer review. Wise et al., *supra* note 4, at 57.

98. A related practice adverted to on *PrawfsBlawg* was "profs call[ing] their students who are editors and shill[ing] for a friend's article." YesterdayIKilledAMammoth, Comment to *Submission Angsting Spring 2017*, PRAWFSBLAWG (Feb. 15, 2017, 5:19:29 PM), <https://prawfsblawg.blogs.com/prawfsblawg/2017/02/submission-angsting-spring-2017/comments/page/23/#comments> [<https://perma.cc/7F2F-92Z2>]. Friedman's survey found that 70.6% of respondent journals cited "faculty recommendation" as a factor in their respective decisions to make an offer. Friedman, *supra* note 4, at 1369.

99. *Submissions*, UNIV. OF CHICAGO LAW REVIEW, <https://lawreview.uchicago.edu/submissions> [<https://perma.cc/V8N4-V4LF>].

100. *Submissions Instructions*, COLUMBIA LAW REVIEW, <https://columbialawreview.org/submissions-instructions> [<https://perma.cc/6BQC-U8B8>] ("[T]he Review strongly prefers subjecting submitted pieces to peer review, contingent on piece-selection timeframes and other extenuating circumstances.").

101. *About the Review*, COLUMBIA LAW REVIEW, <https://columbialawreview.org/about-the-review-2> [<https://perma.cc/W7L8-NZBD>]. *University of Pennsylvania Law Review*, which also received around 2,000 submissions annually, *About the Law Review*, UNIV. OF PA. LAW REVIEW, <https://www.pennlawreview.com/about/about.php> [<https://perma.cc/9QQW-C3CG>], had a self-publication rate of 14.6%. *Georgetown Law Journal*, which received over 2,000 submissions annually, *Submissions*, GEORGETOWN LAW JOURNAL, <https://georgetownlawjournal.org/submit> [<https://perma.cc/VHX6-CZPL>], had a self-publication rate of 11.0%. *Georgetown Law Journal* stated on its website that notes were selected on an anonymous basis, but made no such statement regarding articles. *Id.* By contrast, *William & Mary Law Review*, which received around 1,800 submissions annually, *Submissions*, WILLIAM & MARY LAW REVIEW, <https://wmlawreview.org/submissions> [<https://perma.cc/LUM5-BBGA>], had a self-publication rate of just 0.8%, the second lowest among the T50 journals.

102. On the potential role of faculty in this process, see *supra* notes 79–82 and accompanying text

At the other end of the scale were those journals with very low self-publication rates. *Boston College Law Review*, *William & Mary Law Review*, *Connecticut Law Review*, *Lewis & Clark Law Review*, and *Houston Law Review* each published the work of just one author affiliated with each journal's respective home institution during the audit period. This translated into a rate between 0.7% and 2.1% for those journals. *Utah Law Review* also had a very low rate of self-publication, namely 1.8%, which represented the work of 2 out of 110 authors. The rates for these journals are particularly significant considering that they are well below the average figure of 7.7%, and significantly below the maximum rate of 24.0% associated with *Virginia Law Review*. The data for journals such as *Boston College Law Review*, *William & Mary Law Review*, *Connecticut Law Review*, *Lewis & Clark Law Review*, *Utah Law Review*, and *Houston Law Review* would therefore tend to repel any claim that such journals disproportionately favored their own institution's authors, and those journals are to be applauded in that regard. It is in itself a signal of fairness, openness, integrity, and credibility with regard to this particular metric. The top ten journals ranked by lowest self-publication rate are presented in Table 3.

Table 3: Top Ten Journals Ranked by the Lowest Proportion of Articles Authored by Members of their Home Institution

	<u>Journal</u>	<u>Percentage</u>	<u>Raw Figures</u>
1	Boston College Law Review	0.7%	1 of 144 authors
2	William & Mary Law Review	0.8%	1 of 133 authors
3	Connecticut Law Review	1.2%	1 of 84 authors
4	Lewis & Clark Law Review	1.4%	1 of 74 authors
5	Utah Law Review	1.8%	2 of 110 authors
6	Houston Law Review	2.1%	1 of 47 authors
7=	UC Davis Law Review	2.3%	3 of 132 authors
7=	Fordham Law Review	2.3%	2 of 88 authors
9	Cardozo Law Review	2.5%	4 of 158 authors
10	Indiana Law Journal	2.6%	5 of 194 authors

The author contacted the twenty journals with the lowest self-publication rates,<sup>103</sup> with the purpose of investigating whether there was a policy or practice against publishing work authored by members of their own faculty.<sup>104</sup> Responses were received from twelve journals.

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103. The journals ranked 11th to 20th by lowest self-publication rate were as follows: *Boston University Law Review* (2.7%), *Arizona Law Review* (2.7%), *Alabama Law Review* (3.2%), *Notre Dame Law Review* (3.2%), *Texas Law Review* (3.4%), *Wake Forest Law Review* (3.6%), *George Mason Law Review* (3.7%), *University of Illinois Law Review* (3.7%), *Washington University Law Review* (4.0%), and *Florida Law Review* (4.4%).

104. It was decided that it would be neither useful nor ethically appropriate to contact the journals with the highest self-publication rates to inquire as to their policies or practices on this matter. Current student editors at those journals could have been put in the uncomfortable position of having to defend or explain the actions of their predecessors, dissociate themselves from their predecessors or culpable faculty members, or give a less than candid account of their self-publication policies, practices, or the factors underlying them. In short, the ethical

None of those journals had an official policy<sup>105</sup> against publishing their own faculty members' work. Five journals reported an unofficial policy or practice of discouraging submissions from members of their own faculty and/or an unofficial policy or practice of faculty members refraining from submitting articles to their home journal. Seven journals reported that they had no policy or practice against publishing their own faculty's work, and two of those journals expressed a desire to publish more of their own faculty's work.<sup>106</sup>

Of the journals that reported no policy or practice against self-publication, one reported a practice of that nature in the past, which had been altered in 2012 so that their own faculty members' work could be considered for publication alongside that of submissions from other institutions. A staff member from the journal stated that the reason for the change in practice was that the "editors realized that they were missing out on important scholarship by [their] own faculty."<sup>107</sup> Of the two journals that expressed a desire to publish more of their own faculty's work, one cited the timing of their leadership transition as not lining up with seeking faculty's submissions early enough to review their work, something that the journal hoped to change.<sup>108</sup> Another journal in this category had a policy of elevating its own faculty's work to a full board review upon receipt of submission, but several of the articles to which they extended offers ended up being published in other journals.<sup>109</sup>

Of the journals that reported an informal policy or practice against self-publication, two did not offer any rationale for this.<sup>110</sup> However, the other three journals with an unofficial policy or practice of this nature set out the reasoning behind their position. One Editor stated that their journal was hesitant to publish their own faculty's work, as they felt it looked better for both the journal and the faculty member if their work was published in other institutions' journals. The Editor seemed to be cognizant of the potential for self-publication to appear distasteful, and stated that, personally, they would require their own faculty members to "submit work that was *substantially* better than the work [they]

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difficulties and the potential for inauthentic data to skew the analysis outweighed the potential advantages of making such inquiries.

105. The author obtained the sense from replies that there was not necessarily a consistent or coherent position taken between subsequent editorial boards at several journals. This ties in with Leibman and White's finding that journal editors "felt their journals had no ongoing policy that encouraged uniformity or continuity of evaluative standards." Leibman & White, *supra* note 2, at 413.

106. Friedman's survey found that 73.6% of respondent journals had no policy regarding the publication of in-house work, 13.2% had a policy against it, and 13.2% had a policy in favor of it. Friedman, *supra* note 4, at 1370.

107. E-mail from staff member, Journal D, to author (July 6, 2019) (on file with author).

108. E-mail from Editor-in-Chief, Journal E, to author (July 10, 2019) (on file with author).

109. E-mail from Editor-in-Chief, Journal G, to author (July 21, 2019) (on file with author).

110. E-mail from Editor-in-Chief, Journal A, to author (June 21, 2019) (on file with author); e-mail from Editor-in-Chief, Journal F, to author (July 17, 2019) (on file with author).

accepted from other professors.”<sup>111</sup> Meanwhile, a staff member from another journal with an unofficial policy or practice against self-publication described their journal’s practice as “more of a norm than a policy set in stone” and a “presumption against publishing in-house scholarship.”<sup>112</sup> The rationale offered by that staff member revealed concerns about the potential for conflicts of interest:

I think it makes for an uneasy relationship between faculty and editorial board when there isn’t such a fire wall. For one thing, faculty members have a certain valence (or at least influence) over the students who select the content, so without such a policy I think we’d end up publishing a much higher number of faculty-authored works. Furthermore, some faculty members are more popular than others, or perhaps write in areas that are more popular than others, which could call into question the credibility of our publication decision making process.<sup>113</sup>

The staff member in question also highlighted the impact that such conflicts could have on the quality of scholarship in their journal, adding that:

[O]ur publication spots are a limited asset and we (fortunately) are in a position to attract scholarship that is often more-likely-to-be-cited than some faculty members’ scholarship. As a result, without a presumption against publishing in-house scholarship, I think we’d jeopardize our claim to the highest quality scholarship available through the usual academic market forces.<sup>114</sup>

Though this is a laudable position, it does not seem to reflect the general practice across law reviews. Nance and Steinberg’s survey found that “[t]he author is a professor at your law school” was a factor which tended to more positively than negatively affect publication decisions, though much less significantly than a number of other factors.<sup>115</sup> Such a position is all the more commendable for that reason.

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111. E-mail from Editor, Journal C, to author (July 10, 2019) (on file with author) (emphasis in the original).

112. E-mail from staff member, Journal B, to author (July 8, 2019) (on file with author).

113. *Id.*

114. *Id.*

115. Nance & Steinberg, *supra* note 3, at 583.

Returning to the staff member at the journal that changed its position on self-publication in 2012, they confirmed that their journal now evaluates submissions by their own faculty according to the same standards as all other submissions.<sup>116</sup> Whether or not one accepts that statement at face value, it does seem to be lent some credence by the fact that the journal's rate of self-publication is among the lowest in the T50 journals. The staff member added that their journal "do[es] often make offers to our own faculty on pieces that end up going to higher-ranked journals," and that they "would have expected the same thing to happen at our peer journals."<sup>117</sup> However, that expectation was not shared by all of the journals that responded to the author's enquiries. A staff member at one of the journals with an unofficial policy against self-publication was particularly concerned about protecting student editors from potential conflicts of interest and other negative factors, raising an interesting point about why their own faculty members might seek to extract a publication offer from their home journal. While the (much criticized) trading of offers and the expedite process are broadly understood to be a standard feature of the U.S. law journal market, the staff member highlighted the potential for "manipulation" in this regard:

[W]e have in the past (and, to be fair, only on occasion) faced situations where a faculty member has leveraged an offer from our review to trade up through the expedite process for an offer from a higher ranked journal. Since there is a capacity for this type of manipulation, I think a policy that discourages publishing our own faculty members shields the journal students from being taken advantage of.<sup>118</sup>

The rights and wrongs of the journal offer "trade" have been amply ventilated elsewhere,<sup>119</sup> but this practice raises a more specific concern: the potential for faculty members to use publication offers from their own institution's journal to trade/expedite for an offer of publication from a higher-ranked journal. Four journals referred to the possibility or actual occurrence of their publication offers to their own faculty being used to trade up to higher-ranked journals. However, while three of them seemed to accept this as a fact of life (and two pointed to the quality of their faculty and their ability to get into higher-ranked journals than that of their home institution), one (as stated above) regarded it as

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116. E-mail from staff member, Journal D, to author, *supra* note 107.

117. *Id.*

118. E-mail from staff member, Journal B, to author, *supra* note 112.

119. In Friedman's survey, "[a]uthors [l]everaging [o]ffers to [t]rade [u]p" was the most common concern of respondent journals about the submission and selection process. Friedman, *supra* note 4, at 1372.

“manipulation.”<sup>120</sup> The practice may not raise special concerns if the editorial board applies the same selection standards to all submissions, regardless of whether they are authored by members of their own faculty, as one staff member claimed of their journal’s practice. However, the observations of the staff member who expressed particular concerns highlight that faculty members might seek to extract a publication offer from their home journal, not because they want or intend to publish in their home journal, but to use that offer as leverage for an offer from a higher-ranked journal.<sup>121</sup> If student editors find themselves faced with a conflict of interests, such as direct or indirect pressure being brought to bear upon them by their own faculty members, simply to extract publication offers so that those faculty members can use those offers to trade up to higher ranked journals,<sup>122</sup> then this pressure does seem to amount to “manipulation.” It also draws attention to a limitation in the available data and calls for caution in its analysis, for a journal’s having a particularly low rate of self-publication does not necessarily mean that the journal has a lower than normal rate of making publication offers to its own faculty.<sup>123</sup> Offer data was not, however, available in the context of this study.

If faculty members are effectively using their home journal as a tool for extracting an offer that they intend only (or principally) to use to trade up to higher-ranked journals, this can be regarded as little other than foul play. Nevertheless, the palpability of the unfairness would only seem to increase with the rank of the exploited journal. For example, if publication offers were extracted from a journal ranked in 50th place by faculty from the same institution, simply in the hope of trading those for offers from more highly ranked journals, there are still forty-nine journals ranked more highly through which they must climb to get to the putative “top.” However, if this practice occurs at a journal ranked in 10th place, there is less distance through which those faculty

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120. See *supra* note 112.

121. Authors may also extract publication offers for this purpose from journals from which the author has no intention of accepting an offer. See Michael D. Cicchini, *Law Review Publishing: Thoughts on Mass Submissions, Expedited Review, and Potential Reform*, 16 U.N.H. L. REV. 147, 160–61 (2017). There does seem to be an additional layer of ethical objection, however, when that offer is extracted from the students of one’s own institution.

122. It was stated on *PrawfsBlawg* that some “profs submit to their own students, creating an indefensible conflict of interests, just to get into the expedite pipeline.” YesterdayIKilledAMammoth, Comment to *Submission Angsting Spring 2017*, PRAWFSBLAWG (Feb. 15, 2017 5:19:29 PM) <https://prawfsblawg.blogs.com/prawfsblawg/2017/02/submission-angsting-spring-2017/comments/page/23/#comments> [<https://perma.cc/H24L-4SQS>].

123. Similarly, even though *Virginia Law Review* had a disproportionately high self-publication rate, at 24.0%, it could have made an even greater proportion of its offers to Virginia-affiliated faculty, some of whom might have used their offer to expedite to higher-ranked journals.

members must climb to reach the “top.”<sup>124</sup> The extraction of an offer by a faculty member from a journal ranked in, for example, 150th place, may not be able to secure much leverage at all from their home journal’s offer. This translates into an increasingly unfair advantage enjoyed by those engaging in this practice at institutions with more highly ranked journals, and is an abuse of institutional standing (not to mention abuse of power). It is easier and faster to reach the summit of a mountain when one begins the climb from a road three-quarters of the way up than when one begins the climb from the bottom.

When a linear regression model is applied to the data, as in Figure 2, additional observations may be made.

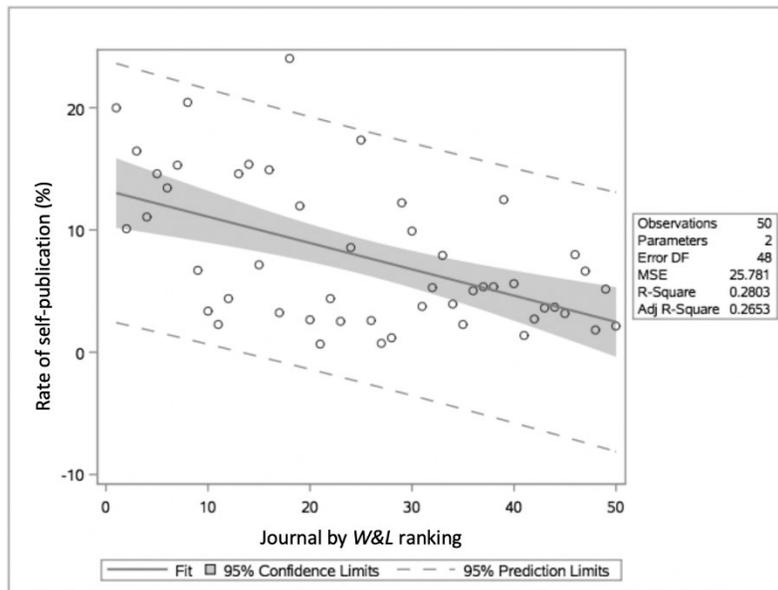


Figure 2: Linear Regression Model for Journal Versus Rate of Self-Publication

Figure 2 reveals a trend whereby the rate of self-publication is higher at higher-ranked journals than at lower-ranked journals. As one progresses down the *W&L* ranking, the rate of self-publication tends to decrease. The degree of correlation in this regard is not particularly strong, but it is still evident.<sup>125</sup> The model also shows that *Virginia Law*

124. There may be less incentive for authors who extract offers from the very top journals in this manner to expedite to higher ranked journals, but some incentive probably remains as, even in the handful of top ranked journals, there is an order of ranking.

125. The R-squared value of 0.2803 means that over a quarter of the observed variation in self-publication rates can be explained by variation in the *W&L* journal ranking. Furthermore,

*Review*, which is represented by the only point outside the 95 % prediction limits, has an anomalously high rate of self-publication, further corroborating the observations already made about that journal<sup>126</sup> and providing a strong statistical justification for a close examination of its publication practices.

Nevertheless, though there may be a broad trend to the effect that self-publication features more frequently at higher ranked journals, the rate of self-publication is not universally maximal at all higher-ranked journals. A straight runoff between *Harvard Law Review* and *Yale Law Journal* amply illustrates this point. Each journal had a self-publication rate above the T50 journal average of 7.7%, but *Yale Law Journal* had a rate of 10.1% (eight of seventy-nine authors), whereas *Harvard Law Review* had a rate of almost double that at 20.0% (twelve of sixty authors).<sup>127</sup> Bearing in mind that the present study was conducted across five calendar years' worth of publications to mitigate the idiosyncrasies of a single editorial board, the particularly high self-publication rate at *Harvard Law Review* suggests an institutional phenomenon rather than one informed solely by ranking.

It is difficult to identify with any certainty the reason(s) why *Harvard Law Review* has such a higher rate of self-publication than *Yale Law Journal*. One may be that *Yale Law Journal*'s blind review policy or practice is more extensive or more faithfully applied than *Harvard Law Review*'s. However, it is implausible to conceive of Harvard scholars as being so nonpareil that such a high proportion of *Harvard Law Review*'s published authors should be affiliated with Harvard over other leading U.S. law schools.<sup>128</sup> The journal's particularly high rate of self-publication, both in general and when contrasted with a peer like *Yale Law Journal*, suggests that institutional affiliation features in the selection exercise. One possible factor is that student editors and/or faculty members may intentionally or inadvertently attempt to promote the sta-

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the p-values for both journal and intercept are quite small (<0.001), which indicates that both of them are significant in explaining the variation of self-publication rates.

126. See *supra* notes 85–92 and accompanying text.

127. *Yale Law Journal* states that the “Articles & Essays Committee reviews submissions without knowledge of the identity of the authors,” *Submissions*, YALE L.J., <https://www.yalelawjournal.org/submissions> [<https://perma.cc/2AR2-YXPW>], and submitting authors were therefore asked to remove identifying information from the manuscript and file name thereof, THE YALE LAW JOURNAL, VOLUME 129 SUBMISSION GUIDELINES 3 (2019), [https://www.yalelawjournal.org/files/129GeneralSubmissionsGuidelines\\_z3jndcr1.pdf](https://www.yalelawjournal.org/files/129GeneralSubmissionsGuidelines_z3jndcr1.pdf) [<https://perma.cc/A4J5-PYFA>]. *Yale Law Journal* also states that the journal's “system automatically redacts all passages that contain the author's names [sic].” *Id.*

128. However, it is not necessarily just Harvard wherein this institutional problem seems to exist. Lindgren writes that “[a] former editor of one top review admitted that the school of the submitter was a major consideration in deciding what to accept. He said that manuscripts from Harvard professors had to be really poor to be turned down.” Lindgren, *supra* note 30, at 530–31.

tus and prestige of their institution, and therefore of themselves, by excluding a greater proportion of non-home-institutional work from their journal slots.<sup>129</sup> This could be particularly relevant at higher-ranked and “elite” journals, helping to buoy up the already lofty status, prestige, and aura of both the institution and the journal.<sup>130</sup> This would be a regrettably self-serving exercise with a self-perpetuating circularity. For example, Harvard is an “elite” institution with an “elite” journal, and by publishing a greater proportion of scholarship of that institution in that journal, the institution and the journal feed off each other’s prestige.<sup>131</sup> There can of course be any number of reasons underlying *Harvard Law Review*’s disproportionately high rate of self-publication. The business of this author is not to make speculative accusations in this regard but to ask questions about what is factually a disproportionately high rate and offer possible answers to those questions. As Ellman noted in his 1980s study: “[T]he major law reviews publish the work of their own faculty disproportionately often. It is impossible to know whether this results from faculty preference or journal preference, or whether there is a significant relaxation of normal evaluative procedures for home faculty submissions.”<sup>132</sup> Whatever the explanation(s) for that disproportionately high rate, it is probable that author affiliation features prominently in *Harvard Law Review* (and *Virginia Law Review* and *New York University Law Review*) editorial boards’ publication decisions — whether that is attributable to faculty members or student editors — for it is implausible that blind review would result in such a high proportion of authors being affiliated with any one institution, let alone the same institution as that of the journal.

#### V. THERE’S A WHOLE WORLD OUT THERE: OVERSEAS AUTHORS

Among the many articles discussing the pros and cons of the U.S. law journal system, few have acknowledged the barriers that may be faced by academics affiliated with non-U.S. institutions. Overseas authors often seem to be an afterthought. This is evident in some journals’ claims that they will only extend publication offers to authors by telephone and in the proposal that authors be given just an eight-hour window in which to accept an offer.<sup>133</sup> Jonathan Gingerich, at the time a

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129. See Leibman & White, *supra* note 2, at 404; Nance & Steinberg, *supra* note 3, at 585.

130. See Leibman & White, *supra* note 2, at 404.

131. See also Krotoszynski, Jr., *supra* note 9, at 330.

132. Ellman, *supra* note 4, at 692.

133. Cicchini, *supra* note 121 (proposing an eight-hour offer window). This is sometimes known as an “exploding offer.” Though Cicchini’s proposal is well-intentioned, it is unworkable for, or would seriously discriminate against, overseas authors. For example, this author (who is located in a time zone twelve to sixteen hours ahead of the contiguous U.S.) might

J.D. student at Harvard Law School, made a short but perceptive observation that non-blind review may “make[] it more difficult for non-U.S. scholars to publish their papers in American law reviews.”<sup>134</sup> He noted research in relation to publication in the medical journal *Gastroenterology* that “found that both reviewers from the U.S. and reviewers from abroad ‘evaluate non-U.S. papers similarly and evaluate papers submitted by U.S. authors more favorably, with U.S. reviewers having a significant preference for U.S. papers.’”<sup>135</sup>

From discussions with a number of overseas scholars familiar with the U.S. law journal system, there seems to be a general perception that it is very difficult for overseas-affiliated authors to publish in the top U.S. law journals. Of those that manage to secure publication, it is commonly believed that many will have some kind of connection with the U.S., such as a U.S.-affiliated co-author, previous professional experience in the U.S., or one or more degrees from a U.S. institution.<sup>136</sup> Nevertheless, hard data is again more convincing than rumors or general perceptions. The question is whether the data supports or undermines these beliefs about the U.S. journal system.

The data showed that the average proportion of overseas-affiliated authors on a per journal basis was just 3.1%. In other words, an average of 96.9% of a T50 journal’s authors had a U.S. institution as their primary affiliation, as shown by Table 4.

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receive a publication offer during local nighttime, which could expire before he had an opportunity to accept it.

134. Jonathan Gingerich, *A Call for Blind Review: Student Edited Law Reviews and Bias*, 59 J. LEGAL EDUC. 269, 274 (2009); see also Nance & Steinberg, *supra* note 3.

135. Gingerich, *supra* note 134, at 274 (quoting Ann M. Link, *U.S. and Non-U.S. Submissions*, 280 J. AM. MED. ASS’N 246, 246 (1998)).

136. For example, *Virginia Law Review* published just one overseas-affiliated author during the audit period. That author, who was affiliated with a U.K. institution, had a notably U.S. background with degrees from Harvard University and Stanford University.

Table 4: Proportion of U.S. to Overseas Institutional Affiliation Per Journal<sup>137</sup>

	<u>U.S. Institution</u>	<u>Overseas Institution</u>
Proportion of publications in T50 journals	96.5%	3.4%
Maximum proportion of authors in any one journal	100.0%	15.3%
Minimum proportion of authors in any one journal	84.7%	0.0%
Average proportion of authors per journal	96.9%	3.1%
Standard deviation	3.6%	3.6%
Median proportion of authors per journal	98.5%	1.5%

Table 4 also discloses, however, a significant range in the proportion of overseas-affiliated authors in the journals' authorship. The most "overseas-friendly" journal was *Wake Forest Law Review* (with an overseas-authored rate of 15.3%), followed by *Brigham Young University Law Review* (13.1%), and *Lewis & Clark Law Review* (12.2%). The top ten journals ranked by the highest proportion of overseas-affiliated authors are presented in Table 5.

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137. Excluding authors whose U.S. or overseas provenance could not be determined using reasonable efforts (five authors of a total of 5,791 authors, i.e., less than 0.1% — of minimal statistical significance).

Table 5: Top Ten Journals Ranked by the Highest Proportion of Overseas Authors

	<u>Journal</u>	<u>Percentage</u>	<u>Raw Figures</u>
1	Wake Forest Law Review	15.3%	17 of 111 authors
2	Brigham Young University Law Review	13.1%	16 of 122 authors
3	Lewis & Clark Law Review	12.2%	9 of 74 authors
4	University of Illinois Law Review	9.3%	20 of 214 authors
5	Iowa Law Review	8.2%	15 of 182 authors
6	Indiana Law Journal	7.7%	15 of 194 authors
7	Cornell Law Review	7.1%	8 of 112 authors
8	Alabama Law Review	6.4%	6 of 94 authors
9	Connecticut Law Review	6.0%	5 of 84 authors
10	Cardozo Law Review	5.7%	9 of 158 authors

At the other end of the scale, eleven of the T50 journals did not publish the work of any authors whose primary institutional affiliation was outside the U.S. across the five-calendar-year audit period. These may be ranked in descending order of the total number of authors published during the audit period, as in Table 6, such that a zero-rate is more significant the greater the number of authors' work published.

Table 6: Journals with No Overseas Authors<sup>138</sup>

	<u>Journal</u>	<u>Percentage</u>	<u>Raw Figures</u>
1	William & Mary Law Review	0.0%	0 of 133 authors
2	Utah Law Review	0.0%	0 of 111 authors
3	Vanderbilt Law Review	0.0%	0 of 109 authors
4	California Law Review	0.0%	0 of 104 authors
5	University of Chicago Law Review	0.0%	0 of 98 authors
6	Texas Law Review	0.0%	0 of 89 authors
7	Fordham Law Review	0.0%	0 of 88 authors
8	Harvard Law Review	0.0%	0 of 60 authors
9	Georgia Law Review	0.0%	0 of 58 authors
10	George Mason Law Review	0.0%	0 of 54 authors
11	Houston Law Review	0.0%	0 of 47 authors

In a straight runoff between *Harvard Law Review* and *Yale Law Journal*, the former did not publish the work of any author primarily affiliated with a non-U.S. institution during the audit period, despite publishing the work of sixty authors during that period. On the other hand, *Yale Law Journal* published authors primarily affiliated with a non-U.S. institution at a rate of 3.8%. Though still a low figure, that is slightly above the T50 journal average of 3.1%.

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138. Ranked from highest number of authors to lowest number of authors during the audit period; a rate of 0% overseas authors from a higher number of authors is “worse” than a rate of 0% overseas authors from a lower number of authors.

In the absence of submissions data, one is unable to quantify what percentage of overseas-affiliated authors' work is accepted for publication in contrast to that of their U.S.-affiliated counterparts. Nevertheless, given that the work of overseas-affiliated authors regularly appears in the volumes of highly ranked institutions' international law journals (as opposed to flagship journals), it is unlikely to be the case that the submission rates of overseas-affiliated authors are so low. Indeed, few authors would rather be published in a highly ranked institution's international law journal than be published in its more prestigious flagship journal. It is tempting to think that there is more of a subject matter alignment between the work of overseas-affiliated authors and international law journals. However, there will be overseas-affiliated authors writing about topics on matters of U.S. or general importance, just as there are U.S.-affiliated authors writing about topics on matters of international law. In addition, international law journals often focus on international or comparative law issues, not merely overseas issues. An editorial policy of publishing articles concerning issues of "national interest"<sup>139</sup> will not necessarily translate into a relatively low overseas author rate, not least because "national interest" in this context might be as opposed to "state interest" rather than "international interest."<sup>140</sup> Some of the T50 generalist law journals also consider articles discussing issues of international significance.<sup>141</sup>

It therefore seems that there may be some other explanation for the rate of overseas-affiliated authored work, which is low almost across the board. Indeed, the journal that published the greatest proportion of overseas-affiliated authored work — *Wake Forest Law Review* — had a rate of almost five times the T50 journal average. It is surely not the

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139. *Boston College Law Review* (with an overseas rate of 1.4%) has an editorial policy of this nature. *Submissions*, BOSTON COLL. LAW REVIEW, <https://www.bc.edu/bc-web/schools/law/academics-faculty/law-reviews/bclr/submissions.html> [https://perma.cc/99A6-S4GU]. *Utah Law Review* (with an overseas rate of 0.0%) states that one of its main objectives is to publish scholarship "poised to contribute new insights to the national legal discussion." *About the Journal*, UTAH LAW REVIEW, <https://utah-law-review.scholasticahq.com/about> [https://perma.cc/3MPS-DTLB]. A journal may have an editorial policy of considering topics of national interest as well as broader interest, such as broader "empirical, interdisciplinary, and philosophical" interest, as in the case of *Cardozo Law Review* (with an overseas rate of 5.7%). *About Us*, CARDOZO LAW REVIEW, <http://cardozolawreview.com/about-us> [https://perma.cc/6M8B-GEKM].

140. *Ohio State Law Journal* (with an overseas rate of 1.1%) states that it "only accept[s] scholarly articles of national interest," but this appears to be as opposed to "articles of only state or local interest." *For Authors*, OHIO STATE LAW JOURNAL, <https://ohio-state-law-journal.scholasticahq.com/for-authors> [https://perma.cc/9NFP-M9H3]. Meanwhile, some journals invite articles concerning issues of state interest. For example, *Iowa Law Review* states that it "is also committed to publishing scholarship that focuses on important issues facing the state of Iowa." *About the Iowa Law Review*, IOWA LAW REVIEW, <https://ilr.law.uiowa.edu/about> [https://perma.cc/NS3J-JEPU].

141. As is the case of the editorial policy of *Wisconsin Law Review* (with an overseas rate of 1.3%). *Manuscript Guidelines*, WIS. LAW REVIEW, <http://wisconsinlawreview.org/submissions> [https://perma.cc/REF4-SF5C].

case that overseas-affiliated authors tend to submit their work for publication in *Wake Forest Law Review* rather than other T50 journals. This author's interactions with student editors and staff when discussing journal and institutional practices in the context of this research counter any suggestion that these journals operate a xenophobic selection policy. Those conversations leave this author with the impression that many student editors endeavor to do their best to run a quality, reputable journal.

What, then, might be the alternative explanation? This article has already demonstrated a statistical correlation between institutional prestige and journal placement. In short, it offers statistical evidence for letterhead bias. Potential reasons and explanations for letterhead bias have already been explored above,<sup>142</sup> but the main suggestion was that institutional prestige was being used as a surrogate for assessing articles on their own merits. That may be due to a range of reasons, from (at best) student editors being placed in the difficult position of having to assess subject matter with which they are not properly familiar or at a level that exceeds their current knowledge or experience,<sup>143</sup> to (at worst) publication decisions being made simply on the basis of institutional affiliation or under faculty pressure.<sup>144</sup>

In reality, the average person will be better acquainted with the standards, norms, and expectations in their own jurisdiction than in other jurisdictions. It is also the case that most people would know little about standards, norms, and expectations in most other jurisdictions.

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142. See *supra* Part III.

143. Posner added that student editors' inexperience was not merely "as students of the law but also as editors, writers, supervisors, and managers." Posner, *supra* note 29, at 1132. Roger C. Cramton described "[t]he claim that student editors can recognize whether an article makes an original contribution" as "now viewed by legal scholars as indefensible." Roger C. Cramton, *The Most Remarkable Institution: The American Law Review*, 36 J. LEGAL EDUC. 1, 7–8 (1986). Alfred L. Brophy described it as "extraordinary" that student editors should select articles in areas in which they have "little expertise." Alfred L. Brophy, *The Signaling Value of Law Reviews: An Exploration of Citations and Prestige*, 36 FLA. ST. U. L. REV. 229, 231 (2009). Lindgren denounced student editors as "incompetents . . . grossly unsuited for the jobs they are faced with." Lindgren, *supra* note 30, at 527. Bernard J. Hibbitts described "the concept of law students exercising quality control over legal scholarship" as "border[ing] on the oxymoronic." Bernard J. Hibbitts, *Yesterday Once More: Skeptics, Scribes and the Demise of Law Reviews*, 30 AKRON L. REV. 267, 291 (1996); see also Wise et al., *supra* note 4, at 15–18. Even student editors have been said to accept the basic premise. Nathan H. Saunders, *Student-Edited Law Reviews: Reflections and Responses of an Inmate*, 49 DUKE L.J. 1663, 1667–68 (2000). Saunders described the problem as "incurable, short of completely overhauling the model of student-edited law reviews." *Id.* at 1668. However, others dispute the charge. Natalie C. Cotton, *The Competence of Students as Editors of Law Reviews: A Response to Judge Posner*, 154 U. PA. L. REV. 951, 953 (2006). Wise et al. found that "[l]aw professors were generally the most critical of law reviews [out] of [law professors, student editors, attorneys, and judges]," while "student editors usually had the most favorable view of law reviews." Wise et al., *supra* note 4, at 69.

144. The worst situations include those in which faculty members bring direct or indirect pressure to bear on editors at their own institution's journal to publish their work. See Lindgren, *supra* note 30, at 534.

The average U.S. student editor cannot reasonably be expected to know whether a given institution in Brazil, Egypt, or China is reputable. Student editors may therefore, out of caution (and even with the best of intentions), hesitate before extending publication offers to academics whose primary institutional affiliation is overseas. They may even back away from making those offers altogether. One cannot substitute institutional prestige for an assessment of the article on its own merits when one does not know the extent to which the author's institution is or is not prestigious. Perhaps that is why, of the handful of overseas-affiliated authors that have managed to have their work published in the top U.S. law journals, some of them have published in those journals on multiple occasions. The author may be presumed in this case to be "good enough" to be published in such prestigious journals if they have published in another of those journals before, bearing in mind that a prior study has shown that previous publications are often taken into account by student editors.<sup>145</sup> In this case a kind of shallow, self-perpetuating author reputability is substituted for institutional prestige in editorial decisions. Likewise, editors may use overseas authors' U.S. credentials, such as educational achievements or work experience, to gauge the "quality" of the author and therefore of their article. Should the author have no U.S. credentials, editors may not feel able to assess the caliber of the author and thus the article. The possession of strong U.S. credentials may therefore boost the publication prospects of an overseas author irrespective of the article's merits.

Nevertheless, even the world's most prestigious non-U.S. institutions feature very infrequently in the pages of the T50 journals. Student editors cannot be so ignorant as not to recognize the international prestige of universities such as Cambridge, Oxford, Melbourne, Sydney, or Toronto, to take just some examples from the Anglophone world. Perhaps the U.S. market is so large and the volume of U.S.-authored submissions so great that editors do not have to think much about overseas-authored work. Perhaps editors do not think that their readership will be interested in what overseas authors have to say. Perhaps, as flagship journals will tend to focus on U.S. issues, editors think that U.S.-authored work will carry the most relevance, credibility, and authority. The possible answers are numerous and are likely to vary between individual editors as much as between journals.

There are clearly some additional factors, however, underlying the widespread low rate of publishing overseas-authored work among the T50 journals, as various anomalies illustrate. Of the seventeen overseas authors published by one of the T50 journals during the audit period, two authors were each published twice. Of the seven overseas authors published in another of the T50 journals during the audit period, one

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145. See *supra* note 34.

author had two articles published in a single issue. That author was neither a senior member of faculty, nor affiliated with any of the internationally “elite” universities. What could be the statistical probability of that, if submissions were being properly assessed on their merits and overseas-authored work features in journal volumes so infrequently? That author held, however, an LL.M. and J.S.D. from Yale Law School, had passed the New York State Bar Examination, and had a (slight) track record of publishing in other “elite” U.S. journals. It would take a naïf to regard those credentials as a coincidence.

There are also apparent anomalies when it comes to the jurisdiction with which overseas authors were affiliated. The data revealed a heavy bias toward authors affiliated with an Israeli institution. An astonishing 38.7% of all overseas authors were affiliated with an Israeli institution. So prevalent were Israeli-affiliated authors that of the thirty-nine journals with overseas authors, twenty-eight (71.8%) published at least one author affiliated with an Israeli institution, and ten (25.6%) published only authors affiliated with an Israel institution (in addition to U.S.-affiliated authors). After Israel, authors were most commonly affiliated with a U.K. institution (14.1%) or an Australian institution (10.5%).<sup>146</sup> In any event, Nance and Steinberg’s survey found that “[t]he author teaches outside the United States” was more of a negative than a positive factor affecting publication decisions, though less negative than a number of other factors.<sup>147</sup>

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146. The top twelve jurisdictions from which authors were primarily affiliated with an overseas institution were as follows: Israel (38.7%), United Kingdom (14.1%), Australia (10.5%), Germany (4.7%), Canada (4.2%), Hong Kong (4.2%), Italy (2.6%), Mainland China (2.1%), Singapore (2.1%), Japan (1.6%), the Netherlands (1.6%), and Norway (1.6%).

147. Nance & Steinberg, *supra* note 3, at 583–84.

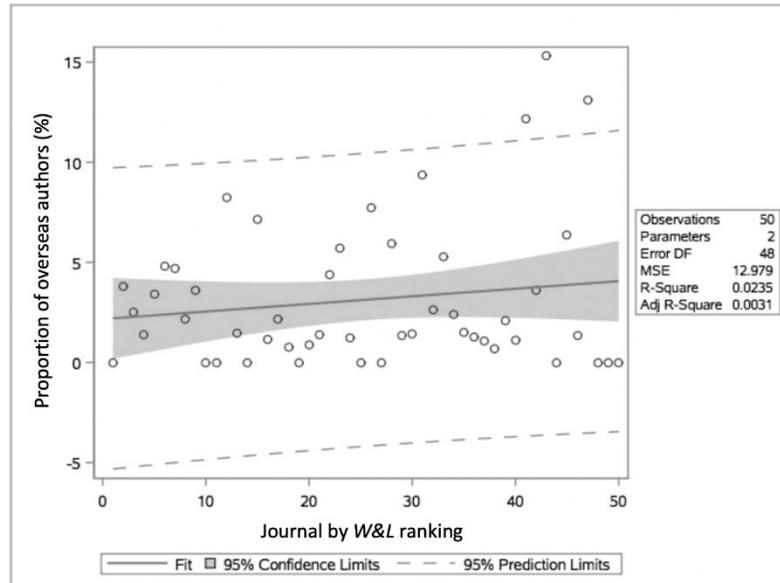


Figure 3: Linear Regression Model for Journal Versus Overseas Authorship

In this regard, the challenges facing overseas-affiliated authors are widespread and not merely confined to journals at the higher end of the *W&L* rankings. Figure 3 shows that it cannot be said that journal ranking has a significant influence on the proportion of overseas authors published by a given journal.<sup>148</sup> The proclivity of editorial boards to publishing overseas-authored work therefore seems to depend more on the individual journal or institution rather than on a letterhead-bias-style phenomenon.

## VI. PRACTITIONERS' PREDICAMENT: ACADEMIC, PRACTITIONER, AND JUDICIAL AUTHORSHIP

There is a perception afoot that it is more difficult for practitioners than academics to publish in top U.S. law journals.<sup>149</sup> One of the reasons for this view may be a surely misplaced perception that practitioners' work is ipso facto inferior to that of academic authors. The

148. The R-squared value of 0.0235 means that just over 2% of the observed variation in the rate of publishing overseas-affiliated authors can be explained by variation in the *W&L* journal ranking. Furthermore, the p-values for journal and intercept are too large (0.2882 and 0.0417, respectively) for a correlation of this nature to be established.

149. Lau described one aspect of this as a systematic bias "against the better placement of articles from practitioners." Lau, *supra* note 13, at 392.

following comment from *Prawfsblawg* is not conclusive, but it is certainly indicative of that perception: “Oklahoma is not a good journal . . . Just look at who they publish, a lot of practitioners and professors at lower ranked schools.”<sup>150</sup> However, the negative perception of practitioner-authored work is not necessarily anecdotal. Nance and Steinberg’s survey found that “25.13% of respondents rated [the author’s being a practitioner] as a negative influence” on publication decisions.<sup>151</sup> To be a practitioner author, rather than an academic author, seems to place one at an immediate disadvantage. Nance and Steinberg found that “[a] significant number of journals . . . are reluctant to publish articles written by practitioners.”<sup>152</sup>

This study measured the relative proportion of academic, practitioner, and judicial authors per T50 journal. These were categorized on the basis of the primary affiliation of the author. Thus, a person with both academic and practitioner credentials would be categorized according to their primary affiliation in the relevant article. The “academic” category of course included faculty, but also research fellows and affiliates, postdoctoral researchers, and students. The “practitioner” category included practicing attorneys and those working for business and non-profit organizations. The “judicial” category primarily comprised current and former judges. The average proportions on a per journal basis were as follows: 94.1% of authors were academics, 3.9% of authors were practitioners, and 1.4% of authors were judicial.<sup>153</sup> There is not a great deal that can be deduced from these figures in isolation as submissions data were not available. For example, we do not know what proportion of article submissions were made by practitioners; thus, the publication figure of 3.9% for practitioners is not, in itself, illuminating. If we knew that 25.0% of article submissions to the T50 journals were from practitioners, but on average 3.9% of a journal’s publications were practitioner authors’ work, then we could deduce that practitioners were not faring well in the selection process. On the other hand, if we knew that just 5.0% of article submissions to the T50 journals were from practitioners, and on average 3.9% of a journal’s publications were practitioner authors’ work, then we could deduce that practitioners were faring very well in the selection process.

Observations can nevertheless be made on the extent to which there is variation among journals in relation to these figures. Of course, that variation may partly be explained by variations in the submission rates to those journals. Thus, if Journal A receives 30.0% of its submissions

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150. Anon, Comment to *Submission Angsting Fall 2018*, PRAWFSBLAWG (Sept. 21, 2018, 03:46:09 PM), <https://prawfsblawg.blogs.com/prawfsblawg/2018/07/submission-angsting-fall-2018.html> [https://perma.cc/7DR3-UHZZ].

151. Nance & Steinberg, *supra* note 3, at 591.

152. *Id.*

153. These figures are each rounded to the nearest 0.1% so do not add exactly to 100%.

from practitioners and Journal B receives 5.0% of its submissions from practitioners, it would not be surprising to find a greater proportion of practitioner-authored work in Journal A and a lesser proportion in Journal B.

However, there are likely to be other factors at play, including perceptions about the inferiority (or superiority) of practitioner-authored work. In this regard, it is insightful to observe that practitioners accounted for between 0.0% and 15.9% of authors published in each of the T50 journals, as illustrated in Table 7.

Table 7: Proportion of Academic to Practitioner to Judicial Authors Per Journal<sup>154</sup>

	<u>Academic</u>	<u>Practitioner</u>	<u>Judicial</u>
Proportion of authors in T50 journals	94.3%	3.9%	1.4%
Maximum proportion of authors in any one journal	98.7%	15.9%	5.3%
Minimum proportion of authors in any one journal	84.1%	0.0%	0.0%
Average proportion of authors per journal	94.1%	3.9%	1.4%
Standard deviation	4.4%	3.0%	1.1%
Median proportion of authors per journal	95.4%	3.5%	1.2%

The most “practitioner-friendly” journal was *Fordham Law Review*, with 15.9% of its authors categorized as practitioners. This rate was over four times the average figure for each T50 journal. This was followed by *Hastings Law Journal* with a rate of 9.2%, and then by both *Arizona Law Review* and *Lewis & Clark Law Review* tied with a rate of 8.1%. The top ten journals ranked according to the highest proportion of practitioner authors are presented in Table 8.

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154. Excluding five authors whose category was not stated and could not be determined using reasonable efforts (five authors of a total of 5,791 authors, i.e., less than 0.1% of authors — of minimal statistical significance).

Table 8: Top Ten Journals Ranked by the Highest Proportion of Practitioner Authors

	<u>Journal</u>	<u>Percentage</u>	<u>Raw Figures</u>
1	Fordham Law Review	15.9%	14 of 88 authors
2	Hastings Law Journal	9.2%	14 of 152 authors
3=	Arizona Law Review	8.1%	9 of 111 authors
3=	Lewis & Clark Law Review	8.1%	6 of 74 authors
5	American University Law Review	7.9%	7 of 89 authors
6	George Washington Law Review	7.8%	11 of 141 authors
7	Cardozo Law Review	7.5%	12 of 160 authors
8	Florida Law Review	7.5%	12 of 161 authors
9	Brigham Young University Law Review	7.4%	9 of 122 authors
10	Utah Law Review	6.3%	7 of 111 authors

At the other end of the scale were journals with the lowest proportions of practitioner authors. Three journals did not publish any work authored by a practitioner across the five-calendar-year audit period. These journals may be ranked according to the total number of authors they published in that period (the higher the author count, the more significant the zero-publication rate), as in Table 9. Accordingly, the least “practitioner-friendly” journal was *UC Davis Law Review*, with zero out of 132 authors having their primary designation as a practitioner.<sup>155</sup> *Boston University Law Review* followed, with zero out of 112 authors

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155. This absence was despite the *UC Davis Law Review* editorial policy stating that the journal “publish[es] articles from legal academics, practitioners, and [its] own student editors.” *About Us*, U.C. DAVIS LAW REVIEW, <https://lawreview.law.ucdavis.edu/about-us.html> [<https://perma.cc/CSB2-RRUG>].

primarily designated as practitioners,<sup>156</sup> and then *Columbia Law Review* with zero out of seventy-nine authors writing in that capacity. Table 9 presents the top ten journals ranked according to the lowest proportion of practitioner authors.

Table 9: Top Ten Journals Ranked by the Lowest Proportion of Practitioner Authors<sup>157</sup>

	<u>Journal</u>	<u>Percentage</u>	<u>Raw Figures</u>
1	UC Davis Law Review	0.0%	0 of 132 authors
2	Boston University Law Review	0.0%	0 of 112 authors
3	Columbia Law Review	0.0%	0 of 79 authors
4	Vanderbilt Law Review	0.9%	1 of 109 authors
5	Southern California Law Review	1.0%	1 of 96 authors
6	Duke Law Journal	1.1%	1 of 87 authors
7	Northwestern University Law Review	1.2%	1 of 82 authors
8	Emory Law Journal	1.3%	1 of 76 authors
9	University of Pennsylvania Law Review	1.5%	3 of 206 authors
10	William & Mary Law Review	1.5%	2 of 133 authors

Of the T50 journals, only two journals indicated on their websites that practitioner-authored work may be less of a publication priority

156. *Boston University Law Review's* editorial policy nevertheless states that the journal "contains articles contributed by law professors and practicing attorneys from all over the world, along with notes written by *Law Review* staff." *Boston University Law Review*, BOSTON UNIV. LAW REVIEW, <https://www.bu.edu/bulawreview> [<https://perma.cc/YUE2-GHBF>].

157. Secondarily ranked from highest number of authors to lowest number of authors during the audit period; a rate of 0% practitioner authors from a higher number of authors is "worse" than a rate of 0% practitioner authors from a lower number of authors.

than work authored by academics. *Notre Dame Law Review*'s editorial policy stated that "while the *Law Review* prefers to publish law professors, it will consider submissions from practitioners, clerks, etc., at its discretion."<sup>158</sup> It indeed had a lower than average proportion of practitioner authors during the audit period, at 1.6%, as opposed to the T50 journal average of 3.9%. There were, nevertheless, eleven journals with a lower practitioner rate than that of *Notre Dame Law Review*. Meanwhile, *Ohio State Law Journal* stated that it "tends to publish articles by faculty members and judges," but that it is "happy to consider articles by practitioners and students."<sup>159</sup> *Ohio State Law Journal* in fact had a slightly higher proportion of practitioner authors than average, at 4.3%.

Figure 4 reveals that journal ranking does not have a significant effect on the proportion of practitioner authors published by a given journal.<sup>160</sup> This result may be different if one includes much lower ranked journals in the analysis, as Nance and Steinberg did<sup>161</sup> but which this study did not. Additionally, *Fordham Law Review*, represented in this model by the only plot outside the 95% prediction limits, had an anomalously high rate of publishing practitioner authors. The author makes no suggestion that this "anomaly" is in any way negative.

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158. *Overview*, NOTRE DAME LAW REVIEW, <http://ndlawreview.org/submissions/overview> [<https://perma.cc/SK8L-YM76>].

159. *For Authors*, *supra* note 140.

160. The R-squared value of 0.0688 means that less than 7% of the observed variation in the rate of publishing practitioner authors can be explained by variation in the *W&L* journal ranking. Furthermore, the p-values for journal and intercept are too large (0.0658 and 0.0032, respectively) for a significant correlation of this nature to be established.

161. Nance and Steinberg found that while "[a]uthor is a practitioner" was a negative factor affecting publication decisions in the "top three cohorts" of journals, it became a "relatively important positive factor at . . . lower-ranked journals." Nance & Steinberg, *supra* note 3, at 606.

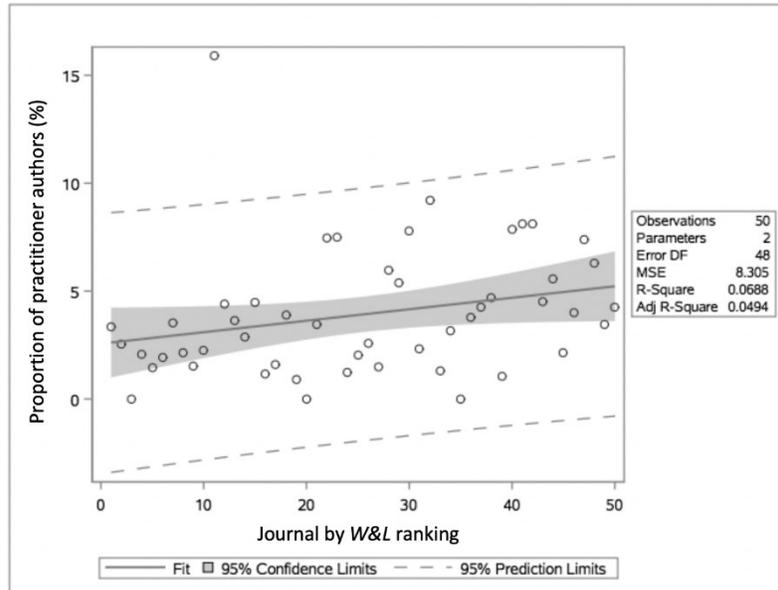


Figure 4: Linear Regression Model for Journal Versus Proportion of Practitioner Authors

The study also measured the proportion of judicial authors in each of the T50 journals. The publication rate for judicial authors was never particularly high. Judicial-authored publications peaked at 5.3% for *Maryland Law Review*, almost 3.8 times higher than the average rate for each T50 journal. This was followed by *Wisconsin Law Review* with a rate of 3.8% and *Lewis & Clark Law Review* with a rate of 2.7%.<sup>162</sup> Table 10 presents the top ten journals ranked according to the highest proportion of judicial authors.

<sup>162</sup> *Cornell Law Review* also had a rounded rate of 2.7% but a lower unrounded rate.

Table 10: Top Ten Journals Ranked by the Highest Proportion of Judicial Authors

	<u>Journal</u>	<u>Percentage</u>	<u>Raw Figures</u>
1	Maryland Law Review	5.3%	4 of 75 authors
2	Wisconsin Law Review	3.8%	3 of 79 authors
3	Lewis & Clark Law Review	2.7%	2 of 74 authors
4	Cornell Law Review	2.7%	3 of 112 authors
5	Hastings Law Journal	2.6%	4 of 152 authors
6	Minnesota Law Review	2.6%	5 of 195 authors
7	Yale Law Journal	2.5%	2 of 79 authors
8	Cardozo Law Review	2.5%	4 of 160 authors
9	University of Pennsylvania Law Review	2.4%	5 of 206 authors
10	UC Davis Law Review	2.3%	3 of 132 authors

Whereas practitioner authors might (rightly or wrongly) be perceived to submit work of an inferior or less relevant quality, one would have expected that judicial-authored work would offer a certain prestige to journals, particularly if the work is authored by a senior member of the judiciary. It was therefore surprising to find that eleven of the T50 journals did not publish any judicial-authored work across the five-year audit period. The three most highly ranked among these journals (according to the *W&L* rankings) were *Georgetown Law Journal* (ranked fourth), *New York University Law Review* (ranked seventh), and *Fordham Law Review* (ranked eleventh). Though the submissions data were not publicly available and therefore one cannot exclude the possibility that these journals did not receive any judicial-authored submissions in relation to the audit period, it does not seem likely that these

journals' zero-rates would be explained by an inability to attract judicial authors. Table 11 presents the eleven journals that did not publish the work of any judicial authors during the audit period, ranked according to the number of authors they published during the audit period (thus the higher the number of authors, the more significant the zero-rate).

Table 11: Journals with No Judicial Authors

	<u>Journal</u>	<u>Percentage</u>	<u>Raw Figures</u>
1	Georgetown Law Journal	0.0%	0 of 145 authors
2	Boston College Law Review	0.0%	0 of 144 authors
3	Wake Forest Law Review	0.0%	0 of 111 authors
4	California Law Review	0.0%	0 of 104 authors
5	University of Chicago Law Review	0.0%	0 of 98 authors
6	Ohio State Law Journal <sup>163</sup>	0.0%	0 of 94 authors
7	New York University Law Review	0.0%	0 of 93 authors
8	Fordham Law Review	0.0%	0 of 88 authors
9	Emory Law Journal	0.0%	0 of 76 authors
10	Georgia Law Review <sup>164</sup>	0.0%	0 of 58 authors
11	Houston Law Review	0.0%	0 of 47 authors

163. *Ohio State Law Journal's* editorial policy nevertheless stated that the journal "tends to publish articles by faculty members and judges." *For Authors*, *supra* note 140.

164. *Georgia Law Review* nevertheless "welcome[d] submissions from law professors, educators, members of the judiciary, and legal practitioners." *For Authors*, GA. LAW REVIEW, <https://www.georgialawreview.org/for-authors> (last visited Dec. 19, 2019).

In a straight runoff between *Harvard Law Review* and *Yale Law Journal*, the latter had a higher proportion of judicial authors among its authorship: 2.5% as opposed to *Harvard's* 1.7%. Both were nevertheless above the average judicial authorship of 1.4% for each T50 journal.

## VII. TO SHARE OR NOT TO SHARE?: SOLE AUTHORSHIP AND CO-AUTHORSHIP

Decisions about whether to author an article on one's own or with one or more co-authors are influenced by a variety of factors. These may include the availability, willingness, or qualification of peers to co-author a piece but also less obvious factors such as internal institutional norms and expectations. For example, if a professor is the sole author of an article published in a journal, he or she may receive particular recognition for that publication in a performance appraisal or promotion or tenure application. However, if the professor is the co-author of that article and declares 50% co-authorship, he or she may receive less, perhaps 50%, recognition for that publication than if he or she had been its sole author. It may therefore count as "half" a publication.

There are both push and pull factors at play here. A push factor would be an institutional policy of the nature just described, and some academics may decide against co-authorship on the basis that they do not want reduced recognition for the publication. On the other hand, the academic may feel that co-authorship allows them to secure a greater volume of publications. Thus some academics may decide in favor of co-authorship in order to inflate the volume of their publications. This practice may be particularly incentivized at institutions that make personnel decisions influenced by the number of research outputs published. Some academics might opt for co-authorship for more tactical or cynical reasons. It might be a method by which an otherwise less productive scholar can have their name on publications to which they did not contribute a great deal. It might also allow scholars who are less able to produce quality research to free ride on the contribution of their more able co-author and thereby achieve publication in a journal in which they would otherwise not have been able to get published.

As with the figures for academic-, practitioner-, and judicial-authored works, the overall proportions of sole- and co-authored articles do not tell us a great deal in the absence of submissions data.<sup>165</sup> The average proportion of sole-authored articles in T50 journals was 78.9% with an average proportion of co-authored articles of 21.1%. Assuming

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165. This metric was measured on a per article, as opposed to a per author, basis. The latter would have led to severely skewed data, not least because some co-authored articles had multiple authors.

a given journal published at these rates, if the proportion of co-authored submissions was 50%, we could deduce that co-authored articles were faring badly at that journal. However, if co-authored articles accounted for 25% of submissions, we could deduce that co-authored articles were faring well at that journal. Again, submissions data were not available on which to base those judgments.

Of greater relevance are differences in sole- versus co-authored publication rates among the T50 journals. Any such variations could again be partly explained by variations in respective submission rates, but they could also be partly explained by the attitudes of student editors toward sole- and co-authored pieces. Though this particular metric would be less likely to influence a publication decision than some of the other factors discussed, it is worth highlighting differences in trends. The proportion of co-authored articles in a T50 journal ranged from 9.3% to 60.9%, representing a large range as presented in Table 12.

Table 12: Proportion of Sole-authored to Co-authored Articles Per Journal

	<u>Sole-authored</u>	<u>Co-authored</u>
Proportion of articles in T50 journals	79.1%	20.9%
Maximum proportion of articles in any one journal	90.7%	39.1%
Minimum proportion of articles in any one journal	60.9%	9.3%
Average proportion of articles per journal	78.9%	21.1%
Standard deviation	7.2%	7.2%
Median proportion of articles per journal	77.7%	22.3%

The journal with the highest proportion of co-authored articles was *Southern California Law Review* with a rate of 39.1%, just over 1.85 times the average figure for each T50 journal. This was followed by *Cornell Law Review* with a rate of 37.2%, and then *University of Chicago Law Review* with a rate of 35.4%. Table 13 presents the top ten journals ranked according to the highest proportion of co-authored articles.

Table 13: Top Ten Journals Ranked by the Highest Proportion of Co-authored Articles

	<u>Journal</u>	<u>Percentage</u>	<u>Raw Figures</u>
1	Southern California Law Review	39.1%	25 of 64 articles
2	Cornell Law Review	37.2%	29 of 78 articles
3	University of Chicago Law Review	35.4%	23 of 65 articles
4	Texas Law Review	35.0%	21 of 60 articles
5	University of Pennsylvania Law Review	31.2%	44 of 141 articles
6	Washington University Law Review	26.9%	25 of 93 articles
7	California Law Review	26.6%	21 of 79 articles
8	Wake Forest Law Review	26.5%	22 of 83 articles
9	Arizona Law Review	26.2%	22 of 84 articles
10	Northwestern University Law Review	25.8%	16 of 62 articles

The journal with the lowest proportion of co-authored articles was *Houston Law Review* with a rate of 9.3%, less than half the average figure for each T50 journal. This was followed by *Brigham Young University Law Review* with a rate of 10.1%, and then *Utah Law Review* with a rate of 10.2%. Table 14 presents the top ten journals ranked according to the lowest proportion of co-authored articles.

Table 14: Top Ten Journals Ranked by the Lowest Proportion of Co-authored Articles

	<u>Journal</u>	<u>Percentage</u>	<u>Raw Figures</u>
1	Houston Law Review	9.3%	4 of 43 articles
2	Brigham Young University Law Review	10.1%	11 of 109 articles
3	Utah Law Review	10.2%	10 of 98 articles
4	Cardozo Law Review	10.6%	15 of 142 articles
5	Maryland Law Review	10.6%	7 of 66 articles
6	Alabama Law Review	10.8%	9 of 83 articles
7	Connecticut Law Review	12.0%	9 of 75 articles
8	George Mason Law Review	12.5%	6 of 48 articles
9	UCLA Law Review	12.8%	15 of 117 articles
10	Ohio State Law Journal	13.6%	11 of 81 articles

A direct comparison of the respective figures for *Harvard Law Review* and *Yale Law Journal* reveals remarkably similar co-authorship proportions. For *Harvard Law Review*, co-authored articles made up 25.5% of the overall article count, while at *Yale Law Journal*, co-authored articles made up 23.4% of the overall article count. Each of these proportions was slightly above the average rate of 21.1% for each T50 journal.

The linear regression model in Figure 5 shows the most interesting aspect of the data for sole- versus co-authored articles.

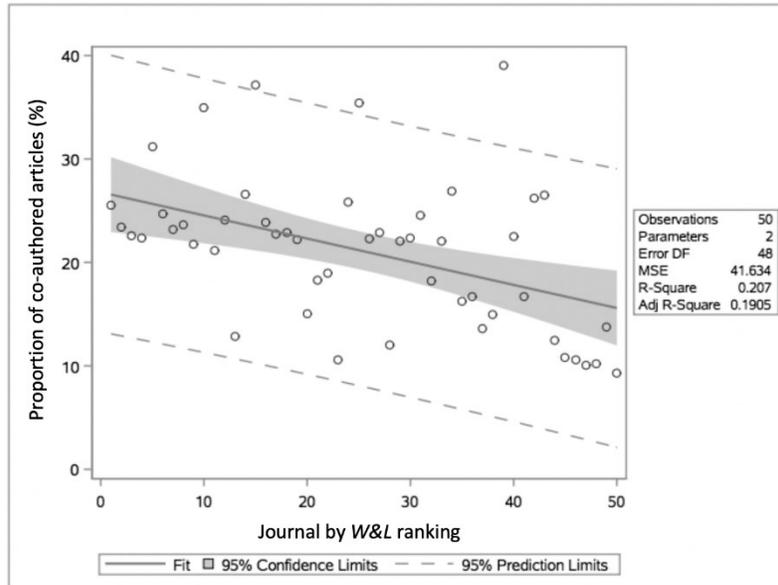


Figure 5: Linear Regression Model for Journal Versus Proportion of Co-authored Articles

This model reveals a significant correlation between the *W&L* journal ranking and the co-authored proportion of a journal's articles.<sup>166</sup> Among the T50 journals, higher-ranked journals are more likely to have a greater proportion of co-authored articles than lower-ranked journals. However, in the absence of submissions data, we cannot conclude that a co-authored article is more likely to be published in a higher-ranked journal than in a lower-ranked journal.

## VIII. DIGEST AND CONCLUSION

This study comprised the largest audit of U.S. law journals to be conducted to date. Most of the existing literature has been based on anecdotal evidence or perception, and the few empirical studies that have been conducted have primarily been survey-based. However, this study collated and analyzed the hard data of journal publications from fifty journals over a five-calendar-year period, covering 4,593 articles and 5,791 authors. It was also the first to be conducted by an overseas author, giving additional perspective and objectivity.

166. The R-squared value of 0.207 means that variation in the *W&L* journal ranking can explain just over 20% of the observed variation in co-authored article proportions. Furthermore, the p-values for both journal and intercept are sufficiently small (0.0009 and <0.001) to draw this conclusion.

The study measured several aspects of author demographics. First, it measured the prevalence and extent of letterhead bias and found a clear correlation between the *W&L* ranking of the publishing journal and the median *U.S. News* ranking of the primary institution to which authors were affiliated. The more highly ranked a journal in the *W&L* ranking, the higher the median ranking of its authors' institutions in the *U.S. News* ranking. When considered in the context of the existing literature and empirical research, this finding provides strong statistical grounding for establishing the phenomenon of letterhead bias, particularly as the conflation of ranking and quality is fallacious.

Second, the study measured the incidence of self-publication among journals. A correlation was found between the *W&L* ranking of the publishing journal and its rate of self-publication: the higher ranked the journal, the greater tended to be its rate of self-publication. The practice of self-publication was criticized and the most culpable journals were condemned by this author for pumping such high volumes of in-house articles into the marketplace. Such journals foment legitimate doubts about the extent to which their article selection decisions are merit-based.

Third, it was found that the work of overseas authors was published relatively infrequently by the T50 journals during the five-year audit period, and not at all by eleven of the T50 journals during the same period. This was deemed to be partly explainable by an inability of student editors to substitute institutional prestige as a surrogate for an independent assessment of article merits, as they may lack the necessary knowledge to evaluate the institutional prestige of overseas authors. Nevertheless, as scholarship from the world's most prestigious non-U.S. law schools also featured so infrequently in the pages of U.S. law journals, there must be additional factors at play. There was no correlation established between *W&L* ranking and the journals' rates of publishing the work of overseas authors.

Fourth, it was found that there was no significant correlation between a journal's *W&L* ranking and its rate of publishing practitioner authors. There was a generally low rate of doing so across the board, with the average proportion standing at just 3.9% and three of the T50 journals publishing no practitioner-authored work during the five-year audit period. The average proportion of judicial-authored work per T50 journal was surprisingly low, at just 1.4%, with eleven of the T50 journals publishing no judicial-authored work across the five-year audit period. Finally, a correlation was established between a journal's *W&L* ranking and its rate of publishing co-authored articles. A greater proportion of a journal's article count tended to comprise co-authored articles at higher ranked journals.

The data presented and the analysis conducted in this article suggest wide-ranging differences in the policies and practices of the T50

journals. Some appear to demonstrate more letterhead bias than others. Some have an abnormally high (or low) rate of self-publication. Some journal staff take clear steps to avoid self-publication and the conflicts of interest it raises, while others express a desire to publish more of their own faculty's work. Some journals seem more open than others to publishing the work of any combination of overseas authors, practitioner authors, judicial authors, and co-authored articles.

Journals should not institute quotas or targets on any of these criteria — with the possible exception of establishing a maximum proportion of their authorship that can be members of their own respective faculties<sup>167</sup> — and this author would be disappointed for this research to be used to such an end. However, journals should make selection decisions on an independent assessment of the merits of each submitted article. The identity and institutional affiliation of the author; whether the author is affiliated with a U.S. or overseas institution; whether the author is an academic, practitioner, or judge; and whether the article is sole- or co-authored, should ordinarily not form part of the article selection process.<sup>168</sup> The only way to ensure merits-based article selection is for journals to adopt a process of blind review,<sup>169</sup> as others have proposed.<sup>170</sup> Leibman and White were right to say that the “lack of blind review seriously compromises the credibility of the manuscript review process.”<sup>171</sup> Some journals claim to conduct blind review,<sup>172</sup> but the practice seems to be limited,<sup>173</sup> and it is not uncommon for journals to invite or require authors to submit their curricula vitae as part of the submission process.<sup>174</sup> This does not necessarily mean that journals that

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167. Perhaps that proportion should be 0%, so that the self-publication phenomenon can be obliterated once and for all.

168. A legitimate exception could be, for example, a piece written by a senior judge. The author also considered that a possible exception could be an article written by a well-known academic on a solicited basis and clearly marked as a solicited article. However, the risk would then be that faculty could use unscrupulous practices to secure solicited article slots or that student editors could attempt to secure solicited articles for ulterior motives. On that basis, the latter exception should probably be ruled out.

169. This is subject to the above, very limited, exceptions. *See supra* note 168.

170. *See* Lindgren, *supra* note 30, at 538; Friedman, *supra* note 4, at 1349–51; Wendy J. Gordon, *Counter-Manifesto: Student-Edited Reviews and the Intellectual Properties of Scholarship*, 61 U. CHI. L. REV. 541, 545 (1994); Leibman & White, *supra* note 2, at 420.

171. Leibman & White, *supra* note 2, at 405.

172. *See supra* note 127.

173. Friedman's survey found that 86.0% of respondent journals had no blind review in their article selection process, 8.1% had a blind committee read, 5.8% had a blind editorial read, and 4.7% had blind screening. Friedman, *supra* note 4, at 1372.

174. These included: *California Law Review, Articles & Essays*, CAL. LAW REVIEW, <http://www.californialawreview.org/submit> [<https://perma.cc/2F85-J322>]; *Vanderbilt Law Review, Submissions*, VANDERBILT LAW REVIEW, <https://wp0.vanderbilt.edu/lawreview/about/submissions> [<https://perma.cc/VP73-6CNX>]; *Boston College Law Review, Submissions*, *supra* note 139; *Indiana Law Journal, Submit*, IND. LAW JOURNAL, <http://ilj.law.indiana.edu/submit> [<https://perma.cc/8722-DZ3Q>]; *Connecticut Law Review, For Authors*, CONN. LAW REVIEW, <https://connecticut-law-review.scholasticahq.com/for-authors> [<https://perma.cc/>

request or require such information substitute author identity or institutional affiliation for an assessment of the article's merits. Student editors, whose task is demanding, are commonly accepted to be improperly equipped for the exercise they are required to undertake (through no fault of their own),<sup>175</sup> and a check of author credentials can help them form a view of the article's merits. That does not mean that the approach to article selection is not merits-based — though it is not purely merits-based.<sup>176</sup>

The danger is, of course, that editors use author credentials as a surrogate for an independent assessment of the merits of the article or “[use] author credentials, as a proxy not for quality of scholarship, but for potential interest of their readership in the article,”<sup>177</sup> particularly as publishing high-profile authors is a way to advance the prestige of the journal itself.<sup>178</sup> Crucially, it would be difficult for either of these to become a surrogate for an independent assessment of article merits if a properly blind review policy (and other safeguards) were built into the publication process.<sup>179</sup> Having just part of the selection process as blind is clearly insufficient, as the data for *Harvard Law Review* amply demonstrates. *Stanford Law Review*'s editorial policy states that:

It is our policy to apply the same standards of review to all submissions, and to judge pieces based solely on their content. To that end, our review process is fully blind until the Committee's final vote. All voting Articles Editors complete their reads without knowledge of the author's identity, institutional affiliation, or any other biographical information. Only the Senior Articles Editor knows the identity of the author; he or she handles all communication with the author . . . . In order to preserve *Stanford Law Review*'s blind review

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652Y-U64M]; *Hastings Law Journal, Journal Submissions*, HASTINGS LAW JOURNAL, <http://www.hastingslawjournal.org/submissions> [<https://perma.cc/XFK4-FMDZ>]; *Ohio State Law Journal, For Authors*, *supra* note 140; and *George Mason Law Review, Submissions*, GEORGE MASON LAW REVIEW, <http://georgemasonlawreview.org/submissions> [<https://perma.cc/DE32-DUT8>].

175. In Friedman's survey, respondent journals cited lack of proper training as the most common concern about the journal editing process. Friedman, *supra* note 4, at 1379. Some institutions offer editorial training or mentorship to student editors, which is a step in the right direction. Whether that training compensates for the almost inevitable lack of substantive legal knowledge, experience, and exposure to scholarly writing, is another question.

176. The provision of a curriculum vitae might simply make the article selection process less time-consuming and more efficient, as student editors do not have to take the time to track down the author's credentials online. Indeed, the provision of the author's name and institutional affiliation will often be enough to enable student editors to locate the author's credentials online, even if no curriculum vitae was submitted.

177. Nance & Steinberg, *supra* note 3, at 585.

178. Leibman & White, *supra* note 2, at 404.

179. See Wise et al., *supra* note 4, at 72.

process, *manuscript files must be anonymized, that is, stripped of names and identifying information.* We will not accept manuscripts that do not comport with this requirement.<sup>180</sup>

This policy is largely commendable, though it must be asked why the review process is blind only until the Committee's final vote and not fully blind. Indeed, notwithstanding this policy, *Stanford Law Review* had the eleventh highest self-publication rate among the T50 journals. At 13.5%, this was not egregious, though it was above the average of 7.7% per T50 journal, and it could ideally be lowered. It would be instructive to discover whether, if *Stanford Law Review* extended its blind review policy to include the Committee's final vote, the self-publication rate would remain as relatively high. Perhaps it would — this cannot be ruled out as it cannot (currently) be tested.

Peer review, as part of the student-edited model, certainly brings advantages,<sup>181</sup> but it must be double-blind in order to maintain the credibility and integrity of the exercise. Having a non-blind peer review mechanism — whether advisory or binding — combined with an otherwise blind selection process is little more of a safeguard against abuse and malpractice than having no blind review policy at all.<sup>182</sup> Law professors, despite their pretensions to egalitarianism, cannot always be trusted to act ethically.<sup>183</sup> In addition, aspiring authors and all those who rely on the quality and integrity of journal scholarship need to know that a professed blind review policy is authentic and rigorously applied.

The adoption of a fully blind selection process, from the initial receipt of the manuscript to the decision on whether to publish it, seems to be the only prospect of salvation from the cynicism and distrust that appear to have steadily eroded law journals' integrity and credibility. There is no convincing reason not to adopt such a practice. The only stakeholders that can have an interest in the status quo are firmly in the minority: the unscrupulous, the corrupt, and the lazy.<sup>184</sup> The characterization of student editors as “oppressors”<sup>185</sup> is silly and absurd, particularly when the student-edited model of law reviews is the creation of faculty, not students. Universities do not only owe it to the broader

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180. *Article Submissions*, STANFORD LAW REVIEW, <https://www.stanfordlawreview.org/submissions/article-submissions> [<https://perma.cc/D8DF-KD2F>].

181. Though, as noted elsewhere, “it is not clear that peer-edited journals are significantly less hierarchical in their selection procedures.” Krotoszynski, Jr., *supra* note 9, at 331.

182. *See supra* Part IV.

183. *See* Lindgren, *supra* note 33, at 534.

184. Friedman's view was that a “faculty member who feels disadvantaged by [a rule against submitting to journals of their home institution] ought seriously to question their scholarly worth.” Friedman, *supra* note 4, at 1351–52.

185. Lindgren, *supra* note 30, at 537.

community to maximize the integrity and credibility of their journal scholarship; they also owe it to their student editors to shield them from conflicts of interest and self-serving faculty. This author has, in conducting this study, done what he can to assist; the responsibility lies with U.S. law schools to practice what they preach: justice.

ANNEX 1: AUDITED LAW REVIEWS AND JOURNAL MEDIAN  
ASSIGNED SCORES

Table 15: Audited Law Reviews and Journal Median Assigned Scores

<u>W&amp;L Rank</u>	<u>Journal</u>	<u>W&amp;L Combined Score</u>	<u>JMAS</u>
1	Harvard Law Review	100	187
2	Yale Law Journal	94.7	184
3	Columbia Law Review	78.6	186
4	Georgetown Law Journal	77.6	171.5
5	University of Pennsylvania Law Review	74.8	186
6	Stanford Law Review	73.2	184
7	Michigan Law Review	69	182
8	New York University Law Review	63	180
9	Minnesota Law Review	62.8	161
10	Texas Law Review	61.7	177
11	Fordham Law Review	61.4	156
12	Iowa Law Review	60.6	156
13	UCLA Law Review	60.5	172.5
14	California Law Review	60.3	177
15	Cornell Law Review	60.1	180
16	Duke Law Journal	60.1	182
17	Notre Dame Law Review	55.5	169
18	Virginia Law Review	55.4	184
19	Vanderbilt Law Review	52.6	171
20	Boston University Law Review	52.2	152
21	Boston College Law Review	50.6	139
22	Florida Law Review	49.5	134
23	Cardozo Law Review	49.1	130
24	Northwestern University Law Review	49.1	166
25	University of Chicago Law Review	48.9	185
26	Indiana Law Journal	48.9	146
27	William & Mary Law Review	47.3	161
28	Connecticut Law Review	46.5	130

29	North Carolina Law Review	44.1	148
30	George Washington Law Review	42.6	161
31	University of Illinois Law Review	41	156
32	Hastings Law Journal	37.5	135
33	Emory Law Journal	37.2	161
34	Washington University Law Review	36.9	156
35	UC Davis Law Review	34.9	156
36	Wisconsin Law Review	33.6	158.5
37	Ohio State Law Journal	33.3	134
38	Washington and Lee Law Review	32.9	134
39	Southern California Law Review	31.2	174
40	American University Law Review	31	130
41	Lewis & Clark Law Review	30.8	119
42	Arizona Law Review	30.6	156
43	Wake Forest Law Review	29.3	143
44	George Mason Law Review	28.5	139
45	Alabama Law Review	28.1	147
46	Maryland Law Review	27	134
47	Brigham Young University Law Review	25.2	146.5
48	Utah Law Review	24.9	134.5
49	Georgia Law Review	24.4	144
50	Houston Law Review	23.3	136

ANNEX 2: U.S. NEWS RANKINGS 2019 AND INSTITUTIONAL  
ASSIGNED SCORES

The full *U.S. News* ranking 2019,<sup>186</sup> which comprised 193 law schools, is not included here due to space constraints. However, the top ten, middle ten, and bottom ten ranked law schools are listed here, together with their respective IASs, to demonstrate how the scores correlate with the respective standing of a law school in *U.S. News*.

Table 16: *U.S. News* Ranking and Institutional Assigned Scores

<u>U.S. News</u> Rank	<u>Institution</u>	<u>IAS</u>
1	Yale University	192
2	Stanford University	191
3	Harvard University	190
4	University of Chicago	189
5	Columbia University	188
6	New York University	187
7	University of Pennsylvania	186
8	University of Michigan (Ann Arbor)	185
9=	University of California (Berkeley)	184
9=	University of Virginia	184
...	...	...
88=	Louisiana State University (Baton Rouge) (Hebert)	105
88=	Michigan State University	105
88=	Saint Louis University	105
88=	Syracuse University	105
88=	University of Arkansas (Fayetteville)	105
88=	University of New Mexico	105

186. *Best Law Schools*, U.S. NEWS & WORLD REP., <https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings> [<https://perma.cc/GD5X-ZYTD>].

88=	University of South Carolina	105
95=	Lewis & Clark College (Northwestern)	98
95=	Marquette University	98
95=	San Diego University	98
...	...	...
RNP	University of North Dakota	48
RNP	University of San Francisco	48
RNP	University of the District of Columbia (Clarke)	48
RNP	University of the Pacific (McGeorge)	48
RNP	Valparaiso University	48
RNP	Western Michigan University Thomas M. Cooley Law School	48
RNP	Western New England University	48
RNP	Western State College of Law at Argosy University	48
RNP	Widener University Delaware	48
RNP	Willamette University (Collins)	48