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THE MUFFLED VOICE OF MINORITY LAW STUDENTS:  
HOW LAW JOURNALS HAVE SUCCUMBED TO  
UNSOLICITED BIASES AND LIMITED THE PROGRESSION  
OF DIVERSITY IN LAW SCHOOLS

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## INTRODUCTION

What does it take to be a published law student in America's current system? The answer: a selection from a journal cabinet which normally consists of current students at the journal's respective law school. The overall process is supervised by a faculty member to ensure that the operation is following the school's standards. However, why would some students of color remain skeptical for success in receiving the honor of publishing? Maybe the student may have had a few words with one of the cabinet members or maybe another submission is a good friend with the cabinet. Maybe the topic is too radical for the conservative board member. The few possibilities are enough to lead an average student to question the process, but could these possibilities actually be a reality instead? Even professors have questioned the process for Law Reviews.<sup>2</sup> Therefore, a deeper evaluation is required to determine whether the issue is a coincidence or systemic.

### BARRIERS FOR CERTAIN CAREER FIELDS FOR MINORITY STUDENTS BY NOT BEING SELECTED OR PUBLISHED BY A LAW JOURNAL

#### *Educational Career Paths for Minorities*

Law students strive for publication honors to gain recognition in a certain field of interest, but there are also career paths which highly recommend publication such as teaching in law schools.<sup>3</sup> Hiring committees normally prefer an applicant that has been published for teaching positions.<sup>4</sup> For example, authors generally compile their lists of journals based on the reputation of the school and the journal due to rankings;<sup>5</sup> Likely because a hiring committee considers the

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<sup>2</sup> See 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, 52 (2013) (noting that surveyed law professors "were dissatisfied with the current system of law reviews and tended to believe it requires major changes").

<sup>3</sup> See Brian Leiter, *Paths to Law Teaching*, UNIV. CHIG. L. SCH. (July 21, 2022), <https://www.law.uchicago.edu/careerservices/pathstolawteaching>.

<sup>4</sup> David T. Richie, *Who is On the Outside Looking in, and What Do They See? Metaphors of Exclusion in Legal Education*, 58 MERCER L. REV. 991, 1014–16 (2007).

<sup>5</sup> Career Development Office, *Entering the Law Teaching Market*, YALE L. SCH. at 11, [https://law.yale.edu/sites/default/files/area/department/cdo/document/cdo\\_law\\_teaching\\_public.pdf](https://law.yale.edu/sites/default/files/area/department/cdo/document/cdo_law_teaching_public.pdf) (last visited Jan. 14, 2023).

publication as a hiring factor.<sup>6</sup> Although a candidate lacking a publication is not viewed as a negative, it reinforces the importance of the rest of a candidate's qualifications or package.<sup>7</sup> Therefore, a law student could benefit from a publication from a high ranked law journal, but this system assists in limiting diversity at top law schools.

The fact that minorities lack representation in the classrooms as professors is common knowledge but the problem uncovers a larger problem for minority law students.<sup>8</sup> A possible theory for the scarce selection of minority professors could be attributed to the low number of minority students published in respected law journals across the nation which is given a sizable weight when determining a candidate for hire.<sup>9</sup> It is well established that law review selection and publications is a stepping stone for students hoping to be noticed by a future employer.<sup>10</sup> However, the route to being selected to a law review journal is normally based on first year performance at the law school which some minorities, such as Black law students, have difficulty when compared to Caucasian students.<sup>11</sup> Research suggests that success rates for minorities could rise by the employment of minority professors.<sup>12</sup> Therefore, many law schools should monitor their law reviews more closely to ensure that minorities have a fair path to membership.

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<sup>6</sup> *Id.* at 10.

<sup>7</sup> *Id.*

<sup>8</sup> Seth Gershenson, *A Law School Instructor Like Me: How A Professor's Race and Gender can Impact Student Performance*, BROOKINGS (Feb. 6, 2017), <https://www.brookings.edu/blog/brown-center-chalkboard/2017/02/06/a-law-school-instructor-like-me-how-a-professors-race-and-gender-can-impact-student-performance/>. See also *Law Professor Demographics and Statistics in the US*, ZIPPPIA (last visited January 16, 2023, <https://www.zippia.com/law-professor-jobs/demographics/>). (The most common ethnicity among law professors is White, which makes up 69.4% of all law professors. Comparatively, there are 10.9% of the Asian ethnicity and 9.8% of the Hispanic or Latino ethnicity.)

<sup>9</sup> Richard H. Sander, *A Systemic Analysis of Affirmative Action in American Law Schools*, 57 STAN. L. REV. 367, 424 (2004) [hereinafter *A Systemic Analysis*] (footnotes omitted) <https://cpilj.law.uconn.edu/wp-content/uploads/sites/2515/2018/10/5.1-The-Case-for-Black-Inferiority---by-Beverly-I-Moran.pdf>); See also Leiter, *supra* note 3.

<sup>10</sup> Leiter, *supra* note 3.

<sup>11</sup> Brenda Beauchamp, *Why Do Law Reviews and Law Faculty Still Lack Diversity?*, CORNELL J. L. & PUB. POL'Y (Apr. 19 2012), <http://jlpp.org/blogzine/why-do-law-reviews-and-law-faculty-still-lack-diversity/>. See also Jesse Rothstein & Albert Yoon, *Mismatch in Law School*, CEPS Working Paper, No. 123, at 3 (2006), <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=e0146983483a9ed1aba19798cdd5c5e2948edcc9>.

<sup>12</sup> Gershenson, *supra* note 9.

### *Federal Clerkships*

Clerkships, especially Federal, normally gauge applicants by their participation in Law Review.<sup>13</sup> The problem is that Law Reviews have historically been known to have lower numbers of minority students while largely dominated by white males.<sup>14</sup> Essentially, this lowers the chances for a minority to be selected for a federal clerkship.<sup>15</sup> Recently, there has been national attention surrounding Law Review's practice of evaluating a candidate based on race and gender.<sup>16</sup> Statistics show that only 23 percent of minority students are chosen for federal clerkships.<sup>17</sup> On the other hand, 77 percent of white graduates are selected for federal clerkships.<sup>18</sup> Thus, judges should evaluate ways to create a more diverse outcome for applicants seeking judicial clerkships. results for applicants.

### THE LEGAL WARS FOR DIVERSITY IN LAW JOURNALS

Constitutional laws and case laws support equal opportunities for minorities in educational settings.<sup>19</sup> For example, the landmark case, *Brown v. Board of Education of Topeka*, allowed for student of color to integrate segregated schools across America.<sup>20</sup> Although minority students were allowed to join white students in the classroom, the fight

<sup>13</sup> Nicholas Alexiou, *Yes, Law Students, You Should Really Try to Get Onto A Journal*, ABOVE L. (May 10, 2018, 11:17 A.M.), <https://abovethelaw.com/2018/05/yes-law-students-you-should-really-try-to-get-onto-a-journal/>.

<sup>14</sup> Hassan Kanu, *Law Review Diversity Study: Answers for SCOTUS, Questions for Legal Academia*, REUTERS (June 4, 2021, 9:31 A.M.), <https://www.reuters.com/legal/legalindustry/law-review-diversity-study-answers-scotus-questions-legal-academia-2021-06-04/>; See also Paul Willison, *Rethinking the Writing Competition: Developing Diversity Policies on Law Journals After FASORP I and II*, 71 CASE WESTERN L. REV. 351, 372, <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=4899&context=caselrev>. (A little over thirty years ago, for example, 76% of law journals lacked a single Black student, 69% lacked a Hispanic student, 97% lacked a Native American student, and 85% percent lacked an Asian student.)

<sup>15</sup> Willison, *supra* note 15, at 370.

<sup>16</sup> See, e.g., Sanjana Karanth, *Judge Dismisses Lawsuit Accusing Harvard Law Review of Bias Against White Men*, HUFFPOST (Aug. 8, 2019), [https://www.huffpost.com/entry/judge-dismisses-lawsuit-harvard-discriminating-white-men\\_n\\_5d4cbb56e4b0066eb70f1b58](https://www.huffpost.com/entry/judge-dismisses-lawsuit-harvard-discriminating-white-men_n_5d4cbb56e4b0066eb70f1b58).

<sup>17</sup> Erik Ortiz, *Clerkships Remain Largely White. Can Law Students of Color Shake Up The Status Quo?*, NBC NEWS (July 4, 2021), <https://www.nbcnews.com/news/us-news/clerkships-remain-largely-white-can-law-students-color-shake-status-n1272973>.

<sup>18</sup> *Id.*

<sup>19</sup> See, e.g., Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq.

<sup>20</sup> *Brown v. Board of Education of Topeka*, 345 U.S. 972 (1953).

for inclusion in law schools still continues.<sup>21</sup> Law schools have a large role in the barriers against minorities by enrolling classes that are insufficiently diverse.<sup>22</sup> In 2019, the U.S. News & World Report revealed 62% of law students were white, 12.7% were Hispanic, 7.8% were Black, 6.3% were Asian and 4% were biracial or multiracial.<sup>23</sup> Law schools should begin to work on new and innovative ways to ensure that minorities are represented in their classrooms and extracurricular activities such as law journals. Therefore, law school's admissions and faculty members should be aware of the obvious shortage of minority students and ensure that extracurricular activities include the limited minorities admitted by ensuring close supervision of decisions made by the various journals' executive boards.

The selection by peers alone, is not a sufficient system to ensure that voices of minorities will be published fairly. Maybe students could be selected by their topic selections and writing skills, rather than how well they can apply a bluebook or edit a footnote. Journals could have separate sections for those who desire to be published and for those who would like to gain the editing skills acquired from journal participation. Regardless of the solution, law journals have repeatedly failed to ensure a system that represents the variety of races that walk the law schools in America.

Most journal boards mainly consist of white students, particularly men or presumably cis-gendered. This could largely be a result of the low percentage of minority students at most law schools and the smaller number of successful second year minority students.<sup>24</sup> However, the results could be a result of a failure of journals to integrate diversity.<sup>25</sup> For example, two lawsuits against New York University's and Harvard's Law reviews surfaced for allegedly unconstitutionally

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<sup>21</sup> A. Benjamin Spencer, *Law Schools, Law Firms Must Share Responsibility for Diversity*, BLOOMBERG LAW (July 21, 2021, 1:00 A.M.), <https://news.bloomberglaw.com/banking-law/law-schools-law-firms-must-share-responsibility-for-diversity>.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Adam Liptak, *For Blacks in Law School, Can Less Be More?*, N.Y. TIMES (Feb. 13, 2005), <https://www.nytimes.com/2005/02/13/weekinreview/for-blacks-in-law-school-can-less-be-more.html> (stating that 52 percent of student are in the lower rankings of their classes.); *See also* Kylie Thomas & Tiffane Cochran, *ABA Data Reveals Minority Students are Disproportionately Represented in Attrition Figures*, ACCESSLEX (Sept. 18, 2018), <https://www.accesslex.org/xblog/aba-data-reveals-minority-students-are-disproportionately-represented-in-attrition-figures>.

<sup>25</sup> Willison, *supra* note 15, at 352.

considering applicants' race and gender in selecting members.<sup>26</sup> The actions could arguably be at the expense of white and male students at each establishment.<sup>27</sup> In addition, executive board seats are normally rotated each year after a selection by the outgoing board members and journal members consisting of second year law journal members.<sup>28</sup> Could the frequent overturn of executive board members cause less accountability? . Unlike a professor, whose grading system and actions could be analyzed over a course of time, an executive member is normally responsible for one school term<sup>29</sup> which makes it nearly impossible to detect a pattern of favoritism or bias. Therefore, any suspicious outcomes can only be viewed as incidental rather than intentional.

#### STUDENT-EDITED VS. PEER REVIEWED ARTICLES

Law journals' student-edited system could be compared to the science peer reviewed system. Peer reviewed articles stem from scientific literature in the early 1800s.<sup>30</sup> Although law journals normally allow executive members to select journal notes to publish, the science journals use external reviewers to examine article selections.<sup>31</sup> The reviewers, otherwise called "referees," duty was to review submissions from authors to ensure authenticity and quality control.<sup>32</sup> Growing concerns about the quality of the scientific literature led members of the scientific community to view the referee not as a mere advisor, but as a gatekeeper.<sup>33</sup> However, critics argue that reviewers have caused discriminatory results.<sup>34</sup> Women and minorities eventually determined

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Michelle Fabio, *What is a Law Review and How is it Important*, THOUGHTCO (Feb. 21, 2019), <https://www.thoughtco.com/what-is-law-review-2154872>.

<sup>29</sup> *Id.*

<sup>30</sup> Melinda Baldwin, *Peer Review*, CARNEGIE MELLON UNIV. (last visited on June 21, 2022) <https://lps.library.cmu.edu/ETHOS/article/id/19/#fnref33>.

<sup>31</sup> ScienceAlert Staff, *What is Scientific Peer Review?*, SCIENCEALERT (last visited on January 17, 2023), <https://www.sciencealert.com/science-peer-review>. *See also* Berkeley University, *Scrutinizing Science: Peer Review*, BERKELEY UNIV. (Accessed on January 17, 2023), <https://undsci.berkeley.edu/understanding-science-101/how-science-works/scrutinizing-science-peer-review/#:~:text=A%20group%20of%20scientists%20completes,peers%E2%80%9D%20of%20peer%20review>).

<sup>32</sup> Baldwin, *supra* note 32.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

that the referees would favor certain races over others for publication resulting in the loss of trust in the process.<sup>35</sup> In addition, several high-profile papers have been published in top journals, only to be heavily criticized after publication or retracted due to allegations of fraud.<sup>36</sup> Scholars have attempted to find other systems to replace the peer reviewed method, but none have proven to produce alternative results.<sup>37</sup>

Many law journals currently use a similar peer review system, called a student-edited process.<sup>38</sup> Journals have a limited number of publishing slots guaranteed to current law students at the journal's associated school. Like the "referees," law journals rely on senior editors or executive board members to vet the papers and determine which submissions should be published.<sup>39</sup> However, the major difference is the qualifications and shorter term of the reviewers. Unlike in the science world, where the selection is conducted by experts in the field who likely has conducted several reviews in the past,<sup>40</sup> the selection is conducted by a law student. In contrast, most European countries evaluation of legal scholarship rely on both editorial and independent/external peer review.<sup>41</sup> However, second- or third-year law students normally make the decision with minimal involvement by school faculty.<sup>42</sup> Further, the board members normally change each year compared to the scientific reviewers who may change less frequently.<sup>43</sup> The frequent change could possibly create concerns in regard to fairness and accountability. In addition, reviews are often conducted without following any type of standardized rules or principles.<sup>44</sup>

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Aaron Carroll, *Peer Review: The Worst Way to Judge Research, Except for All the Others*, N.Y. TIMES (Nov. 5, 2018), <https://www.nytimes.com/2018/11/05/upshot/peer-review-the-worst-way-to-judge-research-except-for-all-the-others.html>. See also Richard Smith, *Peer review: a flawed process at the heart of science and journals*, J. ROYAL SOC'Y MED. (April 2006), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1420798/>. (An editor-in-chief selected articles based on his own knowledge and produced the same results as the peer-reviewed process.)

<sup>38</sup> Stojanovski et. al., *Peer Review in Law Journals*, FRONTIERS RSCH METRICS AND ANALYTICS, (Dec. 8, 2021), <https://doi.org/10.3389/frma.2021.787768>.

<sup>39</sup> Fabio, *supra* note 30.

<sup>40</sup> Carroll, *supra* note 39.

<sup>41</sup> Stojanovski, *supra* note 40.

<sup>42</sup> Fabio, *supra* note 30.

<sup>43</sup> *Id.* (Students are normally elected as second year students and graduate the following year in the traditional juris doctorate program).

<sup>44</sup> Stojanovski, *supra* note 40.

Therefore, more and more papers are published in law journals with low levels of critical assessment.<sup>45</sup>

### LAW JOURNAL'S PROCESS VERSUS MEDICAL JOURNAL'S PROCESS

In order to give a larger scope on the problem, I will compare the current issues revolving law journals with medical journal submissions. Similar to the law journal's process, the reviewers are normally unpaid and few in numbers.<sup>46</sup> However, the members normally serve a longer term than the law school which creates a different concern for elitism among the reviewers of medical journals.<sup>47</sup> Two researchers, Stephen Ceci of Cornell and Douglas Peters of the University of North Dakota, performed experiments on the reliability and potential for unbiased selection.<sup>48</sup> The researchers resubmitted published articles to the same reviewers but changed the names of the authors to see if the results would be similar.<sup>49</sup> Astoundingly, "nearly 90% of the peer reviewers who looked at the resubmitted articles recommended *against* publication," stating that the articles had serious methodological flaws.<sup>50</sup>

Even further, reviewers could potentially have a bias against certain writers while others could be poorly matched to the area of study by mistakes of the editorial board.<sup>51</sup> Reviewers are selected by an editor of the journal or board members of the journal.<sup>52</sup> "Authors may also be asked specifically [to suggest reviewers for their submission] or allowed to oppose reviewers if they feel that certain scholars cannot grant their manuscript an unbiased hearing."<sup>53</sup> "Authors may also be asked specifically [to suggest reviewers for their submission] or allowed

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<sup>45</sup> *Id.*

<sup>46</sup> Julia Belluz & Steven Hoffman, *Let's Stop Pretending Peer Review Works*, VOX (Dec. 7, 2015), <https://www.vox.com/2015/12/7/9865086/peer-review-science-problems>.

<sup>47</sup> Lonnie Aarssen & Christopher Lortie, *Ending elitism in peer-review publication*, IDEAS ECOLOGY & EVOLUTION at 19 (Dec. 15, 2019), [https://www.researchgate.net/publication/250362215\\_Ending\\_elitism\\_in\\_peer-review\\_publication](https://www.researchgate.net/publication/250362215_Ending_elitism_in_peer-review_publication).

<sup>48</sup> Belluz & Hoffman, *supra* note 47.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Dmitry Tumin & Joseph Drew Tobias, *The Peer Review Process*, 13 SAUDI J. ANAESTHESIA S52, S53 (Apr. 13, 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6398293/>.

<sup>53</sup> *Id.*



to oppose reviewers if they feel that certain scholars cannot grant their manuscript an unbiased hearing.”<sup>54</sup> But the decision to heed these requests remains at the editors’ discretion to follow.<sup>55</sup> It has been suggested that these “opposed” reviewers may even be deliberately selected to ensure critical evaluation of a controversial manuscript.<sup>56</sup> Although the medical journal allows for the editorial board to select the reviewer,<sup>57</sup> the selection process of an outside reviewer is what sets their publication process apart from law journals and could be the key to creating a fairer opportunity. Allowing an expert in race issues such as a Richard Delgado or Jean Stefancic,<sup>58</sup> could reduce the concern for bias because the outside expert has no ties to the student and a genuine interest in the study. As a result, the lack of interest potentially makes the reviewer unqualified to pick it apart.<sup>59</sup> Therefore, an interest in the associated study could disassociate a reviewer’s judgment for the best contributions for the journal.

## HOW CONFLICTING VIEWPOINTS CAN BECOME A BARRIER FOR TIMELY ARTICLES PUBLICATIONS

### *Political Party Differences*

Research reveals that reviewers displayed biases surrounding conclusions and results that conflicted with the reviewer’s views or work.<sup>60</sup> Some of the feedback in rejected submissions displayed the reviewer’s disagreement with the results of the manuscript and attempts to inject their own biases.<sup>61</sup> Law journals could easily fall to a similar

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> Yan Liang, *Should authors suggest reviewers? A comparative study of the performance of author-suggested and editor-selected reviewers at a biological journal*, *Learned Publishing* Vol. 31 Iss. 1 (May 22, 2018), <https://onlinelibrary.wiley.com/doi/full/10.1002/leap.1166>.

<sup>58</sup> Varun Hukeri, *The Founders Of Critical Race Theory Once Got Together And Marveled About How It Was Taking Over Education*, *Daily Caller* (June 29, 2021), <https://dailycaller.com/2021/06/29/critical-race-theory-richard-delgado-jean-stefancic-education/>.

<sup>59</sup> Belluz & Hoffman, *supra* note 48, <https://www.vox.com/2015/12/7/9865086/peer-review-science-problems>.

<sup>60</sup> See generally Laxmaiah Manchikanti et. al., *Medical Journal Peer Review: Process and Bias*, 18 PAIN PHYSICIAN J. (2015), <https://www.proquest.com/openview/5269cae3989d2e70e9f18eb88eb90160/1?pq-origsite=gscholar&cbl=5453642>.

<sup>61</sup> *Id.*

fate given the critical division created by recent politics.<sup>62</sup> For example, an author whose article support a democratic or republican issue, could be rejected by a reviewer who opposes the party due to the recent tensions. Several students of Republican backgrounds have expressed fear in revealing affiliation with the party.<sup>63</sup> On the other hand, students in law schools in the South may face bias for writing on hot topics such as critical race theory which has been banned in several states.<sup>64</sup> As a result, many college students may hide their political affiliations to gain job opportunities and avoid isolation making detection of potential gatekeepers harder to detect.<sup>65</sup> Therefore, the same biases that face medical journals could be prevalent in law journals, especially the schools located in the South.

### ***Racial Discrimination***

The birth of critical race theory could create more interest in specialty journals, but reveal suppression of innovative articles.<sup>66</sup> After the Jim Crow era in the South, many attacks towards minorities involved systemic racism rather than blatant actions.<sup>67</sup> The recent civil rights issues and the removal of Confederate monuments revealed many hidden supporters who still are proud supporters of some, if not

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<sup>62</sup> Mark Murray, *A new political divide: Nearly half of college students wouldn't room with someone who votes differently*, NBC News (Aug. 18, 2022), <https://www.nbcnews.com/meet-the-press/first-read/new-political-divide-nearly-half-college-students-wouldnt-room-someone-rcna43609>. (Displays the division created by political parties on college campuses in America.)

<sup>63</sup> Emily Ekins, *Survey Reports*, CATO INST. (July 22, 2020), <https://www.cato.org/survey-reports/poll-62-americans-say-they-have-political-views-theyre-afraid-share>.

<sup>64</sup> Rayshawn Ray & Alexandra Gibbons, *Why Are States Banning Critical Race Theory?*, BROOKINGS (Nov. 2021), <https://www.brookings.edu/blog/fixgov/2021/07/02/why-are-states-banning-critical-race-theory/>.

<sup>65</sup> Ekins, *supra* note 63. See also Conor Friedersdorf, *Evidence that Conservative Students Really do Self-Censor*, THE ATLANTIC (Feb. 16, 2020), <https://www.theatlantic.com/ideas/archive/2020/02/evidence-conservative-students-really-do-self-censor/606559/>.

<sup>66</sup> Baldwin, *supra* note 32.

<sup>67</sup> N'dea Yancey-Bragg, *What is Systemic Racism? Here's What it Means and How You Can Help Dismantle It*, USA TODAY (Jan. 29, 2021, 9:33 A.M.), <https://www.usatoday.com/story/news/nation/2020/06/15/systemic-racism-what-does-mean/5343549002/>.

all, of the ideologies of that era.<sup>68</sup> Critical race theory topics and articles could possibly open doors to topics that would be uncomfortable for individuals proud of the history of the South.

A critical race theory article could possibly trigger a journal whose readers are largely Caucasian Southerners by addressing or ridiculing the Confederacy ideology.<sup>69</sup> Although a faculty member such as a professor provides oversight for journals, observers have argued that peer review suppresses innovative research and rewards more familiar, safer projects.<sup>70</sup> Allowing several external experts in the field to provide feedback and input for publications could reduce the potential for bias. Therefore, allowing for an external expert in the specialized field could promote more innovative articles to become published but there are other factors that would require a diverse selection board.

#### POSSIBLE FINANCIAL LOSSES AND LOSS OF SUPPORT FROM WEALTHY DONORS IF REFORMATION WAS SUCCESSFUL

Generous donors pad the pockets of law schools and could be a factor for why administrators turn their eye to issues of low visibility among minority students.<sup>71</sup> Law schools can be a huge cash flow for many universities.<sup>72</sup> Tuition at even the most mediocre law school can

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<sup>68</sup> Dwayne Fatherree, *Fighting the 'Lost Cause': Whose Heritage? Report Documents Progress in Battle to Remove Confederate Iconography*, S. POVERTY L. CTR., (Feb. 4, 2022). See also TIME, *Unrest in Virginia: Clashes Over a Show of White Nationalism in Charlottesville Turn Deadly*, (Accessed July 17, 2022) (Supporters of the Confederate monument conduct a rally and displayed several forms of racism around the monument.)

<sup>69</sup> Donna Ladd, *Pride and Prejudice? The Americans Who Fly the Confederate Flag*, THE GUARDIAN (Aug. 16, 2018), <https://www.theguardian.com/us-news/2018/aug/06/pride-and-prejudice-the-americans-who-fly-the-confederate-flag>, (Stating that many Caucasians in the South view the history of the Confederate Army as a sign of historic pride.)

<sup>70</sup> Baldwin, *supra* note 32.

<sup>71</sup> Bethany Letiecq, *George Mason University's Donor Problem and the Fight for Transparency*, AM. ASS'N. OF UNIV. PROFESSORS (Accessed Jan. 18, 2023), <https://www.aaup.org/article/george-mason-university%E2%80%99s-donor-problem-and-fight-transparency#.Y8hbNP7MK3A>; See also Elie Mystal, *Law School Has Students Sit Through, Then Applaud 'Racially Charged Rant' Given By Donor*, ABOVE L. (Nov. 7, 2018), <https://abovethelaw.com/2018/11/law-students-captive-audience-to-racism/>.

<sup>72</sup> David Segal, *Is Law School a Losing Game?*, N.Y. TIMES (Jan. 8, 2011), <https://www.nytimes.com/2011/01/09/business/09law.html>.

cost a student around \$43,000 dollars.<sup>73</sup> Making law school students a profitable addition to any university financially.<sup>74</sup> In addition to tuition, law schools are constantly funded by generous boosters who possibly could influence the culture of the recipient school.<sup>75</sup> Some donors are even recognized by having a classroom, building or hall named in honor of the company or donor.<sup>76</sup> Although the generous donations have helped law schools, these donations could be the influence behind the lack of effort to fix the marginal visual of minorities in law schools. For example, The University of Alabama Law School had issues with a donor who wanted to influence hiring, firing and admissions on campus.<sup>77</sup> His donations of \$21.5 million were returned to him instead.<sup>78</sup> In addition, another donor was removed by the law school located at Roger Williams University after the use of racial slurs at a board meeting.<sup>79</sup> Even more, several minority attorneys have voiced issues regarding discrimination from well-known corporate law firms ranging from slower promotions and less opportunities compared to their white co-workers.<sup>80</sup> Corporate law firms normally donate to law

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Masha Gessen, *Did a University of Toronto Donor Block the Hiring of a Scholar for Her Writing on Palestine?*, NEW YORKER (May 8, 2021), (Detailing how a law school rescinded an offer to a Professor allegedly due to the influence of a donor), <https://www.newyorker.com/news/our-columnists/did-a-university-of-toronto-donor-block-the-hiring-of-a-scholar-for-her-writing-on-palestine>; *See also* Melissa Gomez, *UC Hastings College of the Law to rename school after reviewing founder's role in mass killings of Yuki Indians*, L.A. TIMES (Nov. 6, 2021, 5:00 A.M.) (A prominent donor and other alumni pressured their former law school board to change the name), <https://www.latimes.com/california/story/2021-11-06/uc-hastings-college-of-the-law-name-change>.

<sup>76</sup> Karen Sloan, *Villanova Law Gets \$25 Million and a New Name*, NAT'L. L. J. (Jan. 20, 2016), <https://www1.villanova.edu/content/dam/villanova/law/documents/Newsroom/012016%20NLJ%20Article%20Villanova.pdf>.

<sup>77</sup> Debbie Elliott & Mary Louise Kelly, *University of Alabama Returns \$21.5 Million to Hugh Culverhouse*, NPR (Jun. 10, 2019, 5:34 P.M.), <https://www.npr.org/2019/06/10/731385461/university-of-alabama-returns-26-5-million-donation-to-hugh-culverhouse>.

<sup>78</sup> *Id.*

<sup>79</sup> Scott Jaschik, *Law School Will Lose Name of Donor Who Used Slur*, *Inside Higher Ed.* (Jul. 19, 2007), <https://www.insidehighered.com/news/2007/07/19/law-school-will-lose-name-donor-who-used-slur>.

<sup>80</sup> Tsedale M. Melaku, *Why Women and People of Color in Law Still Hear "You Don't Look Like a Lawyer"*, HARV. BUS. REV. (Aug. 7, 2019), <https://hbr.org/2019/08/why-women-and-people-of-color-in-law-still-hear-you-dont-look-like-a-lawyer>; *see also* Ellen Milligan & Todd Gillespie, *Diversity at Elite Law Firms Is So Bad Clients Are Docking Fees*, BLOOMBERG (Oct. 5, 2021, 4:00 A.M. E.D.T.),

schools in their respective communities.<sup>81</sup> A theory could be that, many alumni donors would likely be less prone to donate if journals and other extracurricular activities—outside of sports—were evenly integrated or if white students were no longer the face of their alma mater. Thus, law school administration could have a valid reason not to push for alteration of the selection process in fear of the effects on the needed funds from generous donations by alumni and firms.

## POSSIBLE SOLUTIONS

### *Thorough Vetting of Editors and Candidates for Specialty Journals*

Law schools could negate this concern by creating a more thorough process for their training process for junior editors. The process to train junior editors is similar to the law review process.<sup>82</sup> The junior editors write his or her own article, note, or comment according to the specific guidelines of the specialty journal.<sup>83</sup> The process trains students on the specialized journal area through the writing process.<sup>84</sup> In addition, some journals use citation check tests to test a potential editor's ability to identify citation errors.<sup>85</sup>

Specialty journals can range from topics regarding history, business, social science, and modern topics.<sup>86</sup> Many law students know that employers give a nod to journal participation.<sup>87</sup> As a result, some students may participate in a non-law review specialty journal without

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<https://www.bloomberg.com/news/articles/2021-10-05/big-law-has-a-diversity-problem-and-corporate-clients-are-stepping-in>.

<sup>81</sup> Sloan, *supra* note 77. See also Karen Sloan, *Personal Injury Lawyer Gets Another Namesake Law School with \$50 Mln Gift*, REUTERS (Sept. 8, 2022 1:20 P.M. C.D.T.), <https://www.reuters.com/legal/litigation/personal-injury-lawyer-gets-another-namesake-law-school-with-50-mln-gift-2022-09-08/>.

<sup>82</sup> Eli Olson, *What Do You Know About Specialty Law Reviews?: Interview with Cory Baker*, SCHOLASTICA (Aug. 19, 2015), <https://blog.scholasticahq.com/post/what-do-you-know-about-specialty-law-reviews-interview-with-cory-baker/>.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Legally Blonde and Broke, *The Right Way to Write on to The Law Journal*, A.B.A. (Aug. 16, 2018), <https://abaforlawstudents.com/2018/08/16/the-right-way-to-write-on-to-the-law-journal/>.

<sup>86</sup> Olson, *supra* note 83.

<sup>87</sup> Allison Monahan, *Joining a Law Review Journal*, LIVEABOUT (Jan. 26, 2020), <https://www.liveabout.com/joining-a-law-journal-for-your-legal-career-2164563>.

any interest in the topic but to boost a resume.<sup>88</sup> Without an interest in the topic, a journal member could lack the awareness required to select a proper student article for publication. In addition, a student may join a specialty journal to fill a void on a resume after failing to be selected for a premiere law review journal. As a result, many students end up joining journals that specialize in areas of the law that are irrelevant to the student's interest.

The issue is that junior editors are normally the candidate pool for journal executive boards after serving only a year as a junior editor.<sup>89</sup> Although a written test is a great way of gauging the reasoning skills and attention to detail of potential candidates,<sup>90</sup> there could be more steps to ensure that the candidate has a genuine interest in the area of law associated with the prospective journals. Genuine interest could be determined by the upcoming type of courses a student is registered to take in the upcoming semester to gain more knowledge. For example, a student who is applying for a race journal could be enrolled in a critical race theory class or a class similar to educate themselves on the current state of the problem.

### ***Money Talks, Bring Back Anonymity for Journal Submissions***

Another helpful solution is allowing the actual reviewers of the selection board to remain anonymous. Reviewers aren't paid for their time, but they participate out of a belief in the scientific process and to contribute to their respective fields.<sup>91</sup> Law schools, like many other professional schools, utilize an anonymous grading system to ensure that grades are fairly distributed.<sup>92</sup> Senior editors could possibly be faced with pressures to be biased towards a favorable junior editor. Many students that attend law school could be related to judges,

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<sup>88</sup> *Id.*

<sup>89</sup> Tiffany Gee Ching Lo, *What Do You Actually Do on Law Review? An Overview of Opportunities*, L. SCH. TOOLBOX (June 23, 2021), <https://lawschooltoolbox.com/what-do-you-actually-do-on-law-review-an-overview-of-opportunities/>.

<sup>90</sup> *Id.*

<sup>91</sup> Belluz & Hoffman, *supra* note 48.

<sup>92</sup> Daniel A. Keating, *Ten Myths About Law School Grading*, 76 WASH. UNIV. L. REV. (1998).  
[https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1511&context=law\\_lawreview](https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1511&context=law_lawreview)

mayors, or partners of large firms.<sup>93</sup> Thus, allowing for the selection board to remain anonymous could place all the students on equal playing fields.

### ***Affirmative Action***

Historically, affirmative action has answered the call for minority races for decades.<sup>94</sup> A system that places a quota for minority author publications would drastically increase the odds for students of color to become published. A more involved professor could provide a layer of protection against favoritism and bias. Professors are normally thoroughly vetted by law schools and require quarterly performance reviews by faculty and students. A professor's oversight is critical to promote the overall fairness of journals. A similar system could be adopted for journals to ensure that the selections remain fair. Professors normally grade students through an anonymous system to avoid the chances of bias claims.<sup>95</sup> Professors could incorporate anonymous submissions which could remove identities for students. However, anonymity would be difficult because every student is writing a paper on a different topic which requires approvals and consultations during the editing process which reveals the identity of the student.<sup>96</sup> In addition, the Supreme Court is currently reviewing the legality and effectiveness of affirmative action.<sup>97</sup> For example, California claimed affirmative action to cause more harm to minorities and utilized color blind policies to produce diversity in colleges.<sup>98</sup> Although California

<sup>93</sup> Benjamin Spencer & Charleigh Kondas, *Law Schools Must Do More to Retain First Generation Law Students*, BLOOMBERG (Feb. 15, 2022), <https://news.bloomberglaw.com/us-law-week/law-schools-must-do-more-to-retain-first-generation-students>.

<sup>94</sup> Anemona Hartocollis, *50 Years of Affirmative Action: What Went Right, and What It Got Wrong*, N.Y. TIMES (Mar. 30, 2019), <https://www.nytimes.com/2019/03/30/us/affirmative-action-50-years.html>.

<sup>95</sup> Keating, *supra* note 93.

<sup>96</sup> Vikram Amar, *First Monday Musings by Dean Vik Amar: Why 'Blind' Grading Prevalent at Law Schools Should be Exported to Other Parts of Education*, ABOVE L. (Feb. 4, 2019), <https://abovethelaw.com/2019/02/first-monday-musings-by-dean-vik-amar-why-blind-grading-prevalent-at-law-schools-should-be-exported-to-other-parts-of-education/>.

<sup>97</sup> Alex Swoyer, *Supreme Court Schedules Affirmative Action Cases for Oct. 31*, WASH. TIMES (Aug. 3, 2022), <https://www.washingtontimes.com/news/2022/aug/3/supreme-court-schedules-affirmative-action-cases-o/>.

<sup>98</sup> Elizabeth Slattery, *How Affirmative Action at Colleges Hurt Minority Students*, HERITAGE FOUND. (Dec. 2, 2015), <https://www.heritage.org/courts/commentary/how-affirmative-action-colleges->

advocates success with color blind policies, sociologists deny the effectiveness of the policies.<sup>99</sup> Sociologists, who studied the pathways and trajectories which whites became involved with anti-racism, state that moving away from color blind policies could serve as a pathway for anti-racism.<sup>100</sup> Therefore, law schools could possibly combine the ideas of anonymity and affirmative action to produce a more diverse outcome for publications.

Although the anonymous system present problems for anonymity,<sup>101</sup> affirmative action could still provide an avenue for aspiring minority authors to become published. A required quota for law schools to pledge a publication for a minority editor would have an immediate effect on the law journal.<sup>102</sup> For example, law reviews with race conscious policies saw the median citations to their volumes increase by 23 percent in the five years after adopting the race conscious policies.<sup>103</sup> In addition, a guaranteed publication for the best submitted non-white student would drastically diversify the pool of authors nationally considering the low representation of minorities in law school classrooms currently. Therefore, affirmative action could be a successful tool in providing more opportunities for non-white authors to be published scholarly.

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hurts-minority-students. (Failure rates were high for minority students after the implication of affirmative action. The failure rate decreased after California removed race considerations for college admissions).

<sup>99</sup> Adia Harvey Wingfield, *Color Blindness is Counterproductive*, ATLANTIC (Sept. 13, 2015), <https://www.theatlantic.com/politics/archive/2015/09/color-blindness-is-counterproductive/405037/>.

<sup>100</sup> *Id.*

<sup>101</sup> Amar, *supra* note 97.

<sup>102</sup> Amanda Roberts, *Law Professors Aim to Show Value of Diversity in New Study*, ABOVE L. (June 2, 2021), <https://www.abajournal.com/news/article/professors-aim-to-show-value-of-diversity-in-new-study>.

<sup>103</sup> *Id.*



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## CONCLUSION

Although the journals have created a process that has stood the test of time, the statistics reveal that journals lack minorities.<sup>104</sup> Many of the effects of not being published or selected for certain journals can become a roadblock for various careers in the legal field that severely lack diversity.<sup>105</sup> Qualified teachers could reduce the disparity by becoming more engaged in the processes that students normally delegate with minimal supervision. Even more, minority students could have additional avenues provided by their respective schools which allow for exclusive submissions to be weighed against fellow minority peers to earn a respectable publication offer rather than a handout. Other various methods of testing for editor selection could improve the outcome of students selected while preserving the integrity of the selection process. Therefore, a minority student should be a voice heard rather than a visual stain rarely viewed in scholarly law articles.

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<sup>104</sup> Kanu, *supra* note 15.

<sup>105</sup> Office, *supra* note 6.

