

FOREWORD: THE PEER REVIEW EXPERIMENT

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The *South Carolina Law Review* deserves commendation for experimenting with peer review, a practice virtually unknown—so far as I am aware—among student-edited law reviews, although student editors do sometimes seek informal advice from faculty members at their school concerning submitted manuscripts. Peer review is nearly universal not only in scholarly journals in fields other than law but also in law journals edited by faculty rather than students. Although there are now a number of such journals, scholarly publication in law, including faculty publication, continues to be dominated by student-edited journals.

There is nothing to prevent a student-edited law journal from submitting article submissions to faculty or practitioners for review in a systematic fashion, comparable to that used in journals edited by faculty, as the *Review* contemplates. The process is likely to increase not only the quality of the articles published by the journal but also the quality of the articles it rejects on the basis of the reviews, for negative reviews can help an author to revise, whether or not the journal that turned down the article would be willing to consider a revised version. Authors should therefore welcome peer review, even though it will result in occasional disappointments.

The principal negative is not the disappointment of rejection, for plenty of articles are rejected by students without benefit of faculty advice—that can be even more irritating, and there is no offsetting benefit consisting of receipt of expert criticisms that may enable improvements in the next draft. The principal negative is delay, and it is compounded by the near-universal practice of forbidding authors to submit an article to more than one journal at a time. If the average length of the peer-review process is three months (this is just a guess—and I know that for many journals in other fields it is longer), then an author whose submission is turned down by the first two journals to which he submits it, but accepted by the third, has lost nine months. The delay would be shorter, obviously, if multiple simultaneous submissions were permitted, but the result would be an enormous increase in the burden of reviewing, for there would be a great many more reviews than there would be articles submitted, rather than just twice as many (assuming two reviews per submission). For the article in my example that is accepted only after two rejections, instead of two reviews there would be six.

In fields in which all or virtually all journals are peer-reviewed, authors have no choice no matter how exasperated they are by delay in action on their submissions. They must grin and bear it. The situation in law is of course different, and that is a great challenge for the *South Carolina Law Review*, because some authors, trading off the benefits of peer review against the costs, will find the latter preponderant. So it was natural and prudent for the *Review* to

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permit its authors to submit simultaneously elsewhere, and this would not burden reviewers because the other journals to which the authors submit their articles will not be employing peer review. As explained in the editors' introduction, they encountered drawbacks and have decided to substitute a different method, involving the creation of a consortium of reviews committed to peer review, and exclusive submission of articles to the entire consortium, with each member journal making its own decision on whether to accept the article, based on a single set of reviews distributed to all the journals. This is an ingenious procedure, and it will be interesting to see whether it is successful.

The *South Carolina Law Review* has fixed a deadline for reviewers of two months, which is good, but it remains to be seen whether it can be enforced. What would help to enforce it would be paying reviewers, conditional on their meeting the deadline. Even nominal payments, such as \$75 or \$100, would increase compliance significantly.

Law journals that adopt peer reviewing can be expected to experience a boost in quality, prestige, and possibly even circulation. True, they will lose some good articles to the impatience of the authors. But I think they will gain more good articles because of the career advantages to authors of publishing in a peer-reviewed journal. Modern law schools, in making faculty hiring decisions, place unprecedented weight on scholarly publication, and are bound to weight an article more if it has undergone peer review—and this in addition to the greater weight that it will earn as a result of criticisms and suggestions by the peer reviewers. For an article published in a student journal that uses peer review has been evaluated by academics as well as by students, and that evaluation (presumed positive) will carry greater weight with other academics.

**PEER REVIEW AS AN AID TO ARTICLE SELECTION IN STUDENT-EDITED
LEGAL JOURNALS**

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I. INTRODUCTION

The *South Carolina Law Review* is pleased to present Volume 60, Issue 4—the first Issue in our journal's history comprised entirely of peer reviewed legal scholarship. We are not the first student-edited legal journal to experiment with some form of peer review,¹ but to our knowledge we are the only general

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1. There are many non-student-edited, peer reviewed legal journals. For a Nov. 30, 2006, list compiled by LexisNexis, see <http://www.lexisnexis.com/lawschool/prodev/lawreview/nonStudent200611.pdf>. The following two journals have, apparently, also employed a form of peer review similar to the type instituted by the *South Carolina Law Review*: the *American Indian Law Review* at the University of Oklahoma, see <http://adams.law.ou.edu/ailr/peerreview.cfm> (last accessed March 12, 2009) ("Beginning with the Spring 2008 Volume, articles submitted to the

interest, flagship law review instituting what we consider to be a rigorous peer review system, displaying most hallmarks of peer review publishing in academia, including double-blind review by external experts.

We embarked on our peer review experiment because we believe that article selection through peer review might make more sense than the traditional article selection process, in which student editors rely almost exclusively on their own judgment to decide which manuscripts are most worthy of publication.² The problem with such reliance is not that students are less intelligent than judges, professors, and practitioners. The problem is that they are less experienced and less knowledgeable. It is not reasonable to expect students, no matter how smart, to discriminate accurately among submissions for their scholarly merit, timeliness, and contribution to their respective fields.

American Indian Law Review will be subject to an independent, double-blind peer-review process.”), and the *Pace Environmental Law Review*, see http://www.pace.edu/page.cfm?doc_id=23222 (last accessed March 12, 2009) (“This Law Review provides peer review of legal research alike by students, faculty or members of the bar and bench.”). The *Berkeley Journal of Criminal Law*, see <http://www.law.berkeley.edu/students/jrnlorgs/journals/bjcl/> (last accessed March 12, 2009) (“BJCL is one of the first legal journals to have instituted a Faculty Advisory Committee, which reviews articles we accept for publication. If you publish with our journal, you will have the benefit of peer review of your scholarship by leading criminal law faculty at Boalt Hall.”), and the *Harvard Law Review*, see <http://www.harvardlawreview.org/manuscript.shtml#review> (last accessed March 12, 2009) (“Our selection process has many steps: at least two editors review every submission, and 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.”) (emphasis in original), have also employed a type of peer review, though not of the same sort as instituted by the *South Carolina Law Review*. The two latter journals use their own law school’s faculty to review manuscripts. We drew our peer reviewers from the entire legal community. More important, all manuscripts submitted to our peer review program were sent to external experts for review; the *Harvard Law Review* does not send all submitted manuscripts to faculty for review. In addition, the *Stanford Law Review* has recently announced its intention to begin publishing only peer reviewed articles. See <http://leiterlawschool.typepad.com/leiter/2009/03/which-are-the-highest-quality-legal-journals.html> (last accessed March 31, 2009) (discussing the *Stanford Law Review*’s effort in the comments section of a post regarding legal journal ranking); <http://prawfsblawg.blogs.com/prawfsblawg/2009/03/faculty-influence-on-article-selection-at-the-law-reviews.html> (last accessed March 31, 2009) (discussing the *Stanford Law Review*’s effort as well as “faculty influence on article selection” more generally). Notably, the *Stanford Law Review* has also joined our multiple-journal peer review initiative for next year, “Prism,” which we announce and describe in Part V of this Essay.

2. For helpful descriptions and analyses of the traditional method, see generally 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) (reporting findings from a study of student editors at all tiers of law schools regarding their personal commentary about the legal journal article selection process); Richard A. Posner, *Against the Law Reviews*, LEGAL AFF., Dec. 2004, at 57, 57 (discussing the “strange, even incomprehensible” system of article selection in student-edited legal journals and identifying problems in the traditional process).

At least it is not reasonable to expect students to do so based solely on their own legal training and experience. Academics and practitioners are much better equipped to judge submissions. Not only do academics and practitioners have more general legal experience than students, the former also know much more about specific areas of law, such as Section 1983 litigation or ERISA compliance.

Accordingly, we believe that an article selection process based on peer review empowers student editors to make better publication decisions. In a peer review system, editors ask subject matter experts to evaluate manuscripts for scholarly merit. These subject matter experts are the author's "peers" in the sense that they, like the author, put themselves forth as having special knowledge, experience, or skill relating to a manuscript's subject matter. Often peer evaluation is "double blind," meaning that the reviewers do not know the author's identity and the author is not told who evaluated her manuscript. Editors then use the completed evaluations to help decide which manuscripts are most worthy of publication.³ Editors do not thereby surrender all decision making power to the reviewers. Rather, editors acquire an additional (and extremely valuable) tool for making publication decisions. Thus, freed from the unreasonable aspects of their traditional "gatekeeping" function, student editors can instead focus on judgments better suited to their level of experience, namely, vetting for writing quality and proofreading for grammatical, typographical, factual, and citation errors.

To aid the legal community's continuing evaluation of the role of peer review in legal scholarship publishing, we here detail not only our own motivations and vision, but also our experience with peer review in this Volume.

Part II of this Essay briefly discusses some shortcomings of the traditional article selection process, from the perspective of student editors. Part III then enumerates a few key advantages of peer review and argues that peer review does not detract from student editors' importance or practical education in any way. Peer review instead equips student editors to do their jobs better while enhancing the educational value of the law review experience. Part IV describes the *South Carolina Law Review's* peer review experience culminating in this Issue. Part V casts a vision for the next step for peer review in student-edited legal journals. Finally, Part VI concludes.

3. We recognize that "worthy of publication" is a loaded term. "Worthy" in what way? Novelty, insight, timeliness, utility to judges and practitioners, quality of analysis, and even writing style are all, among others, possible sources of a manuscript's "worth." And different journals may legitimately value one metric of worth over another, depending on the particular journals' missions and goals. Despite the term's ambiguity, however, peer reviewers' opinions of worth are likely to aid students responsible for filling journal pages.

II. SHORTCOMINGS OF THE TRADITIONAL ARTICLE SELECTION PROCESS

The traditional article selection process suffers from at least four major shortcomings. First, as discussed above, students are not well equipped to decide which articles deserve to be published in legal journals' relatively limited pages. Student editors selecting articles for publication have, at most, two years of legal education under their belts. One can hardly imagine, for example, that a student just now learning about Sarbanes-Oxley is the best judge of whether an article on that topic is technically accurate or makes a substantive contribution to the literature. Again, the problem is not a lack of intelligence, but rather of experience. Students are full of insights and ideas, and they are trained to argue, analyze, and distinguish. Unfortunately, however, students often do not know whether their brilliant arguments have already been made or refuted by others—scholars, judges, and legislators alike. Editors' background research and "preemption checks" may help on this score, but due to the time constraints discussed below, they may not. Therefore, it is hardly radical to suggest that the best articles⁴ are not necessarily the ones that get published. As a result, being published is, theoretically, less meaningful for authors. If the system does a relatively poor job selecting for merit, then being selected by the system is a less reliable marker of merit. Likewise, student editors' roles as the gatekeepers of legal scholarship is also less meaningful—one is hardly considered a good gatekeeper if one grants access randomly or irrationally.

Second, the traditional process may encourage authors to be lazy. Insofar as authors believe that students select articles largely on the basis of such metrics as topic, novelty, and the author's resume,⁵ authors may devote less attention to matters such as grammar, punctuation, accurate quotation and citation, and even basic proofreading for coherence and typos. Authors' awareness that their manuscripts will receive a significant "make-over" before their first public appearance reinforces any propensity to submit rough drafts rather than finished work products. Admittedly, student editors should above all concentrate on such details as grammar and proofreading. But they should not be viewed as unpaid research assistants or unattributed co-authors.⁶

Third, the traditional article selection process is too fast. We recognize that many members of the legal community, authors in particular, may disagree with

4. "Best," another value-laden term, refers here to an article's overall contribution to understanding and development of the law relative to other articles. *See also supra* note 3.

5. Christensen & Oseid, *supra* note 2, at 201.

6. Indeed, such an arrangement would arguably constitute an abuse of power. Authors know full well that journals need authors at least as much as authors need journals. At most legal journals the bargaining scales may in fact be tipped in favor of authors.

this statement. Nevertheless, we suggest that faster publication decisions are not necessarily better decisions, especially when made by student editors already hampered by inexperience. Consider the following experience of a typical student editorial board relying largely on an electronic submission vehicle for manuscripts.⁷ Manuscript submissions generally come in waves, one lasting from March to May and another from July to September. During these periods, hundreds of submissions flood our inbox.⁸ In addition to initial submissions, we receive many “expedite requests,” in which authors indicate that they have received publication offers from other journals and thus request that we quickly complete our own reviews before their outstanding offers expire.⁹ As a result, student editors have very little time to make informed decisions, unless they are willing to lose manuscripts already accepted elsewhere. Therefore, it is not surprising that editors often eliminate manuscripts from consideration based on relatively arbitrary criteria, such as author credentials, title, abstract or introduction, and the identity of journals that have already made offers.¹⁰ And sometimes students realize their folly only after committing to publish a manuscript, discovering during editing that, to put it mildly, the manuscript was not quite what they expected after all.

7. See, e.g., ExpressO, <http://law.bepress.com/expresso> (“ExpressO makes law review submissions fast and easy. Have your manuscript delivered to your choice of 550+ law school reviews, including all of the top 100, simply by uploading the electronic file to our site. We deliver, and you avoid the hassles and expenses of photocopying, assembling, and mailing.”) (last visited Mar. 15, 2009).

8. Our Senior Articles Editor, Walt Cartin, estimated that he sifted through approximately 25–30 emails per day during each submission wave. We are not unique in that regard. See, e.g. Christensen & Oseid, *supra* note 2, at 203–04 (finding that several editors receive as many as 1,500 to 2,000 articles per year).

9. Notably, authors can use the expedite request as a leveraging device. For example, suppose an author submits her manuscript to the top 100 legal journals (as ranked by ExpressO). After receiving her first offer (e.g., from the journal ranked 75th), the author can email every higher-ranked journal (1–74) and request an expedited review, to be completed before the first offer expires (usually within one or two weeks). If a higher-ranked journal (e.g., the journal ranked 50th) indeed expedites review and then makes an offer, the author can again request expedited review from all of the remaining higher-ranked journals (1–49). This process can continue until the author receives an offer from the highest ranked journal possible. We are not arguing here that authors are morally blameworthy for gaming the system in this way. But we do want to highlight the effect of an expedite request on student editor decision making. It can force student editors into a rushed “do or die” mode—either move the manuscript to the top of the “review list” and evaluate it quickly, or risk losing the manuscript to journal 75 or 50. The sense of urgency increases with each subsequent expedite request, perhaps convincing student editors that the “hot” manuscript must be worth getting worked up about. Thus, student editors may feel obligated or at least justified in making quick decisions based on factors, such as the number of expedite requests, that arguably have little bearing on scholarly merit.

10. See Christensen & Oseid, *supra* note 2, at 188–201.

Fourth, the traditional process tends to suppress new voices in legal scholarship. To the extent that students are aware of the shortcomings discussed above, they often fall back on one seemingly failsafe approach to selecting articles—relying on author credentials.¹¹ Author credentials include past publications and current institutional affiliation, where prolific writers teaching at top law schools are favored. If these “credibility indicators” do not inspire a student editor with confidence, the editor may very well reject the manuscript on that basis alone.¹² As a result, the scholarship of practitioners, judges, judicial clerks, and some faculty (namely, non-law, adjunct, and junior faculty), not to mention foreigners, receives less consideration than it may deserve, especially when the manuscript topic is unfamiliar to student editors. This institutional bias is unfair and dangerously narrow-minded. One can hardly imagine that the only people capable of writing intelligent, insightful, and ground-breaking legal scholarship teach at the top 100 law schools, much less the top 25.

We believe the foregoing shortcomings of the traditional article selection process may be fatal flaws: the traditional process may not select the best articles. There is no perfect article selection process, of course. But should the legal community continue to countenance a system of scholarship that encourages laziness and hasty decision making and suppresses new voices? We think it’s time to try something different, something that might work better.

III. ADVANTAGES OF PEER REVIEW FOR STUDENT-EDITED LEGAL JOURNALS

The fundamental advantage, and goal, of peer review is this: publishing better articles. Peer review achieves this goal in two distinct ways. First, better articles are more likely to receive positive evaluations from peer reviewers, particularly when review is “double blind.” As a result, better articles are more likely to be accepted for publication. Second, the peer review process itself improves article quality, for both accepted and rejected manuscripts. Our experience supports both of these propositions.¹³

11. *See id.* at 181–85 (summarizing “four empirical studies exploring how law review editors select articles for publication” and noting the heavy emphasis that editors place on authors’ credentials).

12. At least one of the prominent legal journal “ranking systems” ranks journals solely on the credentials of their published authors. *See* Robert M. Jarvis & Phyllis Coleman, *Ranking Law Reviews by Author Prominence—Ten Years Later*, 99 *LAW LIBR. J.* 573 (2007). Insofar as student editors know that journal ranking depends largely on author credentials, they may emphasize credentials as a publishing criterion not only because it is easy, but also because it furthers journal prestige.

13. *See infra* Part IV.

Peer review also might improve articles in another way, by encouraging better writing and more complete research from authors initially. An author is surely more likely to write and research carefully when the author knows a peer, rather than an anonymous student, will read the first draft. In any event, insofar as peer review selects and produces better articles for publication, it enhances (or *ought to* enhance) the prestige and meaningfulness of publication for authors (and tenure committees).

We commonly heard during our experiment that the above advantages of peer review are outweighed by a single perceived disadvantage in the context of student-edited legal journals. Peer review, it is sometimes argued, takes power and thus educational experience away from student editors. This shortcoming is more imagined than real. Student editors do not surrender their decision making power to the reviewers, nor do they lose educational experience that they may have gained. Rather, editors acquire an additional tool for making publication decisions, as well as the training needed to use the tool effectively.

As outlined above in principle and proven below in practice, student editors employing peer review still make final publication decisions. Students are not bound by the reviewers' evaluations, though conscientious practitioners of peer review will accord them great weight. Indeed, a successful peer review journal sometimes *must* exercise editorial discretion to reject manuscripts endorsed by the expert reviewers. This unsavory reality flows from an undeniable fact: journals have finite resources.¹⁴ All worthy manuscripts should ideally be published, but resource constraints do not permit this outcome, especially when many manuscripts are submitted.¹⁵

Not only do student editors retain their inherent powers of discretion in a peer review system, they also learn *more* about legal scholarship and the legal profession. Serving as the mediator between peer reviewers and authors

14. The nature of decision making at student-edited legal journals exacerbates the "finite resources" problem. Not only do student editors lack subject matter expertise, but they also completely "turn over" their editorial boards every year. Thus, any particular editorial board does not have the indefinite time and publishing space needed to work with all manuscripts and authors whose articles could otherwise eventually be accepted and published. Nor do all student-edited legal journals permit a serving editorial board's decisions to "bind" the subsequent Volume's board. Peer review in other disciplines, such as the physical sciences, or in other legal contexts does not suffer from this shortcoming because editors are either permanent employees or else serve for multiple years at a time.

15. For example, we at the *South Carolina Law Review* determined that for Volume 60 our budgetary and human resources permitted us to publish no more than three peer reviewed articles in this Volume's special peer review Issue (which is a fifth Issue for us; we normally publish only four Issues per Volume). Therefore, we were able to accept only the "top three" manuscripts receiving positive reviews. We were forced to reject the "fourth best" manuscript submitted—although that manuscript received very positive reviews, three other manuscripts received even more positive reviews.

provides a better educational experience than that provided by the traditional article selection process for at least three reasons. First, student editors in a peer review system have the opportunity to see not only what good *scholarship* looks like, but also what rigorous and thoughtful scholarly *criticism* looks like. Just as judicial clerks learn how to write better briefs as a result of their experience inside the courthouse, we believe student editors in a peer review system will learn how to be better legal scholars. Second, peer review requires student editors to *use* scholarly criticism to make publication decisions. Our experience has taught us that proper use of a peer evaluation entails more than entering numbers in a spreadsheet. Rather, student editors must learn to read each review in light of the manuscript *and* one or more other reviews of that same manuscript, seeking to get at the root of the manuscript's argument, its strengths, and its weaknesses. Student editors must further "rank" many reviewed manuscripts vying for the same space in journals' pages, and the ranking is much more nuanced than a glance at the authors' resumes. Third, article selection through peer review requires student editors to undertake extensive, detailed, and iterative correspondence with authors and reviewers, which sharpens written and oral communication skills and provides sometimes surprising insight into the legal profession. In contrast to peer review, the traditional article selection process does not provide the first two educational experiences at all and probably provides a less meaningful professional communication experience.

IV. THE *SOUTH CAROLINA LAW REVIEW*'S PEER REVIEW EXPERIENCE

For the reasons discussed above, we believe that article selection through peer review should probably be the norm for all student-edited legal journals. Indeed, we genuinely hope that our experiment will move legal scholarship publishing in that direction, whether the *South Carolina Law Review* directly benefits or not. Therefore, we have decided to disclose as many details of our peer review experience as possible. The devil is in the details, as the saying goes. Thus, we are laying our details bare for two reasons: (1) so that others can fully understand and evaluate our experiment and (2) to help others who may wish to implement peer review at their journals. We recognize that our experiment was imperfect in both conception and execution and expect that others will learn at least as much from our mistakes as from our successes. We have probably made errors in judgment that have unfairly hampered our authors, ourselves, and the legal community. While we genuinely regret such mistakes, we firmly believe that ultimately establishing peer review as the norm for student-edited legal journals is well worth the inevitable bumps and bruises.

Our first strategic decisions related to marketing. We knew that our experiment would fail if too few authors submitted manuscripts or too few experts volunteered to review them. Therefore, we sought inexpensive but effective means to publicize our effort. Beginning in the summer of 2008, we

asked prominent law-related bloggers to help us get the word out. Some bloggers gladly complied, while others did not.¹⁶ We also advertised through our own website,¹⁷ emails to faculty, emails to authors who submitted manuscripts to us via ExpressO after our non-peer review Issues were full, and by word of mouth. We described our Peer Review Pilot Program¹⁸ process as follows:¹⁹

(1) Authors will submit manuscripts (i.e., finished drafts ready for publication, not working papers or incomplete drafts), addressing any area of law, to the Pilot Program specifically by emailing a cover letter and copy of the author's manuscript to sclawreview@gmail.com (see below for more details). Deadline for submissions to the Pilot Program is October 1, 2008.

(2) We will send all received manuscripts to volunteer peer reviewers for peer review. Each manuscript will be sent to at least one but more typically two anonymous peer reviewers, where each reviewer will have expertise in the area of law addressed by the manuscript. Not only will the author not know the identity of the reviewers, but also the identity of the author will not be disclosed to the reviewers,²⁰ for the sake of focusing the evaluation on substantive merit rather than other factors. Peer reviewers will consist of legal practitioners, scholars, and judges. In the event that the volume of submissions to the Pilot Program makes peer review of all manuscripts logistically impossible or impracticable, the *South Carolina Law Review* editorial staff reserves the right to make an initial determination of which manuscripts

16. For example, two prominent bloggers from opposite sides of the political spectrum who kindly helped us were Eugene Volokh of the Volokh Conspiracy, *see* http://www.volokh.com/archives/archive_2008_07_27-2008_08_02.shtml#1217262904, and Brian Leiter of Brian Leiter's Law School Reports, *see* <http://leiterlawschool.typepad.com/leiter/2008/07/south-carolina.html>.

17. *See* South Carolina Law Review, Peer Review Pilot Program Launched, <http://sclawreview.org/news/peerreview.php> (last visited Mar. 15, 2009). *See also* Appendix C.

18. We advertised our peer review experiment in Volume 60 as a "Peer Review Pilot Program."

19. This description was posted on our website, *see* South Carolina Law Review, Peer Review Pilot Program, <http://sclawreview.org/peerreview/index.php> (last visited Mar. 15, 2009). We also posted a call for authors and reviewers and a link to an anonymous web-based survey regarding the role of peer review in legal publishing. The full content of our peer review webpage is reproduced in Appendix C.

20. Before sending manuscripts to reviewers (electronically), we removed all author-identifying information, including metadata and any citations to the author's own work when such citations indicated that the author of the manuscript under review was the same as the author of the cited reference.

will or will not be sent out for peer review. This initial screening by *South Carolina Law Review's* student editors is a last resort and will be avoided if at all possible.

(3) Peer reviewers will provide feedback and recommendations to the editorial staff no later than December 1, 2008. Each reviewer will independently review the manuscript, paying special attention to the following factors: insight, timeliness, novelty, significance to the field, quality of analysis, scope of analysis, and appropriateness for inclusion in a general law review like the *South Carolina Law Review*. Each reviewer may also provide feedback on additional factors if he or she chooses.

(4) Based on careful consideration of the peer reviewers' recommendations and the needs of the journal, the *South Carolina Law Review* editorial staff will choose whether or not to publish each manuscript. We may elect to reject a manuscript outright, accept a manuscript outright, or request the author to revise his or her manuscript in light of reviewer comments, with acceptance conditional on such revision or else the author's convincing us that the revisions are not required.

(5) Accepted manuscripts will then enter the ordinary student-editing process, in which the *South Carolina Law Review's* staff will edit manuscripts for grammar, style, citation format, and accuracy of quotations and facts. Each peer reviewed manuscript published in the *South Carolina Law Review* will be prominently marked as a peer reviewed piece.

Notably, this manuscript submission, evaluation, and publication process did not require authors to submit their manuscripts exclusively to our peer review program. We initially wanted to require exclusive submission but ultimately decided not to create an additional barrier for authors who may not be familiar or comfortable with peer review. Again, we knew that our experiment would fail if too few authors submitted manuscripts. We feared that many authors would hesitate to submit exclusively to a nascent program initiated by a solitary journal.²¹

21. We also wondered whether our "ranking" as a very good but not "elite" journal would militate against authors' willingness to submit exclusively to us. Of course there is no way to answer that question now. But we suspect that the key issue is not prestige but *number*. Peer review takes longer than the traditional article selection process to produce a publication decision.

As a result of our initial marketing campaign, 29 peer reviewers volunteered to join our effort, and authors submitted 21 manuscripts. Given our experimental circumstances, we were pleasantly surprised by the number of manuscripts submitted. We had hoped to attract a few more volunteer reviewers, but were not particularly surprised or disappointed by the number who did come forward. Subsequent events proved that many more members of the legal community are willing to serve as reviewers. Because manuscript topics did not always match up with the subject matter expertise of our original volunteer reviewers, we “cold called” on other external experts as needed, with excellent results. Over half of the experts called upon in this manner accepted our invitation to serve as a peer reviewer. As a result, we ended with 51 total reviewers. These reviewers came to us from academia, law practice, and the judiciary. Our 37 academic reviewers serve on the faculties of 34 law schools spanning the entire “ranking” spectrum, including 5 foreign law schools. Our 13 practicing reviewers work in both small and very large firms, as well as non-firm settings. Our lone reviewer from the bench sits on a state court.

We ultimately sent 17 manuscripts to 30 reviewers for evaluation. Of the four remaining submissions, three were inappropriate for our experiment because they were not traditional law review articles. One was a book review, one was an inspirational law-related essay, and one was a model contracts exam. We felt that those types of manuscripts, while valuable to the legal community, were not the kinds best vetted by peer review. The fourth unreviewed manuscript was withdrawn by its author almost immediately after submission due to acceptance of another publication offer elsewhere. We asked the 30 reviewers to review the manuscripts by completing a Peer Reviewer Questionnaire in accordance with a set of Peer Reviewer Guidelines. Both of these documents are reproduced below in Appendix A and Appendix B, respectively.

Five of the 17 manuscripts were withdrawn by their authors due to acceptance of other publication offers made at some point after we transmitted the manuscripts to our reviewers but before we reached a final publication decision. In two of those five cases, no reviewer had yet completed an evaluation. We of course told those reviewers they need not waste their time completing or beginning their evaluations. In each of the other three cases, however, one reviewer had already completed his evaluation at the time of withdrawal, but the other had not. In all three cases, the completed evaluations

Authors may not wish to gamble on acceptance even at a very prestigious journal since rejection is statistically probable and results in significant time loss. In Part V *infra* we propose a solution to this problem, relying on simultaneous exclusive submission to many journals. If “simultaneous exclusive submission” sounds like an oxymoron, please read Part V, which explains how it is not.

were not highly favorable, which contributed to the authors' decisions to withdraw their manuscripts in favor of other offers.

The remaining 12 manuscripts underwent the entire peer review process. Of the 23 reviewers who agreed to review these 12 manuscripts, 21 timely did so. Most manuscripts were ultimately reviewed by, not just sent to, two reviewers. One manuscript was reviewed by three reviewers, and four manuscripts were reviewed by only one reviewer. Two of the manuscripts in the last category were each sent to two reviewers who agreed to evaluate them, but in each case one reviewer never fulfilled his promise despite our best efforts to encourage timely review. The other two manuscripts that were reviewed by only one reviewer were sent to only one reviewer. We made many attempts to find a second reviewer willing and able to evaluate these manuscripts, but without success.

In principle, we preferred for all manuscripts to be evaluated by at least two reviewers. The problem with reliance on single evaluations is not that such evaluations are inherently untrustworthy. Rather, the problem is that a single evaluation represents only one opinion. We believe peer review selects for merit best when more than one peer's opinion is available to the editors. Our experience bore witness to this common sense belief. For example, no two reviewers ever agreed completely about a manuscript's strengths and weaknesses. Differences between evaluations were sometimes just as enlightening as the evaluations themselves. More striking, one of our accepted manuscripts would probably have been rejected had we relied on only one evaluation. The first evaluation of that manuscript was negative. The second and third evaluations were highly positive. During an extensive dialogue, we and the manuscript's author agreed that the first evaluation had highlighted a significant weakness of the manuscript. We therefore accepted the manuscript on the condition that the author revise the manuscript to address the first reviewer's concerns. The author did so to our satisfaction. While we are pleased with the outcome in the case of this particular manuscript, we recognize that our process, through no fault of any authors, accorded less opportunity for positive outcomes to other manuscripts through the vagaries of reviewer availability and diligence. Thus we must acknowledge that we may not have given an equal chance to the four manuscripts evaluated by only one reviewer.

We want to make clear that we were extremely pleased with the reviewers as a group. They were exceedingly kind to help us at all, and the vast majority fulfilled their promises with remarkable integrity, insight, and dispatch. In general, the reviews were extremely thorough, thoughtful, and helpful. The reviewers caught errors and highlighted shortcomings that most student editors would never have noticed or even known to look for, even if they devoted hours to the evaluation. For example, one reviewer pointed out that the manuscript had failed to fully address a significant case in the field. Similarly, a reviewer of a different manuscript noted that several previous articles had made essentially the same argument as the reviewed manuscript. Such comments were as helpful

to the authors as to us. Many authors told us that the evaluations, even highly negative ones, helped them substantially improve their manuscripts.

Based on the 21 evaluations of the final 12 manuscripts, we extended publication offers to three sets of authors. As noted above, our resource limitations did not allow us to publish more than three manuscripts in our special peer review Issue.²² Two of the three publication offers were made on the condition that the authors address concerns raised by the reviewers. Both authors did so to our satisfaction, acknowledging the importance of the concerns raised. The third offer²³ was made unconditionally because both reviewers of that manuscript recommended publication without any significant changes, a unique accomplishment during our experiment. We are pleased to present all three articles to the legal community: *The Problem with Pure Economic Loss*;²⁴ *The Supreme Court's Common Law Approach to Excessive Punitive Damage Awards: A Guide for the Development of State Law*;²⁵ and *A Pro-Employee Supreme Court?: The Retaliation Decisions*.²⁶

Based on our experience, we have drawn two conclusions relevant to the future of peer review in student-edited legal journals. First, peer review programs should require exclusive submission. Of our 18 bona fide submissions, six (an alarming 33%) were prematurely withdrawn due to publication offers elsewhere. Five of those withdrawals occurred after we had already begun the peer review process, and three occurred after an evaluation was returned by a peer reviewer. It is not hard to see what these numbers would mean on a larger scale, assuming the numbers reflect typical author behavior and reviewer alacrity. If 100 manuscripts were submitted under similar conditions, we would expect 33 manuscripts to be withdrawn prematurely, including 17 after the peer review process was at least half complete. We doubt that the legal community, especially in its capacity as peer reviewer, would long tolerate such wasted efforts. In Part V, we recommend a next step for peer review that addresses this major concern.

22. See *supra* note 15 and accompanying text.

23. Please note that the use of the ordinal here is not meant to identify which of this Issue's three articles received an unconditional offer of publication. We have done our best in this Essay to disclose nothing that could be linked to a particular manuscript submission or author, except, unavoidably, by the manuscript's authors and reviewers themselves, who of course know more than the general public.

24. Peter Benson, *The Problem with Pure Economic Loss*, 60 S.C. L. REV. 823 (2009).

25. Victor E. Schwartz, Cary Silverman, & Christopher E. Appel, *The Supreme Court's Common Law Approach to Excessive Punitive Damage Awards: A Guide for the Development of State Law*, 60 S.C. L. REV. 881 (2009).

26. Michael J. Zimmer, *A Pro-Employee Supreme Court?: The Retaliation Decisions*, 60 S.C. L. REV. 917 (2009). As far as we know, author Michael J. Zimmer is not related to Volume 60's Peer Review Editor, John P. Zimmer. In any event, the two know each other only through this Issue.

Second, the legal profession is willing to commit time and energy reviewing legal scholarship for publication. We were very happy overall with reviewers' willingness to serve at all and to fulfill their commitments. But there is room for improvement in both initial willingness and follow-through. We expect that such improvement will occur if serving as a peer reviewer becomes part of what it means to be a legal scholar. And such a definition of "legal scholar" makes sense, considering that most peer reviewers are also authors themselves. It is not unreasonable to expect an author who writes one manuscript per year to also evaluate one manuscript per year, particularly when the evaluated manuscript relates to the reviewer's own field of scholarship. We hope that our experiment will begin to effect that mental shift.

Armed with knowledge of our process and its result (this Issue), we encourage any interested readers to take our short, anonymous, web-based survey regarding the role of peer review in legal publishing. We designed the survey to gauge current opinion about the value and appropriate use of peer review in the legal community. The survey, which we first posted in the summer of 2008, is reproduced below in Appendix D. As of March 1, 2009, we had received only 43 responses. We would like to collect a larger sample before reporting results. Please consider completing our short survey online whether you approve of our peer review experiment or not. You may access it through the *South Carolina Law Review* website.²⁷

V. THE NEXT STEP FOR PEER REVIEW: THE PEER-REVIEWED SCHOLARSHIP MARKETPLACE ("PRSM," OR "PRISM")²⁸

As a logical next step for peer review in student-edited legal journals, we here announce and describe a new initiative: the Peer Reviewed Scholarship Marketplace ("PRSM" or "Prism"). Prism seeks to achieve two goals. First, Prism will hopefully make exclusive submission realistic and reasonable from authors' perspectives. Second, we hope Prism will provide a painless and risk-free way for other student-edited legal journals to experiment with article selection through peer review.

A description of Prism and its peer review process perhaps explains our optimism and casts our vision best. Prism is a vehicle for *simultaneous exclusive submission to many journals*. An author who chooses to submit a

27. See *South Carolina Law Review*, <http://sclawreview.org/>.

28. We are currently working on establishing a website and organizing a non-profit corporation for "Prism." For those reasons and others, the name presented here, the "Peer Reviewed Scholarship Marketplace," may not be the final name. In any event, we will eventually include a link to Prism on the *South Carolina Law Review* website, <http://sclawreview.org/peerreview/index.php>, so that interested parties may easily find more information about Prism.

manuscript to Prism's peer review program would be required to submit exclusively to Prism, but the submission would be effective for all Prism member journals, which would all rely on the same set of peer evaluations. The *South Carolina Law Review* will administer the peer review process on behalf of all member journals, which means the *South Carolina Law Review* will do all of the work on the journals' end, except, of course, choosing which manuscripts a particular member journal wishes to accept for publication. Prism's peer review process consists of the following steps:

- (1) an author submits her manuscript to Prism;
- (2) on behalf of Prism, the *South Carolina Law Review* arranges for double-blind peer review of the manuscript, similar to this Volume's inaugural experiment;²⁹
- (3) on behalf of Prism, the *South Carolina Law Review* collects evaluations from reviewers, like this Volume's experiment;
- (4) the *South Carolina Law Review* provides the evaluations and the manuscript to all Prism member journals simultaneously;
- (5) any or all member journals have an opportunity to make a publication offer, which may include any conditions (e.g., the offer may be contingent upon the author's addressing concerns raised by the reviewers) or deadlines for acceptance that the particular member journal deems fit; member journals not interested in the manuscript need take no action whatsoever;
- (6) the author accepts or declines any or all publication offers;
- (7) if the manuscript is ultimately published in a Prism member journal, that journal somehow acknowledges, perhaps in a footnote, that the article was obtained through Prism's peer review process—

29. Prism will likely use a Peer Reviewer Questionnaire very similar to the one we used in this Volume, which is reproduced below in Appendix A. This Questionnaire was both helpful and easy to use. But we intend to combine Questions 3 and 5 into a single Question. Most reviewers treated them as duplicative, and rightly so. We should not have included both on the Questionnaire and will not do so again.

member journals have no other obligation or connection to Prism for any other purpose whatsoever.³⁰

This process offers several advantages for authors, member journals, and the legal community. Most importantly, simultaneous exclusive submission to many journals solves the community-wide resource problem identified above³¹ without placing an undue risk on authors' shoulders. Authors are required to submit exclusively, but not to only one journal—they get n “bites at the apple,” so to speak, where n equals the number of Prism member journals. And we believe that n will equal *dozens* of journals, or more, because student-edited legal journals have *nothing to lose* by joining Prism. Because the *South Carolina Law Review* will do all of the administrative work,³² other member journals need not expend any additional resources. Instead, they merely receive periodic emails or packages in the mail containing a manuscript and its double-blind evaluations, just like they receive all other submissions, minus the peer reviews. The member journals then evaluate Prism manuscripts as they would any other manuscript, but further aided by the completed peer reviews. If a member journal likes a manuscript, it may extend an offer. If not, then not. Either way, the member journal loses nothing but gains an entirely new stream of manuscripts to choose from, this time already expertly vetted by the authors' peers. Therefore, we expect that many journals will join Prism. Indeed, the only compelling reason for a journal *not to join* Prism (and all journals are welcome) is animus toward peer review. And, the more journals that join Prism, the less risk authors bear by agreeing to submit exclusively. For example, even if only fifty journals join Prism in its first year, authors would still have fifty

30. But if member journals are willing, we would be delighted for them to help us recruit volunteer peer reviewers, perhaps from their own faculty, who could be called upon to review a manuscript for Prism if needed. We would hope to have at least 500 volunteer reviewers available and see no reason why we cannot achieve a ten-fold improvement over this Volume's experiment by a single journal.

31. See *supra* note 14 and accompanying text.

32. Some may view the *South Carolina Law Review's* taking on all administrative burdens as a ruse to gain power and control over the peer review process and other member journals. That is not our motivation. Our rationale for doing all the work is different: we believe, perhaps wrongly, that peer review will not take root in student-edited legal journals on a large scale unless the barrier to entry is very low for both authors and journals. Therefore, the *South Carolina Law Review* has attempted to remove as many obstacles as possible. The commitment of scarce journal resources to a new and somewhat radical undertaking is one such obstacle. We feared that few journals would wish to join Prism if membership required resource commitment, rather than a simple “okay, let's try it” response. That said, we would be delighted to share administrative responsibility and control with any member journal interested in taking a more active role. Indeed, the *Stanford Law Review* has already offered to help carry the load, and we hope that many other member journals will share responsibility for Prism in coming years, if not immediately, perhaps through a multiple-journal executive committee or a rotating “administrator journal” position.

opportunities to be published. Fifty may be a relatively small or a relatively large number of submissions, depending on the author's habits; but fifty is entirely different than one.

Another key feature of the Prism process described above is the absence of a manuscript submission deadline. Our peer review experiment in this Volume included both a submission deadline (October 1, 2008) and a peer evaluation deadline (December 1, 2008) because we believed it was important to obtain a discrete set of manuscripts which could be reviewed more or less simultaneously during a timeframe of our choosing. Given the uncertainty of receiving any manuscripts at all, we "overlaid" our peer review experiment onto our normal publication schedule, hoping to decide along the way whether we would publish an entire (extra) Issue of peer reviewed scholarship (which is of course what we decided by publishing this Issue) or instead insert one or two peer reviewed articles into our four normal Issues.

There is no need to manage Prism the same way. In fact, it would make little sense. Prism will be composed of many journals, all with different publication cycles, needs, and preferences. Creating a single window in which all member journals would receive a bundle of peer reviewed manuscripts from Prism would probably mean that some member journals would profit very little from the cornucopia of manuscripts simply because the timing was not right. But all member journals could profit from an additional, continuous stream of submissions. By accepting submissions at any time, we expect that Prism will truly supplement journals' standard submission pipelines, such as *ExpressO*.

Although the Prism process features no submission deadline, it will impose a reasonable deadline on reviewers, for the sake of fairness to authors. For this Volume, we gave reviewers two months (from October 1 to December 1) to complete their evaluations. The average time used was 32 days, and the median time was 34 days. Therefore, Prism will set an evaluation deadline of six weeks, measured from the date the reviewer receives the manuscript. Like our policy for this Volume, we will not ask any reviewer to review more than a single manuscript.

We are now calling for volunteer peer reviewers for Prism. If you would like to serve the legal community in this capacity, please provide your name, preferred contact information, and areas of legal expertise to us at the following email address: sclawreview@gmail.com. Or you may reach us by mail: South Carolina Law Review, 701 S. Main Street, Columbia, SC 29208. We also invite any student-edited legal journals to join Prism. If you would like to join, please contact us.

VI. CONCLUSION

We hope this Essay adequately conveys our motivation and vision for peer review in legal publishing, as well as our experience with peer review in this Volume. After nearly a year, we remain more convinced than ever that article

selection through peer review makes more sense than the traditional method. Peer review, over time, will lead to the publication of better articles. And student editors who take part in the process will reap other educational benefits, without sacrificing editorial discretion.

We recognize that our peer review experiment is exactly that—an experiment. We don't have all the answers, and we have made mistakes and will make more in the future. For that reason and others, we welcome suggestions from the legal community regarding where we should go from here and how we should get there. We hope many of you will join our effort. The experiment is worth continuing.

APPENDIX A: PEER REVIEWER QUESTIONNAIRE

**SOUTH CAROLINA LAW REVIEW PEER REVIEW PILOT PROGRAM
PEER REVIEWER QUESTIONNAIRE**

1. Please rate the attached manuscript in each of the following categories, where 1 is the lowest mark and 5 is the highest mark. The categories are intended to be straightforward and do not have specific definitions. When in doubt about the meaning of a particular category, you may interpret it in any reasonable way. If you would like, you may explain how you interpreted a category, but such an explanation is by no means required. The “Scope of Analysis” category is intended to measure how thoroughly the manuscript addresses its topic (e.g., does the manuscript fail to take into account a line of cases or a significant strand of scholarship or criticism?).

	Lowest			Highest	
Insight	1	2	3	4	5
Timeliness	1	2	3	4	5
Novelty	1	2	3	4	5
Significance to the Field	1	2	3	4	5
Quality of Analysis	1	2	3	4	5
Scope of Analysis	1	2	3	4	5

2. Is this manuscript appropriate for inclusion in a general interest law review like the *South Carolina Law Review*?

Yes No

3. Please attach any additional comments, questions, or concerns about this manuscript. Your comments will be most helpful if they are specific. For example, if you gave the manuscript a low “Scope of Analysis” mark based on its failure to adequately address a contrary strand of scholarship, it would be very helpful to identify that contrary strand and its relevance.

4. All things considered, what do you recommend to the *South Carolina Law Review* editors?

- a. Accept “as is” or with minor changes
- b. Accept with major changes (i.e., accept only if significant shortcoming(s) rectified)
- c. Reject

5. Please provide a brief but specific explanation for your recommendation (Question 4 above). For example, you might recommend “Accept with major changes” based on the manuscript’s previously identified failure to sufficiently address a contrary strand of scholarship.

APPENDIX B: GUIDELINES FOR REVIEWERS

Thank you very much for agreeing to serve as a peer reviewer. The *South Carolina Law Review* greatly appreciates your time and commitment to enhancing the quality of legal scholarship in this country. Please know that you are filling a vital role, not only for the *South Carolina Law Review*, but also for the legal community as a whole.

Attached to this email you will find two documents: (1) a manuscript for your review titled “[title]” and (2) a “Peer Reviewer Questionnaire.” In accordance with the following guidelines for reviewers, please evaluate the attached manuscript by completing the attached Questionnaire. Notice that the Questionnaire includes not only “multiple choice” or “rating” type measures of manuscript quality, but also open-ended opportunities for you to comment on the manuscript in any way you see fit.

You may “complete the Questionnaire” by doing any of the following: editing the Questionnaire electronically and saving it as a new document; marking a hard copy of the Questionnaire by hand; or creating a new document that clearly shows your responses to each of the listed questions. Although we prefer that you return your evaluation to us electronically (by emailing an electronic copy of your evaluation to the Peer Review Editor, Dr. John P. Zimmer, at zimmerjp@mailbox.sc.edu), you may also mail a hard copy of your evaluation to Dr. Zimmer at the following address (if desired, we will happily provide a postage-paid, addressed envelope):

South Carolina Law Review
701 S. Main St.
Columbia, SC 29208

However you choose to complete and return your evaluation, we ask that you return it to us no later than December 1, 2008.

If you need but do not have access to sources cited by the manuscript, please advise the editors. We will do our best to provide you with free copies of the required sources as soon as possible.

Our policy is to ask at least two peer reviewers to evaluate each submitted manuscript. Therefore, your opinion and advice to the editors may conflict with the opinion and advice of another reviewer. While we will take all reviews into account as we make our decisions regarding a particular manuscript, we cannot, of course, guarantee that we will adopt your positions. Final decisions rest with the *South Carolina Law Review* editors alone, aided by your expert commentary.

Because we greatly value your time, we will not generally ask for additional input after submission of your review. In rare instances in which further dialog would be especially beneficial, however, we ask that you be willing to respond to comments or counter-arguments of the manuscript author(s) made in response to your review.

Please know that it is our policy to share your review with the manuscript's author(s). Although your comments will be shared anonymously, we ask that you be civil and professional in your remarks. Indeed, please take note of the following Ethical Guidelines for reviewers:

1. You have been asked to review this manuscript because we believe you possess expertise in the topic(s) addressed by the manuscript. If you feel unqualified as an expert, please notify the editors as soon as possible. You may feel qualified as to some portions of the manuscript but unqualified as to others. If this is the case, please identify to the editors those areas in which you feel qualified and unqualified.
2. Please be objective in your review. If you are unable to impartially review a manuscript for any reason, including conflict of interest, please notify the editors.
3. Please adhere to the deadline for submission of reviews to the editors: December 1, 2008. If circumstances make such adherence impossible or impracticable, please notify the editors as soon as possible.
4. Please treat this manuscript as a confidential document. In particular, please do not share copies of the manuscript with others. In addition, please do not make personal or professional use of the manuscript prior to publication without explicit permission of the author(s).
5. Please be civil, professional, and constructive in your review. In particular, please avoid personal attacks on the author(s). If the editors feel that portions of your review are unprofessional or otherwise inappropriate, we may remove them from your review before sharing your review with the author(s).

Again, thanks very much for serving as a peer reviewer. We hope the experience will be as beneficial to you as to us and the manuscript's author(s).

Editors of the *South Carolina Law Review*

APPENDIX C: WEBSITE ANNOUNCEMENT***SOUTH CAROLINA LAW REVIEW* WEBSITE ANNOUNCEMENT: PEER REVIEW
PILOT PROGRAM LAUNCHED**

available at <http://sclawreview.org/news/peerreview.php>

The *South Carolina Law Review* is pleased to announce the launch of a Peer Review Pilot Program for Volume 60. Because we believe the current system of legal scholarship publication may be improved by changing how articles are selected, our Pilot Program will explore the feasibility of article selection through peer review in the context of a major, general interest law review. More specifically, the *South Carolina Law Review's* Pilot Program will employ the following procedure:

- (1) Authors will submit manuscripts (i.e., finished drafts ready for publication, not working papers or incomplete drafts), addressing any area of law, to the Pilot Program specifically by emailing a cover letter and copy of the author's manuscript to sclawreview@gmail.com (see below for more details). Deadline for submissions to the Pilot Program is October 1, 2008.
- (2) We will send all received manuscripts to volunteer peer reviewers for peer review. Each manuscript will be sent to at least one but more typically two anonymous peer reviewers, where each reviewer will have expertise in the area of law addressed by the manuscript. Not only will the author not know the identity of the reviewers, but also the identity of the author will not be disclosed to the reviewers, for the sake of focusing the evaluation on substantive merit rather than other factors. Peer reviewers will consist of legal practitioners, scholars, and judges. In the event that the volume of submissions to the Pilot Program makes peer review of all manuscripts logistically impossible or impracticable, the *South Carolina Law Review* editorial staff reserves the right to make an initial determination of which manuscripts will or will not be sent out for peer review. This initial screening by *South Carolina Law Review's* student editors is a last resort and will be avoided if at all possible.
- (3) Peer reviewers will provide feedback and recommendations to the editorial staff no later than December 1, 2008. Each reviewer will independently review the manuscript, paying special attention to the following factors: insight, timeliness, novelty, significance to the field, quality of analysis, scope of analysis, and appropriateness for inclusion in a general law review like the *South Carolina Law Review*. Each

reviewer may also provide feedback on additional factors if he or she chooses.

(4) Based on careful consideration of the peer reviewers' recommendations and the needs of the journal, the *South Carolina Law Review* editorial staff will choose whether or not to publish each manuscript. We may elect to reject a manuscript outright, accept a manuscript outright, or request the author to revise his or her manuscript in light of reviewer comments, with acceptance conditional on such revision or else the author's convincing us that the revisions are not required.

(5) Accepted manuscripts will then enter the ordinary student-editing process, in which the *South Carolina Law Review's* staff will edit manuscripts for grammar, style, citation format, and accuracy of quotations and facts. Each peer reviewed manuscript published in the *South Carolina Law Review* will be prominently marked as a peer reviewed piece.

**THE SOUTH CAROLINA LAW REVIEW IS NOW SOLICITING BOTH
AUTHORS AND REVIEWERS FOR OUR PEER REVIEW PILOT
PROGRAM IN ALL AREAS OF LAW.**

AUTHORS

If you wish to submit a manuscript to the Pilot Program, please email your manuscript to sclawreview@gmail.com by October 1, 2008. Please include the words "Pilot Project" in the subject line of your email, and please provide a cover letter (1) clearly indicating your desire to participate in the Pilot Program and (2) providing the names of three people who might be appropriate peer reviewers for your manuscript, based on subject matter expertise. You may also provide names of people who you believe would not be able to review your manuscript objectively or fairly. Please also fill out [our brief anonymous survey, reproduced below] providing your opinion regarding the need or lack thereof for peer review in legal publishing.

PEER REVIEWERS

If you wish to volunteer as a peer reviewer, please contact the student Peer Review Editor for Volume 60, Dr. John P. Zimmer, at ZIMMERJP@mailbox.sc.edu, providing the area or areas of law in which you have sufficient expertise to serve as a peer reviewer. Unless a particular volunteer peer reviewer requests otherwise, we intend to ask each reviewer to

review no more than a single manuscript during the Pilot Program, since we recognize that your time is valuable.

If you do not wish to submit a manuscript or volunteer as a peer reviewer at this time, we would still like to hear your opinion regarding the need or lack thereof for peer review in legal publishing. Please take a moment to fill out [our brief anonymous survey, reproduced below]. Your response will help us achieve the Pilot Program's primary goal: to improve legal publishing through the collective wisdom and experience of the entire legal community.

APPENDIX D: PEER REVIEW SURVEY**SURVEY: THE ROLE OF PEER REVIEW IN LEGAL PUBLISHING**

1. Which of the following statements most closely reflects your overall opinion regarding the role of peer review in legal publishing?

- Peer review should be the primary method of article selection for all journals.
- Peer review should be the primary method of article selection for some journals, but not for all journals.
- Peer review should not be the primary method of article selection for any journals.

2. Is a peer reviewed article more likely to be of higher quality than a non-peer reviewed article, all else being equal?

- Yes
- No

3. Do you view a peer reviewed article as more authoritative or trustworthy than a non-peer reviewed article, all else being equal?

- Yes
- No

4. If you were to judge a PUBLISHED article's quality or trustworthiness based on the following factors only, which factors would most inform your judgment? Please rank all factors from 1 to 7, assigning 1 to the single most important factor and 7 to the least important factor. If a particular factor would not affect your judgment at all, you may assign it a zero (in that case, the ranking scale should be from 1 to 7-n, where n equals the number of factors assigned a zero).

- Author's fame or reputation
- Author's professional affiliation or position (e.g., student, professor, judge, Director of the Human Genome Project)
- Journal's fame, reputation, or institutional affiliation
- Title of the article
- Length of the article
- Topic of the article
- Whether the article was peer reviewed

5. All things considered, please rank how well student editors select articles for publication under the standard legal journal system, where 5 is most favorable to student performance and 1 is least favorable.

- 5
- 4
- 3
- 2
- 1

6. What IS the primary role of peer review, when implemented? If possible, select only one choice. You may select no more than two choices.

- Ensure that articles are timely and relevant
- Ensure that articles contain no major factual or legal errors
- Ensure that published articles address only the “hottest” or most important topics
- Ensure that only the best articles are published in journals’ relatively limited pages
- Improve articles’ thoroughness and quality of analysis

7. What SHOULD BE the primary role of peer review, when implemented? If possible, select only one choice. You may select no more than two choices.

- Ensure that articles are timely and relevant
- Ensure that articles contain no major factual or legal errors
- Ensure that published articles address only the “hottest” or most important topics
- Ensure that only the best articles are published in journals’ relatively limited pages
- Improve articles’ thoroughness and quality of analysis

8. What IS the primary role of student editors and staff? If possible, select only one choice. You may not select more than three choices.

- Check facts for accuracy
- Check citations, quotations, and grammar for accuracy (i.e., proofread)
- Suggest substantive changes to an article’s argument or analysis
- Ensure through article selection that only the best articles are published in journals’ relatively limited pages
- Ensure through article selection that articles are timely and relevant
- Ensure through article selection that published articles address only the “hottest” or most important topics

9. What SHOULD BE the primary role of student editors and staff? If possible, select only one choice. You may not select more than three choices.

- Check facts for accuracy
- Check citations, quotations, and grammar for accuracy (i.e., proofread)
- Suggest substantive changes to an article's argument or analysis
- Ensure through article selection that only the best articles are published in journals' relatively limited pages
- Ensure through article selection that articles are timely and relevant
- Ensure through article selection that published articles address only the "hottest" or most important topics

10. Has your work been published in a student edited legal journal?

- Yes
- No

11. Have you served as an editor or staff member of a student edited legal journal (i.e., as a student)?

- Yes
- No

12. Have you served as an advisor to a student edited legal journal?

- Yes
- No

13. Would you submit or have you submitted a manuscript to a peer reviewed legal journal or program?

- Yes
- No

14. Has your work been published in a peer reviewed legal journal or program?

- Yes
- No

15. Have you served as an editor, staff member, or advisor of a peer reviewed legal journal?

- Yes
- No

16. Would you serve or have you served as a legal peer reviewer?

- Yes
- No

17. If desired, please provide any additional comments regarding peer review or the standard legal journal system.