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I. Introduction

In 1931, Judge Cardozo, in describing what he viewed as the prejudice held by judges and practitioners toward law reviews, stated the following:

> The law-review essay has felt beyond the common lot the repressive cruelty of prejudice.
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> There has been prejudice against it on two grounds — prejudice because it was not bound, and prejudice because its authors, for the most part, were not practitioners, but teachers.
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> . . . .
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> If the prejudice on the score of paper were up rooted, there would remain, as I have said, another: the distrust of the dominie, the recluse, the academic scholar. For a long time the practicing lawyers, and the judges, recruited for the most part from the ranks of the practitioners, were suspicious that there would be a loss of practical efficiency if the teachers in the universities were not made to know their place. At the worst they might be philosophers, and they were theorists at best. In part the distrust was of a piece with a belief that man thinking is less efficient than man doing.[1]

Despite this lachrymose view of law reviews, the bias against them faded as the law review became a recognized secondary authority in judicial opinions.[2] Today, however, many of the same issues that formed this early prejudice and framed the debate over the utility of law reviews have appeared again. Judges and practitioners increasingly feel that there is a lack of legal scholarship that they can use when they face their daily case loads. They complain that academia is losing touch with the practice of law.[3] Academics, on the other hand, argue that they are taking the study of law to a higher level. No longer teaching simply doctrine, professors are

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1. Benjamin N. Cardozo, *Introduction* to SELECTED READINGS ON THE LAW OF CONTRACTS FROM AMERICAN AND ENGLISH LEGAL PERIODICALS at vii-viii (Association of American Law Sch. ed., 1931) (noting further that law reviews are viewed with a jaundiced eye because they are more like pamphlets than bound treatises).

2. *See infra* notes 10-66 and accompanying text.

3. *See infra* notes 68-115 and accompanying text.

emphasizing the legal theories and the policies behind the judicial decisions in order to mold lawyers who are not merely doctrinal robots, but who are scholars of the law.[4] Further, many academics argue that non-doctrinal scholarship is the most effective tool to influence the development of the law.[5]

The foundation of this article is an empirical study of the citations of law reviews by the United States Supreme Court, lower federal courts, and state supreme courts. Recently, citation surveys have become popular by numerically ranking law journals based on the number of citations a particular journal or article receives by other law journals, or by a single or narrow set of courts.[6] However, the idea to study the use of law review articles as judicial precedent appeared as early as 1930.[7]

Beyond ranking the law reviews, the purpose of this survey is to analyze citation trends by courts over the past twenty years. If the prejudice Judge Cardozo spoke of nearly seventy years ago has in fact resurfaced, there should be a decline in the use of legal scholarship in judicial opinions. This survey reveals a 47.35% decline in the use of legal scholarship by courts over the past two decades, the most notable decline occurring in the past ten years.

The citation of law reviews in judicial decisions is by no means a complete measure of law reviews' influence on judges, practitioners, or the law.[8] However, a decline in citation, when combined with the pleas of judges and practitioners for more "practical" articles, is persuasive evidence that the bar is finding legal scholarship less relevant to the practice of law.[9] In the face of this decline, law review boards retain unbridled discretion regarding publication decisions for their journals. In fact, there are few, if any, standards for evaluating articles for publication.[10] If student edited law journals do not respond to the bar's requests for "practical" articles, then the dialogue between practitioners, judges, and academics, which began in 1875 in the first student-edited journal, may soon come to an end.

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4. *See infra* notes 116, 120-41 and accompanying text.

5. *See infra* notes 115-35 and accompanying text.

6. *See infra* note 142.

7. *See* D.B. Maggs, *Concerning the Extent to Which the Law Review Contributes to the Development of the Law*, 3 S. CAL. L. REV. 181 (1930).

8. This is not to say that the only way for an article to influence the law is to receive a citation by the court — quite the contrary. For example, many articles which *criticize* or *deconstruct* an opinion, or for that matter, this article, will likely never receive a citation by a court. Citation is not the only justification for legal scholarship; however, the use of law review articles by the courts as a secondary source of authority is a concrete measure of an article's influence on courts. *See* J.M Balkin & Stanford Levinson, *How to Win Cites and Influence People*, 71 CHI.-KENT L. REV. 843, 843-46 (1996). Regardless of whether one agrees or disagrees with using the number of citations an article or law review receives as a "measuring stick," it is the way (at least superficially) many people, including law school professors, define the success of their articles. For example, I am acquainted with several law school professors who utilize citation survey rankings of the various journals when deciding where to publish their articles — choosing the highest "ranked" law review that accepts their article for publication. Another professor conducts periodic Westlaw searches to determine the number of "hits" he has received, commenting when the numbers are good. It is unlikely these are isolated incidents.

9. *See* Jordan H. Leibman & James P. White, *How the Student-Edited Law Journals Make Their Publication Decisions*, 39 J. LEGAL EDUC. 387 (1989).

10. *See id.*

II. The Origin of Student-Edited Law Reviews and Court Citation

A. Early History of Law Reviews

Initially, student-edited law reviews did not enjoy immediate success and struggled to achieve a place of stature in the legal community. Early citations by the courts, however, helped to elevate law journals' prestige and perceived persuasive authority as a secondary source.[11] In order to evaluate properly any changes that need to be made regarding the current choice of topics for legal scholarship, it is important to understand the goals of the early law reviews and to examine the type of article that courts found useful.

Since at least the colonial era, judges, lawyers and the public have carried on a dialogue through printed journals. Some of the first printed works in America related to law.[12] By the 1720s and 1730s, judges printed charges to their grand juries in new papers and politicians and lawyers took their cases to the press in an effort to shape public opinion.[13] The growth of the common law and the expanding jurisdiction in newly formed states required specialized publications so that the bar could stay informed of the rapidly changing law.[14] In order to meet this new demand, legal scholars began authoring treatises and case reporters.[15] These treatises, however, were universal in scope and generally dealt with law that had been decided in past decades.[16] Further, the volume of cases decided in the varied jurisdictions made it difficult for practitioners to keep up with recent decisions in the new case reporters.[17] These factors set the stage for the soon-to-be-developed law review.

The first legal periodicals in America were published around 1808.[18] These early magazines, published to appeal to both lawyers and the general public, included articles on parochial subjects as well as reports of recent cases.[19] By 1850 only ten

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11. *See infra* notes 51-67 and accompanying text.

12. *See, e.g.*, PHILOPOLITES [WILLIAM PENN], THE EXCELLENT PRIVILEGE OF LIBERTY AND PROPERTY BEING THE BIRTH-RIGHT OF THE FREE-BORN SUBJECTS OF ENGLAND (1687) [hereinafter WILLIAM PENN].

13. *See* Michael I. Swygert & Jon W. Bruce, *The Historical Origins, Founding, and Early Development of Student-Edited Law Reviews*, 36 HASTINGS L.J. 739, 750 (1985) (citing FREDERICK C. HICKS, MATERIALS AND METHODS OF LEGAL RESEARCH 207 (3d ed. 1942) (noting that the legal news of the day was provided by general circulation of newspapers until members of the legal profession demanded a medium of their own)). The primary authority for this article's historical review of law journals is the Swygert & Bruce article; therefore, the analysis in this section is based in large part on their well-researched work. *See* JAMES LOGAN, THE CHARGE DELIVERED FROM THE BENCH TO THE GRAND JURY (1723).

14. *See* Swygert & Bruce, *supra* note 13, at 747.

15. *See* John H. Langbein, *Chancellor Kent and the Origins of American Legal Treatises*, 93 COLUM. L. REV. 547, 571-76 (1993).

16. *See* Swygert & Bruce, *supra* note 13, at 751.

17. *See id.*

18. *See id.*; *see also* Michael L. Closen & Robert J. Dzielak, *The History and Influence of the Law Review Institution*, 30 AKRON L. REV. 15, 30-38 (1996) (discussing the history of legal periodicals).

19. *See* Swygert & Bruce, *supra* note 13, at 752-53.

journals had survived out of the thirty commercial publications that had begun circulation near the turn of the century.[20]

Then, in 1852, Asa Fish and Henry Wharton published the first issue of the *American Law Register*, a journal that survives to the present as the *University of Pennsylvania Law Review*.[21] The *Register* contained lead articles that were followed by digests and notes about recent decisions as well as professional news.[22] Like all previous law journals, it was a commercial venture that was not associated with a university. It was not until 1896 that law students at the University of Pennsylvania changed its name and began to edit the journal.[23] As commercial legal periodicals, these journals survived by tailoring their publication to their intended audience and, at the beginning, that audience was lawyers and judges. By the mid- to late 1800s, there were approximately 158 legal periodicals being published in the United States.[24]

Emerging technology played a significant role in the proliferation of legal periodicals. Toward the end of the nineteenth century, the advent of high-speed rotary printing presses and the near simultaneous development of woodpulp newsprint made publication of student-edited law reviews a financial possibility.[25] The increase in the publication of books generally during the late nineteenth century reflected a significant increase in legal publications. "The number of law books published each year hit record levels in the 1880s and 1890s. In 1880, 62 new law books were published in the United States; in 1882, 261; in 1889, 410; and in 1896, 507."[26]

Student-edited law reviews emerged just prior to the twentieth century. The *Albany Law School Journal*, the first student-edited journal, was published in 1875; however,

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20. *See id.* at 754-55 (citing *American Legal Periodicals*, 2 ALB. L.J. 445 (1870)).

21. *See* Joseph P. Flanagan, *Introduction*, 100 U. PA. L. REV. 69, 69 (1951) (discussing the history of the *Pennsylvania Law Review*).

22. *See* Swygert & Bruce, *supra* note 13, at 755-56 (citing *Review of Swan's Tennessee Reports*, 1 AM. L. REG. 382 (1853)).

23. *See* Flanagan, *supra* note 21, at 69.

24. *See* Swygert & Bruce, *supra* note 13, at 742 (citing E. WOODRUFF, INTRODUCTION TO THE STUDY OF LAW 25 (1898)).

25. *See* Bernard J. Hibbitts, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615, 620-21 (1996) (suggesting further that the internet may make the publication of traditional law reviews obsolete) (citing HELMUTT LEHMANN-HAUPT, THE BOOK IN AMERICA: A HISTORY OF THE MAKING AND SELLING OF BOOKS IN THE UNITED STATES 162-65 (1951) (tracing development of the large cylinder press for newspaper printing), and *id.* at 166-70 (detailing technological changes and growth in the paper-making industry in nineteenth century); ALFRED M. LEE, THE DAILY NEWSPAPER IN AMERICA: THE EVOLUTION OF A SOCIAL INSTRUMENT 118-21 (1937) (discussing the modernization of the printing press), and *id.* at 100-03 (detailing newspapers' transition to woodpulp newsprint in the late 1860s and early 1870s)). Professor Hibbitts notes, for example, that "[t]he Michigan Law Review . . . premier[ed] in 1901 with an $800 loan from the School's Board of Regents — not an insignificant sum at the time, but at least within the realm of institutional possibility." Hibbitts, *supra*, at 621 n.28 (citing E. Blythe Stason, *The Law Review — Its First Fifty Years*, 50 MICH. L. REV. 1134, 1134 (1952)).

26. *Id.* at 621 (footnote omitted) (citing *Cheap Books*, AM. L.J., June 21, 1884, at 105, and 2 JOHN TEBBEL, A HISTORY OF BOOK PUBLISHING IN THE UNITED STATES 676-77, 682, 689 (1875)).

it only survived one academic year.[27] Competition with other "commercial" law journals caused many early student-edited law reviews to fail. Finally, after attempts by Albany and Columbia to publish a student-edited journal,[28] Harvard was the first to publish a student-edited law review that has been continuously published from its founding to the present day.[29]

The first issue of the *Harvard Law Review* was published in the spring of 1887.[30] It contained two lead articles, notes about the school, reports of moot court arguments, summaries of class lectures, case digests and comments, book reviews, and a list of recently published books.[31] One of the principal purposes of the journal was to convey to the professional world the messages and the scholarship of the law school's faculty[32] and to "be serviceable to the profession at large."[33]

After the success at Harvard, five other law schools began to publish journals modeled after the *Harvard Law Review*. Yale was the first to follow suit, publishing its first law review in 1891, followed by Pennsylvania in 1896, Columbia in 1901, and Michigan in 1902.[34] These law schools realized the educational benefits of student-run periodicals. The publications gave the schools prestige and credibility, and established the schools as serious legal institutions.[35]

Northwestern was the fifth school to start a law review.[36] Realizing the decreasing utility of more "copies" of the *Harvard Law Review*, Northwestern decided to forge new ground.[37] Following the Harvard format, the editors chose to narrow the focus of their publication to the law of Illinois.[38] The editors explained:

> Undoubtedly the field of law reviews of a general character is already overcrowded. Moreover, it must be conceded that such reviews, however excellent, enlist the interest of but a small minority of the practicing lawyers of Illinois. It is believed, however, that there is a genuine and

27. *See* Swygert & Bruce, *supra* note 13, at 764.

28. *See id.* at 766. In 1885 Columbia Law School started the second student-edited legal periodical, the *Columbia Jurist*. *See* A HISTORY OF THE SCHOOL OF LAW, COLUMBIA UNIVERSITY 103 (Julius Goebel, Jr. ed., 1955).

29. The *Harvard Law Review* is generally credited with being the oldest continuously published student-edited law review. However, the University of Pennsylvania also claims to be the oldest continuously published law review, tracing back to the *American Law Register* in 1851. *See* William O. Douglas, *Law Reviews and Full Disclosure*, 40 WASH. L. REV. 227, 228 n.3 (1965); *see also* Swygert & Bruce, *supra* note 13, at 757, 763.

30. *See* Notes, 1 HARV. L. REV. 35, 35 (1887).

31. *See id.*

32. *See* John Wigmore, *The Recent Cases Department*, 50 HARV. L. REV. 862, 862 (1937).

33. Notes, *supra* note 30, at 35.

34. *See* Swygert & Bruce, *supra* note 13, at 779 (citing Maggs, *supra* note 7, at 181-83).

35. *See id.*

36. *See id.* Northwestern's law review originated in 1906.

37. *See* Swygert & Bruce, *supra* note 13, at 785 (citing Frederic D. Woodward, *Editorial Notes*, 1 ILL. L. REV. 39, 39 (1906)).

38. *See id.* The periodical, originally published by Northwestern, ended up a joint effort between the University of Chicago, the University of Illinois, and Northwestern University. *See* A.K., Editorial Note, *The Law Review*, 21 ILL. L. REV. 147, 153 (1926). It was initially published by Northwestern alone.

> widespread need of a live periodical primarily devoted to the discussion and exposition of Illinois law, and other matters of special practical value to the Illinois bar. In that belief, and with the purpose of supplying that need, this Review is launched.[39]

The purpose of the *Illinois Law Review* was, from the first issue, to enter into a dialogue with the Illinois bar.[40]

Despite the success of these early journals, the utility of the increasing number of "smaller journals" was a contested issue. In 1936, the *Virginia Law Review* published an article arguing "that there is a definite need and definite place for the smaller law review."[41] The article realistically defined the purpose and goals of such a journal:

> But the editor of such a review should realize that his task is a peculiarly individual one and that it is not the imitation, on a lesser scale, of the older journals, whose place as "national" reviews is established. He should realize that the value of his review does not depend on its being national in scope, but that its function is rather to supply a need which the large reviews cannot meet.
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> These, because they are so widely read, cannot confine themselves to a study of the law of any one state, but must publish material which is of general interest to attorneys and jurists throughout the nation. . . . It should, especially if only recently established, specialize to a considerable extent in the law of the state where it is published. By so doing, it may easily become more valuable to the people in its state than a legal periodical of national scope.
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> Attorneys and judges would find particularly helpful a law review which places emphasis upon the law of the state where they are practicing or presiding.[42]

Further, the article gave six suggestions for focusing law review material toward state practitioners:

(1) "One issue or part of an issue may be devoted to a review of the state supreme court decisions . . ."[43]

(2) "Similarly, a review of new state legislation is of general interest to the people of the state."[44]

(3) "Before the state legislature convenes, the law review may offer suggestions for changes in the laws or the adoption of new ones."[45]

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39. Woodward, *supra* note 37, at 39.

40. *See id.*; *see also* Swygert & Bruce, *supra* note 13, at 785; Hibbitts, *supra* note 25, at 623 n.33 (citing Editors' Note, 1 S. L.Q. 45, 45 (1916) (Tulane Law School), Editors' Note, 1 W. RES. L.J. 18, 18-19 (1895), Introductory, 1 COUNSELLOR 16 (1891) (New York Law School), and Notes, *supra* note 30, at 35, as law reviews with a goal of aiding practitioners).

41. Joseph G. Werner, *The Need for "State" Reviews*, 23 VA. L. REV. 49, 49 (1936).

42. *Id.*

43. *Id.* at 50.

44. *Id.*

45. *Id.*

(4) "[I]nterpret the restatements of law with regard to the particular state in which they are located."[46]

(5) "The leading articles may be confined more or less to problems in which the members of the state bar are interested."[47]

(6) "Along with the review of the state supreme court decisions suggested above, the student notes and comments should place emphasis upon the important recent state cases, with pertinent criticisms."[48]

In addition, the article suggested that "[i]n states where there is more than one law review, the editorial boards should reach some agreement whereby each would specialize in certain fields of law," or that some other apportionment be made in order to review thoroughly and effectively state law without duplication.[49] The article, however, noted that, "[o]f course, the fact that a journal becomes specialized in reviewing the law of its own state does not mean that the law of the other forty-seven states and of the federal courts should be entirely ignored."[50] These suggestions from the past are arguably a guide to scholarship that is more responsive to the needs of judges and practitioners.

B. The First Citations by the Courts

Despite their growing number, law reviews would not be regarded as a legitimate persuasive authority until the United States Supreme Court was willing to recognize their contribution to the law. Building on its tradition of citing treatises, The Supreme Court cited its first law review article in 1896.[51] In *United States v. Trans-Missouri Freight Ass'n*,[52] Justice Edward White, dissenting, cited a *Harvard Law Review* article that dealt with the law of contracts, entitled *On Contract and Restraint of Trade*.[53] Three years later in *Chicago, Milwaukee & St. Paul Railway Co. v. Clark*,[54] Chief Justice Fuller, this time in the majority opinion of the court, cited another *Harvard Law Review* article that dealt with the doctrine of consideration.[55] The court noted the following:

> [O]n the principle that where a liquidated sum is due, the payment of a less sum in satisfaction thereof, though accepted as satisfaction, is not binding as such for want of consideration. Cumber v. Wane, 1 Strange,

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46. *Id.* at 51.
47. *Id.*
48. *Id.*
49. *Id.* at 52.
50. *Id.*
51. *See* Swygert & Bruce, *supra* note 13, at 788. Swygert's article contained its own survey to determine the first citations by the Supreme Court. *See id.* at 788 n.408. Whether or not the citations addressed are in fact the first citations by the Supreme Court has not been verified.
52. 166 U.S. 290 (1897).
53. *See id.* at 350 n.1 (citing Amasa M. Eaton, *On Contracts and Restraint of Trade*, 4 HARV. L. REV. 128, 129 (1890)).
54. 178 U.S. 353 (1900).
55. *See id.* at 365 (citing James Barr Ames, *Two Theories of Consideration*, 12 HARV. L. REV. 515, 521 (1899)).

> 426. The rule therein laid down has been much questioned and qualified. Goddard v. O'Brien, 9 Q.B. Div. 37; Sibree v. Tripp, 15 M. & W. 23; Couldery v. Bartrum, 19 Ch. D. 394; Foakes v. Beer, 9 App. Cas. 605; Notes to Cumber v. Wane in Smith's Leading Cases, vol. 1, 606; 12 *Harvard Law Review*, 521.[56]

Overcoming their initial prejudice, courts sought out law reviews to assist in their judicial decision making, and from the beginning, courts cited articles that had been tailored to address the legal problems before them. In many cases, such articles have had a tangible impact on the law as a result of their citation by a court. One of the first examples of such an article was a doctrinal piece written by Samuel Warren and Louis Brandeis titled *The Right to Privacy*.[57] The article, which ultimately influenced a change in the law, appeared in the *Harvard Law Review* in 1890.[58] Warren and Brandeis proposed a change in the privacy doctrine, suggesting the existence of a common-law right to privacy and a tort for its invasion before the courts had recognized such a right.[59] The article focused on existing tort law, addressing the issue of whether the law of torts provided a right to privacy, an issue that had been highlighted in a "somewhat notorious" case brought before a New York trial court a few months before the article was published.[60] After laying out the history of applicable tort doctrine[61] the article stated that, "[i]t is our purpose to consider whether the existing law affords a principle which can properly be invoked to protect the privacy of the individual; and, if it does, what the nature and extent of such protection is."[62]

In *Roberson v. Rochester Folding Box Co.*,[63] the New York Court of Appeals rejected the notion of a common-law right to privacy.[64] The four-judge majority opinion, citing Warren's and Brandeis's article, stated:

> Nevertheless [the trial court] reached the conclusion that plaintiff had a good cause of action against defendants, in that defendants had invaded what is called a "right to privacy"; in other words, the right to be let

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56. *Id.* (emphasis added).

57. *See* Swygert & Bruce, *supra* note 13, at 787-89 (discussing Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890)).

58. *See* Warren & Brandeis, *supra* note 57.

59. *See id.* at 195-95.

60. *See id.* at 195. The Warren and Brandeis article was written in response to *Manola v. Stevens & Myers*, N.Y. TIMES, June 15, 18, 21, 1890 (N.Y. Sup. Court 1890). *See id.* at 195 n.7. The plaintiff alleged that while performing in the Broadway Theater, a role that required her appearance in tights, she was, by means of a flash light, photographed surreptitiously and without her consent by the defendant. The plaintiff prayed defendant be restrained from using the photograph. *See id.* An ex parte preliminary injunction was issued and the issue of permanently enjoining the defendant was set for argument; however, no one showed up on behalf of the defendant at the hearing to oppose the motion. *See id.*

61. *See id.* at 193-94 (discussing the history and law of battery, assault, nuisance, and alienation of affection).

62. *Id.* at 197.

63. 64 N.E. 442 (N.Y. 1902).

64. *See id.* at 443.

> alone. Mention of such a right is not to be found in Blackstone, Kent, or any other of the great commentators upon the law; nor so far as the learning of counsel or the courts in this case have been able to discover, does its existence seem to have been asserted prior to about the year 1890, when it was presented with attractiveness, and no inconsiderable ability, in the Harvard Law Review (volume 4, p. 193) in an article entitled "Rights of a Citizen to His Reputation."[65]

Once their initial prejudice had subsided, courts began to seek out law review articles dealing with the legal issues of the day to assist in their judicial decisions. These articles often shaped the law. Despite losing the battle in the New York Court of Appeals, Brandeis and Warren to a certain degree won the war as subsequently, the New York legislature established a statutory right to privacy.[66] Today, both the privacy right and the article have won wide recognition: William Prosser described the article as an "outstanding example of the influence of legal periodicals upon the American law."[67]

III. Judges & Practitioners v. Academia: The Great Debate Over Legal Scholarship

Practitioners and judges are concerned about what they perceive to be a lack of scholarship addressed toward their needs and believe that much of the modern legal scholarship is directed toward academicians. For example, the American Bar Association's McCrate Report,[68] an educational study focusing on legal education and the practice of law, observed that "[p]ractitioners tend to view much academic scholarship as increasingly irrelevant to their day-to-day concerns . . . ."[69] It further noted that practitioners "believe law professors are more interested in pursuing their own intellectual interests than in helping the legal profession address matters of important current concern."[70] In response to these impractical articles, practitioners have asked law reviews to consider their needs when choosing article topics.

Over the last thirty years, clinical education has grown significantly in an attempt to bridge the perceived gap between practitioners and academics. Simultaneously, the increase in narrowly tailored, theoretical, conceptual, and interdisciplinary legal

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65. *Id.*

66. *See* William L. Prosser, *Privacy*, 48 CAL L. REV. 383, 385 (1960). The statute enacted by the New York legislature made it both a misdemeanor and a tort to make use of the name, portrait, or picture of any person for "advertising purposes or for the purposes of trade" without written consent. *See id* (referring to what is now N.Y. CIV. RIGHTS LAW §§ 50-51 (McKinney 1992 & Supp. 1999)).

67. *Id.* at 383; *see also* JOHN E. NOWAK ET AL., CONSTITUTIONAL LAW 795-96 (5th ed. 1995).

68. Task Force on Law Schools and the Profession, *Legal Education and Professional Development — An Educational Continuum*, 1992 A.B.A. SEC. OF LEGAL EDUC. & ADMISSIONS TO THE BAR [hereinafter *McCrate Report*] (chaired by Robert McCrate). The McCrate Report attempted to bridge the gap between legal educators and practicing lawyers and to "recognize that they are engaged in a common enterprise — the education and professional development of the members of a great profession." *Id.* at 3.

69. *Id.* at 5.

70. *Id.*

scholarship has served to fuel the controversy. Most notably, critics of modern legal scholarship observe that the critical legal studies (CLS) movement and its predecessors that began in the 1970s have overwhelmed traditional, doctrinal legal scholarship. In the eyes of practitioners and judges, the debate is framed in terms of practical legal scholarship versus impractical legal scholarship.[71] However, if law reviews are to respond to practitioners and judges, it is important to define precisely what is meant by practical and impractical.

Generally, what judges and practitioners are asking for is embodied in the definition of practical scholarship proposed by Judge Edwards of the United States Court of Appeals for the D.C. Circuit. Practical scholarship "analyzes the law and legal system with an aim to instruct attorneys in their consideration of legal problems; to guide judges and other decision-makers in their resolution of legal disputes; and [as a secondary role,] to advise legislators and other policymakers on law reform."[72] The practical article must attend to the various sources of law, placing emphasis on cases, statutes, and other authoritative texts.[73] Further, practical scholarship may employ theory[74] to criticize doctrine, to resolve the problems that doctrine leaves open, and to propose changes in the law or systems of justice.[75] Practical scholarship, however, does not have to be "wholly doctrinal" and should include a "healthy balance of theory and doctrine."[76]

Conversely, impractical scholarship is legal scholarship that practitioners and judges feel is abstract and has little relevance to concrete issues before the courts.[77] Impractical scholarship can be purely doctrinal, but it is equally considered impractical if it addresses a narrowly focused and obscure area of the law.[78] More often, however, critics of modern scholarship such as Judge Edwards point to the scholarship that has developed since the 1970s on such topics as law and economics, legal history, law and literature, law and sociology, and various other "law and" movements.[79] In sum, impractical scholarship can be doctrinal. Most often, however, it is modern interdisciplinary scholarship that looks at the law from the outside, using the tools of social science to advocate legal reform.

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71. *See generally* Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 35-38 (1992) (discussing practical versus impractical scholarship). Others refer to "old" legal scholarship as directed to judges and practitioners and "new" legal scholarship as scholarship that "strays away from the law as a source of values and methodology." Peter A. Joy, *Clinical Scholarship: Improving the Practice of Law*, 2 CLINICAL L. REV. 385, 388 n.21 (1996) (comparing Edward L. Rubin, *The Concept of Law and the New Public Law Scholarship*, 89 MICH. L. REV. 792, 802, 809, 820 (1991) and David B. Wexler, *Therapeutic Jurisprudence and Changing Conceptions of Legal Scholarship*, 11 BEHAV. SCI. & L. 17, 18-19 (1993), with Francis A. Allen, *Legal Scholarship: Present Status and Future Prospects*, 43 J. LEGAL EDUC. 403, 404 (1993)).

72. *See* Edwards, *supra* note 71, at 42-43.

73. *See id.* at 43.

74. *See infra* notes 80-82 and accompanying text.

75. *See* Edwards, *supra* note 71, at 43.

76. *Id.*

77. *See id.* at 35.

78. *See infra* notes 107-08 and accompanying text.

79. *See* Edwards, *supra* note 71, at 34-35.

In some contexts, judges and practitioners refer to impractical scholarship as "theoretical." Practitioners and judges believe that practical legal scholarship is scholarship that centers on doctrine, and they criticize as "theoretical" scholarship that does not have an accepted legal doctrine as its foundation. That is not to say that practitioners and judges believe legal scholarship should not include theory. As early as 1897, Oliver Wendell Holmes said, "[t]heory is the most important part of the dogma of the law . . . [i]t is not to be feared as unpractical, for, to the competent, it simply means going to the bottom of the subject."[80] However, the *American Heritage Dictionary's* definition of "theory" notes, among other things, that theory is "a system of assumptions, *accepted principles*, and rules of procedure devised to analyze, predict, or otherwise explain the nature or behavior of a specified set of phenomena."[81] Practitioners and judges, in their criticisms of law reviews, do not seem to condemn theory to the extent it explains phenomena in the law. However, they do appear to condemn many of the principles on which much modern legal scholarship is founded because they feel that those principles are not *accepted*.[82]

The disjunction among practitioners, judges, and academics appears to be a philosophical difference in their jurisprudential theories. Practitioners' cries for "practical" scholarship reinforce the idea that judges and practitioners, including many who were trained during the era of legal realism, believe that the great mass of law is settled and that there is only a fringe of hard cases where it is useful for lawyers to have familiarity with tools other than doctrine.[83] Therefore, practitioners and

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80. O.W. [Oliver Wendell] Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 477 (1897).

81. AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1861 (3d ed. 1992) (emphasis added).

82. The conflict between theory and practice is not a new phenomenon.

> Many great philosophers have focused on the nature of theory and practice, and the relationship between the two. Classical philosophers such as Aristotle distinguished theoretical inquiry, the study of truth for its own sake, from either productive or practical inquiry, and regarded pure theory as the highest and purest form of knowledge.

Jean R. Sternlight, *Symbiotic Legal Theory and Legal Practice: Advocating a Common Jurisprudence of Law and Practical Applications*, 50 U. MIAMI L. REV. 707, 716-17 (1996).

83. The difference in jurisprudential theories between practitioners and scholars was suggested and explained by Robert W. Gordon, Professor of Law at Stanford University. *See* Gordon, *supra* note 86, at 2077. Professor Gordon explains the root jurisprudential theories behind what many judges and practitioners think. *See id.* His focus is on the specific jurisprudence behind Judge Harry Edward's idea of "practical" scholarship, which is discussed in this article. *See id.*

> Judge Edwards is taking up a strong position on greatly disputed issues of jurisprudence. His jurisprudence is central to his thesis because it defines the scope of what he considers "relevant" and "practical" contributions from scholars. His position depends on a conception of the judge as primarily a law-declarer and only marginally and incrementally a policymaker. . . . To work in the fringe areas, it is useful for lawyers to have some familiarity with "theory" and "policy" and the ability to argue from them. But this set of skills is distinctly secondary because it is "practical" only in a very limited set of contexts, the ten percent involving argument over "hard cases." [I]t follows from this . . . that the core legal activity . . . of scholars should be to help judges, and lawyers arguing before them, to "find" existing law . . . address[] some specific knotty doctrinal problem that is already, or soon likely to be, before the courts; or, even better . . . [to write a] treatise devoted to encyclopedic exposition of all the doctrine in some legal field.

judges believe that legal scholarship and "the main business of legal scholars should be to help judges, and lawyers arguing before them to 'find' the existing law" and present it "in the conventional form of judicial-doctrinal discourse."[84] Even advocates of modern legal scholarship admit, at least in part, that this traditional common law-based jurisprudence remains the "official" view.

> [This] view of legal reasoning is undoubtedly widespread in our legal culture. It still seems to be the official view, in the sense that judges and lawyers arguing before judges feel constrained to talk as if it were true. It is reflected in the distinction one often hears made between "legal" and "policy" arguments. *But it is hardly the only view around.*[85]

The other side of the debate is founded on legal realism.[86] Embracing legal realism, many academics, and some practitioners influenced by legal realism, argue that although doctrine supplies the language of legal decision making, it is not a major factor in deciding cases. What judges do is influenced by something else[87] — often believed to be largely political[88] — and therefore, it is the study of this "something else"[89] that is of the greatest utility. Such insights, it is argued, can be a valuable tool to a practitioner.[90]

Moreover, "[o]utside the restricted area of practice before the courts, which is only a small part of what actors in our legal system do, doctrine is even less useful."[91] While these articles may be labeled impractical by lawyers who are looking for material to add to a brief or by a judge looking for authority to cite in an opinion, the scholarship is arguably of great utility in changing societal norms and reforming the overall political structure on which the legal system is supported.[92]

A. The Practicing Bar's Observations

Law review articles are replete with the pleas of judges and practitioners for articles tailored to address the issues they face on a daily basis. Judges and practitioners (and some legal scholars) have criticized what they perceive to be the increasing lack of traditional, doctrinal legal scholarship. One of their primary

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Id. at 2077-78

84. *Id.* at 2078.

85. *Id.* (emphasis added). The purpose of this note is not to suggest that only scholarship centering on doctrine should be produced. Formalism in law reviews should be rejected, and they should be the breeding ground of new ideas and new types of scholarship. However, doctrine is not an impoverished subject, and it continues to be the mainstay of the legal profession.

86. *See* Robert W. Gordon, *Lawyers, Scholars, and the "Middle Ground,"* 91 MICH. L. REV. 2075, 2078 (1993).

87. *See generally* Karl N. Llewellyn, *Some Realism about Realism — Responding to Dean Pound*, 44 HARV. L. REV. 1222, 1236-37 (1931).

88. *See generally* Note, *'Round and 'Round the Bramble Bush: From Legal Realism to Critical Legal Scholarship*, 95 HARV. L. REV. 1669 (1982).

89. *See generally id.*

90. *See infra* notes 116, 120-23 and accompanying text.

91. Gordon, *supra* note 86, at 2078.

92. *See infra* note 125-30 and accompanying text.

criticisms is that academics are writing for other academics rather than directing scholarship toward the bar.

> Practitioners and judges have joined academics in criticizing legal scholarship as too ethereal. Many have noted that law review articles are frequently directed toward an audience consisting of a very small number of legal academics in the author's own specialty area, rather than toward an audience of practitioners, judges or policymakers.[93]

The following quip from John Mortimer's British television series *Rumpole of the Bailey*, dialoging an encounter between an "eminent law professor" and an "eminent practitioner," embodies the discordant feelings between academia and the bar. Upon meeting the practitioner, the professor inquires:

> "What do you think of academic lawyers down at the Old Bailey?" The practitioner replies, "Well to tell you the truth, . . . we hardly think of them at all." The Oxford law don then goes on to inquire: "but you'll have read my paper on 'The Concept of Constructive Intent and Mens Rea in Murder and Manslaughter' in The Harvard Law Review?" "Oh rather," lied the practitioner, "Your average East End Jury finds it absolutely riveting."[94]

Judges, a unique form of practitioners, have been the loudest critics of modern legal scholarship, with articles like the *Growing Disjunction Between Legal Education and the Legal Profession*.[95] In that article, Judge Edwards agrees that modern legal scholarship is often directed at a very small group, and that the group is generally made up of academics rather than practitioners and judges.[96] Specifically, his criticisms are that he has been unable to find law review articles that bear directly on the issues that his court faces on a daily basis.[97] Rather, he finds far too much "impractical" scholarship — usually theoretical, interdisciplinary ("law and") or critical work — which is of little or no help to practitioners.[98] The articles either do not address any legal problem they must resolve, or they address legal problems but use resources other than authoritative legal materials to resolve them.[99]

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93. Sternlight, *supra* note 82, at 734. The article cites the *McCrate Report*, which states:
> Practitioners tend to view much academic scholarship as increasingly irrelevant to their day-to-day concerns, particularly when compared with the great treatises of an earlier era. It is not surprising that many practicing lawyers believe law professors are more interested in pursuing their own intellectual interests than in helping the legal profession address matters of important current concern.

Id. at 734 n.147 (quoting *McCrate Report*, *supra* note 68, at 5).

94. *Id.* at 734 n.147 (quoting Talbot D'Alemberte, Keynote Address, McCrate Report Conference Proceeding (Sept. 30-Oct. 2, 1993)).

95. Edwards, *supra* note 71.

96. *See id.* at 35.

97. *See id.*

98. *See id.*

99. *See id.*

Judge Edwards is not the only judge to observe that there is less traditional, doctrinal legal scholarship. Judge Richard Posner, a leading practitioner of modern interdisciplinary scholarship, has also noted the decline in traditional scholarship.

> The doctrinalists — the traditionalists in academic law — thus are being crowded by economic analysts of law, by other social scientists of law, by Bayesians, by philosophers of law, by critical legal scholars, by feminists and by gay legal scholars, by the law and literature crowd and by critical race theorists, all deploying the tools of nonlegal disciplines.[100]

Further, Judge Posner notes that "fine doctrinal work" continues to be produced, however, it is produced at a "diminished fraction" as law faculties now generate a "formidable quantity" of scholarship intended to be read by other scholars rather than by lawyers or judges.[101]

In a speech to the members of the *Whittier Law Review*, Justice Frank K. Richardson of the Supreme Court of California described the plight of the practitioner searching for more doctrinal work. He opened his speech by praising the work of law reviews, stating, "I am here this evening to tip my hat to the law reviews of the country for quietly providing the light which helps keep the common law on the right trail."[102] In closing his speech, however, Justice Richardson added a personal observation from his days as a practitioner:

> I have spent three-fourths of my professional career as a private sole practitioner . . . almost entirely on the civil side . . . . I subscribed to two law reviews . . . and would examine them for useful, practical help. I was invariably impressed with the scholarship and penetrating in-depth analysis of the authors appearing in the law reviews, but I rarely gained much practical assistance from pursuing them . . . . I could scan an article on the "Commercial Aspects of the Indian-Pakistani Trade

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100. Richard A. Posner, *Legal Scholarship Today*, 45 STAN. L. REV. 1647, 1651 (1993). Judge Posner is a supporter of modern interdisciplinary scholarship and was a pioneer in the application of law and economics. *See id.* Judge Posner observes that:

> [i]nterdisciplinary legal scholars often are not trained in the fields that they wish to bring to bear on the law; often they are not trained for any sort of scholarship except the doctrinal scholarship on which they, perhaps for excellent reasons, have turned their backs. Few American law professors have a graduate degree in law or in anything else. They have the same legal training as practitioners.

Id. at 1656. For this reason, Judge Posner believes that a great portion of interdisciplinary work is mediocre and suggests a restructuring of the legal education process to include specific education in interdisciplinary work at a graduate level. *See id.*

101. *Id.* at 1655. Others have noted that legal scholars are writing for each other. *See, e.g.*, Edwards, *supra* note 71, at 36; Gordon, *supra* note 86, at 2096; Judith S. Kaye, *One Judge's View of Academic Law Review Writing*, 39 J. LEGAL EDUC. 313, 320 (1989); Patricia M. Wald, *Teaching the Trade: Appellate Judge's View of Practice Oriented Legal Education*, 36 J. LEGAL EDUC. 35, 42 (1986) (noting that few law review articles prove helpful in appellate decision making).

102. Frank K. Richardson, *Law Reviews and the Courts*, 5 WHITTIER L. REV. 385, 386 (1983). Frank K. Richardson is an Associate Justice of the Supreme Court of California.

> Treaty," including all 109 footnotes, and not get much comfort. . . . My review of "Regional Planning and Economic Dispersal Programs in Great Britain" gave me no comfort as I faced tomorrow's probate calendar, or a jury selection, or the preparation of interrogatories . . . . The point I am making is that in your selection of materials do not forget the little guy who can periodically use some help in the day-to-day, practical, bread and butter responsibilities of his practice.[103]

Practitioners as well as judges continue to ask law reviews to produce more traditional scholarship tailored toward their needs. If legal scholars do not respond, these criticisms may mark the solidification of the prejudice that prevented judges from considering law review articles as persuasive secondary authority.[104]

In addition to practitioners and judges, some academics agree that a great deal of scholarship being produced today is impractical. They believe that impractical scholarship has added to the discord between the bar and academia. At a conference on law journals sponsored by the *Stanford Law Review* in 1995, Robert Pitofsky, professor and former dean at Georgetown University, now a commissioner of the Federal Trade Commission, summarized recent criticisms by noting that legal scholarship "is increasingly theoretical, impractical, esoteric, [and] spuriously scientific."[105] Pitofsky believes there is a contrast between today's legal scholarship, in which academics reject the opportunity to influence real world decisions in order to maintain purity of vision, with "the scholarship of yesteryear," in which scholars sought to play a real world role.[106]

Like practitioners and judges, academicians similarly note that a great deal of legal scholarship being produced today addresses areas of doctrine that are far too

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103. *Id.* at 391-92.

104. While practitioners and judges complain that there is not enough scholarship tailored to their needs, law reviews have received other criticism from the judiciary. Justice Holmes at one time admonished counsel who referred to a law review article in his oral argument, stating that such articles were the "work of boys." Charles E. Hughes, *Foreword*, 50 YALE L.J. 737, 737 (1941). Much of this animosity may stem from the critical review many judges have received in the pages of law reviews. *See id.* Such criticism has prompted some judges, when asked how to improve law reviews, to suggest, "write only flattering things about judges' opinions . . . [and] if an opinion reaches the wrong result, instead of immortalizing it as myopic or blundering, why not describe it as thought-provoking or interesting?" Kaye, *supra* note 101, at 314. This, however, may not be the most constructive criticism. Of course, judges have not cornered the market on criticism that may not be constructive. *See* Fred Rodel, *Goodbye to Law Reviews*, 23 VA. L. REV. 38 (1936). Professor Rodel stated, "There are two things wrong with almost all legal writing. One is its style. The other is its content." *Id.*

105. *McCrate Report*, *supra* note 68, at 202.

106. *See id.*; *see also* MARY ANN GLENDON, A NATION UNDER LAWYERS 204-05 (1994) (noting that many articles will be read by no one at all, other than the writer's promotion and tenure committee); John S. Elson, *The Case Against Legal Scholarship or, If the Professor Must Publish, Must the Profession Perish?*, 39 J. LEGAL EDUC. 343, 343 (1989); Daniel A. Farber, *The Case Against Brilliance*, 70 MINN. L. REV. 917, 918 (1986) (claiming current scholarship places emphasis on clever, highly counter-intuitive theories at the expense of common sense); John E. Nowak, *Woe unto You, Law Reviews!*, 27 ARIZ. L. REV. 317, 320 (1985) (stating that the way to become a successful professor is to "[t]ake an obscure little problem that no one has thought much about, blow it all out of proportion, and solve it, preferably several times, in prestigious law reviews").

obscure.[107] For example, Professor Kenneth Lasson, a professor of law at the University of Baltimore, observed the following:

> The lead articles themselves are often overwhelming collections of minutiae, perhaps substantively relevant at some point in time to an individual practitioner or two way out in the hinterlands — and that almost entirely by chance. Otherwise they are relegated to oblivion, or if lucky to a passing *but* see in someone else's obscure piece.
>
> True (and perhaps good), law today pervades all aspects of life — but must all aspects of life be treated in law reviews? Here's a sampling of recent articles:
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> — The Unrecognized Uses of Legal Education in Papua New Guinea
> — The Legal Status of Fish Farming
> — Epistemological Foundations and Meta-Hermeneutic Methods: The Search for a Theoretical Justification of the Coercive Force of Legal Interpretation
> — If Spot Bites the Neighbor, Should Dick and Jane Go to Jail?
> — Judicial Review: From the Frog to Mickey Mouse
> — What's Love Got to Do With It? Critical Legal Studies, Feminist Discourse, and the Ethic of Solidarity
> — Morality or Sittlichkeit: Toward a Post-Hegelian Solution
> — Toward a Legal Theory of Popular Culture
> — Toward an Economic Theory of Voluntary Resignation by Dictators
> — The Differentiation of Francophone Rapists and Nonrapists Using Penile Circumferential Measures
> — Why Study Pacific Salmon Law?
>
> Why, indeed.[108]

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107. *See* Kenneth Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926 (1990).

108. *Id.* at 930. Along with practitioners and judges, students apparently are interested for the most part in doctrine. However, their definition of doctrine may be misguided.

> Most law students . . . always want more "doctrinal" education, though their view of doctrine is not the same. . . . What they want is more "black-letter" law — that is, clear and well-organized presentation of rules in the style of the well-taught bar review cram course. This "doctrinal education" we do not need. [Students must be taught] that just learning rules is of limited use; that one has to learn also how to select the right rule for a case among conflicting rules, to apply rules to facts, to interpret rules and factual narratives and to argue contrary interpretations; and that these skills in turn require some grasp of principles, policies, and the importance of contextual variations.

Gordon, *supra* note 85, at 2107-08. In a footnote, Professor Gordon notes a further phenomenon.

> The minute that a teacher launches a discussion of theory, policy, ethics, or social contest that is not immediately and closely tied to resolving a case situation, most of the students tune out and put down their pens. . . . My impression is confirmed by a recent study of Harvard Law students. *See generally* Robert Grandfield, *Making Elite Lawyers* (1992).

While judges have been some of the loudest critics, they have also expressed a desire to consult and utilize law review articles. Chief Justice Charles Evan Hughes expressed his belief that "it is not too much to say that, in confronting any serious problem, a wide-awake judge and careful judge will at once look to see if the subject has been discussed, or the authorities collated and analyzed, in a good law periodical."[109] More recently, Justice William O. Douglas, himself a former law professor, stated, "I have a special affection for law reviews, as I was an editor at Columbia (1924-1925), and I have drawn heavily from them for ideas and guidance as practitioner, teacher, and as judge."[110] Chief Justice Earl Warren stated that law review articles and comments are "indispensable professional tools."[111]

In addition to the federal judiciary, state court judges have expressed an interest in law reviews. Justice Frank K. Richardson stated the following:

> Contrary to what you may think, judges read law reviews, very selectively. The very proliferation of appellate opinion writing in the United States forces the average jurist very often to rely on secondary sources. When a judge can find an applicable law review article, he has discovered a jewel, a very useful tool, a light on the trail, a signpost on the path.[112]

Justice Richardson further suggested that law reviews may shape the law in an even more concrete way, as the modern version of special masters, commissioners or assessors who, near the turn of the century, advised and assisted courts in making determinations of fact.[113]

Id. at 2108 n.81. Of further interest, Professor Gordon has observed that not all students have this reaction.

> The Federalists seem totally aware of the practical utility of building a worldview out of history, political theory, and economics and legal theory that in turn will inform their views of practice and their reform agenda as lawyers. By contrast some of my more left-wing students, to my considerable distress, refuse to see how useful theory could be to their causes, reject it as elitist garbage, and view anecdote, autobiography and polemic as sufficient substitutes.

Id. at 2108.

109. Hughes, *supra* note 104.

110. William O. Douglas, *Law Reviews and Full Disclosure*, 40 WASH L. REV. 227, 227 (1965).

111. *See supra* note 104 and accompanying text.

112. Richardson, *supra* note 102, at 388.

113. *See* Crowell v. Benson, 52 S. Ct. 285, 292-93 (1932). In *Crowell*, Chief Justice Hughes stated in the majority opinion:

> There is no requirement that, in order to maintain the essential attributes of the judicial power, all determinations of fact in constitutional courts shall be made by judges. . . . In cases of equity and admiralty, it is historic practice to call to the assistance of the courts, without the consent of the parties, masters, and commissioners or assessors, to pass upon certain classes of questions, as, for example, to take and state an account or to find the amount of damages. While the reports of masters and commissioners in such cases are essentially of an advisory nature, it has not been the practice to disturb their findings when they are properly based upon evidence, in the absence of errors of law.

Id.

> [L]aw reviews perform an invaluable service for courts when, with resources that are unavailable to courts, [reviews perform] . . . practical field studies, they assemble statistical information, qualitative analysis, and legal and constitutional assessments of judicial problems. When properly documented, the law review in effect becomes, in reality, an investigative arm of the court, a valuable adjunct to the administration of justice nationwide.[114]

Arguably the strongest judicial endorsement of law reviews has come from Chief Justice Earl Warren. Chief Justice Warren, in an address at the University of Southern California Law Review's annual banquet in 1952, stated:

> The American law review properly has been called the most remarkable institution of the law school world. To a lawyer, its articles and comments may be indispensable professional tools. To a judge . . . the review may be both a severe critic and a helpful guide. But perhaps most important, the review affords invaluable training to the students . . . .[115]

B. Academia's Perspective

Despite much criticism and controversy, modern scholarship has many supporters who do not believe it is impractical. Its defenders, however, focus for the most part on the controversial interdisciplinary scholarship, referred to as "theoretical"[116] by judges and practitioners, arguing that it is a justifiable area of legal study. Defenders of "theory" generally justify interdisciplinary scholarship for its ability to explain the legal system, to increase the morality of students and practitioners, and to assist practitioners and judges in their real world legal decisions.[117] Of note, few if any defenders of modern legal scholarship profess the utility or value of narrowly tailored doctrinal scholarship that addresses obscure areas of the law — scholarship that practitioners and judges similarly condemn as impractical.

In direct contrast to judges and practitioners, supporters of interdisciplinary scholarship view it much the way Holmes described, as a tool for the competent *practitioner* to get to the bottom of the subject. They attempt to persuade judges and practitioners that this type of scholarship is practical. For example, J. Cunyon

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114. Richardson, *supra* note 102, at 389. In a series of cases involving the California Mentally Disordered Sex Offenders law, the California Supreme Court relied heavily on a symposium of the University of Santa Clara that addressed the issue and presented an empirical study of medical and penological data. *See id.* (discussing People v. Burnick, 535 P.2d 352 (Cal. 1975) and People v. Feagley, 535 P.2d 373 (Cal. 1975)). The court took judicial notice of the material because it "had been carefully checked, prepared and assessed by experts, and having been published was subject to whatever *professional criticism* was indicated." *Id.* (emphasis added).

115. Earl Warren, *Messages of Greeting to the UCLA Law Review*, 1 UCLA L. REV. 1 (1953).

116. *See supra* note 80-82 and accompanying text.

117. *See* Sternlight, *supra* note 82, at 736 (noting that there are other justification for theory); *see also* Paul Brest, *Plus Ca Change*, 91 MICH. L. REV. 1945 (1993) (stating it is important to expand legal knowledge and thought for their own sake); Paul D. Reingold, *Harry Edwards' Nostalgia*, 91 MICH. L. REV. 1998, 1999 (1993) (arguing that theory describes complex norms).

Gordon, a former member of the United States Navy Judge Advocate General's Corps and current litigation partner at Jenner & Block in Chicago, suggests that "outsider" theoretical scholars, such as feminists and critical race theorists, are of the most assistance to her as a practitioner, in that the heavy doctrinal education promotes the existing establishment, whereas the outsider scholarship can be used to critique the establishment and argue for changes in the law.[118] Others, such as Jean R. Sternlight, an assistant professor at Florida State University College of Law, argue that the various "law and" theories are valuable tools to both legislators and practitioners.[119] In a recent article, Sternlight demonstrates how critical legal studies, law and economics, and feminist jurisprudence can be directly applied by lobbyists to the "real world" issue of whether newborn children should be subjected to mandatory, nonanonymous testing for HIV.[120] Further, she demonstrates how these areas of legal study could provide insights to an attorney regarding the constitutionality of such a law.[121]

Similarly, Professor Robert Gordon of Stanford University points out how the "law and economics" movement is very practical.[122]

> I must admit my jaw dropped when I came to the part of Judge Edwards' article that seems to argue that even law and economics is not "practical." . . . President Reagan's executive orders required all the agencies to do "cost-benefit" analyses; the Antitrust Division of the Justice Department incorporated Chicago School antitrust theory in its guidelines; environmental agencies shifted away from command-and-control regulation to economic-incentive-based standards; deregulation

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118. *See* J. Cunyon Gordon, *A Response from the Visitor from Another Planet*, 91 MICH. L. REV. 1953, 1961-62 (1993).

119. *See* Sternlight, *supra* note 82, at 736-67.

120. *See id.*; *see also* Edward A. Bernstein, *Law and Economics and the Structure of Value Adding Contracts: A Contract Lawyer's View of the Law & Economics Literature*, 74 OR. L. REV. 189 (1995) (arguing that law and economics literature is useful to practitioners). Bernstein states that:

> [t]raditionally, practicing lawyers have ignored the law and economics literature most likely because it focuses primarily on how legal rules can be used to improve social welfare rather than on how to serve the interests of clients. . . . [S]cholars would better serve the practicing bar by directly addressing issues confronting contract lawyers, [however] the existing literature, if viewed from the perspective of a contract lawyer, can be used to analyze and formalize general principles practicing contract lawyers routinely apply to structure value increasing executory contracts and to effectively allocate transactional risks.

Id. at 189-90.

121. *See* Sternlight, *supra* note 82, at 753. However, her insights seem more political than legal. The first half of Professor Sternlight's example focuses on the Fourteenth Amendment. *See id.* at 754. In addition to arguing that the government does not have a compelling governmental interest, she argues that an attorney practically applying CLS would support her position with policy arguments that would be made by a lobbyist opposing the law. *See id.* The second half of the explanation centers on how a "politicized" attorney may act as a lobbyist and organize a political opposition to the legislation, focusing on the adverse impact on African Americans, Hispanics, and poor members of our society, that would likely be caused by mandatory testing. *See id.*

122. *See* Gordon, *supra* note 86, at 2083-84.

> statutes shifted traditional regulated industries like trucking and airlines out of regulation entirely in market regimes; the Bureau of Economics and the Federal Trade Commission seized power from the Bureau of Consumer Protection; tort reforms premised on economic analysis were widely proposed, as were "cafeteria" plans of educational and health providers competing with one another other for consumer votes, and still other plans to privatize virtually every remaining public function. Leading law-and-economics scholars where elevated to the federal bench and administrative agencies, which they found very congenial platforms for the application of their theories.[123]

In contrast to many academics who argue that modern scholarship is practical, many defenders of interdisciplinary scholarship acknowledge that their work is of no practical value to practitioners and judges, but support the scholarship on moral and educational grounds. In fact, many academics admit openly that much of the modern interdisciplinary scholarship is of little use to judges and practitioners, and are satisfied with that development. At least one (anonymous) academic scholar admits that modern scholarship does not speak to judges or practitioners and that he or she has no intention to make any changes regarding publication decisions:

> Though I am always delighted to discover that a judge has [read] anything I have written . . . I can honestly say that I [do not] expect many judicial readers nor am I willing to redirect my writing in ways likely to increase the number.
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> . . . I view my task as a legal academic as similar more to the member of a university department of religion somewhat detached from the practices he/she is studying . . . one need not be devotee of a particular religion in order to find its practices or doctrines fascinating.[124]

One legitimate explanation for why academics may not write articles for practitioners and judges is that they view interdisciplinary scholarship as a tool to critique and serve society, creating a higher level of morality in practitioners and influencing policy changes that need to be made in the law. Emma Jordan of the Georgetown University Law Center, a former president of the Association of American Law Schools, believes interdisciplinary scholarship is a valuable tool to critique our social and legal structures.[125] "[T]he newly emerging genres of critical race legal theory and feminist legal theory offer a window of intellectual opportunity, through which lawyers can begin to reimagine a just and fair society."[126] Bryant Garth, dean and professor at the Indiana University School of Law, argues that law schools should

123. *See* Gordon, *supra* note 86, at 2084; *see also* Bernstein, *supra* note 116, 120, at 189-90 (discussing how law and economics principles can be used by practicing contract lawyers, but noting that "scholars would better serve the practicing bar by directly addressing issues confronting contract lawyers").

124. Edwards, *supra* note 71, at 36 (letter on file in chambers).

125. *See McCrate Report*, *supra* note 68, at 216 (comments of Emma Jordan).

126. *See id.*

teach future lawyers to be guided by morality, and that interdisciplinary scholarship is the way to achieve this end.[127] Many feel that the efforts of critical legal scholars and others doing "law and" work may be the only hope for making the legal profession "honorable."[128]

Interdisciplinary scholarship has been praised for its ability to provide insight into existing legal systems. Yale Law School Professor George Priest argues that the legal system can best be understood by employing the methods and theories of the social sciences.[129] Professor Priest says, "It follows from this view, however, that one must abandon the notion that law is a subject that can be usefully studied by persons trained only in the law."[130]

These beneficial uses of interdisciplinary scholarship have caused many supporters to propose changes to law school curricula. Judge Posner, one of the original practitioners of the law and economics movement, believes that law school curricula should evolve to include specialized education in fields of study other than legal doctrine.[131]

> The law schools need to encourage the branch of academic law that I call "Legal Theory. . . ." By Legal Theory, I mean the study of the law not as a means of acquiring conventional professional competence but "from the outside," using the methods of scientific and humanistic inquiry to enlarge our knowledge of the legal system. There should be departments of law, where students can pursue doctoral programs in Legal Theory, or alternatively programs that meld college, law school and doctoral training in another discipline into an integrated course of study that would take less than the minimum of ten years after high school that such a program would currently require.[132]

To be sure, Judge Posner moderates his support by cautioning that he is not suggesting "that instruction or research in Legal Theory replace doctrinal analysis."[133]

More controversially, however, it has been proposed that a hypothetical law school department, specializing strictly in legal scholarship, would not require a single

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127. *See* Bryant G. Garth, *Legal Education and Large Law Firms: Delivering Legality or Solving Problems*, 64 IND. L.J. 433, 445 (1989); *see also* Anthony T. Kronman, *Foreword: Legal Scholarship and Moral Education*, 90 YALE L.J. 955, 955 (1981) (stating that legal scholarship plays an indispensable role in the process of moral education).

128. *See* Derrick Bell & Erin Edmonds, *Students, as Teachers, Teachers as Learners*, 91 MICH. L. REV. 2025, 2052 (1993).

129. *See* George L. Priest, *Social Science Theory and Legal Education: The Law School as University*, 33 J. LEGAL EDUC. 437, 437 (1983).

130. *Id.*

131. Academics have also expressed this view. *See, e.g., id.* at 441 (predicting approvingly that law schools will become like graduate schools in social sciences).

132. Richard A. Posner, *The Decline of Law as an Autonomous Discipline: 1962-1987*, 100 HARV. L. REV. 761, 778-79 (1987).

133. *Id.* at 779.

individual with legal training. Professor Larry Alexander discussed his proposed legal scholarship department in the following passage:

> [A] department specializing strictly in legal scholarship — if such a department were warranted — could be staffed solely by economists, historians, philosophers, and other academics rather than by lawyers. More precisely, such a legal studies department requires a faculty of good historians, economists, philosophers, and so forth, but not necessarily good lawyers. Though a J.D. degree can help to acquaint social scientists and philosophers with doctrine and with the internal participant's view of law and its institutions, a legal studies department not engaged in training lawyers might well have more Ph.D.s relative to J.D.s on its faculty than most law schools.[134]

Another, less legitimate, explanation for why academics may not write articles for practitioners and judges is that they feel the study of doctrine is not an intellectual pursuit. Professor Mark Tushnet suggests that "something has gone wrong" if legal scholarship focuses on doctrine. He believes that scholarship's obsessive focus on doctrine relegates it to the margin of serious intellectual activity and contemporary social thought.[135] Professor Tushnet believes that traditional legal advocacy is so subjective that a traditional doctrinal article is beyond serious intellectual consideration.

> For example, one recent article deals with the constitutionality of statutes that limit the ability of a defendant accused of rape to examine aspects of the victim's history. It discusses the Supreme Court's interpretation of the confrontation clause of the Sixth Amendment and concludes that some of the statutory limitations are unconstitutional. The authors treat their conclusions as deductions from the Constitution, but the legacy of Realism makes that impossible for serious readers to accept. Instead, the article must be read, as I suspect it was intended to be read, as a research aid for lawyers who defend persons accused of rape, and for the judges before whom those lawyers appear.
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> . . . .
>
> Despite intended appearances to the contrary, both case analysis and policy prescription rely on choices that are not only subjective but controversial. The dialogue they promote is often intellectually sterile, because someone else can simply choose another goal and use the same type of analysis to come to the opposite conclusion. An article that goes with the crooks is followed by one that goes with the prosecutors; one that says that corporate responsibility is a problem is answered by one that says that everything is hunky-dory.[136]

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134. Lary Alexander, *What We Do, Why We Do It*, 45 STAN. L. REV. 1885, 1899 (1993).

135. *See* Mark Tushnet, *Legal Scholarship: Its Causes and Cure*, 90 YALE L.J. 1205, 1205 (1981).

136. *Id.* at 1210-11. Professor Tushnet asserts that contemporary legal scholarship, the study of "law as a phenomenon," comes closest to producing a program of research under which justice, defined in

Professor Tushnet is not alone in his belief.[137]

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terms other than the rule of law, can be achieved. *See id.* at 1218.

The study of "law as a phenomenon" centers on the Marxist theory "that all knowledge is a social product and thus that knowledge can have no transcendent validity." *See id.* at 1219-20. The problems highlighted by this approach are the claims to objective knowledge that are shown to be truly subjective when confronted with the reality that objective knowledge is produced by individuals located inextricably within the arena about which they are said to have knowledge.

However, Professor Tushnet notes that this type of scholarship will not assist most practitioners, not because it fails to address issues judges and practitioners face, but rather because few practitioners will be able to master the technique.

> Proselytizers for the . . . [law as a phenomenon] form sometimes argue that it is professionally valuable. The analytic schemes they develop . . . provide useful ways of organizing a complex body of information, give insights into the kinds of arguments decision-makers find attractive, and so on. The professionalist defense of the third form of scholarship is probably valid, but in a rather restricted sense . . . .Unfortunately, few professionals have enough talent to master the . . . [traditional] forms and then study the . . . [law as a phenomenon]. Selectivity in law school admissions means that the . . . [law as a phenomenon] scholarship will be professionally valuable to a significant concentration of students only at the most elite institutions. Although there are inevitably a few students at every law school who could profit from . . . [this] form's approaches, the absence of a group of sufficient size is likely to create pressures at the less elite schools against following the model used by some scholars at the more elite schools. . . . Under those circumstances, those who produce scholarship of the . . . [law as a phenomenon] form may be seen less as lawyers than as social theorists, economists, or whatever, and their work may not be seen as "legal" scholarship at all.

Id. at 1219 n.57

137. For example, Jane B. Baron wrote a "biographical" account of her progression away from traditional doctrine-centered scholarship. *See* Jane B. Baron, *Self-Criticism*, 60 TEMPLE L.Q. 39 (1987) (addressing her previous article, Jane B. Baron, *The Trust Res and Donative Intent*, 61 TUL. L. REV. 45 (1986)). Professor Baron describes how her first article, addressing whether an express trust must have a res ascertained and arguing that the res requirement functions to defeat rather than to effectuate donative intent, was no longer correct and in retrospect was not intellectual because it did not address the issue in a critical manner. *See id.* at 40.

> I confess . . . that beginning in my first year of law school I have consistently found critical legal thought more interesting, more explanatory and more helpful than other approaches to law. And so it was with great chagrin that on reading my first article, completed more than eighteen months ago, I found it marginal and wrong in precisely the senses suggested by Professor Tushnet in 1981.

Id. Professor Baron wrote the article because of "tenure" and at the urging of tenured faculty members not to write anything controversial. However, she admits that she also chose the topic because she "wanted people to like the article" and "thought the article was correct." *Id.*

In reevaluating the article, Professor Baron realized how much the article had taken for granted:

> [P]ermitting private individuals to dispose of their own wealth after death involves a choice that is easily assailed. There is no *a priori* reason why assets held at death should not pass to the state for redistribution to the needy, or to the needy directly, or to the owner's family members to the exclusion of those not related to him by blood. I have no more interest in defending any of these proposals than I have in defending the current order.

Id. at 41. A Westlaw search reveals that Professor Baron's first article has never been cited by a court. Her biographical account of her first article has similarly never been cited by a court; however, it has been cited in three law review articles, including one she authored and this article.

Another scholar, Meir Dan-Cohen, suggests that law professors should not even attempt to communicate with judges or practitioners because they speak essentially different languages — practitioners persuade while scholars search for truth.[138] The premise of this contention is that practitioners are in the business of persuasion and their calling is the "strategic" use of the law and language to reach an end for their clients.[139] In contrast, sincerity is part of the scholar's role. He is guided by the search for truth and enlightenment, not the strategic goals of clients.[140] These differences are, in Dan-Cohen's opinion, "sufficient to dispel any hope or desire for merging them into . . . a unified system of genuine communication" between academics, judges and practitioners.[141]

In spite of the attempts to persuade the bar that "modern" scholarship is practical, practitioners and judges continue to reject much of the scholarship being produced today. If academics are unwilling to redirect some of their scholarship, the student-edited law reviews may become simply a conversation piece for academics. One sign that law reviews are losing their authority with the courts is the fact that judicial citation of law review articles has declined significantly over the past twenty years.

IV. The Survey

A. Methodology

In contrast to previous studies that have focused on the citation of law reviews by other law journals, or by a single or narrow set of courts,[142] this study analyzes the

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138. *See* Meir Dan-Cohen, *Listeners and Eavesdroppers: Substantive Legal Theory and Its Audience*, 63 U. COLO. L. REV. 569, 574 (1992); *see also* Roger C. Cramton, *"The Most Remarkable Institution": The American Law Review*, 36 J. LEGAL EDUC. 1, 10 (1986) (stating that articles "are not as directly applicable to the problems practitioners face" and that "they frequently employ a scholarly jargon and theoretical framework that practitioners do not understand, [so] they are of much less utility").

139. *See* Dan-Cohen, *supra* note 138, at 574.

140. *See id.*

141. *Id.* at 587.

142. *See, e.g.*, Colleen M. Cullen & S. Randall Kalberg, *Chicago-Kent Law Review Faculty Scholarship Survey*, 70 CHI.-KENT L. REV. 1445 (1996) [hereinafter Cullen & Kalberg, *1996 Faculty Survey*]; Executive Board, *Chicago-Kent Law Review Faculty Scholarship Survey*, 65 CHI-KENT L. REV. 195 (1989); Lawrence M. Friedman, et al., *State Supreme Courts: A Century of Style and Citation*, 33 STAN L. REV. 773 (1981); Janet M. Gumm, *Chicago-Kent Law Review Faculty Scholarship Survey*, 66 CHI.-KENT L. REV. 509 (1990) [hereinafter Gumm, *1990 Faculty Survey*]; James Lindgren & Daniel Seltzer, *The Most Prolific Law Professors and Faculties*, 71 CHI.-KENT L. REV. 781 (1996); William H. Manz, *The Citation Practices of the New York Court of Appeals, 1850-1993*, 43 BUFF. L. REV. 121 (1995); Deborah J. Merritt & Melanie Putnam, *Judges and Scholars: Do Courts and Scholarly Journals Cite the Same Law Review Articles?*, 71 CHI.-KENT L. REV. 871 (1996); Fred R. Shapiro, *The Most Cited Law Review Articles*, 73 CAL. L. REV. 1540 (1985) [hereinafter Shapiro, *Most-Cited*]; Fred R. Shapiro, *The Most-Cited Law Review Articles Revisited*, 71 CHI.-KENT L. REV. 751 (1996) [hereinafter Shapiro, *Revisited*]; Louis J. Sirico, Jr. & Jeffrey B. Margulies, *The Citing of Law Reviews by the Supreme Court: An Empirical Study*, 34 UCLA L. REV. 131 (1986) [hereinafter Sirico, *Supreme Court Study*]; Louis J. Sirico, Jr. & Beth A. Drew, *The Citing of Law Reviews by the United States Courts of Appeals: An Empirical Analysis*, 45 U. MIAMI L. REV. 1051 (1991) [hereinafter Sirico, *Appeals Court Survey*]; Bart Sloan, Note, *What Are We Writing For? Student Works as Authority and Their Citation by the Federal Bench*, 1986-1990, 61 GEO WASH. L. REV. 221 (1992).

citation to law reviews by the United States Supreme Court, federal circuit courts of appeal, federal district courts, and state supreme courts, during three two-year periods spaced ten years apart. The first period covers December 31, 1974, through January 1, 1977 (essentially the years 1975 and 1976). The second and third periods cover the years 1985-86 and 1995-96, respectively, in the same manner. Two-year periods were chosen to obtain broad samples and thus to minimize distortion caused by any particular opinion that contained a disproportionate number of citations or by a single article that garnered a large number of citations. The three periods were chosen to allow for a trend analysis of citation practices over the past twenty years.

This survey utilized the list of leading law journals selected by the *Chicago-Kent Law Review*, which conducts periodic citation surveys.[143] Specifically, the list was taken from Table I of the 1996 *Chicago-Kent Law Review Faculty Scholarship Survey* (1996 *Chicago Kent Survey*), which compiled its ranking from *Shepard's Law Review Citations*.[144] *Shepard's* counts citations in federal and state courts and about one hundred fifty law journals, including the leading student-edited law reviews of many law schools.[145] However, it leaves out most faculty-edited law reviews and interdisciplinary journals[146] so that for the most part, only traditional, student-edited, general interest law reviews appear in the survey. The journals selected by the 1996 *Chicago-Kent Survey*, utilized in this survey, represent a good sample from which to determine which student-edited law reviews are heavily cited. The 1996 *Chicago-Kent Survey* selected three volumes of each law review beginning in 1987, intentionally omitting *Shepard's* recording of self-citations and citation in cases, and ranked the reviews by the total number of citations from the date of the law review's publication through the June 1993 issue of *Shepard's*.[147] Conversely, this survey ranks the same law reviews by the total number of citations by courts and compares the two rankings in Appendix I.

After selecting the law reviews for this survey, a Westlaw search was conducted to find the number of citations to a journal in the particular court and for the year selected.[148] The searches were conducted in the United States Supreme Court (SCT),[149] United States Circuit Courts of Appeals (CTA),[150] United States District Courts (DCT)[151] and State Supreme Courts (ALLSTATES)[152] databases for the

143. *See* Cullen & Kalberg, *1996 Faculty Survey*, *supra* note 142; Executive Board, *supra* note 142; Gumm, *1990 Faculty Survey*, *supra* note 142; Lindgren & Seltzer, *supra* note 142; Merritt & Putnam, *supra* note 142; Shapiro, *Most-Cited*, *supra* note 142; Shapiro, *Revisited*, *supra* note 142.

144. *See* Cullen & Kalberg, *1996 Faculty Survey*, *supra* note 142, at 1446-47 & tbl. I.

145. *See id.* at 1446.

146. *See id.* at 1447.

147. *See id.*

148. The searches are listed in Appendix II. The "Bluebook citation" was always utilized first, and the other variations were included in an attempt to credit any improper cites, although these alternatives rarely reveal additional citations.

149. SCT database contains all U.S. Supreme Court Cases from 1945 to the present.

150. CTA database contains all U.S. Court of Appeals cases from 1945 to the present.

151. DCT database contains all U.S. District Court cases from 1945 to the present.

152. ALLSTATES database contains all State Supreme Court cases from all 50 states from 1945 to the present.

selected year groups. The compiled data were then entered into a computer database to produce the graphs and tables in Appendix I.

This survey is not presented as qualitatively perfect, and certain factors that would affect the number of citations of any one journal were not taken into account. For example, there were inherent problems with using Westlaw searches to count citations to law review articles. Most notably, courts do not always use *Bluebook* format. If *Bluebook* format is used, the spacing of the citation in its online reproduction is not standard, which can affect the ability of the search engine to find the citation.[153] Further, some law reviews have changed names or abbreviations, for instance Columbia, which during the beginning of the 1970s was abbreviated "Col. L. Rev." but is cited today as "Colum. L. Rev." Similarly, many journals have secondary reviews that might accidentally be picked up in a search for a specific law review. For example, in the search for the "UCLA L. Rev.," several cites to the *UCLA-Alaska Law Review* appeared. The survey is, however, sufficiently accurate to generally compare law reviews and to get a sense of the trend of decreasing citation. A random sampling of nine of the journals in the survey revealed an error percentage of slightly less than 0.5 %.[154]

B. Hypothesis and Results

This survey was conducted to provide empirical verification that legal scholarship has become less relevant to the practice of law. If judges and practitioners are correct, then there should be a decrease in the use of legal scholarship in judicial opinions and briefs. Further, when they do cite law review articles, judges and practitioners should cite markedly different articles than those cited by academicians. The results of this survey support this hypothesis.

The number of judicial citations of law reviews in each of the courts surveyed declined dramatically from 1975 to 1996. As evidenced by the tables in Appendix I, there was a 47.35% decrease in overall citations by the federal courts and state supreme courts combined. Federal court citations decreased 45% over the survey period. The results for each specific court were equally dramatic. Citations in the

153. For example, the Southern California Law Review was found abbreviated: 1) "S._Cal. L. Review"; 2) "So._ C._ L._ Rev."; 3) "S._ C._ L._ Rev."; 4) "S.C._ L.Rev"; and 5) "S.C.L.Rev."

154. Of the nine law reviews that were selected, all of these Westlaw "hits" were reviewed for accuracy if there were fewer than 50 total citations. If there were over 50 citations, a random sample of the total hits was reviewed for accuracy. In total, 1942 "hits" were reviewed for accuracy and revealed nine citations that were not attributable to the journal that was the focus of the search. The precise error rate was 0.463%. Individually, each journal produced the following error percentages:

Harvard Law Review: 600 hits checked / 0 errors = 0%
Yale Law Journal: 525 hits checked / 0 errors = 0%
Columbia Law Review: 492 hits checked / 0 errors = 0%
UCLA Law Review 217 hits checked / 5 errors = 2.3%
Southern California Law Review: 210 hits checked / 0 errors = 0%
Brooklyn Law Review: 89 hits checked / 0 error = 0%
California Law Review: 243 hits checked / 4 errors = 1.7%
University of Florida Law Review: 85 hits checked / 0 errors = 0%
University of California at Davis Law Review: 6 hits checked / 0 errors = 0%

United States Supreme Court, while increasing slightly in the 1980s, plummeted 65.0% over the next ten years for an overall decrease of 58.6% for the twenty-year period. Federal circuit court citations decreased 56.0%. Federal district court citations decreased 24.8%, and state supreme court citations decreased 46.8%.

In addition, this survey reveals that judges and practitioners appear willing to cite articles in journals that are not traditionally regarded as "elite." As a preliminary matter, however, no survey of law review citations could fail to conclude that most court citations refer to journals that are generally regarded as elite,[155] and this survey reaches the same conclusion. Across the board, the most frequently cited journals, reflected in the Appendix I rankings, were the *Harvard Law Review* and the *Yale Law Journal*. These two schools topped the list of each of the courts studied in this survey. Similarly, the *University of Pennsylvania Law Review*, the *Columbia Law Review*, the *Michigan Law Review*, and the *Texas Law Review* were ranked in the top ten of each court in this survey.[156]

The more interesting discovery of this survey, however, is that while the elite journals top the list of judicial citations, many judicial citations are to journals that are generally not regarded as elite. While most of the top ten law reviews remained the same from the 1996 *Chicago-Kent Survey*, several surprises appeared in the top twenty. In the federal courts, the *Minnesota Law Review* moved from twenty-fourth to tenth; the *Iowa Law Review* moved from fortieth to sixteenth; and the *Georgia Law Review* moved from thirty-seventh to twenty-first.

In the state supreme courts, many of these same reviews appeared in the top ten. Minnesota moved from twenty-fourth to seventh; the *Hastings Law Journal* moved from thirty-fourth up to eighth; and the *Iowa Law Review* moved from fortieth to ninth. While the elite journals certainly top every list, courts appear more at ease than academics in citing journals that are not generally considered "elite."

Beyond this survey, the results of previously conducted surveys are consistent with the hypothesis of this article. A citation study of the United States Supreme Court, published in the *UCLA Law Review* in 1986, noted a 20% decline in the use of scholarship over a seven-year period, studying citations for the years 1971 to 1973

155. *See* Sirico, *Supreme Court Study*, *supra* note 142, at 132 (noting the dominance of the elite journals); *see also* Sirico, *Appeals Court Survey*, *supra* note 142, at 154-55 (noting that most citations refer to journals that are generally regarded as elite).

156. Several theories have been proffered to explain the dominance of the elite journals in judicial citation. Some have speculated that the dominance of these journals may result from their high quality. *See* Sirico, *Supreme Court Survey*, *supra* note 142, at 133; Sirico, *Appeals Court Survey*, *supra* note 142, at 1055. In addition, courts may tend to cite journals because they believe that a journal's name will increase the article's persuasive power. Sirico, *Supreme Court Survey*, *supra* note 142, at 133; Sirico, *Appeals Court Survey*, *supra* note 142, at 1055. Finally, it has been suggested that many judicial clerks are chosen from elite schools and may tend to cite the publication of their respective alma maters. Sirico, *Supreme Court Survey*, *supra* note 142, at 133; Sirico, *Appeals Court Survey*, *supra* note 142, at 1055. These explanations cover the gamut of possible explanations for the dominance of the elite journals.

and 1981 to 1983.[157] The survey suggested that the decline was most likely attributable to the decreasing utility of law reviews to the bar and bench.[158]

The 1986 UCLA study offered two possible explanations for the decline. First, the authors hypothesized that the decrease may be due to changes in the composition of the Supreme Court during the period of the study.[159] However, this theory was dismissed, as the survey observed that none of the justices appeared to be abnormally sparing or free in citing secondary sources.[160] The other explanation suggested by the study was that the court may find legal scholarship decreasingly useful because "[a] growing portion of academic writing, particularly in the elite journals, may be directed toward the scholar, rather than the bar or the bench."[161]

Most revealing, a citation survey appearing in the *Chicago-Kent Law Review* in 1996 by Debora J. Merritt and Melanie Putnam, *Judges and Scholars: Do Courts and Scholarly Journals Cite the Same Law Review Articles?* (the judicial survey), revealed that judges and practitioners cite articles that focus on different legal scholarship.[162] The judicial survey compared a list of the top ten articles cited by courts, with a prior survey conducted by Fred Shapiro[163] that ranked the top ten articles cited by other law reviews in the years 1989, 1990, and 1991.[164] As the judicial survey noted, "[t]he composition of these lists differs dramatically."[165]

Shapiro's survey contained the thirty most-cited law review articles in scholarly journals. Of these articles, which received over fifty citations each in scholarly journals (with some attaining well over one hundred citations), only twelve have ever been cited in a judicial opinion.[166] Further, the academic survey revealed that more than two-thirds of the articles cited in scholarly journals received only one, if any, judicial citation.[167]

In contrast, two of the articles most frequently cited by courts in the judicial survey received no citations in scholarly journals.[168] Over one-third of the articles cited by courts received fewer than ten citations in scholarly journals. Close to two-thirds of the articles cited by courts received fewer than twenty scholarly journal citations.[169] The judicial survey summarized that, "[e]ven accounting for the possibility that popular, scholarly articles elicit judicial citations after a time lag, the difference between our lists and Shapiro's lists is striking."[170]

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157. *See* Sirico, *Supreme Court Study*, *supra* note 142, at 134 (hesitating to attribute the decline to a quirk in the samples).

158. *See id.*

159. *See id.*

160. *See id.* at 135.

161. *Id.*

162. *See* Merritt & Putnam, *supra* note 142.

163. *See* Shapiro, *Revisited*, *supra* note 142.

164. *See* Shapiro, *Most-Cited*, *supra* note 142, at 1540-42.

165. Merritt & Putnam, *supra* note 142, at 880.

166. *See id.*

167. *See id.*

168. *See id.*

169. *See id.*

170. *Id.* at 882. The survey hypothesized that there is a delay in time between an article's

After noting this divergence, the judicial survey categorized the differences and similarities of the two lists by subject matter, theoretical perspectives employed, and the stature of the journals in which they appeared. Their findings support the assertions of judges and practitioners that many articles are irrelevant to practical judicial decision making.

The subject matter delineation revealed that one-half of the articles in Shapiro's survey concerned race or sex discrimination.[171] Conversely, only one article cited by a court in the judicial survey explicitly addressed sex or race discrimination and "even that article does not focus exclusively on those issues."[172] Many of the articles cited by the courts, however, were highly "theoretical."[173] The judicial survey noted that, "courts do not eschew theoretical discussions by scholars, as long as they perceive those discussions as helpful in resolving the controversies before them."[174]

Additionally, the judicial survey noted that five of its thirty articles focused on the law of a single state and received all of their citations from the courts of a single state. Conversely, none of the articles in Shapiro's survey concentrated on the law of a particular state and received their citations from a number of courts.[175] This conclusion supports the argument of the *Virginia Law Review's* 1936 article,[176] which called for state law reviews to focus on the law of their particular jurisdiction. Similarly, these conclusions, when taken together, support the claims of judges and practitioners that they often consult and cite articles that have been tailored to a specific topic relevant to their practice.

V. Conclusion

This survey set out to find evidence supporting the assertions of judges and practitioners that legal scholarship is becoming less relevant to the practice of law. The results evidence a substantial drop in the citation of law review articles by courts. Further, the survey indicates that judges and practitioners cite to different journals than academics. These results, and the results of the previous surveys discussed in this article, are consistent with the observations of judges and

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publication and its acceptance by the courts that may have influenced the low number of citations by the courts to recent articles. *See id.* at 880-82. The study presented in this paper also found that articles cited by the courts tended to be written in a previous decade, as evidenced in Appendix III.

171. *See id.* at 882-90.

172. *Id.* at 883. In the academic survey, many of the recent articles analyzed legal issues from a feminist, critical race theory, or critical legal studies perspective. *See id.* at 886. In fact, the judicial survey notes that Shapiro estimated that two-thirds of the articles in the academic survey published in 1990 or 1991 employ one of these theoretical perspectives. *See id.* (citing Shapiro, *Revisited*, *supra* note 142, at 758). Conversely, the judicial survey revealed that "none of the articles on our 1989-1991 lists adopts an explicitly feminist, critical race, or critical legal studies perspective." *Id.*

173. *See supra* note 80-82 and accompanying text.

174. Merritt & Putnam, *supra* note 142, at 888.

175. *See id.* at 885.

176. *See* Werner, *supra* note 41.

practitioners, and evidence that modern legal scholarship is losing touch with the practice of law.

The decline in citation evidenced in this survey is not conclusive proof that legal scholarship is of diminishing utility to judges and practitioners. In fact, several alternative explanations have been offered for the decreases. One reason may be an increase in the docket load of courts that precludes researching secondary sources.[177] Another possibility is that the increased numbers of law journals and articles have diluted their potency such that "on-point" articles are impossible to find. Finally, judges and practitioners may have given up reading law reviews altogether and therefore do not know what articles would or would not be of use to their practices.

However, judges and practitioners claim there are too many impractical articles and not enough traditional articles that speak to their everyday needs. They themselves have written many articles and given many speeches asking for scholarship that address issues they confront. The requests seem genuine. Further, with their busy schedules, it is not probable that judges and practitioners are inventing this problem as an excuse to defend their disinterest in the scholarship being produced. It seems unlikely with the proliferation of computer research that docket loads or the increased number of journals has contributed to the decrease in citation by the courts. In light of the heated debate between academia and the bar, the decline in legal scholarship seems at least in part attributable to the proliferation of impractical scholarship.

Justice Frankfurter stated, "the law is what the lawyers are."[178] The question currently facing law review boards and authors is whether law reviews will continue to contain what the practicing lawyers feel that law is. It may be that specialized commercial and bar journals are the proper forum for the scholarship interests of judges and practitioners. However, law reviews have historically sought to be influential tools for practitioners and judges. The consequence of not responding to judges and practitioners may be that many important issues will be decided without the input of academic lawyers.

It is not the aim of this article to suggest that law reviews become a doctrinal exposition for judges. Rather, the debate is properly focused on the "middle ground"[179] where both theoretical interdisciplinary work and doctrinal law review articles exist. Ideally, there needs to be a healthy balance of both theory and doctrine. However, the conclusions of this survey, combined with the results of previous surveys, demonstrate the need for more scholarship tailored toward the practicing bar. Editorial boards and authors should give greater consideration to the needs of judges and practitioners if law reviews are to continue to influence the law as an authoritative secondary source and in order to dispel the resurfacing prejudice against student-edited law journals.

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177. *See* FEDERAL COURTS STUDY COMM., REPORT OF THE FEDERAL COURTS STUDY COMMITTEE 110 (1990); WILLIAM D. MCLAUCHLAN, FEDERAL COURT CASELOADS 73-109 (1984).

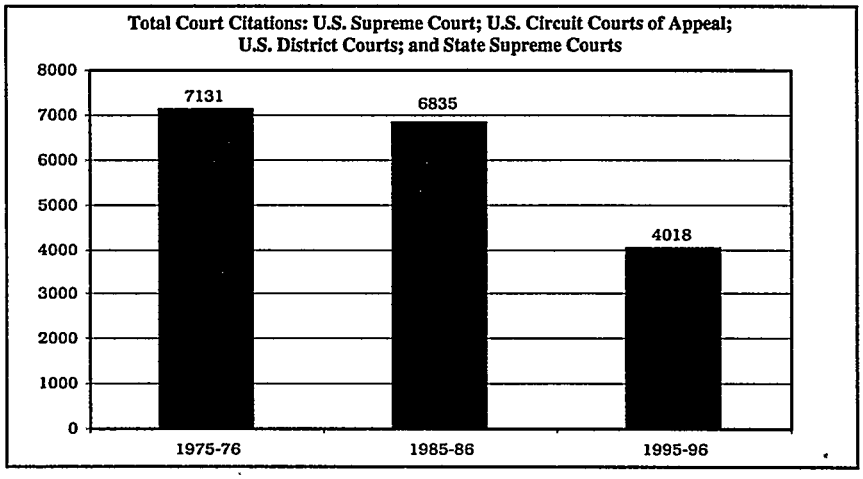
178. Edwards, *supra* note 71, at 34 (citing Letter from Felix Frankfurter, Professor, Harvard Law School, to Mr. Rosenwald (May 13, 1927) (Felix Frankfurter papers, Harvard Law School library), *quoted in* RAND JACK & DANA C. JACK, MORAL VISION AND PROFESSIONAL DECISIONS: THE CHANGING VALUES OF WOMEN AND MEN LAWYERS 156 (1989)).

179. *See* Gordon, *supra* note 86, at 2077.

APPENDIX I

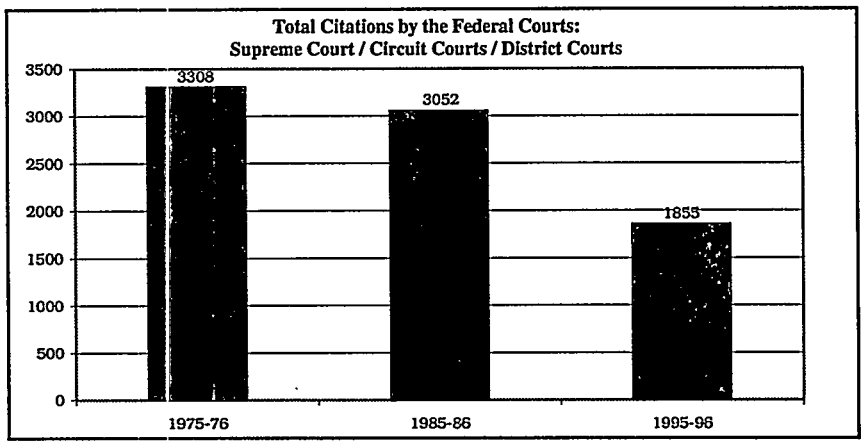
Ranking of Law Reviews: Total Citations by all Courts

	Law School	Chicago-Kent	Total 95-96	Total 85-86	Total 75-76	Total Citations
1	Harvard Law School	1	513	1172	1513	3198
2	Yale Law School	2	341	545	724	1610
3	Columbia Law Review	4	284	558	585	1145
4	Texas Law Review	11	242	356	293	891
5	Michigan Law Review	3	170	280	327	777
6	University of Pennsylvania Law Review	7	121	281	330	732
7	University of Chicago Law Review	8	15	263	286	700
8	Minnesota Law Review	24	152	236	254	642
9	Virginia Law Review	5	108	271	232	611
10	California Law Review	9	137	210	206	553
11	Stanford Law Review	6	118	195	207	520
12	New York University Law	22	133	182	189	504
13	Vanderbilt Law Review	18	136	187	139	462
14	Iowa Law Review	40	91	191	170	452
15	Hastings Law Journal	34	91	168	154	413
16	Tulane Law Review	28	107	155	140	402
17	UCLA Law Review	16	103	124	140	367
18	Georgetown Law Journal	14	79	148	117	344
19	Cornell Law Review	13	94	127	120	341
20	Southern California Law Review	12	78	116	112	306
21	North Carolina Law Review	23	77	126	87	290
22	Duke Law Journal	10	81	107	99	287
23	Northwestern University Law Review	21	64	83	121	268
24	Wisconsin Law Review	17	70	68	77	215
25	Ohio State Law Journal	19	51	78	60	189
26	Boston University Law Review	29	43	74	62	179
27	Maryland Law Review	35	40	58	76	174
28	Georgia Law Review	37	36	89	31	156
29	Business Lawyer	15	47	67	35	149
30	University of Pittsburgh Law Review	39	47	47	44	138
31	Brooklyn Law Review	32	43	43	45	131
32	William and Mary Law Review	27	45	48	24	117
33	University of Cincinnati Law Review	33	41	36	31	108
34	Alabama Law Review	25	28	45	24	105
35	University of Florida Law Review	30	16	35	34	85
36	University of Miami Law Review	36	23	39	22	84
37	Chicago-Kent Law Review	20	15	24	12	51
38	Notre Dame Law Review	26	2	1	3	6
39	U. California at Davis Law Review	38	0	1	5	6
40	San Diego Law Review	31	0	1	1	2



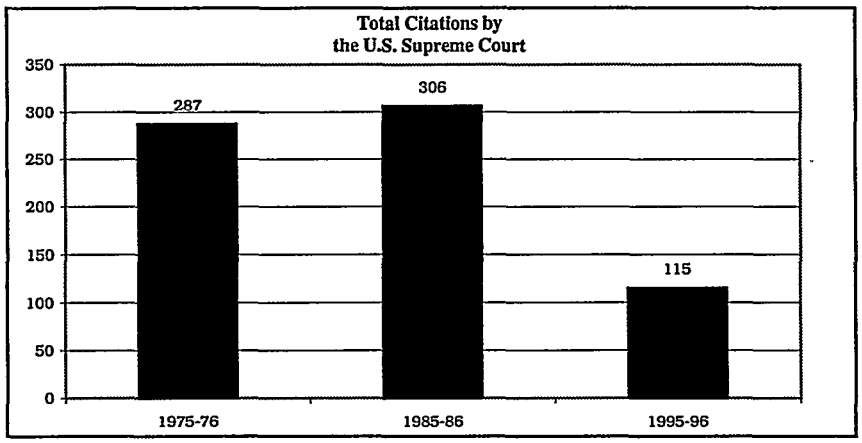
Ranking of Law Reviews: Total Citations by the Federal Courts

	Law School	Chicago-Kent	Total 95-96	Total 85-86	Total 75-76	Total Citations
1	Harvard Law School	1	269	626	897	1792
2	Yale Law School	2	183	267	332	782
3	Columbia Law Review	4	142	299	315	756
4	University of Chicago Law Review	8	94	171	181	446
5	University of Pennsylvania Law Review	7	56	168	205	429
6	Virginia Law Review	5	50	163	124	337
7	Michigan Law Review	3	85	127	124	336
8	Texas Law Review	11	74	98	85	257
9	New York University Law	22	74	86	96	253
10	Minnesota Law Review	24	62	86	101	249
11	Stanford Law Review	6	62	92	92	246
12	Georgetown Law Journal	14	41	75	76	192
13	Vanderbilt Law Review	18	56	72	43	171
14	Cornell Law Review	13	43	63	64	170
15	Duke Law Journal	10	41	62	55	158
16	Iowa Law Review	40	27	59	54	140
17	UCLA Law Review	16	53	41	39	133
18	Northwestern University Law Review	21	36	38	56	130
19	Tulane Law Review	28	45	58	27	130
20	California Law Review	9	36	34	36	106
21	Georgia Law Review	37	19	51	21	91
22	Hastings Law Journal	34	27	36	28	91
23	Business Lawyer	20	27	38	26	91
24	Boston University Law Review	29	23	35	30	88
25	North Carolina Law Review	23	25	34	23	82
26	South Carolina Law Review	12	29	20	30	79
27	University of Pittsburgh Law Review	39	24	17	22	63
28	Ohio State Law Journal	19	24	21	17	62
29	William and Mary Law Review	27	22	23	12	57
30	Brooklyn Law Review	32	21	20	14	55
31	Wisconsin Law Review	17	17	15	18	50
32	Maryland Law Review	35	18	16	15	49
33	University of Cincinnati Law Review	33	17	12	18	47
34	Alabama Law Review	25	13	6	3	32
35	University of Miami Law Review	36	12	7	6	25
36	University of Florida Law Review	30	2	8	8	18
37	Chicago-Kent Law Review	20	5	6	4	15
38	Notre Dame Law Review	26	1	1	3	5
39	U. California at Davis Law Review	38	0	1	1	2
40	San Diego Law Review	31	0	0	0	0



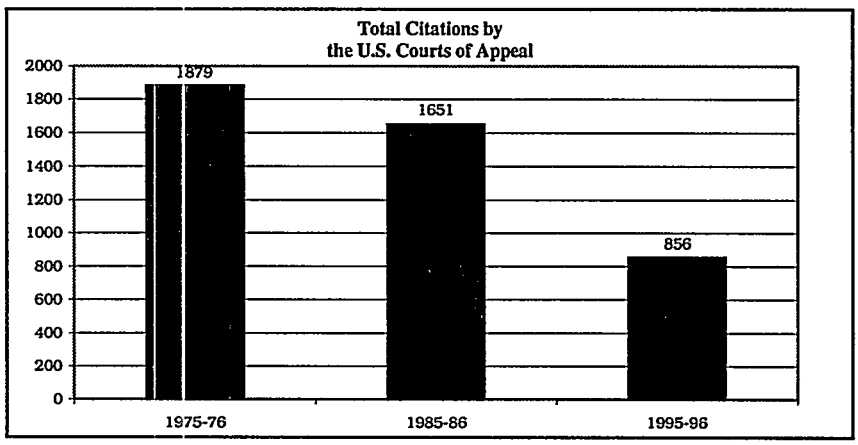
Ranking of Law Reviews: Total Citations by the U.S. Supreme Court

	Law School	Chicago-Kent	SCT 95-96	SCT 85-86	SCT 75-76	Total Citations
1	Harvard Law School	1	15	56	56	127
2	Yale Law School	2	18	31	27	76
3	Columbia Law Review	4	4	38	19	61
4	University of Pennsylvania Law Review	7	4	17	26	47
5	University of Chicago Law Review	8	6	17	22	45
6	Virginia Law Review	5	3	15	15	33
7	Stanford Law Review	6	3	15	11	29
8	Michigan Law Review	3	2	13	10	25
9	Texas Law Review	11	6	10	9	25
10	Minnesota Law Review	24	4	11	10	25
11	New York University Law	22	7	10	7	24
12	Georgetown Law Journal	14	1	6	11	18
13	Iowa Law Review	40	4	6	6	16
14	UCLA Law Review	16	6	6	4	16
15	California Law Review	9	2	0	2	16
16	Northwestern University Law Review	21	3	2	7	12
17	Boston University Law Review	29	3	1	7	11
18	Vanderbilt Law Review	18	3	4	4	11
19	North Carolina Law Review	23	3	3	4	10
20	Southern California Law Review	12	5	4	1	10
21	Duke Law Journal	10	0	6	3	9
22	Hastings Law Journal	34	0	4	5	9
23	Cornell Law Review	13	0	5	3	8
24	Georgia Law Review	37	0	7	1	8
25	Tulane Law Review	28	3	3	0	6
26	University of Pittsburgh Law Review	39	1	3	2	6
27	Business Lawyer	15	1	2	3	6
28	William and Mary Law Review	27	3	1	2	6
29	Brooklyn Law Review	32	1	2	2	5
30	Ohio State Law Journal	19	0	3	1	4
31	University of Cincinnati Law Review	33	1	1	2	4
32	Alabama Law Review	25	2	0	2	4
33	Wisconsin Law Review	17	0	0	3	3
34	Maryland Law Review	35	0	2	0	2
35	Chicago-Kent Law Review	20	1	0	0	1
36	University of Florida Law Review	30	0	0	1	1
37	University of Miami Law Review	36	0	1	0	1
38	San Diego Law Review	31	0	0	0	0
39	Notre Dame Law Review	26	0	0	0	0
40	U. California at Davis Law Review	38	0	0	0	0



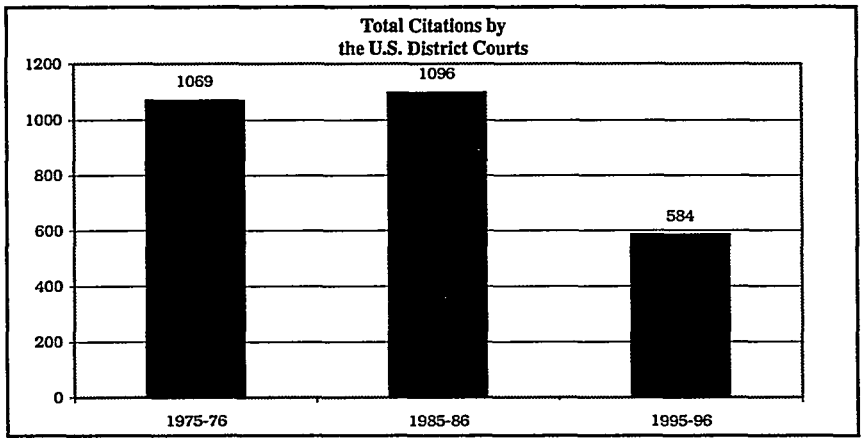
Ranking of Law Reviews: Total Citations by the U.S. Courts of Appeal

	Law School	Chicago-Kent	CTA 95-96	CTA 85-86	CTA 75-76	Total Citations
1	Harvard Law School	1	104	353	509	966
2	Yale Law Journal	2	104	150	195	449
3	Columbia Law Review	4	66	153	164	383
4	University of Chicago Law Review	8	46	106	94	246
5	University of Pennsylvania Law Review	7	31	89	114	234
6	Michigan Law Review	3	34	76	73	183
7	Virginia Law Review	5	21	63	79	163
8	Texas Law Review	11	34	57	54	142
9	New York University Law Review	22	44	41	47	132
10	Minnesota Law Review	24	26	43	61	130
11	Stanford Law review	6	24	48	55	127
12	Cornell Law Review	13	28	42	44	114
13	Duke Law Review	10	24	42	33	99
14	Georgetown Law Review	14	17	38	43	98
15	Vanderbilt Law Review	18	25	36	29	90
16	Northwestern University Law Review	21	20	26	28	74
17	Tulane Law Review	28	16	38	17	71
18	Iowa Law Review	40	11	30	25	66
19	UCLA Law Review	16	24	20	22	66
20	California Law Review	9	20	17	19	56
21	Boston University Law Review	29	10	20	14	44
22	Hastings Law Journal	34	12	18	14	44
23	South Carolina Law Review	12	13	7	22	42
24	North Carolina Law Review	23	12	14	15	41
25	Georgia Law Review	37	8	22	11	41
26	Business Lawyer	15	6	19	15	40
27	William and Mary Law Review	27	8	17	9	34
28	University of Pittsburgh Law Review	39	11	10	12	33
29	Ohio State Law Journal	19	11	11	9	31
30	University of Cincinnati Law Review	33	7	8	12	27
31	Brooklyn Law Review	32	10	10	7	27
32	Maryland Law Review	35	8	6	8	22
33	Wisconsin Law Review	17	7	8	6	21
34	Alabama Law Review	25	6	3	8	17
35	University of Miami Law Review	36	5	3	4	12
36	Univeristy of Florida Law Review	30	1	6	4	11
37	Chicago-Kent Law Review	20	4	0	3	7
38	U. California at Davis Law Review	38	0	1	1	2
39	Notre Dame Law Review	26	1	0	0	1
40	San Diego Law Review	31	0	0	0	0



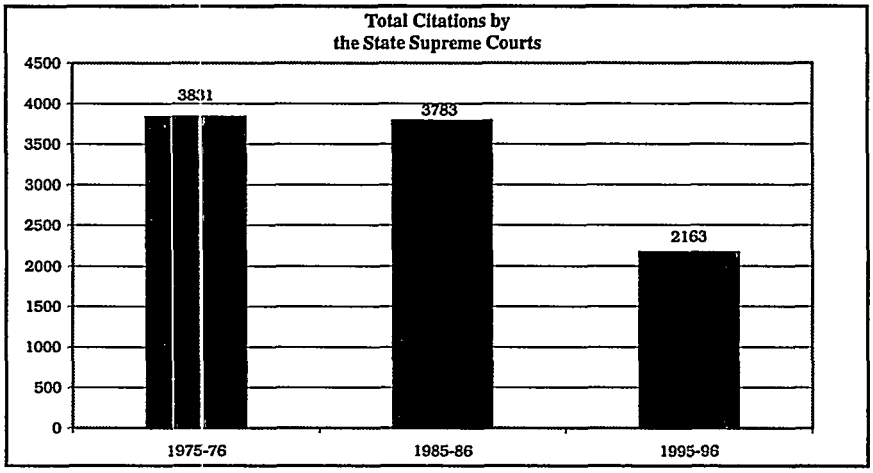
Ranking of Law Reviews: Total Citations by the U.S. District Courts

	Law School	Chicago-Kent	DCT 95-96	DCT 85-86	DCT 75-76	Total Citations
1	Harvard Law School	1	150	217	332	699
2	Columbia Law Review	4	72	108	113	293
3	Yale Law Review	2	61	86	110	257
4	University of Pennsylvania Law Review	7	21	62	65	148
5	Virginia Law Review	5	26	85	30	141
6	Michigan Law Review	3	49	38	41	128
7	University of Chicago Law Review	8	42	48	35	125
8	New York University Law	22	23	35	39	97
9	Minnesota Law Review	24	32	32	30	94
10	Texas Law Review	11	37	31	22	90
11	Stanford Law Review	6	35	29	26	90
12	Georgetown Law Journal	14	23	31	22	76
13	Vanderbilt Law Review	18	28	32	10	70
14	Iowa Law Review	40	12	23	23	58
15	Tulane Law Review	28	26	17	10	53
16	UCLA Law Review	16	23	15	13	51
17	Duke Law Journal	10	17	14	19	50
18	Cornell Law Review	13	15	16	17	48
19	California Law Review	9	14	17	15	46
20	Business Lawyer	15	20	17	8	45
21	Northwestern University Law Review	21	13	10	21	44
22	Georgia Law Review	37	11	22	9	42
23	Hastings Law Journal	34	15	14	9	38
24	Boston University Law Review	29	10	14	9	33
25	North Carolina Law Review	23	10	17	4	31
26	Ohio State Law Journal	19	13	7	7	27
27	Southern California Law Review	12	11	9	7	27
28	Wisconsin Law Review	17	10	7	9	26
29	Maryland Law Review	35	10	8	7	25
30	University of Pittsburgh Law Review	39	12	4	8	24
31	Brooklyn Law Review	32	10	8	5	23
32	William and Mary Law Review	27	11	5	1	17
33	University of Cincinnati Law Review	33	9	3	4	16
34	University of Miami Law Review	36	7	3	2	12
35	Alabama Law Review	25	5	3	3	11
36	Chicago-Kent Law Review	20	0	6	1	7
37	University of Florida law Review	30	1	2	3	6
38	Notre Dame Law Review	26	0	1	0	1
39	San Diego Law Review	31	0	0	0	0
40	U. California at Davis Law Review	38	0	0	0	0



Ranking of Law Reviews: Total Citations by the State Supreme Courts

	Law School	Chicago-Kent	STATE 95-96	STATE 85-86	STATE 75-76	TOTAL
1	Harvard Law School	1	244	546	616	1406
2	Yale Law School	2	158	278	392	828
3	Columbia Law Review	4	142	259	270	671
4	Texas Law Review	11	168	258	208	634
5	California Law Review	9	101	176	170	447
6	Michigan Law Review	3	85	153	203	441
7	Minnesota Law Review	24	90	150	153	393
8	Hastings Law Journal	34	64	132	126	322
9	Iowa Law Review	40	64	132	116	312
10	University of Pennsylvania Law Review	7	65	113	125	30
11	Vanderbilt Law Review	18	80	115	96	3291
12	Virginia Law Review	5	58	108	108	274
13	Stanford Law review	6	56	103	115	274
14	Tulane Law Review	28	62	97	113	272
15	University of Chicago Law Review	8	57	92	105	254
16	New York University Law Review	22	59	96	96	251
17	UCLA Law Review	16	50	83	101	234
18	Southern California Law Review	12	49	96	82	227
19	North Carolina Law Review	23	52	92	64	208
20	Cornell Law Review	13	51	64	56	171
21	Wisconsin Law Review	17	53	53	59	165
22	Georgetown Law Journal	14	38	73	41	152
23	Northwestern University Law Review	21	28	45	65	138
24	Duke Law Review	10	40	45	44	129
25	Ohio State Law Journal	19	27	57	43	27
26	Maryland Law Review	35	22	42	61	125
27	Boston University Law Review	29	20	39	32	91
28	Brooklyn Law Review	32	22	23	31	76
29	University of Pittsburgh Law Review	39	23	30	22	75
30	Alabama Law Review	25	15	39	19	73
31	University of Florida Law Review	30	14	27	26	67
32	Georgia Law Review	37	17	38	10	65
33	University of Cincinnati Law Review	33	24	24	13	61
34	University of Miami Law Review	27	23	25	12	60
35	William and Mary Law Review	36	11	32	16	59
36	Business Lawyer	15	20	29	9	58
37	Chicago-Kent Law Review	20	10	18	8	36
38	U. California at Davis Law Review	38	0	0	4	4
39	San Diego Law Review	31	0	1	1	2
40	Notre Dame Law Review	26	1	0	0	1



APPENDIX II

HARVARD	HARV-L-REV "HARV L-REV" (HARV +2 REV)
YALE	YALE-L-J "YALE. L.J" "YALE L-J" (YALE+2 L-J)
U. PENN	U-PA-L-REV "U-PA-L-REV" "U. PA. L. REV." (PA +2 L-REV.)
U. CHICAGO	U-CHI-L-REV "U-CHI-L-REV" "U. CHI. L. REV." (CHI +2 L-REV.)
COLUMBIA	COLUM-L-REV "COLUM-L-REV" "COLUM. L. REV." COL-L-REV" "COL. L. REV."
	(COLUM +2 L. REV) (COL +2 L-REV)
VIRGINIA	VA-L-REV "VA-L-REV" "VA. L. REV." (VA +2 L-REV) % (VA-TAX +2 REV)
STANFORD	STAN-L-REV "STAN-L-REV" "STAN L. REV." (STAN +2 L-REV)
MICHIGAN	MICH-L-REV "MICH-L-REV" MICH. L. REV." (MICH +2 L-REV)
TEXAS	TEX-L-REV "TEX-L-REV" "TEX. L. REV." "TEX. L-REV" TEXAS-L-REV (TEX +2
	L-REV) % (TECH +2 L-REV)
NYU	N-Y-U-L-REV "N-Y-U-L-REV" "N.Y.U. L. REV." N.Y.U. L-REV" NYU-L-REV (N.Y.U.
	+2 L-REV)
U. MINNESOTA	MINN-L-REV "MINN-L-REV" "MINN. L. REV." "MINN. L-REV" MINN +2 L-REV)
U. IOWA	IOWA-L-REV "IOWA-L-REV" "IOWA L. REV." "IOWA L-REV" (IOWA +2 L-REV)
U. WISCONSIN	WIS-L-REV "WIS=L-REV" "WIS. L. REV." "WIS. L-REV" (WIS +2 L-REV)
U.C.L.A	UCLA-L-REV "UCLA-L-REV" "UCLA. L. REV." "UCLA. L-REV" U.C.LA.-L-REV (UCLA
	+2 L-REV)
NORTHWESTERN	NW-U-L-REV "NW-U-L-REV" "NW. U. L. REV." " NW. U. L-REV" NW.-U-L-REV
	(NW +3 L-REV)
BOSTON	"B-U-L-REV" "B. U. L. REV." "B.U. L-REV" B. U.-L-REV (B-U +2 L-REV)
NORTH CAROLINA	N-C-L-REV "N-C-L-REV" "N.C. L. REV" "N.C. L-REV" N.C.-L-REV (N-C +2 L-REV)
DUKE	DUKE-L-J "DUKE-L-J" "DUKE L.J." "DUKE L-J" DUKE-L-J (DUKE +2 L-J)
VANDERBILT	VAND-L-REV "VAND-L-REV" "VAND. L. REV." "VAND. L-REV" VAND-L-REV
	(VAND +2 L-REV)
HASTINGS	HASTINGS-L-J HAST-L-J "HASTINGS-L-J" "HASTINGS. L.J." "HASTINGS L-J"
	"HASTINGS-L.J." (HASTINGS HAST +2 L-J)
CORNELL	CORNELL-L-REV CORN-L-REV "CORNELL. L.-REV" "CORNELL-L-REV" "CORNELL
	L. REV." "CORNELL L-REV" (CORNELL CORN +2 L-REV)
GEORGIA	GA-L-REV GEORGIA L-REV "GA. L-REV" "GEORGIA-L-REV" GA. L. REV"
	(GA GEORGIA +2 L-REV)
S. CALIFORNIA	S-CAL-L-REV SO-CAL-L-REV "S. CAL. L-REV" "S. CAL. L. REV." (S-CAL +2 L-REV)
TULANE	TUL-L-REV TULANE-L-REV "TUL. L-REV" "TUL. L. REV." (TUL TULANE +2 L-REV)
U. PITTSBURGH	U-PITT-L-REV "U.PITT. L-REV" "U. PITT. L. REV." (PITT +2 L-REV)
BROOKLYN	BROOK-L-REV BROOKLYN L-REV "BROOK. L-REV" "BROOKLYN L-REV"
	"BROOK. L. REV." "BROOKLYN L. REV." (BROOK BROOKLYN +2 L-REV)
OHIO STATE	OHIO-ST-L-J OHIO-STATE-L-J "OHIO ST. L-J" "OHIO-ST. L-J" "OHIO ST. L.J." "OHIO
	ST. L.J." (OHIO-ST +2 L-J)
U. CINCINNATI	U-CIN-L-REV "U-CIN. L-REV" "U. CIN. L. REV." "U. CIN. L-REV" (CIN CINC +2 L-REV)
CALIFORNIA	CAL-L-REV "CAL. L-REV" "CAL. L. REV." (CAL +2 L-REV) % (S-CAL +2 L-REV)
ALABAMA	ALABAMA-L-REV ALA-L-REV "ALA. L-REV" "ALA. L. REV." (ALA ALABAMA +2 L-REV)
	% (ALASKA +2 L-REV)
SAN DIEGO	SAN-DIEGO-L-REV "SAN DIEGO L-REV" "SAN DIEGO L. REV." "SAN DIEGO L. REV"
	(DIEGO +2 L-REV)
MARYLAND	MD-L-REV "MD L-REV" "MD. L. REV." "MD L REV" (MD +2 L-REV)
CHICAGO-KENT	CHI-KENT-L-REV "CHI-KENT L-REV" "CHI.-KENT L. REV." "CHI-KENT .L. REV."
	(CHI-KENT +2 L-REV)
NOTRE DAME	NOTRE-DAME-L-REV "NOTRE-DAME L-REV" "NOTRE DAME L. REV." "NOTRE
	DAME L REV" (NOTRA-DAME +2 L-REV)
MIAMI	U-MIAMI-L-REV "U-MIAMI-L-REV" "U. MIAMI L. REV." " U MIAMI L REV" (U-MIAMI
	+2 L-REV)
U.C. DAVIS	U-C-DAVIS-L-REV "U-C-DAVIS L-REV" "U.C. DAVIS L .REV." "U C DAVIS L REV"
	(C-DAVIS CA-DAVIS CAL-DAVIS CALIF-DAVIS +2 L-REV)
BUSINESS LAWYER	BUS-LAW "BUS-LAW" "BUS. LAW." ("BUS" "BUSS" +1 "LAW")
WM. & MARY	MARY-L-REV "MAR-L-REV" "MARY L. REV." "MARY L-REV" (WM MARY +2 L-REV)
	% (MITCHI +2 L-REV)