



School of Law

LAW REVIEW CIRCULATION 2009: THE COMBOVER

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LAW REVIEW CIRCULATION 2009

THE COMBOVER

For our second annual study of the law review business,¹ we added circulation data for four flagship law reviews (UCLA, Texas, USC, and Washington University) and two specialty journals (NYU's *Tax Law Review* and Duke's *Law and Contemporary Problems*). We also corrected a few errors in the tables in our first study and filled in a few blanks. And, finally, we noticed something that might be worth thinking about: the possibility that the law school combover culture has infected law reviews.

In our first study, we wondered why some law reviews sometimes exaggerate their paid circulation numbers, and noted that

[t]he *Harvard Law Review*, for example, boasts on its website that, "A circulation of about 8,000 enables the *Review* to pay all of its own expenses." We doubt this is one of those forgot-to-update-the-website oversights. The last time the *HLR* had 8,000 subscribers was in 1985. But who knows?²

That study appeared in print in February 2009. By March, the *Harvard Law Review* (*HLR*) website was reporting that "A circulation of about 4,000 enables the *Review* to pay all of its own expenses." The same words are still there as this article goes to press.³ Why, in March 2009, change 8,000 to 4,000? The last time the *HLR* had 4,000 subscribers was in 2001. What was the *HLR* thinking? Perhaps it depends on what the meaning of the word "circulation" is.

While exploring this problem, keep in mind the following numbers from the *HLR*'s 2006, 2007, and 2008 circulation reports to the U.S. Postal Service (the original reports are reproduced on pages 421-423 below):

	<u>2006</u>	<u>2007</u>	<u>2008</u>
Total paid and/or requested circulation:	2,837	2,853	2,610
Total free distribution:	382	286	295
Copies not distributed:	843	923	957
Total:	4,062	4,062	3,862

First, a dictionary might help: it suggests that the *HLR*'s circulation is either much lower or much higher than 4,000. According to the *Oxford English Dictionary*, "circulation" in this context means either (a) "[t]he extent to which copies of a newspaper, periodical, etc., are distributed," or (b) "the number of readers which it reaches."⁴ If the *HLR* is using definition (a), then it is inflating its circulation. It cannot plausibly include the copies it reports as "Copies not distributed" — they are not "copies [that] . . . are distributed" — and thus its circulation is nowhere near 4,000. Using numbers in the *HLR*'s 2006, 2007, and 2008 reports to the USPS, its "Total" circulation minus "Copies not distributed" equals 3,219 for 2006, 3,139 for 2007, or 2,905 for 2008. If by "circulation" the *HLR* means "the extent to which copies of [the *HLR*] . . . are distributed," why not say something more accurate on its website, like: "A circulation of about 2,900

¹ For the first study, see *Law Review Circulation*, 2009 GREEN BAG ALM. 164.

² *Id.* at 167 (quoting www.harvardlawreview.org/about.shtml (vis. Dec. 7, 2008)).

³ See www.harvardlawreview.org/about.shtml (vis. Mar. 10); *id.* (vis. Dec. 27, 2009).

⁴ See circulation, 7.b., OED Online (vis. Dec. 27, 2009).

enables the *Review* to pay all of its own expenses.” On the other hand, if the *HLR* is using definition (b), then it is understating its circulation. After all, the journal does sell more than 2,000 copies, is available on Westlaw and Lexis (and in the many libraries that subscribe), and is cited every year in hundreds of articles and briefs.⁵ Surely the “number of readers which it reaches” is greater than 4,000. Of course, if the USPS wanted to know how many readers the *HLR* has, it would ask, and if the *HLR* wanted to tell us how many readers it has, it would say so.

Second, the text might help: it suggests that the *HLR*’s circulation is much lower than 4,000. Recall that the website says, “A circulation of about 4,000 enables the *Review* to pay all of its own expenses.” This sentence appears to be an effort to explain to us where the money comes from to pay the *HLR*’s expenses. It is not plausible that “Total free distribution” would bring in any money (we leave it to you to look up “free” in the dictionary if you have any doubts). And unless the *HLR* has found people willing to pay it to refrain from distributing itself, then “Copies not distributed” surely do not generate revenue either. That leaves “Total paid and/or requested circulation.” Assuming (generously) that the numbers under this heading are exclusively for “paid” circulation, the *HLR*’s circulation was 2,837 in 2006, 2,853 in 2007, and 2,610 in 2008. Far away from “about 4,000” and getting farther. So why not say something even more accurate on its website, like: “A circulation of about 2,600 enables the *Review* to pay all of its own expenses.” (If the *HLR* were aiming for full and accurate disclosure, it might also mention income from *Bluebook* sales, from West, Lexis, and other on-line distributors, and so on.)

Third, context might help: it suggests that the *HLR*’s circulation is whatever the *HLR* can convince you it is. The *HLR*, like all law reviews, operates within a larger world driven in substantial part by *USNews* rankings and related creatures. It is a world in which some law school leaders — that is, the people in charge of teaching law review editors and other students about the law, its practice, and its values — are committed to being in the elite, to being highly ranked, even if that means also being not fully forthright about the numbers on which rankings are based.⁶ Perhaps law review editors internalize that kind of commitment, if not from their own schools, then perhaps from the law school world at large. Perhaps the propriety of fudging your way toward first place in the law is being simultaneously booted out the front door via lectures in Professional Responsibility classes and welcomed in at the back gate via role-modeling in law school administration and media coverage of it.

Perhaps in March 2009 the *HLR* was thinking that “about 8,000” had become laughably implausible, but “about 4,000,” while not accurate, (1) could pass the laugh test and would be believed by most readers, and (2) was more impressive than an accurate “about 2,600” (2,600 being not much more than the *Yale Law Journal*’s 1,915).⁷ But who knows?

⁵ For example, in 2008, the *HLR* was cited in at least 354 briefs and 201 law review articles (search for “harv. l. rev.’ & da(aft 2007 & bef 2009)” in brief-all and jlr Westlaw databases) (Dec. 27, 2009).

⁶ See, e.g., Alex Wellen, *The 8.78 Million Maneuver*, N.Y. TIMES, July 31, 2005.

⁷ The differences are more striking now, with journals’ release of 2008-09 numbers. The *HLR*’s “paid and/or requested circulation” is now 2,029; the *YLJ*’s is 1,725.

LAW REVIEW CIRCULATION

STATEMENT OF OWNERSHIP, MANAGEMENT, AND CIRCULATION

1. Publication title: Harvard Law Review
2. Publication number: 0047-841X
3. Filing date: September 7, 2006
4. Issue frequency: Monthly, November-June
5. Number of issues published annually: Eight
6. Annual subscription price: Individual: \$35.00; Institution: \$200.00; Non-Profit: \$95.00
7. Complete mailing address of known office of publication: Gannett House, 1511 Massachusetts Ave., Cambridge, MA 02138
Contact person: Colleen Verner, (617) 495-4650
8. Complete mailing address of headquarters or general business office of publisher: Harvard Law Review, Gannett House, 1511 Massachusetts Ave., Cambridge, MA 02138
9. Full names and complete mailing addresses of Publisher, Editor, and Managing Editor:
Publisher: Harvard Law Review, Gannett House, 1511 Massachusetts Ave., Cambridge, MA 02138
Editor:
86 student editors
President — Aileen M. McGrath, Gannett House, 1511 Massachusetts Ave., Cambridge, MA 02138
Managing Editor:
Managing Editor — Alex N. Wong, Gannett House, 1511 Massachusetts Ave., Cambridge, MA 02138
Treasurer — David C. Newman, Gannett House, 1511 Massachusetts Ave., Cambridge, MA 02138
10. Owner: The Harvard Law Review Association, Gannett House, 1511 Massachusetts Ave., Cambridge, MA 02138, a non-profit educational membership organization
11. Known bondholders, mortgagees, and other security holders owning or holding one percent or more of total amount of bonds, mortgages, or other securities: None
12. The purpose, function, and nonprofit status of this organization and the exempt status for federal income tax purposes have not changed during preceding twelve months.
13. Publication title: Harvard Law Review
14. Issue date for circulation data below: Volume 119, November 2005-June 2006.
15. Extent and nature of circulation

	<i>Average no. copies each issue during preceding 12 months</i>	<i>No. copies of single issue published near- est to filing date</i>
A. Total number of copies (net press run)	4000	4000
B. Paid and/or requested circulation		
1. Paid/requested outside-county mail subscriptions	3777	3071
2. Paid in-county subscriptions	0	0
3. Sales through dealers and carriers, street vendors, counter sales, and other non-USPS paid distribution	0	0
4. Other classes mailed through the USPS	60	68
C. Total paid and/or requested circulation	3837	3139
D. Free distribution by mail (samples, complimentary, and other free copies)		
1. Outside-county	45	45
2. In-county	0	0
3. Other classes mailed through the USPS	0	0
E. Free distribution outside the mail (carriers or other means)	337	200
F. Total free distribution (sum of D and E)	382	245
G. Total distribution (sum of C and F)	3219	3384
H. Copies not distributed	843	616
I. Total (sum of G and H)	4062	4000
J. Percent paid and/or requested circulation	88%	93%

16. Publication of statement of ownership is required.
17. I certify that all information furnished on this form is true and complete.

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Aileen M. McGrath
President
September 7, 2006

GREEN BAG ALMANAC & READER 2010

STATEMENT OF OWNERSHIP, MANAGEMENT, AND CIRCULATION

1. Publication title: Harvard Law Review
2. Publication number: 0017-811X
3. Filing date: September 12, 2007
4. Issue frequency: Monthly, November-June
5. Number of issues published annually: Eight
6. Annual subscription price: Individual: \$55.00; Institution: \$200.00; Nonprofit: \$95.00
7. Complete mailing address of known office of publication: Gannett House, 1511 Massachusetts Ave., Cambridge, MA 02138
Contact person: Colleen Verner, (617) 495-4650
8. Complete mailing address of headquarters or general business office of publisher: Harvard Law Review, Gannett House, 1511 Massachusetts Ave., Cambridge, MA 02138
9. Full names and complete mailing addresses of Publisher, Editor, and Managing Editor:
Publisher: Harvard Law Review, Gannett House, 1511 Massachusetts Ave., Cambridge, MA 02138
Editor:
86 student editors
President — Andrew Manuel Crespo, Gannett House, 1511 Massachusetts Ave., Cambridge, MA 02138
Managing Editor:
Managing Editor — Andrea J. Paul, Gannett House, 1511 Massachusetts Ave., Cambridge, MA 02138
Treasurer/Vice President — Adam C. Jed, Gannett House, 1511 Massachusetts Ave., Cambridge, MA 02138
10. Owner: The Harvard Law Review Association, Gannett House, 1511 Massachusetts Ave., Cambridge, MA 02138, a nonprofit educational membership organization
11. Known bondholders, mortgagees, and other security holders owning or holding one percent or more of total amount of bonds, mortgages, or other securities: None
12. The purpose, function, and nonprofit status of this organization and the exempt status for federal income tax purposes have not changed during preceding twelve months.
13. Publication title: Harvard Law Review
14. Issue date for circulation data below: Volume 126, November 2006-June 2007
15. Extent and nature of circulation

	<i>Average no. copies each issue during preceding 12 months</i>	<i>No. copies of single issue published near- est to filing date</i>
A. Total number of copies (net press run)	4062	4000
B. Paid circulation		
1. Mailed outside-county paid subscriptions	2488	2688
2. Mailed in-county paid subscriptions	0	0
3. Paid distribution outside the mails including sales through dealers and carriers, street vendors, counter sales, and other paid distribution outside USPS	307	307
4. Paid distribution by other classes of mail through the USPS	58	97
C. Total paid distribution	2853	3192
D. Free or nominal rate distribution		
1. Outside-county	50	50
2. In-county	0	0
3. Copies mailed at other classes through the USPS	0	0
4. Outside the mail (carriers or other means)	236	236
E. Total free or nominal rate distribution (sum of D)	286	286
F. Total distribution (sum of C and E)	3139	3478
G. Copies not distributed	923	522
H. Total (sum of F and G)	4062	4000
I. Percent paid	91%	92%

15. Publication of statement of ownership is required.
17. I certify that all information furnished on this form is true and complete.

Andrew Manuel Crespo
President
September 12, 2007

LAW REVIEW CIRCULATION

STATEMENT OF OWNERSHIP, MANAGEMENT, AND CIRCULATION

1. Publication title: Harvard Law Review
2. Publication number: 0017-811X
3. Filing date: September 30, 2008
4. Issue frequency: Monthly, November-June
5. Number of issues published annually: Eight
6. Annual subscription price: Individual: \$55.00; Institution: \$200.00; Non-Profit: \$95.00
7. Complete mailing address of known office of publication: Gannett House, 1511 Massachusetts Ave., Cambridge, MA 02138
Contact person: Colleen Verner, (617) 495-4650
8. Complete mailing address of headquarters or general business office of publisher: The Harvard Law Review, Gannett House, 1511 Massachusetts Ave., Cambridge, MA 02138
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Managing Editor — Jonathan G. Cooper, Gannett House, 1511 Massachusetts Ave., Cambridge, MA 02138
Treasurer/Vice President — Portia D. Pedro, Gannett House, 1511 Massachusetts Ave., Cambridge, MA 02138
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11. Known bondholders, mortgagees, and other security holders owning or holding one percent or more of total amount of bonds, mortgages, or other securities: None
12. The purpose, function, and nonprofit status of this organization and the exempt status for federal income tax purposes have not changed during preceding twelve months.
13. Publication title: The Harvard Law Review
14. Issue date for circulation data below: Volume 121, November 2007-June 2008
15. Extent and nature of circulation

	<i>Average no. copies each issue during preceding 12 months</i>	<i>No. copies of single issue published near- est to filing date</i>
A. Total number of copies (net press run)	3862	3800
B. Paid and/or requested circulation		
1. Mailed outside-county paid subscriptions	2136	2706
2. Mailed in-county paid subscriptions	0	0
3. Paid distribution outside the mails including sales through dealers and carriers, street vendors, counter sales, and other paid distribution outside USPS	0	0
4. Paid distribution by other classes of mail through the USPS	474	593
C. Total paid distribution	2610	3299
D. Free or nominal rate distribution		
1. Outside-county	50	50
2. In-county	0	0
3. Copies mailed at other classes through the USPS	0	0
4. Outside the mail (carriers or other means)	245	245
E. Total free or nominal rate distribution (sum of D)	295	295
F. Total distribution (sum of C and E)	2905	3594
G. Copies not distributed	957	206
H. Total (sum of G and H)	3862	3800
I. Percent paid and/or requested circulation	89%	91%

16. Publication of statement of ownership is required.
17. I certify that all information furnished on this form is true and complete.

Robert W. Allen
President
September 30, 2008

GREEN BAG ALMANAC & READER 2010

“TOTAL PAID CIRCULATION”

1979-2009 FOR THE FLAGSHIPS OF THE U.S. NEWS TOP 19, PLUS OTHERS

	Yale	Harvard	Stanford	Columbia	NYU	Boalt	Chicago	Penn
1979-80	*	8760	*	3795	2100	2549	2068	2176
1980-81	4051	8836	*	3790	2173	2342	1827	2150
1981-82	4126	9767	2056	3790	2092	2342	1993	2150
1982-83	4199	8389	2350	3561	2074	2342	2150	1900
1983-84	4092	8762	*	4046	2069	2200	2300	2080
1984-85	3950	7390	*	3227	*	2168	2617	1996
1985-86	3755	7705	*	3164	*	2014	*	*
1986-87	3755	7694	*	2938	*	1990	*	1708
1987-88	3700	7325	*	2947	*	1990	*	1762
1988-89	3700	6995	*	2337	*	1816	*	1628
1989-90	3700	7016	*	2913	*	*	2229	1864
1990-91	3700	7768	*	2676	*	1740	2205	1719
1991-92	3700	6517	*	2798	*	1694	2454	1781
1992-93	3600	6070	*	2525	*	1690	*	1673
1993-94	3500	6018	*	2463	*	1701	1979	1673
1994-95	3300	5204	*	2381	*	1696	2048	1551
1995-96	3300	5029	*	2497	*	1595	1959	1446
1996-97	3300	5454	*	2365	*	1507	1922	1408
1997-98	3300	4367	*	2273	1362	1422	1875	1334
1998-99	3300	4574	*	2227	1222	1639	1872	1347
1999-00	2705	4223	8850	2174	1200	*	1870	1191
2000-01	2705	4013	*	2082	1183	1305	2062	1043
2001-02	2677	3735	1434	2069	1159	1253	1769	1293
2002-03	2577	3491	1280	2029	1211	1196	1845	1233
2003-04	2579	3451	1112	1875	1209	1045	*	1180
2004-05	2712	2945	1112	1743	867	1040	*	1056
2005-06	2296	2837	1112	1638	999	992	*	1101
2006-07	1782	2853	1089	1578	990	1178	*	1093
2007-08	1915	2610	1008	*	*	884	1525	923
2008-09	1725	2029	*	1364	763	820	*	844

* Form 3526 report not found for this year.

LAW REVIEW CIRCULATION

“TOTAL PAID CIRCULATION”

1979-2009 FOR THE FLAGSHIPS OF THE U.S. NEWS TOP 19, PLUS OTHERS

	Michigan	Duke	N'western	Virginia	Cornell	G'town	UCLA
1979-80	2950	1326	1771	*	3350	3197	1536
1980-81	2979	1296	1610	2396	*	3058	1563
1981-82	2985	1411	1520	2387	*	2950	1277
1982-83	2844	1440	1416	2443	3603	3100	1251
1983-84	2771	1378	1440	2400	*	3200	1361
1984-85	2727	1412	1354	2161	*	3000	1400
1985-86	2657	1445	1251	*	3682	1116	1400
1986-87	2604	1469	1268	2200	*	1116	*
1987-88	2535	1335	1264	2029	*	*	1192
1988-89	2481	1295	1223	1958	*	*	1192
1989-90	2426	1268	1178	*	*	3043	1192
1990-91	2382	1255	951	1882	*	2782	1134
1991-92	2332	1253	*	*	*	2260	1192
1992-93	2263	1187	887	1840	*	3955	1083
1993-94	2256	*	*	1680	3250	1514	940
1994-95	2227	*	723	1670	3252	1462	940
1995-96	2125	*	*	1550	2958	*	990
1996-97	*	*	*	1552	2890	1536	1000
1997-98	1925	*	*	1536	2803	1487	1000
1998-99	2010	*	*	*	2805	1471	1000
1999-00	1841	*	*	*	2859	*	921
2000-01	1697	*	*	*	2845	1398	922
2001-02	1654	*	*	1849	2816	*	695
2002-03	1571	*	1017	1068	2288	*	650
2003-04	1419	*	997	644	1766	*	563
2004-05	1207	*	660	616	1827	*	648
2005-06	925	*	466	483	1712	1027	520
2006-07	862	*	575	526	1497	924	521
2007-08	783	957	584	530	1458	1068	*
2008-09	711	790	*	542	1319	*	*

* Form 3526 report not found for this year.

GREEN BAG ALMANAC & READER 2010

“TOTAL PAID CIRCULATION”

1979-2009 FOR THE FLAGSHIPS OF THE U.S. NEWS TOP 19, PLUS OTHERS

	Texas	Vanderbilt	USC	Wash U	Tax L Rev	L&C Probs
1979-80	*	1995	1614	1091	5310	*
1980-81	2349	2046	1519	1190	5685	2000
1981-82	2347	2046	1532	1096	5664	2441
1982-83	2396	1995	1435	1120	5235	2628
1983-84	2396	1995	1333	1107	5189	2543
1984-85	*	2001	1204	1106	4505	2443
1985-86	1960	2020	1082	508.5	4064	2459
1986-87	1684	1996	1054	701	3863	2720
1987-88	*	1550	1199	706	3545	2523
1988-89	*	1359	1133	714	3442	2887
1989-90	*	1253	1133	725	3315	2068
1990-91	1548	1281	1215	502	3000	2106
1991-92	1489	1330	830	490	1544	*
1992-93	1407	1220	980	490	*	*
1993-94	1261	1252	772	490	2016	*
1994-95	881	1252	795	490	1772	*
1995-96	1137	1267	4770	560	*	*
1996-97	1123	1287	*	560	1517	*
1997-98	1645	1265	*	672	1176	*
1998-99	1628	1165	795	660	1149	*
1999-00	1526	952	760	644	*	*
2000-01	1488	960	4100	*	*	*
2001-02	1449	855	680	*	*	*
2002-03	1372	*	698	*	*	*
2003-04	1125	800	680	*	741	*
2004-05	1056	850	670	*	*	*
2005-06	963	850	700	*	746	*
2006-07	963	850	720	*	620	*
2007-08	941	850	740	*	684	1810
2008-09	860	850	*	*	*	1393

* Form 3526 report not found for this year.