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THE SYMPOSIUM FORMAT AS A SOLUTION TO PROBLEMS INHERENT IN STUDENT-EDITED LAW JOURNALS: A VIEW FROM THE INSIDE

THE EXECUTIVE BOARD OF THE *CHICAGO-KENT LAW REVIEW*

One cannot help but conclude from reading this Symposium that the student-edited law journal is in a state of crisis. Without exception, every author works from the proposition that student editing gives rise to a number of problems that hinder the publication of legal scholarship. The charges are sobering: at worst, student editors are “incompetent” and “grossly unsuited” for editing faculty scholarship;¹ at best, faculty authors must exercise restraint² or rely on virtues of character³ to survive an editing process in which student editors are an unfortunate but unavoidable source of stress and problems. The debate is not about whether the problems exist; it assumes the problems and focuses on solutions.

This Comment, in conjunction with Professor Randy Barnett’s contribution on the origins of and philosophy underlying the *Chicago-Kent Law Review*’s symposium format,⁴ attempts to contribute to this debate by focusing on the degree to which the *Chicago-Kent Law Review*’s symposium format works to solve the problems enumerated in this Symposium and elsewhere.⁵ It discusses, from the student editor’s perspective, how the symposium format functions in practice, including an assessment of its strengths and weaknesses. Last, it responds to some of the criticisms and suggestions made by the authors in the Symposium.

1. James Lindgren, *Student Editing: Using Education to Move Beyond Struggle*, 70 CHI.-KENT L. REV. 95, 95 (1994).

2. See generally Gregory E. Maggs, *Just Say No?*, 70 CHI.-KENT L. REV. 101 (1994).

3. See generally Ira C. Lupu, *Six Authors in Search of a Character*, 70 CHI.-KENT L. REV. 71 (1994).

4. Randy E. Barnett, *Beyond the Moot Law Review: A Short Story With a Happy Ending*, 70 CHI.-KENT L. REV. 123 (1994).

5. The criticisms of student-edited law journals can be divided into two broad categories. One criticism—indeed the focus of this Symposium—is that students are not qualified to edit faculty work. A second criticism is that students are not qualified to select the articles that appear in law journals. Exchanges on the latter criticism have been published in both the *Journal of Legal Education*, 36 J. LEGAL EDUC. 1-23 (1986), and the *University of Chicago Law Review*, 61 U. CHI. L. REV. 527-88 (1994). See also Note, *A Student Defense of Student Edited Journals: In Response to Professor Roger Cramton*, 1987 DUKE L.J. 1122 (1987).

I. THE SYMPOSIUM FORMAT AS A SOLUTION

Professor Barnett has sketched out how the *Chicago-Kent Law Review's* symposium format originated, and how it was intended to function.⁶ At the outset, some clarification of the current mechanics of the *Chicago-Kent Law Review's* organization will be helpful.

In most aspects, the *Chicago-Kent Law Review* functions like other conventional law reviews. The primary difference is that a five person Faculty Oversight Committee—consisting of three faculty members as well as the editor-in-chief and the managing editor of the *Law Review*—oversees the selection of symposium topics. Essentially, persons interested in editing a symposium issue present a proposal to a member of the Oversight Committee, who then forwards the proposal to the committee for consideration. Symposium proposals must be accepted by a majority of the Oversight Committee.⁷ Once a proposal has been accepted, the person who proposed the symposium issue—now the Symposium Editor—has substantial control over the substantive content of the issue, subject to ultimate (but rarely exercised) approval of the Oversight Committee.

Once the Faculty Symposium Editor has solicited the articles for a symposium issue, the breadth of the Symposium Editor's responsibilities depends on the exigencies of the symposium issue. Primarily, the Faculty Symposium Editor's role includes nudging contributing authors to meet deadlines, resolving any conflicts that arise between authors and student editors, and generally consulting with the student editors about the substantive content of the symposium.

In all other respects, the *Chicago-Kent Law Review* operates like other law journals in that the student editors handle all the day-to-day responsibilities of the *Review* without oversight.

A. *Advantages of the Symposium Format*

Professor Barnett already has highlighted the most significant advantages of the symposium format: it provides an opportunity for a number of scholars to publish together on a single topic, thus increasing the utility of the journal to the legal academy,⁸ and correspondingly, at least in the case of the *Chicago-Kent Law Review*, increasing

6. Barnett, *supra* note 4, at 123-29.

7. This overstates the formality of the decision-making process—topic proposals are almost always accepted or rejected unanimously.

8. *Id.* at 126.

the prestige of the journal.⁹ This is accomplished by placing the substantive content of individual symposium issues primarily in the hands of faculty experts who can attract friends and colleagues with expertise in a particular area.

From our perspective, a related advantage is that a Faculty Symposium Editor, who invariably is more knowledgeable about a particular area of law than even the brightest of law students, is more capable of selecting articles for publication than student editors. It can hardly be questioned that a faculty member with expertise in a given field is in a better position than student editors to know which authors should be solicited so that a symposium completely covers a topic, and to select which articles are worthy of inclusion. Whether or not faculty selection of articles would work in a conventional law journal, it seems unlikely that student editors, no matter how bright or how "elite" the law school,¹⁰ can match faculty experts in organizing a first-rate symposium. This is a significant advantage of the symposium format.¹¹

B. Problems with the Symposium Format

1. Administrative Problems

The symposium format gives rise to a number of problems that make it less attractive to student editors from an administrative perspective. First, a symposium can be published only as fast as its slowest article.¹² Unlike a conventional law journal which has the option of pushing a slow-developing article into a later issue, we do not have that luxury; the symposium must be delayed until the slow article is ready for press, or we must exclude the slow article altogether. Given that cutting an entire article is an extreme and rare occurrence,¹³ the former option is almost always the default choice. In ad-

9. *Id.* at 128-29.

10. This comment is directly aimed at the suggestion by Professor Lindgren that "[w]e should encourage a maximum role for faculty in article selection. For some reviews, especially weak ones, it may be wise to move to a symposium format in which faculty solicit and choose articles, but students still run most other aspects of the journal." Lindgren, *supra* note 1, at 98 (emphasis added). Perhaps Professor Lindgren means that the move to a symposium format is advantageous for "weak" journals because it can enhance their credibility. However, if Professor Lindgren means that students are incapable of selecting articles because of their inexperience, then it is illogical to think that inexperienced editors at "elite" journals are more capable of selecting articles than inexperienced editors at "weak" journals.

11. *But see infra* page 145 for a discussion of the disadvantages of giving up unfettered student control of the journal.

12. It was refreshing to find out that faculty members are aware of this problem as well. See Lupu, *supra* note 3, at 78.

13. See Maggs, *supra* note 2, at 105.

dition to putting the *Law Review* behind in its four-issues-per-year publication schedule, it also is frustrating for the authors who submitted their articles early.

This is not merely a hypothetical problem. A few years ago, the *Chicago-Kent Law Review* failed to publish a single issue. It is unclear how much of that was attributable to slow-developing articles and how much was attributable to mismanagement by that year's executive board,¹⁴ but undoubtedly the symposium format played some role. Suffice it to say that there are a number of letters in our files from justifiably angry authors whose papers were mired in the publication process for more than eighteen months.

There are, of course, ways to mitigate this problem, including creating a schedule and securing commitments from both student editors and faculty authors to be faithful to it.¹⁵ But there is no cure; the symposium format inherently tends to make the problem of delayed publication more likely than in conventional law journals.

A related administrative problem arises from the fact that articles for symposia are generally commissioned to be written, while conventional journals work with articles that are already finished. In this regard, the symposium format depends on the authors that have agreed to publish in a given symposium more than conventional law journals do. That is, a symposium issue is not a symposium issue unless there is a "collection of writings on a particular topic."¹⁶ When authors who have committed to write an article for a symposium decide, for whatever reason, to back out, we are left in the unfortunate position of being committed to publish articles, yet lacking enough articles to constitute a symposium.

Again, this is not a hypothetical problem. This very issue was supposed to consist solely of the *Symposium on the Admission of Prior Offense Evidence in Sexual Assault Cases*. However, three authors who had committed to write articles for the issue backed out, leaving us with three relatively short pieces on that topic. Obviously, that was not enough for a symposium issue, yet we were committed to publish the articles that had been submitted. Fortunately, we were able to solve the problem by including in this issue two "mini-symposia." However, had that option not been available, we would have

14. Professor Barnett would place much of the blame on an "extremely inefficient student board." Barnett, *supra* note 4, at 130. The consensus of other Chicago-Kent faculty members familiar with the events of that year seems to be the same.

15. See Lupu, *supra* note 3, at 78 n.22.

16. THE AMERICAN HERITAGE DICTIONARY 1232 (2d College ed. 1985).

been faced with the unenviable choice of either foregoing the evidence articles or publishing an extremely thin issue. Two considerations prevented us from choosing the former solution: We would have had our credibility eroded by refusing to publish articles that had been written specifically for our pages; and we would have been left without one of our four planned symposia for the publishing year.

This problem could be mitigated if faculty authors abide by their commitments and student editors manage future issues more intensively. Still, it is a problem that potentially haunts the symposium format.

A third administrative problem is that the addition of the faculty Symposium Editor adds another layer of bureaucracy to the mix. As Professor Lupu noted in his article, this added layer can lead to miscommunication between the Faculty Symposium Editor, the authors, and the members of the *Law Review's* editorial staff.¹⁷ Moreover, it increases the difficulty of getting a symposium issue published on schedule. There are obvious disadvantages to adding another person to be consulted in the publishing process. Depending on the Faculty Symposium Editor's diligence in responding to requests for information, individual delays of two to three days ultimately can add weeks to the publication date of an issue.

2. Ideological Problems

The symposium format also gives rise to some ideological problems of which we are well aware. One problem with the *Chicago-Kent Law Review's* symposium format is that student editors give up some of the control that student editors have at conventional law journals. We suspect that some of our colleagues on editorial boards at other journals look down on us because we do not have the independence that they have in selecting both the topics to be covered and the articles to be published. However, as discussed previously, we believe that faculty members are in a better position to choose which authors and articles can make substantial contributions to legal scholarship. In short, we feel that the advances in legal scholarship that flow from allowing an expert in a field to organize a symposium on a particular topic outweigh our loss of unfettered control; unfettered student control purely for the sake of student control does not, in our opinion, weigh heavily.

17. See Lupu, *supra* note 3, at 71.

A related concern is that the increased faculty oversight will allow a journal to be captured by one viewpoint.¹⁸ As applied to the *Chicago-Kent Law Review's* symposium format, the argument would be that since the Faculty Oversight Committee consists of three faculty members and only two student editors, the faculty members have the power to select only symposium topics and Faculty Symposium Editors who conform to their ideological preferences. However, given the dispersion of control over the individual issues—the Oversight Committee selects the symposium topic and the Faculty Symposium Editor then solicits articles—it is unlikely that the faculty members of the Oversight Committee could impose their ideological preferences even if they chose to do so. Moreover, because the student editors on the Oversight Committee have two votes in the decision to accept or reject a symposium topic proposal, student editors would need to persuade only one faculty member on the Committee in order to derail an attempt to capture the ideology of the *Law Review*. This is another check on the ideological control argument.

A third ideological problem with the symposium format is that it limits the number of topics we are able to cover. If a conventional law journal publishes two to three faculty authored articles in each issue and publishes four issues per year, the journal is able to touch on eight to twelve topics per year.¹⁹ On the other hand, the symposium format limits the *Chicago-Kent Law Review* to just four topics per year. Although we are able to deal with these topics in a more holistic fashion than other journals, we nonetheless are more limited in what we are able to publish.

At a broader level, this latter problem illustrates that the symposium format is not a complete solution to the problems inherent in student-edited law journals. In the unlikely event that every law journal outside those at the “top thirty [law] schools in the top twenty”²⁰ implemented a symposium format, articles that did not fit within the selected symposium topics would be foreclosed from publication. While the legal academy could withstand several journals moving to a symposium format, a widespread acceptance of this approach could silence worthwhile ideas that do not happen to fit within a symposium format.

18. See Note, *supra* note 5, at 1127.

19. Many conventional journals publish six or eight issues per year, in which case they publish between 12 and 24 different faculty articles per year.

20. Barnett, *supra* note 4, at 131.

II. RESPONSES TO CRITICISMS AND SUGGESTIONS

Elsewhere in this Symposium, faculty authors set out a number of criticisms of student-edited law journals, and make suggestions for improvement. In this section, we respond from within the limited context of our experience working within the context of the symposium format.²¹

We begin by applauding Professor Lindgren for pointing out that the problems associated with student editing of faculty authors are not caused by student editors alone.²² But while Professor Lindgren purports to provide a litany of the "sins" committed by both sides, we feel that his list is less than accurate in that he has left the two most egregious faculty misbehaviors off the list. From our perspective, the two most common faculty misbehaviors—and the two most deleterious to the publication process—are inattention in writing and footnoting, and the unwillingness to seriously consider the work of editors as a means of improving an article.

While the point that student editing is sometimes excessive is well taken,²³ it has been our experience (and the experience of our predecessors) that without extreme editing some faculty articles we have published would have been virtually unintelligible. Perhaps this is a function of the symposium format, in which we commit to publishing articles based on their subject matter before anyone has seen the quality of the writing.²⁴ Nonetheless, at times we find it incredible that faculty members are capable of turning in articles littered with both technical mistakes and substantive errors such as unstructured, incomplete and unclear arguments. Sometimes articles are submitted by faculty members who know the limitations of their articles, and gladly accept our editing assistance.²⁵ In other cases, we are given manuscripts that need much work, and without prior approval we set out to

21. We acknowledge that our responses to the comments of the Symposium authors are, to some degree, of limited applicability because of the unique nature of the *Chicago-Kent Law Review's* symposium format and our limited exposure to the problems involved in publishing articles in conventional law journals.

22. Lindgren, *supra* note 1, at 97.

23. We feel it necessary to mention, at least in passing, that few editors intend to be over-aggressive in their editing. Indeed, we often agonize over when to make suggestions and when to remain silent lest we be construed as "editing for editing's sake." The metaphor of editing as walking a tightrope comes to mind. While no doubt we sometimes fall off, we hope that faculty authors recognize that we are aware that we are walking a tightrope and not, as some believe, indiscriminately making every suggestion that comes to mind.

24. See Lupu, *supra* note 3, at 77-78.

25. For example, an author once submitted an article with instructions that the editor had carte blanche to do what the editor wanted to do with the article because she knew it needed substantial rewriting.

make suggestions that would bring the manuscript up to the level of quality we demand. While the policy of the *Chicago-Kent Law Review* is to edit lightly and ultimately defer to the wishes of the author,²⁶ we nonetheless take our roles as editors seriously, and make suggestions that we think would improve the article. Groans that student editors over-edit would be more credible if faculty authors never submitted articles that required substantial editing.

Furthermore, though student editors can be obsessed with fidelity to the vagaries of *Bluebook* style, it should also be noted that heavy editing often is necessary to avoid substantive errors in footnotes. Nuances of *The Bluebook* aside, virtually every article we receive has misquotations and mis-citations in the footnotes that, without editing, would result in errors being put into print. And worse, we often are faced with incomplete footnotes that authors apparently believe should be completed by student editors.²⁷ Again, claims that student editors are obsessive about footnoting and fidelity to *The Bluebook* would be more credible if authors were more attentive in the first instance.

The second "faculty sin" that we believe should be added to Professor Lindgren's litany is the failure of authors to expose their work to the constructive criticism of student editors. We do not doubt that, at one extreme, there are cases—perhaps frequent cases—in which

26. Although to date we have no written policy to this effect, it is the *Chicago-Kent Law Review's* policy to edit sparingly, if possible, from the outset. We then leave to the author the ultimate discretion to accept or reject our non-technical suggestions. That is, aside from errors in grammar, punctuation, spelling, *Bluebooking* and the like, ultimate control of the content of an article remains with the author. In this sense, the *Chicago-Kent Law Review's* policy is similar to that recently promulgated by the editors of the *University of Chicago Law Review*. The Articles Editors, *A Response*, 61 U. CHI. L. REV. 553, 558 (1994).

Thus, in each phase of the publication process, any non-technical change we send to authors is open to debate. If we feel strongly about a certain suggestion, we may support it with an explanation of why we think the change would make the article better. However, if the author still insists on the status quo, we (grudgingly) defer.

We think this approach is advantageous in that it enables authors to preserve a unique voice and tone throughout their article. See Ann Althouse, *Who's to Blame for Law Reviews*, 70 CHI.-KENT L. REV. 81 (1994). See also Lupu, *supra* note 3, at 75-76. An article that retains a certain voice throughout is generally preferable to an article that, although marginally improved by the rewriting of numerous portions by different editors, lacks consistency of tone. The advantage of this approach is that it allows the author to accept suggestions that enhance the article but to reject other suggestions that, although they abstractly improve specific sentences, wreak havoc on the tone of the article. A corollary advantage is that the primary praise or blame for an article remains where it belongs—with the author.

27. Consider one manuscript submitted for publication in this very Symposium with the directive "Journal to supply the cite." Perhaps this is unique to the symposium format, in which we solicit articles to be written; we cannot imagine that an author would submit an unsolicited article to a journal with instructions for the editors to do the author's work if the article is accepted.

poor student editing changes the tone or the meaning or otherwise does violence to an article. But, we submit that there are also cases—again, perhaps frequent cases—in which student suggestions can enhance the quality of an article. While an author should have the right to reject ill-advised edits, we also think that authors must make more of a commitment to seriously consider the suggestions of student editors. This is especially true when a student editor points out that a passage or an argument is unclear, and asks for clarification. If law review editors are unable to discern what an author means, it is our submission that the passage needs to be rewritten.²⁸

We could not agree more with Professor Lupu's approach, in which he strives for that "simultaneous detachment from and proximity to" an article that allows for improvement.²⁹ Unfortunately, all too many authors are either overtly hostile to suggestions, or consider the suggestions at only the most cursory level. Ironically, it is the author herself who is hurt most by her failure to seriously consider changes that would improve an article.

With these two observations in mind, we were encouraged by Professor Lupu's call for character in the editing process, particularly his comment that "the two most crucial aspects of authorial character are pride and humility."³⁰ More authorial pride would certainly combat the sloppiness of the writing in some of the manuscripts we re-

28. This point is made by Professor Epstein in his contribution to this Symposium. Richard A. Epstein, *Faculty-Edited Law Journals*, 70 CHL-KENT L. REV. 87, 93 (1994). While we do not pretend to hold as high a yardstick as Professor Epstein, *id.* ("[I]f I made the error [in misunderstanding a passage], then other readers are likely to make it as well (or so I flatter myself)"), we contend that articles *should* be written in such a way that an average law student can understand the argument an author is making. There are exceptional situations in which the misunderstanding stems from a lack of understanding of the topic generally, but generally the misunderstanding flows from sentences or paragraphs that are written unclearly and can be improved.

29. Lupu, *supra* note 3, at 74.

30. *Id.* at 73. We think faculty members would be surprised at the lack of humility that pervades the faculty end of the publishing process. Although few instances are this extreme, an example illustrates our point. An editor sent a manuscript back to an author with a relatively long list of suggestions she thought would improve the article. The author responded with a scathing letter that rejected virtually all the changes and claimed that "it is virtually impossible for you to suggest an alternative construction of a sentence that I have not already considered and rejected. I've been doing this for a long time and I know what I'm doing." The *Law Review* responded with a letter explaining our policy of deferring to the author, but encouraging the author to at least consider our changes. His response included the following passage, which addressed the *Law Review's* argument that no article is beyond improvement and that given the disparity in quality of manuscripts submitted to us we have an obligation to try and improve each of them:

Now it is certainly the case that some law professors cannot write their way out of a paper bag: as the year goes along you will see a huge quantity of miserable writing, all by people older and more experienced than you are. . . . You will also see some things (one anyway) that are very well written, so well written that they are very hard to improve (so far as the writing is concerned). My article is like that.

ceive, and humility would go a long way toward making the end product better and making the process more palatable for everyone involved.³¹

We also find Professor Lindgren's suggestion about educating law review editors to be intriguing, yet we wonder exactly how this can be implemented. Among other things, Professor Lindgren suggests instructing student editors about the "proper role of editors of scholarly journals" and "making authors do their own cutting, running editing seminars for student editors, encouraging light prose editing, and increasing faculty help, oversight, and training."³² While these suggestions seem helpful in the abstract, putting them into practice would be less than simple. In other journals, Professor Lindgren has railed against student editors who abide by any single style manual, particularly the *Texas Manual of Style*,³³ and instead has encouraged a less restrictive approach to style editing. We wonder, then, exactly what student editors should be taught about style editing.

An anecdote further illustrates this point. As one of the faculty advisors to the *Chicago-Kent Law Review*, Professor Lindgren³⁴ recently met with some *Law Review* editors for an editing training session. The format he chose was to take passages from manuscripts that had been submitted to the *Chicago-Kent Law Review* in the past, and to march through them line-by-line to look for improvements that could be made. There was not a single sentence that we did not have suggestions for, and more often than not they were suggestions that would have made the sentence "better." We learned much about editing. However, what Professor Lindgren could *not* teach us—and what

In the author's defense, it should be noted that after the editor resubmitted some of her suggestions with explanations regarding why she wanted to make them, he ultimately accepted most of the changes, and in an accompanying letter stated the following:

Let me say at once that your efforts have improved the article, and helped me to improve it. If I gave the impression the last time I wrote that I did not think this was possible, that was a mistake for which I apologize.

From that point forward, the relationship between the editor and this author was cooperative, which leads us to believe that perhaps the author's initial salvo was more posturing than it was a response to the editing suggestions.

31. If Professor Lindgren's anecdotes about the behavior of editors are representative, then student editors could use a dose of humility as well. See Lindgren, *supra* note 1, at 96.

32. *Id.* at 98.

33. James Lindgren, *Fear of Writing*, 78 CAL. L. REV. 1677 (1990) (reviewing TEXAS LAW REVIEW MANUAL ON STYLE (6th ed. 1990) and WEBSTER'S DICTIONARY OF ENGLISH USAGE (1989)); James Lindgren, *Return to Sender*, 78 CAL. L. REV. 1719 (1990).

34. It should be noted that Professor Lindgren is as good a friend as anyone could be to the *Chicago-Kent Law Review*. For a number of years, he has given up much time and effort to assist and improve the *Law Review*, and for that members of the *Chicago-Kent Law Review*—past, present, and future—are grateful.

Professor Lindgren was well aware he could not teach us—was which of these changes should have been marked on a manuscript and sent back to the author without crossing the fine line between helpful and over-aggressive editing. And we think it is fair to say that if Professor Lindgren—or any author in this Symposium—had received a manuscript marked up with all the valid suggestions for improvement we made that day, there would have been complaints about over-aggressive student editing.

Hence the bind of student editing: What do you do about work that was not unpublishable, but yet could be improved? Professor Lupu insists that it takes a certain degree of character to know,³⁵ and we do not disagree. However, we submit that education cannot teach that kind of character; it only comes through the experience of editing. And given that student-edited law journals apparently are here to stay, we believe the best approach to take as student editors learn this “character” is to begin with a “light” editing philosophy, then make all suggestions that we think would improve the article, and leave the ultimate decision regarding non-technical edits in the control of the author.

We would be remiss to close without mentioning our agreement with two other points made in this Symposium. First, we concur with Professor Althouse’s suggestion that student editors would be happy to work with law review articles that do not read like law review articles because the author maintains a unique voice.³⁶ Finally, we hold up Professor Lupu’s closing anecdote about his review of Professor Laurence Tribe’s *American Constitutional Law* as a model for what the end product of the editing process can be.³⁷ We suggest that any faculty author or student editor who can read that passage without aspiring to have the same sort of experience should reconsider what he or she is doing.

CONCLUSION

So where does this leave us? We think that the conclusions that can be drawn from this Symposium indicate that student edited law journals are not in a state of crisis after all. First, there are a number of problems inherent in student-edited law journals. Second, responsibility for these problems belongs both to student editors and faculty

35. See generally Lupu, *supra* note 3.

36. Althouse, *supra* note 26, at 85.

37. Lupu, *supra* note 3, at 78-80.

authors. Third, these problems are not insurmountable. And fourth, responsibility for working toward a solution belongs to both student editors and faculty authors.

We believe that the *Chicago-Kent Law Review's* symposium format successfully works toward a solution by putting some of the substantive control of content in the hands of faculty experts, and by adopting an editing philosophy that allows authors to have the ultimate say about their articles with non-technical input from student editors. We realize there are problems with this approach, but on balance it is a framework that seems to make both authors and editors happy, and that results in a high-quality product. We believe that it represents the kind of institutional tinkering that should be done throughout the legal academy—by faculty authors and student editors alike—as we search for the best way to put new and innovative ideas into print.