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FINDING PURPOSE: PERSPECTIVE FROM A “NON-ELITE” JOURNAL

*Jonathan F. Will**

I. INTRODUCTION

The call of this special issue deals with the future of student-edited law journals. Although I have advised the Law Review at Mississippi College School of Law (“MC Law”) for several years, being invited to write this commentary forced me to gain a new perspective. I am not too proud to admit that I had no idea how many legal journal articles have been written about legal journals.¹ These articles pertain to a wide-range of topics, including perceived problems with the student-edited process, which is unique to legal academia, and legal scholarship lacking relevance to the bench and bar.

The rules of the publication game in legal academics are no secret,² and the rules impact some players more disparately than oth-

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¹ See, e.g., Rachel J. Anderson, *From Imperial Scholar to Imperial Student: Minimizing Bias in Article Evaluation by Law Reviews*, 20 HASTINGS WOMEN’S L.J. 197 (2009); Leah M. Christensen & Julie A. Oseid, *Navigating the Law Review Article Selection Process: An Empirical Study of Those with All the Power – Power–Student Editors*, 59 S.C. L. REV. 175 (2007); Michael J. Higdon, *Beyond the Metatheoretical: Implicit Bias in Law Review Article Selection*, 51 WAKE FOREST L. REV. 339 (2016); Jason P. Nance & Dylan J. Steinberg, *The Law Review Article Selection Process: Results from a National Study*, 71 ALB. L. REV. 565 (2008); Dan Subotnik & Laura Ross, *Scholarly Incentives, Scholarship, Article Selection Bias, and Investment Strategies for Today’s Law Schools*, 30 TOURO L. REV. 615 (2014); Richard A. Wise et al., *Do Law Reviews Need Reform? A Survey of Law Professors, Student Editors, Attorneys, and Judges*, 59 LOY. L. REV. 1 (2013); John P. Zimmer & Jason P. Luther, *Peer Review as an Aid to Article Selection in Student-Edited Legal Journals*, 60 S.C. L. REV. 959 (2009).

² Christensen & Oseid, *supra* note 1, at 207 (citing student responses about the “games

ers. Much has been written about the plight of scholars who teach at lower-ranked institutions who are trying to publish articles at higher-ranked schools;³ however the struggle is also real for journals published by these lower-ranked schools. Perhaps fueled by the negativity of some articles, I reformulated the call of this issue, in normative terms — whether student-edited law journals *ought* to have a future. I am convinced the answer is yes for elite and non-elite journals alike.

But that does not necessarily mean that the status quo is sufficient. Journals should periodically assess the extent to which they serve their intended purposes. While legal journals serve many purposes, here I will focus on three: (1) advancing the understanding and development of the law;⁴ (2) providing learning opportunities for law students;⁵ and (3) promoting institutional reputation.⁶ In furthering these purposes, perhaps different journals can play different roles, even among those journals considered *general law reviews*⁷ as opposed to *specialized* or *topic specific*⁸ journals. Because there are more non-elite journals than elite, my goal in this commentary is to reflect on the experience of one such journal and the efforts that have

that have to be played” to secure author acceptances in a world where authors leverage offers to trade up to better placements).

³ Subotnik & Ross, *supra* note 1, at 621-22 (stating that “those from 3rd and 4th tier schools had only the feeblest prospects of cracking the top tier”).

⁴ See, e.g., Michael L. Closten & Robert J. Dzielak, *The History and Influence of the Law Review Institution*, 30 AKRON L. REV. 15, 22-25 (1996); Menachem Wecker, *Law Review Leads to Legal Jobs, Recruiters Say*, U.S. NEWS (Jan. 19, 2012, 9:00 AM), <http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2012/01/19/law-review-leads-to-legal-jobs-recruiters-say>.

⁵ See, e.g., H.J.X., *Law Reviews and Student Scholarship—Demystified*, YALE L. SCH.: STUDENT PERSP. (Feb. 15, 2011, 12:00 AM), <https://www.law.yale.edu/admissions/profiles-statistics/student-perspectives/law-reviews-and-student-scholarship-demystified>.

⁶ See, e.g., Alicia Albertson, *Best Law Reviews: Stanford Tops List*, NAT’L JURIST: PRELAW (Mar. 7, 2014), <http://www.nationaljurist.com/content/best-law-reviews-stanford-tops-list>; see also Lisa Hackett, *Understanding Law Review Success: An Analysis of Factors that Impact Citation Counts* (2013) (unpublished student scholarship, Michigan State University College of Law), <http://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1214&context=king>. We could also add providing a platform for author advancement, but if authors pay attention to (1) and (3), their own advancement should take care of itself.

⁷ See generally Wecker, *supra* note 4; see also Jordan H. Leibman & James P. White, *How the Student-Edited Law Journals Make Their Publication Decisions*, 39 J. LEGAL EDUC. 387, 387-88 (1989) (describing generalist journals as usually the oldest and most selective journal at each school that entertains publication pieces from multiple areas of law and “bear[s] no subject matter qualifiers”).

⁸ Anderson, *supra* note 1, at 209-14.

been made, and continue to be made, to survive as a legitimate player in the game of legal scholarship.

II. SQUARE PEGS AND ROUND HOLES . . . OR CHECKING EXPECTATIONS

After a one-year grace period, I was tasked with advising the MC Law Review during my second year as a faculty member. While I was an Executive Editor of my alma mater's law review a decade prior, I suspect that, rather than being the most qualified for the position, I was simply the least likely to say "no." In hindsight, while my own law review experience as a student gave me a tool set, it also saddled me with certain baggage.

As I think is fairly common to human behavior, I began my approach to leadership and advising with what I knew—my memories of being on law review. But, each journal faces its own issues (pun intended), and certain issues amplify as you trickle down the *U.S. News* ranking system. In short, what might work at some levels will fail miserably at others.

For instance, I recall being perplexed that MC Law Review hosted a symposium every year. My experience was that symposia are reserved for extra special events that occur only so often: anniversaries of landmark cases, deaths of famous jurists or scholars, and so forth. How could that many exciting things occur every year? If everything is great, nothing is great. But that is square-peg thinking for a round-hole journal.

Due credit for this idea needs to be given to our former dean, Jim Rosenblatt, because if done properly, annual symposia serve as a way to attract scholars who would otherwise never seriously consider publishing in a non-elite journal. Indeed, an offer from MC Law outside the symposium context would likely become the first step to leveraging up the rankings ladder. MC Law achieves some success because we choose interesting topics for the symposia that are of regional and national importance. In recent years, we have hosted panels on Tort Reform,⁹ the Voting Rights Act,¹⁰ the Gulf Oil Spill,¹¹

⁹ See, e.g., David F. Maron & Samuel D. Gregory, *A Decade Examined: A Review of the Recovery Under Mississippi's Civil Justice Reforms*, 34 MISS. C. L. REV. 203, 204-06 (2015).

¹⁰ See, e.g., M. Isabel Medina, *The Missing and Misplaced History in Shelby County, Alabama v. Holder – Through the Lens of the Louisiana Experience with Jim Crow and Voting Rights in the 1890s*, 33 MISS. C. L. REV. 201 (2014).

¹¹ MISS. COLL. SCH. OF L. L. REV., BEYOND THE HORIZON: THE GULF OIL SPILL CRISIS: A

and Health Care Reform.¹² We attempt to pick topics that leverage the political atmosphere of a state like Mississippi. After all, discussing civil rights in the Deep South carries a certain cachet.

A symposium piece also requires less commitment. An *elite* author (self-described or otherwise) may cringe at contributing a full-length article to a non-elite journal, but may have fewer reservations about submitting an essay. MC Law experience shows that some tenured scholars are less concerned about the rankings, given that our journal is just as accessible to readers as all the others (more on that below). Though admittedly, honoraria helps. Symposium-length pieces similarly open the door for well-respected practitioners to submit papers of more immediate relevance to the bench and bar. It turns out that useful things can be said in less than 40,000 words.

In addition, symposia provide a unique opportunity for student editors to organize a significant event. Hosting a symposium annually allows all law review members the opportunity to participate. Anyone who has researched and developed a topic, herded scholars/practitioners, and arranged travel, meals, continuing legal education credits, and so forth, knows that it is quite the enterprise. I have seen students grow tremendously in their ability to manage time, people, and expectations—all skills necessary for the efficient practice of law.

Finally, the symposium brings attention to the institution. Our experience at MC Law has demonstrated that if you treat visitors well, they will also speak well of you. It is not uncommon for guest speakers to be unfamiliar with MC Law or to mistake MC Law with another law school. But they soon learn that we are a real school, with books and everything, and that we take great pride in our work. This shines through because of the great work of our students and their tireless efforts to provide and produce quality work on behalf of the law school. Additionally, our deans deserve credit because symposia are not free. Symposia can cost thousands of dollars, and each institution needs to perform a cost-benefit analysis as to whether and how often to host them. One thing to consider when planning a symposium is determining how much scholarly exposure the institution is

LEGAL SYMPOSIUM (Feb. 18, 2011), <http://lawprofessors.typepad.com/files/mc-law-bp-symposium-handout.pdf>.

¹² MISS. COLL. SCH. OF L. L. REV., DIAGNOSIS AMERICAN HEALTH CARE: ECONOMIC STAKEHOLDERS AND BIOETHICAL CONSIDERATIONS: A LEGAL SYMPOSIUM (Feb. 26, 2010), <https://issuu.com/mclawamicus/docs/16371>.

getting from its own faculty through writing or presenting at other institutions. A school with a smaller faculty will have fewer people to send forth, while also having less travel expenses. The symposium may thus fill a gap that justifies the cost when weighing the benefits of advancing scholarship, the opportunities for students, and promoting institutional reputation.

III. TO PEER REVIEW OR NOT PEER REVIEW – THAT IS A COMMON QUESTION

A common critique of student-edited journals is that student editors (through no fault of their own) lack the experience and expertise necessary to choose quality articles, and thus use the author's home institution as a proxy for quality.¹³ Professor James Lindgren's famous (infamous?) submission experiment aptly illustrates this phenomenon.¹⁴ Professor Lindgren held a position at Chicago-Kent, but was also a visiting professor at the University of Chicago.¹⁵ He submitted the same paper on the different letterheads of the two schools at which he taught and, not surprisingly, received much better offers in response to the University of Chicago letterhead submissions.¹⁶ This phenomenon puts those authors teaching at lower-tiered schools at a tremendous disadvantage, particularly given that student editors self-report spending as little as five minutes on each submission during the selection process.¹⁷ The argument suggests that if law journals implemented a blind or peer-reviewed selection process, articles would be chosen based on their quality, as opposed to other proxies.¹⁸

Coming from a lower-ranked school, I can see the value (to authors) of moving to a blind or peer-reviewed selection process. Indeed, I have had more of my own articles selected for publication in journals with some form of peer-review than those exclusively edited by students. However, at the same time, I do not see this as a viable option for the MC Law Review for at least two reasons. First, peer

¹³ Subotnik & Ross, *supra* note 1, at 620-21.

¹⁴ Higdon, *supra* note 1, at 345.

¹⁵ Higdon, *supra* note 1, at 345.

¹⁶ Higdon, *supra* note 1, at 345 (describing Professor James Lindgren's submission experiment).

¹⁷ Christensen & Oseid, *supra* note 1, at 198 (finding a range of five to thirty minutes spent per article).

¹⁸ Zimmer & Luther, *supra* note 1, at 964-65.

reviewing takes time. It is not uncommon for a journal to take several months to decide whether to publish an article. At MC Law, we pride ourselves on not only making quick decisions, but also moving articles efficiently through the publication process. MC Law uses this as a selling point when calling authors with a publication offer. Second, although South Carolina has found some success using a peer-review model,¹⁹ I am unenthusiastic that peer-reviewing at MC Law would tip scholars over the edge to publish with us. It seems to me that the added delays would eliminate some of the features we promote to convince authors to accept our offer.

But here I think a distinction can be made between scholarship in the traditional, theoretical sense, and writing that has a more practical bent. This provides another opportunity to throw myself under the bus due to my square-peg thinking. When I began advising the MC Law Review (our only law journal), in addition to the symposium issue, an annual issue was also dedicated exclusively to Mississippi practice. What on earth—a general, scholarly legal journal spending a full one-third of its print space on Mississippi practice? Law reviews are not supposed to be treatises!

Now, it turns out that the primary driver for this was because MC Law was not receiving a sufficient number of articles from scholars. This ended up being a quick fix; we simply needed to register with ExpressO²⁰ and Scholastica.²¹ Within a year, we fielded enough articles to eliminate the Mississippi-specific issue. However, after reading some of the articles on scholarship²² that highlight the dissatisfaction from the bench and bar with the content of law journals (including from Chief Justice Roberts and Judge Richard Posner),²³ it may be time to revisit the concept of publishing a more practice-based issue. In this context, a peer-reviewed component could add tremendous value in multiple ways.

For one, when authors write about the actual practice of law, getting it wrong can have real implications. If an attorney relies on a journal publishing that “two plus three equals chair”²⁴ under Missis-

¹⁹ Wise et al., *supra* note 1, at 73; see also *Peer Reviewed Scholarship Marketplace*, S.C. L. REV., <http://sclawreview.org/prsm/> (last visited Mar. 20, 2017).

²⁰ *ExpressO*, BEPRESS, <https://www.bepress.com/products/expresso/> (last visited Mar. 20, 2017).

²¹ SCHOLASTICA, <https://scholasticahq.com> (last visited Mar. 20, 2017).

²² See *supra* note 1.

²³ Wise et al., *supra* note 1, at 6.

²⁴ *Shorties Watchin' Watchin' Shorties*, (Comedy Central television broadcast Nov. 11,

sippi law, it reflects poorly on all involved. There are less immediate ramifications if a scholar misconstrues the true impact Immanuel Kant had on evidentiary approaches in 18th century Bulgaria.²⁵ Then again, student editors are probably not much better at determining quality in the former than the latter. Building a peer-review editing process into a submission cycle focused on practical legal writing could bridge this gap.

The practice-specific concept is similar to the concept used by law institutes that publish periodicals focusing on timely issues. These practice-specific issues could also be published more frequently (and quickly) than a treatise update. Lining up local practitioners to serve as peer reviewers would serve multiple functions. Alumni frequently look for ways to stay involved in the law school community (particularly if they can do so without writing a check). Engaging the local bar association can show that the school cares about what *real* lawyers find important, and these folks are queried as part of the *U.S. News* ranking game. It also allows student editors to learn the law while providing networking opportunities as they work with practitioners. Thus, like the annual symposium, a practiced-based issue can advance understanding of the law, offer students learning opportunities, and promote institutional reputation. Currently, MC Law has not adopted a practice-specific, peer-review system, but as we consider whether we are publishing the types of issues to which we aspire, this type of innovation is worth a look.

IV. ONLINE V. PRINT

The last topic that I will focus on briefly is whether student-edited legal journals should abandon their print presence and move exclusively to an online platform. While student learning opportunities are likely equivalent (save for the added knowledge gained by those tasked with rolling out the new platform), it is worth considering the implications for advancing (a) scholarly work, (b) institutional reputation, and (c) cost saving initiatives. One of the first questions the new dean asked me to research was whether it made sense to take

2004), <http://www.cc.com/video-clips/24whfh/shorties-watchin--shorties-educating> (broadcasting comedian Eddie Gossling stand-up titled *Educating*).

²⁵ Orin Kerr, *Final Version of "The Influence of Immanuel Kant . . ." – and What the Chief Really Said*, WASH. POST (June 25, 2015), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/06/25/final-version-of-the-influence-of-immanuel-kant-and-what-the-chief-really-said/?utm_term=.6800bfda3683.

our law review exclusively online. The curmudgeonly Luddite in me balked at the idea. A traditional law review must have a print presence, I thought.

Even after research, I still find, for the most part, that law reviews need a print presence. I hear enough anecdotally to raise concerns about scholars who look down upon journals that exist solely online — as if print is a proxy for quality. Eventually, I believe that this culture will change, but for now MC Law Review can ill-afford to disadvantage ourselves when it comes to attracting authors. The question is how to strike the appropriate (and most efficient) balance. Luckily, the most pressing financial issue—the cost of the online platform—was resolved for us when MC Law’s Dean of Library Services, Mary Miller, decided to launch Digital Commons.²⁶ This now allows us to put the Law Review volumes and faculty papers from MC Law online in a readily searchable format. Additionally, Digital Commons makes our scholarship available to a broader readership than print subscriptions or typical legal search databases. We have not been running long enough to claim victory, but early indications suggest greater traffic, which increases both exposure to scholarship and our institutional reputation.

So, what is the sweet spot for maintaining a print existence? One option is to print only complete, bound volumes in lieu of printing individual issues followed by the bound volume. We are currently exploring whether releasing individual issues online can decrease our publication timetable and as a result, encourage authors who are writing about time-sensitive topics to publish with us. Keeping the full volume in print would allow the journal to maintain some subscription base, though subscriptions rarely cover operating costs.²⁷ Printing a full volume would also enable the journal to retain a relationship with a printing press so that reprints are available to authors. Though here, too, adjustments are being made. It used to be that authors automatically received a large number of reprints. That number has decreased over the years, and now we are considering an *opt in* system where authors only receive reprints if they request them. Under this approach, the default would be that authors receive a final *proof* of the article in a PDF that mirrors what the article will look like in print. If we can strike the appropriate balance, increasing our

²⁶ MC L. DIG. COMMONS, <http://dc.law.mc.edu> (last visited Mar. 23, 2017).

²⁷ See generally Subotnik & Ross, *supra* note 1.

online presence while decreasing our reliance on print should allow MC Law to more effectively advance scholarship while increasing the reputation of our institution.

V. CONCLUSION

Institutions should determine the purposes of student-edited law journals that they consider most important, and then assess how well those purposes are being served by current operations. I have focused on three here: (1) advancing understanding and development of the law; (2) providing learning opportunities for law students; and (3) promoting institutional reputation. Journals at lower ranked schools may find it necessary to innovate in ways that would not make sense for more *elite* journals. This commentary highlights the use of symposia, implementing a peer-review process for practice-oriented writing, and striking a balance between print and online presence to give some perspective from a non-elite journal. It has been a useful exercise at least insofar as I remain convinced that there is a future for student-edited law journals. They do good work.