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Erik M. Jensen

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REFLECTIONS ON EDITING A JOURNAL FOR LAW TEACHERS

*Erik M. Jensen**

For six-and-a-half years, until December 1998, I was one of the editors of the *Journal of Legal Education*, the scholarly journal of the Association of American Law Schools. Colleagues at Case Western Reserve University School of Law and I were successful in bringing editorship of the *Journal* to Cleveland in 1992. At the end of our extended term, we turned over control to our successors at Vanderbilt.

One should hesitate to draw grand conclusions based on personal experience, but I won't. What I'll do in this essay is discuss some of the decidedly unscientific lessons about American legal education, or at least about the scholarship dealing with American legal education, that I've drawn from my editorial experience: About American legal education's provincialism, about the limited interest in writing on pedagogical subjects, about quality of writing, and about the politicization of the legal academy.¹

I don't mean to suggest that my conclusions are all novel; in some cases, experience merely confirms (to my mind, anyway) what many people had already suspected. So be it. This may reflect a minority view in the academy, but I'd rather be accurate than novel.

* David L. Brennan Professor of Law, Case Western Reserve University School of Law, Cleveland, Ohio.

1. My colleague as faculty editor at CWRU, Jonathan Entin, and the *real* editor of the *Journal* during those six and a half years, Associate Editor Kerstin Trawick (not a law teacher, but far better than a law teacher), wouldn't necessarily agree with what I say in this essay. In fact, I suspect they would have discouraged me from writing it, had they only known. In addition, nothing in this essay reflects official AALS policy about anything.

The Insularity of American Legal Education

American law professors are provincial in their views. Few pieces published in the *Journal* during our tenure had any references to non-American publications on legal education. When such citations did occur, the author was almost certainly not an American.²

This conclusion is hardly surprising; we Americans are provincial about almost everything.³ Nevertheless, I'd like to think that, as editors, we weren't provincial in our decisions about what articles to publish. And if our decisions appeared provincial, it wasn't entirely our fault. To begin with, for many publication decisions we enlisted the help of referees, a practice that was intended to guard against bias of all sorts. So I can blame the referees for any questionable decisions.⁴

More important—and this is my primary point—we published relatively few pieces with an international or comparative perspective because we received relatively few submissions reflecting those perspectives. The *Journal* appeared insular not because we wanted it to be that way; it was insular because of the pool of articles from which we could draw.

In fact, we were delighted when we received submissions discussing non-American legal education; we simply didn't get many. And of those we did receive, many were unsuitable for the *Journal*. We turned down some descriptions of the operations of non-American law schools and non-American teaching programs on the ground that the descriptions weren't written in a form to be useful to our primary audience. The articles didn't tell *American* readers why they should care about the day-to-day operations of the [fill-in-the-blank] law school.

That may seem Amerocentric, but those decisions in fact reflected larger concerns. The rejected articles were purely descriptive,

2. In addition to its American distribution—just about all North American law teachers receive it, whether they want to or not—the *Journal* has a substantial international circulation. But you couldn't tell that by the content of most articles we published or by the works cited in the articles.

3. Other folks can be provincial too, of course. For example, *The Law Teacher*, the journal of the Association of Law Teachers in the tenuously United Kingdom, is subtitled *The International Journal of Legal Education* and welcomes “contributions from any jurisdiction,” but my impression is that the claim to internationalism is overblown. *The Law Teacher* appears to be a British journal for a British audience, with cosmopolitanism largely coming from a smattering of Commonwealth materials.

4. Just kidding.

with no comparative analysis. The lack of a comparative perspective limited the utility of those articles for *any* audience. Why should an American reader (again, our primary audience) care how many courses in administrative law a non-American school offers, or how many faculty members the school has? Answers to such questions may exist, but an article for the *Journal* needs to provide them. If an article didn't, we didn't accept it.

Sure, we were being hypocritical in a way. We didn't expect the same comparative perspective from American authors that we did from non-Americans; we didn't expect American authors to explain to a British or continental audience why it should care about their articles. But the hypocrisy, if that's what it was, was attributable to the nature and audience of the *Journal*.

I've little doubt the *Journal* will always be overwhelmingly American in focus. Given the readership and the sponsoring organization, not to mention differences in legal systems (common law vs. civil law, postgraduate legal education vs. undergraduate legal education, etc.), it would be unrealistic to expect radical change in the pool of articles from which the *Journal* editors (and, for that matter, the editors of other American legal publications) can draw. But I hope that changes can occur at the margin—a few more good articles about legal education outside the U.S.—so that we can all broaden our horizons.

The Limited American Interest in Writing About Pedagogy

Few American legal academics are writing about legal pedagogy. The average number of articles submitted to us each year was only about 120. That seems like a large number if you actually have to read the things, but it's quite small considering the size of the American legal academy and the fact (it is a fact, isn't it?) that we legal academics are continually thinking about what we're doing in the classroom. Indeed, the figure may overstate the amount of pedagogical writing. The figure includes the articles clearly unsuitable for serious consideration by the *Journal*—for example, articles on substantive legal topics having no pedagogical content⁵ and the multiple submissions (that is, articles sub-

5. Except insofar as the articles dealt with topics that could be a subject of a law school classroom discussion. But viewed in that way, any article has pedagogical content, and we perceived our function in narrower returns. As a result, we rejected some solid articles on the ground that they didn't belong in the *Journal*, even though they clearly belonged somewhere.

mitted to several law journals simultaneously)⁶—and the short humorous pieces (“On the Lighter Side”) we sometimes printed. People may be thinking great pedagogical thoughts, but they aren’t writing them down.

The primary reason for the dearth of pedagogical articles, I suspect, is that the American academy rewards writing articles about substantive legal matters (or about postmodernism and other flashy “interdisciplinary” subjects), and not about teaching. Despite all the hoopla in the United States these days about the importance of teaching—how it has been improperly subordinated to research agendas, etc., etc.—writing about teaching isn’t taken seriously in most law schools. I’m overstating things a bit; we didn’t see the universe of thought about legal pedagogy. Articles about pedagogy occasionally appear in generalist, student-edited law reviews, where it’s easier for an author to get a quick offer of publication.⁷ (Student editors seem particularly fond of articles that trash legal education.) And some other American publications now have a pedagogical focus, like the American version of *The Law Teacher* (published by the Institute for Law School Teaching at Gonzaga University), which generally publishes very short essays; the *Clinical Law Review: A Journal of Lawyering and Legal Education*, a publication of the Clinical Legal Education Association, which has provided a forum for clinicians to discuss matters of particular interest to clinicians; and *Legal Writing: The Journal of the Legal Writing Institute*, which publishes (obviously) articles on teaching legal writing. But we saw most of the writing about pedagogy—indeed, some pieces that wound up in the other journals were sent to us first—and there wasn’t much.⁸

I can’t provide precise data, but a high percentage of our submissions came from legal-writing instructors and from clinicians (with a

6. The *Journal* is peer-reviewed and, as is true with peer-reviewed journals generally, we insisted on sole submissions. We couldn’t ask referees to evaluate manuscripts that had been submitted to multiple journals.

7. Student-edited reviews have no sole-submission requirement, *see supra* note 6, and it’s not unheard of for authors desperate for publication to send out 80-100 copies of their articles simultaneously. *See generally* Erik M. Jensen, *The Law Review Manuscript Glut: The Need for Guidelines*, 39 J. LEGAL EDUC. 383 (1989). With that sort of distribution, and with several hundred journals begging for articles, getting something accepted by some student journal is much easier than going through a lengthy, peer-review process with one faculty-edited publication.

8. The circulation of the *Journal* (over 7000) is such that it makes sense for clinical or legal writing specialists to publish there, if possible. Other American clinicians or legal writing instructors will see an article published in the *Journal*; it’s not clear that other faculty will see an article published in one of the clinical or legal-writing publications.

drop-off in the latter category after the *Clinical Law Review* began publishing in 1994). But that fact doesn't disprove my general proposition. At many American law schools, clinicians and legal-writing instructors are second-class citizens. That clinicians and writing instructors take thinking and writing about pedagogy seriously is no indication that that's what the "real" faculty is expected to do.

Quality of Writing

Many American law professors are terrible writers. Yes, most people are terrible writers, and most professors are terrible writers. That said (sadly), it's more than a little frightening for the written word to be treated so cavalierly in a discipline, law, that depends so much on precise use of language.

We received many fine manuscripts for consideration, and I don't mean to suggest that the American legal professoriate is made up of dunces.⁹ Nevertheless, many who submitted articles to the *Journal* can't write a coherent essay. (If what some authors sent us was thought to be nearly ready for publication, I tremble to think what their everyday writing looks like.) In far too many cases, the quality of writing was so poor that I had to wonder how the writer graduated from law school. In a large number of cases, the manuscript hadn't even been proofread, much less thought through.

One of us thought a majority of the most poorly written submissions came from legal writing instructors. I'm not sure that was true, but some submissions from writing instructors were horrible. In those cases, given the quality of American law students' writing these days, I'd be inclined to say we have the blind leading the blind, but that would be unfair to the blind.

Politicization of the American Academy

Much writing on American legal education has become politicized in extremely unfortunate ways. And concern about racial, gender, and ethnic sensitivities has dulled critical judgments. In almost every issue of the *Journal* there was at least one article that a careful reader could appropriately criticize as more political than scholarly.¹⁰ I wasn't

9. On the other hand, I don't mean to suggest that terrible writers are geniuses. Equating incomprehensibility and erudition is all too common in the legal academy these days.

10. I'm using the term "political" here in a derogatory way, to refer to articles that are intended to advance political agendas that aren't necessarily grounded in rea-

happy about some of that stuff, but no editor is ever totally happy with everything published during his tenure. Besides, this was a joint editorship, and no one had a veto over selection decisions. Even if we all had reservations about a particular submission, the piece might still have been published, perhaps because referees were positive about the article,¹¹ or because the piece was a good representative of what American legal “scholars” are in fact doing.¹²

Here’s an example of the sort of controversy that can arise when a politically tinged article *isn’t* selected for publication.¹³ We rejected a poem that was intended to be a serious criticism of the difficulties that minorities have in the promotion and tenure process in American law schools. (By “serious” I mean that the poem dealt in a non-humorous way with a serious subject.) We made our decision on the grounds that the thesis was hardly new, and the poem wasn’t a good poem. Our rejection letter, which was of course sent privately to one of the authors, made those two points—sharply, but not unfairly—and that should have ended the matter. To my astonishment, the rejection letter was later characterized in print as a “denial of the Black experience.”¹⁴ And the rejection letter was brought to the attention of the Executive Committee of the Association of American Law Schools (AALS), a body that took this challenge to editorial judgment much more seriously than it should have, expressing sympathy to the authors and suggesting that the complaint had merit.¹⁵ (Oh, yes, the Executive Committee didn’t bother to consult the editors before taking that extraordinary action.)

The complaining author said that she wouldn’t have minded had

son. I certainly don’t mean to suggest that the study of politics is silly or that one cannot reason about matters political.

11. Which may tell us something about the quality of “disinterested” refereeing in nonscientific, academic journals these days. Who should review pieces in areas—like critical race theory and critical legal studies—which are so openly political that reviewing the article is seen as a political act? But that’s a subject for another article on another day.

12. No one will agree with this, but we tried very hard to make sure that the *Journal* contained a sample of the best work of the academy, and that the *Journal* didn’t favor any single set of political views. Indeed, the editors had very different perspectives on almost everything, except the designated-hitter rule.

13. A fuller description of these events can be found in Erik M. Jensen, *Legal Education’s “Learned Society,”* Acad. Questions, Spring 2001, at 46.

14. See Vincene Verdun & Vernellia Randall, *The Hollow Piercing Scream: An Ode for Black Faculty in the Tenure Canal*, 7 HASTINGS WOMEN’S L.J. 133, 149 n.5 (1996). The rejection letter was attached as a note to the published poem.

15. What was supposed to follow from that determination isn’t clear. Do all articles that purport to define the Black experience have to be published?

we simply rejected the poem with a “thanks, but no thanks” letter. It would have been acceptable, that is, if we had rejected the poem *without giving reasons for the rejection*. As faculty editors of a peer-reviewed journal, however, we’d decided that providing reasons was part of our job. Scathing characterizations of academic work are routinely made in referees’ letters for peer-reviewed publications in dozens of academic fields. No author likes to have his work condemned, but it happens all the time. Life goes on. So if we didn’t like a piece, we (or the referees) usually said why, in a private letter, as we did in this case.

It’s not a healthy development for the academy that certain sorts of manuscripts are supposed to be beyond criticism. And it’s not healthy that the AALS endorsed that position.

* * * * *

Complaining about insularity, lack of self-reflection, lousy writing, and increased politicization probably makes me sound more negative than I intend to be. Editing the *Journal of Legal Education* was a great experience.

But American legal education has a lot wrong with it. And, if nothing else, I wish we’d all work harder on our writing.

