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Faculty-Edited Law Reviews: Yes -- A Statement by Roger C. Cramton

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#SYLLABUS

American Bar Association Section of Legal Education and Admissions to the Bar
Volume XVI, Number 3 September, 1985

Versus: Pro and Con Faculty-Edited Law Reviews

(See pages 2, 3, and 6 for other articles on law reviews.)

Roger C. Cramton

Yes—a statement by Roger C. Cramton

By Roger C. Cramton

One of the most curious features of academic law in the United States is that law students exercise editorial responsibilities for our learned journals. To scholars in other disciplines, this longstanding practice is a bizarre absurdity beyond understanding. To speakers at law review banquets, it is a hallowed tradition that is part of the mythology of American legal education—that a meritocracy of talented students can contribute a great deal by writing and editing our learned journals.

Developments in recent years—the growth in the size of law review staffs, the selection of editors through competitive writing programs, and the creation of multiple law reviews—have democratized the law review experience while reducing its typical educational benefits. Although law reviews publish more pages, most of the increase is devoted to ever-longer articles submitted by outside contributors.

Less emphasis is placed on student writing, which provides the most important educational experience, and less than one-half of law review participants ever publish anything. Most of their time is spent on

Continued on Page 3

Joseph R. Julin

No—a statement by Joseph R. Julin

By Joseph R. Julin

Memorandum
To: The Editors of the Northwestern University Law Review
From: A Member of Your Alumni Body

"To the rear, march!"

If we heed the call, indeed the command, for reform given by a highly respected and usually enlightened legal educator, my good friend and former colleague, Cramton, that's the backward path upon which we will travel. I say no. I say let us push ahead. Why return to yesterday, at least the yesterday of our review?

The proponent of transferring editorial control from students to faculty would have us believe that granting law students editorial responsibilities for certain of our learned journals, the unique publications over one of which you preside, is, to scholars in other disciplines, "a bizarre absurdity beyond understanding." Oh, I think, in time, we can persuade our colleagues in other disciplines that, even in the academic world, there may be value in being different.

My good friend would tolerate a student-edited note section but make certain that pages devoted to

Continued on Page 3

Good-bye to Student-Edited Law Reviews?

By Richard E. Speidel

There is a debate over the value of law reviews which are subsidized in part by law schools and edited exclusively by law students. Should they be preserved? If numbers are a test of value, the answer is yes. Every law school seems to have one or more and every bound volume appears to contain at least 500 pages. In contrast with other disciplines, however, few law journals written for and edited by law professionals are supported by law schools. A growing opinion, among law teachers at least, is that there should be more pages of the latter and fewer of the former. The assumption is that the legal scholarship worth preserving will emerge from a faculty- rather than a student-edited journal.

Plainly, if the law school subsidy were removed, any journal would face some interesting times. Many would not survive in a market already saturated by legal literature. The survivors would have adapted their style and content to the demand, however elementary or specialized that might be. There might be more articles on "How to Draft an Enforceable Confession of Judgment Clause" rather than on "Fairness and Efficiency in the Enforcement of Confession of Judgment Clauses."

Even with a subsidy, there are some unsettling changes underway at the student-edited law review: (1) Most law reviews sponsor a "write-on" competition for students not eligible on grades, thereby increasing size and administrative complexity without necessarily improving overall quality; (2) Some law schools have more than one student-edited journal and this stretches the pool of interested and talented students; (3) Earlier job placement based upon more varied criteria has weakened the student incentive to strive for and become a slave to the law review; and (4) The challenge of attracting the top authors is exacerbated by production delays, uneven editing, the "lawreviewese" writing and footnoting style and the like. The force of these changes varies from school to school. The effect, however, is to suggest a deterioration in quality.

In view of these changes and the perceived need for more faculty-edited law journals, should the law school subsidy to the student-edited law review be continued? In my opinion, the answer is yes. Assuming that reasonable standards of quality and administration can be

Continued on Page 8

Report from Skills Training Committee

Marilyn V. Yarbrough

By Marilyn V. Yarbrough

Interest in clinical legal education by the ABA reached its highest point to date with the debate over Accreditation Standard 405(e) in August, 1984. After years of debate among legal educators and between the ABA Section of Legal Education and Admissions to the Bar and the Association of American Law Schools, the House of Delegates approved a standard that encouraged law schools to afford status to clinical law teachers substantially equivalent to that enjoyed by other members of law faculties. (See page 2 of September, 1984 *Syllabus*.)

The Skills Training Committee of the Section has accepted the responsibility for assisting schools as they evaluate their present job security systems and develop new ones. In addition, the committee (formerly the Clinical Legal Education Committee of the Section) continues to consider other matters related to professional skills training in law schools.

A discussion of the continuing agenda of that committee should highlight most of the significant issues in clinical legal education today. Because of the labor intensive nature of clinical legal education, concern with the decline in the demand for legal education and consequent diminishing resources for legal education has heightened the need for close attention to these issues.

Clinical legal education is expensive. Like any facet of legal education, it requires adequate resources to be effective, but unlike other teaching methods, a little stretching of those resources usually cannot be accomplished without disproportionate harm to the programs.

This year the committee will begin evaluating the effectiveness of programs in existence and establishing benchmarks from which progress in accomplishing the goals of 405(e) can be met. The consultant on legal education to the ABA and the executive director of AALS are

Continued on Page 2

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Versus: Pro and Con
YES: Cramton

Continued from Page 1

running arduous writing competitions so that a cachet can be bestowed on second-year students before the beginning of the fall placement season or in drone-like work in the library checking the voluminous citations in the massive articles that dominate law review issues.

The premise of student editorship is that the educational benefits to students outweigh any cost to legal scholarship. But the law review tradition also pretends that law students can make authoritative judgments about legal scholarship. This tradition, part of the myth of the omnicompetent generalist lawyer, assumes that an able second-year law student, armed with a year's drill in the parsing of cases, is able to evaluate and edit any piece of legal scholarship.

This view may have had a limited plausibility in the past when applied to narrow doctrinal scholarship, but it has no validity today, when the most experienced and able faculty members do not claim competence over the entire realm of legal scholarship. Law today is too complex and specialized, and legal scholarship is too theoretical and interdisciplinary. The claim that student editors can recognize whether scholarly articles make an original contribution is a pretense that should no longer be tolerated.

The dangers go beyond the occasional sins of commission or omission by individual student editors. The extraordinary proliferation of student-edited reviews, most of them of erratic and uneven quality, has had harmful effects on the nature, evaluation, and accessibility of legal scholarship. Student editors prefer pieces that recite prior developments at great length, that contain voluminous and largely meaningless citations for every proposition, and that deal with topics that are safe, standard, or faddish.

They discourage scholarship that assumes an informed reader, presents its contribution succinctly, and is innovative or novel. The baleful effects on the form and quality of legal scholarship may be understood by comparing student-edited law reviews with the learned journals of other disciplines.

What changes are needed? The editorial responsibilities of law reviews should be taken over by faculty members, with all students eligible to publish meritorious work in the student-note section. Perhaps a continuing function for student editorial boards can be found in that section. But the pages devoted to scholarly articles should be faculty-edited and, in any review of quality, subject to peer-review procedures. In addition, the Association of American Law Schools should establish a national learned journal in the field, setting a model that may influence others. This journal, broad in coverage, edited by the ablest legal scholars, would accept manuscripts only through a careful peer-review process.

The educational benefits to law students of writing and editing student work can be preserved without placing so many important judgments about the worth of scholarly contributions in their inexperienced hands. Reshaping the structure and control of law reviews is an essential step if American legal scholarship is going to fulfill its promise.

Roger C. Cramton is president of the Association of American Law Schools and Robert S. Stevens Professor of Law at Cornell University.

Versus: Pro and Con
NO: Julin

Continued from Page 1

scholarly articles would be faculty-edited and "in any review of quality, subject to peer review."

I write to assure you, the current student editors of the review for which I once labored as you do now, that reason or the doctrine of impossibility will save you from this regressive move. Whichever, I doubt that you need fear that the clock of our review will turn back to 1932.

The history of our *Review* is a bit unlike that of most. For a quarter of a century from its founding, the *Illinois Law Review*, as our publication was known for some 50 years, had a member of the faculty as its editor.

The distinguished faculty editors included Roscoe Pound and Albert Kocourek. It was Kocourek, the next to last faculty editor, who bridled at the move toward student control. He wrote that student work, apparently intending to refer to both writing and editing, "will always lack that breadth of legal knowledge and maturity of view which can come only to one who has lived with a specialty for many years."

But, the best of scholars sometimes err. Progress, i.e. the move to student editorship, could not be stayed forever.

The 1932 change of editorial responsibility from faculty to student board was hardly on the cutting edge of legal education. It might better be characterized as an act of conformity rather than one of innovation.

But, so what?

It raised the quality of legal education at our law school then.

It enhances the quality of legal education at all law schools now.

Granted, the literature is replete with arguments for and against this uncommon institution, a student-edited learned journal. At worst, the debate of record leaves the scales in balance. More probably, it makes the case for the mode we are in. The debate demonstrates the value, not cost, of our educational mode being unique.

Yes, I know that it was my dean, Harold Havighurst, who wrote the words so often quoted, "law reviews are published primarily in order that they may be written" not read. That bothered him not at all. It was more an argument for the form that our review at long last, 1932, was to take than for perpetually maintaining the status quo, faculty editorial control.

The law review experience for student writer and editor is an experience often unequaled, sometimes unmatched, by other phases of one's undergraduate legal education.

It is an experience we need to increase, not eliminate or devalue, for it enriches our curriculum in ways we should seek to replicate, not repeal.

How many experiences within legal education cause each participant to be concerned about and have a stake in the success of and quality of product produced by a student colleague? Our *Review* helps compensate for the real or perceived obsession of so many legal educators with the adversarial process.

Is there a better way to accomplish one of our prime objectives, the encouraging of the student to explore and become proficient in areas of the law in which the student will have no formal instruction? Is not this one of the most valuable of professional skills?

Law schools seek to do more each year to make certain their graduates will be equal to the trust the degree and license impose. In this effort the student-edited review, once a jewel, has become a whole crown.

The student-edited review is too important to legal education to be abandoned for our review's yesterday. Student editors do not heed the sound of the bugler who knows but one call, the call of retreat. We've just begun to write.

Joseph R. Julin is Chesterfield Smith Professor of Law at the University of Florida and former chairman of the Section.

Specialized Student Reviews Grow in Number but Soon May Reach Peak

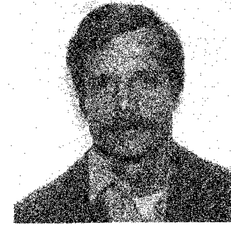
By Timothy Kearley

In their 1981 edition of *Fundamentals of Legal Research*, J. Myron Jacobstein and Roy Mersky noted that there had been a trend in the last couple of decades for law school reviews to change from general law reviews into reviews focusing on a specific field of law; for instance, in the 1960s the *Wyoming Law Journal* became the *Land and Water Law Review* and the *University of Detroit Law Journal* changed into the *Journal of Urban Law*.

At the same time, a few law schools with well established law reviews were creating additional student-run law journals which, naturally, were specialized so as not to compete with their existing reviews; for example, Harvard began a number of new journals—its *Civil Rights-Civil Liberties Law Review* being one—as did Columbia—among them its *Human Rights Law Review*. A handful of other schools did likewise, with most of their new reviews being in the areas of environmental law, international law, or law and social policy.

Regarding the trend for general law school reviews to change format and specialize, Jacobstein and Mersky went on to note that this tendency appeared to be lessening. Although that still seems to be true, there has been a recent, dramatic increase in the number of entirely new student-run law school reviews that focus on a particular area of law.

Just since 1980 no fewer than 30 such reviews have been established. (Many others were created in the 70s—at least 16 international and comparative law journals alone were begun in that decade.) Most of these new reviews are additional publications for their schools, reflecting both the desire of the schools to increase the number of students who are able to profit from the law review experience as well as the increasingly specialized nature of the law itself.



Timothy Kearley

These new specialized law reviews range alphabetically from the *Akron Tax Journal* to the *Yale Law and Policy Review* and in areas of specialization from inequality (*Law and Inequality*—the University of Minnesota) to Latino-oriented legal issues (*La Raza Law Journal*—the University of California at Berkeley) and legal problems relevant to doing business in the Pacific region (*UCLA Pacific Basin Law Journal*).

The favored fields for new law reviews thus far in the 80s are international law and the broad area of law and public policy or contemporary problems, with five entries each. The next most popular topics are environmental law, taxation, and entertainment law, there being four new arrivals on the first subject and three each on the latter two. The other new law school journals cover such areas as law and religion, litigation, legal history, and human rights.

Will this proliferation of specialized law reviews continue? If history is a reliable guide, and I believe it is, we should expect to see more such law school reviews come into being for the same reasons the latest ones were created—to add to law students' educational experience and to cover newly emerging legal specialties. It seems likely, however, that we will see the attainment of some maximum number of law reviews in the next decade or so. Even though new fields of law will undoubtedly continue to appear (the emergence of new technologies, for instance, will certainly spawn them) each law school will only be able to underwrite so many journals and only so many law students will be capable of performing law review work.

We may thus eventually see a return to the older phenomenon of general law reviews changing their format to cover a new legal field, rather than their parent bodies initiating an additional journal. In the light of the criticism that many general law school reviews are bland and essentially fungible, the trend toward law review specialization should be welcomed.

Timothy Kearley is associate professor of law and library administration and associate director of the University of Illinois College of Law Library.