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Law Review Correspondence: Better Read Than Dead?

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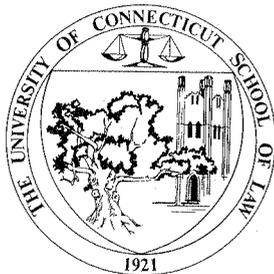
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CONNECTICUT LAW REVIEW



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COMMENTARY

OF CORRESPONDENCE AND COMMENTARY

THE *Connecticut Law Review* is pleased to inaugurate in this first issue of Volume 24 a new section, "Commentary."

The idea for this development is expressed best in our description of the project sent to this issue's participants:

Our proposal is with each issue of our journal to identify and to focus on a significant legal concern. The goal is to address a selected topic in a more timely manner and in a format that provides for alternative views. We expect to do this through one lead piece and accompanying commentaries. While we hope that this section will present legal research and discussions in an accessible format, we still hope to generate significant scholarly analysis and dialogue.

This first issue playfully explores this enterprise—namely, the place and value of "commentary" pieces in legal scholarship and legal journals. Thus, our first Commentary is a commentary on commentary. Professor Erik M. Jensen authors the lead piece, *Law Review Correspondence: Better Read Than Dead?* By discussing the ideas related to the concept of these sections and how they are actually handled by legal journals today, Professor Jensen provides a framework for the presentation of a variety of views.

Joining Professor Jensen are Dale Carpenter, Editor-in-Chief of *The University of Chicago Law Review*, and Professors Arthur Austin, W. Lawrence Church, James Lindgren, and Kenneth Lasson. We believe that this initial presentation of our Commentary will be the first in a series that will successfully respond to the need for alternative representations of legal scholarship and debate.

THE EDITORS

LAW REVIEW CORRESPONDENCE: BETTER READ THAN DEAD?

Erik M. Jensen*

INTRODUCTION

IN recent years, several of the most prestigious academic law journals have started to publish alternatives to the traditional "article." Most notable are the new "correspondence" sections. The *Michigan Law Review* has published correspondence since 1985,¹ and *The University of Chicago Law Review* jumped on the bandwagon in 1990.² Making use of advanced empirical techniques,³ this essay examines the implications of this "experiment in legal publishing."⁴

What exactly is "correspondence"? Many of the examples of correspondence in *Michigan* and *Chicago* look suspiciously like articles—not so long perhaps, but replete with footnotes that are Blue- or Maroon-booked to perfection.⁵ Moreover, the *Chicago* editors, following the best law review tradition, threaten to edit correspondence, just as they do articles.⁶ Both reviews provide correspondents with classy

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1. See Lee E. Teitelbaum, *Correspondence: Moral Discourse and Family Law*, 84 MICH. L. REV. 430 (1985) (first published item of correspondence).

2. See *Correspondence*, 57 U. CHI. L. REV. 117 (1990) ("Exchange on the Eleventh Amendment") [hereinafter *Chicago Correspondence*].

3. See *infra* notes 16-54 and accompanying text.

4. Teitelbaum, *supra* note 1, at 430. Professor Teitelbaum added that "few forms have been as resistant to innovation as the law review." *Id.*

5. Some proponents of the Maroon Book might question whether perfection, rather than efficiency, is an appropriate goal. I leave that issue for participants in the burgeoning school of footnote scholarship. See, e.g., Arthur D. Austin, *Footnotes as Product Differentiation*, 40 VAND. L. REV. 1131 (1987).

6. The Chicagoans' threat to edit correspondence is softened by their promise to seek the "cooperation of the author." See *Chicago Correspondence*, *supra* note 2, at 117; 57 U. CHI. L. REV. (1991) (advertisement facing page 679) [hereinafter *Chicago advertisement*]. But they probably think they have the cooperation of authors of articles as well.

The *Michigan* policy is less clear. When the correspondence section was instituted, the *Review* limited submissions to 5000 words and purported to edit correspondence only for length. See 84 MICH. L. REV., Oct. 1985 (advertisement on inside front cover). The Michiganders have retained the word limitation, but the published invitation to correspondents no longer refers to any

looking reprints, and both advertise the correspondents and their subjects on the journal covers, *just like articles*.⁷

Published correspondence might wind up looking like traditional law review pieces, but it is hard to imagine that the *Michigan* and *Chicago* student editors apply the same selection criteria to all submissions.⁸ Most of the already published items of correspondence, I grudgingly admit, can stand on their own. Nevertheless, no reasonable being⁹ would create a special section for items that would have been published anyway. Furthermore, if editors thought of correspondence as the equivalent of articles, they would not use the new name.

Merit badges awarded for legal-academic publishing are based on an implicit hierarchy: articles count more than commentaries, which often count more than review essays, which are certainly better than book reviews, and so on. What a piece is called may be more important than what it says. For example, no matter how well-crafted and thoughtful, a book review is likely to be looked down upon, or ignored altogether.¹⁰

hands-off editing policy. See 89 MICH. L. REV., Feb. 1991 (advertisement on inside back cover) [hereinafter *Michigan* advertisement].

7. Some other major journals that have made haphazard efforts at publishing correspondence have preserved the letter form (albeit with footnotes). See, e.g., *Scholarship Admired: Responses to Professor Lasson*, 103 HARV. L. REV. 2085 (1990); Robert Wachbroit, *Correspondence: Relativism and Virtue*, 94 YALE L.J. 1559 (1985). Or they have ignored authors and subject matter on covers and in tables of contents. See, e.g., Richard H. Fallon, *Correspondence: Post on Public Discourse Under the First Amendment*, 103 HARV. L. REV. 1738 (1990) (with generic reference to "Correspondence" on cover and in table of contents).

The *Iowa Law Review* has noted its intention to publish correspondence. See 75 IOWA L. REV., Mar. 1990 (advertisement preceding table of contents). With tongue partly in cheek, the first correspondent advocated abolishing the correspondence section as soon as his letter was published. Carl Tobias, *Elixir for the Elites*, 76 IOWA L. REV. 353, 354 (1991).

A faculty-edited publication, *Constitutional Commentary*, has a correspondence section modeled on *The New York Review of Books*. See *Correspondence*, 5 CONST. COMM. 307 (1988) ("The problem [of not having pungent and nasty exchanges between book critics and authors] has been solved. We have received a bona fide letter, and a response by one of our book reviewers.").

8. At *Chicago*, being named Marshall is apparently a help in getting correspondence published. Half of the first group of four correspondents bear that legally prominent name. See *Chicago Correspondence*, *supra* note 2, at 122 (William P. Marshall) & 127 (Lawrence C. Marshall). I understand that some readers have difficulty remembering which Marshall is which. For a further confusing juxtaposition of articles by the Professors Marshall, see Lawrence C. Marshall, *Fighting the Words of the Eleventh Amendment*, 102 HARV. L. REV. 1342 (1989), and William P. Marshall, *The Diversity Theory of the Eleventh Amendment: A Critical Evaluation*, 102 HARV. L. REV. 1372 (1989).

9. I assume *arguendo* that this category includes law review editors. But see *infra* notes 16-54 and accompanying text.

10. Particularly by those law professors who publish nothing at all—i.e., most law professors. See generally Michael I. Swygert & Nathaniel E. Gozansky, *Senior Law Faculty Publication*

For those of us interested not in substance but in form,¹¹ how do we evaluate the significance of a piece of correspondence? Do we take correspondence seriously, or is it (as its name suggests) the equivalent of letters to the editor?¹² If that question seems too metaphysical, the issue can be brought down to earth: should correspondents report this class of publications on their resumes and, if so, how? Adherents of the Bluebook might also ask how published correspondence should be cited: as articles, letters, or what?¹³

Consider the effects on the careers of the correspondents. Publishing in the *Michigan Law Review* or *The University of Chicago Law Review* can do wonders for a young (or not so young) academic. With a reference to one of these journals, a previously dull resume begins to glow.

Publication in such reviews also improves the marketability of an author's other work. In cover letters accompanying as yet homeless manuscripts, the author can proudly state that "I have published recently in *The University of Chicago* [or the *Michigan*] *Law Review*." At least some articles editors may be swayed by such statements.

The stakes are high. Hardly anyone lists published letters on a resume.¹⁴ And how much pizzazz would a cover letter have if, in the interests of full disclosure, the author could say only that "I have recently published a letter to the editor in one of America's premier legal journals"?

If I am right about the suspect status of "correspondence," it suggests that many such items, were they to be characterized as "articles," would find homes in journals farther down the pecking order. Given this new, and apparently easier, route to high-visibility publication, the overflowing mailboxes of elite reviews¹⁵ should be further flooded with

Study: Comparisons of Law School Productivity, 35 J. LEGAL EDUC. 373 (1985).

11. For those readers who are actually interested in substance, see text accompanying notes 35-54.

12. *Chicago's* published items of correspondence don't look like letters, but that's what the editors have asked for from the beginning. See *Chicago Correspondence*, *supra* note 2, at 117 ("letters in response to articles, essays, and book reviews published in the Review"); *Chicago* advertisement, *supra* note 6 ("The Editors cannot guarantee that all letters received will be published").

13. See *infra* note 46 (*Michigan* response to Bluebook issue). Maroon Book proponents presumably worry less about citation trivia.

14. This is not a Black-letter rule, however. See *Published Works of Charles L. Black, Jr.*, 95 YALE L.J. 1573, 1579 (1986) (bibliography including "Selected Letters to the Editor").

15. See Erik M. Jensen, *The Law Review Manuscript Glut: The Need for Guidelines*, 39 J. LEGAL EDUC. 383, 383 (1989).

shorter works. There is a place for authors of shady reputation in *Michigan* and *Chicago*.

THE EDITORIAL REACTION

Or so I thought. (Here's where the empirical study comes in.¹⁶) I tried sending out a longer version of the above text first to *Michigan* and later to *Chicago*. In both cases, I tentatively characterized my essay as "correspondence," hoping to use this subterfuge to bypass the usual editorial barriers. Instead, I succeeded in irritating two editors-in-chief sufficiently to generate lengthy, personally tailored, sometimes indignant letters of rejection. All I wanted was quick publication in a classy journal, but the editors took my queries about the nature of correspondence seriously enough to explain their undertakings.¹⁷ I craved blue or maroon reprints, and instead I got sermons.

Sermons can have value, of course, and these young gentlemen put some effort into their work. In this portion of the essay (or is this an article?), my goal is to spread the word of these two editors to congregations beyond the boundaries of Ann Arbor and Hyde Park. Maybe we can glean something about the editorial processes of these journals, and about desirable changes in legal scholarship, from a close textual study of the two letters (or were they essays?).¹⁸

Both editors were unwilling to deal with my question about resumes. The *Michigan* editor was polite: "[Q]uestions about the respect to be given these pieces in academic circles are probably better answered by others."¹⁹ The *Chicago* editor was more blunt: "[W]e do not believe it is our responsibility to police the manner in which contribu-

16. See *supra* text accompanying note 3.

17. The term is appropriate. Student editors are deadly serious in Ann Arbor and Chicago. Consider the *Chicago* editor's opening:

Although normally we do not respond to unsolicited manuscripts with an extended explanation of our decision not to publish, the number of inaccuracies in your letter causes us to offer a brief explanation of the correspondence section. The criticisms you offer in your submission either bear no similarity to our experience or are matters with which we cannot possibly be expected to be concerned.

Letter from Andrew J. Nussbaum, Editor-in-Chief, *The University of Chicago Law Review*, to Erik M. Jensen (Sept. 20, 1990) (on file with the *Connecticut Law Review*) [hereinafter *Chicago* letter].

18. I can tell the editors chose their words carefully, and meant everything they said. See *Chicago* letter, *supra* note 17 ("we look forward to seeing other work you may write"); Letter from David D. Meyer, Editor-in-Chief, *Michigan Law Review*, to Erik M. Jensen (Apr. 27, 1989) (on file with the *Connecticut Law Review*) [hereinafter *Michigan* letter] ("please keep us in mind the next time you decide to publish").

19. *Michigan* letter, *supra* note 18.

tors use *The University of Chicago Law Review* on their resumes."²⁰ Fair enough. But, the *Chicago* editor added, "[i]t seems to us that any ethical scholar would indicate on a resume the nature of the piece to which a citation refers."²¹ That's not a fully satisfactory answer to a question asking for guidance about "the nature of the piece." And the Chicagoan coupled his dismissal of the characterization issue with amazing naivete about the role played by place of publication in legal-academic circles.²²

What are these journals publishing? At *Chicago*, saith the editor-in-chief, "we do not create any hierarchy among the various types of pieces we publish. They each [sic] address different (not better) purposes and reflect different aspects of legal scholarship."²³ Moreover, *Chicago* denies using "a lower standard of quality in [the correspondence] section. The standard used for pieces published in [that] section will remain as high as for any other section of the *Review*."²⁴

I suppose that an institution shaped by the Chicago School of Economics, with its pervasive moral skepticism, could not admit that some purposes are better than others. And the deconstructionists in the non-Chicago School world would also accept this statement of editorial relativism.²⁵ Nevertheless, returning to the mundane, we might question why an "ethical scholar" should ever be concerned about the treatment of correspondence on his resume if there is no "hierarchy" in types of

20. *Chicago* letter, *supra* note 17.

21. *Id.*

22. The *Chicago* editor denounced the idea that place of prior publication should have controlling effect. But he didn't leave it at that: "Neither law faculty nor other law reviews judge the quality of later work merely by reference to the source of publication of an earlier piece, whether article, review, essay, or correspondence." *Id.* That is a good lawyer's use of the word "merely," which softens the implicit admission that place of prior publication *is* often taken into account—as any veteran of the legal-academic wars knows. The *Chicago* editor went on to make the implicit explicit: "[W]hen authors cite previously [sic] articles in cover letters, we either ignore the reference or look up the articles; any responsible journal considering a piece or law faculty evaluating a candidate's credentials would do at least as much." *Id.* In short, credentials play a role in many acceptance decisions. Cf. Jensen, *supra* note 15, at 385 (noting how editors reasonably use credentials to winnow submissions when no norms govern authors' behavior).

23. *Chicago* letter, *supra* note 17.

24. *Id.*

25. See DAVID LEHMAN, SIGNS OF THE TIMES: DECONSTRUCTION AND THE FALL OF PAUL DE MAN 44 (1991):

The impulse to denigrate "hierarchy" is . . . profoundly anti-intellectual, since the making of a hierarchy—the subordination of some ideas to others in order of importance—is fundamental to rational inquiry. Yet "hierarchy" is almost always a pejorative term in academic discourse, and nowhere more so than at our elite universities.

legal scholarship.²⁶

In fact, despite his disclaimers, the *Chicago* editor described the pieces, and the purposes they serve, in a hierarchical fashion:

Articles are usually extended, carefully detailed analyses of issues; essays normally represent more general thinking on a topic, often by a prominent judge or justice; comments are student-written works focusing on a narrow legal controversy; and book reviews consider the contributions made by recent publications in law and related fields. The correspondence section offers authors who have specific, brief responses to recent articles an opportunity to present a significant counterargument without having to write a more lengthy piece much of whose substance would be repetitive of the work to which he responds.²⁷

One interesting thing about this hierarchy, if it means anything at all, is that it is upside down.²⁸ Although listed last, correspondence seems to be a superior type of publication. Why, pray tell, would *Chicago* ever print what the editor-in-chief calls "articles," "much of whose substance" is "repetitive" of already published work? The description of correspondence, with its "significant counterargument" requirement, is very close to what some real academics call articles.

In most other disciplines or subdisciplines, the reader of a scholarly article is assumed to have basic knowledge of the relevant literature,²⁹ and the reader evaluates a new article by defining its role within that body of work. A good article generally confirms, extends, modifies, restructures, or questions the existing work in the field.³⁰ No one expects the literature to be described from scratch, or the wheel to be

26. See *supra* text accompanying note 21.

27. *Chicago* letter, *supra* note 17.

28. Maybe it doesn't mean anything. Many authors of student comments should be offended by this editor's quite inaccurate description of their work.

29. In the alternative, the reader is directed to the relevant background literature so that he or she can get up to speed before tackling the new article.

30. I put aside the possibility of a "paradigm shift," which turns the theoretical framework of a discipline upside down—a process something like a "gestalt switch." See THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* 204 (2d ed. 1970). Such shifts are by definition extraordinarily rare. In any event, while that insightful concept is not irrelevant to nonscientific fields, see *id.* at 208, it has been extended far beyond the contexts in which Kuhn applied it. Its application to legal scholarship is doubtful at best. See *id.* at 209 (noting "scarcity of competing schools in the developed sciences" as compared with other areas of learning).

reinvented, in the first 30-50-70 pages of each new publication.³¹ (Indeed, most articles aren't that long to begin with.)

In contrast, as the *Chicago* editor implicitly acknowledged, most law review articles contain a great deal of dross, lengthy descriptions of cases (or statutes), and a detailed review of the literature.³² That, I take it, is what "extended, carefully detailed analyses of issues," the *sine qua non* of articles in *Chicago* and other law reviews, often consist of.³³ Dross-filled articles may make significant contributions, but the danger is that the contributions may be lost in the verbal slag heap.³⁴

A RESPONSE—THE CHURCH DOCTRINE

Two years ago, Professor Lawrence Church presented a call for "readable law review articles."³⁵ Among other things, he urged that law reviews "set aside a portion of their space for shorter and more open and direct articles,"³⁶ which "might actually turn out to be more insightful rather than less, if they were stripped of what can sometimes be a camouflaging layer of detailed documentation. Articles might turn

31. I do not mean to suggest that regurgitation of existing thought is never useful. Theoretically informed regurgitation can be a major contribution, even if nothing fundamentally "new" develops from the process. Trying to understand the world, which is what scholarship is about, requires going back to first principles as much as developing new general or unified theories. The tendency in academia to focus only on the new, which in social thought often means the absurd, can be as debilitating to good scholarship as the sloth that burdens so many law schools. "Being provocative . . . gets a writer noticed. Respectful scholarship does not." *Shakespeare and Company*, *ECONOMIST*, Dec. 2-8, 1989, at 101 (book review). See Daniel A. Farber, *The Case Against Brilliance*, 70 *MINN. L. REV.* 917, 917 (1986) ("The . . . traits of novelty, surprise, and unconventionality that are considered marks of distinction in other fields should be considered suspect in economics and law, in which thoughtfulness may be a more important virtue.").

32. See W. Lawrence Church, *A Plea for Readable Law Review Articles*, 1989 *WIS. L. REV.* 739, 739 ("[T]he useful part of the article, the part that makes the author's own contributions to theory and understanding, is buried under a mass of supplemental dross."); cf. Roger Cramton, *President's Message: Scholarship and the AALS*, *AALS NEWSLETTER* (Ass'n of Am. L. Schs., Washington, D.C.), May 1985, at 2 ("[T]he diffusion of good scholarship over hundreds of journals, most containing a few nuggets along with much dross, has made good scholarship difficult to find.").

Not all dross is bad. Much legal publication, particularly the practitioner-oriented stuff that many law professors do, inevitably has a lot of dross. A practicing attorney trying to understand a particular rule of evidence, say, wants everything collected in one place, even if that requires repetition of already existing sources. Besides, I like dross.

33. See *supra* text accompanying note 27.

34. Church, *supra* note 32, at 739-40 ("The articles present a kernel of valuable thought surrounded by an almost impenetrable cover of supporting material.").

35. *Id.*

36. *Id.* at 743.

out to be better, to be more profound, as well as more readable."³⁷ Church hoped that such shorter articles would widen informed participation in scholarly debates.³⁸

A move to shorter, more readable articles would be controversial, even though the new could coexist with (rather than supplant) the longer, traditional pieces. Resistance is inevitable—and not only from law review editors fond of dross.³⁹ Bulk is worshipped in the legal academy, particularly in the promotion and tenure process,⁴⁰ and impenetrable prose is presumed to contain profound insights.⁴¹

Carefully written, short articles run the risk of denigration as "extended op-ed pieces." Discounting such pieces is fundamentally anti-intellectual, but it is a popular practice in academia—as if writing for an educated audience that extends beyond a narrow band of specialists were something to be scorned. Moreover, someone who writes too many short pieces may be criticized for spreading himself too thin.⁴²

Church may not be infallible, but in his resistance to anti-intellectualism he has made many worthwhile suggestions. And his goal may

37. *Id.* at 744. Literary critic *extraordinaire* Malcolm Cowley knew the value of conciseness: "I usually wrote far too much for the occasion, then chopped the manuscript down to size, or sawed it into fireplace lengths." Albin Krebs, *Malcolm Cowley, Writer, Is Dead at 90*, N.Y. TIMES, Mar. 29, 1989, at D24.

38. Church, *supra* note 32, at 744.

39. See Cramton, *supra* note 32, at 2 ("Student editors prefer pieces that recite prior developments at great length, contain voluminous and largely meaningless citations to every proposition, and that deal with topics that are safe and standard or that are currently faddish among law students."); see also Roger Cramton, "The Most Remarkable Institution": *The American Law Review*, 36 J. LEGAL EDUC. 1, 8 (1986) (making same point); Robert Stevens, *Where's the Judicial Fun?*, N.Y. TIMES, July 21, 1991, § 7 (Book Review), at 20 (discussing increase in length of judicial opinions: "The clerks were, after all, trained by those law reviews that, as Disraeli said in another setting, frequently got 'inebriated with the exuberance of their own verbosity.'").

40. See Kenneth Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926, 942-43 & n.90 (1990).

41. See *id.* at 943-48; see also DONALD N. McCLOSKEY, IF YOU'RE SO SMART: THE NARRATIVE OF ECONOMIC EXPERTISE 57 (1990):

A book by a French historian famous for his profound obscurity was recently translated into plain English. When thus made clear it turned out that his argument was simple, even a little simple-minded. The historian in his eminence was outraged by the lucidity of the translation. It did not capture, he complained, "*ma profundité*."

42. See JOHN K. GALBRAITH, A TENURED PROFESSOR 50 (1990) ("[Specialization] was very important. No one, it was clear, was so suspect as the scholar who was said to 'spread himself too thin.'"); see generally RUSSELL JACOBY, THE LAST INTELLECTUALS: AMERICAN CULTURE IN THE AGE OF ACADEME (1987) (decrying the lack of intellectuals writing for general, well-informed audiences). I have heard of deans and faculties who prefer that colleagues write nothing rather than produce short, literate essays. Needless to say, when faculty incentives are skewed in favor of little or no publication, faculty will devote their best nonefforts to that result.

be within reach. Church proposed that his addition to the law review universe "be called a 'commentary' or an 'essay' section,"⁴³ but let's not quibble about the title. Why not simply designate the short, readable articles—those that present a "significant counterargument," as the *Chicago* editor put it⁴⁴—as "correspondence," and let the correspondence sections become the hearts of the born-again law reviews?⁴⁵

In making this suggestion, I have drawn from the *Chicago* editor's letter, but I give him only partial credit. I suspect his view of correspondence is closer to that of his *Michigan* counterpart: "less ambitious essays" and "narrower criticism nicely and cogently presented."⁴⁶ Given the guidelines for letters submitted to *Chicago*—"moderate length (approximately three to six pages double-spaced)"⁴⁷—and the editor's reference to "specific, brief responses,"⁴⁸ it is hard to see more than a modest goal intended for the *Chicago* correspondence section.

But we need not be limited by the intentions of the *Chicago* editorial board. We have been presented with the opportunity to achieve Church's goal on earth and, following the advice of that consummate politician George Washington Plunkitt, we should take it.⁴⁹ With a few modifications, some derived from the *Michigan* experience, we may be able to declare victory in the first battle for short, readable law review articles.

One modification is easy. The three- to six-page *Chicago* limit, which in any event appears to be honored only in the breach,⁵⁰ can

43. Church, *supra* note 32, at 743.

44. See *supra* text accompanying note 27.

45. [Of course, while not *meaning* to quibble, the *Connecticut Law Review* has chosen to adopt "Commentary" as the title to this section. We hope that Professor Jensen is understanding. While it may not yet be the "heart," it is still expected to be an integral part of our new journal format. Eds.]

46. *Michigan* letter, *supra* note 18. By conceding that the status of correspondence was lower than that of articles, the *Michigan* editor accepted my concern (see *supra* text accompanying note 13) that Bluebook aficionados may have difficulty figuring out how to cite "correspondence":

The academic impulse to the footnote and the Bluebook dies hard, although we are not so insistent regarding the former in our Correspondence section. We, of all people, certainly regret adding to the myriad of uncertainties of Bluebook citation style by creating a category of pieces that fall into the netherworld between articles and simple letters to the editor, but we do feel the pieces have a value just the same.

Id.

47. *Chicago* advertisement, *supra* note 6. In contrast, the official *Michigan* limit is 5000 words. See *supra* note 6.

48. See *supra* text accompanying note 27.

49. Cf. PLUNKITT OF TAMMANY HALL: A SERIES OF VERY PLAIN TALKS ON VERY PRACTICAL POLITICS 4 (William L. Riordon ed., 1963) ("I seen my opportunities and I took 'em.").

50. See, e.g., William P. Marshall, *Correspondence on Free Exercise Revisionism: In Defense*

safely be discarded. Having shorter articles is a desirable goal, but even the *Reader's Digest* publishes pieces longer than the *Chicago* standards permit. The *Michigan* rule (5000 words) is more realistic, as long as it is administered with a modicum of sound editorial discretion. Every once in a while, a topic may be worth 6000 or 7000 words.

Another guideline that must be modified is the peculiar idea that *Chicago* correspondence should deal only with *Chicago* articles.⁵¹ That's the way that letters-to-the-editor columns are put together in daily, weekly, and monthly periodicals, but it is a silly rule for law reviews to follow.

No one deals with law journals in the way that readers treat *The New Republic* or *Newsweek*. In those magazines, letters ordinarily appear within a few weeks of the articles to which they relate and, should a letter strike a reader's fancy, he often has the original periodical available for reference. But most of us of sound mind do not sit with a stack of copies of *The University of Chicago Law Review* by our sides. When we see a reference to a potentially interesting piece in *Chicago*, *Michigan*, or any other journal—and regardless of the publication in which the reference appears—we get the original text, either from the library or through an electronic retrieval service.

If that text generates interesting thoughts, we might write them down.⁵² Those thoughts could become an article—a short article, perhaps, but an article nonetheless. Reactions to articles published in *Chicago* need not appear in that journal and, in fact, typically they do not. But so what? On this point, the *Michigan* people got it right. From the beginning they wanted correspondence to be “brief comments on legal scholarship recently published here or elsewhere.”⁵³ A piece of *Michigan* correspondence can discuss a *Chicago* article (or a *Chicago* essay, comment, or piece of correspondence) without doing damage to institutional integrity.

This view of what law review correspondence should be is consistent with the position expressed by the first *Michigan* correspondent,

of *Smith and Free Exercise Revision*, 58 U. CHI. L. REV. 308 (1991) (“correspondence” printing out to over 20 pages). Another piece by one of the ubiquitous Marshalls. See *supra* note 8.

51. See *supra* note 12 (quoting *Chicago's* request for correspondence).

52. Some of us do; some of us don't. See *supra* note 10 and accompanying text.

53. 84 MICH. L. REV. 430 (1985) (editors' introduction to Teitelbaum, *supra* note 1) (emphasis added). Their requests for correspondence today take the same position. See *Michigan* advertisement, *supra* note 6 (“CORRESPONDENCE is designed to provide a convenient, timely, and unstructured forum for readers' comments on legal scholarship. We hope that this forum will foster a lively exchange of ideas on topics addressed in recent legal publications.”).

Professor Lee Teitelbaum:

The creation of a section for correspondence regarding recent articles provides a medium for conducting just the national discourse which scholarship aspires to provoke To talk in print about a colleague's work—to praise it, qualify it, pursue suggested or alternat[iv]e lines of thought—is not only an enjoyable thing to do but promises to facilitate more focused exchanges of ideas and research than has previously been possible.⁵⁴

CONCLUSION

Teitelbaum wrote about correspondence, but his words are equally applicable to articles or to any other category of law review publication. Ultimately, it should not matter what label a piece bears; a good piece is a good piece. Good correspondence should beat a bad article every time.

With dross minimized, real scholarly publications may emerge, articles (read "correspondence") that are academically pure as well as more readable. With correspondence sections so constructed, we can approach Church's heaven. And if somebody somewhere can just be promoted for writing that kind of stuff, we can pass through the pearly gates.

54. Teitelbaum, *supra* note 1, at 430. I excised the one part of Teitelbaum's characterization with which I disagree. Teitelbaum had suggested that the desired discourse "does occur in private conversations or letters and, occasionally, in panels at professional meetings." *Id.* Of course that can happen. But the spoken word is not the model to follow for the new, readable law review article. When closely examined, speech often turns out to be much less rigorous than it seemed when uttered. One of the reasons for requiring scholarly writing is to force members of the professoriate to subject their thoughts to the scrutiny that the widely disseminated written word receives. Law review correspondence serves that function; conversations, panel presentations, and private letters do not.

COMMENTARY REDUX

Erik M. Jensen*

THE editors have kindly provided me with the opportunity to respond to my respondents, and I am not one to leave "white space."¹

Most of the respondents seized the opportunity to write tight little essays of their own. That's wonderful! A Commentary section following this model should be very successful. Maybe some folks will even start reading the *Connecticut Law Review*.²

The professorial articles—authored by Messrs. Austin, Church, Lasson, and Lindgren—are generally beyond reproach, except that I may have been misunderstood on one point: I have not jumped on the anti-scholarship bandwagon.

Whether or not we are in a deconstructionist world, I want *my* text interpreted in *my* way.³ I intended neither to denigrate writing for law reviews nor to suggest that legal writing should play an insignificant role in the academic reward structure. My complaint is with the narrow range of scholarship acceptable today—the big, dross-filled article—not with writing and its related skill, thinking. Besides, if I didn't write, how would I fill up my time? A few classes eight months a year won't do it, and I can run only so many errands.

The essay by Mr. Carpenter, editor-in-chief of *The University of*

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1. Cf. JIMMY BRESLIN, DAMON RUNYON 247 (1991) (quoting Runyon speaking to baseball player Wally Pipp in 1925, the day before Pipp missed a game: "[My editor] has white space blocked out for me in tomorrow's paper. If I do not fill it, he will get somebody else to do it. Fella, the thought of that makes me uneasy. . . . Don't ever leave white space.").

2. Cf. Kenneth Lasson, *On Letters & Law Reviews: A Jaded Rejoinder*, 24 CONN. L. REV. 201, 205 n.16 (1991) (noting paucity of citations to the *Review*).

3. Some works are read favorably by all readers. For example, Professor Austin's seminal work on law review footnoting, Arthur D. Austin, *Footnotes as Product Differentiation*, 40 VAND. L. REV. 1131 (1987), has been used by both those who abhor law review conventions and those who adore them. Does no one, everyone, or only half the population understand that article? Anyway, you can tell from the Austin essay in this collection that he loves footnotes, particularly his own. See generally Arthur Austin, *Commentary on Jensen's Commentary on Commentary*, 24 CONN. L. REV. 175 (1991) [hereinafter *Anti-Clique*].

Chicago Law Review, is more problematic.⁴ (You knew I'd think that, didn't you?) It starts with a snippet from Theodore Roethke—cribbed from *Bartlett's*?⁵—that, as far as I can tell, has nothing to do with the subject at hand. The term “correspondence” has several meanings, and whatever Roethke's intentions were, he did not have letter-writing in mind.⁶ Oh, well. So much for the University of Chicago as a home for liberal education.⁷

The Carpenter piece ends with another misconception: that writing about writing is unimportant. “But there is yet hope,” he states, “if only future correspondence can turn our attention to substance and not to correspondence.”⁸ Of course, not all writing should be about writing, but Mr. Carpenter misses the point.

It is useful to have everyone, even a *Chicago* editor, think about his enterprise and periodically justify his existence. Historians know this. Historiography is a respected subdiscipline, and historians these days are debating, in print, the extent to which their work should be directed at general audiences.⁹ Law professors and law review editors also need to think systematically about what they are doing (or not doing).

En route from flawed beginning to flawed end, Mr. Carpenter has (inadvertently?) provided more grist for Professor Lindgren's mill.¹⁰ “As editors,” Carpenter writes, “we are far more familiar with pieces we publish than with those published by other law reviews.”¹¹ The corollary is sad, but true: publication and editorial decisions are made by

4. Dale Carpenter, *Law Review Correspondence: The View from Way Down Under the Manuscripts*, 24 CONN. L. REV. 171 (1991).

5. My evidence is circumstantial, I admit. The only reference in *Bartlett's* to “correspondence” or “correspondences” is in the three lines quoted by Mr. Carpenter. See JOHN BARTLETT, *FAMILIAR QUOTATIONS* 874, 1030 (Emily Morison Beck ed., 15th ed. 1980).

6. I did read the whole poem, which helps in interpretation. See also NEAL BOWERS, *THEODORE ROETHKE: THE JOURNEY FROM I TO OTHERWISE* 185 (1982) (quoting from the Roethke Papers: “The ‘steady storm of correspondences’ is a reference to the mystical sense of oneness and the ‘steady stream, a veritable storm of signs, reminders of the invisible, the divine world,’ that keep breaking in upon the speaker.”). If I have missed several levels of subtlety in Mr. Carpenter's argument, I apologize.

7. Some advice for the future: quoting Tocqueville is always safe, and he's always on point.

8. Carpenter, *supra* note 4, at 174.

9. The Society of American Historians, for example, “is devoted to the writing of history as literature and thus to encouraging historians to write for the broad public interested in reading about our nation's past.” *THE READER'S COMPANION TO AMERICAN HISTORY* at xxi-xxii (Eric Foner & John A. Garraty eds., 1991).

10. See James Lindgren, *Why I Comment*, 24 CONN. L. REV. 195 (1991) (discussing student-edited law journals with disgust).

11. Carpenter, *supra* note 4, at 174.

those unfamiliar with any literature beyond their editorial noses.

Enough already. Other propositions in the essays would be worthy of challenge or highlight but, alas, white space does not permit it. To make this look appropriately law-reviewish for aficionados of footnote density (of which I am one), I have noted several such issues in the margin.¹² For present purposes, only one major, unanswered question remains: do I get to note this reply on a separate line on my resume?

12. Professor Austin's curious phrase, "toast impotence," deserves special examination. *Anti-Clique*, *supra* note 3, at 177 n.10. What *does* he have in mind?

I could comment on the sorry state of American education, evidenced by Professor Lasson's perceived need to use a footnote to describe "Sisyphus." Lasson, *supra* note 2, at 204 & n.14. Why did Lasson not explain "Kafkaesque" to us? Did Sisyphus need the citation for his own promotion purposes? In any event, I will not insult my readers' intelligence by identifying Wally Pipp. *See supra* note 1.

I *can* defend the "canned footnote" that cites Thomas Kuhn. *See Anti-Clique*, *supra* note 3, at 184 n.43. After one reader of my piece, *A Call for a New Buffalo Law Scholarship*, 38 KAN. L. REV. 433 (1990), criticized me for not providing the obligatory cite to Kuhn, I vowed never to make that mistake again. As a result: *See generally* THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (2d ed. 1970). By the way, *Buffalo Law* is cited twice in these essays, once by Lasson himself. *See Anti-Clique*, *supra* note 3, at 183 n.42; Lasson, *supra* note 2, at 202 n.7. Take that, Lasson! *See id.* (suggesting that I am not cited much).

The Cleveland Indians, under attack from two commentators, *see* Carpenter, *supra* note 4, at 172; *Anti-Clique*, *supra* note 3, at 176 n.5, cannot be defended and are, indeed, defenseless.