

WHO'S TO BLAME FOR LAW REVIEWS?

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70 Chi.-Kent L. Rev. 81 (1994)[†]

I cannot say that I am beyond complaining about law review editors. Frequently, for example, I bemoan the drift from cite and substance editing to word editing. No longer can we trust the editors to pore over the sources, searching for minute inaccuracies, detecting mischaracterizations, and discovering the misquoted word or the omitted italics. A cite and substance edit subjects the writer to certain pressure. Yet, however difficult it is to hear that your citation does not really mean what you had used it to mean, you need to hear it. Today's law review editor will most likely linger over word choices and sentence structures. The stress generated here is usually unnecessary.

Sometimes the editor will attack a sentence perceived as ungainly or merely odd and wrestle it into a standardized form. Since this word editing takes place before any reading of the cited sources, the editor may easily introduce inaccuracies at this point. The stress of reading the edited draft no longer comes from having to face up to your own mistakes. Now you must worry about mistakes introduced by the editor. Chances are high that sentences assume an ungainly form when the writer needs to express a complex idea. An editor oriented toward smoothing out the prose can easily and unwittingly jar the meaning of a precariously balanced sentence.

Sometimes the editor will parse each sentence according to a perverse set of mythical grammar rules¹ – moving each adverb to the most awkward position in the sentence, changing every “but” that begins a sentence to a “however,” every “like” to a “such as,” and somehow along the way making a few verbs not agree with their subjects, thus violating one of the real rules. These nerve-wracking changes may lead you to fill the margins with rants about grammar. *Don't you realize Virginia Woolf began an entire book with the word “but”?!²* You look back on the draft with chagrin as you imagine the poor editors *82 wondering why they ever got mixed up with such a volatile and hysterical law professor. By now, the mere sight of a FedEx envelope causes a pang of anxiety. You may need to wait a day or two for your emotions to settle down before you can bear to open it.

Whining about student editors makes a leisurely pastime for law professors, doesn't it? Law review bashing is an easy enough sport to play. For more of a challenge, why

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¹ I learned only recently, from Professor Lindgren's article *Fear of Writing*, that this mythology comes in bound form, known as the Texas Manual on Style. James Lindgren, *Fear of Writing*, 78 CAL. L. REV. 1677 (1990) (reviewing Texas Law Review, Manual on Style (7th ed. 1992)). As a student editor, I experienced only the lore handed down from editor to editor.

² Virginia Woolf, *A ROOM OF ONE'S OWN* (1991).

don't we look at our own role in generating the problems we complain about? Who's really to blame for the condition of law reviews?

When I wrote my first article, I had the nagging feeling that I was writing a parody of a Law Review Article. Oh, I worked away on a sober piece, but a more knowing me stood apart from the task and goaded the poor, humble scholar me about making it look like a Law Review Article. The exigencies of job and tenure seeking counseled against genuine self-expression and in favor of manufacturing an object eminently recognizable as a Law Review Article. I could not, I thought, risk sending my writing out into the world without a comforting resemblance to what had gone before. The self that could not find expression in the text became an overseer. Sometimes that overseer closely inspected the work for compliance with forms and standards or pressured me to reach a conclusion that mimicked the sort of conclusion the paradigmatic Law Professor would reach in a similar article. Sometimes the overseer took a more distanced pose, surveyed the whole enterprise, and pronounced it a sort of game or joke – a parody of the Law Review Article.

Similarly, law review editors have a sense of what a Law Review Article is supposed to look like: a proper ratio of text to footnotes, a reassuring stolidity to the prose, a predictable structure studded with signposts that advertise the existence of that predictable structure, transition paragraphs before every paragraph that contains the approximation of a new idea, transition sentences before every sentence that ventures into the semblance of new territory, transition phrases parasiting on every sentence that might otherwise contain no reminder of what we have been discussing all along, confidence-inspiring, tiny elevated numbers appearing with the frequency of punctuation marks.

If you give these students your attempt at imitating the law review articles that have gone before, they will quite naturally undertake to help you succeed at what it appears you are trying to do – to produce a textual object that really looks like that article stereotype *83 they have in their minds. Chances are they do not have a terribly lot of respect for the form either and they, too, ridicule its pomposity, its leaden seriousness, its circumspect proposals, and its compulsive footnoting. Yet, just as the author sought a job, tenure, a raise, or (for the more lofty-minded) reputation, the students have extrinsic goals in mind. It is their own future, and not the general advancement of legal literature, that tends to motivate law students to add the work of editing a law journal to their already heavy workload. If the law professor has not challenged the limitations of the genre, why would they?

When you see your article after their editing, you are going to be appalled at what they've done. It's going to come back insipidly neutral in tone, deadened into law reviewese. You hate it. *Why did they do this to my prose?*

Perhaps they have done it because your work seemed to be moving in that direction in the first place. You were writing what was in essence a parody, and they reacted by shifting into an even higher gear parody. It is a joint venture: what we do suggests to them that they ought to do what they do – even though when we see it we find it

appalling. We are like the parents who are aghast when their children lash out at them with anger, sarcasm, or words meant to humiliate. Those parents resist perceiving that it is their own manner of speaking that the children have adopted. The children return their interpretation of the language and intonation they have heard. The parents are aghast because they are now on the receiving end. The children are showing them how it looks from the other side. The parent is not the victim but the teacher. Likewise, we, the law review writers, can fancy ourselves the victims of the students, but we are, most assuredly, the teachers.

Our displeasure with student editing should translate into critique of our own writing. The solution is not to complain about students, but to stop writing these parodies. Personally, I had my happiest editing experience the first time I defied my overseer (so to speak) and allowed myself to write an article that actually felt like self-expression.³ I might add that I have also received very positive responses from people who have read that article over the years. Writing this article, I felt invigorated. Quite aside from any extrinsic benefits I might hope to accrue (salary or reputation – admittedly I already had the safety of tenure), it felt good to write like this. I let go of the restraints entailed in making the article fit the standardized template. *84 I wrote without listening to my overseer; yet, the voice of the overseer crept back into my thoughts at the end of the day. It said: this is embarrassing, sententious, you can never publish it like this. I kept writing because the act of writing was intrinsically rewarding. If I can't publish it, I won't. This lent a kind of freedom to the enterprise. What would I write if I didn't have the template close at hand to use obsessively to check my approximation of article-stereotypicality?

When I went back to this piece a month or so later, after I had gone on to other projects and thus lost the sense of personal investment in the work, I liked it and I liked it in a new way, a way that was not that bland satisfaction of seeing that it does indeed amount to a Law Review Article. I'm sure my noncompliance with standards earned me a few rejections – though no more than usual – but when I did find acceptance (by the *Virginia Law Review*⁴) I found people who liked the piece for what it was, an essay in a personal voice. Because the essay openly avoided the standard form, it did not cause the editors to react with the usual attempts to make it even more standard. The editors had to think it belonged in the form I gave it or they would never have chosen to publish it in the first place.

From my experience I derive this advice: Don't make your work look like a parody of a Law Review Article and you won't give the editor the idea of whipping it into a more perfect parody of a Law Review Article. Instead of criticizing the students for taking your ordinariness and transforming it into the truly appallingly ordinary, develop a genuinely original voice. When the editors accept it, they will not be of a frame of mind that they ought to try to make it ordinary. They will allow you your personal voice. It is only the marginally distinctive piece that the editorial process drains of all distinctiveness. The editor will see the modestly distinctive article as just a bit off and in need of

³ See Ann Althouse, *Standing, in Fluffy Slippers*, 77 Va. L. Rev. 1177 (1991).

⁴ The Virginia Law Review has the distinction of having published Fred Rodell's classic assault on law reviews. Fred Rodell, *Goodbye to Law Reviews*, 23 Va. L. Rev. 38 (1937).

homogenization. Now that may be wrong and insensitive and loutish and we may whine about it, but we hold the solution in our own hands by being original.

Exactly how do we become original? Here we encounter some new difficulties. Whatever problems there were with the old, standard forms, at least we could see what the forms were and successfully follow them. In the name of originality we risk writing badly; in the name of personal voice we risk telling dreary stories about ourselves that contribute little to the general understanding of anything in the *85 area of law. I will not attempt to resolve here just how original or personal you can or should be. Perhaps you may decide that writing a conventional article does indeed serve a good purpose and provide satisfying work for you. If so, my only relevant point is the connection between this kind of writing and the editing law professors typically complain about. Perhaps you will allow yourself, if not to embark on some radical change in style and content, at least to write in a conversational tone, to write shorter, more provocative essays, to read widely and to use an occasional reference to literature or popular culture or to another discipline. My prediction is that if your deviations from convention are forthright and well done, you will find student editors who respect your writing.