A Study in Editing

The *Scribes Journal* Editors

This article about improving law reviews appeared in the previous issue of the Scribes Journal. *Since it touches on editing, we asked the author whether we could show the edits we made, and he graciously agreed. The changes are in boldface; only the punctuation might be a little hard to see.*

I remember the horror as if it were yesterday. Yet it was September 1994, on the train from New Haven to New York City. I had just received the edited manuscript of my first article accepted by a U.S. law review. I opened it expecting to feel a warm inner glow of accomplishment. **Instead,** ~~D~~**d**isappointment flooded me, followed by a rising anger. The editors had rewritten much of it~~;~~ to "improve the readability and clarity of expression." It was perhaps a tad easier to read. It was also wildly inaccurate. The topic was documentary-credit law~~:~~ — ~~An~~ **an** intricate and arcane field full of fine distinctions~~;~~**,** which the editors had trampled underfoot in their quest for clarity.

I had to revise the manuscript extensively to restore its accuracy. This creature to which I had given birth, lovingly, over ~~twelve~~ **12** months~~;~~ had been butchered, and now I had to stitch it back together.[†] (Today, I would give the editors the choice of limiting themselves to essential **substantive** amendments ~~of substance,~~ or

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[1] Today I would give the editors the choice of limiting themselves to essential amendments of substance, or of returning the piece. As a junior academic I did not have, or did not feel I had, this choice. [Moved to text.]

~~of~~ returning the piece. As a junior academic, I did not have, or did not feel I had, ~~this choice~~ **that power.**)

The cause of the butchery was simple. Most law-review editors in the U.S. system do not know how to edit; and, in many cases, do not fully understand what they are editing.

Most U.S. law-review editors are second- and third-year law students. They are typically highly intelligent and highly driven. Serving on law review is a role that falls to the best students and, although very time-consuming, is usually accepted by them as a prestigious marker of achievement ~~within law school~~.

These student editors decide which articles to publish, typically without the benefit of ~~referee's~~ **referees'** reports. As students, they have little to base their selection of articles ~~upon~~, and one suspects that the status of the **author's** school ~~with which the author is affiliated~~ may count heavily.

The editors usually edit the articles extensively, seeking to improve ~~their~~ **the** written expression, and **they** check ~~each and~~ every citation for substantive and formal accuracy. ~~Each function is of questionable importance, and is~~ **Both functions are** questionably performed.

Editing for Readability

On the issue of editing for style and readability, two examples will suffice.

One of my sentences read, "The global economy has changed profoundly in the past 30 years." The editors recast it as, "Over the past 30 years, the global economy has changed dramatically." The test for editing should be whether the change ~~is essential~~ **improves clarity**, not **whether it suits the editors'** personal taste.

In another instance, I had written of a "non-remunerated" reserve requirement. The editors suggested "unremunerated." Either way, no one gets paid, so does it matter?

In all, the editors made 405 changes to my manuscript of some 19,000 words of text. Fifteen of these changes, by my assessment, improved readability or clarity and were worth making. ~~Three hundred and ninety~~ **The other 390** changes added nothing substantial. Of these, 81 had to be reversed because the editors had distorted the meaning. This article was on a topic beyond most law students' knowledge. Excluding the small number of changes to the footnotes, the editors on average made one change for every 50 words. They changed every third sentence of the article — a massive waste of their time and energy, and mine.

I don't mean to question the value of good editing. Not in the least. All writers — even the best — can benefit from good editing. I just wonder how much student editing is good.

~~Citation Checking~~ Checking Citations

The other preoccupation of student editors of ~~US~~ U.S. law reviews is checking citations. This is a curious practice ~~as~~ **because** it seems based on the premise that law professors are sloppy in their research or make things up.*

The list of sins that can plausibly be laid at the feet of law professors is conceivably quite long: laziness, insecurity, egotism, competitiveness, obsessiveness about details, and a tendency to be self-indulgent loners, not team players. Catch any law ~~teacher~~ **professor** on a bad day and ask ~~them~~ about the flaws of ~~their~~ colleagues,

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* **Editors' note: But professors do make mistakes in providing names and numbers, and a self-respecting law journal aims for a consistent citation form.**

and you may get a longer list. But you almost certainly won't be told, even on a very bad day, that ~~their~~ **those** colleagues are sloppy or make up sources. The idea is plain silly. We have almost no incentive, financial or otherwise, to be sloppy or ~~overly creative~~ **overcreative** and every incentive to be careful, ~~as~~ **because** our professional reputation rides on it.

Yet my research assistant last week assembled copies of 28 sources for one of my manuscripts; so that we can mail them to the student editors of a leading ~~US~~ U.S. law review who have been unable to locate them. She couldn't find every source in my office — perhaps for some I worked straight from the books, **or** perhaps they have been mislaid. But each was before me when I wrote the article.

~~But~~ **A law professor's** mere assertions of accuracy ~~by a law professor~~**, though,** are insufficient to dampen the zeal of student editors. This morning they have told me that the references to the sources I cannot produce will be deleted and replaced with sources that they will find. Good luck, folks! If you cannot find sources ~~on~~ about international finance law with accurate citations when your law school is in Manhattan, good luck with finding your own.

What a ~~massive~~ waste of time and intellectual effort.

~~Peer Review, a Potential Solution~~ A Potential Solution: Peer Review

One solution would be to move to a peer-review process for law reviews in the U.S. This is the most common system in Australia and the ~~United Kingdom.~~ **U.K.** Law journals are typically edited by scholars. Law students are often involved, but the editorial

decisions are made by faculty members, sometimes in conjunction with students, but based on reports from referees.[1]

The faculty editors weed out unsuitable or unpublishable articles. Surviving submissions are then sent to one~~;~~ **referee** (or more commonly two~~; referees~~). It is a blind refereeing process: the referees do not know the **author's** identity ~~of the author~~ or ~~their~~ institutional affiliation. **And** ~~T~~this is taken quite seriously ~~=~~. ~~b~~**B**eyond removing the author's name and institution from the cover page, considerable care is usually ~~brought to bear~~ **taken** to ensure that nothing in the text or footnotes suggests the author's identity. Referees are selected for their specialist expertise in the **manuscript's** subject ~~of the manuscript~~ and are routinely sought beyond the institution with which the journal is affiliated, and often abroad.

The process ~~is often~~ **can be** slow~~;~~ because referees are often slow to respond. This is a weakness~~:~~, ~~B~~but it is fair. It ~~does not~~ **neither** advantages eminent scholars or those from leading law schools nor disadvantages young scholars or those from less prestigious schools.

The editing is also largely limited to content. In my experience, referees' reports usually suggest some changes to the argument and occasionally identify a few infelicities of style. In stark contrast, the comments ~~of the~~ **by** student editors of ~~US~~ **U.S.** law reviews tend to focus almost exclusively on form, not substance. **And their editing usually does not, in my experience, improve the writing.**

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[1] For an interesting and robust analysis of the state of play of law journals in Australia, ~~see~~ **compare** John Gava, *Law Reviews: Good for Judges, Bad for Law Schools?* 26 Melb. U. L. Rev. 560 (2002) **(generally condemning law reviews, presumably even those that are peer-reviewed)**, with Michael Kirby, *Foreword: Welcome to Law Reviews*, 26 Melb. U. L. Rev. 1, 4 (2002) **(generally defending the value of law reviews, especially those that are peer-reviewed — as an "increasing number" are in Australia)**; for a ~~consideration~~ view of ~~their~~ **the** situation in Canada, see Kathryn Feldman, *Remarks About the Value of Student-Run Law Journals*, 17 Windsor Rev. Legal & Soc. Issues 1 (2004). [Converted to *ALWD Citation Manual* form; almost all the details were correct. The same goes for the footnotes that follow.]

[Perhaps we should have said "too often does not improve the writing."]

~~Both factors~~ **These tendencies** are to be expected.

Content is what matters. No sane person reads law reviews for the limpid clarity of the ~~written expression~~ **writing** or the illumination ~~on offer from~~ **offered by** the footnotes. Content is what matters, and content is what expert referees' reports focus ~~upon~~.

Yet when one is unqualified to assess or comment ~~upon~~ the content of a piece, all ~~that is~~ **that's** left to do is to ~~critique~~ **inexpertly change** its written expression and **agonize over its** references.

Interestingly, law journals in Australia and the U.K. tend to prefer shorter articles over longer ones~~;~~ — 6,000 to 10,000 words is considered ~~an~~ ideal ~~length;~~ — and do not share the obsession of their U.S. cousins with abundant footnotes. Sophisticated arguments can be readily developed in under 10,000 words, and longer articles, in my view, often communicate less effectively.

~~I am~~ **I'm** tempted to speculate that the excessive length and footnote density of most ~~US~~ **U.S.** law-review articles ~~is a~~ **are** products of the feelings of safety engendered in student editors by long and heavily referenced pieces. After all, such pieces offer the illusion of substance~~;~~ and thus appear to be safe bets for editors with little or no expertise in the ~~field the subject of the article~~ **article's subject**. Perhaps ~~they~~ **these pieces** offer the same illusion to their authors, ~~particularly~~ **especially** those seeking tenure at their faculties~~, which may well be the other reason for their proliferation~~.[2]

In any event, the height of footnote absurdity in the U.S. is illustrated by one of my articles that was accepted subject to my adding another 40 footnotes to it. The editors were troubled **that** it had only 30. I was older by now, and refused, but said the student

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[2] James C. Raymond, *Editing Law Reviews: Some Practical Suggestions and a Moderately Revolutionary Proposal*, 12 Pepp. L. Rev. 371, 375–77 (1985).

editors were welcome to add some if they wished, and they did. All 40 extra references!

A move to peer review would definitely improve the quality of U.S. law-review articles. It would also, I ~~contend~~ **believe**, tend to counter the love of length **that** these journals exhibit. Size is all well and good, in its place, but ~~clear communication is~~ **it** rarely ~~promoted by it~~ **promotes clear communication**. An expert is qualified to assess the worth of an argument~~;~~ and **will** not substitute length and **the** number of footnotes as measures of quality. An expert would also typically object to having to read a 25,000-word piece.

Admittedly, ~~A~~ **a** move to peer review is **unlikely** today ~~unlikely~~ in most U.S. law schools. ~~The effort of serving~~ **Some faculty members may serve** as editors **of journals** ~~and referees would prove a burden on law faculty members and, remember, laziness was listed earlier as one of their credible character failings~~**, but I suspect that far fewer would be willing to serve as referees.**

Serving as a journal editor is a tremendous amount of work, but **it at least** confers ~~considerable~~ status and exposes one to the latest writing in one's field, ~~particularly~~ **especially** if it is a specialist journal.

Refereeing**, on the other hand,** is just plain hard work. Legal scholars in Australia, the U.K., and elsewhere undertake it out of a sense of obligation and a belief **that** ~~it is~~ **it's** an essential part of our shared scholarly enterprise. ~~But a tendency to being self-indulgent loners and not team players was identified as another credible law professor failing.~~ We outside ~~America may be no less lazy or self-indulgent (although we are certainly less pampered) than our American brethren but we~~ **the U.S.** are used to doing this unpaid work, and we accept it as essential quality control for journals. We also typically think that writing ~~referee's~~ **referees'** reports is important scholarly work. **So** ~~Our resumes would~~ **our résumés** usually

reflect prominently any journals ~~of which~~ **that** we are the editor ~~of; and would mention the journals~~ **or** that regularly invites us to serve as a referee~~s~~.

In short, serving as editors of journals and as referees is part of our scholarly culture~~;~~ — and cultures can be slow and difficult to change.

Conclusion

The solution to "the editors don't know how to edit" part of the problem is conceptually simple — teach them. ~~If one would~~ **You might** expect this to be fairly obvious to ~~universities~~ **law schools**, ~~one would be wrong~~ **but apparently it's not**. While the lamentations ~~regarding~~ **about** student-edited law reviews are legion,[3] very few law schools **formally** teach their student editors ~~formally~~ how to do their job.[4]

~~It is~~ **It's** true that editing is a subtle task requiring considerable judgment and ~~it~~ is therefore difficult to teach. ~~However, it is~~ **But it's** equally true that it can be broken down into sequential steps

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[3] *See* Richard A. Epstein, *Faculty-Edited Law Journals*, 70 Chi.-Kent L. Rev. 87 (1994); The Executive Board of the Chicago-Kent Law Review, *The Symposium Format as a Solution to Problems Inherent in Student-Edited Law Journals*, 70 Chi.-Kent L. Rev. 141 (1994); Wendy J. Gordon, *Counter-Manifesto: Student-Edited Reviews and the Intellectual Properties of Scholarship*, 61 U. Chi. L. Rev. 541 (1994); James Lindgren, *An Author's Manifesto*, 61 U. Chi. L. Rev. 527 (1994); Alan W. Mewett, *Reviewing the Law Reviews*, 8 J. Leg. Educ. 188 (1955); Richard A. Posner, *Against the Law Reviews: Welcome to a World Where Inexperienced Editors Make Articles About the Wrong Topics Worse*, Legal Affairs 57 (Nov.–Dec. 2004); Richard A. Posner, *The Future of the Student-Edited Law Review*, 47 Stan. L. Rev. 1131 (1995).

[4] James Lindgren, *Student Editing: Using Education to Move Beyond Struggle*, 70 Chi.-Kent L. Rev. 95, 99 (1994) **(encouraging "increased faculty help, oversight, and training" that includes "editing seminars for student editors").**

and taught;.[5] aAnd training ~~in editing~~ would **at least** improve an editor's efforts.

~~And t~~Training ~~in how to edit~~ would not, ~~of course~~ **though,** address the other part of the problem: that student ~~law review~~ editors are not qualified to choose between potential articles by assessing their substantive quality. It is difficult to see anything short of peer review **as** properly addressing this problem, so the challenge is how to shift U.S. law-faculty culture so that **faculty members willingly bear** the burdens of a peer-review system ~~are borne willingly by faculty members~~.

The answer may well be leadership, by a leading journal. ~~It is~~ **It's** unlikely to come from the journals ranked one, two, ~~or~~ **and** three in the nation, ~~as~~ **because** they will probably feel they have more to lose than gain from change. ~~However it,~~ **But leadership** may well come from journals ~~ranked perhaps between four and ten~~ **that rank a bit lower** and want~~ing~~ to ascend the ladder.

All it would take is **for** one ~~of~~ **or** two highly regarded journals to provide the lead. If one or two such journals were to announce **that** they were now faculty-edited and **that** credible submissions would be peer-reviewed, and **if** this ~~was~~ **were** to lead to a rise in the rankings, then others would likely follow. For the first-movers, finding potential referees ~~should~~ **might** be ~~quite easy~~ **easier than you would think,** ~~as~~ **since** the prestige of serving as a referee for a highly ranked journal should hold some appeal ~~(remember insecurity)~~, **and** the novelty of being asked ~~will~~ **would** count for much~~, and law professors are perhaps less lazy than this piece has intimated~~.

If these cutting-edge journals were to go a step further and announce that the preferred ~~length of~~ manuscript**s length** was between 6,000 and 10,000 words, this would provide even further impetus

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[5] Anne Enquist, *Substantive Editing Versus Technical Editing: How Law Review Editors Do Their Job*, 30 Stetson L. Rev. 451 (2000).

to their ascension. Does anyone really want to write 30,000 words on an incredibly narrow topic~~, ie.~~; **that is,** does anyone enjoy writing tenure pieces? Surely a safer and more enjoyable road to tenure is four or five 10,000-word articles rather than two articles of 30,000 and 20,000 words ~~respectively?~~. The traditional route is a stressful one — it makes a lot ride on two articles, especially when some articles, ~~especially~~ early in one's career, just don't seem to want to come together~~, for whatever reason~~. ~~Certainly t~~The evidence is that as scholars become more senior, their articles become shorter and their footnotes fewer.[6] **So** ~~These~~ **those** cutting-edge journals would, presumably, have considerable appeal to more senior scholars.

The worlds of legal practice, law schools, and law reviews are intensely competitive. ~~— it is~~ **It's** time for some good law reviews to become great ones by harnessing this competition to improve their quality~~;~~ and to ~~thereby~~ lead U.S. law reviews into the peer-reviewed world ~~which is~~ **that's** the norm in law outside the U.S. — and the norm in most disciplines everywhere.

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[6] *See* Ira Mark Ellman, *A Comparison of Law Faculty Production in Leading Law Reviews*, 33 J. Leg. Educ. 681, 683 (1983).

The "Best of" Series