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Editing

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ESSAY

Editing

CAROL SANGER*

Don't ever *defer* to my judgment. You won't on any vital point, I know, and I should be ashamed, if it were possible to have made you; for a writer of any account must speak solely for himself.¹

—Editor Maxwell E. Perkins to F. Scott Fitzgerald (Dec. 12, 1921)

In May 1993, I published a book review of Richard Posner's *Sex and Reason*.² The review was modest in length and in purpose, part of an informal division of labor undertaken by the many critics of *Sex and Reason*. It challenged Judge Posner's claim that an economic analysis of sex was something new and argued that women have been making rational choices with regard to sex and reproduction for quite a long time, something that Judge Posner's book seemed to miss and misunderstand throughout.

Readers of the review (the members of my MCI Friends and Family Plan) have since sent me little notes of praise; that is all to the good. What is not to the good is that the review that was published was not wholly the review I wrote or would have preferred. As satisfactory as the published piece may have been, its tone and content differed from its earlier incarnation in ways that made it less engaging and less effective. The metamorphosis was the result of law review editing.

We are all familiar with the process. At its best, law review editing, like editing elsewhere in the academic and literary worlds, results in a piece improved in style, structure, and content. Too often, however, law review articles are not so much improved as simply changed, sometimes hundreds of times within a single manuscript.

My purpose here is not to complain line by line about various dissatisfactions with the editing of my little review. I accept that authors, like teenagers convinced the world is focused on their every imperfection, are more aware of perceived deficiencies in an article than any reader is likely to be. Nonetheless, many of us have spent many hours resuscitating sentences, paragraphs, lines of argument, and sometimes whole manu-

* Professor of Law, Santa Clara University; J.D., University of Michigan, 1976; B.A., Wellesley College, 1970. I thank Jeremy Waldron, Bill Simon, Jim Ellis, and the editors of *The Georgetown Law Journal* for their comments.

1. Letter from Maxwell E. Perkins to F. Scott Fitzgerald (Dec. 12, 1921), in EDITOR TO AUTHOR: THE LETTERS OF MAXWELL E. PERKINS 30 (John Hall Wheelock ed., 1950) [hereinafter EDITOR TO AUTHOR].

2. Carol Sanger, *He's Gotta Have It*, 66 S. CAL. L. REV. 1221 (1993) (book review).

scripts that have been edited nearly to death. What I want to discuss is why this sort of thing happens so regularly and what we might do about it.

I situate this brief plea for a revival of common sense in editing within a broader and long-standing critical literature on legal scholarship in general. Recent issues include the relationship between legal scholarship and the legal profession,³ the influence of legal scholarship on courts,⁴ differences between scholarly journals in law and in other academic disciplines,⁵ and the role of scholarship within the legal academy. These issues necessarily subdivide into considerations of quantity, evaluation, and style.⁶

Within this literature, controversies over student editing have secured themselves something of a permanent spot with snarly complaints filed periodically by one or another frustrated professor followed by defensive rebuttals from student editors.⁷ My own response to cases of aggravated editing has been to follow Elisabeth Kubler-Ross's stages of reaction to death: denial, depression, bargaining, anger, and acceptance.⁸ This essay is an attempt to do something constructive—at least about the acceptance part. I would like to turn grumbling and pique into something more reflective and more practical by considering the relationship between law

3. See Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 42 (1992) (mourning the "clear decline in the volume of 'practical' scholarship published by law professors"); see generally Max Stier, *Law Review Usage and Suggestions for Improvement: A Survey of Attorneys, Professors, and Judges*, 44 STAN. L. REV. 1467 (1992) (surveying attorneys, judges, and law professors about their use of law reviews, how successful they think law reviews are at accomplishing their purported missions, and how they think law reviews should change).

4. See generally Louis J. Sirico, Jr. & Beth A. Drew, *The Citing of Law Reviews by the United States Courts of Appeal: An Empirical Analysis*, 45 U. MIAMI L. REV. 1051 (1991).

5. See Richard A. Posner, *The Present Situation in Legal Scholarship*, 90 YALE L.J. 1113, 1123-24 (1981) (noting that in other academic fields, journals are edited by an author's peers, not his students, and that normally editors consult scholars familiar with the particular subject before accepting a paper).

6. See generally Symposium, *Legal Scholarship: Its Nature and Purposes*, 90 YALE L.J. 955 (1981); Symposium, *Legal Scholarship*, 63 U. COLO. L. REV. 521 (1992). On problems of evaluation and quality, see Edward L. Rubin, *On Beyond Truth: A Theory for Evaluating Legal Scholarship*, 80 CAL. L. REV. 889 (1992); on issues of quantity, see Kenneth Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926 (1990). Law reviews have also received recent attention in the popular press, suggesting that the politics, practices, and implications of law school publishing may no longer be wholly in-house affairs. See Ruth Shalit, *Hate Story*, NEW REPUBLIC, June 7, 1993, at 11-14 (reporting the false story that the tenure piece of a junior professor had been ghostwritten by student editors).

7. See James Lindgren, *Fear of Writing*, 78 CAL. L. REV. 1677 (1990) (trashing the Texas Law Review Manual of Style); Charles D. Moody & Arthur S. Feldman, *Greetings from Hell*, 78 CAL. L. REV. 1703 (1990) (defending the Texas Law Review Manual of Style and taking snipes at Lindgren); James Lindgren, *Return to Sender*, 78 CAL. L. REV. 1719 (1990) (responding to Moody & Feldman and defending the honor of the polemicists in general and defending his polemic in particular).

8. See ELISABETH KUBLER-ROSS, *ON DEATH AND DYING* ix (1969) (listing the five stages of dying).

review editing and the quality and purposes of the product: the law review article, comment, or book review.

I want to make clear at the outset that I am not looking for the editor of my dreams, a Maxwell Perkins or Saxe Commins, who would take on me and my work as a decades long project of cultivation.⁹ The relation between law review editors and authors is necessarily something quite different, constrained by the one-shot nature of each deal, the yearly rotation of editors, and differences between the content of law review articles and outright fiction. For enduring guidance and encouragement in our craft, we must look to our mentors and muses and to one another. But although I do not expect student editors to nurture my talent, pay my rent, or coax me out of depression (as the editorial greats did for their writers), the relationship could be marked by other positive traits: a commitment to improving the piece but not rewriting it; an ethic of common sense; and editorial deference (after discussion) to those who in *some* sense write for their living, when disagreements persist.

The case for deference stems from consideration of the respective purposes of legal scholarship and the purposes of editing. I begin with legal scholarship, or why we write.

Law professors write in law reviews in order to inform or persuade a particular public—the bar, legislatures, courts, colleagues—on some point of legal doctrine or theory each author thinks is important. Sometimes our purposes are less instrumental. We may write as part of the process of thinking things through, offering up arguments and ideas publicly in order to test out and develop one or another intellectual project. The commitment of idea to print may confirm (or disprove) that there is a project worth writing about. Professors also write to fulfil obligations to our students. Consider Regina Austin's question, "When was the last time you had a student who wanted to write a paper on a topic having to do with the legal problems of minority women, and you had precious little to offer in the way of legal articles or commentary that might be on point?" and her brilliant answer, *Sapphire Unbound!*¹⁰

9. See generally A. SCOTT BERG, *MAX PERKINS: EDITOR OF GENIUS* (1978); DOROTHY B. COMMINS, *WHAT IS AN EDITOR? SAXE COMMINS AT WORK* (1978). For the view that this kind of editor is a thing of the past, see Gerald Howard, *Mistah Perkins—He Dead: Publishing Today*, in *EDITORS ON EDITING: WHAT WRITERS NEED TO KNOW ABOUT WHAT EDITORS DO* 56, 70-71 (Gerald Gross ed., 3d ed. 1993) [hereinafter *EDITORS ON EDITING*] (suggesting that the agent has replaced the editor as the writer's anchor in the publishing world). For the view that in some cases that this change was not altogether bad, see Richard Curtis, *Are Editors Necessary?*, in *EDITORS ON EDITING*, *supra*, at 30, 33 ("The paternalistic treatment of authors by editors in earlier times, however, produced its own set of inequities, for publishers took advantage of many authors who were too ignorant, shy, or well bred to demand good terms of their editors.").

10. Regina Austin, *Sapphire Unbound!*, 1989 *Wis. L. Rev.* 539, 541.

Although we may want to put aside the question of how often our intended audiences actually read what we write, we know that sometimes legal scholarship *is* influential. Courts regularly read and sometimes cite arguments from law review articles.¹¹ The work of junior colleagues is regularly reviewed as part of standard time in grade requirements. Most of us agree that scholarship sensibly contributes to decisions about tenure, promotion, and hiring. More recently—and less sensibly—we have seen that the scholarship or “writings” of those called to public service can substitute for the full measure of the candidate.¹²

This is all to say that when authors sign their names to their work, they take responsibility publicly and professionally for what they have written. For many authors, writing is also a matter of more private accountabilities. Our topics, methodologies, and analyses may also be expressions of the self, representing values, insights, and investigations profoundly connected with who we think ourselves to be. This latter point, the constitutive aspect of scholarship, may explain why we get so upset when work representing a sustained commitment to intellect and to craft is rewritten by student editors. The former point, our public and professional accountability, explains why we should collectively do something about a system that has gone badly wrong.

Unfortunately, law review editors, and to some extent acquiescing professors, have lost sight of the definition and functions of editing. An accepted definition of editing is simply “the improvement of style and suggestion of changes in content as well as expression.”¹³ Both authors and editors agree that the goal is to come up with the best article possible. That goal is almost right, or it is right all the way down, depending on what is meant by “the best article possible.” Here we might turn for guidance to professional editors:

The best book possible is the book in which the author says what he has to say as clearly, as forcefully, and as gracefully as he can. It is the goal of all editing, and most particularly manuscript editing, to achieve this end.¹⁴

11. See Edwards, *supra* note 3, at 45 (“[C]itation studies invariably underestimate utility; I often use treatises and law review articles that are not ultimately cited in my opinions.”).

12. Unless, of course, in the words of Senate Judiciary Chairman Joseph Biden, a candidate’s scholarship is nothing more than “academic musings.” Neil A. Lewis, *Senate Democrats Urge Withdrawal of Rights Nominee*, N.Y. TIMES, June 2, 1993, at A1 (“If . . . what [Guinier] wrote was just a lot of academic musing . . . I suppose it’s conceivable that she could be confirmed. If she says she believes in the theories that she sets out in her articles and is going to pursue them, not a shot.” (quoting Sen. Biden)); see also Robert Post, *Lani Guinier, Joseph Biden, and the Vocation of Legal Scholarship*, 11 CONST. COMMENTARY (forthcoming 1994).

13. PETER L. SHILLINGSBURG, *SCHOLARLY EDITING IN THE COMPUTER AGE 2* (1986).

14. Maron L. Waxman, *Line Editing: Drawing Out the Best Book Possible*, in EDITORS ON EDITING, *supra* note 9, at 153-54.

Thus, there is a difference between the best article possible and the best article written by a particular author. We are not looking for the Platonic form of a given article. My articles might well be better if someone else had written or rewritten them, but such possibilities take us outside the world of editing and into fantasy (or at least a world of ghost writing and book doctors). As editor Maron Waxman points out,

Editing is not rewriting. Many times it would be easier for the editor to rewrite tangled and unclear passages, using the author's manuscript as a primary source. But that is not editing; rewriting is an entirely different job. Keep in mind [Maxwell] Perkin's words: "An editor does not add to a book." The editor must find a way to draw the words from the author.¹⁵

This aspect of editing—the location of final authority with the author—has been overridden in law schools by more headstrong notions of editorial duty. Many law review editors, for all their talent and enthusiasm, have lost sight of, or were inadequately instructed with regard to, this fundamental editorial premise. In consequence, articles are too frequently transformed from something written by an author with a distinct voice, point of view, and line of argument to something closer to a composition by student committee. In its worst form, the method combines unnecessary arrogance with a stubborn adherence to rules, sometimes "official" rules and sometimes independently idiosyncratic ones. Whatever their provenance, the force and good sense of these rules are wildly overestimated by law review editors who find it hard to understand that authors sometimes need to state complicated and subtle points in complicated and subtle prose.

How have such editing practices come into being and why do they persist? The causes are probably a combination of student age, circumstance, and power (in what other discipline do students determine the shape of professorial careers?), coupled with institutional oversight and an exaggerated respect for stylistic norms.

Let us start with the editors themselves. They are often young, a good recommendation for many activities, though not necessarily editing. They are also students, which means in most cases that they are not as familiar (or not at all familiar) with the substantive issues of a particular paper, particularly when the author is changing or developing a field by making new points. Few are trained as editors or plan to make a career out of it. Most student editors have likely had no editorial experience before sitting down to *your* paper other than having had their own work hacked to bits by students who experienced the same thing the year before.

15. *Id.* at 155.

Because student editors are simultaneously taking classes, looking for jobs, *and* publishing a journal, many are overworked. In consequence, they may lose perspective as law review offices sometimes take on the atmosphere of urgency found the night before a bond offering at Skadden Arps. In certain cases, politics and personalities may also interfere with editing judgments, as student editors take it upon themselves to act as defenders or detractors of one or another professor. Because junior editors want to please senior editors, to have their own notes chosen, and to get chosen for next year's board, there is little or no internal impetus for change.

Another source of the problem is that law review practices frequently combine two editorial functions—copy editing and “editing” editing—into one person, or at least one person at a time.¹⁶ This may be a necessary institutional constraint; a law review is, after all, not a commercial business but a curricular activity. Nonetheless, the same person may not be good at all aspects of editing:

Editing is a highly complex set of functions, and no individual is capable of exercising them all with equal aplomb. The editor who wines and dines the agents and charms authors may be a clumsy negotiator; the brilliant dealmaker may have no patience for the tedious and demanding word-by-word task of copy-editing; the copy editor who brilliantly brings a book to life word by word, line by line, may be completely at sixes and sevens when it comes to handling authors.¹⁷

Regrettably, an editor's wining, dining, and dealmaking skills are of little use to most law professors. Nonetheless, the basic point remains: not all law review student editors may be good at all of the editorial tasks they must perform. These tasks necessarily include facility with “personal relations,” a skill lawyers may lack, and one that is likely made more difficult by the awkwardness of the professor-student relationship.

There is also a second sense in which all editors must assume multiple roles. As Saxe Commins explained:

The editor is called upon to play many roles, because with each new manuscript he is confronted with a new set of ideas, the projection of a

16. Copy editor Gypsy da Silva asks and answers the definitional question:

What is a copy editor and why do we need them? A copy editor is that person who, after the author has written the manuscript and the editor has edited it, examines that first sentence, thinking: Would it be better as two questions? What is the antecedent of “we”? Should “them” be “him or her?”

Gypsy da Silva, *The Copy Editor and the Author*, in EDITORS ON EDITING, *supra* note 9, at 143; see also FLOYD K. BASKETTE ET AL., *THE ART OF EDITING* 3 (3d ed. 1982) (“Of the various subordinate editors who help the editor, one is the copyeditor, the man or woman who makes raw copy palatable for the reader.”).

17. Curtis, *supra* note 9, at 30.

new personality and the necessity of adapting himself to a new form. His is therefore a flexible mind, ever remembering that each new book with which he deals is an entirely new entity.¹⁸

This adaptation is particularly necessary in law review publishing because most journals quite deliberately select articles for their diversity.

With the exception of age, none of these problems is intractable. Greater attention to standard rules and techniques of manuscript editing would help tremendously without throwing all the power to authors. At the same time, writers need editors—and *not* simply to fill in missing footnotes. Although many of us show our drafts to colleagues, the editor is still in an important sense “the first reader of the book. . . . If [the editor is] confused, distracted, or let down, it is likely that other readers may also be.”¹⁹ The manuscript editor must therefore “train himself to read uncomfortably, to nag, to question, to probe, not to give the author the benefit of the doubt.”²⁰

The function of critical reader is, however, all the more complicated in the law review setting because the student editor is not quite the average reader of the piece. Audiences for law reviews are rarely the reading public, but rather those who are already familiar with the issues and vocabulary of the substantive area under discussion. In this sense, the assumed congruence of identity between editor and reader is mismatched; the editor necessarily reads as an ingenu while the actual reader—likely a professor, lawyer, or judge—will already have the basics in hand. A consequence of this disparity is that editors often ask authors to simplify, define, and clarify words and arguments (the meaning of “fair use” in a symposium on copyright; an explanation for “capitalization” in a sophisticated article on corporate finance) that are unfamiliar to the editor but not necessarily to the intended audience.

After the editor, preferably someone who has taken the basic underlying substantive course, has scribbled her list of doubts and questions (and not in the first instance in ink on the manuscript itself), what follows should be an exercise in judgmental triage. Good editors recognize that an editor

18. COMMINS, *supra* note 9, at xiii (quoting from a series of lectures prepared for delivery at Columbia University).

19. Waxman, *supra* note 14, at 155; *see also* Letter from Maxwell E. Perkins to Ray Stannard Baker (Aug. 30, 1940), *in* EDITOR TO AUTHOR, *supra* note 1, at 169, 172. Perkins wrote:

I know that the author, of course, best knows his book and that suggestions can only be valuable to him as showing how a reader, if he understands the author's purpose, reacts to it. We do not intend that this should be a book of incidents and facts. Just the same, when one reads, on page 14, about the author and his father working along the shore of a wild northern lake, one would like to have that more developed, perhaps, and also the meeting with the Indians. Not greatly, but somewhat.

Id.

20. Waxman, *supra* note 14, at 155.

“has only so many points to play in any given manuscript.”²¹ She must decide which of the many infirmities she has noted should be put to the author as queries. Here law review editors might consider a hierarchy developed by Maron Waxman, who characterizes desired changes into three categories—necessary, felicitous, and meticulous. Waxman explains:

The absolutely necessary changes are always of utmost importance and should not leave much room for discussion. These would include anything that is clearly wrong: omissions, weak organization and logic, [and] factual errors. . . .

The felicitous changes include substituting smooth phrasing for awkward language [and] heightening [the] narrative thrust. . . . Here the issues are less a matter of right and wrong than of improving the manuscript and presenting the reader with a better book. . . . [With felicitous changes, there is] nothing that [has] to be edited.²²

Deciding whether a change is necessary or felicitous is often the cause of dispute in law review editing. Student editors sometimes mistake substantive changes for stylistic ones. Required changes in syntax, word choice, sentence structure, and tone may well change textual meaning and sense. Patricia Williams has described how in an article on racial discrimination, taken from her own experience of being excluded from a boutique that buzzed in only the “acceptable” customers, student editors first removed references to the experience and then to Williams herself, or at least her race, because “editorial policy” did not permit reference to physiognomy.²³

“Editorial policy” is often invoked to defend a range of editorial preferences that seem far more felicitous, if not out and out meticulous, rather than necessary. Many revisions seem to emanate from an unhappy idea of what legal writing, especially law review writing, *ought* to sound like. An antiquated sense of legal rhetoric has resulted in a bureaucratic impulse toward the impersonal, the flattened, and the pompous.

Although not all required changes are as jarring as those first imposed on Patricia Williams, even lesser forms of relentless bossiness rankle. One friend was required to write out what L.A. stood for (not in Los Angeles,

21. *Id.* at 163-65.

22. *Id.*

23. PATRICIA WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 44-51 (1991). Williams prevailed by convincing the editors that

mention of my race was central to the whole sense of the subsequent text; that my story became one of extreme paranoia without the information that I am black; or that it became one in which the reader had to fill in the gap by assumption, presumption, prejudice, or prejudice.

Id. at 48.

but as in H.L.A. Hart) and to fix his citations accordingly. Another was forbidden to use the word “gendered” as an adjective in a piece on women and culture; another had all her “whiches” changed to “thats.” I have experienced editors who did not believe in commas and others who insisted that all plural nouns take singular objects (for example, “women [plural] may decide to continue their pregnancy [singular]”).

Everyone has his or her own examples of absolute editorial adherence to a rule from some style manual, obeisance sometimes replacing common sense as the manual becomes more an edict and less a guide to good writing. “But,” for example, is forever banned from starting a sentence because, in some vague analogy to Family Law, a conjunction may only figure between two equally weighted clauses in a conventional relationship. In consequence, texts are weighted down with dozens of compulsory “howevers.”²⁴

There is also the bizarre convention of law review footnoting, a growth industry we should not indulge. In the book review under discussion, an editor wanted a citation for the following sentence (a response to Judge Posner’s statement that feminists are unlikely to value virginity or chastity): “What feminists value is consent, and they value it even for virgins.”²⁵ After a discussion of which Deborah Tannen would have been proud, the editor agreed that this was plain silly; there are some things of which we can sensibly just take notice. Any small progress toward reducing the number of footnotes is, however, offset by the current trend toward compulsory parentheticals: the appalling reduction of an entire source into a phrase²⁶—a practice that burdens (often uselessly) an already bottom-heavy manuscript.

It may be that articles less formal in tone or more experimental in approach provoke in editors a greater urge to “bring the piece into line.” Critical race scholars, feminists, and crits, like others before, may well “push the outside of the envelope,” in Tom Wolfe’s phrase.²⁷ Nonetheless, while there may be disparate impact of formalistic editing on those whose

24. But consider the following history of a rule, its fluidity, and preferred usages:

There used to be an idea that it was inelegant to begin a sentence with *and*. The idea is now dead. And to use *and* in this position may be a useful way of indicating that what you are about to say will reinforce what you have just said. But do not do this so often that it becomes a mannerism. One occasionally sees *And* used to begin a paragraph; this had a slightly affected air. *But*, on the other hand, may be freely used to begin either a sentence or a paragraph.

ERNEST GOWERS, *THE COMPLETE PLAIN WORDS* 7 (1973).

25. This would be what Professor Fred Rodell called a “probative or if-you’re-from-Missouri-just-take-a-look-at-all-this type” footnote. Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38, 40 (1936).

26. See parenthetical, *supra* note 8.

27. TOM WOLFE, *THE RIGHT STUFF* 12 (1979).

methods or analyses are less traditional, few professors escape the dispiriting aspects of law review editing. But stylistic elegance or at least stylistic conformity may not always be consonant with improving substantive content. This is not meant as a defense of bad writing or inaccessible prose, but rather as recognition that the development of difficult points sometimes requires complicated—sometimes even imperfect—prose that may not conform in every instance to one or another style manual. Like Marxists, authors of other interests and persuasions may from time to time need to break through the borders of bourgeois lucidity.

Because law review manuscripts are returned with so *many* changes, in some reviews by multiple editors in multiple colors, editing antagonisms are aggravated. Cover letters rarely inform authors that most changes are of the felicitous variety, intended as queries that the author should carefully consider, but is not required to accept. Whether a failure of policy or communication, the practice leads to a lack of editor-author courtesy and rapport. Recommending what might sound like coddling to some, editor John Pine stresses:

[T]wo features . . . are paramount in building editor-author rapport. One is that an editor state, continually, what she *likes* about a work. This is essential, for any author is going to be sensitive to criticism, and blast after negative blast raises the specter of the editor as arrogant, know-it-all jerk. Second, the language employed should be that of a helpmeet. My suggestions are rife with such phrases as “it seems,” “you may want to consider,” “perhaps a better tack is,” etc. In this way an author does not feel threatened, leading to a wary but open-minded assessment of the note, which is precisely what an editor desires.²⁸

In addition, Pine’s method helps “to make the author realize that his

28. John K. Pine, *Line Editing: The Art of the Reasonable Suggestion*, in EDITORS ON EDITING, *supra* note 9, at 170. An example from the correspondence between Maxwell E. Perkins and F. Scott Fitzgerald combines both of Pine’s points:

There is one other point: in giving deliberately Gatsby’s biography, when he gives it to the narrator, you do depart from the method of the narrative in some degree, for otherwise almost everything is told, and beautifully told, in the regular flow of it, in the succession of events or in accompaniment with them. But you can’t avoid the biography altogether. I thought you might find ways to let the truth of some of his claims like “Oxford” and his army career come out, bit by bit, in the course of actual narrative. I mention the point anyway, for consideration in this interval before I send the proofs.

The general brilliant quality of the book makes me ashamed to make even these criticisms. The amount of meaning you get into a sentence, the dimensions and intensity of the impression you make a paragraph carry, are most extraordinary.

Letter from Maxwell E. Perkins to F. Scott Fitzgerald (Nov. 20, 1924), in EDITOR TO AUTHOR, *supra* note 1, at 38, 40.

editor is not interested in rewriting the book.”²⁹ Indeed, editors should well understand that they

are not authors, nor do they wish to be. What the best of editors wishes to be is the perceptive, demanding, energetic, and patient prober who can devote his particular talents and skills to the enterprise of working with authors to publish good books.³⁰

This last point returns us to the ideal of “the best book/article possible” being the best article by this author, not some abstract measure of excellence. Pine reminds students of editing that what an editor really wants is for “an author [to] consider a point and fashion her own original response. This is what leads to a better book.”³¹ He further points out: “Seeing an author fly off on his own wing like this, is of course, an editor’s ultimate desire.”³² He suggests that editors explain *why* various recommendations have been made; in this way the author is more likely to attend to the suggested change. Another suggested practice is to “[e]dit concisely, using the margin for your notes. The fewer marks you make, the easier it is for the author to follow your comments and, as a corollary, sympathize with and understand them.”³³

The debilitating effect upon the author of receiving a rewritten manuscript is compounded by law review practices that sometimes resemble “whittling” more than editing. By “whittling,” I mean the multilayered attack on the draft by which editor after editor in the review hierarchy rethinks the commas and reassesses the arguments—what one friend calls “recreational paraphrasing.” Authors often spend heaps of time with articles editors, only to have the editor in chief come in at the end, with a new list of revisions opening matters already debated and resolved, almost like the bad cop to the article editor’s good one. After what is often already an immense investment in time, just when you think you’ve negotiated the final version of the paper, new revisions come back (by express mail) from someone higher on the editorial chain and the process of reclaiming your work begins anew. This is not only demoralizing for the author, but must be humbling for the articles editor who turned out to have had so very little authority in the first place.

The effect of this is to break down the author’s reserve. After all, how often can you go to the mat? At some point, usually late in the game as new alternations continue to arrive, many of us just give up. It is theoretic-

29. Pine, *supra* note 28, at 172.

30. Waxman, *supra* note 14, at 163.

31. Pine, *supra* note 28, at 172.

32. *Id.* at 171.

33. Waxman, *supra* note 14, at 162.

cally possible to withdraw the piece and start the process again elsewhere, although this is more often done only by the big names in the business. If, however, the timing of publication matters—either because the article is an advocacy piece tied to specific legislation or candidate confirmation or because the author is coming up for tenure—pulling a piece may be unwise. Pulling pieces is also not part of law school culture. Can I really have let “them” get to me this badly? Will it look like a tantrum to my colleagues? In any case, the fact that withdrawing a piece is one of the few available options suggests how misguided the enterprise has become; editors and writers are not supposed to interact with one another at flash points. It isn’t good for the prose.

There is the limited option of turning to single submission, peer review journals, such as *Constitutional Commentary*, *The Journal of Law and Social Inquiry*, and *The Law and Society Review*. These journals maintain, in ways that may seem puzzling to student editors, the highest standards of manuscript assessment and acceptance followed by general deference to authors on matters of style. Still, most of us continue to publish in traditional law reviews because, at least in America, they remain the more established forum within the legal academy.

A few colleagues in high places have told me that they condition acceptance of their work on a reviewer’s promise that their article will be published exactly as submitted. But that is *not* even the deal most of us want. My work, like most, benefits tremendously from editing: suggestions regarding a better verb, a misplaced paragraph, a misconceived section, or an unintended ambiguity all improve the quality of the work. Ideas too may need occasional shake-up and challenge, notwithstanding the fact that most of us receive and incorporate substantial suggestions from colleagues *before* submitting our manuscripts for publication. Nonetheless, editors may be both more detached and devoted than our usual draft-readers. Like many writers, I have gratefully acknowledged the thoughtful work of student editors in my preliminary footnotes. Too often, however, we receive the kind of editing that makes us swear we will start writing books.

With all this in mind, my suggestions regarding law review editing are straightforward. Editors should accept only those pieces that, on the whole, meet that board’s standards for publication at the time of submission. Any piece that student editors think needs to be substantially rewritten should be rejected or, in the tradition of journals elsewhere in the academy, editors might invite a resubmission after various suggested changes are made. If a piece is solicited for publication before it is written, the editors should treat it like other accepted manuscripts. When disputes arise on matters of felicity, law review editors should defer to the author’s judgment. Fewer disputes should arise because editors will have stopped rewriting pieces they have already accepted.

Editors must come to understand that even if the author has it slightly wrong in the sense that her usage may not agree with a particular stylistic authority but otherwise *sounds just fine*, it is the author who stands accountable. I am not claiming that what stands between me and a Supreme Court appointment are a few leaden sentences from a fifteen page review of a book that I recommend not be read. Indeed, I am “going public” with what is really a generic complaint, in part because the stakes with regard to this particular book review are very low. Nonetheless, I wanted the “my” in my contribution to the *Sex and Reason* controversy, as with any other, to be authentic and I am angry that it is not.

Something more substantial than my California location convinces me that it is past high time for professors to “get in touch with their anger” over law review editing. I am not talking about mistakes and misprints. We all know that “typos happen” and rarely do glitches matter substantively.³⁴ Many of us hesitate to do much about any particular editing episode because taken one at a time, the complaints may look frivolous. I believe they are not. Writing is not game theory in which clever authors learn to insert the passive voice three times in order to give it up twice in exchange for some syntax they really care about. Moreover, any cumulative efforts to reform current editing practices cannot be frivolous. Too much real time and energy is consumed in unsatisfying duels between student editors and beleaguered authors.

I therefore nail these theses to the relevant editorial doors: a formal request to student review editors to locate more sensible borders between editorial and authorial judgments. It cannot be that law review editors are penalized for letting a sentence get by that was not quite as good, by the editors’ lights, as it might have been. Editors do not include on their resumes the titles of the pieces they edited, with before and after versions appended.

If concern over editorial standards are the issue, reviews might consider disclaimers for errors, authorial styles, or points of view. In an exchange on editing between law professor and student editors published in the *Califor-*

34. One exception of which I am aware would be the erroneous inclusion of Justice Roger Taney on a list of great justices praised by Judge Leon Higginbotham for having “extraordinary wisdom and compassion.” See A. Leon Higginbotham, *An Open Letter to Justice Clarence Thomas from a Federal Judicial Colleague*, 140 U. PA. L. REV. 1005, 1008 (1992). In a letter to the law review, now included with offprints sent from Judge Higginbotham’s chambers, Judge Higginbotham explains that he deliberately removed Justice Taney’s name from Albert Blaustein and Roy Mersky’s list of 12 great justices because “he was a racist jurist and, as you know, he was the author of the Dred Scott opinion.” Letter from The Honorable A. Leon Higginbotham, Jr., Circuit Judge, United States Court of Appeals for the Third Circuit, to Scott Biel, Editor in Chief, *University of Pennsylvania Law Review* 1 (Feb. 4, 1992) (on file with *The Georgetown Law Journal*). Judge Higginbotham graciously accepts that the name was put back on the list from which it had been deleted during the last proofs, when it was not caught only “because of the time crunch.” *Id.* at 2.

nia Law Review,³⁵ the editorial board decided that “the only way to give a fair treatment to this debate is to publish each piece wholly unedited. Any errors in style, punctuation, citation, and grammar are solely the responsibility of the authors themselves.”³⁶ Disclaimers have also been used when a volume was published quickly and contained reprinted materials; the *Southern California Law Review* used such a disclaimer in its timely symposium on the Clarence Thomas-Anita Hill hearings.³⁷

This essay is also a plea to colleagues to be more resolute. I am not suggesting we bully in reverse. We should, however, keep in mind that in no other area of our lives would we tolerate such intense, gratuitous, and self-righteous correction, and I address this even to those among us who are parents of teenagers. We were all sure—*once* at any rate—that we knew how to write sentences, punctuate, and structure arguments. In other words, professors must not behave as scholar-wimps: we must not cave in to each of the five hundred or so editorial changes per article only to cry over our cappuccinos about how unfair the process is. At times, we may have to follow the lead of William Faulkner, who upon receiving a heavily edited manuscript of *The Sound and the Fury* (all of the italics in the dialogue had been removed), wrote to his editor: “And dont (sic) make any more additions to the script, bud. I know you mean well, but so do I.”³⁸

Law reviews may respond by saying that professors cannot imagine the low quality of many of the pieces submitted or the amount of scut work lazy authors expect them to do—filling in footnotes, sometimes filling in arguments.³⁹ If this is so, editors must simply stop accepting unacceptable, bad, and incomplete work. If there are institutional pressures for them to not do so, then review members too must buck up and do the right thing.

Once or twice, when I have been driven to tears (never in front of an editor) about some massive editorial change, and especially when the revisions have altered some point about women or feminist theory outside

35. See *supra* note 7.

36. Editorial Note, 78 CAL. L. REV. 1675, 1675 (1990).

37. Editorial Note, 65 S. CAL. L. REV. 1279, 1281 (1992) (noting that “in order to publish this issue as quickly as possible, we have abbreviated our editing and citation checking process”).

38. Undated Letter from William Faulkner to Editor Ben Wasson, *quoted in* MICHAEL MILLGATE, *THE ACHIEVEMENT OF WILLIAM FAULKNER* 94 (1966).

39. Without question, writers can be difficult:

Working with him was not exactly a rewarding collaboration. He was obstinate, truculent, and totally lacking in courtesy. There was always the dread of what he might say in a moment of pique and, afterwards, the even greater dread of what the critics were always certain to say about his inaccuracies, his ponderousness of style, and his juggernaut assault on the simplest of declarative sentences. Grammar was violated and syntax slaughtered.

COMMINS, *supra* note 9, at 23 (describing the task of editing the work of Theodore Dreiser).

the ken of the editor-in-charge, friends have suggested I either “write about it” or call Patricia Williams so she could write about it. But I don’t *want* to write about writing and I don’t know Pat well enough to keep calling her up. (I also suspect she has other things to do.) Besides, if we all wrote about it, law review offices would look like the courtroom scene in “Miracle on 34th Street” when the mailmen dumped out all those bags of Kris Kringle’s mail.

What we might do—school by school, review by review—is to talk to one another and talk to student editors with the goal of reinstating a responsible conception of law review editing that more closely approximates editing practices elsewhere in the publishing world.

Because we publish at one another’s schools, discussion between relevant faculty and student editors may be difficult to effect. I may want to strangle the very editor you have just awarded three units of academic credit for her law review work. Home faculty may be reluctant to intrude on local practices. Despite such institutional complexities, some form of collective and sustained effort will improve on “one to one” practices of ultimatum, recantation, and resignation.

Revising the editing process may at times mean more work for professors. If my complaint is that editors have misconceived the nature of the job of editing, then professors cannot reinstate the misconception when it pleases us to do so. We should never expect law review editors to turn professorial notes or outlines into articles. At the same time, as a matter of psychological well-being and professional responsibility, we should insist that our labor and integrity as authors be respected.

