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JUST SAY NO?

GREGORY E. MAGGS*

Most student-run law reviews follow similar editorial procedures. Shortly after accepting an article for publication, the editors set out to change it. Anyone who has seen the process knows the enthusiasm with which the students approach their work. With no outside prodding, they attempt to bolster the argument, correct the citations, and improve the style and diction. The students then rush the manuscript back to the author, usually by express courier.

Authors, it is no secret, often suffer an initial shock when they first receive their marked-up manuscripts. No matter how perfect their articles seemed when submitted, they inevitably come back covered with red ink. Many authors initially view the proposed editorial changes as a sign of hostility. Usually, though, their surprise and dismay fade considerably upon reading what the students have done. Although authors may distrust the student editors at first, they generally find their suggested editorial changes helpful.

Sometimes, however, student editors recommend changes to manuscripts that authors do not want to make. For example, they may ask an author to remove an argument that they find weak or they may urge the author to rewrite a section of an article to give it a different slant. What happens if the author refuses? Simply put, each side tries to make the other side give in, and a struggle for the control of the text ensues.

Student editors fight hard for their positions for several reasons. They principally worry that the reputations of their journals will fall if they publish articles with flaws. They also do not want authors to challenge their authority. They further resent seeing their suggestions dismissed; editing is hard work and no student does it just for pleasure.¹

¹ Associate Professor of Law, The George Washington University National Law Center. I have based this essay on remarks that I made at a panel discussion at the Annual Meeting of the American Association of Law Schools (AALS) on January 9, 1994. The panel discussion, which addressed the "Struggle Between Author and Editor Over Control of the Text," took place during the AALS Open Program on Scholarship and Law Reviews. I wish to thank Jim Lindgren, Philip Hamburger, and the editors of the Chicago-Kent Law Review for inviting me to participate.

¹. See Note, A Student Defense of Student Edited Journals: In Response to Roger Cramton, 1987 DUKE L.J. 1122, 1128-32 (presenting arguments along these lines).
Authors, however, typically do not back down lightly from their positions. Many believe that, because their names will appear on the articles when published, they should determine what the articles say. They often assert that, if the students do not like their articles, then they should not have accepted them in the first place.²

Like most of my colleagues, I dislike quarreling with law review editors. Disagreements waste time and cause tempers to rise. But how should we, as faculty members, respond to the unfortunate reality that student editors do not always agree with us on editorial matters? In this essay, I advocate restraint. Even though struggles for control of the text are annoying, faculty members should not overreact.

I believe that, as a practical matter, authors generally can win most struggles for control if they really want to win them. Faculty members, consequently, should not feel that they need to surrender unconditionally to students or that they have to look for alternatives to student-run publications. Instead, they merely need to discover ways to reduce the frustrations in resolving disputes with student editors.

I. SOME OBSERVATIONS ABOUT LAW REVIEW POLICIES

As with any problem, the place to begin is with the facts. Unfortunately, at present, a lack of published information makes generalizations about law review policies difficult. Many scholars have written excellent essays about student-run journals, but their works mostly have addressed the competence of students to select and edit articles.³ I could not find any works that systematically describe how student editors resolve disagreements with authors.

As a result, for lack of any better option, I recently telephoned editors at several journals to inquire about their policies.⁴ I asked them whether they ever got into disputes with authors, what the disputes were like, and who typically won them. I also asked the students for any additional comments that they might have.

In reporting what the journals said to me during these telephone calls, I must offer two caveats. First, I did not conduct a very scientific

³. For recent commentary on student edited journals, readers should start by consulting two collections of thoughtful essays by a variety of authors that have appeared in the University of Chicago Law Review and the Journal of Legal Education. See 61 U. Chi. L. Rev. 527-58 (1994); 36 J. Legal Educ. 1-23 (1986).
⁴. I made the calls in December 1993. To obtain more candid answers, I promised to keep the students' identities confidential.
study. I just contacted a small number of journals that I felt would give me a representative sample of what generally occurs at most law journals. In making my telephone calls, I did not speak with all of the editors at any particular review. Instead, I merely spoke with the first editor willing to talk to me. A serious study would involve more journals and deeper questioning.

Second, my own biases may have affected the survey. I served as an editor of a law review not too long ago. As a result, before calling the journals, I must admit that I already had in mind that student editors usually are reasonable people who take reasonable actions. Someone without my particular background might have pressed the students harder.

Despite these weaknesses of the survey, I found calling the law reviews both interesting and informative. The following sections briefly describe my questions and the answers that I received.

A. Complaints by Authors

Before calling anyone, I thought that perhaps authors simply might be taking editorial disputes too seriously. I know that quarrels with students sometimes have reduced fellow law teachers to tears. Yet, in my own limited experience, I never have had any serious problems. Although student editors have a reputation for doing things that "drive us crazy," they have not done them to me.

To get a different perspective, I decided to ask the student editors what they thought about the typical complaints by authors. Somewhat to my surprise, all of the students quickly agreed that painful struggles for control of the text did occur. Some even laughed about the standard faculty lamentations. When I called the Harvard Law Review, for example, I told an editor that I was looking for information to combat the image of student editors as tyrants who torment professors by overediting. Without pausing, the Harvard student responded: "And you are calling us for that?"

An editor at the Texas Law Review, however, perhaps best summarized the prevailing view among student editors. He agreed that authors might find the editorial process annoying, but he considered the annoyance simply a matter of just desserts. "If authors don’t want

us to edit," he said, "they should not send us such trash." (In fact, he
did not use the word trash.) Other editors voiced similar sentiments.

B. Editorial Policies

In many disputes between authors and editors, students cite the
editorial policies of their journals to support their proposed editorial
improvements. For example, a student editor might say: "Our edito-
rial policy requires every article to begin with a detailed road-map of
the subjects that it will discuss." When authors disagree with editorial
policies, the students often respond that the policies are not
negotiable.8

I wondered whether student editors truly consider their editorial
rules inflexible or whether they actually are willing to create excep-
tions. When I called the students, to obtain the most candid answers
possible, I asked them to tell me about their past experience rather
than about what they planned to do in the future. The editors at each
journal conceded that, when sufficiently pressed, they had yielded to
authors on nearly every editorial matter with the possible exceptions
of things like Bluebook form and spelling.

Some journals, to be sure, require more pressing than others
before they will waive an editorial policy. A student at San Diego told
me that she and her fellow editors try to avoid struggles. Even if that
is true, not everyone shares this easy-going view. At Pennsylvania or
Columbia, I am sure, the editors do not roll over each time an author
objects. The editorial policies at those schools may bend, but not
easily.

C. Winners and Losers

As a follow up question, I asked the student editors for general-
izations about who succeeds in causing them to back down when they
ask for editorial changes. I found out something that I did not realize
and that, perhaps, many authors do not know. The editors at all of the
journals that I contacted agreed that two kinds of authors generally
get their way in struggles for control of the text.

First, every journal, from Harvard to George Washington to
Northwestern, said that the prestige of the author makes a big differ-

8. For complaints about law review editorial policies, see James Lindgren, Fear of Writing,
78 CAL. L. REV. 1677, 1680-94 (1990) (blasting the editorial rules in the Texas Law Review
Manual on Style (6th ed. 1990), which most law reviews follow); Sanger, supra note 2, at 517
(objecting to editors' "stubborn adherence to rules").
ence. The editors, in particular, make a conscious effort not to push around well-known professors and judges. This tendency reflects both an old-fashioned respect for authority and a self-interested desire not to alienate the best authors. Yes, the practice is elitist. But at least it offers some solace to the famous. (An unfortunate corollary, though, is that to the extent you do get kicked around by the editors, you have a painful indication about where you stand on the publishing pecking order.)

Second, every journal agreed that there is something even more important than being famous: It is being stubborn. All of the editors with whom I spoke agreed that almost any author can get his or her way by emphatically saying: “No, no, no!” People who persist, in other words, tend to prevail. The students, in fact, were quite eager to tell me stories about bullheaded authors who obdurately had refused to accept editorial changes.9

Here is why I think stubbornness works. Struggles for control of the text can end in three possible ways: First, the student editors can rescind their agreement to publish a piece if the author refuses to alter it. Second, the author can pull an article if the students insist on revisions. Third, either the students or the author can back down.

The first possibility almost never happens. Students generally feel that, as matter of both honor and contract, they have no power to rescind their agreements to publish.10 In addition, cutting a piece usually would leave a gap in the journal that the students could not fill. The editorial process often takes several months; as a result, students rarely could substitute a new article at the last minute for one that they decided to drop.

The second possibility also rarely occurs. Famous stories abound about student editors who have pushed authors near to the breaking point.11 Yet, as Professor Carol Sanger has put it: “Pulling pieces is also not part of the law school culture.”12 Most authors simply would be ashamed to withdraw their work. They ask themselves: “Can I really let ‘them’ get to me this badly? Will it look like a tantrum to my colleagues?”13

9. If you are looking in this footnote for names, I am sorry to disappoint you. I promised not to tell.
10. See Note, supra note 1, at 1128.
12. Sanger, supra note 2, at 524.
13. Id.
As a practical matter, that leaves only the third possibility, namely, that one side or the other will give in. Students have considerable leverage. They outnumber the author and can wear him or her down gradually with an unending barrage of suggested revisions. Students realize, moreover, that they can put more energy into any particular struggle because they edit only a few articles in their short tenure. Authors, by contrast, may have a weaker will to fight because they face struggles year after year every time they publish.

Authors, though, have a potent ally; time is on their side. Student editors have deadlines to meet. After all, no matter what else happens, they have to get the law review out. Writers, by contrast, usually can wait a long time for publication without much consequence. As a result, when a sufficiently lengthy impasse occurs, student editors have to yield to a stubborn professor.

II. FACULTY RESPONSES

Even if authors can win struggles with student editors through perseverance alone, the struggles still are problematic. Authors and students both have better things to do than fight about editorial changes. Yet, the ability of authors to win merely by holding out suggests that authors should not consider the problem very grave; if worse comes to worse, they have a remedy. As a result, I think faculty members ought to keep the problem of struggles for control in perspective.

A. Dramatic Responses

Authors do not need to quarrel with student editors about the revision of their articles. In fact, they can avoid struggles with students in two ways. One way is simply to go along with whatever changes the student editors want to make. The other way is to stop publishing in student-edited journals. Neither of these alternatives, though, seems worth the price.

1. Surrender

Professor Mark Tushnet argues in an accompanying piece that authors should not worry much about what student editors do to their

14. See id. at 523.
work. In accordance with current theories of literary criticism, he asserts that a text can have no objective meaning. Instead, every reader attaches to any text a meaning that he or she chooses. Authors and students, as a result, have no reason for struggling over what an article says; especially at the margin, neither the author nor the editor can control the article’s meaning.

I am skeptical about Tushnet’s theory, but I agree that authors often lose nothing by surrendering to student editors. In fact, I seldom object when editors revise the style and diction in my manuscripts. If they think that the word “forbid” sounds better than “prohibit,” they can change it. The students may be right, and the revision most likely will not affect anyone’s understanding of my work.

Yet, the particular words and arguments in an article sometimes can have consequences. Imagine, for example, how confused Hohfeld’s article on jural relations would have become if the editors at Yale indiscriminately had changed “rights” to “privileges” or replaced “disabilities” with “liabilities.” When students attempt to change something that matters, authors should not surrender without a fight unless the students are correct in their views.

Editing also can affect style. Some legal writers have developed superbly polished means of expressing themselves. Justice Antonin Scalia and the late Professor Arthur A. Leff come to mind. An author who surrenders to every editor who suggests a change risks losing the chance to give a unique character to his or her work. That seems too high a price to pay for avoiding disagreement.


17. On the question whether texts can have a certain meaning, I share the view expressed by Judge Kozinski in Trident Center v. Connecticut General Life Insurance Co., 847 F.2d 564 (9th Cir. 1988). If words cannot express ideas, then we cannot have law; contracts, statutes, and judicial opinions all rest on the “basic principle that language provides a meaningful constraint on public and private conduct.” Id. at 569.


20. Stylistic changes recommended by student editors often deprive writing of its character because many law reviews follow awkward rules of style. See Lindgren, supra note 8, at 1697-99.
2. Faculty Journals

In recent years, many legal scholars have advocated creating more faculty-edited law journals. These journals might have a variety of advantages over student-run publications. In particular, because faculty editors have more legal experience, they theoretically would do a better job editing. As Professor Richard Epstein explains in an accompanying essay, faculty generally can be expected to demand fewer unreasonable changes or to attempt to usurp control of the text.

Yet, at present, all authors cannot publish in faculty journals. However good the journals may be, not enough of them exist to print everything that writers produce. More than 250 student-run journals currently publish about 150,000 pages of law review articles every year. Law faculties could supplant these law reviews with their own journals only at great cost. Faculty editors require a salary, while student editors generally do not. If the main purpose is to avoid run-ins with students, the price again seems too high.

B. Modest Responses

Instead of trying to avoid struggles with students for control of the text, faculty members ought to work at developing more effective and more pleasant ways of dealing with law review editors. Although stubbornness may work as a last resort, no one wants to be obnoxious. I recommend two approaches. The first is to help students to understand their own self-interest. The second is to develop editing guidelines that authors could cite as authority when they think students have overstepped acceptable bounds.

1. Self-Interest Properly Understood

The shortness of law school insures that student editors never hold their jobs for more than about one year. As a result, many students may not take a very long-term view of their law reviews. Instead, they may do things that have short-term benefits, but that cause trouble over time.

21. See Cramton, supra note 11, at 9-10 (describing the reasons for growth in peer reviewed publications).
23. See Cramton, supra note 11, at 2.
24. See Note, supra note 1, at 1136 (discussing the practical problems of replacing student editors with faculty editors).
Scorched-earth editing provides one example. Student editors may improve a few pieces by editing every sentence. Over time, however, they may scare away good authors who do not want to subject themselves to the process. Students might find it in their self-interest to lighten up a little bit, even if it means not getting every change they want into every article that they print.

Unfortunately, many student editors either have not understood this point or have not implemented it. I asked all of the journals whether they ever "cut deals" with authors regarding editorial stages. For example, I asked whether they ever might make a proposal such as: "If you publish with us, all we will do is fix the grammar and check the footnotes for content and bluebook form."

None of the editors, at the time, admitted to entering into deals like that. Indeed, many were shocked at the very possibility. Some explained that it would compromise the integrity of the journal. Others gave no reason.

Since I made my telephone calls, however, a significant development has occurred. The University of Chicago Law Review independently decided to take a substantial step in the direction that I proposed. Last spring, the articles editors adopted a policy of "substantial deference to authors."²⁵ With the express hope that the authors would send them better articles, the editors vowed not to require substantial changes after they accept a manuscript.²⁶

I hope that this wise approach works. Law journals all compete for the best articles. The contest is not for money, but for prestige. Virginia tries to take good articles from Texas, Columbia tries to take good articles from Cornell, and so forth. Lighter or more reasonable editing might make some journals more attractive to authors than others.

2. Editorial Policies from the Author's Perspective

As noted above, when an author struggles with a student editor for control of the text, the editor often will cite journal policies as a reason that the author must back down. Authors, at present, have no such policies to hurl back at the editors. They have to persuade the editor not to follow the journal policy mostly by perseverance.

²⁶. See id.
Authors might do better if they could agree on a set of their own policies. For example, the American Association of Law Schools or some other like body could publish general standards of what is and what is not appropriate law review editing. When an editor asks for an unreasonable change, the author might refuse and politely cite whatever policy the request violates. Although the policies would not have any binding force, students might defer to them if they had the endorsement of many faculty members.

What policies should authors adopt? The policies should not strive to eliminate differences in editorial styles or straightjacket student editors. Rather, they should seek to develop an orderly environment in which struggles rarely occur and in which authors’ interests do not fall by the wayside.

No one has prepared a comprehensive list, but several scholars have proposed a few possible policies. Professor Jim Lindgren, for instance, recently has listed nine important guidelines for student editors. For example, he recommends that students should have to announce page limits up front and they should allow authors to decide what to cut to conform to those limits. Professor Carol Sanger advises that students adopt policies that distinguish the “necessary” types of changes from the merely “felicitous.”

To respond to certain frustrations that I personally have felt, I would recommend that the list also include the following three policies:

- authors may use any construction endorsed as grammatical by at least one well-recognized style manual;
- student editors must announce their editorial procedures and policies prior to editing; and
- editors who look at articles late in the editorial process generally cannot revisit material other editors already have approved.

Other scholars, of course, may have additional useful ideas.

28. Id. at 538.
29. See Sanger, supra note 2, at 520.