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EDITED TRANSCRIPT OF THE COMMENTS OF THE PANEL
AT THE AALS PROPOSED SECTION ON
SCHOLARSHIP AND LAW REVIEWS

TOPIC: THE STRUGGLE BETWEEN AUTHOR AND EDITOR OVER
CONTROL OF THE TEXT

CHIP LUPU:

I want to commend everyone on the panel for his or her remarks. . . . I think we ought to turn to the panel for whatever brief comment they would like to make on one another and then turn it to the floor for questions.

JIM LINDGREN:

A few things. First, I once did a survey of a journal that announced that the authors always get their way. I called up ten law professors chosen at random from the prior two volumes. Six of the ten said they'd had style disagreements with the journal. Four of the six said that they were not resolved in ways that they were satisfied with, that there were still things in the manuscript that they wouldn't have put in, but they felt they had to give in. It was interesting that of the two people who said they had no disagreements, one was Mark, who said he thought it wasn't worth worrying about all these problems. He pretty much let students have their way. . . .

Second, I also get rejection letters after an article is already published. I got a hilarious rejection letter this year from *Duke*, which was sent after something was published that came out in *Penn. Duke* said that they're rejecting the article—and as their reason, they said something like: "By now your article is either already published, out of date, or superseded by another article." They didn't bother to pick which one. I thought that was quite funny.

Last, as far as the strategy of putting your foot down and being intransigent, I've been doing that the last three or four years. And I've found that it usually works. It doesn't always work, but it usually works, and it's a reasonably good strategy. I first try to find out whether they would like to be educated about prose style—and if so, I try to give them a bit of an education over the phone about the kinds of things they are doing in their editing that are wrong. Then, if they don't really want that education, I simply say, "Well, are you going to publish it or do I pull it?" And they usually say they want to publish it.

ANN ALTHOUSE:

I guess I want to respond to Mark a little, and then I won't take up any more time. But, I think I understand enough of reader-response theory that I have my own reader-response theory of reader-response theory, and I sort of know what you're talking about. But, I still care what my text looks like, even if I completely understand that every reader is going to turn that into their own work within their own head. I care what my text going out there looks like. I cannot let go of that. I want my prose to be what I wrote, what comes from me. And I think that may be the first step in a process that is completed by the reader, but that's my step, and I care about it, and I can't let go of that. That really matters to me. That's all I'll say about that.

MARK TUSHNET:

That is the romantic view of authorship. The sense in which it is your text when you are sitting in your office writing on the word processor, I mean, that's a contestable question—or not. One variant of this is that Joyce Carol Oates's *Because It Is Bitter and Because It Is My Heart* is not a work in legal scholarship. And if you were sitting in your office writing *Because It Is Bitter and Because It Is My Heart*—well, it can get complicated—but if you were writing that, you would not be writing a work of legal scholarship. It would be your work, but it wouldn't be a work of legal scholarship. When you're writing an article about standing, even *Standing, in Fuzzy Slippers*¹—which is a great article—

ANN ALTHOUSE:

It's *fluffy* slippers—everyone says *fuzzy* slippers.

MARK TUSHNET:

Fuzzy, fluffy, whatever. It just goes to show you.

RICHARD EPSTEIN:

It shows that you are an inattentive reader rather than that she is an inattentive author.

MARK TUSHNET:

[Or have a bad memory.]

RICHARD EPSTEIN:

Mark has, I think, basically given us a broad discussion of literary theory, and not a more focused inquiry into legal writing. So on this question, I want to side very strongly with Ann. My analogy would be to architecture. Anyone who has been in the business will tell you as

1. Ann Althouse, *Standing, in Fluffy Slippers*, 77 VA. L. REV. 1177 (1991).

follows: An ordinary person walks in and looks at a room and will form some impression of it, and that impression will usually be accurate, after a fashion. But you take a professional who works in the area and these details come to the surface. My wife, who does design and construction work, has that kind of an eye, and it can be disconcerting to those of us who do not. She can walk into a room and quickly list twenty-five things that are wrong with it, from the ceiling to the carpets. I come out and say that the room seemed all right but not terrific, without knowing why.

It is like that with authorship. If you leave loose ends in your work, someone will perceive them. They might not even bother to figure out why your paper isn't a strong or distinguished piece of work, but they will know it at an intuitive level. If you fix up your prose, then you will project a far more positive and powerful image. There comes a point at which you become obsessive on matters of detail and enter the realm of diminishing returns, but still I think that you as author should say that it is time to quit rather than leaving that decision in the hands of another rewrite person. I have published articles where I have yielded to editors on points that I thought were wrong. Five years later when I reread the offending passage, I still recoil just a little bit, and say, "No, that isn't me at all." I also feel sad that I have capitulated on points where I thought I was correct.

Writing is a very emotional process. Family comes first, and so too bodily security. But after that I think most people, or at least most academics, define themselves by their published work. Speaking only for myself, my own sense of self-esteem is very tightly bound up with what I write, wholly apart from what the world may think about it. And on this point at least I agree with those who stress the importance of "voice" in the narrative tradition. I would hope that all editors have an attitude of respect and caring for authors. And I must say that here is one point on which I don't think David Hume got it quite right. Carelessness and inattention do not afford the appropriate solution. I think that some attention and some respect really are preferable.

GREG MAGGS:

I agree with everybody. Well, I sort of do. I share Ann's view that it does matter what you say, but I also share Mark's view that I don't really care in the sense that, by the time I'm done with these editorial processes, I'm so worn down that anything they suggest in the last two or three turns, I just don't deal with it anymore. I want to get done. I want to write something else.

RICHARD EPSTEIN:

Fear of the coyotes, right? The way in which coyotes hunt is you have this stag which can outrun any one of them—that's you, the author. And then you have these coyotes—that's the law review editors. So you run from them. You beat the first one. You say, "Oh, I'm free. Oh no, there's another coyote coming." It's a little bit like the video games, because you can never quite escape them all. After a while, you are prepared to yield in order to avoid another rewrite of material that has somehow gone stale.

CHIP LUPU:

. . . I'm not sure that everyone was right, but I know that Richard and Greg were both right. When you're done, you're beaten down and you say, "Just get it off my desk." And then five years later, if you look at it and it wasn't true to yourself, you won't feel very good about it. Those things fit together quite nicely.