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STUDENT EDITORS AND THE LAW
REVIEW PROCESS**

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WHOSE ARTICLE IS IT ANYWAY? Student Editors and the Law Review Process

Josephine (Jo) R. Potuto*

Strange sounds emanate from a colleague's office. Moans and groans. Shouts of "No!" Pacing back and forth. Wails of dismay. Perhaps my colleague holds her head in her hands or reaches for an ice pack. The sounds certainly suggest as much. Two guesses. Either she is grading exams or she is reviewing edits made to her article by law review student editors.

Formal criticism of student-run law reviews often focuses on lead article selection.¹ I share the concerns that student editors are not ideally placed to assess the quality of articles submitted to them for possible publication, and that they incline toward the au courant at the expense of what might be more substantive but less trendy.² My focus in this Article, however, is on how law students edit the articles they select, not on how they select the articles they edit.³

* Potuto is the Richard H. Larson Professor of Constitutional Law at the University of Nebraska College of Law. She has authored more than two dozen law review articles in nearly 20 different law reviews, a sufficient sample from which to observe the student editing process. Potuto readily admits that some law reviews and some student editors do not do the things she describes in this Article. The Article is directed at those that do, and she apologizes to those who don't. Potuto also readily admits that she is on the high end of authors who pore over editing. In a past life Potuto worked in editing and production. She has lectured on the elements of good writing and persuasive writing. She has published a book, *Winning Appeals* (1992) that discusses the elements of good writing. She owes thanks to several colleagues who shared their own experiences with law review editors and the law review editing process. In particular she owes thanks to Professors Bill Lyons and John Lenich at the University of Nebraska College of Law, for their review of the draft and substantive suggestions. Finally, she owes thanks to the University of Nebraska College of Law for the support provided through the McCollum Summer Research Fund.

¹ E.g., Nance & Steinberg, *The Law Review Article Selection Process: Results from a National Study*, 71 *Alb.L.Rev.* 565, 571 (2008); Brophy, *The Emerging Importance of Law Review Rankings for Law School Rankings, 2003-2007*, 78 *U. Colo. L. Rev.* 35, 35-36 (2007); Weisberg, *Some Ways to Think About Law Reviews*, 47 *Stan. L. Rev.* 1147, 1148 (1995); Leibman & White, *How the Student-Edited Law Journals Make Their Publication Decisions*, 39 *J. Legal Educ.* 387, 396 n. 39 (1989); Jensen, *The Law Review Manuscript Glut: The Need for Guidelines*, 39 *J. Legal Educ.* 383, 385 (1989); Cramton, *The Most Remarkable Institution: The American Law Review*, 36 *J. Legal Educ.* 1, 7-8 (1986). Perhaps the earliest, and certainly one of the most damning, critiques of law reviews was authored by Yale Law Professor Fred Rodell. Rodell, *Goodbye to Law Reviews*, 23 *Va. L. Rev.* 38, 45 (1936). Rodell criticized everything legal, or so it seems. See Rodell, *Woe Unto You, Lawyers!* (2d ed.1987).

² Some student editors agree. See Zimmer & Luther, *Peer Review As An Aid To Article Selection In Student-Edited Legal Journals*, 60 *S.C. L. Rev.* 959 (2009).

³ This aspect of law reviews also has been criticized on occasion, particularly the undue infatuation of student editors with Blue Book style and a preference for "exhaustively footnoted tomes;" Nance & Steinberg, *The Law Review Article Selection Process: Results from a National Study*, 71 *Alb.L.Rev.* 565, 568-69 (2008). See Sanger, *Editing*, *Georgetown L. Rev.* 513 (1993).

Law professors joke that law student editors use the editing opportunity to avenge every snide comment one of us made in class, every less than clear lecture, and every too-long assignment. Not to mention finals and grades. We know better, of course. Law student editors are very good students who take their spading and editing responsibilities seriously, spend endless hours, try to do the best job possible, and take the high road when criticized.⁴

Lead article writers, whether professors, judges, or practitioners, are experts in our fields invested in producing high quality work. What sets law professors apart is that we do not march to the same time and bottom line clocks that routinely cabin the work of other legal professionals. We have more opportunity to indulge in getting just the right turn of phrase and to kvetch over the precise language that best makes a point. Given the strictures of “publish or perish,” we also may have more riding on how a finished article reads.⁵ Truth be told, we are at one end of the bell curve in how we react to law review editing.

This Article is prompted by experiences lived and experiences shared by colleagues across the country. I wrote it as catharsis. I expect it to resonate with law professors, provide “aha!” moments, and perhaps offer the solace that comes from shared pain. I entertain a hope that it might reform or at least inform student editors as they edit our work.

Although most of what I say is by nature of criticism, complaint, or even whine about student-edited law reviews, I do not advocate for peer-reviewed journals. I am well aware that they bring their own set of issues.⁶ There is no perfect in this world. In a world bound by finites, there is good reason to conclude that student-managed law reviews serve the interests of law students and law professors alike.

⁴ We know this from personal experience: most law professors were on law reviews. But see Oleson, You Make Me [Sic]: Confessions of a Sadistic Law Review Editor, 37 U.C.Davis L.Rev.1135, 1143-44 (2004).

⁵ See, e.g., Martinez, Babies, Bathwater, and Law Reviews, 47 Stan. L. Rev. 1139, 1142 (1995).

⁶ See notes 31 to 37 *infra* and accompanying text.

I. EDITORS AND EDITING

There are waves in fashion, in movie genres and TV shows, and also in the way law students edit. A common thread is the failure to honor a law professor's text.⁷

In this respect, consider the debate among the founders regarding the scope of the necessary and proper clause.⁸ Chief Justice John Marshall argued that there was power to do anything appropriate not outright prohibited.⁹ Thomas Jefferson argued for exercise of power only when impelled by "a necessity invincible by any other means."¹⁰ He would "lace them up straight,"¹¹ and permit only what clearly was essential. Jefferson never dealt with a law review, and law reviews and student editors are piddling matters compared to the debate over federal power. But Jefferson states the standard that should be followed here too, and he phrased it so very elegantly.¹²

A. Introductions and Topic Sentences: No Summaries Need Apply

⁷ Editing is a skill, as is an editor's ability to communicate with an author. The American Law Institute, for example, offers training for editors that "explore[s] the psychological dynamic that often interferes with communicating an edit." ALI CLE, *Managing the Legal Writing of Others*, http://marketing.ali-cle.org/managing-the-legal-writing-of-others-last-chance?utm_medium=social&utm_source=email. A law review editor-in-chief suggests that law students should be taught how to edit. Saunders, *Student-Edited Law Reviews: Reflections And Responses of An Inmate*, 49 *Duke L.J.* 1663, 1684 notes 76 to 80 (2000).

⁸ U.S.Const.art.1 § 8, cl. 18.

⁹ See *McCullough v Maryland*, 4 *Wheat.* (17 U.S.) 316, 421 (1819) ("Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."). Law review articles also are not a constitution that is expounded, part of Marshall's justification for a broad scope to "proper" in the necessary and proper clause. *McCullough v. Maryland*, 4 *Wheat.* (17 U.S.) 316, 407 (1819).

¹⁰ Jefferson's *Opinion on the Constitutionality of a National Bank* : 1791 *The Avalon Project*, http://avalon.law.yale.edu/18th_century/bank-tj.asp ("Nothing but a necessity invincible by any other means can justify such a prostitution of laws, which constitute the pillars of our whole system of jurisprudence. Will Congress be too strait-laced to carry the Constitution into honest effect, unless they may pass over the foundation-laws of the State government for the slightest convenience of theirs?").

¹¹ Jefferson's *Letter to George Washington, Opinion on the Constitutionality of a National Bank*, 15 February 1791; *The Works of Thomas Jefferson, Federal Edition*, Editor: Paul Leicester Ford, (New York and London, G.P. Putnam's Sons, 1904-5) Vol. 6, quoted in Bailey, *The Elastic Clause: The Necessary and Proper Clause* (October 6, 2011), <http://www.thefederalistpapers.org/history/the-elastic-clause-the-necessary-and-proper-clause>.

¹² Jefferson had his own issues with revisions of his text. E.g., Lehrman, *Jefferson May Have Drafted the Declaration of Independence But He Wasn't Happy Being Edited*, *Fox News* (July 2, 2010), <http://www.foxnews.com/opinion/2010/06/30/lewis-lehrman-editing-declaration-independence-jefferson-franklin-congress/>; Shmoop Editorial Team, *Thomas Jefferson* (November 11, 2008), <http://www.shmoop.com/thomas-jefferson/>.

Introductions and topic sentences summarize a fully developed discussion to follow.¹³ They are road maps that signal the direction of a discussion and the most important points to be made. Law student editors fail to appreciate this. They persist in requesting amplified textual discussion of summary points.¹⁴ One result is unneeded repetition of the full discussion to follow. Because a writer might avoid using the same words twice in very close proximity, parallel phrasing may result; parallel phrasing triggers reader uncertainty.¹⁵ Worse, greater textual development of introductions and topic sentences necessarily means that they become more than summaries. In turn, they can be too detailed to be good road maps. Road maps are important. They signal the full story to be told and enhance comprehension and ease of following thematic development.¹⁶

B. Footnote Mania

I am as fond of footnotes as the next person. Fonder than most, actually. But not when they are used without regard to purpose, need, or good sense. It is said that nature abhors a vacuum.¹⁷ Law students find a vacuum in every unfootnoted sentence. If they had their way, texts would read as a series of phrases separated by hiccoughs – technically known as footnote superscripts – that invade, annoy, and interrupt a reader’s flow of reading.

¹³ Introductions to each section of an article often quickly summarize the main points of preceding sections, both to remind a reader of the salient points and as vehicle to build on them. Law review editors often seek amplification of these introductions too, even though what is summarized was said, in detail, in preceding sections of an article.

¹⁴ Additional to (or substitute for) the desire for textual amplification of topic sentences is a student editor’s penchant for footnotes that cite to where a full discussion will be provided, even if that discussion begins in the very next sentence. Student editors similarly seek footnotes to every declarative sentence in an introduction. In this case, at least the full textual discussion comes pages later.

¹⁵ Using the same word each time to describe the same thing enhances comprehension; using different words suggests intent to convey different meanings. See Carroll, Measurement Properties of Subjective Magnitude Estimates of Word Frequency, 10 *J. Verbal Learning and Verbal Behavior* 722-69 (1971).

¹⁶ See, e.g., Luiten, Ames, and Ackerson, A Meta-Analysis of the Effects of Advance Organizers on Learning and Retention, 17 *Am. Ed. Research J.* 211-18 (1980); Bransford and Johnson, Consideration of Some Problems of Comprehension, W.G. Chase, ed., *Visual Information processing* 400 (1973). See generally, Potuto, WINNING APPEALS: Persuasive Argument and the Appellate Process 1-2, 9 (NITA 1992).

¹⁷ The first to describe the phenomenon apparently was Paramenides. See <http://www.eoht.info/page/Nature+abhors+a+vacuum>. It often is attributed to Aristotle. See <http://abyss.uoregon.edu/~js/glossary/aristotle.html>.

Footnote mania takes several forms.

First, and probably tops on the hit parade, is a student editor's requests for citations to the obvious. I recently completed an article about college athletics in which I wrote, "Student-athletes are talented athletically, but professional athletes in general are more talented than all of them and much more talented than all but a few of them."¹⁸ The student editor wanted a footnote.

A second, and related, form of footnote mania is a student editor's request for a citation when a direct source is unlikely, resulting in a lengthy textual footnote discussion or resort to some other writer who said the same thing, but with no more authority. Student editors are easily satisfied. So long as a sentence is footnoted, any old footnote source often will do. Indeed, student editors are content if an author cites to her own earlier article where she made the same or a related assertion, even when that earlier assertion had no authoritative external source. This loop-around may satisfy a student editor's need for a footnote, but it also betrays a failure to understand a footnote's function.

There are good reasons for an author to cite to her own published article. Citing it as authority for an assertion restated in a later article is not one of them. An assertion that requires external authority as support when an author says it the first time is no more authoritative because the same author said it twice, or 50 times for that matter. Nor does it help, except better to disguise the absence of external authority, when an author cites to a secondary source whose own authoritative source is the author's unfootnoted assertion in an earlier article.

¹⁸ Potuto, Lyons, Rask, What's in a Name? The Collegiate Mark, The Collegiate Model, and The Treatment of Student Athletes, 92 Oregon L. Rev. 879, 917 (2014). The same law review editor also wanted source support for the statement that "March Madness is a national story with office bracket pools everywhere." I tried this one out on a friend with no interest in sports. Even she had heard of March Madness. Even she was aware that office pools were everywhere. I single out the examples from this article not because the footnote requests were unusual – they were not – but because it is the most recent and, therefore, the freshest in memory.

A third, and related, form of footnote mania is a student editor's request for source support for an author's opinion. If an expert is not entitled boldly to state an expert opinion, then what's an expert for?¹⁹ A particularly virulent form of this mania is the student editor who first edits out that part of the text that underscores it is an author's opinion, thereby making the text read as a statement of fact, and THEN asks for a citation.

A fourth form of footnote mania is a student editor's penchant for footnoting every sentence in a general text discussion of the same case or article, resulting in a series of "ids" in footnotes, frequently with no change in page number. These footnotes not only are unnecessary, but they also are unsightly. Quotations, or discussion of specific aspects of a case, need to be footnoted, but not every sentence in a general discussion.

C. Making Changes Just Because They Can

When student editors make revisions, they substitute either their [lack of?] substantive expertise for that of an author or their style for hers. They seem to believe, wrongly, that they must revise texts else they fail as editors. The inevitable corollary: the more edits, the better the editor.

I once painstakingly went through hundreds of edits and then painstakingly wrote a lengthy memo explaining why I rejected many of them. I also rewrote edited text so that I could accommodate what prompted a rewrite, but in my voice, not theirs. All in all it took upwards of 40 hours. The law review response: "You don't need to tell us why you rejected our edits. If you don't like them, just reject them."

When student editors conclude that an edit clearly is warranted, they should stand behind that conclusion and at least require a law professor to explain. Any edit that they are willing

¹⁹ Sometimes law student editors "get it." See Saunders, Student-Edited Law Reviews: Reflections And Responses of An Inmate, 49 Duke L.J. 1663, 1685-86, notes 82-85 (2000).

immediately to concede should not have been made in the first place. In any event, the response to my explanation of rejected edits asked the impossible. Law professors are wired to explain, especially to students. We want the law review editing process to be a series of teachable moments.

Some examples of editing just because they can:

(1) Original Text: “The debate roiling.” Revised Text: “The debate boiling.”

(2) Original Text: “Ties to.” Revised Text: “Connects with.”

(3) Original Text: “There often are.” Revised Text: “There are often.”

(4) Original Text: “Equal treatment.” Revised Text: “Equality of treatment.”

(5) Original Text: “These rules.” Revised Text: “The rules.” NOTE. The preceding sentences discussed several rules among a body of rules.

(6) Original Text: “No one regulated.” Revised Text: “Nothing regulated.” NOTE. Things don’t regulate. People and associations of people do.

Law review editors also unknowingly change meaning. Again, a few examples suffice:

(1) Original Text: “Over time there was less interest.” Revised Text: “Over time there was little interest.”

(2) Original Text: “Value.” Revised Text: “Valuation.”

(3) Original Text: “All this money is parent to the perception that” Revised Text: “All this money is apparent to the perception that” NOTE. This edit highlights the failure of law students to recognize aphorisms or famous quotes and the play on words in which a law professor occasionally might indulge.

(4) Original Text: “Not negligible.” Revised Text: “Significant.”

(5) Original Text: “Insulated from.” Revised Text: “Immune to.”

(6) Original Text: “Should.” Revised Text: “Would.”

(7) Original Text: “Were they to attend.” Revised Text: “Where they attend.” NOTE.

Student editors are unacquainted with the subjunctive form.

(8) Original Text: “Equally, of course.” Revised Text: “Yet, of course.” NOTE. In whose universe is “equally” synonymous with “yet?”

The edit-because-they-can phenomenon brings with it several undesirable consequences. Each edit increases the time an author must spend reviewing a returned draft and, in turn, the time student editors must take in the next go-round. Edits also often eliminate any “music” in the writing. All of us try to write with style; some of us succeed. Revisions may translate text that has cadence and rhythm into text that lands with a thud.²⁰ Thuds that enhance clarity are certainly justified. Thuds that only thud just make an unpleasant noise. In addition, edits both introduce grammatical errors and make ungrammatical that which was grammatical. They also introduce inconsistency.

Punctuation matters. A book that underscores the point is *Eats, Shoots & Leaves: The Zero Tolerance Approach to Punctuation*.²¹ A hungry panda might eat both shoots and leaves. If less hungry and also in a rush, he might be one who eats only shoots, and then leaves. There also might be a hungry killer who first eats, next shoots, and then leaves. (Hopefully the police catch him.) It all depends on the commas.

The law professors that I know are card carrying members of the zero tolerance league. I suspect most of us are. From experiences lived and shared, I believe that law student editors

²⁰ Student law review editors are not the only ones that exchange the music of text for minimal gain. Consider the beauty achieved in the King James version of the Old Testament. The newest renditions of some of the psalms may be closer to original meaning. But they pay for it by losing the poetry. Compare for example two translations of Psalm 23. Listen to the thud in the modern version: “The Lord is my shepherd, I lack nothing,” and “Even though I walk in the darkest valley.” New International Modern Translation. Now listen to the King James version: “The Lord is my shepherd, I shall not want,” and “Even though I walk through the valley of the shadow of death.”

²¹ Lynne Truss, *Eats, Shoots & Leaves* (Gotham Books 2006).

mainly are not. They insert commas between subjects and predicates. They use one comma rather than two (or none) to set off a nonrestrictive clause in the body of a sentence. They split compound verbs by inserting modifiers. They change the tense from future to present in one sentence, but not in the next. They insert commas when a speaker would not pause and omit them when a speaker would. They none of them know the rule that a semicolon replaces a comma between items when a sentence has a string of commas within items. Added to all this, they are not consistent in any of their usages.

As a colleague describes it,

Law review editors confuse changes made in unthinking obedience to the rules in the Blue Book and whatever style manual they have elevated to holy writ with improvements to an article. In addition, I suspect, although I could be wrong, that many student editors have at best a vague sense of the rules of grammar and would not know what you mean by a split infinitive, a misplaced modifier, or lack of number agreement.²²

WORD's grammar check is both an aid and a hindrance. It is an aid because WORD knows more formal rules of grammar than many law students do. It is a hindrance because WORD is not always right and because WORD highlights all failures to adhere to formal grammatical rules, no matter the style reason. It thus provides student editors with an incentive to make changes and apparent legitimacy when they do.

²² The comment is from Bill Lyons, the Richard H. Larson Professor of Tax Law at the University of Nebraska College of Law. Lyons is the Associate Editor-in-Chief of *The Tax Lawyer*, published by the Tax Section of the American Bar Association. He oversees Georgetown law students who work on the *Tax Lawyer*. Second year law students may make no substantive edits, add footnotes, or revise wording. Third year editors may suggest text or footnote changes but may not revise without the permission of the author.

Law review editors deplore sentence fragments even when used for emphasis or cadence. They always want active voice. They never approve of sentences that begin with conjunctions.²³

Winston Churchill was an artist with language. He wrote musically. He knew the meanings and connotations of words and the strictures of good grammar. He also understood that grammatical rules should not be applied invariably. He famously objected when an editor rewrote his text to avoid a sentence that ended in a preposition: “This is the sort of English up with which I will not put.”²⁴

So, grammatical rules should be followed. Check. Style sometimes permits departure from grammatical rules. Check. Law review editors often do not have the same fine grasp of grammatical rules as do law professors. Check. Style choices should be made by an author, not an editor. Check. Add all that up. The conclusion: student editors should “lace them up straight” and stick to the clearly essential.

D. They Say Potato, But They Also Say Pot-ah-to

Law professors aim for consistency in articles we write. Student editors often undermine that consistency. They do so in punctuation. They do so in capitalization. They do so in abbreviations. They do so in requests for footnote support.²⁵

A prime cause of inconsistency is that several student editors are assigned to an article. Editors focused on separate sections of text decide, in their wisdom, that they have a better idea

²³ Not only may style choice dictate use of conjunctions to begin a sentence, but formal grammatical rules do not say otherwise. See the American Heritage Dictionary of the English Language (4th ed. 2006) (“But may be used to begin a sentence at all levels of style.”)

²⁴ See Churchill on Prepositions, <http://public.wsu.edu/~brians/errors/churchill.html>.

²⁵ I once wrote, “faculty positions on campuses are going unfilled.” The student editor wanted a footnote. In the same article I also wrote “there are campus spending freezes.” This time no footnote request. If anyone can explain the difference, please email.

of how the text should read. The things they change also occur in other sections of the article, and those other editors have different better ideas.²⁶

I once used a lot of numbers in an article. Sometime the numbers showed money value. The numbers were small – “one” or “11”; middle range – “11 thousand” or “2014”; and large – “one million” or “101,715.”²⁷ The student editors rejected my numbering convention. I think that they substituted one if their own, but, whatever it was, they applied it inconsistently. Worse, they applied it unthinkingly. Among the excrescences: “one hundred and one thousand seven hundred and fifteen” and the even more horrendous “\$one million dollars.”

Some lead authors do not mind, or maybe do not notice, inconsistencies introduced through the editing process. I do.

E. Deadlines as A Movable Feast,²⁸ and Other Times When Law Professors Are The Main Course

1. Deadlines That Are Not. Student editors accept an article for publication. They spend weeks (months) in the editing process. They then return an edited draft to an author and ask for it back in five days, citing publication deadline needs. On one occasion I was asked to have a solicited article in by a date certain as the law review was under time pressure. I rushed to comply. Then the draft sat untouched for more than a month. The editing process took another month. The edited draft then was returned to me with a request for a quick turnaround, again because of law review time pressures.

Law students are busy with classes, class assignments, family, and often work obligations. Law professors are busy too. Meeting publication deadlines should be a joint effort.

²⁶ See Sanger, *Editing*, *Georgetown L.Rev.* 513,523 (1993).

²⁷ Textual illustrations reflect my numbering convention, and what was done to it, but they do not replicate actual numbers used in the article.

²⁸ Ernest Hemingway, Seán (ed.) *A Movable Feast: The Restored Edition*. Scribner's: New York, 2009.

Time is not of the essence if one side dawdles. Processes are not fair if the other side always must take up the slack.

2. Pete and Repeat. Many law reviews now take a second substantive run at an article after a law professor spends countless hours reviewing a first set of edits and returns what should be a final approved draft. Instead, a supervising editor then goes to work. That editor revises edits the prior editors made and the law professor accepted. That editor edits text the prior editors left untouched. That editor reintroduces edits the law professor rejected. That editor asks for more footnotes. The process is time consuming, ponderous, inefficient, and exceedingly irritating.

3. Read The Memo, Please. I adhere to grammatical rules and am a stickler about punctuation. Except, . . . I also aim to write the way I talk and the way written words sound when spoken. After a law review accepts an article, I provide a memo that lists the grammatical rules and other conventions that I follow. These include agreement of subject and number, no split infinitives, and no modifiers interrupting a compound verb. I also explain any particular use of passive voice I have employed because a complex or multi-varied subject means active voice would result in a lengthy, involved, awkward sentence structure.

I intend the memo to short circuit editing issues and, in turn, lessen the time needed to review an edited draft. Every lead editor assures me that the law review editors assigned to my article will heed my memo. No doubt the assurance is made in good faith. It never happens, however, and I am not sure why. A colleague opines that student editors may not understand the grammatical rules I list.²⁹ I once was told by student editors that they never saw my memo.

II. STUDENT-RUN LAW REVIEWS: GOOD FOR GOOSE AND GOOD FOR GANDER

²⁹ See note 21 supra and accompanying text.

Law reviews are good for law students.³⁰ They offer experience in managing an enterprise and acting in concert with peers. They introduce students to a wide array of legal subjects whose exploration goes deeper into discrete questions than students encounter in class.³¹ Just as writing exposes gaps in an author's knowledge and forces us to develop closely our train of thought, argument, organization, and sequencing and development of points,³² law review editing hones a law student's legal analysis and feel for thematic development and organization.

Law reviews also give students perhaps their first experience of being fully and ultimately responsible for reading and making decisions regarding content and meaning. The student editor experience may not equal a medical resident's first experience making independent and directly unsupervised judgments about patient status and treatment. But it is on that continuum.

Editing lead articles introduces students, up close and personal, to quirky, testy, sometimes ego-ridden, contributors. The skill set employed to deal with us also should work well with difficult clients as well as with supervising lawyers, senior law partners, judges, and others higher on the food chain. And, of course, tenure on a law review is a desirable resume credential, especially for law students who aspire to work for large national law firms or themselves to teach law.

Law reviews also are good for law professors. We are educators, first and foremost. Law reviews are good for us because they provide good training for our students. They also

³⁰ Indeed, law reviews originated as vehicles to educate law students. Baker, *Relics or Relevant?: The Value of the Modern Law Review*, 111 W. Va. L. Rev. 919, 923 (2009).

³¹ According to a former law review editor, law reviews prepare law students for a career in law in other ways too -- the "grueling hours," "scut work," experience of "chronic stress," and success in competitive environments as measure of worth. Oleson, *You Make Me [Sic]: Confessions of a Sadistic Law Review Editor*, 37 U.C.Davis L.Rev. 1135, 1140 (2004).

³² In other words, publish or perish has a fully supportable pedigree.

offer advantages over peer-reviewed journals.³³ They provide more outlets to place articles than can a peer-reviewed system, and they publish them more quickly.³⁴ They decrease the incidence of favoritism in article selection.³⁵ They avoid the potential conflicts that may arise when peers review the work of rivals in their fields.³⁶ These include a peer reviewer who rejects an article because its author comes from a different school within a field, because an author espouses theories with which a peer reviewer disagrees,³⁷ or even because a peer reviewer dislikes the political or social bent of an author or article.³⁸ If law student editors select articles based on an author's reputation or the school at which an author teaches,³⁹ so too do peer reviewers.⁴⁰

III. A MODEST PROPOSAL⁴¹

³³ There are advantages to peer reviewed journals, of course. E.g., Zimmer & Luther, *Peer Review As An Aid To Article Selection In Student-Edited Legal Journals*, 60 S.C. L. Rev. 959 (2009); Socha & Rzepiennik, *All Journal Articles Are Not Created Equal: Guidelines For Evaluating Medical Literature*, 67 Def. Couns. J. 61 (2000).

³⁴ In a peer-reviewed system, articles are submitted to one journal at a time. See, e.g., Posner, *The Peer Review Experiment*, 60 S.C. L. Rev. 821, 821-22 (2009).

³⁵ E.g., Peters and Ceci, *Peer-Review Practices of Psychological Journals: The Fate of Published Articles Submitted Again*, 5 *Beh & Brain Sci* 187 (1982); Jacobsen, *Scholars Fault Journals and College Libraries in Survey by Council of Learned Societies*, 42 *Chron of Higher Educ* 1, 1 (Aug 6, 1986). Favoritism is not eliminated, however. It can creep in through the back door when law professors submit their articles to colleagues at the school where the review is published and ask them to recommend it to the law review staff.

³⁶ Articles reviewed in peer reviewed journals are anonymous. There nonetheless are times when formal anonymity is pierced. For example, a field may be so small that everyone in the field knows each other. In addition, word of an article in progress or a research project undertaken may be widely known.

³⁷ E.g., Horrobin, *The Philosophical Basis of Peer Review and the Suppression of Innovation*, 263 *JAMA* 1438, 1438 (1990).

³⁸ E.g., Ceci, Peters, Plotkin, *Human Subjects Review, Personal Values, and the Regulation of Social Science Research*, 40 *Am Psych* 994, 1001 (Sept 1985).

³⁹ E.g., Leibman & White, *How the Student-Edited Law Journals Make Their Publication Decisions*, 39 *J. Legal Educ.* 387, 396 n. 39 (1989); Nance & Steinberg, *The Law Review Article Selection Process: Results From a National Study*, 71 *Alb. L. Rev.* 565, 571 (2008).

⁴⁰ Peters and Ceci, *Peer-Review Practices of Psychological Journals: The Fate of Published Articles Submitted Again*, 5 *Beh & Brain Sci* 187 (1982); Jacobsen, *Scholars Fault Journals and College Libraries in Survey by Council of Learned Societies*, 42 *Chron of Higher Educ* 1, 1 (Aug 6, 1986). One study concluded that a random selection of articles produces almost as much agreement in article selection as does agreement among peer reviewers. Cole and Simon, *Chance and Consensus in Peer Review*, 214 *Science* 881, 885 (1981).

⁴¹ The title comes from Jonathan Swift, *A Modest Proposal for Preventing the Children of Poor People From Being a Burthen to Their Parents or Country, and for Making Them Beneficial to the Publick* (1729), *The Electronic Classics Series*, Jim Manis, Editor, PSU-Hazleton, <http://www2.hn.psu.edu/faculty/jmanis/swift/swift-modestproposal6x9.pdf>. Swift satirically suggested that the impoverished Irish might ease their economic troubles by selling their children as food for rich gentlemen and ladies.

In one way at least, it would be nice if law student edits always changed the meaning of text, altered tone, or betrayed bad grammar. At least then a law professor could hit “all-reject” and be done with it. Instead, law students have the audacity to make valuable contributions to a draft.

Law students identify areas where clarity is needed, even if their attempt to bring clarity misstates the text or eliminates the music. Their spading exposes errors in text, surfaces sources that fail to support textual statements, and assures the accuracy of footnoted page references. On occasion, they highlight a textual statement that requires footnote support. On occasion, they find grammatical errors neither justified by style nor intended. On occasion, they pinpoint awkward phrasing. And, yes, the editing process is a two-way street. While most of us write well and clearly, there are some who need an editor’s help.

Their contributions are valuable, and appreciated. Unfortunately, they may be jewels buried in the editing detritus from which law professors must dig out.

Listed here are some suggestions to recalibrate the editor/author balance.

1. Remember Thomas Jefferson. Law review editors should honor the substantive knowledge and style predilections of a law professor.
2. Remember Winston Churchill. Law review editors should assume that a law professor who departs from the rigid application of grammatical rules did so purposefully.
3. To curb editing enthusiasm, law review editors should imagine themselves explaining each edit to the law professor author. They should make only those edits that they both are able to explain and would be willing to explain in person.

4. Law review editors assigned to a section of an article should read the full article before beginning to edit. This might decrease the inclination to ask for explanations and for footnote sources, and it also might lead to greater consistency overall.
5. If an author provides a list of writing predilections, law review editors should read it. If there is something that they do not understand, then they should ask for clarification. If there is something that they will not do, then they should tell her, and explain why. Above all, law review editors should recognize that a law professor who takes the time to make and send a list will expect them to adhere to it – and likely be cranky if they don't.
6. If they are unsure of the meaning of text, law review editors should ask a law professor to rewrite or explain. This is more efficient than rewriting on a guess and leaving it to the law professor to sort out. Telephones are ubiquitous these days, but they are never used during the editing process. They should be.⁴²
7. Law review editors should count to 100 before deciding that a footnote is needed. They should ask themselves whether the assertion is one that a law professor as expert has authority to make. They should ask themselves whether the source they seeks is likely to exist. They should ask themselves whether footnotes will advance meaning or provide a reader meaningful additional information.
8. Supervising editors should read an entire edited draft to assure consistency BEFORE returning an edited draft to a law professor to review.

⁴² My colleague, Professor Lyons, suggests that law review policy may prohibit law students from making direct contact with authors, either to protect the time of law professors or to assure no miscommunication. Both these concerns may be ameliorated if questions are collected and funneled through a senior articles editor. Law reviews also could ask law professors if they want to accept questions or prefer to wait to see a full, edited draft.

9. One round of edits is enough. Supervising editors who believe additional edits are required should make those edits before returning an edited draft to a law professor.⁴³ Subsequent edits should be for typographical errors only.

10. Law review editors should keep in mind that the article they are editing was good enough to be accepted for publication before it was given to them to edit.

IV. CONCLUDING THOUGHTS

Referees and umpires are quick to admit that they make bad calls. In the abstract, that is. When it comes to a particular contested call they invariably claim they were right. Similarly, law professors know that a fresh eye brought to a manuscript can pick up unintended errors, enhance overall clarity, and improve style; but we are little better than referees and umpires when it comes to acknowledging failings in a particular draft.

My mother's worst curse which, unfortunately, she needed to visit on me frequently: "I just hope that you have children of your own so that one day they can do to you what you are doing to me." The background of law professors typically includes tenure on a law review. We therefore experience that curse first hand.

In this Article, I bare down on the deficiencies of law student editing not as an end in itself but as a platform from which to plead for reform. Writing and editing are an interactive process, however. In focusing exclusively on law student editors, I omit a discussion of what law professors do that drives student editors to the aspirin bottle.

Doubtless law professors have behaviors and predilections that impede a smooth editing process. Some of us might resent editors who are students revising our text. We may bristle at criticism. We likely are less than politic in registering complaints. This Article therefore begs a

⁴³ Some law reviews actually employ such a process. See Saunders, Student-Edited Law Reviews: Reflections and Responses of An Inmate, 49 Duke L.J. 1663, 1685 note 81 (2000).

companion piece that focuses on what law professors could do to make a student-editor's job easier.⁴⁴ It is not mine to write. But I am happy to edit.

⁴⁴ On occasion, former members of law reviews provide their observations about the process. These fail to include criticism of what law professors do or advice to us about what we might do that would improve the process. E.g., Oleson, *You Make Me [Sic]: Confessions of a Sadistic Law Review Editor*, 37 U.C.Davis L.Rev.1135 (2004). Saunders, *Student-Edited Law Reviews: Reflections And Responses of An Inmate*, 49 Duke L.J. 1663 (2000).