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LAW REVIEW AT 25, EDITORS AT 50

Donald Gjerdingen[†]

Life has many unwritten rules. One is this: the best things in life happen to you because somebody else does something they don't *have* to do. The best things in life are not earned—they are gifts.

The longer I have been away from the founding of the *William Mitchell Law Review*, the more I appreciate what some people did and, most important, just how much they didn't *have* to do it. What many of you may not know is just how much Mike Steenson didn't *have* to get involved. The founding of the *Review* was not an easy or celebrated event. Most of the faculty were indifferent, a few were hostile. Mike didn't have to take the criticism that he did about us, even though it was justified and even though it wasn't his responsibility; and he didn't have to let us make decisions about editing articles or spending money, even though we knew virtually nothing about either.

As I look back now with the eyes and heart of a parent, I understand what he was doing and hard it must have been for him. We made mistake after mistake and he would just smile through his moustache, pretending we were doing things right. We had no idea how inept we were. If he had told us the truth, we would have quit. But he never did. We thought, with all the enthusiasm of youth, we knew more than the authors did. He knew better and so did the rest of the world, but he didn't say anything or let them tell us so. If he had told us how much we had to learn, we might never have started. But he never did. And if he had told us how many mistakes we were making, we might have ended up making even more than we did. If any of those things had happened, you would be planning a 20th anniversary or a 15th or perhaps none at all. But none of those things did happen and they didn't happen because Mike Steenson did so many things that he didn't *have* to do.

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Part of why you are here is because of this—this gift—from him.

What fewer of you may know is how much Dean Heidenreich did that he didn't *have* to do. Marcy Wallace and Bill Macklin and I know, but many of you don't. You should. Dean Heidenreich let us work. Most important, he paid the bills. He never asked why we were taking so long or when we would be done. He never asked for any progress reports or proof of what we were doing. We made mistakes we should not have made—expensive mistakes—and then handed him the bill. For what he paid our printer for the first issue, he could have paid a full-time faculty member for a year. At any point, he could have scolded us, or reined us in, or treated us like the inexperienced, gawky legal group we were. He didn't, though, and that was a gift as nice as any we received.

The uncertainties we had in our first years could have brought out the worst in people. We asked students to do things we didn't yet know how to do. We could not give them answers to reasonable questions or hand them a sample volume, and we could not give them credible deadlines. New things are exciting, but they do not come with teachers. We routinely estimated how long it could take us, accounting for every delay our minds could imagine, and then multiplied by a factor of two or three, just to be safe. Routinely, we were off by an order of magnitude. We then would make new, seemingly more reasonable and accurate estimates, factoring in our new knowledge. The next time, we still would be off by an order of magnitude, just like before. And so it went. The seemingly-random uncertainty of it was deadening. I've run the Boston Marathon twice and what we made people go through was worse; they must have felt as if we had dropped them into a tunnel without light, and told them just to run.

But so many times, from so many people, we got the best. So many times, for reasons that still amaze me and make me thankful, students did things they didn't *have* to do. They gave us large parts of their lives at a time when, looking back, life and what you can do with it is particularly precious. They gave up things they never got back: they gave up time with people they loved; they gave up time to be alone; and they gave up time to be something other than law students. They gave up things I couldn't ask them to give up today. They didn't have to do what they did for us, and they didn't have to give up what they gave up. But they did and because they did, we didn't disappear. That, too, I now know was a gift.

Our world was like yours, except in one special way—we didn't

know if we would succeed. Our frailties would be public, and we were so vulnerable. Failure was an option. So was shame. In the purgatory of time before the first issue, I survived some days only because I could look across a desk and think, for a restful moment, it didn't depend on me. During the first years, each person mattered so much. When everything was new, one person gained or lost on staff mattered; just as one assignment done or not, or one promise kept or not mattered. Each day, and getting through it, mattered too. Some days I survived only by thinking about the sentence in my hand and the day around me, and nothing more. There were days, more than you will ever know, when our future hung by a single thread of resolve—what one person, Marcy Wallace, decided she could do if sleep and the rest of life didn't matter. Without her, it would have been over. It was that close, and she mattered that much.

Our lives were intimate in ways still hard to express. We knew each other the way people did on a life raft: on bad days, we depended on each other absolutely; on good days, we could give each other sanctuary. Either way, we measured time in terms of each other, waiting for footsteps or voices. The same room was both a place to work and, for precious moments, a place to forget work. Some days, we survived only because, if pushed, we had absolute faith in each other. Nothing less would have worked. We had no choice: promises and each other were the only currency we had; if it was to work, this was how it had to work. Given the job and the few people to do it, no work ever went away—it just got shifted to other people. Some nights, I slept only because other people didn't. Every hour one person worked was a gift to the others, and it was understood that way.

Other times, the gift was helping others not think about work. For all kinds of reasons, there were times—truly ugly, heavy moments—when we felt weak and overwhelmed; if we had been told to look to the next day, we would have turned away. At those times, we were so thankful to look around the room and just see who was there, so thankful to think, not about the next day and what we had to do, but just about that moment and who was there. We could sit and be quiet with each other; things did not have to be said because people already knew and understood. Eventually, as we learned each other, talk melted into the unspoken rhythms of faces and limbs: entire conversations could start and finish in an instant, just with the eyes; questions could be answered before they were

asked; and the content of whispers could be known, just by watching.

Most important, we could sit together in the same room and work, and say things without talking, and just feel accepted. That was such a welcome refuge, because in so many other parts of our day we had to be on guard. At work and in class, we were constantly being judged or graded or reviewed. But regardless of what happened in those other places, we knew—if we could just get to that room—we would be accepted, and without condition. That meant so much.

The images are still fresh and clear for me today, and full of emotive power. People still seem the way they were, however they are now. Conversations long since finished don't seem that way and uncreased faces, fresh and full of every kind of emotion, still seem ready to speak. I can still hear steps, long since made, echoing at night off empty hallways, and I can still sense emotion in handwriting left, now years ago, on a page. From a few fragments of sentences, even now, I can still identify voices. I still wonder what brings joy to these people, and what life holds for them, just as I still worry about them and miss their company. A part of these people never left me.

I still remember the room where we worked. For a while, it was home, in all the ways to be imagined. It was tucked away, near the furnace, in the basement of the two-story building that stood like a giant shoebox at the other end of Summit. When you entered the room, the top half of the outside wall of the room was glass, the rest was painted cinderblock. The light switch was on the right. If you stood up, you were eye-level with the grass. On a hot day you could feel the glow of heat against your back, and if you leaned back in the far desk and raised your eyes, you could see sky. At night, you got an angry street lamp. We worked with three desks, one metal bookshelf, and two typewriters. We saw a lot of the street lamp. Late at night, after the library closed, we had the building to ourselves.

That room, when it was most alive, was filled with people working with words. First there were words typed slowly on double-spaced pages with wide margins on the left, each letter spit onto the page by a whirring typewriter. Then there were words on pages stacked and spread on waxy desks, being edited—people bent over, both hands on the page, eyes in the words, mind at the end of a pencil. People doing things with words. People imagining. People

hearing silent sounds and rhythms. People thinking on paper, leaving tracks on typed pages: words knotted or run through, slipping off the page; words changing place, somersaulting over each other; words roped in pencil, ready to be moved; words added, lifted in tiny kites anchored above the line or blown out into the margin; new blocks of words, filling margins, ready to march in line.

Then there were the walls of words. Entire articles of words, taped end-to-end, draping down, width by width, over entire walls, and spilling onto the floor where we could walk them, section by section. Then there were the wonderful tubes of galleys, words sideways *in print* on long rolls of exquisitely smooth glossy paper. They littered the room, flapping and rolling everywhere. They hid in desk drawers, and swayed on desk tops or rolled over edges with the slightest ebbs of air. Towards the end, there were the sounds of steady, whispering voices filled with words, droning softly back and forth from galley to copy, intoning the rise and fall of large and small caps, the lean of italics, and the placement of spaces, periods, and commas. Then there were page proofs, pasted and measured by hand, braiding galleys together one last time. Then there was a single, stapled copy of a volume from the printer we could show and then take back out of the hands of every person we saw. Finally (and at times I thought there would never be a finally—just an always), there were boxes and boxes and boxes of words between thick gray covers with a relief image of Justice Mitchell so, we said, you could separate our words from the others in the dark.

To this day, the esthetics of that process and the rearranging of words on pages with wide margins hold a special appeal for me. The marks and the editing, I know now, made us believe. The marks, even if unartful, let us touch progress with our fingers, and taught us what we needed to learn. They taught us what we needed to see and do. If we moved words, we felt as if we were working, and if we added strong words or slashed weak ones, we felt as if we were crafting law. The marks knit one by one on those pages gave us hope and allowed us to believe some day we would be done. If we marked a title as italics by drawing a line under clean, typed words or if we marked a quote as centered by setting down facing pairs of brackets in clean margins, then we could believe the words already had changed form. Once we marked the words, we could see them as something else—as tight and varied print on clean pages—and we could imagine ourselves closer, by months, to the end. I still use those marks today—knotted loops to delete, brack-

ets to center, sine waves to reverse, and tiny clamshells to close up—and they still have the same meaning for me. I still associate those marks on double-spaced pages with hope. And yes, there are gritty details, too. I now ask for style manuals first. And having learned the most unnecessarily complex and pedantic system of citation in the world—the *Bluebook*¹—I can learn any of the many different systems used by academics in a day. Still other reminders of those times I encounter daily. I still keep sharp #3 pencils in a cup on my desk, just as I still edit best on hard copy. I still like double-spaced pages with wide margins on the left, too. I know it goes back to those words and that room on Summit Avenue.

To this day, words and galleys and proofs, from whatever source, still draw me in. Words without meaning to me years ago—words like font, serif, em dash, kerning, stet, and running head—now just are part of how I see and think, and they just seem part of the esthetics of ideas, and the daily miracle of books. After our humbling experience in the cottage craft of basement publishing, books seem even more wonderful and dazzling and full of art. They are even more appreciated now. The physical textures of books, from the dust jackets, cool and smooth, to the feel of each printed page against the tips of the fingers, seem all the more marvelous now. And the intricate visual rhythms of words on a page—each a frozen dance—seem all the more artful. Too often, law reviews serve as industrial publishing, prepared not for reading or working but for storing in some catacomb of shelves. Too often, each has a brief bloom of newness, with freshly-colored covers and

1. See Donald H. Gjerdingen, Book Review, 4 WM. MITCHELL L. REV. 499 (1978) (reviewing A UNIFORM SYSTEM OF CITATION (Columbia Law Review et al. eds., 12th ed. 1976)) (making a little-read and widely-ignored argument remembered fondly by the author); see also ANTHONY GRAFTON, THE FOOTNOTE: A CURIOUS HISTORY (rev. ed. 1997) (describing the role of footnotes throughout history). My retroactive title for the book review (since I didn't get one the first time around) would be *The Bluebook—The System by Pedants for Pedants*.

Footnotes should have something *important* in them, particularly since this piece has so few. I thought about my mother's recipe for lefse (it's all in choosing the right potatoes) or how to qualify for the Boston Marathon (you run a lot). I also thought briefly about my PIN number for the ATM, but I didn't think that would be a good idea. The deep humanity of the blues or the truth about global warming also came to mind. In the end, I thought the best use of this space would be to teach people important skills they need in life. Things come to mind like how to change a diaper, how to score a baseball game, how to kiss, or how to teach a kid to whistle. I'll pick one of these, or something even better, and leave it on file with the *William Mitchell Law Review*. I'll leave it next to the big thick file, "Things Put on File by Marcy Wallace," so you can find it easily.

new names, and then ends up stored away in some library tomb laid out in dependable, but dull, common wrappings. Each is the same size and look. Each aims to be the tail of the other. The legal world would prosper, I sometimes think, if now and then a random prize would be inserted in those pages, like a drawing by “Kari, Age 6” of crayon cats lounging under a blinking yellow sun on a desk-full of light brown paper, or a baseball card from little league for “Erick, #3, first base—Kinser Lumber.” If only, just every now and then, a few clowns could pop from those drab pages.²

What happened in that room allowed me (and others) to think I could do what I do today. Every day, I work with words. The process is no easier now. The process is still lonely. Often it is heartlessly slow and often there are more drafts than pages. But it has become a working reflex and it is familiar, and then, too, there are those special days when the words come dressed in paragraphs or pages. In the process, I’ve learned that words, like heartbeats, eventually add up. I’ve also learned if you are good, people will criticize you; and if you are bad, people will ignore you. And if a few people take you seriously, you can rejoice; and if you feel ignored, you are always in good company. That’s not so bad. I also get to teach, a gift unimaginable when I started law school. Every day, I get to walk into a room of students excited about law and talk to them about it, just as every day I get to walk into a library of thousands of books and read what interests me. And I have the freedom to make things up, the power just to say and write what I want, regardless of what other people think. Without that room on Summit Avenue, I’d be doing something else.

There is a wonderful redemptive lesson in allowing law students to work with words in rooms as we did. Few acts of creation are as open, as exposed, or as human as putting words on a page. What I now know is this: every word of law goes through the same process we struggled with—every word, every single word. Every statute or opinion, every rule or regulation is both as limited by the frailties of humans and as open to imagination as the words we wrote. Putting words on paper, even words of law, involves imagina-

2. My personal favorite remains Aside, *The Common Law Origins of the Infield Fly Rule*, 123 U. PA. L. REV. 1474 (1975) (making my day). The *William Mitchell Law Review*, I’m glad to see, has shown the same spirit. See Christopher W. Lane, *Bluebooks, Filled Milk, and Infield Flies: Deconstruction, the Footnote, and A Uniform System of Citation*, 19 WM. MITCHELL L. REV. 161 (1993) (reviewing *THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION* (Columbia L. Rev. et al. eds., 15th ed. 1991)) (making much sense).

tion, drudgery, and revision, no matter how much we may at times pretend otherwise. Every opinion goes through drafts and revisions. So does every statute, administrative regulation, and constitution. Words in print didn't start out that way, and words now in stone—especially words now in stone—didn't start out that way either. Every word of law first is made by people; every time, it starts out on a blank page and becomes something else because of lawyers working with words. And every time, somebody controls how it is written as surely as we did then and you do now. Different words and meanings are possible, too, just as different voices are heard if different people are allowed to write. And every time, as well, some people are not allowed to write.

In a profession that gives power to words, this is an important lesson. We put the power of the state behind words used by lawyers. Law is about legitimation of power, and we are neither a government of people nor of laws, but something different, and better—a government of people who believe in the culture of law. Law lives in the heads and culture of lawyers,³ and it comes alive in the interaction of people, words, and imagination. We live among people who believe in the power of public words, and who allow the culture of law to work. They expect lawyers to think and debate, and to do drafts and revise. But once the work of lawyers is finished and the words are set, they respect it. Once an opinion is handed down or order issued, once a contract or deed is signed, they turn over their money and give up their freedom. In return, they expect lawyers to be serious and decent people. They expect lawyers, every day and moment, to appreciate the deep and exacting power law has over the lives of regular people. This is a delicate and tedious, but ultimately rare and wonderful thing in the history of how people deal with people. Law students who learn this lesson early and first-hand have an opportunity to be better lawyers and live better lives.

In the excitement of that room, we also did things in the name of editing that were not editing. I know that now. We rewrote articles we had no business rewriting. In our eagerness to be like other law reviews, we drained articles of style, muted voices, and crushed good prose. We strained strong thoughts through bulbous skeins

3. See, e.g., Donald H. Gjerdingen, *The Future of Our Past: The Legal Mind and the Legacy of Classical Common-Law Thought*, 68 IND. L.J. 743 (1993) (describing the intellectual structure of American legal thought during the Civil War-to-1937 period).

of footnotes and turned them into verbal sludge. If given the chance, we would have edited love letters. We asked for citation to authority for things any dog knew and at times, and even worse, things God didn't. We confused citation form with divine law, and hubris with knowledge, just as we over-organized and under-thought, and confused small thinking with big ideas. Worst of all, we confused changing with editing. Five editions of the *Bluebook* and an internet later, I don't think the basic process has changed much. You can blame us.

Editing is about power. I understand that now. Editing often is the tangy first taste law students get of real-world power. No other profession does this. Editors have power over other students and power over lawyers. And they have it in a way unlike any other power in law. The discretion is yours and yours alone. This is a heady thing. You don't *have* to be fair, principled, or even polite. There will be no record. There will be no review. There will be no next time, no turnabout or reversal of fortune. You can do just what you want. Whatever you do, they must accept and whatever you decide is final. Whatever they really want to say, they must keep it to themselves. You are like the boss in the old days, the other person is equally like the hired hand. This is a critical test of character and a measure of basic decency and humanity—how does this person who is about to become a lawyer treat people who can't fight back or say aloud what they really think.

There will just be you—in *your* room—alone with the words of another person and your power. The process will not be easy or without error. In the ache for guidance, it is easy to confuse “do the words say it clearly?” with “how would *I* say this?” In that moment, you need to use that small, still voice and remember editing is about taking people seriously and helping them. Editing is about knowing what questions to ask and what things to tell people to help them be the best of themselves. It is about sharing your experience and talents with a person you don't *have* to share it with, so that she might later share it with someone she doesn't *have* to share it with. That is how these things work. It is not about taking words away, just because we can, or about making other people do what we do, just because we can make them. So often, power is best used by deliberately choosing *not* to use it. The same is true for the power of editing.

Other things happened in that room, too. When they were happening, I didn't think much about some of them. They were

just there, like paper, every day in the room. I had no thought of the power that one, in particular, would take on over time. Now, when I look back, it is the dominant emotion I have of that room. The lasting worth of what happened in that room comes down to this: we believed someone was waiting for our words, even as we wrote them down. No one ever said it aloud. It was just in the air of that room. We hoped someone in the legal world—we didn't know who or where, but someone, somewhere, just one person—would pick up our gray volume with the profile of Justice Mitchell, turn to the words we had written and have their legal heart changed.

Of course, that never happened. As I look back from a distance of twenty-five years, I know now the legal world was a busier place than we imagined and our work was never as clear, obvious, or convincing to others as it was to us. But in the end that was not the point. No number of cites would have satisfied us. We were just so excited about what we were doing. All we wanted was for other people to feel about the words as we did. We just wanted someone else to see those words and know what we saw in them. We just wanted someone else to read those words and understand what they meant to us. We just wanted so much for someone else to hear, just for a moment, what it was we were trying so hard to say. In the end, that was why what happened in that room was so important. We got to try. We got the chance to hope for things that, until we had the law review, we couldn't even hope about. We had our citizenship.

That for us, and I hope for you, was the biggest gift of all.