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The Intersection of Psychology, Peace, and Human Rights

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AFTER GETTING TO YES*: A SURVIVAL GUIDE FOR LAW
REVIEW EDITORS AND FACULTY WRITERS

*Juan F. Perea***

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We all remember our first articles. The excitement of that first offer to publish. The pleasure of finally accepting an offer to publish. “Do you promise faithfully to publish your article with us?” Solemnly, “I do.” “Do you promise faithfully to publish my article?” Equally solemnly, “We do.” You put down the telephone and bask in the glow of the consummated transaction. All that remains is a flurry of formalities and signatures. Soon the paperwork passes.

At this early and tender stage of the relationship, both editors and writers have much to feel good about. The journal, and the editors, can look forward to publishing a piece that they expect will bring their journal attention, citations, perhaps even acclaim. The writer can look forward to publishing his or her article in a journal that will bring the article attention, citations, and perhaps even acclaim. Most importantly, both law review editors and writers share a common goal: to make the article as good as it can be before it is finally published. The better the article, the greater the likelihood of those things we both want: attention, readers, citations, perhaps even acclaim. Yet this relationship, despite its auspicious, hopeful beginnings, often crashes and burns in rancor, dueling egos, and irrationality. The suggestions that follow are my attempt to make the law review editing process more rational and happier for both law review editors and faculty writers.

What qualifies me to offer these words? I have had opportunities to participate in editing manuscripts from many points of view. Once upon a time I was a student law review editor, doing the work that law review editors do. I later drafted opinions for a judge, who of course

* The title of this essay obviously expands upon the title of Roger Fishel’s and William Ury’s book, *Getting to Yes* (1981).

** Professor of Law, University of Florida College of Law. As this is intended to be an essay based solely on my personal experience, I have studiously avoided all footnotes but three. I am grateful to my colleagues, with whom I have shared the good and the bad. I must also thank Law Review students and editors, with whom I have also shared the good and the bad. Keep up the *good* work!

edited my draft opinions. As a faculty member, I have published numerous articles and have received a full spectrum of the editing quality available, from excellent to abysmal. I also edited a book of original essays recently.¹ As editor of that volume, it was my job to edit the work of many highly skilled scholars from various disciplines. In addition, the completed book that I submitted was then edited by the professional editors at NYU Press and again by me before we arrived at the final product. At this point in my career, then, I have published enough to have survived many edits, good edits and bad edits. I have concluded, solemnly, that good edits are better than bad edits.

My goal in this brief essay is to discuss, from the point of view of an experienced faculty member, how to do a good edit and how to avoid a bad edit. First, it is very hard to do a good edit. It is made especially difficult for law review editors because, typically, you have never been taught how to edit an article. (No one taught me either. . . . I was simply handed a manuscript and given my assignment to "edit.") In most cases, this is not a skill we are born with; it must be learned over a significant period of time. Unfortunately, the law review process as we know it provides neither the training nor the time to both learn to be an effective editor and to perform good edits. This is why that relationship between editor and writer that starts out promising often turns sour. Unless you have some basis in prior experience that developed your editing skills (say because you worked as a journalist or newspaper editor for a significant time prior to law school), then, unfortunately, the articles you receive from faculty writers become your first experiments at editing. If you have a good sense of your role, then even first efforts at editing may be useful to the writer in improving his or her article. Lacking that sense, which unfortunately I encounter all the time, will likely lead to a very frustrating and annoying process that interferes with that goal we began with: to produce the best article possible under the constraints we all face.

I. THE HELPFUL EDIT

So here are a few suggestions about the proper role of the law review editor (and any editor, for that matter) as I have come to see it. It can be very helpful to have the help of very bright, talented law students in improving a manuscript. However, some approaches to editing are much more helpful in improving a piece than others.

1. See *IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES* (Juan F. Perea ed., 1997).

Here are some of the helpful approaches. First, and probably most helpful, is to take a “macro” view of a manuscript, at a high level of generality, and ask yourself certain questions about it:

(1) As currently constructed, does the argument of the article flow logically? Do its sections make sense in their relationship to each other and in their sequence?

(2) Are there any ways the argument might be strengthened? Are there any building blocks of the argument missing? Should any sections be added (or deleted)? Could the argument be improved by combining any sections? Your professors may be helpful in considering these questions.

(3) Is there excessive repetition, for example the same propositions or information presented in different sections of a work? Is the repetition excessive given the particular article you are working with? Sometimes repetition is purposeful and effective, as when one is trying to demonstrate the existence of a pattern. Sometimes repetition is just excessive.

(4) Are there any interesting implications of the article, relationships to other legal issues or areas, that the author might not have considered that are worthwhile?

Then, of course there are important “micro” questions you should ask about any manuscript:

(1) Are significant propositions adequately supported? If not, you may need additional sources.

(2) Are there any areas that, as written, don’t make sense? Do any of the ideas have to be expressed more clearly? Any ambiguities that might confuse a reader? These areas need to be identified and dealt with. When you identify such an area, it is usually most helpful for you to think through a clearer way of expressing the idea, or a way to resolve the ambiguity. Do not just identify a problem. Take the further step and figure out what you think is the best way to fix it.

(3) As will come out in a cite check, if certain sources do not support a proposition, then this needs to be fixed.

Once you have considered all these questions carefully, the best way to convey your suggestions to an author is to write a separate memorandum, independent of the manuscript, that lists and describes all of your suggestions for improvement. Your memorandum should also prioritize the suggestions according to their importance in your mind. Believe me, I (and every author I know) will read your memorandum carefully and thoughtfully. I will probably implement many of your suggestions and, at a minimum, interrogate myself about why my manuscript should stay as it is rather than be modified.

There are several reasons why such a memorandum is a far preferable way to proceed than for you to go ahead and implement your changes and to present me with many *faits accomplis* which I then have the choice to accept or the burden to undo. First, I want to see clearly what your suggestions and rationales are, rather than to infer them from my now-adulterated text. Second, I am in the best position to implement your changes. Since I am the most familiar with my work, probably I can see most effectively how to change or reorganize an article in a way that fits with the whole article and in a way that is true to what I am trying to say. This works much better than having you make changes piecemeal and then drop important sections or paragraphs because they no longer fit with the way you modified the article (although they fit nicely the way I had constructed the article). Let me do this work; the finished article will come out better. Third, there may be good reasons for me not to accept some of your suggestions, which I am happy to explain to you. If you have already gone ahead and implemented something that is inappropriate, or deleted something that was vitally important (both of which have happened to me repeatedly), then I have the burden of undoing something that never should have been done in the first place. Is it even necessary to describe how frustrating it is to have to spend time figuring out how to undo editorial malpractice that resulted in the deletion of some of the most important material in an article?

II. THE RAMBO OR RAMBA EDIT

Take no prisoners. Slash and burn. Leave no sentence unaltered, no paragraph intact. Attack the text with apocalyptic zeal. This is a scary edit. I shall call it the Rambo edit, or the Ramba edit for female editors. The Rambo editor exults in creating mayhem from order. Textual terminators, Rambo editors live by certain wild, unfortunate rules and principles which I list below. These are the rules to avoid if you want to be a good editor.

(1) "I edit, therefore I am." This principle corresponds to a law review editor's sense that she must justify her title as articles editor on the review and prove, to all the world, that she can really edit. "Real editing" then becomes a quantitative and competitive exercise. The greater the cutting, the better the edit, so the reasoning goes. A certain misanthropic status can result from such an edit. Rambo editors may feel they have proved their value to the Review by editing the hell out of an article, and having a decimated manuscript to show for it.

My suggestion here to editors is to relax. You are securely on the Review. Your position does not depend on the amount of concentrated damage you can inflict on a manuscript. You may still be competing

with colleagues, but Rambo edits are a counterproductive form of competition. If you do a good edit, you may well receive a letter from a faculty writer, with copies to the Editor-in-Chief and perhaps the faculty advisor, congratulating you and your review on a job well done (happily, I have had occasion to write such letters in the past). This will attest to your skill and value far more than the likely response to a Rambo edit. More on responses to Rambo edits later.

A Rambo edit was one of the worst experiences of my professional life. On one occasion, I had an article accepted by a law review and we began our relationship with hope and satisfaction. The first editor with whom I worked did a good job, concentrating on matters of organization and repetition, and suggesting that an additional section might be helpful. I agreed and implemented the changes he suggested, and everything seemed to be going smoothly. Then a higher-level editor decided, on his own initiative, to “take a fresh crack” at my article. In hindsight, I can see that his choice of words revealed a Rambo editor. The second editor didn’t like my writing style nor my diction throughout a long manuscript, so he resolved to make my article sound like him. He proceeded to slash and burn almost every sentence and paragraph in my entire manuscript, and in the process introduced many outright errors. The one that I remember best is that, after his edit, he had John Jay, one author of the Federalist papers and an early Supreme Court Justice, quoting contemporary sociologist Milton Gordon. Think about that. I cannot publish what I said and thought after receiving the still-smoking, smoldering ruins of my manuscript.

Here are several suggestions for those of you who have Rambo editorial tendencies, or if you are seized by an irresistible, aggressive impulse to edit:

- (a) If, after careful consideration, you feel that significant sections of an article require rewriting, call the author and talk it over. A constructive conversation may resolve your concerns.
- (b) Take a cold shower.
- (c) Take a warm bath.
- (d) Go to the movies. Avoid the Rambo movies and other Action/Adventure films. Avoid anything violent or thrilling. Stick to comedies and art films.

(2) Avoid rewriting an author’s text. If you conceive of your role as that of rewriting an article, you are already on the road to trouble, for three reasons. First, you are probably not thinking enough about the “macro” issues discussed above which you should be thinking about. You are beginning with a microscopic view of your role. Second, everyone can always find different ways to say something. But difference alone is not the same as improvement. Change for its own

sake can also make things worse. Avoid the temptation to change something just because you can think of a different way to do it. If you cannot articulate exactly how and why your version of a sentence or an idea is better than the author's version, then your version is probably only different and not better. Remember that the goal is to make the article better, not just to change it. Finally, most faculty members are quite skilled at writing. We would not be doing what we do if that were not the case. Heavy-handed rewriting is almost always unnecessary and is sure to garner the wrath of the faculty writer whose work you have rewritten in the name of "editing."

(3) Avoid Rambo editing for the sake of tradition. This one is usually worded, "We are the ____ Law Review and we have certain traditions to uphold!" This argument attempts to justify heavy-handed editing in the name of tradition. "We've always done it this way!" Tradition, like change, is not necessarily good. If your journal has a tradition of Rambo editing, you may want to consider the costs and benefits of that approach. The kind of tradition worth keeping is striving for excellence and quality, which may be inconsistent with Rambo editing.

III. WHY YOU SHOULD AVOID RAMBO EDITS

There are many reasons why it is better to do a good edit rather than a Rambo or Ramba edit. Here are some.

(1) If you care about the reputation of your journal, it is in your best interest to do good edits. Faculty members often share their horror stories about the Rambo edit they received at this or that journal. We exchange information. This information then factors into the decision about where to publish an article. When an author has a choice between two journals of comparable quality, a bad editing experience can sway a decision away from the journal that produced that experience. Believe it or not, journals develop a reputation based on the quality of experience that faculty members have with them. To state the obvious, it is better for every journal to have a good reputation rather than a bad one.

(2) A Rambo edit interferes with our mutual goal, publishing the best possible article. I have found that when I get a Rambo edit, I spend an enormous amount of time figuring out what to do with the still-smoldering debris of my manuscript and even more time figuring out how to restore it at least to the quality that was there to begin with. This is all wasted time. You may have edited the hell (along with everything else) out of my article. I have spent an inordinate amount of time fuming and putting it back together. Is it better at the end of such a process? It may be improved marginally, but time that I would have spent making it better I had to spend figuring out what you did and

putting my article back together. After a Rambo edit, the article usually ends up about as good as it started, after much expenditure of effort by you and by me. This is terribly wasteful of our time and effort.

If you really want to improve a piece, spend your valuable time thinking at the "macro" level I described above. Then I can spend my time improving the article too, instead of doing reconstructive emergency surgery. You don't have to spend the time that it takes to do a Rambo edit, and it isn't even helpful anyway.

(3) Unless you tend towards the masochistic, you probably dislike being yelled at as much as anyone. I can guarantee that when you take a carefully written and organized manuscript and render it incoherent and introduce errors, you will get very angry phone calls from your faculty author. And it may reach far beyond just an angry phone call to you. The circle of law professors is fairly small. Most of us know someone at your school. We call our friends and express our dismay about the havoc wreaked in the Rambo edit performed by X editor. An additional call may go to the Law Review advisor, who will also be fully informed about what you have done.

(4) Post-traumatic Guilt Syndrome. I have faculty colleagues who, in hindsight, express horror and embarrassment at their behavior as law review editors of the Rambo variety. They often wish to apologize to authors for the Rambo edits in which they participated. Much better to do a good edit and to hold your head high, guilt-free.

(5) Faculty dreams. Suppose you have Rambo-edited an article to smithereens, and you loved it. Suppose you, like many of your law review colleagues, have ambitions of becoming a law professor. Suppose, during the interview process, you are seated at dinner directly across from the author of the article you Rambo-edited. It is a small, intimate restaurant with small tables, so there is no escape. How will you explain yourself? How will you survive dinner? How will your conduct as a law review editor haunt you in the future? This may sound far-fetched, but this situation, or like situations, arise. Much better to do a good edit and to hold your head high.

I hope these suggestions of what to do and what to avoid are helpful. I know that if you follow my suggestions for a good edit, we will have both a better article and a better relationship at the end of this process. As you can gather, the quality of edit an article receives makes a difference in many ways, some of which you may have thought about and some not. I always look forward to publication, and I enjoy working with students (at least those lacking Rambo tendencies). I hope that we can increase the quantity of good articles and relatively happy outcomes. There is no reason why quality and satisfaction need be mutually exclusive.

