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Andrea's Adventures in Law Review Land

Robert E. Rains

What's in a name? That which we call a rose by any other name would smell as sweet.

William Shakespeare, *Romeo and Juliet*

In June of 1998, while most tenured professors—at least those with summer stipends—were, no doubt, off somewhere thinking great thoughts, I found myself undertaking the arduous duty of teaching summer school. In Florence, Italy. Of course, I didn't have to teach all fourteen sessions all by myself; Italy has modern laws protecting the honest laborer, just as we do. No, indeed. Learned Italian judges, professors, and practicing attorneys all pitched in to help eager young American law students pick up a few extra credits after having persuaded their parents of the many benefits of a multicultural experience.

One particularly enthusiastic attorney from Rome, Andrea Russo, in the mistaken belief that our students might appreciate extra reading, brought two detailed handouts explaining recent changes in the Italian system of international private law in the domestic relations area. As, probably, the only recipient who actually read the handouts, I was genuinely impressed. I suggested to Andrea that I could take the two readings, merge them together, and produce a publishable article for an American law review; and he agreed.

Oh, didn't I mention that Andrea is a typical male name in Italy? But you knew that, of course. Indeed, I often amuse myself during my sojourns in Italy by casually mentioning my (American) wife, Andrea, and watching for reactions.

So, we've all been in this situation: we come home from a trip, with promises made and great aspirations, only to find that the mundane demands of everyday life drag us down so that we are not the superhero action figures we thought, but just ordinary mortals suffering from the classic lawyer anticompulsion: procrastination. Which is, I know, a fancy excuse for admitting that, well, I didn't get Andrea's (the Roman lawyer's, not my wife's) article rewritten until mid-November 1998. And, although I put the best face on it and sent it out to ten or twelve law reviews, I knew we were toast. Not only

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that, but I realized that I had sadly failed my Roman colleague. Naively, Andrea had assumed that anything worth writing in a paper is worth putting in the body of the paper, and I had gratuitously inserted only about a dozen footnotes. So, between bad timing and a paucity of those little notes so beloved by law review editors, it was no surprise that it was no soap.

I felt bad that I had let Andrea down, and in the summer of 1999, not being burdened by a posting to Florence, I decided to give the customers what they want, and I spent a couple of rather boring days, not unlike Johnny Appleseed, planting footnotes here and there in Andrea's article. By early August I had shored up the foundation of the edifice with footers galore and, with Andrea's blessing, was ready to send it out into the world once more—once more to place my ego into the hands of earnest law review editors who almost surely were not yet born when I started to practice law.

Then I had a thought.

In our modern world of rectitude and correctitude, what are the implications, law-review-wise, of an author's gender, or perceived gender? Would the aforementioned earnest young people be more or less likely to accept this interesting but rather technical article if they believed Andrea to be female or if he were identified as male? Or would sex matter not a whit? (As I have yet to encounter any situation where sex mattered not a whit—except perhaps to certain single-celled and lower-order life forms—I discounted the last possibility.)

I really didn't know, but I thought it might be fun to try to find out. So I decided to apply the scientific(?) method. I would conduct an experiment. Having zeroed in on international or comparative law reviews at thirty-six law schools as appropriate targets/subjects, I would send cover letters to half of them identifying the author only as Andrea Russo, Italian attorney. The cover letters to the other schools would use the male personal pronoun in referring to Andrea.

But how to select which schools would get which letter? Would it be truly scientific if one set of letters went only to first-tier schools and the other set to schools that criticize *U.S. News and World Report*? Ultimately, on the principle that imitation is the sincerest form of flattery, I decided to use methods as scientific as those employed by *U.S. News*: I mailed one set of cover letters to the first eighteen schools in alphabetical order and the other letter to the rest.

Oh yes, I also asked my learned colleagues at the Dickinson School of Law to fill out (or in, as they preferred) what I modestly named the World's Shortest Survey:

The same article is submitted to multiple, student-edited law reviews. The author's first name is a common American female name. However, the author is a foreign male. In half the cover letters, the gender of the author is unspecified, so it is assumed that the student editors will likely conclude that the author is female. The other cover letters refer to the author using the pronoun "him."

Please check your honest answer(s) and elaborate as you wish:

- The article is more likely to be accepted by those journals whose editors believe the author to be female.

- ___ The article is more likely to be accepted by those journals whose editors know the author to be male.
 - ___ It's irrelevant; only the total number of footnotes is important.
 - ___ Other. (Please explain.) _____
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You are no doubt sitting on the edge of your seat awaiting the results of the Great Experiment. What have I learned?

I can report two relatively certain results from the survey of my colleagues.

First, there was a groundswell of opinion that my brain cells had not died in vain. A clear plurality of my colleagues voted that only the number of footnotes is important.

Second, we law teachers are a rather paranoid lot. Of those who expressed a view on gender preference, women almost uniformly believed the article would more likely be accepted if the editors knew the author to be male, while men believed the opposite. (One person of indeterminate gender also asserted that a male author would be favored. I hasten to add that if I knew who this anonymous respondent was, I could probably determine the gender.) A couple of optimists believed that law reviews so insulate the actual editors from the identity of the authors that gender is irrelevant.

Two colleagues offered other insights which I found noteworthy (i.e., worth pilfering). One, a male, opined: "The article is most likely to be accepted if the words 'critical theory,' 'paradigm' or 'deconstruct' appear in the title." (If true, this puts me at a competitive disadvantage; I have never understood for more than five minutes at a time what any of these concepts means.)

A female colleague elaborated, with wisdom beyond her years:

While I flirted with options 1 and 3, I have to go with the degree of pompous self-congratulations in the transmittal letter and the letterhead on which that letter is written. (As an example, I wrote an ABSTRACT, taking credit for assembling a new test based on unpublished documents, and received multiple offers, including top-tier schools.) Then again, I wouldn't underestimate the magical power of having 'hermeneutics' in the title along with a pop culture reference.

"No, no," I hear you saying. "What was the result with the law review editors?"

Here I am less sure. Indeed, like Ally McBeal's The Biscuit, I'm troubled. Beset by doubts.

Was it condescending to believe that law review editors receiving the gender-neutral cover letter would conclude that our Italian Andrea was a female? After all, if they had ever had the misfortune to tune in to public television during a fundraising week—a near certainty if they have *ever* watched public TV—then they no doubt have seen/heard the great (and bearded) Italian tenor Andrea Bocelli in concert. That, coupled with the rather awkward phrasing of my gender-neutral cover letter, might at least have led them

to suspect that Andrea Russo was not what his name would suggest to an American ear.

So, did I actually fool anyone? Well, yes. I am pleased (sort of) to report that I received rejection letters from three editors who had received my gender-neutral cover letter, all of whom referred to the author as "Ms. Russo." While this was gratifying (in a rather sick way), my underlying premise was called into serious doubt when I received a voicemail rejection, from a school that Miss Jean Brodie would certainly label as being among "la crème de la crème," in which the editor referred to Andrea Russo as "her" not once, but four times. Problem is, this school had received the cover letter identifying Andrea as male. Oops!

What about the good news? Obviously, I wouldn't be telling this tale if no one had accepted the article. So with great pride I can report that I received offers of publication from three schools; and you're certainly wondering which cover letter they received. Well, I'm not entirely sure.

There may be something to my female colleagues' perspective: two of the acceptances came from schools that received the male-identifying cover letter.

But what about the third acceptance? In my mind this is the Stealth Acceptor. During a period of time when our voicemail system was being "upgraded" and therefore messages were being lost and cut off at an even higher rate than usual, I received a voicemail message from a female which, as recorded, went:

Hi, Mr./Professor Rains, I'm sorry, I'll make this quick . . . written by Andrea Russo, um, whether or not you've had other offers because we'd, um, we'd like to extend an offer and send out a contract . . .

Here our helpful voicemail system terminated the message. And, although I wrote to all remaining schools to request expedited review after receiving the first identified acceptance, I never heard from the Stealth Acceptor again.

* * * * *

The law school's inclusion in the university corporation has the countenance of ancient tradition, it comes down as an authentic usage from the mediaeval era of European education, and from the pre-history of the American universities. But in point of substantial merit the law school belongs in the modern university no more than a school of fencing or dancing. This is particularly true of the American law schools . . .

Thorstein Veblen, *The Higher Learning in America*

Well, I think that all of us who make a living teaching at American law schools might think old Thorstein just a trifle harsh. But why, other than tradition—and (dare I say it?) our collective laziness, or at least inertia—do we continue to put up with this system in which potentially career-making or -breaking decisions are placed in the hands of novices who have not completed their education and are not yet qualified even to take the examination to become qualified to practice in the field in which they are judging the merits of our work?

In the immortal words of Pogo: *We have met the enemy and he is us.*