

## NOTES ON FOOTNOTES

Many students seem to have troubles with footnotes or endnotes as they work on their law review articles or upper-class writing papers. The troubles are chiefly of three sorts: knowing when to provide a footnote, knowing what authority is competent to prove the truth of the assertion being footnoted, and knowing how to put the footnote in proper form.

Knowing when to provide a footnote is not difficult to understand; footnotes are used for three different but related purposes. First, footnotes are used as part of the discourse of scholarship to identify the originator of any corresponding ideas, authorities, or arguments in the text that are not original to its author, both to safeguard the author's honesty in avoiding plagiarism and also to give deserved credit by attribution to the person or institution that did originate the ideas or arguments. (This is also the reason quotation marks are required whenever you quote from another person's work!) Second, footnotes are used to identify the exact textual source, the place where any ideas, authorities, or arguments used by the author in the text but taken from other authors or institutions may be located, so that the reader may check for himself or herself the truth of the current author's use of those sources. Third, footnotes are used to provide more detail than can be made to fit comfortably in the text.

Knowing what authority is competent to prove the truth of an assertion is more difficult. When the point of the footnote is to identify the author of an idea that is not one's own, then the citation should be to the work of that author where he or she set out that idea and not to some later commentator's treatment of the author's works. (Of course, at the point where one is addressing any significant new arguments raised by later commentators, then citations to the works of the commentators are both appropriate and necessary.) When the footnote is designed to prove the truth of a legal proposition, then the citation must be to the legal documents--usually primary sources--that have the power to prove the assertion. For example, if one asserts that 23 of the 50 states have legislative enactments that require X, then the appropriate footnote must include current citations to the state codes for those 23 states (or if uncodified, to the various state legislative enactments themselves)! The point is that a citation to a law journal article from 5 years ago that asserts that 23 states have legislative enactments that require X is not competent to prove the truth of the assertion. It just doesn't have the power to demonstrate what has been claimed.

I ask that students completing their upper-class writing papers under my supervision use the Bluebook as their citation guide. Putting footnotes in the proper form is then only to continue learning the conventions of citation that were learned in first-year legal writing class. In general the Bluebook asks in Rule 2 that authors of scholarly papers use the typeface conventions for law review footnotes typified by the examples in the inside front cover. The other mechanics of citation remain largely the same: Rules 1-9 apply to any type of authority; rules 10-21 apply to specific authorities. One further change is that the full title of a case is not underlined or italicized in a law review footnote--as it is in the text--although a short form cite in a footnote is underlined or italicized. (Rules 2.1(a) and 10.9.)



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