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## Stylish Legal Citation

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## Stylish Legal Citation

Alexa Z. Chew\*

### Abstract

Can legal citations be stylish? Is that even a thing?

Yes, and this Article explains why and how. The usual approach to writing citations is as a separate, inferior part of the writing process, a perfunctory task that satisfies a convention but isn't worth the attention that stylish writers spend on the "real" words in their documents. This Article argues that the usual approach is wrong. Instead, legal writers should strive to write stylish legal citations—citations that are fully integrated with the prose to convey information in a readable way to a legal audience.

Prominent legal style expert Bryan Garner and others have repeatedly pinned legal style problems on citations. For example, Garner has argued that in-line (or textual) citations supposedly interrupt the prose and cause writers to ignore "unshapely" paragraphs and poor flow between sentences. Garner's cause célèbre has been to persuade lawyers and judges to move their citations into footnotes, which he asserts will fix the stylistic problems caused by citations.

This Article proposes both a different explanation for unstylish citations and a different solution. The explanation is that legal style experts don't address citation as a component of legal style, leaving practitioners with little guidance about how to write stylish citations or even what they look like. This Article summarizes the citation-writing advice offered to practitioners in legal-style books like *Plain English for Lawyers*. Spoiler alert: it's not much.

The solution is to restructure the revision and editing processes to incorporate citations and treat them like "real" words, too. Rather than cordoning off citations from the rest of the prose, writers should embrace them as integral to the text as a whole. This Article describes a method for writing citations that goes well beyond "Bluebooking." This method should be useful to any legal writer—from first-semester 1Ls to judicial clerks to experienced appellate practitioners.

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\* The author is a Clinical Associate Professor of Law at the University of North Carolina School of Law. She is grateful for the excellent research assistance of Taylor Carrere (UNC Law 2019), Allison Cottle (UNC Law 2020), and Keith Hartley (UNC Law 2018). Both the author and the Article have benefited from the generosity of Kevin Bennardo, Kaci Bishop, Paige Britton, Luke Everett, Rachel Gurvich, and Katie Rose Guest Pryal, who offered insightful feedback on drafts.

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## Stylish Legal Citation

Alexa Z. Chew\*

### Introduction

This Article’s goal is to convince you that citations can enhance your legal writing style. To view stylish citations as a goal to achieve rather than conceiving of citations as a hurdle to clear.

By “legal writing” I mean legal documents that lawyers or judges write in practice and that include descriptions of law supported by citations to legal authorities.<sup>1</sup> Examples of this kind of legal writing include briefs, memos, and judicial opinions.<sup>2</sup> By “style” I mean the end result of choices that writers make about how to convey meaning. Style can be appealing or unappealing, noticeable or not. As with clothing, style doesn’t have to be “good” or even apparent, which brings us to stylishness.

Unlike “style,” which can take any number of modifiers, “stylish” has a positive connotation; it suggests being appealing. For example, Professor Helen Sword’s study of “stylish academic writers” found that stylish academic prose was engaging, pleasurable, and elegant.<sup>3</sup>

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<sup>1</sup> Professor Mark Osbeck used a similar definition in his article theorizing what makes a legal document “well written.” See Mark Osbeck, *What is “Good Legal Writing” and Why Does It Matter?*, 4 DREXEL L. REV. 418, 460 (2012) (“By legal writing, I mean to include various types of expository writing that lawyers, judges, and related professionals (e.g., judicial clerks) produce in the course of their work. The prototypical examples of such writing are legal memoranda, letters, briefs, motions, and judicial opinions.”). My circumscription of “legal writing” is not particularly nuanced because this article is about bringing in-line citations into the style fold, not about where to draw lines around “legal writing.” If you are writing legal documents that regularly incorporate in-line legal citations, then you are in this article’s intended audience. For an example of more nuanced line-drawing around what is and isn’t legal writing, see J. Christopher Rideout, *Knowing What We Already Know: On the Doctrine of Legal Writing*, 1 SAVANNAH L. REV. 103, 104–05 (2014).

<sup>2</sup> This definition of legal writing excludes some kinds of legal writing, such as contracts and scholarly writing (like law review articles), because the problems this article addresses don’t arise in them.

<sup>3</sup> HELEN SWORD, *STYLISH ACADEMIC WRITING* 7–8 (2012).

Stylish legal writing is described in similar, appealing terms: “exhibits artistic flair,”<sup>4</sup> “a complete blast—a pure joy to read,”<sup>5</sup> and “crisp and direct.”<sup>6</sup>

Yet the general view is that legal writing is rarely stylish. Here is one summary of how “[l]eading lawyers across the country” described legal writing:

They think modern legal writing is flabby, prolix, obscure, opaque, ungrammatical, dull, boring, redundant, disorganized, gray, dense, unimaginative, impersonal, foggy, infirm, indistinct, stilted, arcane, confused, heavy-handed, jargon- and cliché-ridden, ponderous, weaseling, overblown, pseudointellectual, hyperbolic, misleading, incivil, labored, bloodless, vacuous, evasive, pretentious, convoluted, rambling, incoherent, choked, archaic, orotund, and fuzzy.<sup>7</sup>

Every legal reader has read legal prose that could fairly be described by at least one of those adjectives.<sup>8</sup>

Because of the prevalence of unappealing legal writing and the importance of writing to lawyers’ work, many legal writing experts give advice for stylish legal writing. Bryan A. Garner has written numerous legal-style books and articles. Other classic legal-style texts include *Plain English for Lawyers*<sup>9</sup> and *Thinking Like a Writer*.<sup>10</sup> Ross Guberman is a newer legal-style expert. His popular book *Point Made*<sup>11</sup> highlights stylish legal writing by practitioners and the

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<sup>4</sup> Osbeck, *supra* note 1, at 457.

<sup>5</sup> Tony Mauro, *Kagan’s ‘Unique’ Writing Style on Display in Visa Case*, 97 JUDICATURE 60 (2013) (describing U.S. Supreme Court Justice Elena Kagan’s writing style).

<sup>6</sup> *Id.* (also describing Justice Kagan’s style).

<sup>7</sup> TOM GOLDSTEIN & JETHRO K. LIEBERMAN, *THE LAWYER’S GUIDE TO WRITING WELL* 3 (3d ed. 2016).

<sup>8</sup> Bryan Garner describes the worst part of the cycle of “poor legal writing” as “mak[ing] law students pore over ream upon ream of tedious, hyperformal, creaky prose” and acculturating “them to pomposity.” As he puts it, we lawyers “learn our trade by studying reams of linguistic dreck—jargon-filled, pretentious, flatulent legal tomes that seem designed to dim any flair for language.” BRYAN A. GARNER, *LEGAL WRITING IN PLAIN ENGLISH: A TEXT WITH EXERCISES* xvi–xvii (2001) [hereinafter, GARNER, *PLAIN ENGLISH*].

<sup>9</sup> RICHARD C. WYDICK, *PLAIN ENGLISH FOR LAWYERS* (5th ed. 2005).

<sup>10</sup> STEPHEN V. ARMSTRONG & TIMOTHY P. TERRELL, *THINKING LIKE A WRITER: A LAWYER’S GUIDE TO EFFECTIVE WRITING AND EDITING* (3d ed. 2008).

<sup>11</sup> ROSS GUBERMAN, *POINT MADE: HOW TO WRITE LIKE THE NATION’S TOP ADVOCATES* (2d ed. 2014) [hereinafter GUBERMAN, *POINT MADE*].

companion book *Point Taken*<sup>12</sup> highlights stylish legal writing by judges.

But rarely do these books include examples of how to cite stylishly using the in-line citations that are most common in legal writing. As detailed below, some of these books offer limited advice about how to minimize the negative impact citations have on the prose in a document. But none suggests that citations might enhance the reader's experience in the way that well written prose can. Garner offers the most citation-related style advice; however, his signature advice is to break the in-line-citation convention entirely and put citations in footnotes instead.<sup>13</sup>

This Article fills a gap in the legal-style literature by embracing citation as a part of legal style itself. Part I summarizes the general critiques of legal writing as unstylish before describing the specific role of citations as supposed agents of bad legal style. Part II summarizes the citation-writing advice offered by practitioner-focused legal writing texts. Part III describes techniques for stylish citation. It does so within the existing conventions of legal writing—using in-line citations,<sup>14</sup> citing after every new proposition of law, and for the most part following the citation style codified in *The Bluebook: A Uniform System of Citation*.<sup>15</sup>

What this Article thus provides is a touchstone for those who wish to write stylish legal citations—citations that are fully integrated with the prose to convey information in a readable way to a legal audience

## **I. In-Line Citations Make Legal Writing Worse (Maybe)**

This Part first considers the general view of legal writing as unstylish and then focuses on the particular ways that legal citations contribute to that general view.

### **A. Wordy, Unclear, Pompous, and Dull**

Half a century ago, legal writing style was described as “(1) wordy, (2) unclear, (3) pompous, and (4) dull.”<sup>16</sup> This quote appears in the first

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<sup>12</sup> ROSS GUBERMAN, *POINT TAKEN: HOW TO WRITE LIKE THE WORLD'S BEST JUDGES* (2015) [hereinafter GUBERMAN, *POINT TAKEN*].

<sup>13</sup> See, e.g., BRYAN A. GARNER, *THE WINNING BRIEF: 100 TIPS FOR PERSUASIVE BRIEFING IN TRIAL AND APPELLATE COURTS* 139 (3rd ed. 2014) [hereinafter GARNER, *THE WINNING BRIEF*] (“Put all your citations in footnotes, while saying in the text what authority you're relying on.”).

<sup>14</sup> A recent survey of judges showed that 78% prefer in-line citations. Ross Guberman, *Judges Speak Out*, <https://www.legalwritingpro.com/blog/judges-speak-out/>.

<sup>15</sup> *THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION* (Columbia Law Review Ass'n et al. eds., 20th ed. 2015) [hereinafter *BLUEBOOK* (20th ed.)].

<sup>16</sup> DAVID MELLINKOFF, *THE LANGUAGE OF THE LAW* 23 (Little, Brown 1963).

chapter of Professor Richard C. Wydick’s classic style text, *Plain English for Lawyers*.<sup>17</sup> The enduring sentiment<sup>18</sup> recurs in the openings of other popular practitioner-focused legal writing texts:

- “[Y]our average legal writer: wordy, stuffy, artificial, and often ungrammatical.”<sup>19</sup>
- “[W]e have a history of wretched writing, a history that reinforces itself every time we open the lawbooks. It would take hundreds of prolific Holmeses and Prossers and Darrows to counterbalance all the poor models that continually fortify the lawyer’s bad habits.”<sup>20</sup>
- “If you don’t need a weatherman to know which way the wind blows, you don’t need a literary critic to know how badly most lawyers write. You only need to turn to any page of most legal memos, briefs, judicial opinions, and law review articles to find convoluted sentences, tortuous phrasing, and boring passages filled with passive verbs.”<sup>21</sup>

Describing legal writing style as awful is a sensible way to begin a book about employing good style.<sup>22</sup> After all, once the reader recognizes the symptoms and nods along in agreement with the diagnosis, she’s more likely to buy the prescription.

At the core of all of these critiques is this: a writer’s poor style is problematic because it inhibits the reader’s understanding.<sup>23</sup> Rather than consider the merits of a poorly written argument, readers must

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<sup>17</sup> WYDICK, *supra* note 9, at 3.

<sup>18</sup> See, e.g., Joseph Kimble, *A Curious Criticism of Plain Language*, 13 LEG. COMM. & RHETORIC: JALWD 181, 186 (2016) (asserting that plain language advocates “believe that most legal writing has been pretty awful for centuries, and scholars agree”).

<sup>19</sup> GARNER, *PLAIN ENGLISH*, *supra* note 8, at xvii.

<sup>20</sup> BRYAN A. GARNER, *THE ELEMENTS OF LEGAL STYLE* 2 (2d ed. 2002) [hereinafter GARNER, *ELEMENTS OF LEGAL STYLE*].

<sup>21</sup> STEVEN D. STARK, *WRITING TO WIN: THE LEGAL WRITER* xi (2000). The conclusion of *Writing to Win* is pretty grim as well. *E.g.*, *id.* at 266 (“[C]omplaints about legal writing are never just laments about craftsmanship; they are cries that lawyers no longer can see.”).

<sup>22</sup> Ross Guberman begins *Point Made* with a more hopeful message: “This book will reveal the craft behind th[e] art [of advocacy writing]. I am convinced that if you learn why the best advocates write the way they do, you can import those same techniques into your own work.” GUBERMAN, *POINT MADE*, *supra* note 11, at xxix.

<sup>23</sup> This is probably self-evident, but there’s plenty of support for it. *E.g.*, Bryan A. Garner, *The Citational Footnote*, 7 SCRIBES J. LEG. WRITING 102 (1998–2000) [hereinafter Garner, *Citational Footnote*] (“Look at how much more difficult it is to tease out the essential ideas.”); SWORD, *supra* note 3, at 4 (“Instead of gleaming new insights, we f[i]nd ourselves trying to make sense of sentences . . .”).

spend their precious energy trying to make sense of the words themselves.<sup>24</sup> Not only does poor style make readers grumpy, it results in readers ignoring sentences or paragraphs (or entire documents) or misinterpreting the words.<sup>25</sup> Confusing readers can have real-world effects: “Poor writing style can lose cases. It can pull the legs out from under codified law. It can turn ‘ironclad’ contract terms into tinfoil.”<sup>26</sup>

And yet, poor writing style seems to be common.<sup>27</sup> One explanation is that writers don’t know any better.<sup>28</sup> To address this knowledge deficiency, legal writing experts try to educate writers about the elements of good style and how to execute it. Experts offer advice aimed at helping writers improve the technical components of style: omitting surplus words, using concrete verbs, limiting passive voice, shortening serpentine sentences, and so on.<sup>29</sup> Several automated programs now exist to help writers spot these style deficiencies in their writing without human intervention.<sup>30</sup>

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<sup>24</sup> GOLDSTEIN & LIEBERMAN, *supra* note 7, at 5.

<sup>25</sup> *Id.*

<sup>26</sup> Mark Cooney, *Style Is Substance: Collected Cases Showing Why It Matters*, 14 SCRIBES J. LEG. WRITING 1 (2011–2012).

<sup>27</sup> Susan Hanley Kosse & David T. ButleRitchie, *How Judges, Practitioners, and Legal Writing Teachers Assess the Writing Skills of New Law Graduates: A Comparative Study*, 53 J. LEGAL EDUC. 80, 85–86 (2003) (finding that nearly 94 percent of respondents to a survey of attorneys, judges, and legal writing professors “found briefs and memoranda marred by basic writing problems”).

<sup>28</sup> *See, e.g.*, Bryan A. Garner, *Why Lawyers Can’t Write*, ABA JOURNAL (March 2013) (“[L]awyers on the whole don’t write well and have no clue that they don’t write well.”).

<sup>29</sup> For examples of this advice, see the practitioner-focused legal writing books discussed in Part II.B *infra*.

<sup>30</sup> BriefCatch, created by Ross Guberman, is a “first-of-its-kind, sophisticated editing tool that will improve any legal document by generating instant feedback and suggestions.” *What is BriefCatch?*, <https://briefcatch.com>. PerfectIt with American Legal Style “is designed specifically for legal writers and editors to improve the process of editing and proofreading legal documents.” *American Legal Style for PerfectIt*, Intelligent Editing, <http://www.intelligentediting.com/resources/american-legal-style-for-perfectit/>. WordRake “tightens, tones, and clarifies your writing. Just click the ‘rake’ button and watch the in-line editor ripple through your document, suggesting edits to remove clutter and improve unclear phrasing, just like a live editor.” <https://www.wordrake.com>.

On a personal note, I tried BriefCatch on a draft of this article. I learned that I use the word “quite” much more often than I realized.



A second explanation is that writers are intentionally using bad style because they believe their audiences prefer it,<sup>31</sup> that the conventions of legal writing require it.<sup>32</sup> Proponents of better legal style acknowledge that legal writing has some unstylish conventions while pointing out the flexibility within the boundaries of those conventions.<sup>33</sup> They try to convince the legal community that, actually, nobody is really enjoying the wordy, unclear, pompous, and dull legal prose.<sup>34</sup> And so supervising attorneys and judges should stop perpetuating it.<sup>35</sup> In the context of academic writing, also known for being a slog, Professor Patricia Nelson Limerick effectively summarized the problem: “What we have here is a chain of misinformation and misunderstanding, where everyone thinks that the other guy is the one who demands dull, impersonal prose.”<sup>36</sup>

Even if nobody is demanding dull, impersonal prose in their legal writing, that seems to be what has resulted. Much legal writing, of

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<sup>31</sup> See Cooney, *supra* note 26, at 2 (“Lawyers who think that judges are conditioned to happily accept legalese should think again.”); see also James Lindgren, *Fear of Writing*, 78 CAL. L. REV. 1677 (1990) (describing *The Texas Manual on Style* as “one of the most pernicious collections of superstitions that has ever been taken seriously by educated people” and lamenting its propagation of “spurious usage rules” and terrible writing style).

<sup>32</sup> JOSEPH KIMBLE, WRITING FOR DOLLARS, WRITING TO PLEASE: THE CASE FOR PLAIN LANGUAGE IN BUSINESS, GOVERNMENT, AND LAW 28 (2012) (“[Legalese] keeps its hold on many lawyers, sadly, for the reasons discussed in the previous section (inertia, habit, overreliance on old models, a misunderstanding of plain language, lack of training and self-awareness, and the specter of too little time).”).

<sup>33</sup> See, e.g., Kimble, *supra* note 18, at 186 (“We acknowledge that the law, like any other profession, has certain terms of art, although (in my view, at least) they are more rare and more replaceable than lawyers like to think.”); RICHARD K. NEUMANN, JR. & SHEILA SIMON, LEGAL WRITING 3 (2d ed. 2011) (explaining that lawyers need not “write in the same way or in the same style” because “[m]ost legal writing tasks can be done effectively in a variety of ways”).

<sup>34</sup> See, e.g., Cooney, *supra* note 26, at 3 (“Some lawyers think they're playing it safe by rehashing stuffy old forms that are breeding grounds for legalese. If you are among those lawyers, beware: your safety net has a hole in it.”).

<sup>35</sup> See, e.g., Kimble, *supra* note 18, at 189 (“It is legal style that ‘prescribes’ old models from one generation to the next. It is legal style that has been standardized—in an archaic, dense, verbose language that most people simply cannot understand.”). Legal writing professors, generally, seem to want to end their role in perpetuating poor legal style, whatever that role might be. But they have to balance the desire to improve legal writing as a whole with the need to prepare students to work within the conventions of legal writing as they currently exist.

<sup>36</sup> Patricia Nelson Limerick, “Dancing with Professors: The Trouble with Academic Prose,” in SOMETHING IN THE SOIL: LEGACIES AND RECKONINGS IN THE NEW WEST 340 (2001).

course, includes not just dull, impersonal prose but also dull, impersonal in-line citations.

## B. In-Line Citations Can Make Legal Writing Worse

However grim the views of legal prose are, they only get worse when in-line citations are added to the mix. Most briefs and judicial opinions contain numerous in-line citations because they are the conventional means by which authors support their assertions about the law (or facts).<sup>37</sup> Documents that use in-line citations often have long passages that alternate between sentences of prose and sentences of citation. To the uninitiated, in-line citations make little sense. But to law-trained readers, in-line citations communicate a lot of information about the cited authorities and the strength of writers' support.<sup>38</sup>

The core purpose of in-line citations is communicative—they're meant to be read.<sup>39</sup> They are meant to be interspersed among the prose of a legal document, and they are integral parts of legal documents. But just because they're meant to be read doesn't mean they're always easy to read, even for law-trained readers. Instead, many in-line citations are what I would call "bumpy." They stick out from the prose in a way that interferes with readability, either by decreasing ease of comprehension or dissipating the reader's attention. Law-trained readers struggle with bumpy citations because they can't easily incorporate the information in the citations with the information in the prose. Readers either slow to a painful crawl or start skipping the bumpy citations altogether, missing out on whatever information they were meant to convey.

Although citations are meant to be read, they have a weaker valence than prose. By weaker valence, I mean that readers pay less attention to citations than they do to prose. This weaker valence is a feature, not a bug. It allows writers to place citations right next to the propositions they support, at the reader's point of need.<sup>40</sup> As Justice Scalia put it, in-line citations can convey information "almost subliminally" as readers' eyes speed across them. Bumpy citations don't convey information subtly or subliminally; the reader has to work to integrate them with the prose.

Bryan Garner, editor-in-chief of *Black's Law Dictionary* and author of *The Redbook: A Manual on Legal Style*, is not a fan of in-line legal citations. In his view, they "clutter" the pages of briefs, some of which "have become virtually unreadable."<sup>41</sup> Other pages "are readable,

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<sup>37</sup> Alexa Z. Chew, *Citation Literacy*, 70 ARK. L. REV. 869, 876 (2018).

<sup>38</sup> *Id.* at 879.

<sup>39</sup> *Id.* at 880–90.

<sup>40</sup> Chew, *supra* note 37, at 879.

<sup>41</sup> GARNER, *THE WINNING BRIEF*, *supra* note 13, at 142.

but only by a reader who is mentally capable of dealing with lots of underbrush.”<sup>42</sup> As described more fully in Part II, Garner advises writers to “eliminate the clutter of numerical pollution” by not using in-line citations.<sup>43</sup> Garner has even pinpointed two 1990s *Bluebook* changes as directly responsible for “objectively” making “legal writing worse” in recent years: the sixteenth edition of the *Bluebook*’s “requirement of parentheticals” and “the issuance of a retrograde practitioner’s section.”<sup>44</sup> Bryan Garner is hardly alone in noting that citations make legal writing worse<sup>45</sup>

The critiques of in-line citations are plentiful but boil down to two, which I hereby dub the bumpy citation problem and the presumptuous citation problem.<sup>46</sup>

## 1. The Bumpy Citation Problem

Many legal documents don’t effectively integrate in-line citations and prose to convey information in a readable way. And as a result, the citations seem like interruptions or clutter rather than an integral part of the document meant to be read alongside the surrounding prose. This is the bumpy citation problem.

Bumpy in-line citations interrupt the prose rather than working together *with* the prose. These are the kinds of in-line citations that Garner has described as “thought interrupters,” making legal prose “quite jarring—as if you were driving down a highway filled with speed bumps.”<sup>47</sup> Others, like Garner, characterize all in-line citations

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<sup>42</sup> *Id.* at 143.

<sup>43</sup> GARNER, PLAIN ENGLISH, *supra* note 8, at 77.

<sup>44</sup> Bryan A. Garner, *Parenthetical Habits*, ABA J. 27 (Nov. 2016).

<sup>45</sup> *E.g.*, RUGGERO J. ALDISERT, WINNING ON APPEAL: BETTER BRIEFS AND ORAL ARGUMENTS 202 (2d ed. 2003) (referring to citations as “literary hiccups”); LINDA H. EDWARDS, LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION 196 (5th ed. 2010) (“Citations in the text of a document can make the text hard to read.”); WAYNE SCHIESS, WRITING FOR THE LEGAL AUDIENCE 9 (2003) (“[C]itations make our writing clogged and disjointed.”). Judge Posner has also noted that citations make legal writing worse, but his critique has focused on citation form rather than the existence of citations at all: “The particular casualty of preoccupation with citation forms is the style of legal writing.” Richard A. Posner, *Goodbye to the Bluebook*, 53 U. CHI. L. REV. 1343, 1349 (1986). That said, he has at times laid quite a bit of legal-style blame on the *Bluebook*: “the Bluebook encourages the tendency of young lawyers . . . to cultivate a most dismal sameness of style, a lowest-common-denominator style.” *Id.* Judge Posner and Bryan Garner have been adversaries in the great footnote debate. *See infra* note 124.

<sup>46</sup> These are the substantive critiques anyway. Some people simply don’t like in-line citations as a matter of preference.

<sup>47</sup> Garner, *Citational Footnote*, *supra* note 23, at 97, 98; *see also* STARK, *supra* note 21, at 232–33 (“[Y]our readers don’t absorb cites; they jump over them. Once they start jumping, it’s hard to get them to stop so they don’t miss

as bumpy, describing legal readers who need to “jump over” in-line citations to make sense of the prose.<sup>48</sup> One memorable metaphor is of prose sentences as “isolated islands in a sea of citations.”<sup>49</sup>

But bumpiness is not an inherent quality of citations: it results from a failure to fully integrate the information conveyed by the citation with the information conveyed by the surrounding prose. Of course, the longer the citation, the more likely it is to “bump out” from the prose. Similarly, unnecessary citations are likely to bump out from the prose. Citations that are either unnecessary or overly long are simply excessive and drain reader energy, just like any other unnecessary passage of writing.

Excessive citation (or hypercitation or “citationitis”) occurs when the quantity of citation in a document exceeds the quantity necessary to support the propositions in the prose.<sup>50</sup> Judge Ruggero Aldisert, for example, called “excessive citation” one of the “three mighty horsemen running against” the advocate’s purpose of selling an argument to the reader.<sup>51</sup> Excessive citation can “confuse[] what is necessary to the argument” with “what is pseudo-academic show-and-tell.”<sup>52</sup>

For readers, the bumpy citation problem manifests mainly as an unpleasant experience during which the citations gradually deplete the reader’s energy and attention. If the reader misses important information about the cited legal authorities, the reason is often diminished reader attention. But sometimes the reader misses important information about the cited legal authorities because it wasn’t there to see—the writer didn’t include the information. Instead, the writer presumed that the reader knew it, consciously or not. This is the presumptuous citation problem.

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subsequent text.”); MARY BETH BEAZLEY & MONTE SMITH, *LEGAL WRITING FOR LEGAL READERS* 219 (2014) (“Most readers would have to struggle to pick up any information in phrases and clauses interspersed among the citations.”).

<sup>48</sup> EDWARDS, *supra* note 45, at 196 (“A reader has to jump over all the names, numbers, and parentheticals; find the spot where the text begins again; and then pick back up on the message of the text.”); STARK, *supra* note 21, at 140 (“[Y]our readers don’t absorb cites; they jump over them.”).

<sup>49</sup> MARK P. PAINTER, *THE LEGAL WRITER* 47 (2d ed. 2003).

<sup>50</sup> See, e.g., Garner, *Citational Footnote*, *supra* note 23, at 98 (“With computer research and the proliferation of caselaw, it has become easier than ever to find several cases to support virtually every sentence. Only today I was reading a brief that had an *average* of 12 cases cited on each page.”).

<sup>51</sup> ALDISERT, *supra* note 45, at 236. The other two mighty horsemen are “compulsive footnoting” and “pedantry.” *Id.*

<sup>52</sup> *Id.* at 236; ARMSTRONG & TERRELL, *supra* note 10, at 344 (“Do not refer to cases you know to be irrelevant or unsupportive.”)

## 2. The Presumptuous Citation Problem

The presumptuous citation problem occurs when writers rely on *citations* to communicate information about the cited authority that readers expect to see *in the prose*. For example, the facts of a case might be described only in an explanatory parenthetical<sup>53</sup> even though those facts underlie a critical analogical argument. Or, worse, the relevance of a cited authority might never be explained at all,<sup>54</sup> even in an explanatory parenthetical; the reader is left to divine its significance using only the weight-of-authority information in the citation.

From the *writer's perspective*, the writer has said what needs to be said about the law because she wrote a citation. When the writer sees the citation, she knows what the cited authority said because she is familiar with it, and she knows how it fits in with the surrounding prose because she wrote it. But from the *reader's perspective*, key information is missing. The reader hasn't necessarily read the cited authority nor is it likely she can recall whatever portions the writer thinks are important.<sup>55</sup> But the writer might not notice this omission because the citation is shorthand to *her* for information about the cited authority.

A citation communicates information to the reader about the weight of the cited authority and the authority's relationship to the preceding prose,<sup>56</sup> but citations alone don't communicate what the authority says or means—those explanations take place in the prose. Writers might presume that a citation will convey an authority's content as well as its characteristics, but that presumption is rarely a safe one to make.

Bryan Garner refers to this problem as “hiding the law”<sup>57</sup> and “camouflaging” poor prose from editorial scrutiny.<sup>58</sup> He argues that in-line citations make it easy for writers to “bury important parts of” their analyses in the citations rather than making those points explicitly in the prose.<sup>59</sup> According to Garner, alternating sentences of prose with phrases or sentences of citation makes it “hard to come up

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<sup>53</sup> Garner, *Citational Footnote*, *supra* note 23, at 103.

<sup>54</sup> See Garner, *Citational Footnote*, *supra* note 23, at 103.

<sup>55</sup> See, e.g., ARMSTRONG & TERRELL, *supra* note 10, at 166–67 (“[I]nstead of defining a couple of clearly phrased questions, [the writer] offers a laundry list of citations to rules he assumes the judge has memorized.”).

<sup>56</sup> See Chew, *supra* note 37, at 881–82.

<sup>57</sup> Garner, *Citational Footnote*, *supra* note 23, at 103.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

with shapely paragraphs.”<sup>60</sup> Because the prose sentences aren’t truly adjacent to each other, Garner argues, writers are less likely to effectively connect them to each other because the disconnects are simply hard for the writer to see.<sup>61</sup>

Here’s one example from Bryan Garner of a presumptuous citation, drawn from a dissenting opinion in *Hunt v. Cromartie*, authored by Justice Clarence Thomas:

[T]he Court appears to discount clear error review here because the trial was “not lengthy.” *Ante*, at 1458–1459. Even if considerations such as the length of the trial were relevant in deciding how to review factual findings, an assumption about which I have my doubts, these considerations would not counsel against deference in this action. The trial was not “just a few hours long,” *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 500, 104 S.Ct. 1949, 80 L.Ed.2d 502 (1984); it lasted for three days in which the court heard the testimony of 12 witnesses. And quite apart from the total trial time, the District Court sifted through hundreds of pages of deposition testimony and expert analysis, including statistical analysis.<sup>62</sup>

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<sup>60</sup> *Id.* at 98. Per Garner, a related harm is that writers might see a paragraph where there is no paragraph, only the length of one: “[L]egal writers often intend a single sentence, followed by a string citation with parentheticals, to stand for a paragraph. After all, it fills up a third or even half of the page.” Garner, *Parenthetical Habits*, *supra* note 44, at 27. Moreover, laments Garner, these faux paragraphs “can go on for dozens of pages at a stretch” and “often do[] in the average brief.” *Id.* at 98–99.

Garner also points out that these ills are magnified by the double-spacing often required in briefs and slip opinions. *Id.* at 102. I’m not so sure that a single prose sentence followed by a long string cite isn’t a paragraph. The fake-paragraph view presumes that only prose sentences count when it comes to forming a paragraph. But what is a paragraph? A paragraph is a topic sentence, which is a claim, supported by further sentences, which are reasons. If those reasons happen to come in the form of citation sentences rather than prose sentences, they still form a paragraph. Moreover, this particular type of paragraph is an efficient means of conveying a rule synthesized from multiple authorities. See Michael D. Murray, *For the Love of Parentheticals: The Story of Parenthetical Usage in Synthesis, Rhetoric, Economics, and Narrative Reasoning*, 38 UNIV. DAYTON L. REV. 1, 184 (2012) (“Parentheticals are crucial to the structure [of an explanatory synthesis], because they allow open demonstration of the material drawn from multiple cases cited in a string cite to support the proposition induced from the multiple authorities.”).

<sup>61</sup> *Id.* (“The connections between consecutive sentences get weaker.”).

<sup>62</sup> *Hunt v. Cromartie*, 121 S.Ct. 1452, 1472 (2001) (Thomas, J., dissenting).

As Garner notes, “the relevance of the cited case,” *Bose*, “is not directly discussed” in the text of the opinion.<sup>63</sup> The reader is left to infer the role that *Bose* has in the analysis here—is Thomas arguing that a principle from the case applies in the situation at hand or merely providing attribution for the quoted language? The reader also might scan backwards through the opinion looking for earlier mentions of *Bose* to figure out what proposition of law the citation is supporting. Or perhaps the reader will look up the case and read it, then assimilate her independent research into the written argument. Whatever the outcome, none is optimal because the writer has lost the reader’s attention.

Noticing that the content of a cited authority needs more explanation in the prose can reveal other writing problems. As it turns out, in the *Hunt* dissent, Justice Thomas explained *Bose*’s relevance in the a substantive footnote. Garner did not think that was a useful place for the information,<sup>64</sup> nor do I.

Garner concluded that citations caused the passage to be confusing: the confusion stemmed from the “backwash of citations . . . splashing through the passage” and the substantive footnote.<sup>65</sup> I reached a different conclusion: Justice Thomas introduced information out of order—rather than connecting new information (how the case applied) to previously described information (what the case means), he connected new information (a context-less quote from a case) to new information (how the case applied).<sup>66</sup> Thus, rather than having a citation problem, the passage has a flow problem: all the information is new to the reader, and so the reader can’t connect it to existing knowledge from earlier in the passage.<sup>67</sup> The writer presumed that the reader would understand the relevance of *Bose* from the citation alone.

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<sup>63</sup> Bryan A. Garner, *Clearing the Cobwebs from Judicial Opinions*, 38 COURT REV. 4, 11 (Summer 2001) [hereinafter Garner, *Clearing the Cobwebs*].

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> One definition of “flow” is “the logical progression from something your reader already knows to something your reader doesn’t already know.” CHEW & PRYAL, *supra* note 137, at 380. The common legal-writing acronyms of C-RAC and CREAC are designed to help writers avoid applying unexplained law to the facts of a case.

<sup>67</sup> See CHEW & PRYAL, *supra* note 137, at 380 (“[N]ew information is most easily understood by your reader when you bundle it with information your reader already knows.”) (citing Susan E. Haviland & Herbert H. Clark, *What’s New? Acquiring New Information as a Process in Comprehension*, 13 J. VERBAL LEARNING & VERBAL BEHAVIOR 512, 513 (1974)). Goldstein and Lieberman offer a travel metaphor to explain flow: “Readers expect sentences to proceed in order. When you give directions, you start with the street nearest the person you are instructing, and you give the sequence of streets and turns that will lead to the desired destination.” GOLDSTEIN & LIEBERMAN, *supra* note 7, at 104.

Garner’s revision of the confusing passage addresses this flow problem by explaining what the precedent case means before describing how it applies to the case at hand.<sup>68</sup> His revision moves the citations into footnotes, but the revisions to the *prose* would address the flow problem even if the citations were in line with the text. In other words, the bumpy citation helped spot the problem and diagnose it, but moving the citation out of sight did not fix the passage. Instead, the solution was to add more prose describing the law before applying it.<sup>69</sup>

Presumptuous citations are just another form of a common writing problem: it is difficult for a writer to see her own writing exactly as her readers will. As Joseph M. Williams and Joseph Bizup put it, “We see what we thought we said, and we blame our readers for not understanding us as we understand ourselves.”<sup>70</sup> Many revision techniques are aimed exactly at this tricky problem of seeing words from the reader’s perspective. This Article argues that writers should include citations in their revision process, which should help writers see into the shadows cast by citations and notice when information is missing or out of place.

## II. Legal Stylists Haven’t Tried to Fix In-Line Citations

In-line citations *seem* well-suited for style advice:<sup>71</sup> in-line citation is a core convention of legal writing<sup>72</sup> so they are ubiquitous, in-line citations comprise a significant percentage of the words in many legal documents, and in-line citations seem to make legal writing worse in identifiable ways.

Despite the apparent need for a systematic approach to writing stylish legal citations, legal style experts almost completely ignore in-line citations in their advice. Instead legal style advice focuses on improving legal prose by ignoring citations or, at best, by suggesting ways to minimize them. Of prominent legal style experts, Bryan Garner has taken the minimization approach the furthest by telling

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<sup>68</sup> Garner, *Clearing the Cobwebs*, *supra* note 63, at 11–12.

<sup>69</sup> This example also illustrates how a passage can suffer from both bumpy citations and presumptuous citations. Both disrupt the reader’s ability to read the prose smoothly but in different ways. To continue the visual metaphor, bumpy citations bump out from the prose while presumptuous citations reveal a hole in the prose.

<sup>70</sup> JOSEPH M. WILLIAMS & JOSEPH BIZUP, *STYLE: LESSONS IN CLARITY AND GRACE* 3 (12th ed. 2017).

<sup>71</sup> *E.g.*, Osbeck, *supra* note 1, at 460 (referring to Judge Easterbrook as an “exceptional writer” but not addressing his use of citations or any other legal writer’s use of citations).

<sup>72</sup> Chew, *supra* note 37, at 896.



legal writers to give up on in-line citations altogether and quarantine citations in footnotes.

When lawyers want to improve their writing style, they can turn to books written for practitioners. These books might briefly review the basic conventions of legal reasoning and writing typically covered in first-year legal writing textbooks,<sup>73</sup> but their content focuses more on finesse and elegance. But not, as this section shows, incorporating in-line citations with finesse and elegance. Instead, the most popular legal style books don't treat citation as a facet of legal style at all. As a result, they offer little practical guidance to writers hoping to incorporate in-line citations more stylishly into their documents.

*Plain English for Lawyers* was first published in 1979, and since then it has become a "classic"<sup>74</sup> and is "[p]robably the most popular legal text."<sup>75</sup> The book's stated premise is that "good legal writing should not differ, without good reason, from ordinary well-written English."<sup>76</sup> In the first chapter, it offers an example of good legal writing from Judge Benjamin Cardozo's majority opinion in *Palsgraf v. Long Island Railroad Co.*<sup>77</sup> The passage is from the opinion's statement of facts and describes a long sequence of events that begins with men running to catch a train and ends with scales falling on a woman standing at the other end of the train platform. It is a famous example of skillful, engaging legal writing. It contains no citations because it's the statement of facts from a judicial opinion.

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<sup>73</sup> This Article's review of legal writing guides focuses on books written primarily for practitioners rather than on books written primarily for first-year legal writing courses. First-year courses tend to focus on fundamental competencies such as understanding and using legal discourse, using legal authorities, and communicating via appropriate legal analysis. Style is rarely a focus in 1L legal writing courses and textbooks. For example, a study of 1L legal writing textbooks found that typical course content includes "such basic legal topics as the roles and functioning of the judicial and legislative systems; the doctrine of stare decisis; precedential values and appropriate uses of legal authority; the major forms of legal reasoning; the principles of statutory construction; the ethical duties of legal writers; the standards of appellate review; and other doctrines relating to appellate procedure." Terrell Pollman & Linda H. Edwards, *Scholarship by Legal Writing Professors: New Voices in the Legal Writing Academy*, 11 LEGAL WRITING J. 3, 20 (2006). For practitioners, who have presumably already learned the foundational skills covered in 1L legal writing courses, however, developing style becomes a priority.

<sup>74</sup> Beverly Ray Burlingame, Book Notices, 10 SCRIBES J. LEG. WRITING 155, 163 (2005–2006) (reviewing the fifth edition of *Plain English for Lawyers*).

<sup>75</sup> Tom Goldstein, *Drive for Plain English Gains Among Lawyers*, N.Y. TIMES, Feb. 19, 1988, § B, at 7.

<sup>76</sup> WYDICK, *supra* note 9, at 4.

<sup>77</sup> *Id.* at 5 (quoting *Palsgraf v. Long Island R.R. Co.*, 1662 N.E. 99 (N.Y. 1928)).

The book contains dozens of lessons about legal style, and indeed not one is about citation. The book also contains 18 practice exercises containing 114 total questions.<sup>78</sup> Only one of those questions contains a complete citation.<sup>79</sup> That question tasks readers with revising a long sentence, “putting subject, verb, and object(s) close together and near the front of the sentence, and omitting as many surplus words” as possible.<sup>80</sup> The sentence references both a restatement section, including the publication date, and a rule from a model code.<sup>81</sup> Those references separate the subject of the sentence and the verb. For sure they should be moved out of the middle of the sentence. And the book’s answer key suggests doing exactly that by placing the references in a separate citation sentence after the prose, preceded with a “see” signal.<sup>82</sup> But neither the chapter nor the answer key explains why this structure is the most effective way to integrate these authorities with the prose.

*Thinking Like a Writer: A Lawyer’s Guide to Effective Writing and Editing* is another popular writing guide for practitioners.<sup>83</sup> The authors, Stephen V. Armstrong & Professor Timothy R. Terrell, set

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<sup>78</sup> The number of questions is easiest to see in the book’s answer key. *Id.* at 109–28.

<sup>79</sup> It’s question 2 in Exercise 10, which appears in Chapter 6, “Arrange Your Words with Care.” *Id.* at 43. Here’s the full sentence:

“Reasonable remedial measures,” as used in the Restatement (Third) of the Law Governing Lawyers § 120 (2000) and the American Bar Association Model Code of Professional Responsibility, Rule 3.3, includes as a first step remonstrating with the client in confidence, telling the client about the lawyer’s duty of candor to the tribunal, and seeking the client’s cooperation with respect to the withdrawal or correction of the false testimony.

<sup>80</sup> *Id.*

<sup>81</sup> See *supra* note 79.

<sup>82</sup> WYDICK, *supra* note 9, at 118. Here’s the suggested answer:

The first of these “reasonable remedial measures” is for the lawyer to speak with the client in confidence. The lawyer should tell the client about the lawyer’s duty of truthfulness to the court and should try to get the client to correct or withdraw the false testimony. See *Restatement (Third) of the Law Governing Lawyers* § 120 (2000); American Bar Association Model Code of Professional Responsibility, Rule 3.3.

Notice also that the first sentence—a description of a law—is unsupported by a citation.

<sup>83</sup> See ARMSTRONG & TERRELL, *supra* note 10, at ix (describing the audience of the book as practicing lawyers rather than new law students).

“super-clarity” as their book’s organizing principle.<sup>84</sup> The book doesn’t have any specific chapters or sections about citation, but some advice is scattered across the chapters addressing introductions<sup>85</sup> and legal genres.<sup>86</sup> And, unlike *Plain English for Lawyers*, many of the book’s legal excerpts include in-line citations.<sup>87</sup> One example is a memorandum with in-line citations and the authors’ annotations about how a reader would respond to those citations and how a good editor would suggest revising them.<sup>88</sup> However, neither the original memo nor the revised version<sup>89</sup> includes citations after every assertion of law, which makes the sample less useful to writers who want to know how to skillfully incorporate in-line citations.<sup>90</sup>

Regardless, the chapter addressing style does not address citation in either its advice or its examples.<sup>91</sup> Like the first chapter of *Plain English for Lawyers*, it reproduces Justice Cardozo’s opening to *Palsgraf*,<sup>92</sup> which doesn’t have citations. The chapter includes short examples from briefs,<sup>93</sup> a genre that usually includes frequent in-line citations to the record or the law. These examples are meant to demonstrate rhythm, confidence, and a sense of character,<sup>94</sup> and they do. However, these examples do not include any citations. So they can’t show readers how to maintain their style while also integrating citations.

That brings us to two more recent entries<sup>95</sup> into the practitioner-focused legal writing books: *Point Made: How to Write Like the*

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<sup>84</sup> *Id.* at 9.

<sup>85</sup> *Id.* at 167.

<sup>86</sup> *Id.* at 343–44.

<sup>87</sup> *See, e.g., id.* at 182–83.

<sup>88</sup> *Id.* at 409–13.

<sup>89</sup> This particular example memo is revised twice, but the second revision omits the portion containing the citations. *Id.* at 444.

<sup>90</sup> *Id.* at 409–13. Consistently throughout the examples in *Thinking Like a Lawyer*, the first sentence of a paragraph of law is not supported by a citation to a legal authority, even when the authors are arguing in favor of using the first-sentence position in a paragraph to give a rule of general applicability from a case. *See, e.g., id.* at 183.

<sup>91</sup> *Id.* at 263–84.

<sup>92</sup> *Id.* at 267 (quoting *Palsgraf v. Long Island R.R. Co.*, 1662 N.E. 99 (N.Y. 1928)).

<sup>93</sup> *Id.* at 279–80, 283–84. Many of the chapter’s examples are not identified by genre, but several are identifiable as belonging to briefs of one kind or another.

<sup>94</sup> *Id.* at 279–80, 283–84.

<sup>95</sup> There are other legal writing books aimed at practitioners that address style. *Plain English for Lawyers* and *Thinking Like a Writer* have been

*Nation's Top Advocates* and *Point Taken: How to Write Like the World's Best Judges*, both by Ross Guberman. Both books are built around hundreds of short examples of compelling legal prose by advocates and judges.<sup>96</sup> The examples are interspersed with commentary describing the techniques used in each sample and how to employ those techniques.<sup>97</sup> As Guberman notes in the introduction to *Point Made*, he “cut most of the citations” for readability.<sup>98</sup> His focus is thus on analyzing the prose words and helping advocates write stylish prose. The book’s sum total advice on citation is this: First, he advises against citational footnotes because “most judges still want citations the old-fashioned way—in the text—and nearly all the top advocates in [*Point Made*] still put them there.”<sup>99</sup> Second, he advises

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around for a long time and are widely known. The two Guberman texts are newer but popular. *Point Made* is in its second edition. Other books that fit the category of practitioner-focused legal writing book include Tom Goldstein & Jethro K. Lieberman’s *The Lawyer’s Guide to Writing* and Steven D. Stark’s *Writing to Win: The Legal Writer Well*, see *supra* notes 7 and 21.

*Writing to Win* includes almost no explicit guidance about writing citations, although it does include an example with in-line citations from an amicus brief that Stark describes as an effective example of “a complex case reduced to its essentials.” STARK, *supra* note 21, at 129 (quoting and discussing an amicus brief filed by Professor David Shapiro in *Atascadero State Hospital v. Scanlon*, 473 U.S. 234 (1985)). Other examples don’t have in-line citations, and the book doesn’t contain a separate style chapter.

*The Lawyer’s Guide to Writing Well* contains a little citation advice in its style chapter. GOLDSTEIN & LIEBERMAN, *supra* note 7, at 110. In addition to declaring that the authors “do not know anyone who reads string cites,” on the topic of “string citations and miscitations” they offer this (good) advice: “Cite only those cases that you have read. Confine your citations to the principal cases that support your point.” *Id.* Otherwise, the book does not address citations, although some “bad” examples include in-line citations. See *id.* at 88, 101–02. None of the excerpts from judicial opinions include in-line citations.

Judge Aldisert offers citation advice in *Winning on Appeal*, and he also includes an excerpt by Justice Breyer that contains in-line citations—but specifically as an “example of excellent use of parentheticals,” rather than as a broader commentary on the readability of Justice Breyer’s citations. See ALDISERT, *supra* note 45, at 264–65 (citing *Meyer v. Holley*, 123 S. Ct. 824, 828–29 (2003)).

<sup>96</sup> GUBERMAN, POINT MADE, *supra* note 11, at xxx–xi (describing Guberman’s empirical technique and an overview of the book’s contents); GUBERMAN, POINT TAKEN, *supra* note 12, at xxiii–xxv.

<sup>97</sup> GUBERMAN, POINT MADE, *supra* note 11, at xxx–xi; GUBERMAN, POINT TAKEN, *supra* note 12, at xxiii–xxiv.

<sup>98</sup> GUBERMAN, POINT MADE, *supra* note 11, at xxxi.

<sup>99</sup> *Id.* at 181.

writers not to place citations in the middle of sentences, sound advice that is often offered.<sup>100</sup>

*Point Taken*, on the other hand, does include both examples of compelling judicial opinions with in-line citations<sup>101</sup> and some advice about writing citations, mostly about writing effective parentheticals.<sup>102</sup> Nevertheless, *most* of the examples of legal analysis (where legal citations typically appear) have been edited to exclude the citations that were in the original opinions. For instance, the opening of the chapter about legal analysis reproduces five pages of Chief Justice John Roberts's majority opinion in *Snyder v. Phelps*.<sup>103</sup> Guberman describes the excerpt as an example of perfect organization, clear and well-supported analysis, and skillful writing.<sup>104</sup> And he offers this long excerpt as a model to use for the rest of the chapter, which "break[s] down the structure conundrum into specific techniques for organizing legal analysis in a reader-friendly way."<sup>105</sup> The excerpt is interspersed with Guberman's commentary about Chief Justice Roberts's logical progression, transitions, and word choices. But the excerpt doesn't contain any of the thirty-two legal citations that are in the original opinion,<sup>106</sup> even though one of the organizational precepts that Guberman says Roberts followed is "[c]ite only enough authorities to prove your point."<sup>107</sup>

In sum, none of the four books described in text above (or the several books described in footnotes below) provide a systematic approach for writing stylish citations. Nor do they offer examples of stylish citations—citations that are fully integrated with the prose to convey information in a readable way to a legal audience. A legal writer eager to improve the connections between prose sentences and citation sentences wouldn't find much guidance in those writing books.

Legal writers eager for citation-style help would find a bit more guidance in Bryan Garner's writing texts. He is one of the few legal style experts who explicitly addresses citations as a component of legal writing: "[I]t's not just about active voice and short sentences and all the other tips that can improve any kind of writing. In legal writing, it's also about where you put your citations."<sup>108</sup> He is the author of

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<sup>100</sup> See *infra* Section IV.B.1.

<sup>101</sup> E.g., GUBERMAN, POINT TAKEN, *supra* note 12, at 136–40.

<sup>102</sup> E.g., *id.* at 136.

<sup>103</sup> *Id.* at 84–96 (citing and discussing *Snyder v. Phelps*, 562 U.S. 443 (2011) (Roberts, C.J.)).

<sup>104</sup> GUBERMAN, POINT TAKEN, *supra* note 12, at 83–84.

<sup>105</sup> *Id.* at 97.

<sup>106</sup> *Snyder*, 562 U.S. at 451–59.

<sup>107</sup> GUBERMAN, POINT TAKEN, *supra* note 12, at 97.

<sup>108</sup> Garner, *Clearing the Cobwebs*, *supra* note 63, at 17.

about a dozen books related to legal writing, including at least five that offer substantial legal writing advice: *The Elements of Legal Style*,<sup>109</sup> *Legal Writing in Plain English: A Text with Exercises*,<sup>110</sup> *Making Your Case: The Art of Persuading Judges*,<sup>111</sup> *The Redbook: A Manual on Legal Style*,<sup>112</sup> and *The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Courts*.<sup>113</sup>

In each of those books—as well as many articles<sup>114</sup>—Garner addresses the role of citation in legal writing style. His books and articles consistently describe citations as impediments to stylish legal writing and advise writers to remove citations from the text and place them in footnotes, a position on the page from which he argues they can do less harm to the prose.<sup>115</sup> If a writer must put the citations in line with the text, Garner’s governing guideline is to make them as unobtrusive as possible: “Always subordinate citations to the statements they support. Never begin a sentence with a citation.”<sup>116</sup> The underlying premise of Garner’s citation advice is that citations always detract from legal style—they cannot contribute to stylish legal writing, or themselves be stylish. At best, they do no harm. And for the most part, they make legal writing worse.

Garner has been advocating for footnoted citations (or, to use his coinage, “citational footnotes”) for over twenty-five years,<sup>117</sup> and his solution addresses the writing problems caused by in-line citations by

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<sup>109</sup> GARNER, *ELEMENTS OF LEGAL STYLE*, *supra* note 2.

<sup>110</sup> GARNER, *PLAIN ENGLISH*, *supra* note 8.

<sup>111</sup> ANTONIN SCALIA & BRYAN A. GARNER, *MAKING YOUR CASE: THE ART OF PERSUADING JUDGES* (2008).

<sup>112</sup> BRYAN A. GARNER, *THE REDBOOK: A MANUAL ON LEGAL STYLE* (3rd ed. 2013) [hereinafter GARNER, *THE REDBOOK*].

<sup>113</sup> GARNER, *THE WINNING BRIEF*, *supra* note 13.

<sup>114</sup> *E.g.*, Garner, *Clearing the Cobwebs*, *supra* note 63; Garner, *Citational Footnote*, *supra* note 23. Garner regularly includes examples of legal writing with in-line citations. However, these examples are not exemplars—instead, Garner uses them as support for moving citations to footnotes. *E.g.*, Garner, *Clearing the Cobwebs*, *supra* note 63, at 17–21.

<sup>115</sup> *E.g.*, GARNER, *THE REDBOOK*, *supra* note 112, at 149 (“Ignore any suggestion or prescription about placing citations in text in court papers. If court rules otherwise allow footnoting citations, you may and probably should do so. Doing so eliminates the clutter of numerical pollution.”).

<sup>116</sup> GARNER, *ELEMENTS OF LEGAL STYLE*, *supra* note 2, at 90.

<sup>117</sup> *See, e.g.*, SCALIA & GARNER, *supra* note 111, at 132 (“The Garner view: I’ve made it something of a cause celebre to reform the way citations are interlarded in lawyers’ texts. Since 1992, I’ve recommended putting all bibliographic material (volume numbers and page numbers) in footnotes . . .”).

simply removing them from the text.<sup>118</sup> Removing in-line citations altogether eliminates even the potential for bumpy or presumptuous citations and also makes disjointed or incomplete prose more obvious to the writer by eliminating the visual distraction of citations.

Being forced to explain how and why controlling precedents apply is one benefit of the citational-footnote solution to the unstylish citation problem.<sup>119</sup> As Bryan Garner has explained, putting citations in footnotes means “[y]ou have to talk about the controlling precedents—what they mean and how they apply.”<sup>120</sup> Per Garner, tucking the citations out of sight prevents the “splattering” of “pages with citations and parentheticals but never really discussing the living past of the law.”<sup>121</sup>

However, citational footnotes have not been embraced by most legal writers,<sup>122</sup> both because the convention for in-line citations is strong and citational footnotes introduce other writing problems even as they eliminate bumpy and presumptuous citations. Well-known legal writers who have rejected citational footnotes include Garner’s sometimes co-author Justice Antonin Scalia,<sup>123</sup> Judge Richard Posner,<sup>124</sup> and Chief Judge Diane Wood.<sup>125</sup>

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<sup>118</sup>Per Garner, putting citations in footnotes “has many advantages. The chief ones are that (1) you have to discuss the caselaw contextually, without reducing holdings into parentheticals; (2) you can more easily vary the length and structure of your sentences; and (3) you’ll be writing sharper paragraphs (often shorter paragraphs) that contain more information in actual prose.” GARNER, *ELEMENTS OF LEGAL STYLE*, *supra* note 2, at 92

<sup>119</sup> Garner, *Clearing the Cobwebs*, *supra* note 63, at 10.

<sup>120</sup> *Id.* at 10–11.

<sup>121</sup> *Id.* at 11.

<sup>122</sup> For example, *The Citational Footnote*, published in 1998, lists examples of opinions using footnoted citations from the high courts of Alaska, Delaware, Georgia, Minnesota, Missouri, Texas, and Washington. The list also includes opinions from the U.S. Courts of Appeal for the Fifth and Ninth Circuits. *Id.* at 107. *See also* SCALIA & GARNER, *supra* note 111, at 133 (referring the reader to a list of cited examples in *Legal Writing in Plain English*).

<sup>123</sup> In *Making the Case*, Garner wrote, “It is with no small degree of sadness that I note my inability to persuade my coauthor to use this method for the improvement of judicial writing generally.” SCALIA & GARNER, *supra* note 111, at 133.

<sup>124</sup> Garner described his back-and-forth with Judge Posner in *Court Review* as “an exchange that deserves greater attention than it has gotten.” GARNER, *THE WINNING BRIEF*, *supra* note 13, at 141 (citing Garner, *Clearing the Cobwebs*, *supra* note 63, at 4; Richard A. Posner, *Against Footnotes*, 38 COURT REV. 24 (Summer 2001); Bryan A. Garner, *Afterword*, 38 COURT REV. 28 (Summer 2001)).

<sup>125</sup> *Chief Judge Diane P. Wood*, 15 SCRIBES J. LEG. WRITING 99, 124 (2013) (interview with Bryan A. Garner).

Justice Scalia explained his reasons for rejecting the Garner prescription in *Making Your Case: The Art of Persuading Judges*, which he co-authored with Garner.<sup>126</sup> First, Scalia did not think that “putting the entire citation material (case name, court, date, volume number, page) in a footnote” would make a document more readable.<sup>127</sup> Legal readers can’t ignore the footnotes because they want to know what authority supports the writer’s claims. “So, far from enabling the reader’s eyes to run smoothly across a text uninterrupted by this ugly material,” citational footnotes force the reader’s “eyes to bounce repeatedly from text to footnote.”<sup>128</sup>

Second, he thought Garner’s proposed solution to the repeated-eye-bounce problem was unworkable:

My co-author’s solution to this problem is to “weave” the name of the court and the case name (and the date?) into the text (“As the Supreme Court of the United States said in the 1959 case of *Schwartz v. Schwartz*, . . .”). I doubt that this can be done (without sounding silly) for all the citations that a brief contains.

Or, if a writer were skilled enough to weave the key details into the text, doing so would create the new problem of a lack of valence:

I will rarely want the court, name, and date of a case thrust in my face, so to speak, by inclusion in the narrative text as though it’s really important. Ordinarily, such information can better be conveyed, almost subliminally, in a running citation.<sup>129</sup>

Justice Scalia was not alone in this observation about legal reading and how citation sentences have a difference valence than prose sentences.<sup>130</sup> Law-trained readers learn to read citations so that they can speed up or slow down as needed. Because citations are easier to spot and skim over (or dive into) than descriptions of the same information in prose sentences, readers have more control over how much emphasis to give that information.<sup>131</sup>

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<sup>126</sup> SCALIA & GARNER, *supra* note 111, at 133–35.

<sup>127</sup> *Id.* at 135–36.

<sup>128</sup> *Id.* at 134.

<sup>129</sup> *Id.* at 134.

<sup>130</sup> *E.g.*, BEAZLEY & SMITH, *supra* note 47, at 217 (“Readers’ immediate need to understand a source’s validity makes it more important for memo and brief writers to place citations in text than it is to preserve the supposed ease of reading that citation-free text allows.”).

<sup>131</sup> Finally, Justice Scalia’s “conclusive reason not to accept Garner’s novel suggestion is that it is novel.” SCALIA & GARNER, *supra* note 111, at 134. He explained that “[j]udges are uncomfortable with change” and pointed to “crabby judges” who would surely dislike this change. To his credit, Garner has taken the long view, staying on message for three decades and even



And this stripping of reader control might be the main reason that legal writers have rejected citational footnotes, despite Garner’s influence and advocacy. Garner’s entire approach hinges on the premise that writers aren’t up to the challenge of skillfully incorporating citations into their texts in a way that readers can follow. His calculation is that it’s easier for writers to write readable documents if they put the citations in footnotes and fill the text with details about the source of law: “In short, it doesn’t really matter whether readers can negotiate their way through eddies of citations—because, on the whole, writers can’t.”<sup>132</sup>

But what if, on the whole, writers just can’t negotiate their way through eddies of citations *yet*? What if legal style experts included in-line citations in their model examples and broke down the methods that stylish legal writers use to skillfully incorporate in-line citations? What if, rather than ignoring in-line citations or relegating them to footnotes, legal style embraced in-line citations?

Part III proposes a different solution to the citations-make-legal-writing-worse problem: teach legal writers how to write stylish legal citations. This solution accepts as premises that in-line citations are conventional, that legal readers know how to read them and try to incorporate information from the citations with the surrounding prose, and that it is actually possible for legal writers to write readable documents using in-line citations.

### III. How to Cite Stylishly

This Article proposes a solution to the citations-make-legal-writing-bad problem that is so obvious we haven’t tried it yet: purposefully teach legal writers to write citations that are fully integrated with the prose to convey information in a readable way to a legal audience. Although most of Part III describes how to tackle specific parts of stylish citations,<sup>133</sup> an overarching principle is simply to pay more attention to citations during the writing process.

In *Citation Literacy*, I argued that citation should not be an afterthought in law school pedagogy.<sup>134</sup> Instead, citation should be treated like the core convention of legal discourse that it is and integrated throughout the first-year curriculum so that law students

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characterizing the change to adopt citational footnotes as “glacial.” Garner, *Citational Footnote*, *supra* note 23, at 105.

<sup>132</sup> Garner, *Citational Footnote*, *supra* note 23, at 99.

<sup>133</sup> This Article does not address how best to incorporate hyperlinked citations or the merits of hyperlinked citations. For more, see Ellie Margolis, *Is the Medium the Message? Unleashing the Power of E-Communication in the Twenty-First Century*, 12 LEG. COMM. & RHETORIC: JALWD 1, 21–25 (2015).

<sup>134</sup> Chew, *supra* note 37, at 906.

can learn to read citations before they have to write them.<sup>135</sup> Similarly, citations should not be an afterthought in professional legal writing.<sup>136</sup> Stylish citations should be a goal, just like effective topic sentences and energetic paragraphs.

The problems that allegedly arise from in-line citations—bumpy citations and presumptuous citations—aren't really citation problems. They're writing process problems that result from excluding citations from the writing process. For instance, legal writers do sometimes write sentences that lack "flow."<sup>137</sup> A writer's flow problem, however, cannot be attributed solely to the presence of citations. If a writer is using stylish citations, the citations do not interrupt the flow of a document. They enhance it. Furthermore, the solution to flow problems lies not in removing essential portions of a text (those would be the citations), but in creating critical distance to help see the text anew.<sup>138</sup>

This Article is based on the premise rejected by Bryan Garner: legal writers *can* write readable citations. But to do so, legal writers (and the experts who advise them) need to pay as much attention to what their citations are conveying as they do the prose. In particular, writers should revise prose and citations *together*. Doing so will help writers notice bumpy citations and presumptuous citations. A writer can then smooth down bumpy citations by improving the connections between the prose and citations, filling in any missing information that the writer presumed would be conveyed by the citations.

Advice abounds about how to revise prose and how to check citation form, but not about how to handle citations as part of the revision process. To the extent that legal writing guides address revision as a distinct stage of the writing process, they don't include citations in their advice or examples.<sup>139</sup>

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<sup>135</sup> *Id.* at tk.

<sup>136</sup> In *The Elements of Legal Style*, Garner describes the sole section explicitly addressing citation as "these paltry paragraphs on the subject," noting that "these paltry paragraphs accord citations their due." GARNER, *ELEMENTS OF LEGAL STYLE*, *supra* note 2, at 89. Ouch.

<sup>137</sup> One definition of "flow" is "the logical progression from something your reader already knows to something your reader doesn't already know." ALEXA Z. CHEW & KATIE ROSE GUEST PRYAL, *THE COMPLETE LEGAL WRITER* 380 (2016).

<sup>138</sup> "Critical distance is the metaphorical *space* between creating a document and reading it that allows you to *think critically about the document*. Without critical distance, your brain automatically fills in missing steps and missing letters . . . . You need space to see problems with your writing." *Id.* at 408.

<sup>139</sup> See, e.g., ARMSTRONG & TERRELL, *supra* note 10, at 177–99 (advising writers about typical revision tasks but without addressing citations or including citations in the examples); LAUREL CURRIE OATES & ANNE ENQUIST, *THE LEGAL WRITING HANDBOOK: ANALYSIS, RESEARCH, AND WRITING* 543–44 (6th ed. 2014) (advising writers about revision tasks but without addressing

Revision is “rethinking the big-picture strategies of your document to make your document more effective.”<sup>140</sup> The goal when revising is to put the ideas you’ve already written “in a better order,” and “ensure your analysis is airtight.”<sup>141</sup> Professors Laurel Currie Oates and Anne Enquist describe the goal of revision as “unity and coherence” at several levels: within the document, within each section, and within each paragraph.<sup>142</sup> An effective revision process will help the writer check for unity and coherence at these three levels. For example, two commonly advised revision tasks are writing a reverse outline<sup>143</sup> and transforming a passage into a list of sentences.<sup>144</sup> Both techniques can give the writer critical distance from the prose. Reverse outlines are especially useful for assessing the unity and coherence of a document or passage. They can also help diagnose incoherent paragraphs, because incoherent paragraphs are difficult to summarize. Transforming a passage into a list of sentences helps diagnose and treat paragraphs that lack flow by forcing the writer to consider a passage’s sentences, one by one.

The basic idea of revising citations is simply to include citations in the revision process. However writers choose to assess the unity and coherence of their documents, they should include the citations as part of the process rather than saving them for a separate stage, particularly if that separate stage focuses on checking only citation

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citations). *But see* EDWARDS, *supra* note 45, at 185 (including “editing quotations and citation form” as the first step of “revising to achieve a final draft,” a process that does not otherwise include big-picture revision tasks).

<sup>140</sup> CHEW & PRYAL, *supra* note 137, at 423; ENQUIST & OATES, *supra* note 139, at 542 (“A revision checklist should focus on the large issues in writing.”). In *Writing and Analysis in the Law*, now in its sixth edition, Professor Helene S. Shapo and her coauthors describe means of achieving “paragraph coherence,” the first of which is “arrang[ing] your sentences in a logical order.” HELENE S. SHAPO ET AL., *WRITING AND ANALYSIS IN THE LAW* 214 (6th ed. 2013). As they explain, “[i]f the final sentence of a paragraph contains information that the reader needs in order to understand the first sentence, then the paragraph will be hard to understand, regardless of the clarity of these sentences.” *Id.* The process of determining the logical order of sentences should include the citation sentences as well as the prose sentences.

<sup>141</sup> CHEW & PRYAL, *supra* note 137, at 423.

<sup>142</sup> ENQUIST & OATES, *supra* note 139, at 544.

<sup>143</sup> *E.g.*, CHEW & PRYAL, *supra* note 137, at 423–24; ENQUIST & OATES, *supra* note 139, at 543 (“after-the-fact outline”). Here is a thorough and accessible primer on reverse outlines: Rachel Gurvich & Beth Wilensky, *Add reverse outlining to your writing toolbox*, Before the Bar Blog, <https://abaforlawstudents.com/2017/09/05/add-reverse-outlining-to-your-writing-toolbox/>.

<sup>144</sup> *E.g.*, CHEW & PRYAL, *supra* note 137, at 378–79.

form.<sup>145</sup> Because a law-trained reader will incorporate the content of the citations with the content of the prose, the writer should revise with that law-trained reader in mind.<sup>146</sup>

The rest of this Part describes a system that any legal writer can use to reach the goal of writing stylish citations. It pulls together advice about writing stylish citations that is scattered across dozens of books and articles addressing legal writing style. This system also includes some direction from the *Bluebook* because the *Bluebook* is the most popular citation manual,<sup>147</sup> but the following system for writing stylish citations is meant to be useful no matter what citation manual you're using. To that end, the system described below does not explain how to format citations. I suggest legal writers learn to cite commonly cited legal authorities, such as cases and statutes in the jurisdictions in which they practice. You can always use a citation manual like the *Bluebook* to look up the mechanics of how to cite a particular kind of authority that you don't cite often. I wouldn't worry about memorizing the finer details, particularly of abbreviations. That's what the manuals are for.

## A. Choosing What to Cite

The first step of writing stylish citations is choosing what to cite.<sup>148</sup> And you need to choose wisely. Poor choices at this first step of the citation-writing process will reverberate throughout your whole

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<sup>145</sup> For example, in the sample revision checklist that Oates and Enquist include in their revision chapter, they include the questions, "Is the analysis conclusory or superficial?" and "What can be omitted?" ENQUIST & OATES, *supra* note 139, at 543. The process of answering both questions could include a review of a draft's citations.

<sup>146</sup> This assumption is in tension with Garner's assertions that legal readers cannot navigate legal citations and other writing experts' characterizations of citations as superfluous text to skip over. Still, both citation norms and commentary about how law-trained readers absorb the contents of in-line citations suggest that writers should write as though readers do have the skill to incorporate information from legal citations. *See generally* Chew, *supra* note 37.

<sup>147</sup> It also includes some suggestions for deviating from the *Bluebook* (or at least taking advantage of ambiguity in the *Bluebook*) to improve the stylishness of citations. Sometimes deviating from the *Bluebook's* rules or preferences improves the transfer of information from writer to reader, and savvy writers know this and develop workarounds. *See, e.g.*, Jack Metzler, *Cleaning Up Quotations*, 18 J. APPELLATE PRACTICE & PROCESS 143, 146 (2017) ("It takes very few successive quotations before most legal writers will give up trying to follow the standard citation rules directly and find different ways to get their point across.").

<sup>148</sup> BEAZLEY & SMITH, *supra* note 47, at 213 ("The first challenge for many legal writers is figuring out when citations are necessary.").

analysis, not just the citations in your document.<sup>149</sup> That is because citations manifest the strength of precedential support that you have for your claims and, in turn, your conclusions.<sup>150</sup> To that end, you want to cite the strongest precedent that supports your description of the law.<sup>151</sup>

But more isn't necessarily better. Indeed more is rarely better.<sup>152</sup> Citing more than you need results in hypercitation—draining reader energy and suggesting that the you don't know which authorities offer the best support.<sup>153</sup> Citing less than you need, though, results in a different problem: hypocitation, or legal analysis that lacks sufficient support. As a general matter, every statement of law should be supported by a citation to at least one appropriate authority.<sup>154</sup> More specifically, the first time you describe law, provide a citation to support it.<sup>155</sup> This goes for any kind of statement of law—whether you're quoting or paraphrasing or extracting an implicit rule, describing the facts of a case, or reciting a statute or regulation. Writers should include a citation for even basic legal propositions.<sup>156</sup> If

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<sup>149</sup> In the *Redbook*, Bryan Garner describes two unfortunate failures: in one, the attorney based an argument on vacated authority and in another, the attorney failed to citatorize an iffy authority that would have led to controlling authority. GARNER, *THE REDBOOK*, *supra* note 112, at 148 (citing *Smith v. United Transp. Union Local No. 81*, 594 F. Supp. 96, 101 (S.D. Cal. 1984); *Glassalum Eng'g Corp. v. 392208 Ontario, Ltd.*, 487 So. 2d 87, 88 (Fla. Dist. Ct. App. 1986).

<sup>150</sup> CHEW & PRYAL, *supra* note 137, at 59.

<sup>151</sup> *Id.* Choosing what to cite is very much a legal research task. Explaining how to effectively legal research is beyond the scope of this article, but know that you have to be able to find the strongest precedent before you can dub it the strongest precedent.

<sup>152</sup> *See, e.g.*, GARNER, *THE REDBOOK*, *supra* note 112, at 151 (explaining that “citing a string of authorities that repeat a well-established point of law” adds no weight).

<sup>153</sup> *See, e.g.*, GARNER, *THE WINNING BRIEF*, *supra* note 13, at 160 (“[S]tring citations often betray a lack of confidence.”).

<sup>154</sup> CHEW & PRYAL, *supra* note 137, at 365–66.

<sup>155</sup> BEAZLEY & SMITH, *supra* note 47, at 213.

<sup>156</sup> People disagree on this point. For example, Chief Judge Diane Wood of the Seventh Circuit has said, “if [a proposition] is not a particularly controversial proposition of law, sometimes I don't even bother to put a case in at all.” *Chief Judge Diane P. Wood*, 15 *SCRIBES J. LEG. WRITING* 99, 123 (2013) (interviewed by Bryan A. Garner). For example, she offered: “If I say, ‘The standard of review from a summary-judgment motion is *de novo*,’ I don't need a cite for that. You probably have 5 million cites for that, so unless I'm doing something innovative with that point, I might delete the citation altogether.”

you later apply that law to the facts of your case, you can refer to the cited authority without providing another citation.<sup>157</sup>

The threshold decision when writing stylish citations, then, is choosing whether you need to cite at all. Citations where they are unnecessary will come across as “clutter.” For example, citations usually don’t appear in headings or in passages that apply already-explained law. But missing citations leave the reader to rely only on your word that the law is what you say it is—and, for genres that require citations, a writer’s personal authority is not enough to prove a principle of law. Whatever authorities you choose to cite, you should read them yourself; don’t rely on citations in the documents you read without verifying their accuracy yourself.<sup>158</sup>

Once you’ve made the threshold decision to cite, the next question is whether to cite one authority or multiple authorities.

### 1. When to Cite One Authority

For explicit rules, uncontroversial rules, and descriptions of case law, cite the best single authority for your proposition.

The most frequent advice about citing authorities stylishly is to “[c]ite only enough authorities to prove your point.”<sup>159</sup> Choosing a single, best authority to support a proposition is not always an easy task.<sup>160</sup> You have to be sure that you’ve researched your issue thoroughly enough to have identified all the potential candidates for “best authority.” And then you have to choose just one from among

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<sup>157</sup> See BEAZLEY & SMITH, *supra* note 47, at 213 (“For example, the statement that ‘the *McGuffin* rule applies here’ does not need a citation in a discussion in which the writer has already introduced and cited *McGuffin*.”).

<sup>158</sup> This advice is everywhere. For example, Garner notes the particular danger that older citations might no longer be accurate “[l]egal materials may be retitled, codified, renumbered, or amended.” GARNER, *THE REDBOOK*, *supra* note 112, at 160. He’s also put it less subtly: “Never cite a case you haven’t read. Never cite a case you haven’t read. NEVER CITE A CASE YOU HAVEN’T READ.” Bryan A. Garner, *Arguing Your Authorities*, 43 *STUDENT LAWYER* 17, 18 (2015).

<sup>159</sup> GUBERMAN, *POINT TAKEN*, *supra* note 12, at 97; see also ALDISERT, *supra* note 45, at 239 (“Some precedents are much more important than others. Recognition that a hierarchy of values exists is essential if judges are to find the proper grounds of decision; if lawyers are to find the basis for predicting the course of decision; and if citizens are to obtain reasonable guidance in conducting themselves according to the demands of legal order.”). Joseph Kimble, *First Things First: The Lost Art of Summarizing*, *COURT REV.* 30, 32 (Summer 2001) (listing “cite only the controlling cases” as a guideline for writing in plain language)

<sup>160</sup> Actually sometimes it is an easy task. Garner suggests that you “[s]implify pick the most recent case from the court of last resort in your jurisdiction.” GARNER, *THE WINNING BRIEF*, *supra* note 13, at 161. If such a case exists, I agree this makes the task easy.

them.<sup>161</sup> To make this decision, go back to the guidelines<sup>162</sup> for weighing authority that you probably covered in your first semester of law school.<sup>163</sup>

- Is the authority binding or non-binding?<sup>164</sup>
- If it's a case, what level of court is it from?
- How recent is it?
- How closely does the issue addressed by the legal authority match the issue you're writing about?

Additional considerations for evaluating the persuasive value of non-binding cases<sup>165</sup> include how often the authority is cited,<sup>166</sup> the

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<sup>161</sup> SCALIA & GARNER, *supra* note 111, at 126 (“As for governing authority, if the point you are making is relevant to your reasoning but is neither controversial nor likely to be controverted, a single citation (the more recent the better) will suffice. Anything more is just showing off to an unappreciated audience.”); GARNER, *THE REDBOOK*, *supra* note 112, at 151 (“One or two citations suffice if the authority is controlling or well established.”); GARNER, *THE WINNING BRIEF*, *supra* note 13, at 160 (“[I]f you’re citing in text, and you can support a proposition with just one case, do it.”).

<sup>162</sup> The list below is not exhaustive and can be formulated in different ways. For example, Garner offers this list for “choos[ing] which precedents to cite based on authority, hierarchy, freshness, and clarity of reasoning”: whether the authority is controlling, court hierarchy, freshness, and quality of reasoning. GARNER, *THE REDBOOK*, *supra* note 112, at 151.

<sup>163</sup> Reasonable minds can disagree about how to weigh authorities, so really these are guidelines. For example, Judge Aldisert developed a “citation evaluation chart” for appellate-brief writers “to evaluate the weight and usefulness” of twenty common research materials. ALDISERT, *supra* note 45, at 103–06. Legislative history ranks fifth on his list, ahead of, for example, a “[c]ase from the highest court in the jurisdiction with *similar* material facts.” *Id.* at 103. The trial court opinion being appealed also ranks in the top ten, which seems an unlikely source of authority for its own challenged content. ALDISERT, *supra* note 45, at 104.

<sup>164</sup> Other formulations of this divide are “mandatory” in place of “binding” and “persuasive” or “non-mandatory” in place of “non-binding.” CHEW & PRYAL, *supra* note 137, at 60. Beazley and Smith use “authoritative” and “nonauthoritative,” with “nonmandatory” in opposition to “authoritative.” BEAZLEY & SMITH, *supra* note 47, at 214–16.

If you’re dealing with uniform acts, interstitial authorities also might exist—legal authorities that fit in the space between binding and non-binding—but if you find yourself trying to deal with interstitial authorities, there’s a law review article to help you navigate that situation. See Kevin Bennardo, *The Third Precedent*, 25 GEORGE MASON L. REV. tk, tk (forthcoming 2017).

<sup>165</sup> Non-binding case law includes opinions from other jurisdictions, trial court opinions, and unpublished opinions.

<sup>166</sup> Citorize the authority to find out. Citators are quite useful beyond just checking to see if something is still “good law.” Aaron S. Kirschenfeld, *Yellow Flag Fever*, 108 LAW LIBR. J. 77, 96 (2016) (“Rethinking the citator as a tool

reputation of the authoring judge and the geographic proximity of the issuing court to the court of decision.<sup>167</sup> Secondary sources have their own loose hierarchy of persuasiveness, with well-known treatises or restatements floating to the top.<sup>168</sup> Law review articles are notoriously hard to rank but are generally weighted by reputation of the author and the law review itself.

For rules that you have inferred from a legal authority and that might be controversial, citations alone are not enough to prove to your reader that the law is what you say it is.<sup>169</sup> For example, when a court applies a rule that it doesn't explicitly state, readers are left to infer the rule using deductive reasoning. Sometimes the rules lawyers infer are tough to disagree with; in those situations, a single citation with a "see" signal and an explanatory parenthetical will suffice. But other times the rules lawyers infer might seem to be a stretch or be counterintuitive; for those implicit rules that have the potential for controversy, use prose to explain how you reached your rule by describing the inferential steps you took from the legal precedents.<sup>170</sup> And in other circumstances, a citation to multiple authorities—or a string citation—is exactly what you need to support certain types of propositions.

## 2. When to Cite Multiple Authorities

Use string cites to support these types of propositions:

- A rule synthesized from multiple authorities
- An assertion that a rule has been consistent across time or has changed across time

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for analyzing the influence of a case based on later citations in a variety of sources is needed, rather than calling it a final box to tick to ensure the validity of a case's proposition as good law."). Indeed, Professor Kirschenfeld suggests that citators' best uses aren't checking for "good law" at all. *Id.*

<sup>167</sup> Bennardo, *supra* note tk, at 3–4 (citing Kevin Bennardo, *Testing the Geographical Proximity Hypothesis: An Empirical Study of Citations to Nonbinding Precedent by Indiana Appellate Courts*, 90 NOTRE DAME L. REV. ONLINE 125, 149 (2015)).

<sup>168</sup> See SCALIA & GARNER, *supra* note 111, at 127. Scalia and Garner advise citing secondary authorities like treatises, law-review articles, and American Law Reports (ALR) case annotations to "help confirm your analysis of trends in the law, general background . . . , and your view about what is the 'best' rule with the most desirable policy consequences."

<sup>169</sup> See SCALIA & GARNER, *supra* note 111, at 126.

<sup>170</sup> See SCALIA & GARNER, *supra* note 111, at 126 ("But if a point is central to your case and likely to be contested, not only cite the case but concisely describe its facts and its holding. And follow that description by citing other cases (*Accord Smith v. Jones, Roe v. Doe*).").



- An assertion that a rule is consistent or differs across jurisdictions<sup>171</sup>
- To emphasize an underappreciated pattern in case law<sup>172</sup>

Despite their occasional utility, string cites have a lot of haters.<sup>173</sup> They top Judge Aldisert’s list of citation don’ts, and he characterizes them as “generally irritating and useless.”<sup>174</sup> Other legal writing experts seem to feel about the same:

- “String cites are rarely helpful” because they don’t help the reader “grasp the relationship between the issue at hand and cases you cite but do not discuss in detail.”<sup>175</sup>
- “[D]on’t use string citations. This warning has become something of a cliché, yet lawyers everywhere continue to use string citations. They’re a bad habit. And like many other bad habits in legal writing, string citations often betray a lack of confidence.”<sup>176</sup>
- “Judges are almost uniformly against the use of string citations.”<sup>177</sup>

But there’s no inherent problem with string cites;<sup>178</sup> the problem with string cites is an extension of hypercitation—or including unnecessary citations.<sup>179</sup> Sometimes string cites are the right tool for the job.<sup>180</sup>

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<sup>171</sup> See, e.g., SCALIA & GARNER, *supra* note 111, at 126 (“If there is no governing authority in point, your resort to persuasive authority may require more extensive citation to show that the rule you are urging has been accepted in other jurisdictions . . . . If persuasive authority is overwhelmingly in your favor but not uniformly so, you may have to resort to a footnote showing all the courts in your favor, followed by a But see citation of the few courts that are opposed. And citing an ALR annotation on point will be helpful.”).

<sup>172</sup> In their introductory legal writing text, Beazley and Smith include “illustrat[ing] a trend in the law” or “giv[ing] a brief overview of a still-developing area of law” as two of the “rare occasions” in which string cites are useful. BEAZLEY & SMITH, *supra* note 47, at 219.

<sup>173</sup> Bryan Garner describes the string citation as “long-decried.” Garner, *Citational Footnote*, *supra* note 23, at 80.

<sup>174</sup> ALDISERT, *supra* note 45, at 265.

<sup>175</sup> ARMSTRONG & TERRELL, *supra* note 10, at 343

<sup>176</sup> GARNER, *THE WINNING BRIEF*, *supra* note 13, at 160.

<sup>177</sup> BEAZLEY & SMITH, *supra* note 47, at 219.

<sup>178</sup> Garner, *Citational Footnote*, *supra* note 23, at 80 (“I don’t favor string citations, but I’m not adamantly opposed to them either—not if they’re out of the way [in a footnote].”).

<sup>179</sup> See ALDISERT, *supra* note 45, at 265 (“Especially irksome are string cites following a well-established legal precept . . . .”); GUBERMAN, *POINT MADE*, *supra* note 11, at 181 (“[J]ust because you put your citations in the text doesn’t mean that you should stick them in the middle of your sentences.”);

Because string cites are so visible, writers should use great care when crafting the propositions that precede string cites.<sup>181</sup> The reader will see the string cite coming before she finishes reading the proposition. She will probably be wondering why there's a string cite, and she should know the answer to that question by the period at the end of the proposition. For example, if the proposition is a rule inferred from a pattern observed across multiple cases—the proposition should explicitly say what that pattern is.<sup>182</sup> The reader should only have to read the explanatory parentheticals closely if she desires more information, not to figure out the pattern.

## B. Writing the Citation(s)

Once you have decided what to cite, you need to write the citation. Although writing citations is a task associated with the *Bluebook*, the key decisions—placement, signal, and parenthetical content—shouldn't require a citation guide. These are decisions that should be driven by your understanding of the prose and its substantive relationship to the cited authority. Complying with the *Bluebook* or another citation formatting guide largely requires mechanical decisions that come much later in the citation-writing process.<sup>183</sup>

### 1. Citation Sentences or Clauses

Except on rare occasions,<sup>184</sup> put each citation in its own sentence *after* the prose sentence. When possible, avoid putting citations in the

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SCALIA & GARNER, *supra* note 111, at 135 (“Now if Garner wanted to make a really useful suggestion, he might suggest avoiding, whenever possible, the insertion of lengthy citations in the middle of a sentence.”)

<sup>180</sup> The “rare occasions” in which string cites are useful include “to illustrate a trend in the law, give a brief overview of a still-developing area of law, or establish that multiple authorities in a variety of jurisdictions have followed or not followed a particular rule . . . .”<sup>180</sup> BEAZLEY & SMITH, *supra* note 47, at 219.

<sup>181</sup> *Id.* at 219 (“[P]ut as much information as possible into the sentence preceding the string cite.”).

<sup>182</sup> *Id.* at 220 (“[D]o your best to include all of the information that is common to all of the cases . . . .”).

<sup>183</sup> And remember, you'll have opportunities to revise and edit your citations, so don't get too bogged down with all of these options when you're drafting. Just as drafting prose often requires some faith in the revision process, drafting citations can as well—because revising citations is part of the process of writing stylish legal citations.

<sup>184</sup> GARNER, *ELEMENTS OF LEGAL STYLE*, *supra* note 2, at 91. (“Only when the citation is necessary and unobtrusive ought the citation to go in midsentence.”).

middle of prose sentences. Citations are hard to read there, and they make the prose sentence difficult to read.<sup>185</sup>

Keeping citations and prose in their own sentences creates a smoother reading experience. The reader can complete a prose sentence before incorporating the citation's content with it, rather than trying to hold half the prose sentence in her mind while incorporating the citation and then the rest of the prose sentence.

But writing scenarios commonly arise in which the most proper place for a citation is in the middle of a sentence. For example, if the first part of a sentence is supported by the cited authority and the second part is not, then the *Bluebook* advises a citation clause to separate the two parts. Worse yet is if a sentence contains several clauses, each of which is supported by a different authority, potentially resulting in a single prose sentence containing numerous citation clauses. Even expert legal readers have a tough time following the meaning of such a sentence, and stylish writers find other solutions. Here are three:

- If an authority supports only part of the sentence and you think it's important to show the reader which part, break up the sentence into two.<sup>186</sup> Then put the citation sentence after the appropriate prose sentence.
- If different parts of a sentence are supported by different authorities and breaking up the sentence doesn't make sense, use a single string citation after the prose sentence. This scenario occurs regularly when citing to factual documents in briefs.
- If an authority supports only part of the sentence because the sentence is applying law to facts from your case, consider whether a citation is necessary at all. If you've already described the law elsewhere and you're merely referencing that previous description, you can probably omit the legal citation. You might still need to cite factual documents,<sup>187</sup> in which case

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<sup>185</sup> See, e.g., BEAZLEY & SMITH, *supra* note 47, at 219 (“A sentence with text and citations interspersed is probably the hardest thing for readers to read.”).

<sup>186</sup> GARNER, *THE WINNING BRIEF*, *supra* note 13, at 160; BEAZLEY & SMITH, *supra* note 47, at 218 (“[S]tructure your sentences so that all citations, and particularly long-form citations, can be placed in their own citation sentences.”).

<sup>187</sup> Trial and appellate briefs often require citations to litigation documents to support statements of fact. For example, the local rules for the Eastern District of North Carolina require that “[e]ach statement” made by a party moving for summary judgment or opposing a motion for summary judgment “be followed by a citation to evidence that would be admissible,” including “the relevant paragraph or line number of the evidence cited.” Local Civil Rules for the U.S. Eastern District of North Carolina, Rule 56.1(a)(3) (2015). Similarly, the local rules for the U.S. Court of Appeals for the Fourth Circuit require that the statement of the case include “references to the specific

put the factual citation in its own sentence after the prose sentence.

Another common citation-in-the-prose-sentence scenario occurs when a writer refers to a case at the beginning of a sentence. The *Bluebook* advises writers to include the rest of the citation as a clause following the case name.<sup>188</sup> Some legal writing experts do as well.<sup>189</sup> I don't, and neither does Bryan Garner.<sup>190</sup> If you need to introduce a case name for the first time in a prose sentence, break up the citation into two pieces: (1) the case name and (2) everything else. Put the case name in the prose sentence and then put everything else (except the case name) in a citation sentence *after* the prose sentence.<sup>191</sup> Breaking up the citation in this way isn't supported by the *Bluebook*, but it also isn't prohibited by the *Bluebook*. Stylish legal writers use this approach often enough that it is conventional. For example, Chief Justice Roberts does so twice in the part of the *Snyder v. Phelps* opinion that Ross Guberman uses as a model of legal analysis in *Point Taken*.<sup>192</sup> Here's an example from *Snyder*:

To cite another example, we concluded in *San Diego v. Roe* that, in the context of a government employer regulating the speech of its employees, videos of an employee engaging in sexually explicit acts did not address a public concern; the videos “did nothing to inform the public about any aspect of the [employing agency’s] functioning or operation.” 543 U.S., at 84, 125 S.Ct. 521.<sup>193</sup>

The same advice applies to citations to litigation documents. When possible, put these citations in their own sentences. If you like, you can offset them with parentheses or square brackets,<sup>194</sup> which distinguishes them from legal citations as well as the surrounding text.

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pages in the appendix that support each of the facts stated.” Local Rule 28(f) (2016).

<sup>188</sup> See, e.g., THE BLUEBOOK (20th ed.), *supra* note 15, at 3–4, 96.

<sup>189</sup> See, e.g., BEAZLEY & SMITH, *supra* note 47, at 217 (“[S]ome writers mistakenly separate the case name from the rest of the citation . . .”).

<sup>190</sup> GARNER, ELEMENTS OF LEGAL STYLE, *supra* note 2, at 90 (“Never begin a sentence with a citation.”).

<sup>191</sup> GARNER, THE WINNING BRIEF, *supra* note 13, at 160.

<sup>192</sup> For example, see *Snyder v. Phelps*, 562 U.S. 443, 453 (2011).

<sup>193</sup> *Snyder v. Phelps*, 562 U.S. 443, 453 (2011).

<sup>194</sup> Bryan Garner recommends this practice. See GARNER, THE REDBOOK, *supra* note 112, at 150. The *Bluebook* authorizes the use of parentheses when citing court and litigation documents, but it doesn't recommend either their use or disuse. THE BLUEBOOK (20th ed.), *supra* note 15, at 25 (Bluepages Tip associated with Rule B17.1.1).

## 2. Introductory Signals

Use appropriate signals to convey the relationship between your prose and the cited authority, but don't get too fancy.

Readers use signals to understand how a cited authority relates to the proposition that precedes it. For example, using no signal indicates that the relationship is simple: the cited authority directly supports the proposition.<sup>195</sup> In other words, the reader could look at the cited authority and point to text that says the same thing as the proposition. On the other hand, a “see” signal indicates that the relationship is more complicated: the cited authority supports the proposition but doesn't directly state it<sup>196</sup>—meaning the writer drew an inference from the cited authority to reach the proposition. A “see” signal doesn't necessarily indicate a lower quality of support, but it informs the reader that the writer is relying on an interpretation of the cited text.

One reason not to get too fancy with signals is that not all readers share a common understanding of what the fancier ones mean. In the *Redbook*, Garner describes three ways in which divergent meanings arise: changes across time,<sup>197</sup> differences among citation systems,<sup>198</sup> and irregular or inconsistent use.<sup>199</sup> Signals that are not used regularly or consistently give legal readers less practice interpreting them and incorporating them with legal prose. A particularly curious (or diligent) reader might look up unfamiliar signals, but the goal of stylish writing generally, not just stylish citation, is for the intended audience to be able to understand a document's content without consulting reference books.

Legal writers should be able to assume that legal readers with basic citation literacy can instantly decipher citations that use no signal and these commonly (and consistently) used signals:

- *see*
- *see also*
- *e.g.*
- *see, e.g.*

If a writer is confident that her intended audience is familiar with less common signals like “*cf.*” and “*accord*,” then she can take advantage of the more precise meanings they convey. But if a writer doesn't have

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<sup>195</sup> *Id.* at 4.

<sup>196</sup> *Id.* at 5.

<sup>197</sup> GARNER, *THE REDBOOK*, *supra* note 112, at 157. He gives as an example the signal “*cf.*,” which the Bluebook redefined six times in 39 years.

<sup>198</sup> *Id.* at 157. He gives as an example the signal “*but see*,” which is defined differently by the Bluebook, the ALWD Guide, and the Maroonbook. He also points out the Bluebook and ALWD Guide use the *contra*, *e.g.*, and *cf.* signals—but the Maroonbook doesn't. *Id.* at 157.

<sup>199</sup> *See supra* note 197 (describing the shifting meanings of *cf.*).

that confidence about her audience, she should explain those more nuanced relationships with prose rather than relying on a signal that might be misinterpreted or ignored by her audience.

### 3. Explanatory Parentheticals

Use explanatory parentheticals to share useful information that supports your explanation of the law.<sup>200</sup> But don't use them to explain legal precepts that are essential to your analysis.<sup>201</sup> And don't add them reflexively.

The *Bluebook* describes the purpose of an explanatory parenthetical as supplying “additional information to explain the relevance of the cited authority.”<sup>202</sup> It also limits the *Bluebook*-approved forms of explanatory parentheticals.<sup>203</sup> The *Bluebook* doesn't offer much beyond that basic advice, but legal style experts have filled the void. Parentheticals are one aspect of citation that legal style experts have provided a lot of advice about. The advice is not all consistent, though.<sup>204</sup> Some style experts advise writers to include a parenthetical after every citation to a case not discussed in the text<sup>205</sup> or after every citation that has a signal.<sup>206</sup> Other style experts point to parentheticals as a prime cause of citation clutter.<sup>207</sup> Everybody

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<sup>200</sup> GARNER, *THE WINNING BRIEF*, *supra* note 13, at 170 (“Instead of appearing in parentheticals, the important information [in your analysis] ought to be elevated to the text . . . .”); Gerald Lebovits, *Write the Cites Right*, 76 N.Y. ST. B.A. J. 60, 60 (October 2004) (“Use a parenthetical to explain the point you make in the preceding sentence of your text. Don't use a parenthetical to add information that doesn't explain your preceding sentence.”).

<sup>201</sup> Garner, *Arguing Your Authorities*, *supra* note 153, at 17–18 (“Parentheticals are for unimportant cases, not the main cases on which you rely.”); RICHARD K. NEUMANN, JR., *LEGAL REASONING AND LEGAL WRITING: STRUCTURE, STRATEGY, AND STYLE* § 17.4, at 244 (4th ed. 2001) (“Use an explanatory parenthetical only for information that is simple and not part of the argument. And resist the temptation to use explanatory parentheticals to avoid the hard work of explaining complicated and important authority.”).

<sup>202</sup> THE BLUEBOOK (20th ed.), *supra* note 15, at 5 (B1.3).

<sup>203</sup> *Id.* at 5–6 (B1.3).

<sup>204</sup> The *Bluebook*'s guidance for parentheticals has changed over the last few editions, and I suspect that parenthetical preferences align with whichever *Bluebook* rule was in play when the writer was in law school.

<sup>205</sup> ARMSTRONG & TERRELL, *supra* note 10, at 343.

<sup>206</sup> *E.g.*, ALDISERT, *supra* note 45, at 263 (“In recent years, the parenthetical has become very popular, and I strongly recommend its use.”).

<sup>207</sup> *E.g.*, GARNER, *PLAIN ENGLISH*, *supra* note 8, at 78–79 (describing the “excessive citations” that result “when coupling parentheticals with the citations”).

agrees, though, that parentheticals can be helpful when they are done well.<sup>208</sup> Perhaps parentheticals can even be stylish.<sup>209</sup>

With explanatory parentheticals, the writer has to strike a balance between telling the reader useful information about a cited authority—perhaps to explain why a signal was necessary—with the substantial space an explanatory parenthetical takes up in the text. An explanatory parenthetical can easily double or triple the length of a citation, which might mean a few lines of text occupied by a citation to a single authority.<sup>210</sup> Worse, despite explanatory parentheticals' prominent appearance in a document, writers can't always count on readers to read them. Bryan Garner, for example, has suggested that judges don't read passages filled with parentheticals—instead, “they glance at the cases, turn the pages quickly and have a hasty glimpse of the fragments of lawyerly prose.”<sup>211</sup>

The nature of parentheticals leaves stylish writers to balance these competing interests. Moreover, the writer's choices are further constrained by the conventions for forming parentheticals: a short phrase, a quote that is also a complete sentence, or a phrase of potentially indefinite length that begins with a present participle.<sup>212</sup>

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<sup>208</sup> See, e.g., GUBERMAN, POINT TAKEN, *supra* note 12, at 136 (“Helpful parentheticals buttress the analysis and immerse readers in key nuggets from cited decisions.”).

<sup>209</sup> Professor Michael D. Murray, in one of several articles about parentheticals, has described them as “especially lovely,” “elegant,” and “efficient”—just about the nicest things anyone has said about an element of legal citation. Michael D. Murray, *For the Love of Parentheticals: The Story of Parenthetical Usage in Synthesis, Rhetoric, Economics, and Narrative Reasoning*, UNIV. DAYTON L. REV. 175, 193 (2012).

<sup>210</sup> Bryan Garner has estimated that adding parentheticals “lengthens the average citation threefold or fourfold.” Garner, *Parenthetical Habits*, *supra* note 44, at 26.

<sup>211</sup> *Id.* at 27. Garner has suggested that parentheticals can be particularly problematic because, within the last twenty years, practitioners “got into the ‘parenthetical habit’ and started trying to boil down most case explanations to mere parentheticals,” meaning that those cases weren't discussed contextually in prose. *Id.* at 27, 28. Garner described these “citations with their trailing cabooses” as “visually repulsive.” *Id.* at 26–27. Garner traced the modern “parenthetical habit” to the sixteenth edition of the Bluebook, which introduced a rule that every “see” signal be followed by an explanatory parenthetical. *Id.* at 26. As a result, legal writers began adding explanatory parentheticals reflexively, *id.*, including when they don't make much sense—such as when they repeat the content from the proposition or convey information unrelated to the proposition. This proliferation of explanatory parentheticals, Garner argues, has changed the way judges (and presumably lawyers) read. *Id.*

<sup>212</sup> THE BLUEBOOK (20th ed.), *supra* note 15, at 5–6 (B1.3); see also GARNER, THE REDBOOK, *supra* note 112, at 159 (explaining that explanatory parentheticals should “(1) begin with a present participle (holding, affirming,

Given these considerations, it's unsurprising that legal writing experts perceive parentheticals as frequent contributors to unstylish legal writing and excessive, interrupting citations. It's also unsurprising that legal writers have trouble with parentheticals; choosing when to include one and what to put in them requires considerable judgment.

We'll get to form in the next bulleted list, but here are some guidelines for figuring out *when* to include information in a parenthetical rather than in the prose (or not at all):

- Use parentheticals when “synthesizing authorities and lines of authorities.”<sup>213</sup> The parentheticals can summarize the commonalities among the authorities or emphasize differences. Typically, the parentheticals will appear in a string cite.
- Use a parenthetical to summarize a case's reasoning in order to prove that the rule you've taken from the case is accurate.<sup>214</sup>
- Use a parenthetical to clarify that your citation refers to a particular passage if a page in the cited authority includes “several unrelated points.”<sup>215</sup>
- Don't use parentheticals to summarize how a court applied a rule to facts if you later want to refer to that court's reasoning or factual analysis.<sup>216</sup> Because readers might skip over parenthetical information or merely skim it,<sup>217</sup> anything essential to your analysis—like a rule or case you want to reference later—should appear in the prose rather than a

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reversing, overruling, etc.), (2) include a direct quotation, or (3) combine both approaches”).

<sup>213</sup> GUBERMAN, POINT TAKEN, *supra* note 12, at 136; GARNER, THE REDBOOK, *supra* note 112, at 159 (“If several sources support a single statement, but on different bases, use parentheticals to distinguish the citations.”).

<sup>214</sup> *E.g.*, ALDISERT, *supra* note 45, at 263 (“The parenthetical can also be used to state the reasons that supported the conclusion of the cited case . . .”).

<sup>215</sup> GARNER, THE REDBOOK, *supra* note 112, at 159.

<sup>216</sup> This advice is not universal. For example, Professor Voigt advises using parentheticals to “illustrate the application of a rule” rather than illustrating the rule in the text of the document. Eric P. Voigt, *Explanatory Parentheticals Can Pack a Persuasive Punch*, 45 MCGEORGE L. REV. 269, 274 (2013); *see also* ALDISERT, *supra* note 45, at 263 (“If a case is cited to show resemblances or differences in the facts, a parenthetical disclosing the material facts of the cited case will be very effective.”). It's possible our disagreement is semantic, but rule or case illustrations are considered descriptions of how a court applied a rule in another case, and they're most useful for setting up analogies or explaining how a non-obvious rule works in practice. In either situation, hiding the illustration in a parenthetical would not be useful.

<sup>217</sup> GARNER, THE WINNING BRIEF, *supra* note 13, at 170 (“[T]he phrase ‘important parenthetical’ is surely an oxymoron.”).



parenthetical. Remember that citations have a different valence than prose.

In addition to form conventions codified in the *Bluebook*, consider these form suggestions once you've decided that an explanatory parenthetical is appropriate:

- If you're using multiple parentheticals in a string cite to support a single point, make the parentheticals parallel<sup>218</sup> so that the reader can see how the authorities in the string cite align with one another. The parallel form will emphasize the parallel substance of the cited authorities.
- Use the most legally meaningful and precise participle you can: holding, upholding, stating, prohibiting, invalidating, pointing out, concluding, refusing, etc.<sup>219</sup>
- Combine “a leading participle with a quote from the cited material.”<sup>220</sup>
- When choosing a standalone quote for a parenthetical, choose a sentence that you would point to in the text if a reader asked why you cited that particular authority. Remember that the reader might not have any other context for the quote, so the quoted language needs to inform on its own.<sup>221</sup>

#### 4. Citing and Quoting Parentheticals

A system of precedent and citation like the one used in the United States means that newer judicial opinions cite older opinions (or other legal authorities) to support their propositions of law. Those older opinions themselves likely cite yet older cases to support their propositions, and so forth backwards in time. The writer then must choose which of the cases in this historical chain to cite. The oldest case has the advantage of lacking historical baggage, but it has the disadvantage of being older—the rule might have changed in the meantime. Any newer case has the advantage of being recent, but it has the disadvantage of bringing with it historical baggage—all the cases that the rule appeared in earlier. This historical baggage is problematic because it can add length to the citation in the form of a “citing parenthetical.” Here's an example:<sup>222</sup>

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<sup>218</sup> See GUBERMAN, POINT TAKEN, *supra* note 12, at 136.

<sup>219</sup> See, e.g., *id.* at 136–37, for a list of precise present participles.

<sup>220</sup> *Id.* at 138.

<sup>221</sup> See *id.* at 139.

<sup>222</sup> In *Dotson*, the *Rodriguez* citation includes its own citing parenthetical to *Austin v. Paramount Parks, Inc.*, 195 F.3d 715, 727 (4th Cir. 1999). See *Dotson v. Pfizer, Inc.*, 558 F.3d 284, 292 (4th Cir. 2009). However, the *Bluebook* only requires one level of recursion. THE BLUEBOOK (20th ed.), *supra* note 15, at 108 (Rule 10.6.2).

The standard of review for a judgment as a matter of law is *de novo*. *Dotson v. Pfizer, Inc.*, 558 F.3d 284, 292 (4th Cir. 2009) (citing *Rodriguez v. Smithfield Packing Co.*, 338 F.3d 348, 354 (4th Cir. 2003)).

A related issue is when a writer quotes a case that itself is quoting another case. In that situation, not only does the substance of the proposition originate in an older case, the exact words do as well. In addition to the use of quotation marks, a “quoting parenthetical” can be appended to the citation to indicate the quotation’s origin, like this:<sup>223</sup>

“When we review a finding of retaliation after a full trial on the merits, ‘our sole focus is “discrimination *vel non*”—that is, whether in light of the applicable standard of review the jury’s finding of unlawful retaliation is supportable.” *Dotson v. Pfizer, Inc.*, 558 F.3d 284, 296 (4th Cir. 2009) (quoting *Cline v. Wal-Mart Stores, Inc.*, 144 F.3d 294, 301 (4th Cir.1998)).

Rules for using and forming citing and quoting parentheticals appear in the *Bluebook*, and at first blush are easy enough to implement if you assume that every time you cite or quote a case that cites or quotes another case, you add a citing or quoting parenthetical. But if you do so, you’ll probably end up writing a lot of citing and quoting parentheticals. And even I, an on-the-record fan of in-line citations, think they make a mess. Moreover, those citing and quoting parentheticals rarely communicate anything useful to the reader about the cited authority—so why include them?

The *Bluebook* offers some options. First, in the twentieth edition of the *Bluebook*, the rules for using citing parentheticals offer enough ambiguity to conclude that citing parentheticals are optional.<sup>224</sup> I

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<sup>223</sup> In *Dotson*, the *Cline* citation includes a quoting parenthetical to *Jiminez v. Mary Washington Coll.*, 57 F.3d 369, 377 (4th Cir. 1995). *Dotson v. Pfizer, Inc.*, 558 F.3d 284, 296 (4th Cir. 2009). However, the *Bluebook* only requires one level of recursion, even though the reader can see that the phrase “discrimination *vel non*” is a quotation in *Cline*. THE BLUEBOOK (20th ed.), *supra* note 15, at 108 (Rule 10.6.2).

<sup>224</sup> Because this may be a disputed point, I offer a long footnote in support of my position: Since the introduction of the Bluepages in the eighteenth edition of the *Bluebook*, the Bluepages rules have never addressed citing parentheticals or included a single example of a citing parenthetical. See THE BLUEBOOK (20th ed.), *supra* note 15, at 3–29; THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION 3–27 (Columbia Law Review Ass’n et al. eds., 19th ed. 2010); THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION 3–24 (Columbia Law Review Ass’n et al. eds., 18th ed. 2005) (last appearance of Courier). Indeed, the Bluepages are silent as to many aspects of citation and delegate decision-making authority to the writers. David J.S. Ziff, *The Worst System of Citation Except for All the Others*, 66 J. LEGAL EDUC. 668, 679 (2017). As Professor Ziff observed, when the Bluepages are silent, the practitioner “may” fill the gap

suggest taking advantage of that flexibility and using citing parentheticals only when they obviously increase the weight of the cited authority—for example when citing a recent intermediate appellate court opinion that cites an older high court opinion.<sup>225</sup>

Second, the Bluepages offer “citation omitted” as an alternative to including a *quoting* parenthetical:

A quotation appearing within another quotation can either be parenthetically attributed to its original source or otherwise acknowledged by indicating that a citation has been omitted.<sup>226</sup>

The citation-omitted parenthetical acknowledges that the quoted language came from somewhere, but the writer doesn’t think its origin is useful information for the reader. Omitting the quoting parenthetical helps streamline the citation information to just what the writer this is necessary.

Another citation option for quoting a case that itself quotes another case is not to include any kind of parenthetical—not even one that says “citation omitted.” This option is not sanctioned by the *Bluebook*, but my casual observation suggests that it is used in practice. If the cited case’s original quotation marks are retained, then they flag for the reader that the quoted language came from a second

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with a corresponding Whitepages Rule; the alternative is to fill the gap with whatever the author thinks reasonable. *Id.* at 679.

But even the Whitepages rules don’t require citing parentheticals. In the twentieth edition of the *Bluebook*, the relevant Whitepages rule states that “[w]hen a case cited as authority itself quotes or cites another case for that point, a ‘quoting’ or ‘citing’ parenthetical is *appropriate* per rule 1.5(b).” THE BLUEBOOK (20th ed.), *supra* note 15, at 108 (Rule 10.6.2) (emphasis added). The rule doesn’t say that a quoting or citing parenthetical is required. Rule 1.5(b) addresses the order of citing and quoting parentheticals, but it likewise does not require them.

In earlier editions of the *Bluebook*, Rule 10.6.2 used the same “appropriate” language but directed users to rule 1.6 rather than 1.5. *E.g.*, THE BLUEBOOK (19th ed.) at 100; THE BLUEBOOK (18th ed.) at 92. Rule 1.6 addresses “related authority” and offers guidance for appending citations to related authority when doing so “may be helpful to aid in locating the primary work or to provide relevant information not reflected in the primary citation.” THE BLUEBOOK (20th ed.), *supra* note 15, at 65; THE BLUEBOOK (19th ed.) at 61; THE BLUEBOOK (18th ed.) at 53. Rule 1.6 thus suggested that citing and quoting parentheticals should be included only when useful.

<sup>225</sup> Beazley & Smith opine that the need to use a quoting/citing parenthetical “does not occur regularly in legal writing,” and that the need arises only when “knowing the origin of the cited language could affect readers’ understanding of your argument,” which occurs “only when the relationship between the two sources is significant . . . .” BEAZLEY & SMITH, *supra* note 47, at 222.

<sup>226</sup> THE BLUEBOOK (20th ed.), *supra* note 15, at 8 (Bluepages Tip in B5.1).

(older) authority. For some readers, that will be fine; for others, they might wonder whether the writer omitted the quoting parenthetical because it didn't add helpful information to the citation or because the writer was careless. If the cited case's original quotation marks aren't retained, then the reader won't know any better and the citation will be "cleaner." However, entirely erasing all evidence of a quotation's origins is at odds with the convention in legal writing to treat words precisely—and particularly to treat other writers' words with care.<sup>227</sup>

A final option that seeks to reconcile these competing desires is an innovation suggested by Jack Metzler: a "cleaned up" parenthetical.<sup>228</sup> Metzler proposes a new *Bluebook* rule that allows writers to remove ellipses and square brackets from nested quotations without having to acknowledge each change in a parenthetical as otherwise required by the *Bluebook*.<sup>229</sup> Rather than a series of parentheticals containing "metadata" about the alterations and the original quoted authorities, the writer can acknowledge her intervention with a two-word parenthetical: (cleaned up).<sup>230</sup> Metzler argues that his innovation allows "the author to treat the words of the opinion as the opinion of the [authoring] court (which is what they are) even though they first appeared in an earlier decision."

## 5. Short-Form Citations

Use short cites when possible.<sup>231</sup>

The *Bluebook* and other citation systems provide shorter forms for citations, which writers can use after they've used a complete or "full" citation for an authority.<sup>232</sup> The *Bluebook* uses "*id.*," which is short for *idem*. *Idem*, in turn, is Latin for "the same." Because the word is Latin (and because of convention), *idem* and its abbreviated form *id.* are italicized or underlined. Neither *idem* nor *id.* are proper nouns, and so they should be capitalized when beginning a sentence but not otherwise.

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<sup>227</sup> See, e.g., THE CHICAGO MANUAL OF STYLE: THE ESSENTIAL GUIDE FOR WRITERS, EDITORS, AND PUBLISHERS 448–49, 462–63 (15th ed. 2003) (providing two sets of guidelines for altering quotations: the guidelines appropriate for "general works" and "most scholarly studies" and the "rigorous method" guidelines appropriate to "legal writing and textual commentary").

<sup>228</sup> See generally Metzler, *supra* note 147.

<sup>229</sup> *Id.* at 154–55.

<sup>230</sup> *Id.* at 154.

<sup>231</sup> GARNER, THE REDBOOK, *supra* note 112, at 152 ("Use short-form citations after the first full citation."); BEAZLEY & SMITH, *supra* note 47, at 214 ("[U]se short citation forms . . . to keep your writing readable . . .").

<sup>232</sup> See, e.g., THE BLUEBOOK (20th ed.), *supra* note 15, at 8 (B4).

Other short form abbreviations include *ibid.*, which is short for *ibidem*, and *supra*. Some jurisdictions (like the U.S. Supreme Court) regularly use *ibid.* in addition to *id.* If that’s the convention (or rule) in your jurisdiction, then you should as well. Otherwise, stick to *id.* because it’s more common and *ibid.* doesn’t appear in the *Bluebook*, which is the go-to citation guide in the United States. Avoid *supra* in practical legal documents, unless court rules require it.<sup>233</sup>

The benefit of short form citations is mainly that they are shorter—which minimizes interruptions. You can (and should) still use signals and explanatory parentheticals with short cites, as appropriate.

## 6. Parallel Case Citations

Don’t use parallel citations unless you have to.<sup>234</sup>

A parallel case citation is a citation to a single case that references multiple reporters: usually an official reporter and at least one unofficial reporter, each of which contains the text of the cited case.<sup>235</sup> Here’s an example: *Andrews v. Andrews*, 242 N.C. 382, 383, 88 S.E.2d 88, 89 (1955).

Parallel case citations increase the length of citations without adding much new information.<sup>236</sup> However, they’re conventional in some jurisdictions, and they do serve a purpose, which is to increase access to cited authorities by providing multiple means of finding them.<sup>237</sup> That purpose was more compelling when lawyers relied on print reporters but might have access to only one set.<sup>238</sup>

## C. Revising to Tie Together Prose and Citations

After you’ve written a draft of your document—including citations and prose—you’ll want to revise the draft. When you do, include citations

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<sup>233</sup> See GARNER, *THE REDBOOK*, *supra* note 112, at 153 (“Avoid *infra*, *supra*, *op. cit.*, *loc. cit.*, and similar abbreviations to refer to a citation that appears elsewhere in the writing.”).

<sup>234</sup> *Id.* at 158 (“Avoid parallel citations unless local rules require them.”).

<sup>235</sup> CHEW & PRYAL, *supra* note 137, at 441.

<sup>236</sup> GARNER, *THE REDBOOK*, *supra* note 112, at 158 (explaining that parallel citations “bulk up the text with more numbers” and “inflate the number of authorities without adding weight”).

<sup>237</sup> *Parallel Citation—Past and Present*, Colo. Law., JANUARY 2001, at 25, 26 (describing the “original reason for providing parallel citations” as the writer “mak[ing] it easy for all readers to check the accuracy of an authority regardless of which version of that authority is available to the readers”).

<sup>238</sup> See *The Bluebook in the New Millennium—Same Old Story?*, 93 LAW LIBR. J. 335, 342 (2001) (“Greater availability of information in electronic format for authors and readers, coupled with the greater availability of resources for readers to locate the information in various formats, makes the *Bluebook*’s preference for print and parallel citations less reasonable today.”).

in the process. Specifically, use the revision stage of your writing process to strengthen the relationships between prose words and citation words. As you revise, assume that your reader can read your citations well enough to understand the information contained within them. Focus on whether the information gleaned from the citations integrates easily with the surrounding prose:

- Have I said too much? Not enough?
- Does my document flow? Or is information out of order?
- Am I repeating myself unnecessarily?

The remainder of this section is organized around specific opportunities to test how well your citations and prose are tied together. Reviewing your draft for these issues will help you notice bumpy or presumptuous citations so that you can fix them.

### 1. Citation Placement

As you review your draft, check whether every statement of law that needs a citation has a citation.<sup>239</sup> And also whether the document contains unnecessary citations—for example, to support a prose sentence that applies previously explained law or in a document part that doesn't usually include citations.

Also assess the prose sentences that your citations support—perhaps some of them are unnecessary.<sup>240</sup> One pattern I see often in student writing is a quote supported by a citation followed by a paraphrase of the quote, but unsupported by a citation. The missing citation to support the paraphrase might be what the student and I notice first, but the fix is rarely to add a citation to support the paraphrase. Instead, the fix is usually to delete the quote and use the citation to support the paraphrase.

### 2. Best Available Support

Check whether you are supporting each proposition with the *best* available authority. In particular, give attention to each non-binding authority cited in your document. Perhaps you've done additional

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<sup>239</sup> The convention in practical legal writing is that descriptions of existing law—substantive rules, descriptions of cases, procedural rules, etc.—should be followed by citations to appropriate authority. However, references to law that the writer has *already* described don't necessarily require a citation; this circumstance arises most often when the writer applies the already-described law to the facts of her case. Also, some parts of legal documents conventionally don't include citations, like headings and introductory summaries. An "introductory summary" is a catch-all term that includes the "brief answer" or "short answer" in an office memo, the "summary of the argument" in an appellate brief, and the "executive summary" in a report.

<sup>240</sup> ALDISERT, *supra* note 45, at 263 ("You must balance the desire to present something that is tightly written with the necessity of furnishing the court with sufficient tools to accept your argument. The question is always: why have I cited the case?").

research since you first wrote that citation, and now you can swap in a stronger authority. Perhaps you can't. If so, check to see how well you've prepared the reader to accept your citation to non-binding authority.

In the prose, have you flagged non-binding authority for your reader? Readers can get frustrated otherwise.<sup>241</sup> You can flag the authority as non-binding by giving the name of the (non-binding) court in text or describing a secondary source by name or type.<sup>242</sup> Beazley and Smith suggest “commentators” to flag a secondary source.<sup>243</sup>

Also consider whether you can go beyond flagging the non-binding authority by “giv[ing] readers a reason to find value” in a proposition from a non-binding source.<sup>244</sup> In other words, tell the reader why she should care about a case from another jurisdiction or a page from a treatise or law review article.<sup>245</sup> You chose to cite that authority for some reason, so ensure you provided that reason in the text. A common reason to cite non-binding authority is because there is a gap in the binding law and the non-binding authority helps to fill that gap.<sup>246</sup> Explain the gap and explain how the non-binding authority helps to fill the gap. Has your jurisdiction not yet addressed the issue? Does the other jurisdiction use the same rule as your court? Does the law review article propose a solution to the otherwise unresolved problem raised by your case?

These revisions will go in the prose sentences surrounding your citations, rather than in the citations themselves—but they will help tie together the prose and citations.

### 3. Accurate Support

Check the accuracy of any words you've used to describe the legal authorities. Every statement should be accurate. For example, if a prose sentence references “courts” plural but only one court appears in the citation, the citation doesn't fully support the proposition.<sup>247</sup>

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<sup>241</sup> BEAZLEY & SMITH, *supra* note 47, at 215 (explaining that readers “instinctively presume” that any cited legal authority is binding and will be frustrated if they are surprised by non-binding authorities that they haven't been warned about).

<sup>242</sup> BEAZLEY & SMITH, *supra* note 47, at 215 (“Generally, the best way to do this is to mention or refer to the source; you need not announce to the court that a particular source is not authoritative.”).

<sup>243</sup> *Id.* at 216.

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> CHEW & PRYAL, *supra* note 137, at 60.

<sup>247</sup> *See* BEAZLEY & SMITH, *supra* note 47, at 221.

#### 4. Appropriate Signals

Check each signal for appropriateness. Using appropriate signals is part of conveying the law accurately and also how stylish legal writers smooth over bumpy citations to make them blend with the surrounding prose. Signals are worth checking during the revision stage because prose can change over the course of a draft, as can a writer's understanding of a cited authority.

#### 5. Quote or Paraphrase

Awkward quotations are sometimes associated with unstylish citations because the combination of a quotation and a citation can feel (or even look) like an adequate explanation of law without conveying enough information to be adequate.<sup>248</sup> So when revising, it's worth reviewing each quotation and asking whether the information is best conveyed in the quotation as is, in a shorter quotation, or in a paraphrase.

#### 6. String Cites Redux

Because many readers either dislike string cites or have trouble incorporating their content with the surrounding prose, check every string cite to see if it's necessary.<sup>249</sup>

- Do the cited cases repeat the same information? One despised type of string cite is a pile-on of cases supporting an uncontroversial rule, like a standard of review, particularly when at least one of the cases is from the jurisdiction's court of last resort.
- Does one of the authorities cite the other authorities? If so, consider citing that authority and noting in a parenthetical that it contains a summary of other similar cases.<sup>250</sup>

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<sup>248</sup> For example, when Judge Rodney Davis described his experience adopting citational footnotes, he noted that a consequence of moving the citations out of the text was that his "use of quotations tend[ed] to be less awkward." Rodney Davis, *No Longer Speaking in Code*, 38 COURT REV. 24, 26 (Summer 2011). Citations don't make quotations awkward—over-quoting and poor integration with the rest of the prose make quotations awkward. Appropriate attention to quotations and citations during the revision and editing processes can produce the same benefits that Judge Davis found after he switched to citational footnotes: "weaning myself of the practice of pasting quotations into my opinions is improving my writing and sharpening my understanding of the rules I am applying." *Id.* This advice from Justice Scalia and Bryan Garner on paraphrasing applies as well to in-line citations as citational footnotes: "You want the court to develop confidence in your reasoning—not in your ability to gopher up supporting quotations. Say what you know to be the law, and support it by citing a case that holds precisely that." SCALIA & GARNER, *supra* note 111, at 128.

<sup>249</sup> GARNER, *THE REDBOOK*, *supra* note 112, at 158 (suggesting that readers eliminate redundancies within citations to help condense citations).

<sup>250</sup> See BEAZLEY & SMITH, *supra* note 47, at 220.



## 7. Missing or Out-of-Order Information

For any passage containing citations, check each pairing of prose and citation to see if it builds off of information conveyed earlier in the document. This is a way to check for flow (and presumptuous citations). A general principle of communication is that “[w]e learn by connecting new information to what we already know.” A corollary at the sentence level is that “readers prefer to encounter information that is old or familiar *to them* before they encounter information that is new or unfamiliar.” Connecting new information to known information is the trick to flow, and various approaches exist to check that sentences progress from known to new.

My preferred approach is to transform a passage into a list of sentences,<sup>251</sup> which can easily include citations, and then check for out-of-order or missing information:

- In your document, hit return after any sentence that isn’t followed by a citation.
- Also hit return after each citation sentence.
- What you should end up with is a list of short paragraphs, with each paragraph containing a single prose sentence plus any citation sentences that support that prose sentence.
- You might find it tidier to add bullet points or numbering, as I’ve done here.
- Once you finish, start with the first sentence in your list and read it and any supporting citation: Does the information in the citation complement the information in the prose sentence? Or do you see opportunities to tie them more closely together?
- Then consider each successive list item and ask whether it builds off of information presented earlier in your list, or, if not, whether it presumes information that your reader might not have.
- If a list item presumes information that hasn’t yet been presented in your passage, add in the missing information or move the list item further down in your list.
- Repeat until you finish going through the passage.

This list approach works well because it each prose sentence is visible yet still connected to its supporting citation. It’s also easy to move the items around once they’re no longer embedded in paragraphs.

## 8. Redundant Information About the Authority

Check for repetition of content between the citation and the preceding prose, such as a case name or issuing court. Because citations communicate information about a cited authority’s weight, that information usually need not be repeated in the prose.<sup>252</sup> Instead,

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<sup>251</sup> CHEW & PRYAL, *supra* note 137, at 378–79.

<sup>252</sup> *See* Chew, *supra* note 37, at 882.

writers can rely on citations to convey information about the issuing court or year of decision (or name of the case, which doesn't normally convey weight-of-authority information). An exception is when the writer wants to highlight some of that information for the reader, perhaps because the cited authority isn't binding or is very recent or very old. Whenever it occurs, repeating weight-of-authority information in the prose should be intentional.

Also check for information that appears in both the proposition and any explanatory parenthetical. That information only needs to appear once—decide where based on whether the information is important to understand your analysis or “additional” information for curious or skeptical readers.<sup>253</sup>

For every case name mentioned in the prose, ask yourself why. Sometimes a case name in the prose can help spot a writing problem.

- Is it standing in for a legal principle? If so, your reader will probably be better off if you state the principle rather than shorthanding it with a case name.
- Is it introducing a case for the very first time? If so, is it to convey a legal principle from the case? In that situation, the reader's focus should be on the principle rather than the case name; move the case name into the citation.<sup>254</sup> Case names don't convey information about weight of authority, so their utility is limited in prose sentences. An exception is if you're describing the facts and reasoning of a case; in that situation, referencing the case name will be useful so that you and the reader can use the case name to refer to the case.

## Conclusion

Legal writers write citations and should care for those words just as they care for the prose words they write. In-line citations in particular affect the way legal prose looks and reads—so writers should embrace them as an element of legal style that enhance their documents. This Article endeavors to help writers do so by identifying features of “stylish” legal citations and describing a writing process for helping writers craft them. Perhaps it will also encourage legal style experts to bring citations into their style guidance.

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<sup>253</sup> Garner, *Arguing Your Authorities*, *supra* note 153, at 17 (“Never follow a citation with a parenthetical that merely repeats what you've already said.”). Appellate attorney Andrew M. Low described a document that “paraphrases the principle from a case” and then follows that paraphrase with a parenthetical containing a substantively identical quotation from the case as “boring and unpersuasive” because the writer says everything twice. Andrew M. Low, *Citing Authorities*, 40:4 THE COLORADO LAWYER 55 (April 2011).

<sup>254</sup> See BEAZLEY & SMITH, *supra* note 47, at 218.