

# CITATION FRUSTRATIONS — AND SOLUTIONS

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## I. INTRODUCTION

Working with citations is a fact of life on law journals. Because citation work is detail-oriented, requires great concentration, and is sometimes perceived as “drudge work,”<sup>1</sup> it often generates a high level of frustration among law review staff, editors, and authors. This Article will address the primary frustrations suffered by each group and will propose solutions for alleviating those frustrations.

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1. As one 1999 law graduate wrote in an on-line humor column, Law Review is the sine quo non feather in the cap for young legal minds. It is what they are doing up there in the Ivory Tower.

Ostensibly, Law Review staffers boldly suggest revisions, precisely detail sources and bind the works in compact tomes invariably embroidered with gold lettering on acid-free paper that reeks of academic integrity. The purpose behind all this effort, of course, is so the Supreme Court will have something to rely on when [it] decide[s] if hair weaving is a fundamental right.

But the ugly truth lies behind the curtain. Junior staff on Law Review is the stuff of secretaries. 2Ls Bluebook until they're blueballed and run from library to library searching for forgotten or never-noticed books. They might as well be buying underwear for the boss's wife. It's remarkable that anyone wants a part of it. Ivo Labar, *Humor* > August 28, *Law Review: See Drudgery, infra* <<http://www.lawstudent.com/Entertainment/humor/Archives/archives.html>> (accessed Nov. 30, 2000). Along the same lines, a prominent law professor who has written extensively on law review scholarship wryly stated,

Second-year law review acolytes are forced to dedicate at least one year of a putatively prosperous legal career to footnotes. Each day, they spend hours interpreting arcane sections of the *Bluebook* and then forfeit good beer time on the weekends in order to verify “fugitive” citations. By the time law students become clerks, lawyers, or dropout law professors, they have been trained to intimidate and confuse the world with a profusion of self-serving, tedious, and lengthy notes.

Arthur D. Austin, *Footnote Skulduggery and Other Bad Habits*, 44 U. Miami L. Rev. 1009, 1010 (1990) (footnotes omitted in quoted passage and in article title).

Part II of this Article explores the frustrations felt by law review staff members, including feelings that cite and source projects<sup>2</sup> are “grunt work,” that the projects involve too many steps, and that citation rules are difficult to locate. This Section provides law review editors with ideas about how to respond to these complaints and how to design training sessions to better equip staff members to handle cite and source projects more effectively.

Part III deals with frustrations experienced by law review editors when they work with staff members and authors. The solutions to this group’s problems include training, written guidelines, and constant, clear communication with everyone involved in the cite and source process. Part IV addresses frustrations that authors have when dealing with citations. Training, written guidelines, and communication are again the primary solutions.

Appendix 1 contains detailed Sample Cite and Source Guidelines that law journals can use when training staff members. The guidelines provide a step-by-step blueprint of how a cite and source project should be handled from beginning to end. Law journals are welcome to use or borrow language and ideas from this Appendix. Appendix 2 provides a Cite and Source Evaluation Form that editors should complete when reviewing a staff member’s cite and source project. Again, law journals should feel free to use or adapt the information in this Appendix.

## *II. LAW REVIEW STAFF MEMBERS*

A principal duty of law review staff members is to “cite and source” articles selected for publication. “Cite and source” is the process through which law review members check the substantive accuracy of articles, place citations in the proper form, ensure that cited sources are still good law, and correct grammatical and typographical errors. Different law journals have different names

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2. *Infra* n. 8 and accompanying text (defining “cite and source”).

for this process, including “spading,”<sup>3</sup> “cite-checking,”<sup>4</sup> “admins,”<sup>5</sup> “subciting,”<sup>6</sup> and “Bluebooking.”<sup>7</sup>

Based on my experience with law reviews, the following gripes are common among staff when they receive a cite and source assignment:

- “Why am I doing this grunt work?”
- “There is too much to do!”
- “I cannot find the rule!”

#### A. “Why Am I Doing This Grunt Work?”

New staff members often perceive cite and source work as hazing — an unpleasant experience that must be endured to secure the coveted law review credential. This perspective often develops during training, even before editors distribute the first assignment. Accordingly, editors must ensure that the new member orientation

3. *E.g.* Am. U. Wash. College of L., *Administrative Law Review* <<http://www.wcl.american.edu/pub/journals/alr/frames/about.html>> (last updated July 24, 1999) (indicating that “junior staff” are required to contribute 170 hours per semester for “proofing, spading, office work, and other appropriate tasks as assigned during the year”); U. of Akron Sch. of L., *Curriculum / Courses L–Z* <[http://www.uakron.edu/law/crs\\_3.htm](http://www.uakron.edu/law/crs_3.htm)> (last modified June 30, 2000) (description for “Law Review Staff”).

4. *E.g.* Santa Clara U., *Santa Clara Law Review, Candidate Cite-Checking Handbook 1998–99* <<http://www.scu.edu/lawreview/handbook9899.htm>> (accessed Nov. 30, 2000) [hereinafter *Santa Clara Handbook*].

5. *E.g.* U. of Notre Dame Kresge L. Lib., *Bluebooking for Journal Members* <<http://www.nd.edu/~lawlib/research/pfbluebk.html>> (accessed Nov. 30, 2000) [hereinafter *Notre Dame Handbook*]. This guide provides,

Your goal in conducting “admins,” that is, running source and cite checks, is two-fold. First, you are checking the accuracy of the author’s substance. Are the quoted passages accurate? Do the sources really say what the author ascribes to them? Always check each quotation word for word, and don’t be afraid to change an introductory signal where necessary, or otherwise flag an inaccuracy for your copy editor. If the author is saying what a case says, check the holding; if the author is not referring to the holding, is she clear about why she is using the case? Check the source for validity. For cases, Shepardize or Auto/Insta-Cite; look at the negative treatment to see if the case can be cited as the author interprets it.

*Id.*

6. *E.g.* Harvard L. Sch., *Journal on Legislation, JOL Editor’s Manual* pt. III(B)(1) <<http://www.law.harvard.edu/studorgs/jol/resources/editorsmanual.htm>> (last updated Mar. 8, 2000) [hereinafter *JOL Editor’s Manual*].

7. *E.g.* U. Mo.-Kan. City Sch. of L., *UMKC Law Review Staff Manual, Staff Member Assignments* <<http://www.law.umkc.edu/lawresources/lawreview/staff/Staff%20Manual.htm>> (last updated July 21, 2000) (“Bluebooking requires both technical and substantive analysis.”) [hereinafter *UMKC Staff Manual*].

presents an accurate, yet realistic, picture of what the cite and source process entails. They must not diminish it, present it as an obstacle to be overcome, or complain about it in an effort to empathize with new members.

During new member training, editors should first explain what a cite and source project involves. As noted above, on most reviews, a cite and source project consists of the following four components: (1) verifying the substantive accuracy of the article; (2) placing citations in proper form; (3) determining whether cited authorities are still good law; and (4) correcting grammatical and typographical errors.<sup>8</sup> Harvard's *Journal on Legislation*, which calls a cite and source a "subcite" project,<sup>9</sup> tells its members that

[a] subcite is an independent appraisal of an article that, in the author's opinion, is ready for publication. You will soon learn that every article contains hundreds of mistakes — from incorrect page numbers in footnotes to factually incorrect assertions in the text — and your job is to find them. As a Subciter, you are responsible for ensuring that your assigned portion of the article is publication ready.<sup>10</sup>

As part of the orientation process, editors should urge new members not to be intimidated when checking articles written by judges, professors, and practicing attorneys. Similarly, editors should warn new members not to assume that articles written by professionals will contain fewer errors than student-written pieces. Indeed, professionally written pieces are often replete with errors of varying kind and degree. To help make these points, the editors might convey the following insights:

- Some professional authors often do not pay a lot of attention to the footnotes, especially with regard to citation form. They concentrate on the text, knowing that law review members will double-check their work.

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8. *E.g. Santa Clara Handbook*, *supra* n. 4, at pt. II(B) (listing the activities as substantive accuracy, technical accuracy, Shepardizing, and "grammar, spelling, style, continuity, etc.").

9. *Supra* n. 6 and accompanying text.

10. *JOL Editor's Manual*, *supra* n. 6, at pt. III(B)(3) (Introduction: What Is a Subcite?).

- Some professional authors use research assistants — often students with less training than you now have — to prepare many of the footnotes.<sup>11</sup>
- Professional authors often write under great time constraints. Many have only a few weeks during the summer to complete an article. Professors who write during the school year have competing duties, such as teaching and University service, that sometimes divert their attention from important details.

To help new members understand the process and end product, editors might distribute a sample cite and source project. One part of the handout would include the assignment as given to a staff member. The second part would reflect the completed assignment, replete with corrections, strike throughs, and other editing marks.<sup>12</sup> The editors and members can then use this handout as a reference during the remainder of training.

After the editors explain what the cite and source process involves, they should emphasize the importance of the process. Although a cite and source assignment might *seem* like drudge work, the review would not select the top students and writers in the school if that is all it involves. Indeed, the importance of the cite and source process cannot be overemphasized. The cite and source process is the only check on the article's substantive accuracy.<sup>13</sup> Thus, the review's reputation rests on the shoulders of those

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11. Austin, *supra* n. 1, at 1018, 1018 n. 57.

12. On a related point, editors should teach new members what different proofreading symbols mean and should encourage new members to use these symbols so that their changes will not be misunderstood. Common proofreading symbols may be found in many style manuals, such as *The Chicago Manual of Style* (14th ed., U. Chi. Press 1993), and at various on-line sites. *E.g.* Capital Community College, *Common Proofreading Symbols* <<http://webster.comnet.edu/writing/symbols.htm>> (accessed Nov. 30, 2000); E-pen.com, *Common Proofreading Symbols* <<http://www.epen.com/symbols.htm>> (accessed Nov. 30, 2000); P. N.W. Natl. Lab., *Author's Guide, Standard Editing Symbols* <<http://www.pnl.gov/ag/usage/editsyms.html>> (last updated May 17, 2000).

13. *E.g.* *UMKC Staff Manual*, *supra* n. 7, at "Staff Member Assignments" (emphasizing that the cite and source process "is the only verification process performed for the authorities cited. The quality of the journal depends upon detailed and accurate analysis."). As part of this component of training, the editors should talk about exactly what work the editors do and should emphasize that while the editors will spot check the staff members' work, they will not and cannot check every source. If new members believe editors will redo the work, it will diminish members' level of personal responsibility toward the article.

assigned cite and source projects.<sup>14</sup> If the authorities in the footnotes do not provide the type and degree of support the introductory signals indicate;<sup>15</sup> if cases have been reversed, overruled, or vacated; or if portions of the article have been plagiarized,<sup>16</sup> the author, the editors, and the review as a whole will be humiliated.<sup>17</sup> But these problems can be avoided if staff members take their assignments seriously and perform them thoroughly.

To assist members in completing high-quality cite and source checks, each review should develop written cite and source instructions or checklists<sup>18</sup> that explain the steps in the cite and source process and detail the specific items members are responsible for verifying. For those reviews that do not yet have instructions, sample guidelines are included in Appendix 1. The mere fact that the review has taken the time to prepare careful, written instructions will impress upon many members the importance of the task.

The editors should review key portions of the guidelines with the new members and should make the guidelines required reading. Moreover, since most people retain information better by doing than by listening, before requiring new members to complete a cite and

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14. *JOL Editor's Manual*, *supra* n. 6, at pt. III(B)(3), step 5 (also adding that “[w]hen the legal community cites the *Journal*, it assumes perfection. Please treat your job with this in mind.”).

15. ALWD & Darby Dickerson, *ALWD Citation Manual: A Professional System of Citation* Rule 45 (Aspen L. & Bus. 2000); *The Bluebook: A Uniform System of Citation* Rule 1.2 (Harvard L. Rev. Assn. et al. eds., 17th ed., Gannett H. 2000) (both providing definitions for introductory signals) [hereinafter *Bluebook*].

16. Plagiarism involves quoting or using another's words, thoughts, or ideas without proper attribution. *E.g.* Matthew C. Mirow, *Plagiarism: A Workshop for Law Students* (1988), (available at <<http://sprodmtcibs.com/writing/plagiarism/html/>>). For strategies on finding and avoiding plagiarism, see *infra* Appendix 1, at Part VII.

17. During training, the editors might talk about actual incidences in which these types of mistakes were not discovered during the cite and source process and the consequences that arose from those errors. *E.g.* Austin, *supra* n. 1, at 1012 n. 21 (discussing fraud in footnotes and citing *Errata*, 50 Wash. L. Rev. 230 (1975), which apologized for a printed quotation that was a hoax); *Memorandum from Dean Howard B. Eisenberg to Marquette Law Review Subscribers and Members*, 80 Marq. L. Rev. n.p. (1996) (in the bound volume, the memo appears before the Winter 1997 table of contents; the memo apologizes for an act of plagiarism committed by the journal's immediate past editor in chief). Although the author is primarily responsible for plagiarism, law review members bear some responsibility for not detecting plagiarism before publication. Of course, if the author takes material without any attribution to the original, discovering the plagiarism can be a difficult — although not necessarily impossible task. *Infra* app. 1, at pt. VII (listing “red flags” staff members should notice when cite and sourcing an article).

18. Sample checklists for both the *ALWD Citation Manual* and the *Bluebook* (16th edition) can be accessed at <<http://www.law.stetson.edu/lawrev/>>. The Author gives permission for law reviews to use and modify either checklist with attribution to the *Stetson Law Review*.

source on an article scheduled for publication, the editors should consider giving the members a short (five to ten footnotes) cite and source project, which can then be reviewed in a group setting or in individual conferences. This type of practice exercise will give members confidence in their ability to complete the work, will give them a sense of how to manage their time on actual assignments, and will give editors an opportunity to catch and correct glaring errors before the publication process is affected.

Another idea is to prepare a list of the most common problems that might arise during a cite and source and suggestions about how to avoid or handle them. Examples include the following:

- What should you do if you cannot locate a cited source in the school's library?  
**Possible solutions:** See the editor about requesting the source from the author or request your library to order the source through interlibrary loan.<sup>19</sup>
  
- What should you do if you believe the library has the source, but you cannot locate it?  
**Possible solutions:** Seek help from a reference librarian or editor if you cannot find the source within a reasonable time period. Have one member pull all sources before the cite and source project begins and keep them in a designated location.
  
- What should you do if you cannot find a particular quotation within a source?  
**Possible solutions:** Attempt to locate the information online, which will permit word searching. If the information cannot be located in an electronic source, you can contact the editor, who in turn can query the author.
  
- What should you do if you cannot find a citation form for the particular source?  
**Possible solutions:** Analogize to the closest rule possible, and (1) record the rule number used in the margin or in a

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19. Another solution is to ask your reference librarians to present a segment during new member training that addresses library usage and special problems that law review students face. *E.g.* Pamela D. Burdett, Dorothy C. Clark & Sally G. Waters, *What Librarians Can Do for Your Law Review*, 30 *Stetson L. Rev.* 593 (2000).

cover memorandum and (2) include a copy of the source or of portions of the source needed to develop the citation.<sup>20</sup>

As a further guide for staff members, when cite and source projects are distributed,<sup>21</sup> the editor should attach a written cover memorandum that includes at least the following, key information:

- the deadline;
- the supervising editor's name, phone number, and e-mail address;
- the names, phone numbers, and e-mail addresses for all students participating in the cite and source project, along with the range of footnotes for which each person is responsible;
- the location of any materials that already have been gathered (such as a special shelf in the library or in the law review office);<sup>22</sup>
- how the member should organize any copies made during the cite and source process and where those copies should be deposited; and
- any special problems with the article or any unusual sources that will require special attention.

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20. Section B of the Introduction to the *ALWD Citation Manual* contains a section explaining what to do if a source is not covered in the *Manual*. Also, see the text accompanying *infra* notes 33 to 34, which suggests that citation manuals should be viewed akin to statutes.

21. Law reviews should have a method to notify members that they have received an assignment. Some reviews have policies that each member must check his or her law review box daily for assignments. Other reviews require members to check e-mail daily; the editors then send e-mails to staff members indicating that they have received a new assignment. To help give advance notice to those students most likely to receive an assignment, one editor might be responsible for posting a list reflecting which students are "up next." The *Stetson Law Review*, for example, posts a weekly worker list. Those who have the fewest cumulative hours are listed at the bottom and thus know they will be the next ones to receive an assignment.

22. To help expedite the cite and source process, editors should conduct a "presource." A presource involves reviewing each footnote and identifying sources that are not contained in the school's library and ordering them through interlibrary loan or requesting copies from the author.



Editors can help ensure a higher-quality end product if they give members an adequate amount of time within which to complete the project. Assigning 100 footnotes due in 5 days will virtually guarantee a poor product. One commonly used rule of thumb is to assign 10 footnotes for each day the member has to complete the assignment — so at least 10 days to complete 100 footnotes. The supervising editor can grant variances for particularly difficult or easy assignments. Another rule of thumb is, if the publication schedule permits, to include two weekends in the assignment period. This way students can better balance the competing demands of law review, class work, interviews, and other obligations.

Editors must provide support for members throughout the cite and source process. The supervising editors should make the staff members aware that they are willing, able, and available to answer questions that arise during the process. They may do so by providing home and work phone numbers and school and home e-mail addresses, by keeping set hours in the law review office, and by visiting the library at times when staff members are working on the project.

In addition, editors should be proactive and should seek out members during the process. It is far better to learn about problems at this point than after the deadline. Editors also can send messages to the staff members to check progress and offer assistance, and the law review might establish a listserv that staff members can use to get quick answers to their questions.

After members return the cite and source assignments, the responsible editor should take time to review the work product carefully. Changes should not be incorporated into the piece wholesale. Instead, the editor should evaluate each suggested change. One tip is for editors to scrutinize the same source “corrected” by several different staff members in different footnotes. From an author’s perspective, it is frustrating to receive an edited manuscript when you can tell where one cite and sourcer stopped and the next one started due to inconsistencies in format. In addition to inspecting citation form, the editor also should spot check quotations<sup>23</sup> and other substantive aspects of the footnotes.

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23. Some law reviews actually require editors to recheck every quotation due to the number of errors they tend to discover and due to the ease of a reader determining that a quotation does not match the original source.

One guide is to check one source in every ten footnotes. If the editor notices problems, the spot checking should increase to one source in every five footnotes.

While the editor reviews staff members' work, he or she should make a list of tasks each staff member completed well and tasks on which each staff member must improve. The editor should then meet individually with each staff member to review this list and to answer any questions the staff member might have about the assignment.

During the meeting, the editor should cover the good and the bad. One technique is to walk through the cite and source and show each staff member what you, as the editor, had to correct. Also show the staff member how he or she might find any rules he or she missed. Another technique is to review the list of good and bad points and to review examples of the areas in which the member had the most significant problems. The editor should try to keep the tone positive, even if the product was subpar. A negative tone likely will discourage the member and will not help achieve the ultimate goal — to have an error-free book. However, the evaluation must be honest.

If the assignment was unacceptable, the editor — after meeting with the member — should return the assignment to the member for additional work. Although many editors are hesitant to take this step — either because they believe it will delay the publication schedule or because they believe the student will not improve the second time around — they must do so. If the editor does not remediate the problems, the same problems will occur and the next supervising editor also will end up with a subpar product. A law review cannot operate efficiently if it does not use all of its members in the most effective manner possible. An editor whose attitude is, "I can do this faster myself," will only end up hurting the review. In the long run, he will either burn himself out or delay the publication schedule.

The editor-staff member meeting should take place as soon as possible — ideally within one week of submission. Although editors have hectic schedules and often want to simply move forward in the process, they cannot afford to skip this step. If they delay the meeting for several weeks, the staff member likely will not remember the project or may very well have completed an interim project, having repeated the same errors.

Added benefits of this meeting include reinforcing members that the work they perform is valuable and showing them how their work contributes to the publication. In other words, the cite and source

work they perform is not merely grunt work or a bizarre hazing ritual the result of which goes unreviewed or unused. Stated differently, these meetings can help motivate the students to do the best job possible on future assignments.<sup>24</sup>

A few editors balk at holding meetings, because they do not like to deliver bad news or do not like confrontation. First, do not assume that the members will be confrontational.<sup>25</sup> If treated with respect, they likely will appreciate and respond to the feedback. Second, if you do not like to deliver bad news, you probably have chosen the wrong profession. Learn to practice this essential skill now, not with your clients.

After the conference, the editor should provide a written evaluation to be placed in the member's law review personnel file so that the member's work can be evaluated for a grade at the end of the semester.<sup>26</sup> The editor should provide a copy of this evaluation to the member so that he is not surprised at the end of the semester. To encourage supervising editors to complete this evaluation, the editor in chief or faculty advisor should emphasize that the quality of feedback will play a large part in determining each *editor's* grade for the semester.

To summarize, the solutions to the "Why am I doing this grunt work?" frustration include the following:

- adequate training about what a cite and source entails, the importance of the cite and source process, and the consequences of inadequate cite and source work;
- written instructions or checklists about what is expected;
- support from the editors throughout the process; and

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24. It always helps morale to let people know that they, and the work they perform, are appreciated. You might be surprised to learn how much goodwill small gestures can generate. At the *Stetson Law Review*, for example, one editor distributed short thank-you notes and packets of M&Ms to staff members who performed well on assignments. The positive buzz around the office was amazing. The students were excited to learn that someone had reviewed their work and thought that it merited recognition.

25. The likelihood of a confrontation will diminish if you assume that each member performed his or her work in good faith. Once you assume bad faith, your assumption is sure to become evident to the member, who, in turn, will become defensive.

26. A copy of the form used by the *Stetson Law Review* is attached as Appendix 2.

- feedback, including a face-to-face meeting and a written evaluation about what the staff member did well and what the staff member needs to improve.

If the members know what they are doing, why they are doing it, and whether they did it correctly, their morale will be better, and complaints about assignments hopefully will decrease.

#### B. “There’s Too Much to Do!”

Another oft-heard complaint from staff members assigned to cite and source projects is that there is too much to do. Sometimes the gripe is well founded, especially if the member was not given enough time to do a thorough job. Other times, the staff member merely needs guidance about how to proceed. Breaking a large project into manageable steps and suggesting a logical way to attack it often will help quell complaints.

Although the suggested guidelines in Appendix 1 provide a more detailed list of tasks for cite and sourcers to perform, below is a ten-step summary that should help put the assignment into perspective.

1. Read the instructions and understand what the assignment asks you to do.
2. Skim the article to gain a general understanding of the topic.
3. Carefully review the text to catch “facial” errors, such as misspelled words and missing punctuation.
4. Scan footnotes for unusual sources that might take time to locate.
5. Pull cited sources and put them in a central location.
6. Proceed footnote by footnote and check both the substantive accuracy of each citation as it relates to corresponding text and put each authority in proper citation form.
7. Update sources, especially primary authorities, to ensure they are still valid. The most common way of

completing this task is through Shepardizing, although West's KeyCite is gaining acceptance.

8. Do one final check for possible citation form errors that you missed.
9. Prepare a cover memo to the editor explaining any problems, difficulties, or remaining work (such as verifying a source that has not yet arrived through interlibrary loan).
10. Follow up with the editor about the quality of your work and areas in which you need to improve.

Another way to avoid complaints of overwork is to assign new members smaller projects at first and then build to longer assignments. The first time a member performs a cite and source, it often takes two or three times longer than subsequent assignments. Editors can plan for this eventuality by giving "half assignments," if the publication process permits, or by assigning new members to check student works, which typically have been vetted more carefully and cite fewer unusual sources.

A related technique is to provide better coordinated assignments — with coordinated being used in several different contexts. First, the assigning editor should be sensitive to which unusual or related sources are contained within each section of the paper and then attempt to divide the paper accordingly. Second, the assigning editor might have a short preliminary meeting with all staff who will be working on the project to review anticipated problems and develop model citations for difficult sources. Third, the review might survey its members about their areas of substantive interest and expertise. When feasible, those with an interest in securities law might be assigned articles in that area. This latter idea will not always work, but when a paper in an area with unusual sources or citations is selected for an issue, a student with an interest or background in that area might prove to be more highly motivated to wade through those materials.

Yet another solution is to conduct a presource, in which an editor or another member reviews the footnotes before the paper is sent to cite and source and orders sources that are not in the school's library or easily located on-line. Although interlibrary loan can be an effective way to locate such sources, editors should not be

shy about asking authors to provide copies of these difficult-to-locate sources.<sup>27</sup> If the sources are ready for the staff to verify, that is one less step that will delay the process or cause unneeded frustration.

A final solution is to make effective use of the school's reference librarians. Often what takes the most time in a cite and source is locating the sources. Ask your librarians to develop tours or programs for your law review members. If the review is publishing a symposium in a certain area, request a special research session on that topic. For example, ask the librarians to present an international law research session if the symposium involves international law. Most second-year students will not know how to locate these specialized sources, and a one-hour research program will result in a savings of dozens of hours per person. In other words, do not ignore other resources at your school, which can help law review members save time and energy.<sup>28</sup>

### C. "I Can't Find the Rule!"

A third frustration voiced by law review members is that they cannot find an exact rule on how to cite particular sources. The key is to anticipate this problem and address it during new member training. No citation manual can address every type of source. Not only would any manual that so attempted be several volumes long and thus unuseable, but legal sources are forever evolving.

New member training should include a review of the citation manual used by the law review.<sup>29</sup> Although students learn some citation form in most research and writing programs, they will not

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27. Difficult-to-locate sources include unpublished materials, books not readily available in your library or a nearby library, newspaper articles not available on-line, and various foreign materials. Before an editor asks an author to provide a lot of sources, someone on the review should conduct an initial check for availability. *Supra* n. 22 (describing a "presource" project). But if a source is not readily available and the author is unwilling or unable to provide a copy, that may be a red flag for plagiarism. See Austin, *supra* n. 1, at 1018 n. 58 (citing 20 Case W. Res. J. Intl. L. publication p. (1988)) ("The most prudent recourse is the one adopted by the *Case Western Reserve Journal of International Law*, which is to caution the author: 'Authors should cite only to authorities which they have personally consulted.'"); cf. Arthur D. Austin, *Footnotes as Product Differentiation*, 40 Vand. L. Rev. 1131, 1147-1148 (1987) (discussing "fugitive sources").

28. Another resource is faculty members with a specialty in the area of the article. The professors might be able to help clarify ambiguities or might have difficult-to-locate materials tucked away in their offices. Research and writing faculty also might be willing to conduct sessions on citation strategy and form.

29. The Author has prepared PowerPoint presentations on both the *ALWD Citation Manual* and the *Bluebook* (16th edition). Law reviews interested in copies of these programs may submit a request to dickerson@law.stetson.edu.

have faced the range of citation issues that they will on law review. Editors should start with the following basics: how to find information using the index; how law review form differs from legal memorandum form;<sup>30</sup> and important law review concepts students would not have addressed in the first-year curriculum (such as footnote placement and *supra* and *infra* cross-references). Editors also should require new members to read key portions of the citation manual that they either did not read in research and writing or read, but have long since forgotten.<sup>31</sup> Such sections might include the introduction and rules of general citation style.<sup>32</sup>

Students should view the citation manual, whether the *ALWD Citation Manual*, the *Bluebook*, or another guide, akin to a statute.<sup>33</sup> If the student cannot determine how to cite a particular authority, he or she should analogize to the closest possible rule and then be consistent throughout the project.<sup>34</sup> To alert the editor to the situation, the staff member should include a marginal note or cover memorandum that explains which rule or rules were used and why. This way, the editor can independently check the manual and can ensure that the authority is cited the same way within each section of the article.

Students also should be instructed not to spend hours worrying about where a particular comma or period belongs. Although staff members should be directed to look up the proper citation form for each source, and while poor citation format can detract from the article's and review's credibility, citation form is not a matter of life

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30. The *ALWD Citation Manual* contains a single form for all documents; however, editors still will have to explain footnotes, which typically are not used in memoranda. ALWD & Dickerson, *supra* n. 15, at preface. The *Bluebook* contains many rules that differ depending on whether a citation appears in a law review article or in a memorandum or brief. For journals that use the *Bluebook*, editors should prepare a list of important differences. *E.g.* *Notre Dame Handbook*, *supra* n. 5 (listing differences in Bluebooking for journals as compared to memoranda and briefs, including differences in typeface and case citations).

31. *E.g.* *Notre Dame Handbook*, *supra* n. 5 (including a concise section on "How to Use the Bluebook").

32. *E.g.* ALWD & Dickerson, *supra* n. 15, at R. 1–11, 44–46; *Bluebook*, *supra* n. 15, at R. 1–9.

33. For this thought, I am indebted to Professor Robert Batey of Stetson University College of Law.

34. ALWD & Dickerson, *supra* n. 15, at 7 ("By analogizing to the most similar format . . . , you stand the best chance of providing your readers with the information they need to find the source.").

and death.<sup>35</sup> If the member truly cannot locate the correct format after a reasonable and good faith effort, the member should do the best he or she can and spotlight the problem for the editor. Editors often are in a much better position to modify citation form quickly. They are not in the position, however, to reverify the substance of the article.<sup>36</sup> Consequently, staff members' time and energy should be focused more heavily on checking the accuracy of textual statements and verifying information such as the correctness of authors' names and dates — matters that can affect the reader's ability to locate the source.<sup>37</sup>

Another solution is for the editors to prepare an internal style guide that addresses sources that are not covered in the primary citation manual, but are frequently cited in works printed in the journal.<sup>38</sup> For example, the *Florida State Law Review* has published a style guide for many Florida sources,<sup>39</sup> the *Texas Law Review* has published the "Greenbook" for Texas sources,<sup>40</sup> and the *Fordham International Law Journal* regularly publishes a citation manual for European Community materials.<sup>41</sup> Another solution is to instruct members to consult recent editions of the school's law review to shed light on the "gray areas." However, this strategy might backfire and lead new members to waste hours poring through back issues.

Finally, as with any other problem, an established communication system always is effective. Staff members should not feel like they must struggle through problems alone. Editors should be approachable and reachable, and staff members also should have ways to communicate with each other.<sup>42</sup>

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35. *But see* Daniel R. White, *The Still Official Lawyer's Handbook* 53 (Penguin Group 1991) (stating, tongue-in-cheek, that "[c]onfusing *supra* and *id.* could cause an innocent person to go to jail and die").

36. *See supra* n. 13 and accompanying text (concerning editors spot checking staff members' work on substantive issues).

37. *See supra* n. 13 and accompanying text (emphasizing that "the primary goal of legal citation is to lead the interested reader to the cited source").

38. Journals who take the time to develop these and similar sources are encouraged to post the materials on-line and to request the National Conference of Law Reviews (NCLR) to place a link to the materials on the NCLR home page, which is located at <<http://www.law.stetson.edu/nclr/default.htm>>.

39. Fla. St. U. L. Rev., *Florida Style Manual* (4th ed. 1997) (available at <[www.law.fsu.edu/journals/lawreview/downloads/242/fsm.pdf](http://www.law.fsu.edu/journals/lawreview/downloads/242/fsm.pdf)>).

40. Tex. L. Rev., *Texas Rules of Form* (9th ed., 2d prt. 1998).

41. *A Citation Manual for European Community Materials, Sixth Annual Edition*, 23 *Fordham Intl. L.J.* 935 (2000).

42. *Supra* pt. II(A).



### III. LAW REVIEW EDITORS

Law review editors also encounter citation frustrations. These frustrations can be divided into (a) frustrations with staff members and (b) frustrations with authors.

#### A. Frustrations with Staff Members

The primary lament one hears in editor offices across the country is, “We trained the staff on how to do cite and source work, but they still make a lot of mistakes!” If this is the cry, then the first thing the editors should do is re-evaluate the training process. As noted in Part II, sufficient time should be devoted to cite and source work during the new member orientation. And hands-on training is often more effective than the lecture approach.

Improving the quality of cite and source work, however, also depends on continued training. One or two sessions during the new member orientation is not nearly enough time to teach someone the subtleties of verifying authorities and checking citation form. Instead, the review also should develop a formal program that provides follow-up training. While individual feedback on assignments should be a keystone to the program,<sup>43</sup> group feedback also should be provided.

For example, the review might hold “all member” meetings on a regular basis. One component of the meeting might be to address common errors and to have staff members work short exercises to help correct these errors. Alternatively, the appropriate editor might issue periodic newsletters or messages to the staff that, among other things, identify the common errors and reflect the correct form. If the editor’s time is tight, consider using talented senior staff members to help in the training effort.

In addition, editors must have in place a systematic procedure to check staff cite and source work. Editors cannot blindly insert changes suggested by staff and cannot assume that the staff caught every mistake. While mistakes in format can be easier to catch and often can be corrected by an editor well versed in the review’s selected citation manual, “patent” errors — errors involving the substance — are harder to catch. However, the review will pay a much higher price in terms of damaged reputation if readers

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43. *Supra* pt. II(A).

discover the substantive errors. Accordingly, editors must spot check the substance of the paper.<sup>44</sup>

One step that will save editors time in this spot checking process is to have backup documents from the cite and source project available and organized in the law review office. For example, copies of cited cases, statutes, and other authorities might be arranged by footnote number and kept in a storage box on a designated shelf in the review. As part of their cite and source project, staff members would be required to highlight pertinent portions of the cited authorities and to arrange copies of those authorities in the preferred order. Staff members also would be required to attach copies of Shepard's or KeyCite printouts to primary sources. With this arrangement, editors conducting spot checks could do so more quickly. They also would be able to spot "red flags" more quickly. For example, if a copy of a particular source is missing, the presumption will be that the staff member did not check the source. If the Shepard's sheet is missing from a case, the editor can assume that the staff member did not check the validity of that case.

Finally, the review should have a procedure to penalize or even remove students whose work does not improve even with additional training. While removing a member can be an unpleasant event, it is not fair to the group as a whole to have a member who simply cannot pull his or her weight.<sup>45</sup>

### B. Frustrations with Authors

Editor frustrations with author citations can take a variety of forms, including frustrations with citation format, frustrations with the type and degree of support, and frustrations with authors who object to "correct" citation format.

The old adage says that prevention is the best medicine. That saying has validity in the citation context. When editors evaluate articles for publication, they should study material in the footnotes as well as in the text. If the citation form is horrendous, if a long paper has far fewer footnotes than would be expected,<sup>46</sup> or vice

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44. Text accompanying *supra* n. 23.

45. For information about staff discipline, see Vincent A. Branton, *Now That I've Got It, What Do I Do with It?: Practical Advice on Managing a Law Review*, 30 *Stetson L. Rev.* 533 (2000).

46. This might be a sign of plagiarism. See *infra* app. 1, at pt. VII.

versa,<sup>47</sup> if the paper is replete with unverifiable sources — such as interviews without transcripts<sup>48</sup> — or if the citations are to sources your school does not have or your members do not have the expertise to cite<sup>49</sup> — then these factors should weigh heavily in the publication decision.<sup>50</sup> If you accept papers with these problems, you are inviting a migraine — or worse.

If the review accepts — or wishes to accept — a paper with citation problems, the editors have a couple of solutions. One would be to have the staff correct the problems. Such a solution, however, drains valuable resources. The alternative is to ask the author to place the footnotes in proper citation form. The best time to have this discussion is when you make the offer. Consider making the offer conditional on citation form revisions. Of course, some authors may scoff at this condition, so you need to use discretion about when you impose such a condition and to have a fallback if the author refuses.<sup>51</sup>

47. Austin, *supra* n. 1, at 1020 (“The footnote that cannot be verified according to normal practices and procedures, and yet is accepted, is a perverse anomaly to the footnote canon of verification.”).

48. A “high density” of footnotes “may cloak ploys of questionable ethical credibility.” Austin, *supra* n. 1, at 1017. Professor Austin also cautions that while “[f]requent references to books and treatises could reflect scholarship, [they] are more likely to constitute blatant footnote padding and perhaps a form of plagiarism.” *Id.* In another article on footnotes, Professor Austin noted,

Neophyte writers have a tendency to go for quantity. . . . The customary objective is 500 or more footnotes. Exceeding 500 is a dramatic expression of footnote machismo.

Nevertheless, experience is still the best mentor and teaches the sophisticated writer that reliance on brute numbers is academically uncouth. It is ostentatious overkill. Moreover, “numbergrubbers” have a tendency to rely on “inflators” such as *supra*, *infra*, *ibid.*, and *id.* and, as a result, are vulnerable to justified chastisement for sneaking in “useless” notes.

Austin, *supra* n. 27, at 1141–1142 (footnotes omitted).

49. The *Stetson Law Review*, for example, once had to decline an article because the sources were in Belgian, and the author refused to provide English translations.

50. Editors are encouraged to follow this sage advice:

Editors should accept only those pieces that, on the whole, meet that board’s standards for publication at the time of submission. Any piece that student editors think needs to be substantially rewritten should be rejected or, in the tradition of journals elsewhere in the academy, editors might invite a resubmission after various suggested changes are made. If a piece is solicited for publication before it is written, the editors should treat it like other accepted manuscripts.

Carol Sanger, *Editing*, 82 *Geo. L.J.* 513, 524 (1993).

51. A refusal may be a warning that the author will be difficult to work with; thus, you may want to hold firm on the condition and let the author place his or her piece in another review. Also consider if allowing the author to revise the footnotes will delay the publication schedule.

Another preventative step is for the review to have a written policy about citation form. Most reviews have language on their copyright notice page that citations should conform to a particular citation book. Other reviews have gone further and have developed “style sheets” for authors to follow when they depart from traditional citation form in certain ways.<sup>52</sup>

Yet another way to prevent citation frustrations with authors is to include provisions in the publication agreement that require the author to cooperate in the editing process, to provide difficult-to-locate sources in a timely manner, and to abide by certain rules of ethics and professionalism. If the review has not done so already, it should adopt a code of ethics, provide prospective authors with a copy of that code, and incorporate code provisions in the publication agreement. The National Conference of Law Reviews has promulgated such a code,<sup>53</sup> which includes the following, helpful provisions:

- In all actions, the law review staff and the law review author must be competent, prompt, and diligent.<sup>54</sup>
- A law review author shall attribute all material that is not original.<sup>55</sup>
- “[A] law review author shall take such steps as are necessary to permit the manuscript’s sources to be verified.”<sup>56</sup>
- A law review author shall not distort any sources cited in the manuscript.<sup>57</sup>

If the review accepts a piece that contains deficient support, the editor should note the areas of concern and ask the author to

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52. E.g. Buffalo Crim. L. Ctr., *Buffalo Criminal Law Review Style Sheet* <<http://wings.buffalo.edu/law/bclc/BCLRstyle.htm>> (accessed Nov. 30, 2000); U. of Ill. Press, *Law and History Review, Guidelines for Preparation of Manuscripts* <<http://www.press.uillinois.edu/journals/lhrstyle.htm>> (accessed Nov. 30, 2000); Yale L. Sch., *Journal of Law, Economics & Organization, Style Sheet* <<http://www.law.yale.edu/jleo/sheet.htm>> (accessed Nov. 30, 2000) (using APA format); cf. Coalition of Online L. Js., *Citation Proposal: How to Cite Electronic Journals* <[http://www.urich.edu/~jolt/e-journals/citation\\_proposal.html](http://www.urich.edu/~jolt/e-journals/citation_proposal.html)> (accessed Nov. 30, 2000) (providing a link for journals who wish to use the proposed citation format).

53. Michael L. Closen & Robert M. Jarvis, *The National Conference of Law Reviews Model Code of Ethics: Final Text and Comments*, 75 Marq. L. Rev. 509 (1992) (available at <<http://www.law.stetson.edu/nclr/default.htm>>).

54. *Id.* at 514 (Rule 1.2).

55. *Id.* at 525–526 (Rule 5.1).

56. *Id.* at 526–527 (Rule 5.2).

57. *Id.* at 527 (Rule 5.3).

provide additional substantiation. If the author refuses or claims that he or she does not have time, then the review must balance relevant factors to decide whether to withdraw the offer of publication,<sup>58</sup> to postpone publication to a later issue to allow the author the needed time, or to have staff members attempt to find substantiation. The factors to weigh include the prominence of the author, the amount of missing information, the difficulty of the topic, the perceived ability of staff members to locate the missing information, the author's willingness to allow staff members to add citations, and the publication deadlines.

Regarding authors who insist that citations be placed in a format that does not conform to the review's selected citation manual, the editors should first make sure that they — the editors — are correct. Then, they should determine why the author wants to depart from the accepted format. If the author's reason is logical, then the aberrant citation format may be a nonissue.

Another question to ponder is whether it is worth losing the article over citation form. If the writing and analysis are sound and if readers can locate the information given the author's preferred format, then a fight over citation form seems silly. Also remember that all authors are not created equally. On the continuum of deference, a Supreme Court Justice should receive more deference than a practitioner who has never published a scholarly article, and an established expert in the field should receive more deference than newer authors. Finally, the editors might explore whether the author will permit an editor's note indicating that normal citation form has not been followed. If so, then concerns about uniformity should be largely resolved.<sup>59</sup>

#### *IV. AUTHOR FRUSTRATIONS*

Both student authors and professional authors experience frustrations with citations and other aspects of preparing footnotes. The frustration experienced by student authors often stems from the fact that they are not taught the placement and content of footnotes. Even if they are trained in the cite and source process, that process

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58. Be sure to check the publication agreement before taking this radical step.

59. If the deviations are minor and will not be noticed by many, it might not make sense to highlight the differences.

teaches them citation form and how to check *others'* footnotes. It does not teach them how to write their own footnotes. Accordingly, as with other problems, the solution is training.

Before students begin writing their casenotes or comments, they should receive training — ideally by a faculty member — about footnoting and plagiarism. Students must understand when, where, and why to use footnotes. Just as important, they must understand what constitutes plagiarism and how to avoid it.<sup>60</sup> An excellent source on these topics is the second edition of a book by Professors Elizabeth Fajans and Mary R. Falk called *Scholarly Writing for Law Students: Seminar Papers, Law Review Notes, and Law Review Competition Papers*.<sup>61</sup>

Professional authors' primary frustration lies with law review students making changes in the footnotes. Nothing is more exasperating from an author's perspective than to receive an article that has been edited and not be able to tell what changes have been made — *other than* discovering changes that are incorrect. If the author does not know where the changes are, he or she must personally or through an assistant spend hours tediously going word-by-word through the article to see what has been altered. From personal experience, I can say for certain that this process is both annoying and infuriating.<sup>62</sup>

The solution to the first problem, the location of changes, is for editors to reflect what changes they have made to a paper, either through a redline version or in a cover letter.<sup>63</sup> If a law review does

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60. For sources that define and explain how to avoid plagiarism, see Elizabeth Fajans & Mary R. Falk, *Scholarly Writing for Law Students: Seminar Papers, Law Review Notes, and Law Review Competition Papers* 109–115 (2d ed., West 2000), Terri LeClercq, *Failure to Teach: Due Process and Plagiarism in Law School*, 49 J. Leg. Educ. 236 (1999), and Ralph D. Mawdsley, *Plagiarism Problems in Higher Education*, 13 J.C. & U.L. 65 (1986); Mirow, *supra* n. 16.

61. Other good sources include Elizabeth Fajans & Mary R. Falk, *Comments Worth Making: Supervising Scholarly Writing in Law School*, 46 J. Leg. Educ. 342 (1996), and Eugene Volokh, *Writing a Student Article*, 48 J. Leg. Educ. 247 (1998).

62. I am not alone in this regard. *E.g.* Sanger, *supra* n. 50, at 514 (“My own response to cases of aggravated editing has been to follow Elisabeth Kubler-Ross’s stages of reaction to death: denial, depression, bargaining, anger, and acceptance.”). The situation worsens when the editors have given no notice that a galley is on its way to be reviewed, they send it regular mail, and then demand a forty-eight-hour turnaround. Communication is key to any relationship, including the author-editor relationship.

63. On a similar point, Professor Carol Sanger vents:

Because law review manuscripts are returned with so many changes, in some reviews by multiple editors in multiple colors, editing antagonisms are aggravated. Cover letters rarely inform authors that most changes are of the felicitous variety, intended as queries that the author should carefully consider, but is not required to accept.

not have this procedure in its publication process, the process should be added.

The solution to the second problem, inserting incorrect changes into the paper, is a bit more difficult, but should be achievable by following these steps:

- Avoid change for the sake of change. Correct errors; do not insert personal preferences even in the footnotes.<sup>64</sup> The footnotes are still part of the paper and still belong to the author.
- Train not only the staff,<sup>65</sup> but also new editors. Being elected editor does not automatically bestow one with greater knowledge or wisdom than noneditors.
- Make sure an editor experienced in citation form reviews the article before it is sent to the author for review. In other words, there must be an editor who reviews the cite and source work performed by staff members.
- Consider designating a single editor whose primary job is to master proper citation form and to review citation form in each article.
- Clearly communicate changes to the author and be receptive to feedback even on issues of citation.

## V. CONCLUSION

Although some consider footnotes and citations to be of minor importance in the world of legal scholarship,<sup>66</sup> they are here to stay.

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Whether a failure of policy or communication, the practice leads to a lack of editor-author courtesy and rapport.

*Id.* at 522.

64. Professor Sanger aptly explained that [a]t its best, law review editing, like editing elsewhere in the academic and literary worlds, results in a piece improved in style, structure, and content. Too often, however, law review articles are not so much improved as simply changed, sometimes hundreds of times within a single manuscript.

*Id.*

65. *Supra* pt. II(A), app. 1.

66. *E.g.* J.M. Balkin, *The Footnote*, 83 Nw. U. L. Rev. 275, 275–277 (1989) (discussing the frustrations of footnoting).

Consequently, it is essential that law reviews develop effective methods to deal with citation-related issues such as the cite and source process, which has both technical and substantive components. Training, open communication, and written policies are solutions to many citation frustrations. Similarly, if those working with citations understand their purpose and know what their role is in the process, then the frustrations will diminish if not vanish.



## APPENDIX 1

### SAMPLE CITE AND SOURCE GUIDELINES<sup>67</sup>

#### I. Purpose and Overview

The purpose of a cite and source assignment is to check the substantive accuracy of the article, to place all citations in proper form, to verify the validity of each cited source, and to read the paper for grammatical and typographical errors.

Please note that the cite and source will be the *only* substantive verification of the article's content. Accordingly, you must use extreme care when completing this assignment. The quality of this *Law Review* depends on accuracy. Thus, mistakes will reflect poorly on the *Law Review*, the staff, and the school.

Editors will review your work, but cannot do your work for you and do not have time to double-check all of your work. Therefore, you must approach the cite and source assignment with the attitude that you are the *only* person checking a work that will appear in the *Review* with your name on the masthead.

Although there are different ways to conduct a cite and source assignment, you must complete each step listed below before submitting the assignment to the supervising editor. In addition, most new members discover that the project is more manageable if they divide it into discrete tasks and complete it over a number of days.

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67. These guidelines were developed using the following sources: *JOL Editor's Manual*, *supra* n. 6; *Notre Dame Handbook*, *supra* n. 5; *Santa Clara Handbook*, *supra* n. 4; *UMKC Handbook*, *supra* n. 7; and two documents I prepared for the *Stetson Law Review*. One is called *The Cite and Source Process*, and the other is a *Cite and Source Checklist*, both of which are distributed during new member training.

## II. Preliminary Matters

- A. Carefully review the instructions provided by the supervising editor. If you did not receive written instructions, contact the editor to discuss the assignment before you begin working.
- B. Note the deadline on which the assignment is due and plan your schedule accordingly.
- C. If the assignment is given at a time when school is not normally in session, be sure to contact the library to determine when it is open.
- D. Make sure you have the supplies you need to complete the assignment (for example, colored pen or pencil, citation guide, Post-it notes, and copy card).
- E. Determine which other staff members are working on the assignment; locate their contact information in case you cannot find a source or want to consult with them on a citation.
- F. Make sure you know whether there is a particular place in the library or the *Law Review* office where source material for the project is maintained.
- G. Make a clean copy of the article in case you need to recopy your work at the end. The work you submit to the editor should be legible so that your corrections will not be misinterpreted.

## III. Read the Entire Article

- A. Before you begin marking up the article, take time to read it. You cannot effectively check the article if you do not understand what it concerns and what the author is attempting to say.
- B. On the first read, do not worry about editing. Read without your pen in your hand. However, if you notice basic mistakes — such as typographical errors or basic grammatical errors — you might mark them. You also might mark areas that

you initially believe are confusing. But do not be distracted with editing on this preliminary read, the purpose of which is simply to get a feel for the article's structure and topic.

- C. If you are not checking the entire article, make sure you know which part is yours.
- D. Review the footnotes to determine whether the author cites any unusual sources that you do not believe will be in the library or on-line. Once you have identified those sources, check the library catalogue or run an on-line search to verify your initial belief. If the sources do not appear to be readily available, check with the supervising editor to determine whether the sources have been ordered through the library or requested from the author. *You cannot skip or wait until the end to complete this step, as missing sources will prevent you from meeting your deadline.*

#### IV. Review the Text Carefully for Citation Errors, Style Errors, Grammatical Errors, and Typographical Errors

- A. Remember that text, as well as citations in the footnotes, must conform to the citation manual. The text also must be free of grammatical errors and typographical errors. Finally, the text should conform with the *Law Review's* selected style manual.<sup>68</sup>
- B. The editors are responsible for the "stylistic" edit. Therefore, do not spend a lot of time changing words or trying to move around sentences. However, if you find clear errors — such as punctuation errors — or substantive problems with the article, you, the staff members, will be the ones to correct those problems. Do not be afraid to speak up and give input.
- C. Carefully review the article using the following items as a nonexhaustive checklist:<sup>69</sup>
  - 1. **Footnote placement:** Make sure footnote reference numbers appear everywhere a footnote is needed. A

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68. *E.g. The Chicago Manual of Style*, *supra* n. 12. Law reviews also might have internal style manuals.

69. Annotated checklists are available at [www.law.stetson.edu/lawrev](http://www.law.stetson.edu/lawrev).

footnote generally is needed for each new thought that is not the author's own. If you are using the *ALWD Citation Manual*, if every sentence in a paragraph is from the same section or page of the same source, one footnote at the end of the paragraph will suffice. Make sure footnote reference numbers appear *after* the punctuation —,<sup>4</sup> <sup>5</sup>.

2. **Footnote placement (case names):** Make sure a footnote number follows a case name referred to in the text for the first time. (On a related note, make sure that the first time a case is referred to in the text, the full name appears.)
3. **Typeface:** Make sure names of cases and publications are italicized.
4. **Quotations:** Determine whether long quotations should be block indented. Make sure quotations within block quotations are surrounded with double, not single, quotation marks. Make sure quotations of less than fifty words have *matching* double quotation marks (i.e., have both opening and closing quotation marks). Make sure that quotations within these shorter quotations are enclosed in matching single quotation marks. Make sure that commas, periods, and other punctuation are correctly placed in relation to the closing quotation marks. Make sure the quotation marks are not backwards. *Do not alter material within a quoted passage* unless you use brackets to indicate the change. Determine whether the quotation is introduced properly (e.g., Does it need a comma or colon? Should the first letter of the quotation be altered and placed in brackets?). Consult the style manual to make this final determination.
5. **Numerals:** Make sure that numbers — which include numerals (e.g., 347) and words (e.g., one hundred) — conform to the citation manual. Make sure commas within numbers are correct.
6. **Symbols:** Use a dollar symbol with numerals and the word dollar with words. Use the same rule for per-

centages. Make sure that, in the text, Section, section, and § are consistent and correct.

7. **Case names:** Make sure the full and correct case name appears in the text the first time the case name is used in the text (even though the full reference might appear earlier in a footnote). Make sure case names are in the correct typeface.
8. **Publication names:** Publication names should be italicized. Publication names should not be abbreviated in the text. Carefully check the capitalization of each word in the title against the citation manual.
9. **Statutes:** Make sure that code names are spelled out in the text (e.g., Florida Statutes, not Fla. Stat.). Code names in the text should appear in regular type, not italics or large and small capital letters.
10. **Typographical consistency:** Make sure words and names are spelled consistently (e.g., State versus state; nonprofit versus non-profit).
11. **Proper names:** The first time a proper name is used, make sure it is the *entire* proper name: title, complete name, including first name/initial, middle name/initial, last name (e.g., Senator Edward M. Kennedy; Chief Justice William H. Rehnquist).
12. **Headings:** Make sure that the headings are capitalized correctly and are consistent with other headings in the paper. Make sure that headings are lettered or numbered consecutively.
13. **Table of contents (if any):** Make sure the entries in the table of contents for the article match the headings used in the body of the article.
14. **Style matters:** If a word other than a proper name is capitalized, check the capitalization against the style manual. Also check hyphenated words against the style manual. Look through the table of contents in

the style manual to see if any other matters appear pertinent to the paper.

15. **Grammatical and typographical errors:** Correct any typographical or grammatical errors (not preferences). When in doubt, consult a dictionary or grammar guide before making a change. A few items to check definitely include noun-pronoun agreement, noun-verb agreement, comma usage (including use of the serial comma), and possessives.
16. **Proofread for other details:** Check for details such as missing periods and other missing or incorrect punctuation, matching parentheses and quotation marks, and similar matters.

## V. Locate Cited Sources and Check All Statements for Substantive Accuracy

- A. Locate each cited source in the footnotes. If you cannot locate a source, contact a reference librarian or an editor for assistance. *It is critical that you actually see and review each source.* Skipping a source simply is not acceptable. We prefer that you check the hard copy of each source, if available, as on-line sources may contain typographical errors and misnumbered internal pages and often do not reflect the actual typeface, such as italics.<sup>70</sup>
- B. Look up each cited passage. Review enough of each cited source so that you can determine whether the author is properly using the source.<sup>71</sup>

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70. The review might ask members to make a separate list of all sources.

Make a list of all sources on a separate sheet of paper, preferably in groups of like materials (e.g., all reporters together and all statutes together). This will facilitate your book collecting effort and give us a list to work with should any sources not be available.

*UMKC Handbook*, *supra* n. 7 (“Staff member assignments,” “Source Pulling” subsection).

71. The *Santa Clara Handbook* contains an excellent definition of checking for substantive accuracy.

Verifying substantive accuracy is fact-checking, a process that can be very subjective.

The object here is to verify that all quotations are precise and that the assertions of the author can be reasonably construed from any material cited as support.

*Santa Clara Handbook*, *supra* n. 4, at pt. III(B)(2) (emphasis in original).

- C. Verify that all quotations are precise. If emphasis has been added, if any words or letters have been altered, or if material has been omitted, consult the citation manual for the proper presentation. We cannot overstate the importance of you checking the quotations closely.
- D. Ask — and answer — the following questions:<sup>72</sup>
1. **Does the source say what the author indicates that it says?** If you are not sure, make a marginal note and also include an entry about the source and text in your cover memorandum to the supervising editor.
  2. **Do the cited sources offer the extent of support that the author suggests?** In other words, are the correct introductory signals used? Be sure to read the definitions of each signal in the citation manual.
  3. **Is the cited material actually quoting another source?** If so, identify the original source in a parenthetical.
  4. **Are the page numbers accurate and complete?** If the page numbers listed are incorrect, it is your responsibility to locate the correct page numbers. If a source is on-line, you may want to locate the cited material through a word search. Except in rare circumstances each citation must have a pinpoint citation. You must add any pinpoint citations that the author does not include.
  5. **Are any paraphrases actually quotations?** If so, either change the wording and present the language as a quoted passage (i.e., use quotation marks or block indent) or suggest a better paraphrase to the editor. If you hit several passages that appear as paraphrases, but are actually quotations, contact the supervising editor immediately.

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72. Most of the following questions are derived from the *Santa Clara Handbook, supra* note 4, at Part III(B)(2).

6. **Are additional explanatory parentheticals required by the citation manual or needed for clarity?** If so, draft the suggested parenthetical and highlight this addition in your cover letter to the editor.
  7. **Are there any areas of text that, after having reviewed other sources, you now believe need a footnote?** If so, insert the suggested note in the text and draft the substance of the note. Highlight the suggested additions in your cover letter to the editor.
- E. Copy cited cases, statutes, regulations, and other primary sources. For longer sources, such as books and law review articles, copy all cited passages and a page on either side as well as any page needed to verify the citation (such as the title page and copyright page).<sup>73</sup>
  - F. Highlight direct quotes and place the corresponding footnote number by the highlight. Also mark other cited passages and write in the corresponding footnote numbers.
  - G. Organize the copied sources by footnote — or in another manner as instructed by the supervising editor.
  - H. Place the sources in the designated area in the library or *Law Review* office.

## VI. Check the Validity of Each Source

- A. Shepardize or KeyCite all cases, statutes, regulations, rules, and constitutions.
- B. Note any adverse history (e.g., cases that have been reversed, overruled, vacated, or modified) in the margin and in the cover memorandum to the supervising editor.

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73. Instead of copying sources, reviews could require students to place the actual books on designated shelves and to use bookmarks to note cited passages.



- C. Attach the Shepard's or KeyCite printout to the *front* of the corresponding source. Highlight any entries about which the editor should be aware, such as negative history.
- D. For books, make sure the author has cited the most recent edition (unless the source is cited for historical purposes). You can make this determination by checking the on-line catalogue. If you find an updated edition, convert the citation (including pinpoint citations) to the most recent edition and note the change for the editor in the cover memorandum. *Also check for pocket parts and other supplements.*

## VII. Check the Technical Accuracy of Each Citation

- A. Place each cited source in the correct citation form.
- B. Locate and check each pertinent rule for the type of source at issue. Do not guess. Look up each rule *even* if you think you know the answer.
- C. Realize that you may not find a rule that covers the exact source you are looking up. Think of the citation manual as a statute. Search the index and table of contents for key terms (usually the name of a source, a type of source, or a type of author — like “student author”; you can also look for concepts, like “signals” and “abbreviations”). When the rules you find do not answer the question specifically, analogize to the most relevant rule — as you would do with a statute. When you analogize, make a marginal note for the supervising editor indicating which rule or rules you used. That way, the supervising editor can double-check your work and see how others working on the same article handled the situation. *See an editor if you are spending an unreasonable amount of time formatting any one citation.*
- D. Realize that you typically will need the actual source to check the citation format. Thus, you may want to check the form of the source at the same time you are using the source to check substantive accuracy.
- E. Use the following items as a nonexhaustive list of matters you should check in each footnote:

1. **Introductory signals:** Are the correct signals used? Are signals italicized? Are the signals in the correct order? Is the punctuation, if any, between signals correct?
2. **Order of authorities within a signal:** Are the authorities listed in the correct order?
3. **Abbreviations and spacing:** Are the proper abbreviations used? Are abbreviations used when not appropriate or vice versa? Are abbreviations spaced properly?
4. **Typeface:** Is the correct typeface used for each source?
5. **Full citation versus short citation:** Is a full citation used the first time the source appears in a footnote? Thereafter, is the proper short citation used? Check the capitalization of *id.*; carefully check *id.* cites to make sure they refer to the source cited. In this age of word processors, many authors move material around and forget to check the *id.* citations. Are hereinafter references actually used later in the paper? Are hereinafter “short forms” in the proper typeface?
6. **Numbers and symbols:** Are numbers and symbols in footnote text used appropriately? Are an appropriate number of section symbols or paragraph symbols used?
7. **Capitalization:** Are words — especially words in titles — capitalized properly?
8. **Supplements:** If material is from a supplement, include that information in the citation.
9. **Explanatory parentheticals:** Is the form of each parenthetical correct? Check for matching open and closed parentheses.

10. **Internal cross-references:** Do *supra* references fall earlier in the paper and *infra* references fall later? Ask the supervising editor whether you also should check the cross-referenced note numbers (you may not need to do this if it appears that we will need to add or delete footnotes).
  
11. **Quotations:** Determine whether long quotations should be block indented. Make sure that quotations within block quotations are surrounded with double, not single, quotation marks. Make sure that quotations of less than fifty words have *matching* double quotation marks (i.e., have both opening and closing quotation marks). Make sure that quotations within these shorter quotes are enclosed in matching single quotation marks. Make sure that commas, periods, and other punctuation are placed correctly in relation to the closing quotation marks. Make sure the quotation marks are not backwards. *Do not alter material within a quoted passage* unless you use brackets to indicate the change. Determine whether the quotation is properly introduced (e.g., Does it need a comma or colon? Should the first letter of the quotation be altered and placed in brackets?). Consult the style manual to make this final determination.

F. Use the following lists to check specific sources:

1. **Cases:**
  - a. Check the typeface for full citations and short citations.
  - b. Make sure that the full citation is complete. Among other things:
    1. Make sure the parties' names are spelled correctly and are properly abbreviated. Do not copy abbreviations from West reporters, because West has its own set of abbreviations that do not

always conform with the citation manual.

2. Check punctuation (comma after the case name that is not italicized; period after “v.”; proper punctuation within or following abbreviations of any sort).
  3. Check the court abbreviation. Insert district or division information for *state* appellate courts.
- c. Delete parallel citations.
  - d. Include pertinent subsequent history *whenever* the case is cited in full format. Do not typically include certiorari denied designations unless the court of appeals case is less than two years old. Italicize subsequent history designations (*aff'd*).
  - e. Properly designate dissenting, concurring, and plurality opinions in an explanatory parenthetical.
  - f. Convert S. Ct. citations to U.S. citations when possible.
  - g. For LEXIS or Westlaw citations, make sure the opinion is not in a reporter.

2. **Statutes:**

- a. Make sure the proper code abbreviation is used.
- b. Particularly with state courts, check the proper format. Do not rely on formats you see in cases or other articles.
- c. For federal statutes, typically use the U.S.C. citation instead of U.S.C.A. or U.S.C.S. unless

the statute was amended after the last U.S.C. supplement was published.

- d. Carefully check the date. Again with regard to U.S.C., that code is published every six years. The most recent version was published in 1994. If the date is not 1994, something is likely incorrect or needs a “Supp.” designation. For other statutes, typically use the date on the copyright page of the specific volume.
  - e. Check for the current publisher. Publishers have been changing rapidly over the last few years.
  - f. Make sure the citation contains a single section symbol for a single section (even if multiple subsections are cited) and two section symbols for multiple sections (but not for multiple subsections).
3. **Authored works, such as books and law review articles:** Make sure that the author’s name is spelled correctly and appears just as it does on the first page of the cited source.
  4. **Sources from the Internet:** Check the URL (address) very carefully. Do not insert a hyphen in a URL. If the article contains Internet citations, highlight that fact in your cover memorandum to the editor, so he or she can check the URL again right before publication (because URLs change frequently). *Print each Internet site you check.* Be sure to write a date on the copy.
  5. **Unverifiable sources:** If the author has cited sources that cannot be verified, contact the editor for additional instructions and note this matter in the cover memorandum to the editor. An example of an unverifiable source is an interview for which no transcript exists. At a minimum, attempt to check

items such as the names of those interviewed and their affiliated institutions.

## VII. Miscellaneous — But Important — Matters

- A. **Plagiarism:** In this age of computers, it is very easy for authors to cut and paste information into their articles without proper attribution. Thus, you must be very sensitive to this problem. Below are some plagiarism “red flags” and some tips for spotting plagiarism. If you find repeated instances of plagiarism, contact the supervising editor immediately. If you find one or two paraphrases that should have been quotations, correct the problem and note your discovery in the cover memorandum to the editor.
1. **Noticeable changes in font type or size** may be a sign that the person cut and pasted from another source.
  2. **Unusual spacing between lines** may be a sign that the person copied material from an electronic source.
  3. **A *supra* or *infra* reference to a note that does not exist or that does not relate to the subject matter** might be a sign that an entire footnote was copied from another source.
  4. **Short citations without accompanying full citations** may indicate that a footnote was lifted from another source (deletions or alterations coupled with carelessness also can explain this problem).
  5. **Certain citation formats can be a sign that a person copied from another source** (or that the person has not stayed current with citation forms). Some of these include the following:
    - a. Using only an author’s last name or a last name and first initial.
    - b. Citing an outdated statute (such as a 1988 citation for U.S.C.).

- c. Repeatedly citing outdated editions.
  - d. Including parallel citations for cases.
  - e. Using introductory signals that have been discontinued.
  - f. Inserting certiorari denied information for older cases.
6. **Missing footnotes** in factual sections of the article may indicate that the person borrowed words or ideas from a source, but did not cite the source. If this happens, look through sources that were cited to see if you can determine the origin.
  7. **If several footnotes contain sources with older dates, and the dates are within a particular range**, such as 1982–1987, then that may signal copying from an article written in 1987 or 1988.<sup>74</sup>
  8. **False references** (i.e., citing sources that do not exist or that do not relate to the point at issue) are a sign of plagiarism.
  9. **Hanging quotations** may indicate plagiarism. A hanging quotation is one in which the writer “begins by using a quotation but continues to quote after closing the quotation marks.”<sup>75</sup>
  10. **Quotations without supporting citations** often reflect plagiarized text.

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74. E-mail from Jan Levine, Assoc. Prof. & Dir. of Research & Writing, Temple U. Sch. of L., to <legwri-l@chicagokent.kentlaw.edu>, *On-line Cheating — How to Spot* (May 5, 1998) (containing tips developed by James Sempsey, Systems Manager at Temple University) (copy on file with Author); Gregory Senechal, *Carleton University, Instructor's Guide to Internet Plagiarism, Dead Giveaways* <<http://www.carleton.ca/%7Egseenecha/guide/>> (accessed Nov. 30, 2000).

75. Irving Hexham, *The Plague of Plagiarism* <<http://www.acs.ucalgary.ca/~decowan/items/plague.htm>> § 5 (accessed Nov. 30, 2000) (Professor Irving Hexham teaches in the Department of Religious Studies at the University of Calgary).

11. **If portions of the paper are written in clearly different styles**, that is a sign of plagiarism.<sup>76</sup> One example might be a section in which several paragraphs are written in “formal prose,” without any contractions, and then several paragraphs contain more informal language with contractions. Distinct changes in terminology might be another red flag.
12. **“Another indication of plagiarism is when a paraphrased passage appears to expound the work of a major author although the footnotes refer to secondary sources.”**<sup>77</sup> An example would be a section that purports to contain the author’s original description or analysis of a case, but the case description cites secondary sources or other cases instead of the case discussed in the text.

B. **Self-plagiarism:** Self-plagiarism occurs when the author quotes his or her earlier work, but does not cite that work. There are varying theories about how self-plagiarism should be handled, so if you encounter this situation, see the supervising editor as quickly as possible. Options for the editor include the following: (1) adding a general statement at the beginning of the article that certain portions (or substantial portions) come from the prior source with citation to the prior source; (2) inserting citations to the prior source in various footnotes; (3) requesting that the author remove or rewrite the repetitive portions; (4) doing nothing because the

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76. *Id.* (section entitled “Indications of Plagiarism”).

77. *Id.* at § 7. Professor Hexham, using a nonlegal example, explains, For example, if a writer claims to be expounding the views of Kant, but presents a paraphrase of the interpretation of Kant given by writers like Stephan Körner or Norman Kemp Smith, or when someone presents the argument of the *Bhagavad Gita* as though it is their own summary of the Gita when an almost identical summary is found in the work of Ninian Smart, then plagiarism is clearly indicated.

In such cases plagiarism is likely because the impression given to the reader is that the author was working with original texts when in fact the work was based on secondary sources. In these and similar cases plagiarism can be proven when an author’s text or footnotes contain printing mistakes and other mistakes found in a secondary source.

*Id.* (emphasis in original).



amount of repetition is de minimis and citations to one's own work might in themselves be viewed as self-serving.<sup>78</sup>

- C. **Staff member misconduct:** If you witness misconduct on the part of another staff member during the cite and source process, report the matter to the supervising editor as quickly as possible. One example of misconduct would be a member who you believe is not checking the substantive accuracy of the assigned article.
- D. **Editor misconduct:** If you believe that any editor has engaged in misconduct with regard to the assigned article, report the matter to the editor in chief immediately. One example of editor misconduct would be an instruction to staff members not to look up certain sources (with an accompanying statement that no one is going to check the sources).
- E. **Confidentiality:** It is important to keep the specifics of your work on the *Review* confidential. While it is fine to talk about matters, and to express frustrations, within the *Law Review* office, be careful about what you say in front of others, especially if you are going to criticize the author or another *Law Review* member.

78. *Id.* On the issue of self-plagiarism, Professor Hexham writes,

Some people argue that self-plagiarism is impossible by definition because plagiarism is theft and people cannot steal from their own work. But, this is not correct in law. There are circumstances, such as insurance fraud, embezzlement, etc., when it is possible to steal from oneself.

Self-plagiarism must be distinguished from the recycling of one's work that to a greater or lesser extent everyone does legitimately. Although self-plagiarism in academic publications is a gray area many universities implicitly recognize the practice as fraudulent. . . . Among established academics self-plagiarism is a problem when essentially the same article or book is submitted on more than one occasion to gain additional salary increments or for purpose of promotion.

The extent of re-cycling is also an indication of self-plagiarism. Academics are expected to republish revised versions of their Ph.D. thesis. They also often develop different aspects of an argument in several papers that require the repetition of certain key passages. This is not self-plagiarism if the complete work develops new insights. It is self-plagiarism if the argument, examples, evidence, and conclusion remain the same in two works that only differ in their appearance.

*Id.*

**VIII. Prepare a Cover Memorandum to the Supervising Editor**

- A. Prepare a memorandum to the supervising editor that contains the following information:
1. Your name.
  2. The date.
  3. The title of the assigned article.
  4. The footnote numbers for which you were responsible.
  5. A list of any sources you could not locate and the status of those sources. Describe what you did to locate the source. If the source has been ordered, please indicate the date on which you ordered the source and the person with whom you placed the order. Identify the footnotes in which the missing sources are cited.
  6. A list of any substantive problems you found or substantive changes you made in the article with location information (pages and footnote numbers).
  7. A list of any cases or other primary sources whose validity is in question (e.g., a vacated case) and each footnote in which the source appears.
  8. A list of any citation formats with which you had trouble, an explanation of which rule(s) you used to prepare the citation, and each footnote in which the citation appears.
  9. A list of any other problem areas not mentioned above.
  10. A list of any recommended areas of follow up (like rechecking URLs or Supreme Court citations before publication) and corresponding footnotes.

11. Any other comments about the article that you believe would help the supervising editor.

B. Keep a copy of this memorandum for your records.

## **IX. Final Matters**

A. If your working copy is messy, recopy your work onto a clean copy. If you do so, however, please work with another staff member to proofread your work. If you miscopy or fail to copy a change, that change may very well be lost forever.

B. Turn in your assignment on or before the designated date. If you experience an emergency, contact the supervising editor as soon as possible. If you request an extension, you will be asked to show what work you have done to date. Please do not request an extension unless absolutely necessary, as a delay on your part may delay the entire publication schedule.

C. Accurately record the time you spent completing the assignment on your weekly timesheet.

D. Within about a week of submitting your assignment, the editor should contact you for a meeting to evaluate your work. If you do not hear from the supervising editor in seven to ten days, be proactive and contact him or her. It is essential that you learn where you need to improve so that future projects will be even better.

E. If your work is substandard, you may be asked to redo portions of the assignment or to attend additional training sessions.

**APPENDIX 2****CITE AND SOURCE EVALUATION FORM<sup>79</sup>**

**Staff Member:** \_\_\_\_\_  
**Evaluating Editor:** \_\_\_\_\_  
**Project:** \_\_\_\_\_  
**Date Project Assigned:** \_\_\_\_\_  
**Date Project Submitted:** \_\_\_\_\_  
**Date of Feedback Meeting:** \_\_\_\_\_  
**Date of Evaluation:** \_\_\_\_\_

Evaluate each aspect of the member's work using the following scale: 5 = excellent; 4 = above average; 3 = average; 2 = fair; 1 = poor.

ITEM	SCORE	COMMENTS
Timeliness		
Substantive Accuracy (including correct quotations)		
Technical Accuracy		
Grammatical and Typographical Changes		
Sources Pulled Correctly		
Quality of Cover Memorandum		
<b>Overall Score</b>		

**Other Comments:**

\_\_\_\_\_  
 Editor's Signature and Date

\_\_\_\_\_  
 Member's Signature and Date

79. A similar version of this form was developed by editors of the *Stetson Law Review*.