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### Footnote Citations?

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# The Scrivener: Modern Legal Writing



## Footnote Citations?

by K.K. DuVivier

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Let's face it—legal citations can interrupt the flow of sentences and make them harder to read. In comparison, the widely used Modern Language Association documentation style<sup>1</sup> recommends short parenthetical citations in text that direct readers to a list of authorities at the end: for example, "(Gilligan 105)." Another format commonly used in history, art history, and other disciplines is that of the *Chicago Manual of Style*.<sup>2</sup> The Chicago note style uses raised numerals in the text to refer readers to authorities in endnotes or footnotes. Although such a footnote style is predominant in law reviews, few have advocated it in legal opinions—until now.

### Footnotes and Readability Of Judicial Opinions

At the California Appellate Justices' Institute in the fall of 2000, Bryan Garner, the editor of the seventh edition of *Black's Law Dictionary*, recommended that citations be placed in footnotes to make judicial opinions more readable.<sup>3</sup> Some California judges have taken Garner's advice to heart and are relegating all of their citations to the bottom of the page. Justice Rodney Davis of California's Third District in Sacramento has started placing all of his case citations and statutory references in footnotes. "It's far more conducive to understanding what the opinion is actually saying than sandwiching in these arcane numerical references that break up the text and make it sound like you're writing in a foreign language," says Davis.<sup>4</sup>

California Supreme Court Justice Ming Chin generally dislikes footnotes. Yet, he also finds "an element of attractiveness in the idea" of using them in opinions.<sup>5</sup> Nevertheless, he has not been convinced to follow Garner's advice. He jokes, "Most of us learn to just skip over the citations anyway. We get used to them."<sup>6</sup>

Justice Chin's point is well taken—legally educated audiences do get used to citations and skip over them when they interfere with readability. However, legal readers do not always skip over the important information conveyed by the citations in the text. For example, consider the following fictional citation: *Smith v. Murphy*, 39 P. 99 (Colo. 1915), cited in *Brown v. Interstate Corp.*, 85 P.3d 5 (Colo. Ct. App. 2000) (quoting *Restatement (Second) of Contracts* § 90 (1979)). Although this citation may seem lengthy, it provides the readers with important information about the weight of authority for the legal proposition it supports. From the citation alone, readers can glean at least three important points: (1) that the 1915 case was determined by the highest court in the state; (2) that although this original case is old, the Colorado Court of Appeals still considers the case controlling authority because the court recently cited it; and (3) that the proposition the case is cited for is well-enough established nationwide to be recognized by the *Restatement*.

When the citation immediately follows a proposition, significant information about the weight of the authorities can be determined at a glance. However, if the citation is placed in a footnote, the author cannot count on readers making the extra effort to look down to the bottom of the page and to make the necessary connections. Consequently, much might be lost by moving citations to footnotes at the bottom of the page where they most likely will be ignored.

### Write for the Audience

Judicial opinions are written for a number of audiences. One of the primary audiences for these opinions is the litigants, who presumably are not legally educated. These lay readers want to know the outcome of the case and prefer to read it in plain English, without citations that seem to interrupt the flow and obscure the meaning. However, most readers of judicial opin-

#### DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through the *Scrivener* column. Send your questions to: [kkdುವಿವಿ@law.du.edu](mailto:kkdುವಿವಿ@law.du.edu) or call her at (303) 871-6281.

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K.K. DuVivier is an Assistant Professor and Director of the Lawyering Process Program at the University of Denver College of Law.

ions are lawyers: the litigants' attorneys and other attorneys who may be reading the case for its precedential value. Furthermore, the readers of legal briefs are primarily legally educated—judges, law clerks, and other attorneys. Thus, any advantage gained by moving citations out of the text might be outweighed by the value of the information in the textual citation.

Finally, if better readability is the goal, citations are not the biggest impediment. There are simple techniques to keep citations from seriously interrupting the train of thought. One of the simplest is to move most citations to the end of sentences.<sup>7</sup> Also, most writers can better improve readability by concentrating on their writing techniques. As California Second District Justice Daniel Kolkey says, "When you look at the great legal writers, models like Cardozo and Holmes, it's about writing in the active voice and keeping the sentences short. It's not just about where you put the cites."

## Conclusion

Some day courts may embrace footnote citations. However, until that day comes, I would not, in most cases, advocate footnote citations as the best remedy for concerns about the readability of a brief.<sup>8</sup>

## NOTES

1. *MLA Style Manual and Guide to Scholarly Publishing*, 2d ed. (1998). See [www.mla.org/main\\_stl.htm](http://www.mla.org/main_stl.htm).
2. *The Chicago Manual of Style*, 14th ed. (Chicago, IL: The Univ. of Chicago Press, 1993).
3. *The Recorder*. See [www.callaw.com](http://www.callaw.com) (March 1, 2001).
4. *Id.*
5. *Id.*
6. *Id.*
7. DuVivier, "Pesky Citations," 29 *The Colorado Lawyer* 33 (March 2000).
8. *Supra*, note 3. ■

### 20th Annual Day of Caring for Breast Cancer Awareness May 12, 2001, Denver Merchandise Mart

The AMC Cancer Research Center will sponsor the 20th Annual Day of Caring for Breast Cancer Awareness on Saturday, May 12, 2001. There will be thirty-two seminars and forty exhibits providing information on prevention, treatment, and survivorship issues. Cost is \$45 and includes lunch and an "inspirational" fashion show. Day of Caring is not a fundraising event, but is self-supporting. One-half of the cost of the event is paid by registration fees; the balance is funded by sponsors, donations, and a silent auction. Scholarships are provided for those who cannot afford the registration fee. For complete information or to register, call (303) 239-3367, or e-mail: [DayofCaring@AMC.org](mailto:DayofCaring@AMC.org).

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### Nominees Sought for National Association of Counsel for Children 2001 Outstanding Legal Advocacy Award

**Deadline: June 1, 2001**

The National Association of Counsel for Children ("NACC") created the Outstanding Legal Advocacy Award to honor excellence in the field of children's law, advocacy, and protection. The NACC presents this award annually to individuals and organizations making significant contributions to the well-being of children through legal representation and other advocacy efforts. The NACC is looking for people who have "tipped the scales" in favor of children, especially those who cannot rise above their circumstances without help. Accomplishments such as work in child welfare, juvenile justice, private custody and adoption, and policy advocacy should be considered when suggesting nominees. Past nominees have included attorneys, judges, administrators, social workers, probation officers, GALs, and volunteers. Nominations are due by June 1, 2001, and should be mailed to: Awards Committee, National Association of Counsel for Children, 1825 Marion St., Suite 340, Denver, CO 80218. For complete information about the award and for a copy of the application form, contact the NACC at (303) 864-5320.

# LEGAL SUPPORT BRIEFS . . .

## Mile High Association of Legal Support Staff Presents Program on "Pro Bono" May 21, 2001

Attorney Steven C. Choquette, a partner with the Denver law firm of Holland & Hart, will present a program on "Pro Bono" at the monthly meeting of the Mile High Association of Legal Support Staff. The meeting will be held from 6:00 to 8:00 P.M. at Parkplace, 111 Emerson St., Denver. For complete information or to make reservations, call Cathy Hansen, (303) 672-2719.

## Paralegal Handbook Available Online By the National Federation of Paralegal Associations

The National Federation of Paralegal Associations ("NFPA") has announced that the latest edition of the sixty-page handbook, *Paralegal Responsibilities*, is available online at no cost at [www.paralegals.org/ProfessionDevelopment](http://www.paralegals.org/ProfessionDevelopment). The handbook lists in detail the practice areas in which paralegals work and the specific tasks they perform. The effort was accomplished through research by NFPA volunteer coordinators who compiled tasks from paralegals around the country. Hard copies of the handbook can be purchased at a cost of \$15 for NFPA members or \$20 for nonmembers. Visit the website or call (816) 941-4000 for complete information.

## Upcoming Events: Mark Your Calendars Now!

- Mile High Association of Legal Support Staff monthly programs, from 6:00 to 8:00 P.M., at Parkplace, 111 Emerson St.,

Denver: June 18, 2001—"Investigative Tips and Techniques," which will provide useful on-the-job tips and advice on case investigation; July 16, 2001—"A Lighthearted Look at Business Etiquette." For complete information, contact Cathy Hansen at (303) 672-2719.

- Association of Legal Administrators Regions 2 & 4 Educational Conference: "On the Trail to Success." October 26-27, 2001, Fort Worth, Texas. Brochures will be available early August 2001. For information, contact Kathryn N. Scourby, (865) 549-7711 or e-mail: [kscourby@hunton.com](mailto:kscourby@hunton.com); or Nancy J. Collins, (501) 688-8847 or e-mail: [ncollins@mwsgw.com](mailto:ncollins@mwsgw.com).

## Organizational Membership Information

**Association of Legal Administrators (ALA),  
Mile High Chapter:**

Sylvia Jackson, Denver, (303) 899-7321

**Association of Legal Assistants of Colorado (ALAC):**

Sunde King, Colorado Springs, (719) 475-9900

**Colorado Association of Legal Support Staff (CALSS):**

Janet Boughton, Grand Junction, (970) 241-0316

**Colorado Bar Association Paralegal Committee:**

Eileen Kelly-Sharpe, Denver, [eksparalegal@cs.com](mailto:eksparalegal@cs.com)

**Mile High Association of Legal Support Staff (MHALSS):**

Ronda Bilby, Denver, (303) 864-1000

**NALS of Colorado:**

Perri Morris, Denver, [pmorris@nea.org](mailto:pmorris@nea.org)

**Rocky Mountain Paralegal Association (RMPA):**

Nanette K. Yokomizo, Denver, (303) 860-1900

## Master of Criminal Justice Program University of Colorado at Denver • Graduate School of Public Affairs

### Criminal Justice Summer 2001 Schedule of Courses

| <u>Title of Course</u>      | <u>Day</u> | <u>Date</u>                | <u>Time</u>         |
|-----------------------------|------------|----------------------------|---------------------|
| Crime and Literature        | Tuesday    | 6/5, 6/12, 6/19, 6/26      | 5:30 P.M.-9:30 P.M. |
|                             | Saturday   | 6/16, 6/23, 6/30           | 9:00 A.M.-5:00 P.M. |
| The Supreme Court and Crime | Monday     | 6/2, 6/11, 6/18, 6/25      | 5:00 P.M.-9:30 P.M. |
|                             |            | 7/2, 7/9, 7/16, 7/23, 7/30 |                     |
| Women & Criminal Justice:   | Friday     | 6/1, 7/6, 7/20             | 5:00 P.M.-9:30 P.M. |
| Battered Women in the       | Saturday   | 6/2, 7/7, 7/21             | 8:30 A.M.-5:30 P.M. |
| Criminal Justice System     |            |                            |                     |

For complete information or to register, contact the Graduate School of Public Affairs, University of Colorado at Denver, P.O. Box 173364, Campus Box 142, Denver, CO 80217; (303) 556-5970; [www.cudenver.edu/public/gspa](http://www.cudenver.edu/public/gspa).

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