



# BIG TROUBLE IN LITTLE PRINT

## THE IMPORTANCE OF PROPER CITATION AND RESEARCH TECHNIQUE

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**I** SQUINTED AT THE EIGHT-POINT FONT of footnote 66, unsure if my confusion was due to my own misreading or the text itself. Another glance at the email sent to me by a fellow Research Editor confirmed the latter: I was baffled because this footnote did not cite a book,<sup>1</sup> journal article,<sup>2</sup> case,<sup>3</sup> or even a Tweet.<sup>4</sup> Instead, footnote 66 cited a plaque found in the men’s restroom at the University of Pennsylvania’s Van Pelt Library.

As there is, of course, no *Bluebook* entry regarding bathroom plaques (let alone plaques or signage in general), I carefully considered my colleague’s inquiry on how to proceed in authenticating this source. Eventually, I directed her to call the library and to politely ask the staff to take a picture of plaque. Once we received this photographic evidence from an equally perplexed librarian, we were able to correct some minor errors in footnote 66 which now reads: “In the men’s room of the Van Pelt Library

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<sup>1</sup> See THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 15, at 149-58 (Columbia Law Review Ass’n et al. eds., 20th ed. 2015).

<sup>2</sup> See *id.* R. 16, at 159-71.

<sup>3</sup> See *id.* R. 10, at 94-118.

<sup>4</sup> See *id.* R. 18.2.2(b)(v), at 149-58.

of the University of Pennsylvania, a urinal is endowed by an alumnus with a plaque: ‘The relief you are now experiencing is made possible by a gift from [name of alumnus].’<sup>5</sup>



The bathroom plaque situation, though memorable, was not the only citation conundrum I faced during my tenure on the *George Mason Law Review*. Foreign-language sources often presented a unique problem, forcing either the purchase of translation technology or blind faith in the accuracy of Google Translate. Notably, one article relied almost entirely on economic sources written in Chinese that proved both inaccessible and indecipherable to even the one journal member who understood the language. What’s more, some articles were completely devoid of footnotes, requiring extensive research to support any assertions not considered common knowledge – a particularly difficult task for those lacking expertise in the subject matter of the piece.

Occasionally, last-minute changes or author dissatisfaction with sources cited in the footnotes compelled the research team to begin again, creating a domino effect that delayed production on multiple issues. Almost always, the citation of obscure materials required a judgment call on the part of the Research Editor, piecing together multiple *Bluebook* rules to best represent the source.

As the *Law Review*’s Senior Research Editor, it was my job to confront these issues (and many more) during “spading,” a month-long process essential to the journal’s reputation and the bane of its existence. “Spaders” ensured that all citations conformed to proper *Bluebook* format and verified that all sources actually supported the author’s claims; failing this, the spader was tasked with finding appropriate material to substantiate the assertion. More often than not, spaders tackled multiple “TK” footnotes in each assignment, indicating that a citation was needed and that the author had not provided one. Ultimately, PDFs of all sources cited in the article were compiled in “e-binders” complete with red boxes denoting the precise

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<sup>5</sup> James J. Fishman, *Rethinking Riley: Applying Commensurate and Intermediate Scrutiny Standards to Judicial Evaluation of Charitable Solicitation Regulation*, 25 GEO. MASON. L. REV. n.66 (forthcoming 2018).

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location of the quoted or paraphrased information and bookmarks signifying the corresponding footnote numbers.

It is no exaggeration to recognize that this process requires *hours* of tedious work and precise attention to detail. Imagine failing to locate any source that supports an author's claim, even after utilizing a dizzying array of search queries and research databases. Perhaps a footnote had been deleted at the beginning of an article without your knowledge, rendering the bookmarks for each subsequent footnote one number off and causing a great deal of confusion during final edits. Every so often, despite spending an inordinate amount of time examining the *Bluebook*, a source did not seem to fit neatly within any of the guide's twenty-one rules of citation. In the end, the time and detail devoted to this process was made only somewhat more palatable by the knowledge that spading was still done entirely on paper a few years ago, with actual binders rather than e-binders.

With this in mind, one might question the importance of the cite-checking process. Why do busy law students spend hours poring over the minuscule print relegated to the bottom of the page, the footnotes often overlooked by all but those hoping to find sources for their own articles and the most discerning academic readers? Even the above-the-line text is typically “read by no one beyond the [author's] immediate family” and is instead “forever archived on library shelves and the Westlaw and Lexis-Nexis electronic databases.”<sup>6</sup>

The answer to this question may surprise second-year students who view the spading process as an elaborate form of torture meant to test their commitment to the law review. In reality, the cite-checking process has very little to do with assessing new members and almost everything to do with reputational concerns. Law journals are ranked by the frequency with which their articles are cited in other journals and in case opinions.<sup>7</sup> Therefore, if the journal's citations are inaccurate or if the sources do not actually support the author's claims, it is unlikely that the article will ever

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<sup>6</sup> Reid Alan Cox, *Academic Legal Writing: Law Review Articles, Student Notes, and Seminar Papers* by Eugene Volokh, 5 *ENGAGE* 157 (2004) (book review) (quoting Judge Alex Kozinski, *Foreword* to EUGENE VOLOKH, *ACADEMIC LEGAL WRITING: LAW REVIEW ARTICLES, STUDENT NOTES, AND SEMINAR PAPERS* 1, 2 (1st ed. 2003)).

<sup>7</sup> See *Ranking Methodology*, WASH. & LEE U. SCH. OF L., [managementtools4.wlu.edu/LawJournals/Default3.aspx](http://managementtools4.wlu.edu/LawJournals/Default3.aspx) (last visited Oct. 15, 2018).

be cited. Over time, lack of attention to the footnotes could lead to a decline in the ranking and reputation of the flagship law review and, by extension, the associated law school.

Nothing tarnishes a journal's reputation quite like the publication of a plagiarized article. While there is little scholarship regarding the prevalence of plagiarism in academia,<sup>8</sup> surveys conducted by the International Center for Academic Integrity between 2002 and 2015 indicate that 40% of graduate students and 62% of undergraduates admit to cheating on written assignments.<sup>9</sup> These statistics do not bode well for the future of intellectual honesty and integrity if this lack of respect for the work and ideas of others follows these students into their professional careers. This is especially true for legal scholarship; indeed, law professor Lisa G. Lerman suggests that because a bulk of legal scholarship is published in student-edited law reviews as opposed to peer-reviewed journals, "it may be easier to get away with plagiarism . . . in law than in any other academic discipline."<sup>10</sup>

My own dedication to intellectual honesty and to the proper attribution of source material developed during my undergraduate studies. As a history major, I was required to pass a research methods course surveying different techniques of historical investigation prior to graduation. Each class began with a quiz probing students' understanding of the day's reading and proper citation formatting. So great was my professor's desire to permanently etch the Chicago/Turabian style (a system even more complex than the *Bluebook*) in her students' minds that she threatened to reduce marks on our final papers by one letter grade for each citation error.

Beyond a deeply-rooted fear of plagiarism and improper citation that eventually convinced me of the necessity of citing after nearly every sentence and produced a thirty-page thesis with two hundred footnotes,<sup>11</sup> the

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<sup>8</sup> See Syed Shahabuddin, *Plagiarism in Academia*, 21 INT'L J. OF TEACHING & LEARNING IN HIGHER EDUC. 353, 355-56 (2009).

<sup>9</sup> *Statistics*, INT'L CTR. FOR ACAD. INTEGRITY, [academicintegrity.org/statistics/](http://academicintegrity.org/statistics/) (last accessed Oct. 15, 2018).

<sup>10</sup> Lisa G. Lerman, *Misattribution in Legal Scholarship: Plagiarism, Ghostwriting, and Authorship*, 42 S. TEX. L. REV. 467, 479 (2001).

<sup>11</sup> If you're ever curious about the persecution of visionary women during the Spanish Inquisition, I'm your girl.

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research methods course also introduced me to notable scandals in the historical scholarly community. Take, for instance, Doris Kearns Goodwin, a widely-respected, Pulitzer Prize-winning presidential historian the *Huffington Post* once heralded as the “World’s Most Decorated Plagiarist.”<sup>12</sup> In 2002, Goodwin confessed that she “failed to acknowledge scores of quotations or close paraphrases from other authors,” in addition to borrowed passages from at least three previous works, in her 1987 book *The Fitzgeralds and the Kennedys*.<sup>13</sup> Her publisher entered into a confidential agreement to settle one author’s legal claim and published a corrected edition of the book after destroying its inventory of the original.<sup>14</sup>

Despite the initial outrage, Goodwin remains highly regarded and has since published three books; this includes 2005’s *Team of Rivals: The Political Genius of Abraham Lincoln*, which received numerous prestigious awards and inspired Stephen Spielberg’s Oscar-winning movie *Lincoln*.<sup>15</sup> The historian regularly appears on television to offer commentary on the President and her most recent book, *Leadership in Turbulent Times*, debuted at number three on the *New York Times*’ Hardcover Nonfiction Best Seller list.<sup>16</sup>

Similarly, Stephen E. Ambrose retained his legacy as a celebrated military historian in spite of serious plagiarism accusations. Also in 2002, it was revealed that Ambrose had copied many passages in one of his final books, *The Wild Blue: The Men and Boys who Flew the B-24s over Germany*, a pattern that was traced to his doctoral thesis and at least six of his more than forty other books.<sup>17</sup> Ambrose was also criticized for his “rushed and sloppy”

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<sup>12</sup> Eric J. Weiner, *Doris Kearns Goodwin: World’s Most Decorated Plagiarist*, HUFFPOST (Mar. 29, 2006), [www.huffingtonpost.com/eric-j-weiner/doris-kearns-goodwin-worl\\_b\\_18139.html](http://www.huffingtonpost.com/eric-j-weiner/doris-kearns-goodwin-worl_b_18139.html).

<sup>13</sup> David D. Kirkpatrick, *Historian Says Borrowing Was Wider than Known*, N.Y. TIMES (Feb. 23, 2002), [www.nytimes.com/2002/02/23/us/historian-says-borrowing-was-wider-than-known.html](http://www.nytimes.com/2002/02/23/us/historian-says-borrowing-was-wider-than-known.html).

<sup>14</sup> *Id.*

<sup>15</sup> *About*, DORIS KEARNS GOODWIN, [doriskearnsgoodwin.com/about-doris/](http://doriskearnsgoodwin.com/about-doris/) (last accessed Oct. 15, 2018).

<sup>16</sup> *Id.*; *Hardcover Nonfiction*, N.Y. TIMES (Oct. 7, 2018), [www.nytimes.com/books/best-sellers/hardcover-nonfiction/](http://www.nytimes.com/books/best-sellers/hardcover-nonfiction/).

<sup>17</sup> Kirkpatrick, *supra* note 13; Mark Lewis, *Ambrose Problems Date Back to Ph.D. Thesis*, FORBES (May 10, 2002), [www.forbes.com/2002/05/10/0510ambrose.html#7a3b7e686e03](http://www.forbes.com/2002/05/10/0510ambrose.html#7a3b7e686e03).

research techniques, leading to the printing of historical inaccuracies.<sup>18</sup> Nevertheless, his contributions to military history live on in films such as *Saving Private Ryan*, on which Ambrose served as a consultant; in a television mini-series, *Band of Brothers*, based on the historian's homonymous work; in the title of Ambrose Professor of History at the University of New Orleans; and in the Stephen E. Ambrose Oral History Award.<sup>19</sup>

In stark contrast to his colleagues, historian Michael A. Bellesiles could not escape the consequences of such careless research and citation mistakes. The former Emory University professor's 2000 book, *Arming America: The Origins of a National Gun Culture*, expanded on an earlier prize-winning article with the same essential thesis: that America's gun culture was non-existent prior to the approach of the Civil War.<sup>20</sup> Although the historian's argument that there were very few guns in seventeenth-, eighteenth-, and early nineteenth-century America directly contradicted previous understandings of the country's history, Bellesiles maintained that it was supported by probate records and gun censuses from the period.<sup>21</sup>

Unsurprisingly, Bellesiles' correlation of low gun-ownership with low homicide rates in early America proved divisive, as was his discussion of the Second Amendment; because guns were not widely owned or culturally important, the author asserted, it is unlikely the Framers viewed gun ownership as an individual right.<sup>22</sup> Most initial reviews and reactions to the book were overwhelmingly positive, inspiring a glowing article on the front page of the *New York Times Book Review* and a public letter of support signed by forty-seven law professors and historians.<sup>23</sup> On the other hand, Charlton Heston – then president of the National Rifle Association – found

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<sup>18</sup> Associated Press, *Stephen E. Ambrose, Prolific Author and Historian, Dies at 66*, N.Y. TIMES (Oct. 13, 2002), [www.nytimes.com/2002/10/13/obituaries/stephen-e-ambrose-prolific-author-and-historian-dies-at-66.html](http://www.nytimes.com/2002/10/13/obituaries/stephen-e-ambrose-prolific-author-and-historian-dies-at-66.html).

<sup>19</sup> *Id.*; *The Stephen E. Ambrose Oral History Award*, RUTGERS SCH. OF ARTS & SCIS., [oralhistory.rutgers.edu/interviewees/2-uncategorised/1576-the-stephen-e-ambrose-oral-history-award](http://oralhistory.rutgers.edu/interviewees/2-uncategorised/1576-the-stephen-e-ambrose-oral-history-award) (last accessed Oct. 15, 2018).

<sup>20</sup> James Lindgren, *Fall from Grace: Arming America and the Bellesiles Scandal*, 111 YALE L.J. 2195, 2197-98 (2002) (book review).

<sup>21</sup> *Id.* at 2196-98.

<sup>22</sup> *Id.* at 2196-97.

<sup>23</sup> *Id.* at 2199-200.

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Bellesiles' argument "ludicrous" and emphasized the incompleteness of the probate records at the heart of his claims, a criticism shared by many conservative and libertarian publications.<sup>24</sup>

By early 2001, however, Bellesiles' reliance on seemingly nonexistent records and mathematically impossible data was widely discussed among historians and legal scholars.<sup>25</sup> Academic journals eventually caught wind of this debate and began publishing critiques of the book.<sup>26</sup> For instance, a *Willian and Mary Law Review* article concluded that Bellesiles had "substantially misrecorded the seventeenth and eighteenth century probate data he presente[d]" and "repeatedly counted women as men, counted about a hundred wills that never existed, and claimed that the inventories [he cited] evaluated more than half of the guns as old or broken when fewer than 10% were so listed."<sup>27</sup> Perhaps most alarmingly, many observed that a San Francisco archive of probate inventories dating before 1860 was destroyed during the natural disasters that rocked the city in 1906, long before Bellesiles claimed to have used such materials to count guns.<sup>28</sup>

In response, Emory University convened an independent panel of three renowned historians to investigate these charges of scholarly misconduct.<sup>29</sup> Following a detailed analysis of the historian's research methods, the panel reported the Professor Bellesiles was "guilty of unprofessional and misleading work" and deviated from accepted professional norms by "(a) Failing to carefully document his findings; (b) Failing to make available to others his sources, evidence, and data; [and] (c) Misrepresenting evidence or sources of evidence."<sup>30</sup> Concurring with the panel's finding, the trustees of

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<sup>24</sup> Charlton Heston, 'Arming America,' N.Y. TIMES (Oct. 1, 2000), [www.nytimes.com/2000/10/01/books/1-arming-america-266906.html](http://www.nytimes.com/2000/10/01/books/1-arming-america-266906.html); see Lindgren, *supra* note 20, at 2200-2201.

<sup>25</sup> Lindgren, *supra* note 20, at 2201.

<sup>26</sup> *Id.*

<sup>27</sup> James Lindgren & Justin L. Heather, *Counting Guns in Early America*, 43 WM. & MARY L. REV. 1777, 1778-79 (2002).

<sup>28</sup> *Id.* at 1779.

<sup>29</sup> *Columbia's Board of Trustees Votes to Rescind the 2001 Bancroft Prize*, COLUM. NEWS (Dec. 16, 2002), [www.columbia.edu/cu/news/02/12/bancroft\\_prize.html](http://www.columbia.edu/cu/news/02/12/bancroft_prize.html).

<sup>30</sup> Stanley N. Katz, Hanna H. Gray & Laurel Thatcher Ulrich, *Report of the Investigative Committee in the matter of Professor Michael Bellesiles*, EMORY U. (July 10, 2002), [www.emory.edu/news/Releases//Final\\_Report](http://www.emory.edu/news/Releases//Final_Report).

Columbia University rescinded Bellesiles' prestigious Bancroft Prize.<sup>31</sup> Bellesiles later resigned from Emory University and took a part-time job teaching history at Central Connecticut State University; though he published another book, *1877*, in 2010, the historian's reputation has never recovered from the scandal surrounding *Arming America*.<sup>32</sup>

Having spent hours of my life as a history student and as a Research Editor wading through seemingly incomprehensible and illegible documents of dubious origin, I understand the difficulties of primary source research and authentication. Nevertheless, I cannot help but wonder if being assigned a Research Editor like myself prior to the publication of his book would have saved Bellesiles from scholarly disgrace. In fact, Professor James Lindgren aptly noted the following:

The data fit together almost too neatly. In particular, if anyone had looked closely at the probate data, they would have seen that it did not look right. The regional differences were suspiciously slight; the increases over time were extremely regular; the study did not indicate which counties were in which categories; and in most unconventional fashion, the probate data were published with no sample or cell sizes.<sup>33</sup>

My job as Bellesiles' Research Editor would have entailed just that: looking closely at his sources and either confirming his assertions or informing him that something just didn't add up. Despite Professor Lerman's insinuation that law journals are somehow inferior to peer-reviewed publications because they are edited by inexperienced students, I can point to several incidents in which my peers refused to publish plagiarized or improperly researched articles. I have no doubt that we would have reached this decision in Bellesiles' case; instead, we would have worked with the historian to find verifiable sources or to revise his thesis.

Law review editors juggle the twin responsibilities of upholding the journal's reputation by publishing high-quality, thoroughly vetted pieces and of catering to authors by publishing their articles as they envisioned them. This often thankless job can lead to disagreements between authors

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<sup>31</sup> *Columbia's Board of Trustees*, *supra* note 29.

<sup>32</sup> Patricia Cohen, *Scholar Emerges from Doghouse*, N.Y. TIMES (Aug. 3, 2010), [www.nytimes.com/2010/08/04/books/04bellisles.html](http://www.nytimes.com/2010/08/04/books/04bellisles.html).

<sup>33</sup> Lindgren, *supra* note 20, at 2198.



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and editors over the revision of above-the-line text, the addition of footnotes, or the particular sources cited by the research team. Ultimately, it is likely that the editors will comply with the author's demands (as it is, after all, the *author's* article). Plagiarism and unverifiable source material stand as the principal exceptions to this rule (as it is, after all, the *editors'* journal and reputation) and that is what makes the spading process so important.

Remember this the next time you read a law review article and your eyes pass over the footnotes as if they were invisible. Thanks to countless hours of squinting at eight-point font to authenticate each citation, that piece was deemed fit for publication and you can feel comfortable referencing both the article itself and its sources – even if one of those sources happens to be a bathroom plaque.

