The Canons of Citechecking

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Each fall, a fresh batch of second-year law students – the new law review "associate editors" – returns to campus for initiation into the world of citechecking. That is, these students, usually with only one year or so of familiarity with legal writing at all, much less academic legal writing, are tasked with combing through an often hastily submitted and poorly sourced manuscript to determine fidelity of citation form and sufficiency and accuracy of substantive support.

Ensure that all statements are supported, the editors are told. Ensure that everything is *Bluebook*ed correctly. The future of the legal academy depends on it. Every time a period after "*id.*" is left in roman typeface, the Republic is put in jeopardy.

Of course, the *Bluebook* is a ponderous web of verbose rules that, despite occupying a healthy 560 pages, offers no advice on *when* a supporting citation is necessary or to what extent. Nor do the *Bluebook* or similar style guides often make clear which rules are discretionary or why we follow them at all. Thus, fifty or so second-years, not-yet-jaded and eager to prove their worth, set out applying the *Bluebook*'s advice almost mechanically.

The results can be tiring for the editors and frustrating to the authors.[1]

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[1] *See, e.g.*, Orin Kerr, Twitter (Aug. 29, 2017, 2:28 PM), twitter.com/OrinKerr/status/

Law reviews are perhaps an imperfect model of scholarly publishing. And it's convenient (indeed, popular) to blame student editors for their overeager and naïve application of the rules or to ascribe the awkward prose many publish to the editing process.[2] But what can we do? We're told that this is the way to get the fanciest of jobs. And more experienced jurists are hardly lining up to do the work.

(I've been told that law review editors can occasionally be useful; for instance, in identifying an accidental mis-citation or mischaracterization or in cleaning up what an author's research assistant has neglected to.)

So in the same tradition of legal scholarly publishing – a student editor with very little experience offering barely informed solutions to improve publishing – I present here a set of so-called "canons of citechecking." Akin to the statutory canons of construction,[3] they might be useful to editors for rationalizing when to insist (or not) that an author's proposition be supported. The idea, of course, is to offer reasonable, meaningful suggestions to authors rather than to blindly perform mechanical busywork or to play "gotcha!"[4]

The canons follow:

902614045257334784; Richard Primus, TWITTER (Feb. 19, 2017, 9:37 AM), twitter.com/Richard_Primus/status/833339681173430274.

[2] *See, e.g.*, Bryan A. Garner, A LEGAL LEXICOGRAPHER LOOKS AT LAW REVIEWS, 16 GREEN BAG 2D 286-87 (2013) ("Unless the author is a famous one whose prose the editors dare not tamper with, the edited and published writing usually takes on an 'official' law-review style that is lacking in personality or individual idiom, overburdened with abstract phraseology, bottom-heavy with footnotes, humorless, and generally unobservant of good grammar and diction."); Bryan A. Garner, *Law Review Editors Missed a Few, So We Have This Usage Skills Quiz for You*, ABA J.: BRYAN GARNER ON WORDS (April 2018), www.abajournal.com/magazine/article/test_your_usage_skills ("For each question, the law review cited actually printed the incorrect choice. Whether that's the fault of the original author or a law review editor is an unanswerable question for most of us; but if you're familiar with law review practices, you'll probably agree that it's fairer to name the journal than the author.").

[3] *Cf.* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW (2012).

[4] *See also* Anne Enquist, *Substantive Editing Versus Technical Editing: How Law Review Editors Do Their Job*, 30 STETSON L. REV. 451 (2000).

THE CANONS OF CITECHECKING

1. *Own-Lexicographer Canon*. An author may be her own lexicographer. A term defined in the text needs no citation, although one might be helpful for a controversial or obscure definition or to provide helpful background information.
2. *Collateral-Issue Canon*. A factual proposition that is collateral to the thrust of a sentence or argument needs no citation.
3. *Plain-Meaning Canon*. Where the plain meaning of a cited work squarely conflicts with the author's assertion, the assertion needs revision.
4. *Superfluity Canon*. A proposition made obvious by its introduction (and support, if applicable) elsewhere in the piece needs no additional citation, although one might be helpful to pinpoint a particular excerpt of referenced text. Similarly, a citation should not be added if no one outside a Law Review editorial staff would be grateful for its addition.
5. *Argument Canon*. A proposition that can be construed as an introduction or argument, rather than a non-obvious factual proposition or assertion of law, needs no citation.
6. *Stare Decisis (*Bluebook *Common Law)*. A particular source's citation format in a previous issue of the Law Review should be adhered to unless it is plainly wrong.
7. *Noscitur a sociis*. When recommending support for an unsupported proposition, the recommended support should be of the same type (law review article, monograph, scientific treatise, etc.) as that used to support analogous propositions in the same article.
8. *Canon of Conflict Avoidance/Editorial Avoidance*. Construing a citation or adding a signal to it in a way that comports with the author's assertion is preferable unless the assertion is plainly wrong.
9. *In pari materia*. Whether a given assertion needs support should be considered in light of similar-subject-matter assertions by the author in the same piece or others.
10. *Whole-Journal Canon*. Whether a given assertion needs support should be considered in light of similar-subject-matter assertions in the Law Review.

11. *Whole-Field Canon*. Whether a given assertion needs support should be considered in light of similar-subject-matter assertions in the author's area of study.
12. *Ejusdem generis*. Whether a given assertion needs support should be considered in light of similar assertions in the piece. For instance, if a quoted phrase from the same source is used throughout, it should be cited – or not cited – in a consistent manner.
13. *Authorial Supremacy*. It is emphatically the province and duty of the Author to say what the law is.
14. *Scrivener's Error Canon*. Where a pincite or citation contains an obvious, objective error, it may be corrected without loudly drawing the author's attention to it.
15. *Presumption Against Implied Repeal of the* Bluebook. The requirements of the *Bluebook* (and the Law Review's style guide) are presumed to govern where the author has not affirmatively overruled them. Apparent abuse by the Author of citation format and the rules of English is not an affirmative overruling.
16. *Absurd Results Canon*. If strict compliance with the *Bluebook* would produce a plainly unhelpful monstrosity, it may be overruled.
17. *Supremacy-of-Garner Principle*. Aside from the spelling of "donut/doughnut" (about which *Garner's Modern English Usage* is presumed to be in error[5]), recommendations of Bryan Garner presumptively govern.

[5] *See* BRYAN A. GARNER, GARNER'S MODERN ENGLISH USAGE 302 (4th ed. 2016) (recommending "doughnut").