The Bottom Line On Footnotes [Fn. 1] and Endnotes [Fn. 2]

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Footnotes and endnotes have been the subject of mirth. Pennsylvania Judge (and later Dickinson Law School Dean) Laub once said, “Anyone who reads a footnote in a judicial opinion would answer a knock at his hotel door on his wedding night.”3 A Higher Court thus has jurisdiction over Henry Newell, and we are confident that any sins he may have committed will be dealt with appropriately there. See Matthew 25:41–46 (explaining Final Judgment procedures).9

Some believe that citations should appear in footnotes, although most attorneys and judges put citations in their text. Citations in text are called “sentence citations.” A movement led by legal-writing maven Bryan A. Garner is afoot to use citational footnotes, or sentence citations in footnotes.10 Anti-traditionalists who favor moving sentence citations into footnotes argue that sentence citations are “aggravating,” a “nuisance.”11 They also contend that citational footnotes force opinion writers to assure that what remains in the text does not look like “legal code.”12 And that, they urge, makes legal writing accessible and democratic. Garner argues that volume and page numbers should be put into footnotes to make sentences shorter; paragraphs forceful and coherent; ideas, not numbers, controlling; poor writing laid bare; case law better discussed; and string citations less bothersome.13 Opponents of citational footnotes argue, however, that looking up and down at the footnotes is itself distracting.14

Whatever approach you favor – sentence citations or citational footnotes – conforms with approved usage. You can even compromise by putting case names in running text and citations in footnotes or endnotes. But I offer three cautions if you use citational footnotes or endnotes.

First, use footnotes or endnotes only for citational letters and figures. Do not develop legal authority in footnotes or endnotes or use them for any other purpose. In short, do not let an opportunity to use footnotes or endnotes for citations lead you to put into your footnotes or endnotes what should properly appear in your text.

Second, for judges, if your opinion goes online, readers will have a difficult time hyperlinking to your footnoted citations. They will be forced to move their cursors up and down repeatedly.

Third, attorneys and judges should add relevant information to their running text to explain the citation’s weight of authority – such as the name of the court and the year of the opinion – even if that information will also be in the citation. Do not force readers to read footnotes or endnotes to get necessary information.

Footnoting is for lawyers whose eyes are set vertically rather than horizontally.

For those who footnote or endnote items other than citations, here are some rules to make legal writing go above and beyond the bottom line:

• Attorneys in their papers and judges in their opinions should use footnotes, if at all, and not endnotes. Readers need to find citations quickly. They get frustrated when they are forced to flip to the end of the document to get them. On the other hand, editors and publishers of legal newspapers, newsletters, and magazines, which often jump pages to generate interest and maximize space, find endnotes helpful, whereas law journals and law reviews, which do not jump pages, prefer footnotes.

• If you use footnotes or endnotes, do not include deep analysis or textu-
ally relevant discussion in footnotes or endnotes or make footnotes or endnotes too lengthy. Information in footnotes and endnotes might go unread. That would be unfortunate for attorneys because the decision maker might miss an argument. It would also be unfortunate for judges because “[a] footnote is as important a part of an opinion as the matter contained in the body of the opinion and has like binding force and effect.”

- Too few footnotes or endnotes draw special attention and elevate their importance in a way the author might not intend. Too many footnotes or endnotes lessen the value of all the footnotes or endnotes.
- Footnotes or endnotes should not be written merely to show that you are scholarly. When an appellate court does that, years of litigation can ensue, as the Supreme Court acknowledged in H.J., Inc. v. Northwestern Bell Tel. Co.
- Write footnotes and endnotes in the same point size and font as those in the text. Single space footnotes and endnotes even when the text is double spaced. These rules may be different for published materials, depending on the publisher.
- Double space between footnotes and endnotes. Here, too, this rule may be different for published materials, depending on the publisher.
- If you justify the text, justify the footnotes and endnotes as well. Note, however, that most readers prefer non-justified (ragged-right) margins for typed (unpublished) materials.
- Footnote and endnote numbers appear in the text as superscripts (raised above text in smaller type). Writers may use more than one footnote or endnote number in a sentence. Footnote and endnote numbers immediately follow, without a space, the word, phrase, clause, or quotation to which they refer. Persuasive legal writers should be careful, however, not to overload readers with too many footnotes in a sentence. Law reviews might get away with that. But a persuasive brief is not a law-review article.
- When footnote and endnote numbers follow punctuation, place them immediately (no space) after quotation marks, periods, commas, question marks, exclamation points, colons, semicolons, and parentheses – but before dashes.
- In formal legal writing, all sentences, including those in footnotes and endnotes, should be complete. No sentence fragments.
- The first time you cite in a footnote or an endnote, give a full citation, even if you already gave a full citation in your text.
- Bluebook format: When pinpoint-citing to footnotes or endnotes, use an ampersand (“&”) when the reference is found at the page and in the footnote: A v. B, 91 A.D.3d 19, 19 & n.9 (5th Dep’t 2012) (mem.) If the reference is in the footnote or endnote alone, cite the page and footnote or endnote directly: X v. Y, 16 N.Y.4th 61, 62 n.3 (2012). Cite multiple footnotes thus: X v. Y, 16 F.5th 62 nn.3-4 (15th Cir. 2012).
- Because footnotes and endnotes might go unread, legal writers sometimes sneak important information into them to hide content or to treat it disdainfully. Justice Blackmun once commented on that technique, of which, he argued, the Supreme Court majority was guilty.
- Footnotes and endnotes can hide useless, irrelevant information born of “exhaustive research [that] would be a shame to discard.” For ways in which legal writers engage in footnote skullduggery and other bad habits, see Arthur D. Austin, Footnote Skullduggery and Other Bad Habits.

One bad habit is to use single-spaced footnotes in briefs to cheat on page limits. Another is to sneak in a barb. A footnote of that kind comes from People v. Arna, in which the majority of the California Court of Appeal, in seven consecutively numbered sentences, told a dissenter that he is a “S-C-H-M-U-C-K.” And there you have it: footnoting for lawyers whose eyes are set vertically rather than on an inefficient horizontal plane.


2. Endnotes appear at the end of the document. Footnotes appear at the bottom of the page.


7. Id.

8. 791 F.2d 1191, 1199 n.7 (5th Cir. 1986) (Goldberg, J.).


11. Id.

12. Id.


19. Got that?

20. See *Lewis v. City of New Orleans*, 415 U.S. 130, 137 (1974) (Blackmun, J., dissenting) (“It is no happenstance that in each case the facts are relegated to footnote status, conveniently distant and in a less disturbing focus.”).


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