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The Bluebook Blues (reviewing Harvard Law Review Association, *The Bluebook: A Uniform System of Citation* (19th ed., 2010))

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The *Bluebook* Blues¹

The Bluebook: A Uniform System of Citation

BY THE COLUMBIA LAW REVIEW, THE HARVARD LAW REVIEW, THE UNIVERSITY OF PENNSYLVANIA LAW REVIEW, AND THE YALE LAW JOURNAL

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AUTHOR. Judge, U.S. Court of Appeals for the Seventh Circuit; Senior Lecturer, University of Chicago Law School. I thank Sonia Lahr-Pastor for her very helpful research assistance. I have asked the editors not to make my citations conform to *The Bluebook*, and they have graciously consented.

1. With apologies to Warren D. Rees, "Singing the Bluebook Blues: A Review of the Sixteenth Edition," *AALL Spectrum*, June 1997, p. 20.

Nowadays the word “hypertrophy” is used mainly to denote a class of diseases in which an organ grows to an abnormal size because of the uncontrolled growth of the cells that constitute it. But the word is still used occasionally to denote a structure or activity that has grown far beyond any apparent functional need.² An example is the Egyptian pyramids. The pharaohs needed a secure burial place because they were buried with valuable possessions that they believed they would need in the afterlife. But security didn’t require an immense pyramid of stones above the burial place. This is not to suggest that the elaboration of the pharaonic burial places was mindless; but it served cultural, religious, and political needs remote from the functional need to secure the burial place against thieves.³

Examples of hypertrophy in law abound. The staff of the U.S. Supreme Court is an example. Over the last half century it has grown in both size and quality. There are twice as many law clerks, they are more carefully selected, and they have served a year as a law clerk to a lower court judge, usually a federal court of appeals judge. And because of the creation of the “cert pool” in which all but two of the Justices participate, the average amount of time that law clerks spend preparing cert memos for the Justices has fallen, even though the number of petitions has risen. This allows the clerks more time to work on the Court’s principal output – opinions in argued cases. Yet the number of such opinions issued by the Supreme Court has fallen by half since 1984, without any discernible increase in quality, though the current Justices are on average as competent and conscientious as their predecessors.

The Bluebook: A Uniform System of Citation exemplifies hypertrophy in the anthropological sense. It is a monstrous growth, remote from the functional need for legal citation forms, that serves obscure needs of the legal culture and its student subculture.

Many years ago I wrote a review of *The Bluebook*, then in its sixteenth edition. My review was naïvely entitled “Goodbye to the Bluebook.”⁴ *The Bluebook* was then a grotesque 255 pages long. It is now in its nineteenth edition – which is 511 pages long.

I made a number of specific criticisms of *The Bluebook* in that piece, and I will not repeat them. I don’t believe that any of them have been heeded, but I

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2. For example, the *Oxford English Dictionary* (online ed.) gives “fig. Overgrowth” as its second definition.
 3. See, for example, John D. Cooney, “Egypt’s Pyramids,” 134 *Science* 936–938 (1961). Another example of archaeological hypertrophy is the terra cotta warriors of Qin Shi Huang. See Richard Stone, “Archaeologists Seek New Clues to the Riddle of Emperor Chin’s Terra-Cotta Army,” 325 *Science* 22 (2009).
 4. 53 *University of Chicago Law Review* 1343 (1986).

am not certain, because, needless to say, I have not read the nineteenth edition. I have dipped into it, much as one might dip one's toes in a pail of freezing water. I am put in mind of Mr. Kurtz's dying words in *Heart of Darkness*—"The horror! The horror!"—and am tempted to end there.

A system of citation forms has basically two functions: to provide enough information about a reference to give the reader a general idea of its significance and whether it's worth looking up, and to enable the reader to find the reference if he decides that he does want to look it up. In *Goodbye to the Bluebook* I suggested four principles to guide the design of such a system: "to spare the writer or editor from having to think about citation form," "to economize on space and the reader's time," "to provide information to the reader," and "to minimize distraction."⁵ There is some tension among them but not a great deal, and they are easily implemented and are disserved by a 511-page tome. Most citations in a law review article, treatise, brief, or judicial opinion are to cases, statutes, treatises, and law review articles, and the format for these citations is familiar to every law student after a month or so of law school. There are esoteric sources, such as administrative decisions and regulations, but the agencies caption their various promulgations in a way that makes it obvious how to cite them analogously to judicial decisions and to statutes.

Notice that my guiding principles do not include "standardization"⁶ or, the equivalent, "uniformity." Consistent application of even a very short citation manual will achieve an adequate level of internal consistency. Advocates of uniformity or standardization have a larger ambition—that all legal citations shall be uniform—in short, that there shall be a single system of legal citations. *The Bluebook's* subtitle—"A Uniform System of Citation"—is a bid for monopoly.

But why is a single system of legal citations more desirable than uniform typeface, margins, and paper thickness for all documents of the same general character, such as novels? Within the same document, uniformity is desirable because without it readers will puzzle over whether the differences are accidents or have some intended significance. But across documents, slight differences in citation form are untroublesome, though "slight" is an important qualification: differences large enough to make the reader pause to translate from a more familiar to a less familiar form impede easy reading. The basic legal citation convention of placing volume number before the name of a

5. Id. at 1344.

6. See Paul Axel-Lute, "Legal Citation Form: Theory and Practice," 75 *Law Library Journal* 148, 149 (1982).

statute, case, or article and page number directly after it is deservedly uniform, and likewise the abbreviations of the federal and state case reporters and of West's regional reporters. Efforts to impose uniformity beyond the basic conventions encounter rapidly diminishing returns well illustrated by *The Bluebook's* obsession with abbreviations. An example that I have picked literally at random is "C.Ag." What does "C.Ag." stand for? Why, of course, the *Código de Águas* of Brazil. Now suppose one had occasion to cite the *Código de Águas*. Why would one want to abbreviate it? The abbreviation would be meaningless to someone who was not a Brazilian lawyer, and perhaps to Brazilian lawyers as well (but do *they* abbreviate *Código de Águas* "C.Ag"?). The basic rule of abbreviating, ignored by the authors of *The Bluebook*, is to avoid nonobvious abbreviations: don't make the reader puzzle over an abbreviation, as *The Bluebook* does routinely. Consider "Temp. Env'tl. L. & Tech. J.," "ILSA J. Int'l & Comp. L.," "Emp. Rts. & Emp. Pol'y J.," and "AIPLA QJ." These are names of journals. Now try figuring out "B.T.A.M. (P-H)," "A. Ct. Crim. App.," "A.F. Ct. Crim. App.," "C.G. Ct. Crim. App.," "N-M Ct. Crim. App.," "Ne. Reg'l Parole Comm'n," and "Cent. Ill. Pub. Serv. Co."

What is the point? It's as if there were a heavy tax on letters, making it costly to write out Coast Guard Court of Criminal Appeals instead of abbreviating it "C.G. Ct. Crim. App."

There is an argument for a uniform understanding of signals of case authority (such as "accord," "see," "see also," "cf.," "but see," "contra"), and *The Bluebook* offers a set of definitions. In fact there is little uniformity in the use of the signals by law clerks and other legal writers. *The Bluebook's* effort is unobjectionable and takes up little space, so I am not disposed to criticize it. But what is the point of such rules as that "[i]n law review footnotes, a short form for a case may be used if it clearly identifies a case that (1) is already cited in the *same footnote* or (2) is cited (in either full or short form, including '*id.*') in *one of the preceding five footnotes*. Otherwise a full citation is required."⁷ This reads like a parody, but is not. There are more than 150 pages of such "rules."

I have put my money where my mouth is, metaphorically speaking. I don't use *The Bluebook* or any other form book in either my judicial opinions or my academic writings. Journals, and not only law journals, do sometimes impose citation forms on me. But the *Federal Reporter* does not; nor do the publishers of most of my books. My judicial and academic writings receive their share of criticism, but no one to my knowledge has criticized them for citation form. The reason is that readers are not interested in citation form. Unless the form is outlandish, it is invisible.

7. *The Bluebook: A Uniform System of Citation* 107 (19th ed. 2010).

I acknowledge that many of the citation forms that I use conform to forms found in *The Bluebook*, though those forms are ones largely unchanged from the first edition, published in 1926, which itself largely codified existing practices. Those forms are superior in a number of instances to what one finds in the *Chicago Manual of Style*, the source of the citation forms used in most scholarly publications. (An example is the pointless requirement in the *Manual of Style* of listing in a citation to a book the city in which it was published.)

I have a short manual for my law clerks (written mainly by Scott Hemphill, a former law clerk who is now a professor at Columbia Law School, but amended from time to time by subsequent law clerks and by me), dealing with office procedures and the like, and it includes a brief section on citation form, which I reprint below and which attempts to implement the guiding principles to which I referred earlier. The citations in this Book Review conform to my manual. The manual is approximately one one-hundredth the length of *The Bluebook*. Although I write my own opinions (which some readers will take as a sign of eccentricity or anachronism), most of the research for them is done by my law clerks, and they incorporate the results of their research in memos that they e-mail me. When they cite a case, a statute, a law review article, or whatnot, they are instructed to quote enough of it not only to answer a specific research question but also to give me a sense of the context of the point for which they're citing it. If I decide to use the cited reference, I copy and paste the citation into my opinion draft. And so that I don't have to spend time reformatting the citation, my manual instructs them in my "system" of citations.

These law clerks are very smart, and they are all law school graduates, and I concede that a first-year law student would need a little more guidance to legal citation form, though not 511 pages' worth. I think that if one compares my citation system to that of *The Bluebook*, one will at least *begin* to question *The Bluebook's* utility.

APPENDIX 2 [TO POSNER'S CLERKS MANUAL]: CITATION FORMATS

[Posner] doesn't follow the *Bluebook*, the *Maroon Book*, the *Chicago Manual of Style*, or any other style book, and doesn't want you to get hung up worrying about citation form. A few simple rules, however, should be kept in mind:

No parallel citations in cases; statutory provisions do not need years, unless the point is to identify an old law.

Case names

- Avoid abbreviations (especially nonobvious ones, such as “Trans.” and “Elec.”), with a few exceptions: Ry., R.R., Comm’n, Co., Corp., Inc., &, Ass’n, Ins.; sometimes Dist., Mfg., Int’l.
- Omit *Inc.* or *Co.* when it immediately follows *Co.*, *Ry.*, or *R.R.*
- *In re Casename*, not *In the Matter of Casename*

State courts

- Highest court: abbreviation for the state (Ill., Cal., N.Y.)
- Intermediate appellate court is Ill. App., Cal. App., etc. New York is an exception: “N.Y. App. Div.”
- Regional reporter is preferred, but if the citation is to the official state reporter, do not repeat the state name within parentheses. If you have a regional-reporter citation, do not add the official-reporter citation.

Supra cites of cases repeat the full title; *supra* cites of authored materials repeat the author. Use an N-dash (–) for page and date ranges (and watch them turn into run-of-the-mill hyphens when you get the galleys back!).

Don’t just copy blindly a citation from a reporter; reformat it (e.g., by putting a space between court and year, as West does not do: “7th Cir. 2000” not “7th Cir.2000”).

The usual citation order is Supreme Court, Seventh Circuit, other circuits, state supreme courts, other state appellate courts, federal and state trial courts. But when state law supplies the rule of decision in a case, the state courts whose law governs should be cited first; and all in reverse chronological order. Sometimes it makes sense to put a seminal case first. He is not a stickler about order. Remember, you are not working on a law review. Substance rather than form is paramount in his chambers (though make sure not to be sloppy!).

The following page contains a cheat sheet of examples. You may note occasional inconsistencies – why name the authors in *Nimmer* but not *McCarthy*? – but don’t let that bother you too much. Do not treat these as gospel. When in doubt, check old opinions, or check the D.C. Circuit – they’re the real sticklers.

Green v. Bock Laundry Machine Co., 490 U.S. 504, 527 (1989) (Scalia, J., concurring)

Outlet Embroidery Co. v. Derwent Mills, 172 N.E. 462, 463 (1930)
(Cardozo, C.J.)

Meyerson v. Harrah's East Chicago Casino, No. 01-1993, 2002 WL 1483222, at *1 (7th Cir. July 11, 2002) [recently published; no F.3d pagination yet]

Relational Design & Technology, Inc. v. Brock, No. 91-2452-EEO, 1993 WL 191323, at *6-7 (D. Kan. May 25, 1993) [district court case not published in a reporter]

J&T Hydro Co., 66 F.E.R.C. ¶ 62,138 (1994) [but agency in a case name has no periods]

42 U.S.C. §§ 1396a(a)(1), (8), (10)(B)(i), (19), (23)

720 ILCS 5/12-15

Ind. Code § 35-48-4-1(a)

Fed. R. Evid. 408

Fed. R. Civ. P. 10(c)

Fed. R. App. P. 28(a)(9)(B)

24 C.F.R. 3500.14(c)

57 Fed. Reg. 49600, 49605 (Nov. 2, 1992)

U.S.S.G. § 2G1.1(b)(1) Application Note 2

Restatement (Second) of Torts § 772(a) (1977) [previous opinions reveal uncertainty about the proper date]

2 Fowler V. Harper, Fleming James, Jr. & Oscar S. Gray, *The Law of Torts*, § 7.8, pp. 423-24 (2d ed. 1986)

W. Page Keeton et al., *Prosser & Keeton on the Law of Torts* § 56, p. 376 (5th ed. 1984)

5 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1327, pp. 762-63 (2d ed. 1990)

Richard J. Pierce Jr., *Administrative Law Treatise* § 3-5, pp. 6-7 (4th ed. Supp. 2003)

7 *Collier on Bankruptcy* ¶ 1109.01[1], p. 1109-4 (15th ed. 2002)

2 *McCarthy on Trademarks* § 17:22, p. 17-44 (2002)

4 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 13.03[C], pp. 13-75 to 13-77 (2002)

Author, "Title," 99 *Journalname* 101, 103-05 (2002)

Other pointers:

- Abbreviations such as EEOC, FCC, and UCC have no periods.
- Always spell out United States.
- Do not note cert. denied.
- Do not use brackets to indicate when a capital letter has been lower cased within a quotation.
- Do not use pincites in short opinions or opinions that stand for a single point.
- Insert a space between the “n.” and the note number, and if you need to cite both the note and the text on the page, use an “and” instead of an ampersand.
- You can use *Id.* to refer to the last source in a prior stringcite.
- He uses two section symbols when he’s citing at least two subsections, even if both subsections are within the same section.
- He uses *et seq.*
- He places state court cases by reverse chronological order and not alphabetically by state. Within a state, state supreme court citations are placed before intermediate appellate court citations.
- He does not insert “the” in the interior of a case name citation, even if the West reporter has it.
- He does not include “of [geographical name]” in a case name citation, even if the West reporter has it.

The first edition of *The Bluebook*, entitled *A Uniform System of Citation: Abbreviations and Forms of Citation*, was as I have said published in 1926.⁸ It was twenty-six pages long. When I was a law student, *The Bluebook* was in its tenth edition (published in 1958) and had grown to 124 pages.⁹ In the fifty-two years since, it has increased in length by almost four hundred percent. As a result, it is even less valuable than it was a half-century ago. The nineteenth edition is twice as long as the sixteenth. Will this mindless growth ever cease?

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8. On the evolution of *The Bluebook* to the early 1990s, see James W. Paulsen, “An Uninformed System of Citation,” 105 *Harvard Law Review* 1780, 1782–1785 (1992).
 9. I confess, at the risk of destroying my credibility as a critic of *The Bluebook*, that even when it was a quarter of its present size I was unable to master it. Shortly before the election of the president of the *Harvard Law Review*—a post to which I aspired—I was called on the carpet by Peter Edelman, the *Review*’s managing editor (and now a professor at Georgetown Law School), for having performed a deficient “technical citecheck” on an article or note. He was quite savage in his criticisms, and I worried, though it turned out unnecessarily, that his criticisms would result in my being passed over for the presidency.

Some increase in length over time was to be expected with the expansion of the legal system, growing interest in foreign law, and the advent of new publication vehicles, such as the web. But my clerks' manual is still only 885 words, which is roughly two printed pages. The analogy of cancer to *The Bluebook's* growth comes quickly to mind, as does the distinction between the multiplication of cancer cells in the organ in which they first appear and their eventual metastasis to other organs. For the growth of *The Bluebook* has stimulated the creation of supplemental citation and style guides at a number of law reviews, some of which further dictate compliance with the *Chicago Manual of Style* except as it conflicts with *The Bluebook* or the law review's supplement. In its current edition (the sixteenth, just published), the *Chicago Manual of Style* is a thousand pages long. And by a further metastasis legal citation form has become the subject of a vast academic literature.¹⁰ There is even a 180-page book called *Understanding and Mastering The Bluebook*.¹¹

In my 1986 review of the sixteenth edition of *The Bluebook* I summarized my criticisms as follows:

The particular faults of the Bluebook . . . place it in the mainstream of American legal thought. Like many of the judicial opinions and law review articles whose citation forms it dictates, the Bluebook is elaborate but not purposive. Form is prescribed for the sake of form, not of function; a large structure is built up, all unconsciously, by accretion; the superficial dominates the substantive. The vacuity and tendentiousness of so much legal reasoning are concealed by the awesome scrupulousness with which a set of intricate rules governing the form of citations is observed.¹²

I am not alone in these criticisms; much of the vast literature of commentary on *The Bluebook* is critical.¹³ But there is not much root-and-branch criticism.

10. See the references in the footnotes in Ian Gallacher, "Cite Unseen: How Neutral Citation and America's Law Schools Can Cure Our Strange Devotion to Bibliographical Orthodoxy and the Constriction of Open and Equal Access to the Law," 70 *Albany Law Review* 491 (2007). Despite its intimidating title, this is an excellent article.

11. Linda J. Barris, *Understanding and Mastering The Bluebook* (2d ed. 2010).

12. Posner, note 4 above, at 1343-1344.

13. See, for example, besides Gallacher's article, note 10 above, James D. Gordon III, "Oh No! A New Bluebook!," 90 *Michigan Law Review* 1698 (1992). There is also a literature defending *The Bluebook*, some of it hideously cute, such as Donald Shawler, "In Defense of the Bluebook: A Buoyant Look at Legal Citation History and Practice with a Keen Eye Towards the Newly Materialized Competition between Harvard's *Bluebook* and Chicago's *Maroonbook*," *CBA Record*, Jan. 1992, p. 18.

Most critics accept the basic premises of *The Bluebook*, fuss over details, and don't worry that "bluebooking" involves an expenditure of time that would be better devoted to legal education or practice.¹⁴ I want my law clerks to spend their time doing legal research and analysis rather than obsessing over citation form. And while there are plenty of alternative systems of legal citation, including some that are much shorter,¹⁵ the challenger to *The Bluebook* that gets the most attention is even longer than *The Bluebook*—640 pages in its current edition.¹⁶

Why is *The Bluebook* successful? The prestige of its sponsors (originally the *Harvard Law Review*, but now also the Yale, Columbia, and Pennsylvania reviews), and its length (lawyers are suspicious of brevity in any form), are only part of the answer; its having been the first published manual of legal citations (or at least the first to have commanded attention) is another part. The desire for uniformity of citation style, misplaced though it seems to be, gave *The Bluebook* a modest "first mover" advantage, comparable to though much weaker than that of being the first telephone company or the first railroad. The more subscribers that a telephone company has, the more valuable its service is, and so the first company will have an advantage in signing up new subscribers. And once a railroad is built with a track of a particular gauge, subsequent railroads, wanting to interconnect with the first railroad and each other, will be likely to adopt the same gauge. The greater the number of law reviews that use *The Bluebook's* citation forms, the greater the incentive of a new law review to use those forms as well, less to spare their readers' having to adjust to a different form—readers generally are indifferent to citation form, and anyway accustomed to its differing across publications—than to avoid having to think about citation form or invite invidious comparison with the elite law reviews that conform to *The Bluebook*. The uniformity advantage is slight, as I have said, or else all legal publishers would use *The Bluebook*, and many do not. My court does not have a citation form book, and the publishers of judicial opinions do not impose a citation style on our opinions. That means that the court reports published by West do not have a uniform citation style—and no one notices or objects.

A second, more difficult question is why *The Bluebook* keeps growing in size. There are reasons for its occasional updating, when new types of legal

14. Gallacher is an exception, and there are others.

15. A good example is Ronald B. Standler, "Legal Research and Citation Style in USA," 2004, www.rbso.com/lawcite.htm#Alternatives (visited Sept. 10, 2010), which combines criticism of *The Bluebook* with constructive alternative suggestions.

16. Darby Dickerson and Association of Legal Writing Directors, *ALWD Citation Manual: A Professional System of Citation* (3d ed. 2006).

reference material emerge, such as online publication, or, in an earlier day, the *Federal Register*; but the number of new types of material that have emerged since 1926 cannot explain the almost twenty-fold growth in the length of *The Bluebook*. In part its growth is due to the pointless decision of *The Bluebook's* authors to prescribe an abbreviation for every law review, court reporter, statute book, etc., in the world, so that as these sources proliferate, the lists of abbreviations grow. The nineteenth edition, published just five years after the eighteenth, is 23 percent longer; but the “tables” section, which catalogs legal sources for the United States and a large number of foreign jurisdictions as well, is 38 percent longer, mostly because of additional foreign materials (sources of Iraqi law, for example), all carefully listed and (uselessly) abbreviated. The catalog of sources has value as a guide, but that is the function of a reference book rather than a manual.

The growth in *The Bluebook's* length is probably due in part to the desire, largely financial in origin, to issue new editions at short intervals. Once committed to *The Bluebook* because of the “first mover” advantage that it enjoys, law review editors are pretty much forced to buy each successive edition. They would be reluctant to do so if each edition made significant changes in the existing citation forms, as that would undermine the uniformity advantage of *The Bluebook* over competing form books. So adding to the existing forms—listing new legal sources and creating abbreviations for them—is the preferred method of revision from edition to edition, and makes its length grow from edition to edition.

This is not necessarily good economics. The longer the intervals between editions, the higher the price *The Bluebook* would command, because buyers would know that the edition they were buying would not become obsolete so soon. Lengthening the intervals would be like increasing the durability and hence value of a light bulb. But updating is so central to legal research that a planned-obsolescence business model works for *The Bluebook*.

The growth in the size and complexity of *The Bluebook* may also reflect the reflex desire of every profession to convince the laity of the inscrutable rigor of its methods. The essence of “profession” as a type of service provider is that it employs esoteric methods that its customers must take on faith; it is on that basis that a profession can claim such privileges as licensure requirements that restrict entry and thus competition. But unlike the genuinely professional methods used by the modern medical profession to diagnose and treat disease, the core method of the lawyer and the judge is “legal reasoning,” and it lacks scientific rigor; indeed, at its best, it is uncomfortably close to careful reading, to rhetoric, and to common sense. An unconscious awareness of the limitations of legal “science” drives the search for rigor into unlikely places, such as the

form of citations,¹⁷ and has given the profession a 511-page book that it does not need.

A grim capitalist logic thus drives the malignant growth of *The Bluebook*.

17. So Justice Blackmun, though he let his law clerks write most of his opinions, citechecked the clerks' drafts meticulously and is reputed to have been a positively awesome bluebooker, despite which his opinions are not generally admired, even by those who like the outcomes. (Although the Supreme Court has its own citation system, it is very limited, and *The Bluebook* is available to fill the interstices.) Blackmun even bluebooked his clerks' bench memos!