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## Goodbye to the Bluebook

Richard A. Posner

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## ESSAY

### Goodbye to the Bluebook

*Richard A. Posner*†

Anthropologists use the word “hypertrophy” to describe the tendency of human beings to mindless elaboration of social practices. The pyramids in Egypt are the hypertrophy of burial. The hypertrophy of law is *A Uniform System of Citation*, now in its fourteenth edition (1986)—a 255-page pamphlet on legal citation form, published by a consortium of law reviews led by Harvard. Most student-edited law reviews, as well as most courts, law firms, and legal publishers, follow—slavishly—the complex and intricate directives laid down in the “Bluebook” (see, e.g., *id.* at pp. iv-v), as it is known from its blue cover. The legal profession needs a new approach to legal citations and to legal style—the latter a related but more important subject that the Bluebook ignores. The students at the University of Chicago Law School have mounted a bold challenge to the Bluebook’s hegemony: the *University of Chicago Manual of Legal Citation*, which debuts in this issue of the *Review* (see the appendix to this essay).<sup>1</sup> Although I have minor reservations about the *Manual of Legal Citation* and regret that it doesn’t tackle the problem of style,<sup>2</sup> it is a refreshing contrast to the Bluebook.

The particular faults of the Bluebook, most of which the new Chicago Manual corrects, 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

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† Judge, U.S. Court of Appeals for the Seventh Circuit; Senior Lecturer, The University of Chicago Law School. The comments on a previous draft of Edward DuMont, Frank Easterbrook, and Richard Porter are gratefully acknowledged.

<sup>1</sup> *The University of Chicago Legal Forum* and the students in the Bigelow Legal Research and Writing Program at the University of Chicago Law School will use the manual as well as the *Law Review*.

<sup>2</sup> Its one-page discussion of “style” is limited to such formalities as capitalization.

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.

Let us consider what purposes are served by having a system of citation forms rather than a free-for-all. There are four. The first is to spare the writer or editor from having to think about citation form; he memorizes the book of forms, or uses its index. This purpose is defeated when the form book becomes so complex that considerable time is spent studying, consulting, extrapolating from, and resolving contradictions in it. The second purpose, which is self-evident, is to economize on space and the reader's time. The third, which is in tension with the second, is to provide information to the reader. The fourth is to minimize distraction.

Regarding the third purpose, notice that the information provided by a citation is of two sorts: (1) information that helps the reader decide what to do with the citation—accept it at face value, discount it, go look up the cited work—and (2) in the event that the reader wants to look up the cited work, information that makes it easy to locate it in a library. Information of the first sort is illustrated in the case of journal articles by the name of the author and the title and date of the article. Even just the journal's title provides information of the first as well as second sort, because some journals are more authoritative or more selective than others or have a specialized subject matter that provides an additional clue to the nature of the cited article.

The fourth purpose of citation forms, that of minimizing distraction, can be illustrated by supposing there were no convention on whether to cite the *Federal Reporter, Second Series* "F.2d" or "Fed. 2d." It doesn't matter a fig which of these forms is used. But it is desirable that one should be used consistently within an article or journal, so that the reader, if he sees "F.2d" and "Fed. 2d." in the same article or even in different articles in the same journal, won't wonder (even if just momentarily) whether these are two sources or one.

From this simple, and I trust uncontroversial, statement of the purposes served by having citation forms, it is possible at once to draw several specific inferences that are unfavorable to the Bluebook. First, an article should not be cited by the author's last name

only, which is the general Bluebook form for citing articles.<sup>3</sup> The purpose of citing the author's name is to tell the reader who the author is, and for those purposes a last name will not suffice unless the author is so well known to all possible readers that no further identification is necessary. The Bluebook's requirement that the author of *War and Peace* be cited "L. Tolstoy" (because a book is to be cited by the last name and first initial of the author) is merely pedantic;<sup>4</sup> but in an era of multiple Ackermans, Dworkins, Epsteins, Whites, Schwartzes, etc. writing law review articles, a scholarly work should as a general rule cite authors of articles by their full names, so that the reader will be in no doubt who the author is—a bit of information that may tell him how much weight he wants to give the citation and whether he wants to look it up.

This is one of the few cases in which the Bluebook sins by omission.<sup>5</sup> The principal vices of the Bluebook are requiring the useless elaboration of citations and requiring useless uniformity; these, along with the Bluebook's aspiration (of which more later) to be a treatise on legal bibliography as well as a manual of citation forms, explain the excessive length of the Bluebook and the excessive time that legal writers and editors spend learning and applying its rules.

Among the useless (and costly) elaborations of citation form are the rules (suggested although not required) for typeface in law reviews—large and small capitals for books, italics for articles and signals ("see," "cf.," "contra," etc.), and so forth. These would be useful if it were otherwise possible to confuse a book with an article, or to misunderstand when words like "see" and "cf." and "see also" and "see generally" introduce citations and when they are part of ordinary discussion. But such confusions are very rare. When one is referring to a case by the name of only one party, so that the tell-tale "v." is missing, italicization is useful so that the reader knows immediately that it is a case and not a person or an institution that is being discussed. But this is one of only a few examples where typeface informs more than it distracts.

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<sup>3</sup> The Bluebook does allow (p. 83) the reader to give more than the last name "if failure to do so would make identification difficult." The full name, however, nearly always communicates useful information to the reader; it should be given as a general rule, and not merely in exceptional cases.

<sup>4</sup> I wonder how one is expected to cite the author of *The Divine Comedy*: "D. Alighieri"? That would merely be absurd.

<sup>5</sup> A second is in not requiring parallel citations to cases published in the *English Reprint* series—for there are many discrepancies between the nominate reporters and *English Reprints*. A third is the omission of any discussion of style.

Among the Bluebook's other useless elaborations of citation form are:

(1) Requiring the notation "cert. denied" after citations to cases in which certiorari was sought and refused, though the Supreme Court has told the legal profession time and again that denial of certiorari does not indicate approval of the lower court's decision.<sup>6</sup>

(2) Requiring the date of the most recent codification of a statute, even though a statute currently in force is properly dated as of the date of publication of the article or other work citing it, which means it doesn't need a date at all unless the date of *original* enactment is important for one reason or another.

(3) Strongly recommending (all law reviews appear to have interpreted this as a command) that a citation preceded by a "cf."—or other signal that indicates that the citation provides only indirect support for the proposition it is cited for—be followed by a parenthetical explanation of what the cited work says. This produces such absurdities as attempting to boil down *Leviathan* or *The Republic* to a sentence fragment. The Chicago Manual does away with this requirement. See Rule 2.4.

Among the examples of the Bluebook's requiring excessive uniformity of citation forms, four in particular should be noted. The first is the long lists of abbreviations spotted throughout the Bluebook. The long lists are undesirable on two counts. Abbreviations should always be used sparingly, because when used in profusion they make a work unreadable and uncivilized. And except for the handful of abbreviations that can fairly be said to be part of the lawyer's technical discourse (mainly abbreviations of the names of case reports, such as F.2d, and legal periodicals, such as Colum. L. Rev.), a nonobvious abbreviation—an abbreviation you must learn from a list of abbreviations—is a contradiction in terms. If the abbreviation is not obvious, some readers will be confused (not every lawyer can memorize the Bluebook), so the word should be spelled out in full.

The second example of insistence on excessive uniformity (really a part of the first) is a set of complex rules (eliminated by the Chicago Manual, see Rule 3.2) for abbreviating case names, which sometimes are very long. The simplest approach would be to drop all but the first few words in the name—e.g., for "International

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<sup>6</sup> A notation of cert. denied does serve to indicate that a case has become final, but this is a small benefit from having to use the notation for all cases. The Chicago Manual suggests this limited use in citations to recent cases. See Rule 3.2(c).

Association of Machinists and Aerospace Workers, Local District Number 101," substitute "International Ass'n."

The third example (overlapping the first two because it consists in significant part of abbreviations of names of courts and of reporter series) is a guide to citing rarely cited, mostly very old, decisions. And the fourth is an elaborate hierarchy (abandoned by the Chicago Manual, see Rule 2.3) for ordering the citations in a list ("string") of citations. There is no need to have rules about the order in which authorities are cited in a string citation. There is a natural order that depends on the purpose of the string citation and the contents of the cited works. If the author wants to show the evolution of a body of law, then if left to his own devices he will cite them in chronological order. If he is citing cases from the same jurisdiction to provide authority for a proposition, he will cite them in reverse chronological order because, other things being equal, a recent case is more authoritative than an old one. When other things are not equal, as where one citation is of a decision from a higher court than the other, the author will cite the decision of the higher court first even if that decision is older. No rules are needed for these things. All that rules can do is distract the author from thinking about the logical ordering of his citations.

I shall illustrate the Bluebook's unhealthy preoccupation with uniformity by the entry under "Kentucky" (pp. 189-90), an example chosen literally at random. The entry is a page long. The reader is told that the Kentucky Reports should be cited "Ky." It would have been easier to say at the beginning of the Bluebook that the official reports of a state's highest court are cited by the abbreviation for the state; there is no need to repeat this for every state. Apparently (although the Bluebook doesn't bother to explain this) the volumes of the Kentucky Reports before 1879 were originally not numbered consistently. Hence the Bluebook prints a list of all the reporters before 1879, with the dates of their reporting and with abbreviations of each reporter's name, which we are told to put after the volume number and "Ky.," as in "62 Ky. (1 Duv.)" for the first volume published in Duvall's reportership, in 1863. All the Bluebook had to tell us was to include the reporter's name in the citation before 1879 and to give the first and middle initials of "Marshall" and "Monroe" because there were two reporters named Marshall and two named Monroe. The writer or editor can be left to use his own imagination on how to abbreviate "Duvall" and "Metcalf" and whether to try to abbreviate "Bush" and "Dana." No doubt some lack of uniformity would result from the casual approach that I have suggested. But when one considers how infre-

quently the Kentucky Reports before 1879 are cited—even by Kentucky courts—the chance that a reader would be seriously distracted if he encountered variant abbreviations of reporters' names is nil. It is something for only a pedant to worry about.

Among other unnecessary rules about Kentucky are that the Kentucky Revised Statutes should be abbreviated "Ky. Rev. Stat.," that the Kentucky Acts should be abbreviated "Ky. Acts," and that the Kentucky Administrative Regulations Service should be abbreviated "Ky. Admin. Regs." Should freedom reign and someone write "Ky. Admin. Regs. Serv." instead, no confusion would result. There is, though, some gold amidst the dross. Apparently there are two versions of the Kentucky Revised Statutes Annotated, so the Bluebook properly tells us to put in the editor's name. This is a small nugget, though, since annotated codes as distinct from official codes are rarely cited. More important, it is worth knowing that the Kentucky Reports ended in 1951, so the writer won't waste his time looking for later citations to those reports. I estimate that 10 percent of what the Bluebook says about Kentucky is worth saying. And that 10 percent is bibliographical information—not citation forms. The distinction is important. There is a place for a treatise on legal bibliography, which will for example inform the reader about the history of judicial reports in Kentucky; but it does not follow that the treatise writer should tell the reader how to cite those reports. The Bluebook reflects a confusion of functions.

There are sillier things in the Bluebook than the Kentucky entry; I shall mention only one. Apparently the Annotated Code of Maryland has no volume numbers (again this is not said, but left to the reader to infer), so that each volume must be cited by subject matter. Instead of just telling the reader this, and leaving him to fend for himself, the Bluebook (pp. 191-92) gives the full titles of each of the 30 volumes of the Code with an abbreviation for each. Thus, like little children, we are told that the criminal law volume of the Annotated Code of Maryland should be cited "Md. Crim. Law" (in large and small capitals, since a statute is cited like a book); unexplained is why "Law" is not abbreviated to "L.," as in other instances where the word appears in a citation.

The time that law students and lawyers spend mastering and applying the manifold rules of the Bluebook is time taken away from other lawyerly activities, mainly from thinking about what they are writing. It is so hard to get the citation forms right that the writer or editor who has done so is apt to feel that he has acquitted himself of a difficult task and should be allowed to rest his

brain. Less attention can be given writing and rewriting because so much is devoted to forms most of which don't matter worth a straw to the reader. Instead of learning the Uniform Commercial Code the student learns the Uniform Citation Code, which is almost as long, and far more arbitrary. It is all part of the surprising juvenescence of the legal profession; students study the laws laid down by other students, and teachers teach the law laid down by their just-graduated students, the judges' law clerks.

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The particular casualty of preoccupation with citation forms is the style of legal writing. The Bluebook displays an excessive, an unhealthy—one is almost tempted to say, since this is still the land of freedom, an un-American—obsession with uniformity. By teaching that uniformity is one of the most important things in law, the Bluebook encourages the tendency of young lawyers, many of whom in their larval stage are law review editors and in their chrysalis stage the ghostwriters of judges and senior partners (the butterflies), to cultivate a most dismal sameness of style, a lowest-common-denominator style. The Bluebook creates an atmosphere of formality and redundancy in which the drab, Latinate, plethoric, euphemistic style of law reviews and judicial opinions flourishes. Every lesson that students of the English language and teachers of writing seek to instill and that the great writers exemplify<sup>7</sup> is turned on its head in legal writing. Here are some of the anti-lessons that our heavily student-influenced legal culture enforces:

1. Use the passive voice as much as possible, to make unclear who is doing what to whom (“we are asked to overrule *Jones v. Smith*”).
2. Be vague; talk a lot about “fairness,” “justice,” “rights,” “activism,” etc., without defining any of these terms.
3. Nominalize a lot, so that it looks as if you're writing in a technical jargon (e.g., “a Fifth Amendment denial of due process claim” rather than “a claim that the state denied due process in violation of the Fifth Amendment”).
4. Use a lot of adjectives and adverbs.

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<sup>7</sup> See, e.g., George Orwell, *Politics and the English Language* (widely reprinted); Gunther Kress and Robert Hodge, *Language as Ideology* (1979); Richard A. Lanham, *Style: An Anti-Textbook* (1974); Joseph M. Williams, *Style: Ten Lessons in Clarity & Grace* (1981). For an excellent guide to improving legal writing, see Richard C. Wydick, *Plain English for Lawyers*, 66 Cal. L. Rev. 727 (1978)—an essay that should be compulsory reading for law review editors.



5. Make your sentences long.
6. Be euphemistic (e.g., say not “sex discrimination” but “gender-based discrimination,” not “girl” but “minor woman,” not “fired” but “terminated”).
7. Use long textual footnotes to make your work hard to follow, and to avoid having to integrate your ideas in a logical structure.
8. Use a lot of cross-references—see if you can make the reader spend his time flipping backwards and forwards in your work.
9. Qualify everything you say with “I think” or “it could be argued” or “it would seem.” Always weasel. But never acknowledge genuine uncertainty about any proposition you advance; affect certitude.
10. Always be stuffy, boring. Avoid contractions, humor (unless heavy-handed), or any other hint of informality. Never say “though” for “although” or “till” for “until.” Always use the Latinate form of a word (e.g., elevate for raise). Sound old.
11. Banish individuality. Make your writing seem like the work of a committee.
12. Be wordy. Repeat points. Include plenty of unnecessary detail. Never go back over your work to eliminate redundant words and sentences.
13. Cite authority for every proposition, however obvious; maximize the ratio of citations to pages. Save time and thought by copying string citations (unread) from previous articles or opinions.
14. Use legalisms and archaic expressions whether or not there are equivalents in ordinary language. Don’t say that something is within a statute’s reach; say it’s within its “ambit.” Don’t say “this case”; say “the instant case” or “the case at bar.” Don’t call an issue “new”; call it one “of first impression.” Don’t say a contract is “broken”; say it’s “breached.” Never call the parties by their names; call them “appellant” and “appellee,” or, better, “plaintiff-appellant” and “defendant-appellee.” Make the reader think you wrote your piece right after waking up from a 200-year sleep.
15. Be abstract, not concrete. Never try to make the reader visualize what he is reading.
16. Use clichés (tired metaphors). Don’t say, “this law will deter people from speaking out freely”; say it will “chill their freedom of speech.” “Chill” is the accepted cliché for describing the effect of a law that places a burden on free speech or, indeed, any

right. Don't try to find a fresh metaphor.

17. Adhere rigidly to every outdated rule of grammar you can find. So never begin a sentence with "But" or "And" or "However," or end it with a preposition; never split an infinitive (however awkward the alternative); never omit the noun after a demonstrative pronoun; allow no paragraph to have fewer than three sentences; never omit "of" after "all"; always use "and" or "or" before the last item in a series; and never use "since" for "because" or "while" for "although."

18. Be sure to use lots of unnecessary commas, to slow down or perhaps stupefy the reader. Use lots of italics, hyphens, and compound words (in the German manner)—like "rulemaking" and "factfinding"—to confuse and distract.

19. Write in a superior, arrogant, dismissive, sarcastic manner. Insinuate that only a fool, or a person untutored in the mysteries of the law, would disagree with you. Make clear that all legal questions have a right and a wrong answer, and that yours is the right answer. Make certitude the test of certainty.

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The ideal replacement for the Bluebook would be a short pamphlet that began (as I began this essay) with a statement of the purposes for having citation forms and with the admonition that the specific rules laid down in the pamphlet should be interpreted in accordance with its purposes. A *short* list of rules would follow, many of which would state procedures rather than answers—e.g., add the editor's name in citing case reports that are not numbered consecutively. The list of rules would be so short that there would be ample room for supplementing it with a list of style rules, which would simply be the obverse of the anti-lessons that I have just given, with examples. The entire book of citation forms and style need not exceed 25 pages. It would, if adopted, not only improve legal citation practices and legal style, but also free up lawyers' time to think more about legal substance and presentation and less about legal formality.

I congratulate the students of the University of Chicago Law School for having written a citation manual that comes so close to the ideal that I have sketched. I estimate that the new manual is only about 15 percent as long as the Bluebook (even excluding the Bluebook's list of tables of authorities), but, with the exception of foreign materials, it touches all of the essential bases of legal citation form—cases, statutes and legislative materials, administrative materials, books, articles, and student commentary. It corrects

most of the Bluebook's faults that I have discussed in this essay and introduces no new ones. It vastly simplifies citation form without depriving the reader of any valuable information; indeed, by requiring the full names of authors as a general rule it significantly expands the information conveyed by legal citations. It leaves much to the discretion of the author and editor yet without imposing on them a difficult burden of thought and decision; for as to matters not prescribed by the Manual, no more than a moment's thought should be necessary to answer a question of form in a satisfactory though not always uniform manner. The Manual is a breath of fresh air; may it swiftly conquer the world of legal publishing. The Bluebook will and should survive—but as a treatise on legal bibliography, not a manual of citation form.

# APPENDIX: THE UNIVERSITY OF CHICAGO MANUAL OF LEGAL CITATION†

## Introduction

The following set of guidelines provides a simple, workable system of citation for legal writing. The guidelines are intended to cover all varieties of legal writing, including but not limited to briefs, legal memoranda, judicial opinions, and academic writing.

These rules provide a basic framework: they suggest the essential elements of any citation and how they most clearly can be presented. However, because it is neither possible nor desirable to write a particular rule for every sort of citation problem that might arise, the rules leave a fair amount of discretion to practitioners, authors, and editors. They are encouraged, where no specific rule covers a situation, to cite authority in a clear, sensible manner.

We believe that consistency within a brief, opinion, or law journal is important, but that uniformity across all legal materials is not. We hope and expect that writers and editors will adapt the rules to the particular needs of their formats. The rules leave them this responsibility without imposing on them the burden of conforming exactly to the rest of the legal world.

## **RULE 1: TYPEFACES**

All material should appear in roman type except the following, which should be italicized (or underlined if only roman typeface is available):

- (a) names of authorities in text;
- (b) uncommon foreign words;
- (c) words to be emphasized in text or notes.

Thus names of cases, articles, speeches, and books should be in roman type when in a citation clause—that is, whenever followed

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† © 1986 The University of Chicago Law Review and The University of Chicago Legal Forum. The editors solicit readers' comments on this working draft, which omits a list of suggested abbreviations and tables of U.S. and foreign authorities. (Appendix 3). Thanks go to Douglas G. Baird, Gerhard Casper, Richard A. Epstein, Jo Desha Lucas, Geoffrey P. Miller, Richard A. Posner, A.W.B. Simpson, and Nelson Lund for helpful comments on earlier drafts.

by citation information—and italicized (or underlined) when used in text, including textual parts of footnotes—that is, only when not followed by citation information. For example,

Justice Rehnquist's majority opinion in *National League of Cities v. Usery*, 426 U.S. 833 (1976), reinvigorating the Tenth Amendment, was overturned in *Garcia*.

Finally, common legal phrases, such as *ex parte* or *de facto*, are not italicized.

## **RULE 2: CITATION SENTENCES**

### **Rule 2.1: Introducing Authorities**

An authority may be introduced either:

(a) without any words of introduction, only when the authority directly supports the statement in the text; or

(b) preceded by an ordinary English phrase explaining its force and or purpose.

Thus, for example, citations might be introduced by "See," "But see," "See, for example," "For general background, see," or other descriptive language.

### **Rule 2.2: Punctuation of Citation Sentences**

Multiple authorities following a single introductory phrase should be separated by semicolons. When a new phrase introduces another group of citations, a new citation "sentence" should begin.

### **Rule 2.3: Order of Authority**

Give this issue careful thought. The most important authorities, or those most supportive of the argument being made in text, usually should appear first. Authority that supports the text only by analogy, or indirectly, should appear next, in a separate citation sentence introduced by language explaining how the authority supports the proposition made in text. Sources that provide only tangential support for the proposition in text should be omitted.

Authorities that are of equal force should be grouped by type. Cases should be put with other cases, statutes with other statutes, and secondary materials such as books or articles with other materials of the same kind. Within each such group, the authorities may be organized in any manner that seems desirable.

### Rule 2.4: Explanatory Information

Additional information should be provided if it is helpful in explaining the force or meaning of the authority cited or if the authority makes a point different from that in the text. This information may be presented in parentheses or in a separate phrase as seems appropriate. For example,

Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365, 379 (1978) (White, J., dissenting), citing *Aldinger v. Howard*, 427 U.S. 1 (1976).

*United States v. Benjamin*, 328 F.2d 854 (2d Cir. 1964), affirming the conviction of an attorney for conspiracy.

General Trade Policy, Hearings on H.R. 794, H.R. 1571, and H.R. 2203 before the Subcommittee on Commerce, Transportation, and Tourism of the House Committee on Energy and Commerce, 98th Cong., 1st Sess. 234 (1983) (statement of U.S. Trade Representative William E. Brock).

*Lochner v. New York*, 198 U.S. 45, 56 (1905) (emphasis added).

## RULE 3: INITIAL REFERENCES TO AUTHORITIES

### Rule 3.1: General Matters

(a) *Internal Citation.* Citation to a specific part of a work should correspond to the internal ordering system the work uses. Indicate the precise location of the supporting statements within the authority, using the page number (no symbol), section (§) number, paragraph (¶) number, chapter (ch.) number, or note (n.) number, or any combination of these.

Internal identifiers standard for many or all editions of a work should be used. For example, a few well-known works indicate the pagination of the first edition with an asterisk at the appropriate place in the margin or text. Thus,

William Blackstone, 1 Commentaries \*12.

The particular edition used may be cited if desired.

(b) *Authors' and Editors' Names.* Cite to the author's or editor's full name as given on the first page or the title page of the source cited. (In subsequent references give only the last name, as indicated in Rule 4.2(c) and (d)).

Where there are two or three authors, list them all in the same fashion; if there are more than three, it is adequate to list the first several and then "et al."

For student-written works in law journals, the author's name should be replaced by the designation used in the journal, such as

“Note,” “Comment,” or “Case Note.”

(c) *Authority included in another source.* When an authority is collected, reprinted, or otherwise included in whole or in part in another source, cite by joining the citation clauses for the two works with an appropriate descriptive phrase. Indicate the page of the larger source at which the included work begins. Thus, for example,

Mark Tushnet, Corporations and Free Speech, in David Kairys, ed., *The Politics of Law: A Progressive Critique* 253, 256 (1982).

The Civil Rights Attorney's Fees Awards Acts of 1976, Sen. Rep. No. 94-1011, 94th Cong., 2d Sess. 6 (1976), reprinted in 1976 U.S. Code Cong. & Admin. News 5908, 5913.

Goldberg v. Kelly, 397 U.S. 254 (1970), excerpted in Stephen G. Breyer and Richard B. Stewart, *Administrative Law and Regulatory Policy* 719 (2d ed. 1985).

### Rule 3.2: Cases

(a) *Reported Cases.* Use the following form, with the indicated punctuation:

{case name}, {volume number} {reporter} {1st page}, {cited page}  
{(court)} {year}.

For example,

Securities and Exchange Com'n v. Texas Gulf Sulphur Co., 401 F.2d 833, 848 (2d Cir. 1968).

(i) *Case Name.* Use the running head in the first reporter cited. In text, however, words may be spelled out where reasonably necessary for clarity and readability. If there is no running head, see discussion in Rule 3.2(b).

(ii) *Reporter.* Abbreviate the name of the reporter in accordance with the abbreviations suggested in Appendix 3 [*Editors' note:* Appendix 3, listing U.S. and foreign authorities, is omitted.]

When citing to a state case, indicate the volume and first page of the case for each reporter listed in Appendix 3. For example,

Henningsen v. Bloomfield Motors, Inc., 32 N.J. 358, 161 A.2d 69 (1960).

Where the official reporter reprints an earlier editor's collection of cases and renumbers the volumes, it is not necessary to indicate the name of the earlier reporter's editor. For example, use either

Marbury v. Madison, 5 U.S. 137 (1803), or

Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803).

A looseleaf service or other source containing opinions is treated the same as any other reporter, but the publisher should be indicated parenthetically at the end of the looseleaf's name to facilitate location of the volume. Thus,

In re Saberman, 3 Bankr. L. Rep. (CCH) ¶ 67,416 (Bankr. N.D. Ill. 1980).

(iii) *Cited Page*. Indicate the particular pages of the case that support the proposition in text.

When citing to state cases, however, it is permissible to give the particular pages supporting the text for one reporter only. Thus,

Henningsen v. Bloomfield Motors, Inc., 32 N.J. 358, 161 A.2d 69, 97-99 (1960).

(iv) *Court*. Indicate the name of the court that decided the case (abbreviating as in Appendix 3) unless the court's identity is clearly indicated by the name of the reporter. For example,

Burney v. Children's Hospital, 169 Mass. 57, 47 N.E. 401 (1897).

Aetna Life Ins. Co. v. Lavoie, 470 So. 2d 1060 (Ala. 1985).

(b) *Pending and Unreported Cases*. Use the following form:

{name}, {docket number}, slip. op. at {cited page} ({court} {date and year}).

For example,

Topps Chewing Gum, Inc. v. Fleer Corp., No. 85-7356, slip op. at 5318 (2d Cir. Aug. 25, 1986).

Since there is no running head, use any reasonable abbreviation of the case name. Usually, the names of the first-named plaintiff and first-named defendant—separated by “v.”—will suffice. If a pending or unreported case is available on Westlaw or Lexis, indicate that parenthetically.

(c) *Prior and Subsequent History*. Indicate a case's prior or subsequent history only when it clarifies the strength of the case's authority or shows whether the case is continuing.

Use the following form:

{citation to main authority}, {type of prior/subsequent action} {citation to subsequent/prior authority}.

Use reasonable abbreviations (“aff’d,” “rev’d,” “aff’g,” “rev’g”)



to indicate type of prior or subsequent action. For example,

Delaware Valley Citizens' Council v. Com. of Pa., 762 F.2d 272 (3d Cir. 1985), *aff'd in part, rev'd in part, and restored to docket for reargument*, 106 S. Ct. 3088 (1986).

Indicate a grant of review ("cert. granted," "appeal filed") but do not indicate a denial of review ("cert. denied," "appeal denied") that has no precedential authority (for example, a denial of certiorari by the United States Supreme Court) unless it is particularly recent and thus indicates finality.

A substantially different case name in prior or subsequent history should be indicated. For example,

Great Western United Corp. v. Kidwell, 577 F.2d 1256 (5th Cir. 1978), *rev'd as Leroy v. Great Western United Corp.*, 443 U.S. 173 (1979).

Leroy v. Great Western United Corp., 443 U.S. 173 (1979), *rev'g Great Western United Corp. v. Kidwell*, 577 F.2d 1256 (5th Cir. 1978).

### Rule 3.3: Periodical Article

Articles in journals, newspapers, and services should be cited as follows:

{author}, {name of article}, {volume number} {periodical} {page}  
( {date} ).

For example,

Bruce A. Ackerman, *Beyond Carolene Products*, 98 Harv. L. Rev. 713 (1985).

(a) *Author*. See Rule 3.1(b).

(b) *Name of Article*. A very long title may be shortened as seems appropriate.

(c) *Volume Number*. Some popular periodicals are frequently identified by date rather than by volume. If so, the volume number may be omitted:

Albert Gore Jr., *Stability for Two*, *New Republic* 19 (Nov. 17, 1986).

(d) *Periodical*. Abbreviate periodical titles in accordance with the guidelines of Appendix 2. Words such as "the" or "of" may be omitted from the periodical name.

(e) *Date*. Where the issues of a periodical are paginated consecutively throughout a volume, only the year is needed. Where issues are not consecutively paginated, give an adequate date to identify

unambiguously the location of the article, e.g., “(Summer 1983)” or “(June-July 1983)” or “(June 13, 1983).”

If the volume number or title clearly indicates the year of publication, the date may be omitted. For example,

E. Donald Elliott, *Constitutional Conventions and the Deficit*, 1985 Duke L. J. 1077.

### Rule 3.4: Books and Treatises

Books and treatises should be cited in the following form:

{ author }, { volume number } { title } { subdivision } ( { edition } { year } ).

For example,

Kenneth Culp Davis, 3 *Administrative Law Treatise* § 18:5 at 353 (2d ed. 1980).

(a) *Author*. See Rule 3.1(b). When referring to an edited work without a single author, place the editor’s name in the author’s position, followed by “ed.” For example,

David Kairys, ed., *The Politics of Law* (1982).

(b) *Volume number*. Replace roman numerals with arabic numerals.

(c) *Title*. Generally, use the title of the book as it appears on the title page, omitting subtitles. If the title is very long, it may be shortened appropriately.

(d) *Subdivision*. See Rule 3.1(a).

(e) *Edition and date*. Give the number of the edition cited unless citing to a first or single edition. Thus one would cite to “(2d ed. 1978)” but only indicate “(1978)” for a first edition. If an edition is commonly identified by the editor’s name rather than by the number of the edition, the editor’s full name may be substituted.

If a supplement is being cited, the parenthetical containing the year should also indicate the year of its publication as well as the original volume’s information. For example,

Austin Wakeman Scott, *The Law of Trusts* § 215 (1967 & Supp. 1984).

### Rule 3.5: Constitutions

Cite to constitutions in the following form:

{ state or country } Const. { subparts }.

For example,

U.S. Const. art. I, § 9, cl. 2.  
 N.M. Const. art. IV, § 7.  
 U.S. Const. amend. XIV, § 2.

If the constitution cited has been superseded, indicate the year of its adoption and, parenthetically, the year it was superseded. For example,

Ark. Const. of 1868 art. III, § 2 (superseded 1874).

### **Rule 3.6: Statutes**

(a) *Which Source to Cite.* There are two citation sources for most statutes: the code, which collects statutory language after enactment; and the act, which is the original source of the statutory language.

Always cite to the code if available. Wherever possible, cite to the official code listed in Appendix 3 (e.g., U.S.C., not U.S.C.A. or U.S.C.S.).

The act may be cited in addition, and it should be cited if the material relied upon is not contained in the codification (for example, statements of legislative findings or purposes often are not codified).

If neither the code nor the act is available, cite to a legislative looseleaf service or to another secondary source, such as U.S. Code Congressional and Administrative News ("U.S. Code Cong. & Admin. News").

(b) *Citation to a Codification.* Use the following form:

{name of act}, {title or volume} {codification} {subdivision}  
 ({year}).

For example,

National Labor Relations Act, 29 U.S.C. §§ 151-169 (1982).

Subdivided Lands Act, Annot. Cal. Bus. & Prof. Code § 11000 (West 1964).

(i) *Name of Act.* Give either the official or popular name of the act or title, as desired, with or without abbreviating. This part of the citation may be omitted if the name is not helpful.

(ii) *Codification.* Sources for codifications of statutes for American jurisdictions are given in Appendix 3, as are details of citation. Generally, give all necessary subdivisions of the statute cited (articles, titles, sections).

(iii) *Year.* Indicate the year of the most recent version that contains the language cited. If the codification is unofficial, give

the publisher's name in the parenthetical before the date, e.g., "(West 1983)."

(c) *Citation to an Original Act.* Use the following form:

{name of act}, {source} · ({year of passage}), {codified at codification}.

For example,

National Environmental Policy Act Pub. L. No. 91-190, 83 Stat. 853 (1970), codified at 42 U.S.C. § 4332 (1982).

Act of May 28, 1981, 1981 Minn. Laws 1307, to be codified in Minn. Laws § 260.

(i) *Name of Act.* As with citation to a codification, give the official title of the act or a popular or common name. If there is no official or popular name, it is customary to identify the act by "Act of {date of passage}." For U.S. statutes since 1957 and some state statutes, it is customary to indicate "Pub. L. No. xxx" after the name.

(ii) *Source.* Refer to Appendix 3.

(iii) *Codification.* If the act is or will be codified, cite the codified version after the date.

(iv) *Year of Passage.* The year may be omitted when clearly indicated in the name of the act.

(d) *Other Information.* Any information about the current force of an act, such as amendments or repeals, should be provided. For example,

Antidumping Act of 1921, 19 USC 160 or 42 Stat. 11 (1947), repealed by Trade Agreements Act of 1979, § 106(a), Pub. L. No. 96-39, 93 Stat. 144, 193.

When citing to sections of widely known acts, it is often helpful to indicate the section number in the original act as well as the section number in the codification. For example,

Taft-Hartley Act § 301(a), 29 U.S.C. § 185(a) (1982).

(e) *Model Codes and Uniform Acts.* When citing a uniform act as the law of a particular state, cite to the state statute, although it may be helpful to indicate parenthetically the corresponding uniform act section. When citing the uniform act directly, it is permissible to give the name of the author parenthetically with the date. For example,

See Fla. Stat. § 672.615 (1967) (U.C.C. § 2-615 (ALI 1962)).

### **Rule 3.7: Legislative Materials**

(a) *General Rule.* For legislative materials other than those specified below, cite as follows:

{title}, {legislature}, {session} {page or section} ({date}).

The session may be omitted if the legislature only has one session, and the publication may be omitted where there is no published volume containing the material (e.g., for unenacted bills).

(b) *Federal Sources.* Federal bills and resolutions often can be cited to the Congressional Record ("Cong. Rec."). Federal reports and documents often can be cited to the United States Code Congressional and Administrative News ("U.S. Code Cong. & Admin. News"). Forms for such citations are:

(i) *Bills and Resolutions.*

{title and/or bill no.}, xxth Cong., xxth Sess. ({date introduced}) in {citation to source, if any}.

For example,

S.2404, 97th Cong., 2d Sess. (April 13, 1982) in 128 Cong. Rec. 7091 (Apr. 20, 1982).

(ii) *Committee or Subcommittee Reports.*

{title of the report}, {Sen. or H.R.} Rep. No. xx, xxth Cong., xxth Sess. {page} ({date}).

For example,

Martin Luther King, Jr. Federal Holiday Commission, H.R. Rep. No. 98-893, 98th Cong., 2d Sess. 4 (1984).

(iii) *Committee or Subcommittee Hearing.*

{title, including bill number and committee name}, xxth Cong., xxth Sess. {page} ({date}).

For example,

Service Industries Commerce Development Act of 1982, Hearing on H.R. 5519 before the Subcommittee on Commerce, Transportation and Tourism of the House Committee on Energy and Commerce, 97th Cong., 2d Sess. 69 (1982) (statement of Gordon J. Cloney, II, Chamber of Commerce of the United States).

### **Rule 3.8: Executive and Administrative Materials**

(a) *General Rule.* Cite by author (if appropriate), title, official

source, page, and date, for both federal and state materials. The appropriate sources for federal and state regulations and adjudications, and more detailed rules for citation, are listed in Appendix 3.

(b) *Federal Regulations and Rulemaking.* Agency regulations appear in two sources: the Code of Federal Regulations (“C.F.R.”), which collects final rules; and the Federal Register (“Fed. Reg.”), which publishes proposed and final rules. Notices of proposed rulemakings appear only in the Federal Register.

Cite to the Code of Federal Regulations if available, and otherwise to the Federal Register. For example,

10 C.F.R. § 10.12 (1986).

National Bureau of Standards, Amendment to Procedures for the Development of Voluntary Product Standards, 51 Fed. Reg. 22496, 22502 (1986) (amending 10 C.F.R. § 10.13).

Some specialized regulations often are cited according to the convention of the agency promulgating them. For example, the Treasury’s regulations under the Internal Revenue Code are cited simply as “Treas. Reg. § xx.”

(c) *Federal Adjudications.* Cite to the official source used by the agency, if available. Otherwise, cite to the Federal Register, indicating the agency as author. Where applicable, follow the rules for citing court cases (see Rule 3.2); for example, use the running head at the top of the source if there is one. Thus,

Hollywood Ceramics Company, Inc., 140 N.L.R.B. 221 (1962).

Official sources specific to particular agencies are listed in Appendix 3. For example, Treasury rulings and procedure for the Internal Revenue Code are cited to the Cumulative Bulletin (“Cum. Bull.”) or its advance sheet, the Internal Revenue Bulletin (“Int. Rev. Bull.”).

### **Rule 3.9: Rules of Practice**

A special form is used for court rules and rules of evidence or procedure, which are cited simply by name and number of the rule. For example,

Fed. Rule Civil Proc. 12.

Tex. Rule Evid. 803(a)(1).

U.S. S. Ct. Rule 7.

## RULE 4: SUBSEQUENT REFERENCES TO AUTHORITIES

### Rule 4.1: General Rule

When citing an authority for the first time, give the full citation according to Rule 3 above. Thereafter, references to the same authority should be made as follows:

- (a) by another full citation, if the full citation has not appeared for several pages;
- (b) by “id.,” only if the authority is the only one cited in the immediately preceding sentence or footnote;
- (c) by a short form, if one exists (see Rule 4.2); or
- (d) to avoid ambiguity, by a shortened name specifically designated in parentheses in the initial reference. For example, the initial reference might read

Gerald Gunther, *Constitutional Law* 14 (11th ed. 1985) (“Gunther Casebook”),

and the later references

Gunther Casebook at 292 (cited in note 16).

### Rule 4.2: Short Forms

- (a) *Cases*. For a case cited previously, use the following form:

{shortened case name}, {volume number} {reporter} at {page}.

For example,

Texas Gulf Sulphur, 401 F.2d at 845.

(i) *Shortened case name*. The shortened form of the case name is usually the name of the first non-governmental party (e.g., “Chaney” for “Heckler v. Chaney” or “Watson” for “U.S. v. Watson”). Popular names for cases (for example, “The Lottery Cases”) may be used when desired. If the case is cited several times in close proximity, even the shortened case name may be omitted.

(ii) *Reporter and page*. For state cases, cite to either the official or West regional reporter, but be consistent. For example, if the first internal citation was to the West reporter, continue to use the West reporter in subsequent references.

- (b) *Periodical Articles*. Use the following form:

{author’s last name}, {volume} {periodical} at {page} (cited in note xx).

For example,

Ackerman, 98 Harv. L. Rev. at 725 (cited in note 10).

Recall that for student-written works, the name of the author is replaced by a designation such as "Comment" or "Note."

If the article is cited several times in close proximity, "(cited in note xx)" may be omitted.

(c) *Books and Treatises*. Use the following form:

{author's last name}, {shortened title} at {subdivision} (cited in note xx).

For example,

Davis, 3 Administrative Law at 357 (cited in note 41).

Again, if the book is cited several times in close proximity, "(cited in note xx)" may be omitted.

(d) *Statutes*. Use either of the following forms, according to the source used in the initial reference:

(i) *Citation to a Codification*:

{title or volume number} {codification} {subdivision}.

For example,

42 U.S.C. § 4332.

(ii) *Citation to an Original Act*:

{shortened name of act} {subdivision}, {source}.

For example,

National Environmental Policy Act § 201, 83 Stat. at 854.

(e) *Legislative Materials*. Use the following form:

{shortened title or bill/report number} at {subdivision} (cited in note xx).

For example,

H. Rep. No. 96-304 at 9 (cited in note 94).

(f) *Executive and Administrative Materials*. Cite a codified regulation as to a statute, a regulation appearing in the Federal Register as to a periodical, and an adjudication as to a case. Thus,

49 C.F.R. § 73.607.

50 Fed. Reg. at 2530 (cited in note 23).

Hollywood Ceramics, 140 N.L.R.B. at 221.



## Appendix 1: General Rules of Style

In matters not peculiar to legal writing, general rules of style are observed. We recommend use of the *Chicago Manual of Style* to resolve any questions of style not resolved by the main sequence of this text. For convenience, however, this appendix offers a few rules of style frequently needed in editing legal writing. These rules are not intended to be exhaustive.

**Quotations:** Quoted materials may be indicated by a block quotation (indented left and right, without quotation marks and generally single-spaced) or by quotation marks surrounding material in text. The choice is left to the discretion of the author or editor. Generally, quotations running more than six lines in text should be in block form.

If the source for a block quotation is given in text (as in briefs, memoranda, or footnote text), it should begin on a separate line, flush with the (original) left margin.

**Alterations of Quoted Texts:** When a letter must be changed from lower to upper case or vice-versa, enclose it in brackets. Substituted words or letters also should be bracketed. Significant mistakes in the original should be followed by “[sic],” but otherwise left as in the original.

**Omissions in Quoted Materials:** Omissions may be indicated by ellipses (“ . . . ”). Follow the guidelines provided in the *Chicago Manual of Style*.

**Capitalization:** Generally, capitalize the first word in a heading in text or in the title of a book. Capitalize nouns referring to people or groups (for example, “the Administrator” or the “Board,” etc.) only when they identify specific persons, officials, groups, or government offices. Similarly, capitalize such phrases as “the Act,” “the Code,” “the Circuit,” and so forth only when the referent is unambiguously identified.

Names of parts of a constitution or statute may be capitalized when used in an English sentence as proper nouns, as in “First Amendment,” “Article III,” or “Section 8(e).” This practice should be consistent within an article or journal. The phrases “the Court” and “the Constitution” should be capitalized only when referring to the United States Supreme Court and Constitution.

## Appendix 2: Abbreviations

### Part A: Generally

Generally, abbreviations should only be used if they are easily recognized without reference to this book.

Abbreviations should not be used when abbreviation only saves one or two letters; thus use "Labor" instead of "Lab." Generally, abbreviations of under three letters should not be used unless their meaning is well known or clear from context (for example, abbreviations for West regional and federal reporters, "J." for justice, "L." for law).

For abbreviations not familiar or recognizable from context (for example, those in specialized fields, referring to foreign materials, or referring to several words), spell out on first reference and note in parentheses.

Generally, leave a space between all words in an abbreviation unless they can be put together into an independently recognizable group (e.g., N.Y.U. or U.C.L.A.).

Similarly, periods are inserted in all abbreviations, but when referring in text to an organization or other entity that is usually referred to by an acronym (e.g., "the SEC," "the NLRB," "the UCC"), periods may be omitted. Thus "Securities and Exchange Commission Reports" is abbreviated "S.E.C." but one might refer to "the SEC" in text.

## Part B: Geographical Terms

### (1) *Ordinals*: Use

1st, 2d, 3d, 4th, 5th, . . . etc.

(2) *Directions*: Use "N.," "S.," "E." and "W." for all forms of these directions (e.g., "N." for "Northern" as well as "North"). These letters can be combined, e.g., "N.E." for "Northeastern" or "S.W." for "Southwestern." Note, however, that the West Publishing Company's Southern Reports is traditionally abbreviated "So." instead of "S." Either form may be used, since neither is ambiguous.

(3) *Foreign Countries*: Generally, use the first three or four letters of each word, but use more letters if a shorter form would be ambiguous: e.g., do not use "Aust.," because it might stand for Austria or Australia. Where the country's name includes a direction, abbreviate as above: e.g., "E. Ger." or "S. Kor." Use of a common name ("E. Ger. instead of "Ger. Dem. Repub.") is encouraged; thus omit such terms as "The Republic of."

(4) *States and similar subdivisions:*

For U.S. states, abbreviate as follows:

Ala.	D.C.	Ky.	Mont.	Ohio	Utah
Alaska	Fla.	La.	Neb.	Okla	Vt.
Ariz.	Ga.	Me.	Nev.	Or.	Va.
Ark.	Hawaii	Md.	N.H.	Pa.	Wash.
Cal.	Idaho	Mass.	N.J.	R.I.	W.Va.
Colo.	Ill.	Mich.	N.M.	S.C.	Wis.
Conn.	Ind.	Minn.	N.Y.	S.D.	Wyo.
Del.	Iowa	Miss.	N.C.	Tenn.	
	Kan.	Mo.	N.D.	Tex.	

For U.S. territories, spell out the name except for common abbreviations such as "N." or "Am."

For Canadian provinces, Australian states, and other non-American subdivisions, some limited abbreviation may be possible (e.g., the first three or four letters, as in "Ont." for Ontario or "Vict." for Victoria), but it may be advisable to include the name of the country parenthetically.

Names of counties, cities, and smaller subdivisions should generally be spelled out.