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BEATING THE BLUEBOOK BLUES: A RESPONSE TO JUDGE POSNER†

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INTRODUCTION

Judge Richard A. Posner's recent critique (*The Bluebook Blues*)¹ of the maddening hypertrophy of *The Bluebook* is surely a refreshing voice of sanity for the multitudes of law students and legal professionals who have had occasion to consult it. Even at Harvard Law School, the home of its founding institutional sponsor, *The Bluebook's* labyrinthine rules annually aggravate a fresh crop of otherwise remarkably stoic future lawyers. But while many of Posner's observations regarding *The Bluebook* are astute, we posit that both form and uniformity *are* important for citations, and we suggest citation-formatting software as a means of maximizing the utility of legal citations while minimizing the burden of creating them.

I. THE COSTS OF RIGID *BLUEBOOK* ADHERENCE: TIME, MONEY, AND CLARITY

Posner is right that *The Bluebook* has become “a monstrous growth,” and that “‘bluebooking’ involves an expenditure of time that would be better devoted to legal education or practice.” If Posner himself does not use *The Bluebook* for his academic writings, however, it is because he does not have to—that job falls on the weary shoulders of first-year law students who sacrifice their precious little free time to subcite² for their institution's academic

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1. Richard A. Posner, *The Bluebook Blues*, 120 YALE L.J. 850 (2011), available at <http://www.yalelawjournal.org/images/pdfs/940.pdf> [hereinafter Posner, *The Bluebook Blues*].

2. The word “subciting” is not found in standard English dictionaries. However, one online dictionary offers these trenchant definitions:

journals. Every year legions of first-year subcitors descend upon volumes of publication-bound manuscripts to scrupulously ensure that every citation in every manuscript precisely conforms to *The Bluebook's* arcane and convoluted rules of form. Like hundreds of Bob Cratchits slaving away for an ungrateful master, at *The Bluebook's* command they pour over such menial issues as whether Alaska should be abbreviated AK, Alas., or not at all,³ or whether the period in “*id.*” should or should not be italicized.⁴ These students would do better to spend their time preparing for their Property or Contracts classes, or honing their skills for the next moot court competition. And for law professors and others who edit their own works' citations, the detailed complexity of *Bluebook* citation formatting is a distraction from the much more important task of attending to the work's substance.

The Bluebook is not only unjustifiably time consuming, but also troublingly expensive: if each of the 44,000 J.D. students who graduate annually purchase a hardcopy of *The Bluebook* for \$32 (or a subscription to the new online version, which is pricier still), the aggregate financial cost of such fastidious formatting is in the range of \$1.4 to \$2.2 million per year.⁵ Of course, the cost is almost certainly greater, since, as *The Bluebook* notes, the book is relied on not only by law students but also by “lawyers, scholars, judges, and other legal professionals” who may purchase several copies over the course of a career and who absorb the financial costs of time spent formatting citations or pass them on to clients, benefactors, taxpayers, or others.

We further agree with Posner that *The Bluebook* devotes far too much attention to abbreviations. Based on a review of the index, they are treated on nearly three-quarters of *The Bluebook's* pages,⁶ suggesting that they are responsible for much of its bloat. Moreover, too many of these abbreviations defy easy recognition. What percentage of the relevant audience, for example, would be able to correctly explain the abbreviations “WPNR,” “Haw.,”

1. A cruel and unusual punishment for masochistic first-year law students interested in furthering their competitive instincts in another academic venue. 2. The method by which egomaniacal law professors can get away with lazy academic work and/or inattention to detail. Law reviews and student law journals feast on first-years willing to put in the requisite hours to subcite.

Subciting, URBAN DICTIONARY, <http://www.urbandictionary.com/define.php?term=subciting> (last visited Mar. 20, 2011).

3. Do not abbreviate “Alaska”—ever. See THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION 436 tbl.T.10.1 (Columbia Law Review Ass'n et al. eds., 19th ed. 2010) [hereinafter THE BLUEBOOK (19th ed.)].

4. The period at the end of “*id.*” should, of course, always be italicized. See *id.* R. 4.1, at 172.

5. Law Sch. Admissions Council & Am. Bar Ass'n, OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 870 (2011) (indicating that 44,004 J.D. students graduated in 2009); *Purchase Bluebook Products*, THE BLUEBOOK, <http://www.legalbluebook.com/Purchase/Products.aspx?op=Book> (last visited Mar. 18, 2011) (offering the most recent edition of *The Bluebook* for \$32 plus shipping, or a three-year subscription to *The Bluebook Online* for \$50).

6. The “Abbreviations” entry in the index references 371 of *The Bluebook's* 511 pages, or 72.6 percent. See THE BLUEBOOK (19th ed.), *supra* note 3, at 475-76.

or “BB”?⁷ (Hint: BB is not an abbreviation for *The Bluebook*.) If, as Posner says and we agree, the primary functions of a citation are (1) to indicate to the reader the significance of a reference and (2) to enable the reader to find the source, then it seems counterproductive to obfuscate a citation with confounding abbreviations. Large costs in clarity are traded for small savings in space. We find it doubtful, for example, that abbreviating “Policy” to “Pol’y” to save one character space, as Table T13 demands, or using the abbreviation “Pres.” to represent “Preserve” (not “President” or “Presentation”), as required by Table T6, are worth the cost in clarity.

This is even more the case as the printed page increasingly gives way to electronic media, where the need to economize on space weighs much less heavily in the functional calculus. Longer footnotes in electronic media do not cost the publisher more, and to the extent longer footnotes are distracting to the reader, electronic media can offer the option of presenting them to the reader only upon the reader’s interactive request (such as by moving the cursor over the footnote location). We therefore agree with Judge Posner that abbreviations are one area in which *The Bluebook* could benefit from considerable simplification.

II. UNIFORMITY AND ABBREVIATIONS AS A MATTER OF VALUE

Posner, however, does not go far enough either in eradicating unhelpful abbreviations or even in following his own function-based formatting principles: (1) ease of use for the writer; (2) economy of both space and readers’ time; (3) informative value of citations to the reader; and (4) minimization of distraction.⁸ We doubt, for example, that a majority of current law students would be able to quickly comprehend the meaning of the Posner-endorsed abbreviation “Ry.”⁹ And while we agree with Posner and *The Bluebook* that “In re [*case name*]” is shorter and therefore preferable to “In the Matter of [*case name*],” we think that for authors to concern themselves with this choice strikes the wrong functional balance, since doing so is both distracting and pedantic from the perspective of the writer and contributes no additional information to the reader.

Another questionable space-saving device endorsed by both *The Bluebook* (Rule 4.2) and Posner is the use of only author last names with the “*supra*” short citation form. Although author names may convey meaningful information to the reader for very well known authors with relatively uncommon last names, such as “Posner,” it is often more important to remind the reader of journal title, article title, or date. For example, a mere author’s name in a “*supra*” citation could obscure the fact that a putatively authoritative

7. *Id.* at 368, 437, 367-68, respectively. The latter pages indicate that “BB” can be used to represent at least two *different* publications.

8. Posner, *The Bluebook Blues*, *supra* note 1, at 852. See also Richard A. Posner, *Goodbye to the Bluebook*, 53 U. CHI. L. REV. 1343, 1344 (1986) [hereinafter Posner, *Goodbye to the Bluebook*].

9. Posner, *The Bluebook Blues*, *supra* note 1, at 855. See also THE BLUEBOOK (19th ed.), *supra* note 3, at 431 tbl.T.6 (noting that “Railway” should be abbreviated “Ry.”).

source is in fact a hastily drafted blog post, an outdated book, or the work of a biased organization. Expecting readers to search upward (or downward, in the case of “*infra*”) for such information is unreasonably optimistic in the context of modern scholarly legal writing, where articles containing 300 or more footnotes and spanning many dozens of pages are not uncommon.

Posner also downplays the value of universal consistency, which we and other commentators believe is important.¹⁰ In *Goodbye to the Bluebook*, he decries *The Bluebook* for cultivating “a most dismal sameness of style,” yet a citation’s dual functions of indicating authority and reducing search costs are both furthered by a sameness—not a variety—of style. Consider Posner’s consistent prescription from both *The Bluebook Blues* and *Goodbye to the Bluebook* that dates should be omitted from statutory citations for laws currently in force, a prescription that is in direct conflict with *The Bluebook*’s directive in Rule 12. How are readers to know whether a date’s absence indicates a current statute or an editorial oversight, or conversely, whether a date’s presence indicates an abrogated law or simply adherence to *Bluebook* form? Context sometimes helps, but context is not as robust as uniformity of convention.

The common practice of cutting and pasting citations into electronic searches also requires some degree of uniformity. Although Westlaw properly processed most of Posner’s *Bluebook*-defying citation forms, it choked on some seemingly reasonable abbreviations that we postulated. For example, abbreviating the word “Technology” as “Tech.” in “13 Albany Law Journal of Science and Tech. 751” resulted in a Westlaw error message.¹¹ In any event, Posner seems to recognize the value of uniformity of style for aesthetic reasons even where functional concerns are largely absent, as when he instructs his clerks to add a space to the Westlaw-generated citation “7th Cir.2000” to produce “7th Cir. 2000.” We believe functional and aesthetic concerns such as these provide the motivation for what *The Bluebook* seeks to accomplish: maximization of reader value through a uniform system of citation.

Nevertheless, *The Bluebook* pursues these meritorious ends through cumbersome means. Posner is correct in his claim that “[e]fforts to impose uniformity . . . encounter rapidly diminishing returns.” He aptly notes that the core problem with *The Bluebook* is that it is unwieldy. It still applies a twentieth-century method in a much larger, twenty-first century world. What worked for *The Bluebook* with twenty-six pages in 1926 does not scale well to its current 511 pages and beyond. *The Bluebook* is now offered in an electronic format, with full-text search capabilities and a few other en-

10. See, e.g., James D. Gordon III, *Oh No! A New Bluebook!*, 90 MICH. L. REV. 1698, 1702 (1992) (“[C]itations should be consistent enough to permit immediate comprehension . . .”).

11. Entry of the specified citation as abbreviated into the Westlaw box entitled “Find this document by citation” on Mar. 21, 2011 produced the following error message: “We cannot process this FIND request because this citation may contain incorrect information or because the document is not available on Westlaw.” A similar search on the same date using the citation format approved by *The Bluebook*, and another using the journal’s full name without any abbreviation, each produced the desired document.

hancements that titillate the senses of those legal writers with a formatting fetish. These capabilities, however, do not go far enough to address the fundamental unwieldiness and lack of scalability that so frustrate Posner and many others on the supply side of legal writing. If, as Posner indicates, not all legal publishers use *The Bluebook*,¹² it is not because there is no advantage to uniformity but because, at least in the eyes of the nonconforming publishers, the advantage is slight *relative to the burden*. This is an important qualification that Posner glosses over, but one that clarifies the required solution: a system of citation that maximizes the value to the reader through uniformity while simultaneously minimizing the burden on the writer (and our nation's law students) through ease of use. We see promise for this solution in citation-formatting software.

III. THE PROMISE OF COMPUTER-GENERATED CITATIONS

Citation-formatting software could significantly ease the burden on writers of producing uniform citations by internalizing much of the tedium that accompanies manual use of *The Bluebook*. With its 511 pages of detailed conditions, tables, and internal cross-references, *The Bluebook* reads much like the U.S. Tax Code, and just as TurboTax and other tax software packages have expedited use of the Tax Code, software could streamline use of *The Bluebook's* intricate rules.

An example is illustrative. Suppose an author wishes to cite to the U.S. Supreme Court case of *Southern Pacific Co. v. Jensen*.¹³ The author might select "Case" from a short list of options and then "U.S. Supreme Court." The software would then present the author with a template in which to input all the required information, such as case name, reporter name (the software could provide guidance in selecting the preferred reporter), volume, start page, pin cite, date, and signal. After entering all the required information, the author would simply hit "Enter," and the software would return a properly formatted citation. There would be no need for the author to look up *Bluebook* Rule 10.2, cross-reference Rules 2 and 6.1(b), and consult Tables T1 and T6, nor would the author have to worry about recalling the order in which information should appear, the typeface for a case name (or for adjacent characters such as commas), or the prescribed abbreviation for names like "Southern Pacific Company." In short, there would be no need for the author to wade through a mire of conditions, lists, and exceptions—or even remember them—since they would be either internalized or summarily presented during the short dialog with the software.

By making it easier for writers to produce uniform citations, such software would benefit those on both sides of legal writing and improve the efficiency of the system. We are not, however, advocating for a blind codification of everything in *The Bluebook*, or worse, building up an even larger rule base just because software reduces the cost of rules to the writer. As we

12. Posner, *The Bluebook Blues*, *supra* note 1, at 859.

13. 244 U.S. 205 (1917).

mentioned previously, every rule should somehow benefit the reader, and we join Posner in questioning the extent to which some of *The Bluebook's* prescriptions impart such a benefit. Moreover, some rules may not be easily incorporated into a computer algorithm or even presented to the writer as succinct, context-dependent guidelines. Such rules in particular will require careful thinking about the benefits and burdens of their adoption. But because software creation forces creators to carefully consider not only how each rule relates to each other rule but also how to *implement* each rule in the software, creating software in conjunction with the rules should result in greater consideration of the tradeoffs associated with each rule. This, in turn, should result in a better set of rules for the legal community as a whole.

Given the benefits of citation-formatting software, it is not surprising that a number of software products have already entered this competitive space, though all have shortcomings. Programs such as RefWorks¹⁴ and CiteIt¹⁵ claim to accommodate *The Bluebook*, but because they are designed as comprehensive research tools they can be cumbersome to use and do not integrate easily enough with Microsoft Word. Somewhat more promising is Citrus, a Microsoft Word plugin designed to allow users to quickly and easily put their citations in *Bluebook* format.¹⁶ Although seemingly simple to use (based on its online video tutorial), the software is unfortunately geared toward legal practitioners and does not support law review format (for example, Citrus does not provide support for the “*supra*” form). Moreover, its exorbitant price of nearly \$1000 per commercial user per year further exaggerates the importance of form over substance beyond what is already implied by *The Bluebook's* oversized volume, thereby discouraging its widespread adoption. Word 2010, the latest iteration of Microsoft Word itself, costs \$140 for the entire word-processing program and contains a citation-formatting function remarkably similar to what we recommend that could eventually provide an effective solution. Currently, however, Word does not include *The Bluebook* among its supported formats.

Once a simple and effective software solution is created, we believe maintenance costs would be vastly lower than the costs associated with printing and distributing hardcopies of *The Bluebook's* ever-larger tome, which, at current rates of accretion, may require two volumes by 2050. Free, bundled, or attractively priced software would compound the benefits to writers of using it and thereby help tip network effects in favor of efficiency rather than against it. This would reverse the current state of affairs in

14. REFWORKS, <http://www.refworks.com/> (last visited Mar. 23, 2011).

15. CITEIT!, <http://www.citeit.com/> (last visited Mar. 23, 2011). See also ZOTERO, <http://www.zotero.org/> (last visited Mar. 23, 2011) (offering free, university-produced, donor-funded software that integrates with the Firefox browser); CITEGENIE, <http://www.citegenie.com/> (last visited Mar. 23, 2011) (“CiteGenie™ will create citations in Bluebook . . . format[.]”); ENDNOTE, <http://www.endnote.com/> (last visited Mar. 23, 2011); WESTLAWNEXT, <http://west.thomson.com/westlawnext/seeit/ebook/pdf/L-353624.pdf> (“[P]aste text into your work product with the official citations—including *The Bluebook* . . . format[.]”).

16. *Citations Made Simple*, CITRUS, <http://www.cit-r-us.com/index.html> (last visited Mar. 23, 2011).

which, according to Posner, network effects have contributed to the legal citation system spiraling into disutility. In addition to saving writers substantial time and money each year, widespread replacement of *The Bluebook* with formatting software would also benefit readers by producing greater uniformity,¹⁷ which is, after all, the objective stated on *The Bluebook's* own cover.

It is possible, perhaps even likely, that incumbent inertia may constrain *The Bluebook's* big four Ivy League sponsors—the flagship law reviews of Columbia, Harvard, Pennsylvania, and Yale—from promoting or developing such a beneficial tool. Yet if prestige is indeed an advantage as Posner suggests, then perhaps Stanford's Center for Computers and Law (CodeX), whose self-declared mission is “to explore ways in which information technology can be used to enhance the quality and efficiency of our legal system while decreasing its cost,”¹⁸ or some other such high-prestige venture, may wish to take up the banner of moving our system of legal citation into a new age of efficiency that is long overdue.

17. Under the current state of affairs, for example, even *after* rigorous editing at top law schools, citations to the “Harvard Business Review” exhibit variety in punctuation, abbreviation, and order of information. *See, e.g.*, Jeffrey M. Lipshaw, *The Venn Diagram of Business Lawyering Judgments: Toward a Theory of Practical Metadisciplinarity*, 41 SETON HALL L. REV. 1, 26 n.77 (2011) (“88 Harv. Bus. Rev. 44 (Sept. 2010)”); Scott J. Davis, *Would Changes in the Rules for Director Selection and Liability Help Public Companies Gain Some of Private Equity's Advantages?*, 76 U. CHI. L. REV. 83, 90 n.30 (2009) (“85 Harv Bus Rev 18, 19 (July/Aug 2007)”); Kenneth M. Siegel, *Protecting the Most Valuable Corporate Asset: Electronic Data, Identity Theft, Personal Information, and the Role of Data Security in the Information Age*, 111 PENN ST. L. REV. 779, 814 n.379 (2007) (“Harvard Bus. Rev., Oct. 2005, at 96”). We thank Robert Bird for alerting us to this example.

18. *Overview*, CODEX: STANFORD CENTER FOR COMPUTERS AND LAW, <http://codex.stanford.edu/> (last visited Mar. 17, 2011).